Gemini AIA A401.0-2017 Universal Master Agreement V1.0
Gemini Att A Series A-1 V1.0
Gemini Att A Series A-2 V1.0
Gemini Att B - California Subcontractor Billing GCpay
Gemini Att C - 00.00 - California General SOW V1.0
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MASTER SUBCONTRACT AGREEMENT made as of the «___» day of «______» in the year «_________»
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

«BNBuilders, Inc. »« »
«2601 Fourth Avenue, Suite 350»
«Seattle, WA 98121»
« »

and the Subcontractor:
(Name, legal status, address and other information)

«<Insert Sub Legal Name>»« »
«<Insert Address – tie to Physical Address>»
«<City, State zip>»

Mailing Address:
<Insert Address>
<City, State zip>»
« »
« »
«Telephone Number: (xxx) xxx-xxxx
Fax Number: (xxx) xxx-xxxx»

The Contractor has made a contract for construction (hereinafter, the Prime Contract)
dated: «Provided in Each Project Agreement»

with the Owner:
(Name, legal status, address and other information)

«Provided in Each Project Agreement»

for the following Project:
(Name, location and detailed description)

«Provided in Each Project Agreement»

The Prime Contract provides for the furnishing of labor, materials, equipment and
services in connection with the construction of the Project. A copy of the Prime Contract,
consisting of the Agreement Between Owner and Contractor (from which compensation
amounts may be deleted) and the other Contract Documents enumerated therein, has been
made available to the Subcontractor.

This Master Subcontract Agreement shall be utilized in conjunction with the Executed Prime Contract for the
particular project. Subcontractor shall require each sub-subcontractor and or any tiered vendors under their control
to be bound by these terms and agreements.

The Architect for the Project:
Gemini AIA A401.0-2017 Universal Master Agreement V1.0
Whereas the Contractor and the Subcontractor seek to enter into a Master Agreement for a duration of five (5) years, from the date of this Agreement, that will govern all terms except (1) Contract Price, (2) Project duration, (3) Project Scope, and (4) the applicable Prime Contract. These items will be defined in separate Project Agreements. The intent of these Master Agreements is to simplify the negotiation and contracting process by finalizing all contract terms except those related to a specific project. As such, Contractor and Subcontractor agree as follows:

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Master Subcontract Agreement consists of (1) this Master Agreement; (2) other documents listed in Article 15 of this Master Agreement; and (3) Modifications to this Master Agreement issued after execution of this Master Agreement. The Subcontract Documents consist of (1) this Master Subcontract Agreement, (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and other Contract Documents enumerated therein, (3) Modifications to the Prime Contract, whether issued before or after the execution of this Agreement, in accordance with the provisions of Article 5, and (4) the specific Project Agreement and documents referenced therein. These form the Subcontract Documents, and are as fully a part of each separate Project Agreement as if attached thereto or repeated herein.

§ 1.2 The Subcontract Documents form the Subcontract for Construction. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Master Subcontract Agreement shall be the AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified (if) at all by Prime Contract, current as the date of this Agreement.

§ 1.4 The Master Subcontract Agreement may be amended or modified only by a Modification to this Master Subcontract Agreement. The Subcontract for a particular project may be amended or modified by a Modification to the Subcontract Documents for that Project. A Modification is a written amendment signed by both parties, or as otherwise described in, and in accordance with the provisions of, Article 5.

§ 1.5 The Subcontract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Contractor and Subcontractor.

§ 1.6 In the event of a conflict or discrepancy in terms between the various agreements related to a Project, the Subcontractor shall be deemed to have agreed to perform the most stringent or highest quality or costly way of performing the Work and the greater quantity and highest quality. Where the requirement is not more stringent or does not have a higher quality or cost, the following will control in order of precedence:

.1 The Prime Contract, consisting of the agreement between the Owner and the Contractor and the other Contract Documents enumerated therein including subsequent modifications thereto;
.2 The Specific Project Agreement and any attachments thereto;
.3 Modifications to this Master Subcontract Agreement;
.4 This Master Subcontract Agreement, and;
.5 Other documents listed in Article 15 of this Agreement (as applicable).

State-specific changes attached to a Rider modify, add to, and delete from the language of this Master Subcontract Agreement and the other Contract Documents with regard to Projects in that state. Where any language of the Subcontract Documents conflicts or is inconsistent with the State-Specific Rider, the state-specific changes shall control.

ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Subcontractor shall assume toward the Contractor all obligations and responsibilities that the Contractor, under the Prime Contract, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, in addition to the rights, remedies, and redress set forth herein. In the event of any change in the Prime Contract, Subcontractor shall be bound to the Contractor to the same extent Contractor is bound to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 General
The Contractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number.
§ 3.2 Services Provided by the Contractor

§ 3.2.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor’s Work to avoid conflicts or interference in the Subcontractor’s Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of a Specific Project Agreement if requested in writing, the Contractor shall provide the Subcontractor copies of the Contractor’s most recent updated construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor’s Work properly. Subcontractor is responsible to review the Contractor’s schedule and updates and is bound by the duration, sequences, and completion dates therein. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details. Subcontractor agrees to notify Contractor of its obligation to or inability to comply with any schedules, directives, or revisions within five business days of Contractor’s issuance of such documents. In the absence of written objection by the Subcontractor, the Subcontractor agrees to be bound by such schedules, directives or revisions.

§ 3.2.2 Jobsite laydown and storage area is dependent on specific project conditions. If available, space will be allocated for Subcontractor use, as deemed necessary, by the Contractor’s Superintendent. If during the course of the work the Contractor directs the Subcontractor to repeatedly relocate their facilities, Subcontractor will be entitled for reimbursement of direct costs necessary for that work, except as previously agreed upon or if such relocation is a direct result of not being able to complete the Work due to phasing and/or sequence of the Work.

§ 3.2.3 Except as provided in Article 13, the Contractor’s equipment will be available to the Subcontractor only at the Contractor’s discretion and on mutually satisfactory terms.

§ 3.3 Communications

§ 3.3.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects the performance of this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.3.2 The Contractor shall not give instructions or orders directly to the Subcontractor’s employees or to the Subcontractor’s Sub-subcontractors or suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.3.3 The Contractor shall permit the Subcontractor to request information directly from the Architect regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.3.4 If hazardous materials or substances are being used on the site by the Contractor, a subcontractor, or anyone directly or indirectly employed by them (other than the Subcontractor), and they are a type of hazardous material or substance of which an employer is required by law to notify its employees, the Contractor shall, prior to delivery to the Project site or exposure of the Subcontractor’s employees to such material or substance, give notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor’s compliance with such laws.

§ 3.3.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner’s interest therein.

§ 3.3.6 If the Contractor asserts a Claim against, or defends a claim by, the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor and the Subcontractor shall, at its cost, cooperate with Contractor by providing all relevant documents and witnesses upon request.

§ 3.4 Claims by the Contractor

§ 3.4.1 Any liquidated damages for delay imposed by the Owner or Contractor, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.
§ 3.4.2 The Contractor’s Claims for the costs of services or materials provided due to the Subcontractor’s failure to execute the Work shall require

1. two days’ written notice prior to the Contractor’s providing services or materials, except in an emergency; and
2. written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor’s providing such services or materials.

§ 3.5 Contractor’s Remedies

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Master Agreement and fails within three working days after receipt of notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, without prejudice to other remedies the Contractor may have, remedy such default or neglect and withhold, in accordance with Section 11.1.7.2, the reasonable cost thereof from current or future payments due the Subcontractor. If payments due to the Subcontractor are not sufficient to cover such amounts, the Subcontractor shall pay the difference to the Contractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 General

The Subcontractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number. The Subcontractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Subcontractor shall designate in writing a representative who shall have express authority to act on the Subcontractor’s behalf with respect to each specific Project. The term “Subcontractor” means the Subcontractor or the Subcontractor’s authorized representative.

§ 4.2 Execution and Progress of the Work

§ 4.2.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement. Subcontractor agrees to start work on the date directed by the Contractor or as indicated in the Project Schedule (Attachment E) provided in each Project Agreement, and proceed in a diligent manner in accordance with the Construction Schedule, and any revisions thereto, as established by the Contractor.

§ 4.2.2 The Subcontractor shall supervise and direct the Subcontractor’s Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor’s Work to avoid conflict, delay in, or interference with the Work of the Contractor, other subcontractors, the Owner, or Separate Contractors.

§ 4.2.3 Submittals

§ 4.2.3.1 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples, and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay, including a reasonable review and approval time of submitted materials both by the Contractor and Owner/Architect, in the Work or in the activities of the Contractor or other subcontractors (and in no event beyond the timeline mandated by the Prime Contract and/or the Project Schedule attached hereto as Attachment E provided in each Project Agreement).

§ 4.2.3.2 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Subcontractor represents to the Contractor that the Subcontractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Subcontract Documents.

§ 4.2.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.
§ 4.2.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract.

§ 4.2.6 The Subcontractor shall pay for all materials, equipment, and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence and releases provided in Attachment B, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.2.7 The Subcontractor shall take necessary precautions to properly protect the work of the Contractor, Separate Contractors, and other subcontractors from damage caused by operations under this Subcontract.

§ 4.2.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and Separate Contractors whose work might affect the Subcontractor’s Work. The Subcontractor shall participate in the preparation of coordinated drawings as directed by the Contractor, if required by the Prime Contract, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or Separate Contractors.

§ 4.3 Permits, Fees, Notices, and Compliance with Laws
§ 4.3.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Subcontractor’s Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.3.2 The Subcontractor shall comply with Federal, state, and local tax laws; social security acts; unemployment compensation acts; and workers’ compensation acts, insofar as applicable to the performance of this Subcontract.

§ 4.4 Safety Precautions and Procedures
§ 4.4.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract as required in Attachment G. The Subcontractor shall comply with safety measures, plans, or program initiated or adopted by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, for the safety of persons and property, in accordance with the requirements of the Prime Contract. The Subcontractor shall notify the Contractor within twenty-four hours of an injury and/or near miss (an incident that could have caused injury) to an employee or agent of the Subcontractor which occurred at the site.

§ 4.4.2 If hazardous materials or substances are being used on the site by the Subcontractor, the Subcontractor’s Sub-subcontractors, or anyone directly or indirectly employed by them, and they are a type of hazardous material or substance of which an employer is required by law to notify its employees, the Subcontractor shall, prior to delivery to the Project site or exposure of the Contractor, other subcontractors, and other employers on the site to such material or substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with the laws by the Contractor, other subcontractors, and other employers on the site.

§ 4.4.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor’s Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. Provided such relief is available under the Prime Contract, the Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor’s reasonable additional costs of demobilization, delay, and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.4.4 The Subcontractor shall indemnify and reimburse the Contractor for the cost and expense the Contractor incurs (1) for remediation of a hazardous material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.4.3, except to the extent that the cost and expense are due to the Contractor’s fault or negligence.
§ 4.5 Cleaning Up  
§ 4.5.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.5.2 As provided under Section 3.4.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor’s appropriate share of cleanup costs.

§ 4.6 Warranty  
§ 4.6.1 The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work, the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly identified, approved and authorized, may be considered defective. The Subcontractor’s warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall provide satisfactory evidence as to the kind and quality of materials and equipment furnished or to be furnished. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract Documents. The Subcontractor shall execute a written guaranty and warranty applicable to all phases of the Work in accordance with the Subcontract Documents and other applicable provisions of the Contract Documents pertaining to warranties and guarantees.

§ 4.6.2 All material, equipment, or other special warranties required by the Subcontract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with the Subcontract Documents.

§ 4.7 Indemnification  
§ 4.7.1 To the fullest extent permitted by law, the Subcontractor agrees to be responsible for and shall defend, indemnify, and hold harmless the Contractor, the Project Owner, any entities Contractor is required to indemnify in the Prime Contract, and agents, representatives, employees, volunteers, officers, managers, affiliates, parent companies, principals, board members, and directors of any of them (“Indemnified Parties”) for, from, and against costs, claims, actions, causes of action, damages, liabilities, losses, liquidated damages, fines, penalties, and expenses, (including but not limited to actual attorneys’ and expert fees and costs, and costs and expense of consultation, preparation, and review of claims and related documents and in the defense of such claims or in the enforcement of Subcontractor’s indemnity obligations hereunder) (“Loss”) arising out of, related to, or resulting from, or allegedly related to or arising from: (i) any negligent act or omission (whether passive or active), or any intentional act or omission in the performance of the Work, or any breach of any provisions of the Subcontract Documents, by the Subcontractor, a Sub-subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by an Indemnified Party indemnified hereunder; (ii) any determination by a court or agency that Subcontractor is not an independent contractor or that Owner or Contractor is the employer or a joint employer of any of Subcontractor’s or any Subcontractor’s employees or personnel; (iii) any matters for which Subcontractor provides indemnification under the terms of Subcontract Documents; and (iv) any claim, action, suit or proceeding by Subcontractor’s employees, including but not limited to workers’ compensation, unemployment and wage-and-hour claims. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to an Indemnified Party described in this Section 4.7.

§ 4.7.2 With regard to the indemnity and defense obligations arising under Section 4.7, such obligations shall arise regardless of whether such Loss is caused in part by the concurrent or partial negligence of an Indemnified Party.

§ 4.7.3 In claims against any person or entity indemnified under this Section 4.7 by an employee of the Subcontractor, a Sub-subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 4.7.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Subcontractor or Sub-subcontractor under workers’ compensation acts, disability benefit acts or other employee benefit acts. For the purposes of the foregoing indemnification provision only and to the fullest extent allowed by applicable law, Subcontractor specifically waives
immunity it may be granted under any such worker’s compensation, disability benefit acts or other employee benefit acts.

§ 4.8 Remedies for Nonpayment
If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within ten working days of receipt of payment from the Owner for said work, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days’ notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor’s direct costs of demobilization and remobilization.

§ 4.9 Professional Services Provided by Subcontractor
§ 4.9.1 The Subcontractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by a Specific Project Agreement or unless the Subcontractor is required to provide such services in order to carry out the Subcontractor’s responsibilities for its own construction means, methods, techniques, sequences, and procedures. The Subcontractor shall not be required to provide professional services in violation of applicable law.

§ 4.9.2 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Subcontractor by a Specific Project Agreement, the Contractor will provide all performance and design criteria that such services must satisfy to the extent the Contractor has received such performance and design criteria from the Owner and Architect under the terms of the Prime Contract.

§ 4.9.3 If professional design services or certifications by a design professional are required because of means, methods, techniques, sequences, or procedures required by the Contractor and related to the Work of the Subcontractor, the Subcontractor shall make a written request for all performance and design criteria related to Subcontractor’s Work.

§ 4.9.4 The Subcontractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the performance and design criteria received from the Contractor under this Section 4.9.

§ 4.9.5 The Subcontractor shall cause the professional services performed under this Section 4.9 to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop drawings and other submittals related to the Work designed by such design professional shall bear the professional's written approval when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals, provided the Contractor has provided to the Subcontractor all performance and design criteria required by this Section 4.9.

§ 4.10 NATURE OF THE WORK
§ 4.10.1 Subcontractor has satisfied itself as to the nature, conditions, and location of the work, the equipment, materials, and manpower needed which can in any manner affect the work under this subcontract agreement and acknowledges that the Subcontractor has had a reasonable opportunity to examine the site. Prior to commencing work, the Subcontractor shall examine the site and any surface upon which work is to be performed, and shall notify the Contractor in writing of any conditions which might adversely affect its work; failure to do so will constitute a waiver of entitlement to any additional compensation or contract time arising out of such conditions.

§ 4.10.2 BNBuilders, Inc. is signatory to the Carpenters and Laborers trade unions. Subcontractors shall employ only union labor at the job-site for work normally performed or claimed by the above listed trade unions.

ARTICLE 5   CHANGES IN THE WORK
§ 5.1 The Owner or Contractor may make changes in the Work by issuing Modifications. Upon receipt of a Modification by Owner to the Prime Contract issued subsequent to the execution of this Agreement, the Contractor shall promptly notify the Subcontractor of such Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.
§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions, or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of any Specific Project Agreement, with the Subcontract Sum and the Subcontract Time adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a Claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents. To ensure timely completion of the work, the Contractor may direct the Subcontractor to proceed with changes to the work prior to submitting a claim for adjustment to the Contract Sum, in which case the Subcontractor will proceed with said work, and submit a claim for adjustment to the Subcontract Sum within five working days.

§ 5.2.1 All time and material authorizations for changes in the work must be signed on a daily basis or no later than 10:00 AM the following day by a BNBuilders authorized representative for verification of work hours and materials expended. A signature shall only constitute verification and shall not be construed as an approval for payment. Approval for verified time and material authorizations shall only come from the Project Manager. Any time and material work authorizations not signed by the contractor shall be performed at the subcontractor’s risk.

§ 5.2.2 Adjustments made to the Prime Contract shall represent total compensation due in accordance with sections 5.1 and 5.2 accordingly. All costs arising out of the modified scope of work shall include, but no be limited to, all direct costs of materials, equipment, labor, all overhead and profit, insurance, bond, permits, applicable taxes, and all indirect costs and schedule revisions including, but not limited to, delay, loss of productivity, disruption, acceleration, resource leveling, manpower shifts, additional supervision, consumables, extended activity durations, increased number of activities, modified critical path, inefficiency, reduction in either total or free float, impact, ripple effect, stacking effect, extended overhead, storage, start/completion date charges and other indirect costs if any arising out of this modification, or out of the cumulative impact of this modification combined with other modifications.

§ 5.3 The Subcontractor shall make all Claims promptly to the Contractor for additional cost, extensions of time and damages for delays, or other causes in accordance with the Subcontract Documents, but in no event more than fourteen calendar days after knowledge of the event or cause giving rise to the claim unless a shorter time is required by the Prime Contract. A Claim which will affect or become part of a Claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such Claims shall be received by the Contractor not less than five working days preceding the time by which the Contractor’s Claim must be made. Failure of the Subcontractor to make such a timely Claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6   CLAIMS AND DISPUTES

§ 6.1 Mediation

§ 6.1.1 Any claim arising out of or related to this Master Subcontract Agreement or any Specific Project Agreement, except those waived under the terms of this Subcontract, shall be subject to mediation at Contractor’s sole option as a condition precedent to binding dispute resolution.

§ 6.1.2 On claims in excess of thirty-five thousand dollars ($35,000) in the aggregate, the parties shall endeavor to resolve their claims by mediation, which, unless the parties mutually agree otherwise, shall be before a construction attorney licensed to practice law in the prevailing state, who is A-V rated in Martindale-Hubble and who possess at least fifteen years of experience in construction law. Request for mediation shall be filed in writing with the other party to this Master Subcontract Agreement.

§ 6.1.3 The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.1.4 If the 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 a claim and shall hold harmless and reimburse the Contractor for all expense, including legal penalties, and will be prosecuted to the maximum extent possible under the law. This draft was produced by AIA software at 07:41:50 on 06/28/2017 under Order No. 597256939 which expires on 04/12/2018, and is not for resale.
expense, incurred by Contractor which arise out of Contractor’s submission of Subcontractor’s claim to Owner or other responsible party. Subcontractor shall be bound by any adjudication or award in any action or proceeding resolving such a claim.

§ 6.1.5 Subcontractor shall not be entitled to and hereby waives any and all claims for any productivity losses, efficiency losses, increased supervisory costs, home office overhead, extended job site overhead, disruption costs, “ripple effect” costs, trade stacking, compression, acceleration, consequential damages, damages of any other type, lost profits, lost opportunity costs, or similar damages or costs, however denominated, as well as any other monetary relief, for any delay, disruption or suspension of the Work (collectively, "Impact Costs and Consequential Damages"), except to the extent of such sums as may be recovered on Subcontractor’s account from Owner. Subcontractor further waives any and all claims against Contractor for damages or additional compensation which is related to, caused or contributed to by delay and/or disruption of Subcontractor’s performance, or by any act, omission, or other conduct causing or contributing any Impact Costs and Consequential Damages (including negligent conduct on the part of Contractor or any other person). If Subcontractor wishes to seek compensation for Impact Costs and Consequential Damages of any kind, or for any other increase in the Contract Sum, it must give the Contractor written notice no later than ten (10) days after the beginning of the underlying cause thereof, or such shorter period of time as may be provided by this Master Subcontract Agreement or in the Prime Contract or any Project Agreement, and with sufficient time for the Contractor to comply with any notice requirements set forth in the Prime Contract. Failure to provide such written notice shall be a waiver of and a conclusive defense to any claim by Subcontractor and shall further bind the Subcontractor to the same consequences as those to which the Contractor is bound. The requirement to give such notice in no way shall be deemed to authorize or to furnish entitlement for recovery for Impact Costs and Consequential Damages or for any other form of relief which may be sought by Subcontractor. Subcontractor waives all special and/or consequential damages of any kind whatsoever and by whatever cause.

§ 6.2 Binding Dispute Resolution for Claims involving Owner
For any Claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall, at Contractor’s sole option, be as set forth in Section 6.3. For any Claim involving the Owner, Contractor, at its sole option, may require the Subcontractor to comply with the dispute resolution procedure and same choice of law and venue provisions as set forth in the Prime Contract. In such event, Subcontractor shall remain liable to Contractor for Work provided under the Subcontract to the same extent and for the same duration that the Contractor may be held liable to Owner under the Prime Contract, and in no event prior to Contractor’s release from responsibility to the Owner for Subcontractor’s Work.

§ 6.3 Binding Dispute Resolution
§ 6.3.1 Any Claim subject to, but not resolved by, mediation shall be subject to arbitration at Contractor’s sole option which, unless the parties mutually agree otherwise, shall be submitted in the manner herein specified. Arbitration shall be initiated by either party making written demand upon the other for arbitration. The arbitration demand shall list a complete statement of the items to be arbitrated and shall nominate an arbitrator. The arbitrator shall be an attorney licensed to practice law in the prevailing State and must be A-V rated in Martindale Hubble and shall possess at least fifteen years’ experience in construction law. If within ten (10) business days after such demand the other party has not designated a different arbitrator, the initially nominated arbitrator shall serve as arbitrator. If within ten (10) business days after such demand the other party designates a different arbitrator, the party shall within five (5) business days, either reach agreement on who shall serve as the arbitrator or if the parties cannot reach agreement within the five (5) business day time frame, the parties shall jointly petition the presiding judge of the County court in the county where Contractor maintains an office in the state where the Project is located, who shall designate the arbitrator who must be A-V rated. Unless otherwise agreed by the parties, the arbitration rules shall be the current prevailing Federal Rules of Civil Procedure, except that requests for admission shall not be allowed and the parties shall be limited to 15 interrogatories. The arbitration shall take place in the city where Contractor maintains an office in the state where the Project is located and shall be held on thirty (30) days’ notice by the arbitrator. The decision of the arbitrator shall be final and binding on the parties and judgment on such award may be entered by either party in a court of competent jurisdiction on the state. The party which is not the substantially prevailing party shall bear all costs and expenses of the arbitration.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written
demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

§ 6.3.3 Contractor, at its sole and absolute discretion, may consolidate an arbitration conducted under this Master Agreement or a specific Project Agreement with any other arbitration or legal proceeding to which it is a party. Provided, that for consolidation into an arbitration, (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 6.3.4 The Contractor, at its sole and absolute discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration or in any other legal proceeding, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Master Agreement.

§ 6.4 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law. The award rendered by the arbitrator or arbitral tribunals shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 6.5 This Master Agreement and any Specific Project Agreement shall be governed by the laws of the State of where the Project is located, without reference to its laws regarding choice of law.

§ 6.6 Waiver of Claims for Consequential Damages
Except with regard to Subcontractor’s indemnity and defense obligations under the terms of the Subcontract Documents, the Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Subcontract, including without limitation, any consequential damages due to either party’s termination in accordance with Article 7. Nothing contained herein shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of this Agreement. Notwithstanding the foregoing, if Subcontractor should default in performance of the Work described in Section 2 or in any Project Agreement or should otherwise commit any act which causes delay to the Prime Contract work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor’s default.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT
§ 7.1 Termination by the Contractor
7.1.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a three-day period after receipt of electronic written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by electronic written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract for that Specific Project and finish the Subcontractor’s Work for that Specific Project by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor’s Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor less 25% of such unpaid balance to be withheld by Contractor, if such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor within five (5) days of notification by Contractor.

7.1.2 If the Owner or Contractor terminates the Prime Contract for the Owner’s convenience, the Contractor shall promptly deliver written notice to the Subcontractor. The Contractor may terminate this Master Agreement or any Specific Project Agreement for convenience upon electronic written notice to the Subcontractor.

7.1.3 Upon receipt of written notice of termination, the Subcontractor shall cease operations as directed by the Contractor in the notice;
.2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and
.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.1.4 In case of such termination for the Owner’s or Contractor’s convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, but not overhead and profit on the Work not executed.

§ 7.2 Suspension by the Contractor For Convenience
§ 7.2.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of a Subcontract for a Specific Project in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

§ 7.2.2 An adjustment shall be made for increases in the Subcontract Time caused by suspension, delay or interruption. No adjustment shall be made to the extent that
.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or
.2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.3 ASSIGNMENT OF THE SUBCONTRACT
§ 7.3.1 In the event of termination of the Prime Contract by the Owner, the Contractor may assign the Subcontract under a Project Agreement to the Owner, with the Owner’s agreement, subject to the provisions of the Prime Contract and to the prior rights of the surety, if any, obligated under bonds relating to the Prime Contract. In such event, the Owner shall assume the Contractor’s rights and obligations under the Subcontract Documents.

§ 7.3.2 Without the Contractor’s written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT
The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.

(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications, and accepted alternates.)

«Per Attachment "C" Scope of Work, as provided in each Project Agreement
Per Attachment "D" List of Contract Documents, as provided in each Project Agreement»

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
§ 9.1 The date of commencement of the Subcontractor’s Work, shall be:
(Insert one of the following-
[ ] The date of this Agreement.
[ X ] See Attachment E as provided in each Project Agreement.
[ ] Established as follows:
(Insert a date or a means to determine the date of commencement of the Subcontractor’s Work.)

§ 9.2 Subcontract Time
§ 9.2.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontract

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Time shall be measured from the date of commencement of the Subcontractor’s Work as required by the Subcontract Documents and per Attachment E (as provided in each Project Agreement).

§ 9.2.2 Subject to adjustments of the Subcontract Time as provided in the Subcontract Documents, the subcontractor shall achieve substantial completion of the Subcontractor’s Work as required by the Subcontract Documents and per Attachment E (as provided in each Project Agreement).

§ 9.2.3 Subject to adjustments of the Subcontract Time as provided in the Subcontract Documents, if portions of the Subcontractor’s Work are to be completed prior to substantial completion of the Subcontractor’s Work, then the Subcontractor shall achieve earlier substantial completion of such portions by the dates set forth in Attachment E (as provided in each Project Amendment).

§ 9.2.4 If the Subcontractor fails to achieve substantial completion as provided in this Section 9.2, liquidated damages, if any, shall be assessed as set forth in Section 3.4.

§ 9.3 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.4 No extension of time will be valid without the Contractor’s written consent after a Claim is made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM
§ 10.1 The Contractor shall pay the Subcontractor the Subcontract Sum in current funds for the Subcontractor’s performance of the Subcontract. The Subcontract Sum shall be «provided in each Project Agreement» ($ «TBD»), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 Alternates
§ 10.2.1 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:
(Insert the numbers or other identification of accepted alternates.)

«Provided in each Project Agreement»

§ 10.3 Unit prices, if any: Provided in each Project Agreement

§ 10.4 Allowances, if any, included in the Subcontract Sum: Provided in each Project Agreement

ARTICLE 11 PAYMENTS
§ 11.1 Progress Payments
§ 11.1.1 It is agreed that as a condition precedent to any payment by Contractor to Subcontractor hereunder the Contractor must first receive payment from the Owner for the Work of Subcontractor for which payment is sought. Subcontractor specifically agrees that it is relying upon the Owner’s credit (not the Contractor’s) for payment, and Subcontractor specifically accepts the risk of non-payment by Owner. Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Architect, and certificates for payment issued by the Architect, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Payments received by the Subcontractor for Work properly performed by its employees, sub-tier Subcontractors and suppliers shall be held by the Subcontractor in trust for those employees, sub-tier subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Subcontractor for which payment was made to the Subcontractor by the Contractor. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Subcontractor shall create any fiduciary liability or tort liability on the part of the Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Subcontractor for breach of the requirements of this provision.

§ 11.1.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as required in the Prime Contract, or as follows:

«Provided in each Project Agreement»
§ 11.1.3 Provided an application for payment is received by the Contractor not later than the «20th» day of a month, the Contractor shall include the Subcontractor’s Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Architect. The Contractor shall pay the Subcontractor each progress payment no later than ten working days after the Contractor receives payment from the Owner.

§ 11.1.4 If the Subcontractor’s application for payment is received by the Contractor after the application date fixed above, the Subcontractor’s Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.1.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor’s first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor’s Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor’s applications for payment.

§ 11.1.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor’s Work as of the end of the period covered by the application for payment.

§ 11.1.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.1.7.1 The amount of each progress payment shall first include:
  .1 That portion of the Subcontract Sum properly allocable to completed Work:
  .2 That portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor’s Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing; and
  .3 The amount, if any, for changes in the Work that are not in dispute and have been properly authorized by the Contractor, to the same extent provided in the Prime Contract, pending a final determination by the Contractor of the cost of changes in the Subcontractor’s Work, even though the Subcontract Sum has not yet been adjusted.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:
  .1 The aggregate of previous payments made by the Contractor;
  .2 150% of the amount, if any, for Work that remains uncorrected and for which the Contractor has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017 for a cause that is the fault of the Subcontractor;
  .3 For 150% of Work performed or defects discovered since the last payment application, any amount for which the Contractor may withhold payment in whole or in part, as provided in Article 9 of AIA Document A201-2017, for a cause that is the fault for which the Contractor believes, in its sole and absolute discretion, relate to damage, defective work or fault of the Subcontractor; and
  .4 Retainage withheld pursuant to Section 11.1.8 of this Agreement.

§ 11.1.8 Retainage
For each progress payment made prior to substantial completion of the Subcontractor’s Work, the Contractor may withhold the following amounts as retainage from the payment otherwise due:

« As determined by the Prime Contract. If no rate is set forth in the Prime Contract, the rate of Retainage shall be ten (10%) percent or the maximum amount allowed by law, whichever is less. »

Retainage shall be paid within ten (10) days’ receipt of retainage from the Owner for Subcontractor’s Work.

§ 11.1.9 Upon the partial or entire disapproval by the Contractor of the Subcontractor’s application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.
§ 11.1.10 Provided the Contractor has fulfilled its payment obligations under the Subcontract Documents, the Subcontractor shall defend and indemnify the Contractor and Owner from all loss, liability, damage, or expense, including reasonable attorney’s fees and litigation expenses, arising out of any lien claim or other claim for payment by any of the Subcontractor’s subcontractors, suppliers, or vendors of any tier. Upon receipt of notice of such lien claim or other claim for payment, the Contractor shall notify the Subcontractor. If approved by the applicable court, when required, the Subcontractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 11.2 Substantial Completion
When the Subcontractor’s Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, so long as Contractor has received payment from Owner for said work, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor’s Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor’s Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor’s substantially completed Work to the same percentage of retainage as that on the Contractor’s Work covered by the certificate.

§ 11.3 Final Payment
§ 11.3.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor’s Work is fully performed in accordance with the requirements of the Subcontract Documents, Owner has accepted the Subcontractor’s Work, the Architect has issued a certificate for payment covering the Subcontractor’s completed Work, and the Contractor has received payment from the Owner.

§ 11.3.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor’s Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

§ 11.4 Interest
Payments due and unpaid under this Subcontract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing, or as defined in the Prime Contract, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 12 INSURANCE AND BONDS
§ 12.1 Subcontractor’s Required Insurance Coverage
§ 12.1.1 The Subcontractor shall purchase and maintain the following types and limits of insurance, from a company or companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor’s operations and completed operations under the Subcontract:

See Master Attachment A, attached hereto and incorporated herein.
See Subcontract Attachment A, as applicable (provided in Specific Project Agreement).

§ 12.1.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor’s Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor’s completed operations coverage, for the applicable statute of repose, statute of limitations or the amount of time you are legally liable for the Work or as specified in the Prime Contract, whichever is longer.
§ 12.1.3 If professional services are required under Section 4.9, the Subcontractor shall provide the professional liability insurance coverage required under this Section 12.1 and Attachment A for the following period after completion of the Work:

« Provided in each Project Agreement, if applicable »

§ 12.1.4 Certificates of Insurance.
The Subcontractor shall provide certificates of insurance and all required policy forms and endorsements acceptable to the Contractor evidencing compliance with the requirements in this Article 12 and Attachment A at the following times: (1) prior to commencement of the Subcontractor’s Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Contractor’s written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final application for payment and thereafter upon renewal or replacement of such coverage until the expiration of the time required in this Article 12. The certificates shall show the Contractor and the Owner, and any other entities required by the Prime Contract, as additional insured as further outlined in Attachment A.

§ 12.1.5 Deductibles and Self-Insured Retentions.  The Subcontractor shall disclose to the Contractor any deductible or self-insured retentions applicable to any insurance required to be provided by the Subcontractor.

§ 12.1.6 Additional Insured Obligations. See Subcontract Attachment A, as applicable (provided in Specific Project Agreement).

§ 12.1.7 Notice of Cancellation or Change in Coverage. Within three (3) business days of the date the Subcontractor becomes aware of an impending, threatened or actual cancellation or expiration of any insurance required by the Subcontract Documents (whichever comes first), the Subcontractor shall provide notice to the Contractor of such impending or actual cancellation or expiration. Upon receipt of notice from the Subcontractor, the Contractor shall, unless the lapse in coverage arises from an act or omission of the Contractor, have the right to suspend the Work in accordance with this Agreement until the lapse in coverage has been cured by the procurement of replacement coverage by the Subcontractor. The furnishing of notice by the Subcontractor shall not relieve the Subcontractor of any contractual obligation to provide any required coverage.

§ 12.2 Subcontractor’s Required Performance Bond and Payment Bond
§ 12.2.1 The Subcontractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

As provided in each Project Agreement, Performance & Payment Bonds may be required.

Such bonds shall be provided by companies and at ratings acceptable to the Contractor, in Contractor’s sole discretion. Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond. Each party agrees that electronic signatures (whether digital or encrypted) and/or and scanned copies of original signatures of any such bond is intended to authenticate the bond and shall have the same force and effect as manual signatures and original copies. Such electronically signed or scanned/PDF versions of the AIA Document A312™, Payment Bond and Performance Bond shall be fully enforceable against the surety.

§ 12.2.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations under this Agreement, the Subcontractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 12.3 Contractor’s Insurance and Bond Obligations
§ 12.3.1 Upon written request of the Subcontractor, the Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 12.3.2 Upon written request of the Subcontractor, the Contractor shall furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.
§ 12.4 Property Insurance
§ 12.4.1 When requested in writing, the Contractor shall make available for the Subcontractor’s review copies of the builders risk policies in effect for the Project, to the extent copies of the policies are available to the Contractor. The Contractor shall notify the Subcontractor if the required builders risk insurance policies are not in effect.

§ 12.4.2 If the required builders risk insurance is not in effect for the full value of the Subcontractor’s Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor’s Work, and the Subcontractor shall be reimbursed for the direct cost (without mark-up) of the insurance by an adjustment in the Subcontract Sum.

§ 12.4.3 Property insurance for the Subcontractor’s materials and equipment required for the Subcontractor’s Work, stored off site or in transit and not covered by the Project builders risk insurance, shall be paid for through the application for payment process.

§ 12.4.4 Risk of Loss. All Work covered by any Work Authorization or this Master Agreement done at the Project site or in preparing or delivering materials or equipment, or any or all of them, to the Project site, shall be at the risk of Subcontractor exclusively until the completed Work is accepted by Contractor.

§ 12.5 Waivers of Subrogation. The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, and (2) the Owner, those entities required under the Prime Contract, and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees for damages caused by fire or other causes of loss to the extent those losses are covered by builders risk or property insurance provided under the Prime Contract or other property insurance applicable to the Work or to property at or adjacent to the Project site, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require similar written waivers in favor of the individuals and entities enumerated herein from the Subcontractor’s Sub-subcontractors, agents and employees. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 12.5 shall not prohibit this waiver of subrogation, which shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise; (2) even though that person or entity did not pay the insurance premium directly or indirectly; or (3) whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 13 TEMPORARY FACILITIES, SERVICES, EQUIPMENT AND WORKING CONDITIONS
§ 13.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor’s temporary facilities and services, except as noted below:

«Provided in each Project Agreement»

§ 13.2 The Contractor’s equipment will be available to the Subcontractor only at the Contractor’s discretion and on mutually satisfactory terms, except as noted below:

«Provided in each Project Agreement»

§ 13.3 Specific working conditions as noted below:
(Insert any specific arrangements or requirements concerning working conditions and labor matters applicable to the Subcontractor’s Work.)

«Provided in Each Specific Project Agreement»

ARTICLE 14 MISCELLANEOUS PROVISIONS
§ 14.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

§ 14.2 The Contractor’s representative for this Master Agreement:
§ 14.3 The Subcontractor’s representative for this Master Agreement:

(Name, address, email address and other information)

«Ron A. Montoya»
«BNBuilders, Inc.»
«2601 – 4th Avenue, Suite 350»
«Seattle, WA 98121»
«Phone: (206) 382-3443»

§ 14.4 Notice

§ 14.4.1 Except as otherwise provided in Section 14.4.2, where the Subcontract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic notice is set forth in Section 14.4.3.

§ 14.4.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 14.4.3 Notice in electronic format as set forth below or in the Prime Contract:

«Provided in each Project Agreement»

§ 14.5 Neither the Contractor’s nor the Subcontractor’s representative for this Master Agreement or for any Project Agreement shall be changed without ten days’ prior notice to the other party.

§ 14.6 The invalidity of any provision of the Subcontract Documents shall not invalidate either this Master Agreement or the Subcontract or its remaining provisions. If it is determined that any provision of this Master Agreement or the Subcontract for a particular Project violates any law or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case, this Master Agreement and the Subcontract shall be construed, to the fullest extent permitted by law, to give effect to the parties’ intentions and purposes in executing the Subcontract.

§ 14.7 Unless already provided for by the Prime Contract, the parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 14.8 The substantially prevailing party in any legal action or arbitration shall be entitled to recover all cost of suit, including, but not limited to reasonable attorney fees.

§ 14.9 Subcontractor hereby acknowledges that it is thoroughly familiar with all DBE/MBE/WBE requirements pertaining to a Project under any specific Project Agreement. If the Subcontractor claims status as a DBE/MBE/WBE, the Subcontractor shall take all steps necessary and shall make all necessary records available to the Contractor and the Owner to assure that Subcontractor is in compliance with such requirements. In the event that any subcontractor or supplier of the Subcontractor is designated as or is required to be a DBE/MBE/WBE, Subcontractor agrees to be responsible for insuring that any sub-subcontractor or supplier meets all applicable requirements. Subcontractor acknowledges that Contractor is relying upon Subcontractor’s representations regarding the validity of Subcontractor’s status, if any, as a DBE/MBE/WBE, and that misrepresentation of the status of Subcontractor or any of its sub-subcontractors or material suppliers is a material breach of this Master Agreement and grounds for immediate termination of any Work Authorization or this Master Agreement. In the event of
termination as the result of material misrepresentation of the status of the Subcontractor as a DBE/MBE/WBE, Subcontractor shall not be entitled to any compensation not already paid.

§ 14.10 Design Build Work. To the extent that any portion of the Work under a Project Agreement is designated as design-build, including any portion of MEP work, Subcontractor agrees as follows.

§ 14.10.1 Subcontractor acknowledges that that Contractor is relying upon Subcontractor to perform all necessary design services and coordination for Subcontractor’s Work to comprise a completely operation system or systems, integrated with the other components of the Project, meeting the Owner’s requirements, and in compliance with applicable codes and laws, including to the extent applicable the ADA and FHA.

§ 14.10.2 Subcontractor shall procure all design services in connection with its work from licensed, independent professionals. If the person providing the design services for Subcontractor is an independent design professional, the services shall be provided pursuant to a written agreement acceptable to Contractor and all such agreements shall include appropriate indemnities by such design professional toward Contractor and (if required by the Prime Contract) Owner and shall require appropriate amounts of professional liability insurance. Contractor reserves the right to object to the persons or employees that Subcontractor intends to utilize for design services, in which case Subcontractor at its sole cost shall utilize other persons, acceptable to Contractor, for such services.

§ 14.10.3 Subcontractor shall prepare, for written approval by the Contractor and Owner, schematic design documents consisting of drawings illustrating the basic components of the design of the Subcontractor’s Work and their relationship to other Project elements. Three printed sets and one reproducible set of these documents, at a minimum, shall be provided to Contractor. Following completion of the schematic design documents, Subcontractor shall update the preliminary schedule and estimate for the Contractor’s review and estimate. Approval by the Contractor, Owner, or Architect of any submittals by Subcontractor shall not relieve Subcontractor from its obligations under the Subcontract Documents, including its obligation to comply with applicable codes and law.

§ 14.10.4 Based upon the approved schematic design documents, Subcontractor shall prepare, for approval by the Contractor and Owner, design development documents consisting of further definition of design elements, including drawings, outline specifications, and other documents to fix and describe the size and character of the Subcontractor’s Work, including the relationship to other Project elements. Three printed sets and one reproducible set of these documents, at a minimum, shall be provided to Contractor. Following completion of the design development documents, Subcontractor shall review and update the schedule and estimate for Contractor’s review and approval.

§ 14.10.5 Based upon the approved design development documents, Subcontractor shall prepare for approval by Contractor, Owner, and governmental and/or other entities, including revisions necessary to secure needed approvals, construction documents setting forth in detail the requirements for construction of Subcontractor’s Work. These documents shall consist of drawings and specifications that comply in all respects with codes, laws, regulations, and standards of good practice to be in effect as of the time that the work is to be performed. Three printed sets and one reproducible set of these documents, at a minimum, shall be provided to Contractor.

§ 14.10.6 Subcontractor shall coordinate its Work with that of Contractor, other subcontractors, and all other persons at the Project site, to ensure that the completed Project provides a fully functional, operational systems or systems that conform to Owners’ design program.

§ 14.10.7 Copies or originals of all data collected in relation to work associated with any Work Authorization or, and all data and documents prepared in connection with the Project, shall be provided to Contractor and to Owner. Data collected, stored, and/or provided shall be in a form acceptable to Contractor. All data, designs, drawings, reports, drafts, work products, maps, records and other documents reproduced, prepared or caused to be prepared by Subcontractor pursuant to or in connection with any Work Authorization or shall be the exclusive property of Contractor, who shall own the copyright and all other intellectual property rights in connection therewith, and who shall be entitled to make full use thereof. All such documents shall be delivered and/or returned to Contractor upon request.

§ 14.11 This Master Agreement and any Project Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts shall constitute one agreement. This Master Agreement and any Work Authorization may also be executed and made binding
through the use of signatures sent via facsimile and/or PDF through e-mail and whether digital or encrypted, which signatures shall be treated and effective as originals.

ARTICLE 15 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 15.1 Subcontract Documents, except for Modifications issued after execution of the Master Subcontract Agreement, are enumerated in the sections below.

§ 15.1.1 The Specific Project Agreement and any documents listed therein.

§ 15.1.2 This executed AIA Document A401™–2017, Master Form of Agreement Between Contractor and Subcontractor.

§ 15.1.3 The Prime Contract, consisting of the Agreement between the Owner and the Contract.

§ 15.1.4 State-Specific Rider – Refer to Attachment “F”

☐ California Rider to AIA A401-2017 Master Form Agreement Between Contractor and Subcontractor

☐ Washington Rider to AIA A401-2017 Master Form Agreement Between Contractor and Subcontractor

§ 15.1.5 Additional Documents, if any, forming part of the Subcontract Documents:

.1 Other documents:

«Attachment “A” – Master Insurance Requirements, dated 1/1/2017
Attachment “B” – Subcontractor Billing Information, dated TBD
Attachment “C” – Scope of Work, dated TBD
Attachment “D” – List of Contract Documents, dated TBD
Attachment “E” – Project Schedule, dated TBD
Attachment “F” – State-Specific Rider(s)
Attachment “G” – Safety Program Requirements, dated TBD »

This Master Subcontract Agreement entered into as of the day and year first written above and shall expire 5 years from said date.

BNBuilders, Inc. <Insert Subcontractor Legal Name>

CONTRACTOR (Signature)

«Ron A. Montoya, Director of Operations»
(Printed name and title)

Contractor’s License No.: ____________________
Contractors UBI No.: ____________________

7621899.2
BNBuilders is utilizing an online certificate of insurance tracking website through Parker Smith & Feek powered by MyCOI.

Subcontractors are required to upload Certificates of Insurance directly to Parker Smith & Feek's certificate tracking website.

**Initial Enrollment and Registration**

Enrollment in Parker Smith & Feek's MyCOI Website is a simple **one-time process**. You will receive an automated email directly from myCOI@psfinc.com with enrollment instructions.

During the initial registration, all your insurance agent(s) contact information will be collected.

Agent Information Required:

- Agent Name
- Agency Name
- Agency Address
- Agency Phone Number
- Agent Email Address
- Policy Lines Written by your Agent

This program does not cost you anything to use. Please provide all the required information when registering.

**Submitting your Certificate of Insurance**

Upon enrollment and assignment to a project, certificates of insurance will need to be uploaded into Parker Smith & Feek's certificate tracking website powered by MyCOI by your insurance agent or the subcontractor. Please upload one entire certificate of insurance, including your endorsements into one .pdf per project.

If the agent/subcontractor does not submit a compliant certificate in a timely manner, you will be notified directly from myCOI@psfinc.com.

All subcontractor insurance certificates are to be uploaded per the instructions above and will be processed via Parker Smith & Feek powered by MyCOI.
Attachment A Series A-1
Insurance Requirements
Job Name:
Job Number:

1.1 Liability Insurance
a. To the fullest extent allowable by law, prior to the commencement of the work Subcontractor shall purchase and maintain such insurance as will protect it from the claims set forth below which may arise out of or result from Subcontractor’s operations under this agreement whether such operations be by itself or by any sub-Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Limits shall be all the Insurance Coverage and/or limits carried by or available to the Subcontractor, the minimum limits as required herein or as required in the Main Contract, whichever is greater;

1.1.2 General Conditions
a. Subcontractor shall maintain completed operations liability insurance for the term of the contract plus the period of time Subcontractor may be held legally liable for its work. Physical insurance certificates and endorsements are to be furnished to the Contractor for a minimum of one year following completion of Subcontractor’s work, or longer if required by the main contract.

Subcontractor shall maintain policies of insurance in full force and effect, at all times during the performance of the work, plus the statute of repose or statute of limitations applicable to the jurisdiction where the work is performed.

b. All insurance companies shall have a Best’s rating of A-VII or better.

c. In addition, Subcontractor shall provide Contractor with 45 days notice in case of cancellation or non-renewal, except 10 days for non-payment of premium.

d. Certificates of Insurance Acord Form 25 and all required Endorsements shall be filed with Contractor within (5) working days of award of Subcontract and prior to commencement of the work.

e. If requested by the Contractor, Subcontractor shall provide a certified and true copy of any or all policies.

f. Acceptance of the certificates or endorsements by the Contractor shall not constitute a waiver of Subcontractor’s obligations hereunder.

g. It is the Subcontractor’s sole responsibility to require and monitor compliance and appropriate coverage and minimum limits as required herein for any liability coverages for all tiers of sub-subcontractors. For any coverage required herein where the Subcontractor shall name Contractor and Owner or others as additional insured(s) the Subcontractor shall require a sub-subcontractor to make as additional insured(s).
h. If Subcontractor fails to secure and/or pay the premiums for any of the policies of insurance required herein, or fails to maintain such insurance, Contractor may, in addition to any other rights it may have under this Agreement or at law or in equity, terminate this subcontract or secure such policies or policies of insurance for the account of Subcontractor and charge Subcontractor for the premiums paid therefore, or withhold the amount thereof from sums otherwise due from Contractor to Subcontractor. Neither the Contractor's rights to secure such policy or policies nor the securing thereof by Contractor shall constitute an undertaking by Contractor on behalf of or for the benefit of Subcontractor or others to determine or warrant that such policies are in effect.

i. Subcontractor shall be fully and financially responsible for all deductibles or self-insured retentions.

1.1.3 Coverage Forms

a. **Subcontractor’s Commercial General Liability** insurance shall be written on an industry standard Commercial General Liability Occurrence from (CG 00 01, 12/07) or its equivalent and shall include but not be limited to products/completed operations; premises and operations; blanket contractual; advertising/personal injury; independent contractors. Coverage shall be on an occurrence form with policy limits of not less than:

- **$1,000,000 Each Occurrence Bodily Injury & Property Damage**
- **$1,000,000 Personal & Advertising Injury**
- **$2,000,000 General Aggregate to apply on a Per Project basis**
- **$2,000,000 Products/Completed Operations Aggregate**

Terms and Conditions of coverage shall include:

1. Per Project Aggregate (CG 25 03) or equivalent.
2. If applicable to the project, no Residential Exclusions shall apply (must be evidenced on the certificate).
3. No exclusion for subsidence.
4. No exclusion for damage to work performed by Subcontractors (CG 22 94 or similar).
5. No exclusion for cross liability for any person / organization.
6. No exclusion for explosion, collapse, underground hazards, and liability assumed under an insured contract (including tort liability of another assumed in a business contract).
7. No removal or limitation of the “Damage To Your Work” exclusion exception if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.
8. If any work or operations are within fifty feet of any railroad (including any light rail, fixed rail, or other rail systems), Subcontractor shall obtain Contractual Liability – Railroads Endorsement CG 24 17 or its equivalent.
9. Professional Liability Exclusion shall include exceptions for Construction Means and Methods (CG 22 79 or CG 22 80 or their equivalents).
10. Deductibles or Self-Insured Retentions shall be made known and acceptability determined at the sole discretion of Contractor.

b. **Business Auto Liability** – Coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) form CA 00 01, written on an occurrence basis to apply to "any auto" or at a minimum “all owned, hired and non-owned autos”, with policy limits of not less than;

- **$1,000,000 per accident for bodily injury and property damage**

  1. If applicable, Broadened Pollution for Covered Autos shall apply. This requirement may also be satisfied by providing proof of separate Pollution Liability that includes coverage for transportation exposures.
  2. If any work or operations are within fifty feet of any railroad (including any light rail, fixed rail,
or other rail systems), Subcontractor shall obtain Construction Liability – Railroads Endorsement – CA 20 70 or its equivalent.

c. **Workers’ Compensation and (b) employers’ liability-stop gap** – All Subcontractors of every tier shall provide coverage for industrial injury to their employees (or leased employees as applicable) in strict accordance with the provisions of the State or States in which project work is performed or where jurisdiction is deemed to be applicable. Workers’ Compensation shall be provided in a statutory form on either a state or, where applicable, federal (U.S. Longshore & Harbor Workers Act, Maritime-Jones Act, etc.) basis as required in the applicable jurisdiction.

Owner-operators are required to furnish Workers Compensation Certificates, notwithstanding any statutory exemptions. For states that do not require Workers’ Compensation Coverage, Owner/Operator shall elect into coverage under the Workers’ Compensation Laws of the governing state.

**Policy limits of not less than;**

**Workers Compensation: Statutory**

**Employers Liability / Stop Gap:**

- $1,000,000 Bodily Injury by Accident – Each Accident
- $1,000,000 Bodily Injury by Disease – Total Limit
- $1,000,000 Bodily Injury by Disease – Each Employee

d. **Commercial Umbrella or Excess Liability Insurance** over Subcontractor’s primary Commercial General Liability, Business Auto Liability and Employers Liability / Stop Gap. All coverage terms required under the Commercial General Liability, Business Auto Liability and Employers Liability/Stop Gap above must be included on the Umbrella or Excess Liability Insurance. See Subsection below regarding “Trade Specific Umbrella/Excess Liability Limits”. Coverage shall be written on an occurrence form with policy limits not less than:

**Trade-Specific Umbrella/ Excess Liability Limits – See attached Matrix and below:**

**Tier 1 – Subcontractors**

Subcontractors included in **Tier 1 scopes of Work**, including but not limited to:

- Division 01 General Requirements
- Division 02 Existing Conditions specific to; site surveys and laser scanning.
- Division 10 Specialties (except signage connected to electrical Tier 2)
- Division 11 Equipment (except athletic, recreational, and play equipment Tier 2).
- Division 12 Furnishing (except manufactured casework or countertops Tier 2)

The Tier 1 sections above shall provide, at a minimum, the following Umbrella / Excess Limits of Liability;

- **$2,000,000 Each Occurrence**
- **$2,000,000 Personal & Advertising Injury**
- **$2,000,000 Aggregate (where applicable, following the terms of the underlying)**

**Tier 2 - Subcontractors**

Subcontractors included in **Tier 2 scopes of Work**, including but not limited to,

- Division 06 specific to architectural casework, wood paneling, ornamental woodwork, plastics, and millwork
- Division 07 specific to traffic coatings, vapor retarders, and joint protection
- Division 08 Openings (except entrances, storefronts, and curtain walls, windows,
skylights, louvers, and specialty glazing)
- Division 09 Finishes (except high performance coatings Tier 3)
- Division 10 Specialties; specific to; signage connected to electrical line voltage
- Division 11 Equipment; specific to; athletic, recreational, and play equipment
- Division 12 Furnishing specific to manufactured casework and countertops
- Division 27 structured cabling (except if scope includes line voltage work then Tier 3)
- Division 28 Electrical Safety and Security
- Division 32 Exterior Improvements specific to dry stacked stone

The Tier 2 sections above shall provide, at a minimum, the following Umbrella / Excess Limits of Liability;

$5,000,000 Each Occurrence
$5,000,000 Personal & Advertising Injury
$5,000,000 Aggregate (where applicable, following the terms of the underlying)

Tier 3 - Subcontractors

Subcontractors included in Tier 3 scopes of Work, including but not limited to;
- Division 02 Existing Conditions (except Site Surveys Tier 1)
- Division 03 Concrete
- Division 04 Masonry (except dry placed stone, Tier 2)
- Division 05 Metals
- Division 06 Woods, Plastics, and Composites (except architectural casework, wood paneling, ornamental woodwork, millwork, and plastics Tier 2)
- Division 07 (except traffic coatings, vapor retarders, and joint protection Tier 2)
- Division 08 Openings (specific to entrances, storefronts, and curtain walls, windows, skylights, louvers, and specialty glazing)
- Division 09 Finishes specific to High-Performance coatings
- Division 13 Specialty Facility Components
- Division 14 Conveying Equipment
- Division 21 Fire Suppression
- Division 22 Plumbing
- Division 23 Heating, Ventilation and Air Conditioning
- Division 25 Integrated Automation
- Division 26 Electrical
- Division 31 Earthwork
- Division 32 Exterior Improvements (except dry stacked stone Tier2)
- Division 33 Utilities

The Tier 3 sections above shall provide, at a minimum, the following Umbrella / Excess Limits of Liability;

$10,000,000 Each Occurrence
$10,000,000 Personal & Advertising Injury
$10,000,000 Aggregate (where applicable, following the terms of the underlying)

Crane Services Liability. Should Subcontractors work include providing crane services, at a minimum, shall provide the following Umbrella / Excess Limits of Liability;
$10,000,000 Each Occurrence
$10,000,000 Personal & Advertising Injury
$10,000,000 Aggregate (where applicable, following the terms of the underlying)

The policy shall include coverage for Rigger’s Liability and shall not exclude coverage for damage to property being lifted. If not included in the required limits, Rigger’s Liability shall be provided in the limits not less than the maximum value of the property lifted at any one time. BNBuilders will accept a separate Rigger’s Liability policy in lieu of Subcontractors provision of this coverage under its Commercial General Liability policy.

If any tier or type of Subcontractor maintains Umbrella or Excess limits greater than what is required herein, such limits carried become what we require under this contract.

e. **Pollution liability** – Subcontractor shall provide evidence of Pollution Liability; specifically including coverage for mold, covering all operations necessary or incidental to the fulfillment of all contract obligations hereunder. Such insurance shall provide coverage for bodily injury, property damage (including loss of use of damaged property or of property that has not been physically injured), clean-up costs and remediation expenses (including costs for investigation, sampling, characterization, and monitoring), legal costs, defense costs, natural resource damage, transportation of pollutants on and off the project site, and non-owned disposal site liability if subcontractor’s scope of work (or subcontractor’s consultants) includes the responsibility of manifesting and disposing of contaminated material or waste from its activities. Coverage shall also extend to pollution conditions arising out of the subcontractor’s operations including coverage for sudden as well as gradual release arising from subcontractor’s operations including operations of any of its subcontractor’s or consultants. Such insurance shall provide coverage for wrongful acts, which may arise from all activities from the first point of subcontractor engagement and shall continue on a practice basis for not less than 36 months after completion, or the period of time subcontractor may be held legally liable for its work, whichever is longer. The retro date if any such coverage shall be prior to the commencement of subcontractor’s work.

**Trade – Specific Pollution Coverage and Limits:**

**Tier 1 – Pollution Liability**

Subcontractors included in **Tier 1 scopes of Work**, including but not limited to:

- Division 04 Masonry (except dry placed stone)
- Division 07 (except traffic coatings, vapor retarders, and joint protection)
- Division 08 Openings specific to entrances, storefronts, and curtain walls, windows, skylights, louvers, and specialty glazing)
- Division 25 Integrated Automation
- Division 27 structured cabling (except if scope includes line voltage work)
- Division 28 Electrical Safety and Security

The Tier 1 sections above shall provide, at a minimum, the following Pollution Limits of Liability;

- **Such insurance shall be in the amount of not less than $1,000,000 per claim or occurrence and $1,000,000 annual aggregate.**

**Tier 2 – Pollution Liability**

Subcontractors included in **Tier 2 scopes of Work**, including but not limited to:

- Division 09 Finishes specific to High-Performance coatings
- Division 13 Specialty Facility Components
• Division 14 Conveying Equipment
• Division 32 Exterior Improvements (except dry stacked stone)
• Division 32 Exterior Improvements specific to dry stacked stone

The Tier 2 sections above shall provide, at a minimum, the following Pollution Limits of Liability;

• Such insurance shall be in an amount of $2,000,000 per claim or occurrence and $2,000,000 annual aggregate.

Tier 3 – Pollution Liability

Subcontractors included in Tier 3 scopes of Work, including but not limited to:
• Division 02 Existing Conditions (except Site Surveys)
• Division 03 Concrete
• Division 21 Fire Suppression
• Division 22 Plumbing
• Division 23 Heating, Ventilation and Air Conditioning
• Division 26 Electrical
• Division 31 Earthwork
• Division 33 Utilities

The Tier 3 sections above shall provide, at a minimum, the following Pollution Limits of Liability;

• Such insurance shall be in an amount of $5,000,000 per claim or occurrence and $5,000,000 annual aggregate.

If Subcontractor maintains Pollution Liability limits greater than what is required herein, such limits carried become what we require under this contract.

f. Professional Liability and/or Errors & Omissions – Subcontractor shall provide evidence of Professional Liability insurance covering claims that arise from the actual or alleged errors, omissions or acts of the Subcontractor or any entity for which the Subcontractor is legally responsible, for the provision of all professional services necessary or incidental to the fulfillment of all contract obligations hereunder.

Such insurance shall be in an amount of not less than;
$1,000,000 each claim / $2,000,000 aggregate

If Subcontractor maintains Professional Liability limits greater than what is required herein, such limits carried become what we require under this contract.

The policy shall be effective from the date of commencement of all professional services in connection with the fulfillment of all contract obligations hereunder. The retroactive date in the current and future policies shall be prior to the commencement of all professional services. Coverage shall be maintained for a period not less than 36 months or the period of time Subcontractor may be held legally liable for its work, (whichever is longer) following the completion of the work; or an extended reporting period of 36 months following completion of the work shall be purchased.

Coverages shall not include any exclusion or other limitations related to scopes of services or project type or construction type, or delays in project completion and cost overruns.
g. **Additional Insured / Primary-NonContributory / Waiver of Subrogation Requirements**

To the fullest extent of coverage allowed under applicable law, all those listed in **1.1.4**, Additional Insured, shall be named as additional insured on a primary and non-contributory basis for all required lines of coverage except Statutory Workers Compensation and Professional Liability, arising out of “your work” with respect to work performed by or for the Subcontractor on behalf of the Contractor. Contractor shall accept General Liability Additional Insured forms CG 20 10 11/85, CG 20 10 10/01 & CG 20 37 10/01 or their equivalent.

Additional Insured status shall be for all limits carried, not limited to the minimum acceptable as required herein. Subcontractor’s insurance shall be Primary as respects to Contractor and Owner, and any other insurance maintained by Contractor and Owner shall be excess and not contributing insurance with Subcontractor’s insurance until such time as all limits available under the Subcontractor’s insurance policies have been exhausted.

Additional Insured endorsements that contain comparative fault, vicarious liability or sole negligence limitations of the Contractor / Owner or any other party required by the contract, will not be accepted.

In the event that any policy provided in compliance with this agreement states that the coverage provided to an additional insured shall be no broader than that required by contract, or words of similar meaning, the parties agree that nothing in this agreement is intended to restrict or limit the breadth of coverage or limits available.

The additional insured status shall remain in full force and effect for the term of the contract plus the applicable statute of repose, or the amount of time you are legally liable, whichever is longer.

It is further agreed that the additional insured coverage required under this contract shall not be subject to any Defense Costs Endorsements such as Form IL 01 23 11 13, allowing for the recovery of defense costs by the insurer if the insurer initially pays defense costs but later determines the claims are not covered.

Contractor reserves the right, in its sole and subjective discretion, to reject any Additional Insured forms that are deemed not equivalent to what is required herein.

h. **Waiver of Subrogation** – Subcontractor shall provide a Waiver of Subrogation Endorsement naming those listed in the **1.1.4** for all lines of coverage.

1.1.4 **Primary Additional Insured’s:**
- **Contractor** – BNBuilders, Inc.
- **Owner** – 
- **Building Owner** – 
- **Architect** – 

1.2 **Additional Requirements**

a. **Aircraft Liability.** If Subcontractor (or its subcontractors or suppliers, regardless of tier) use any owned, leased, chartered or hired aircraft of any type or any unmanned aerial vehicle (drones) in the performance of this contract, they shall maintain aircraft liability insurance in an amount of not less than **$10,000,000 per occurrence, including Passenger Liability.** Evidence of coverage in the form of a certificate of insurance shall be provided prior to the start of the Project.
1.3 **Property Insurance**

a. If Builder’s Risk or other property insurance is not provided by others under the Main Contract, the Subcontractor shall procure and maintain, at the Subcontractor’s own expense, property and equipment insurance of the Subcontract Work intended to become part of the project, including any property stored off the site, in transit or any of the Owner’s or Contractor’s property in the care, custody or control of Subcontractor. Subcontractor and Subcontractor’s insurance carrier(s) hereby waive all rights of subrogation against Contractor and Owner for damage including loss of use.

b. Contractor neither represents nor assumes responsibility for the adequacy of the Builders Risk Insurance to protect the interests of the Subcontractor. It shall be the obligation of the Subcontractor to purchase and maintain any supplementary property insurance that it deems necessary to protect its interest in the Work, including without limitation off site stored materials and materials in transit.

c. If Builder’s Risk insurance purchased by the Owner or Contractor provides coverage for Subcontractor for loss or damage to Subcontractor’s work, Subcontractor shall be responsible for the insurance policy deductible amount applicable to damage to Subcontractor's work and/or damage to other work caused by Subcontractor.

d. Subcontractor is solely responsible for loss or damage to its personal property including without limitation; tools, equipment, scaffolding, vehicles, temporary structures or property or materials created or provided under the Subcontract until delivered and accepted or installed at the Project Site. Any insurance provided by Subcontractor shall include a waiver of subrogation from insurers in favor of Contractor and Owner.

**END OF ATTACHMENT A**

**Please submit your insurance certificate via email to:**

Cert Holder Address:
BNBuilders, Inc.
C/O Parker, Smith, & Feek
Attn: Certificate Analyst
2233 112th Ave NE
Bellevue, WA 98004
myCOI@psfinc.com
425.709-3662
BNBuilders is utilizing an online certificate of insurance tracking website through Parker Smith & Feek powered by MyCOI.

Subcontractors are required to upload Certificates of Insurance directly to Parker Smith & Feek’s certificate tracking website.

**Initial Enrollment and Registration**

Enrollment in Parker Smith & Feek’s MyCOI Website is a simple **one-time process**. You will receive an automated email directly from [myCOI@psfinc.com](mailto:myCOI@psfinc.com) with enrollment instructions.

During the initial registration, all your insurance agent(s) contact information will be collected.

Agent Information Required:

- Agent Name
- Agency Name
- Agency Address
- Agency Phone Number
- Agent Email Address
- Policy Lines Written by your Agent

This program does not cost you anything to use. Please provide all the required information when registering.

**Submitting your Certificate of Insurance**

Upon enrollment and assignment to a project, certificates of insurance will need to be uploaded into Parker Smith & Feek’s certificate tracking website powered by MyCOI by your insurance agent or the subcontractor. Please upload one entire certificate of insurance, including your endorsements into one .pdf per project.

If the agent/subcontractor does not submit a compliant certificate in a timely manner, you will be notified directly from [myCOI@psfinc.com](mailto:myCOI@psfinc.com).

All subcontractor insurance certificates are to be uploaded per the instructions above and will be processed via Parker Smith & Feek powered by MyCOI.
1.1 Liability Insurance  
   a. To the fullest extent allowable by law, prior to the commencement of the work Subcontractor shall purchase and maintain such insurance as will protect it from the claims set forth below which may arise out of or result from Subcontractor’s operations under this agreement whether such operations be by itself or by any sub-Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Limits shall be all the Insurance Coverage and/or limits carried by or available to the Subcontractor, the minimum limits as required herein or as required in the Main Contract, whichever is greater;

1.1.2 General Conditions  
   a. Subcontractor shall maintain completed operations liability insurance for the term of the contract plus the period of time Subcontractor may be held legally liable for its work. Physical insurance certificates and endorsements are to be furnished to the Contractor for a minimum of one year following completion of Subcontractor’s work, or longer if required by the main contract.

   Subcontractor shall maintain policies of insurance in full force and effect, at all times during the performance of the work, plus the statute of repose or statute of limitations applicable to the jurisdiction where the work is performed.

   b. All insurance companies shall have a Best’s rating of A-VII or better.

   c. In addition, Subcontractor shall provide Contractor with 45 days notice in case of cancellation or non-renewal, except 10 days for non-payment of premium.

   d. Certificates of Insurance Acord Form 25 and all required Endorsements shall be filed with Contractor within (5) working days of award of Subcontract and prior to commencement of the work.

   e. If requested by the Contractor, Subcontractor shall provide a certified and true copy of any or all policies.

   f. Acceptance of the certificates or endorsements by the Contractor shall not constitute a waiver of Subcontractor’s obligations hereunder.

   g. It is the Subcontractor’s sole responsibility to require and monitor compliance and appropriate coverage and minimum limits as required herein for any liability coverages for all tiers of sub-subcontractors. For any coverage required herein where the Subcontractor shall name Contractor and Owner or others as additional insured(s) the Subcontractor shall require a sub-subcontractor to make as additional insured(s).
h. If Subcontractor fails to secure and/or pay the premiums for any of the policies of insurance required herein, or fails to maintain such insurance, Contractor may, in addition to any other rights it may have under this Agreement or at law or in equity, terminate this subcontract or secure such policies or policies of insurance for the account of Subcontractor and charge Subcontractor for the premiums paid therefore, or withhold the amount thereof from sums otherwise due from Contractor to Subcontractor. Neither the Contractor’s rights to secure such policy or policies nor the securing thereof by Contractor shall constitute an undertaking by Contractor on behalf of or for the benefit of Subcontractor or others to determine or warrant that such policies are in effect.

i. Subcontractor shall be fully and financially responsible for all deductibles or self-insured retentions.

1.1.3 Coverage Forms
a. Subcontractor’s Commercial General Liability insurance shall be written on an industry standard Commercial General Liability Occurrence from (CG 00 01, 12/07) or its equivalent and shall include but not be limited to products/completed operations; premises and operations; blanket contractual; advertising/personal injury; independent contractors. Coverage shall be on an occurrence form with policy limits of not less than:

$1,000,000 Each Occurrence Bodily Injury & Property Damage  
$1,000,000 Personal & Advertising Injury  
$2,000,000 General Aggregate to apply on a Per Project basis  
$2,000,000 Products/Completed Operations Aggregate

Terms and Conditions of coverage shall include:

1. Per Project Aggregate (CG 25 03) or equivalent.
2. If applicable to the project, no Residential Exclusions shall apply (must be evidenced on the certificate)
3. No exclusion for subsidence
4. No exclusion for damage to work performed by Subcontractors (CG 22 94 or similar).
5. No exclusion for cross liability for any person / organization.
6. No exclusion for explosion, collapse, underground hazards, and liability assumed under an insured contract (including tort liability of another assumed in a business contract).
7. No removal or limitation of the "Damage To Your Work” exclusion exception if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.
8. If any work or operations are within fifty feet of any railroad (including any light rail, fixed rail, or other rail systems), Subcontractor shall obtain Contractual Liability – Railroads Endorsement CG 24 17 or its equivalent.
9. Professional Liability Exclusion shall include exceptions for Construction Means and Methods (CG 22 79 or CG 22 80 or their equivalents)
10. Deductibles or Self-Insured Retentions shall be made known and acceptability determined at the sole discretion of Contractor.

b. Business Auto Liability – Coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) form CA 00 01, written on an occurrence basis to apply to “any auto” or at a minimum “all owned, hired and non-owned autos”, with policy limits of not less than;

$1,000,000 per accident for bodily injury and property damage

1. If applicable, Broadened Pollution for Covered Autos shall apply. This requirement may also be satisfied by providing proof of separate Pollution Liability that includes coverage for transportation exposures.
2. If any work or operations are within fifty feet of any railroad (including any light rail, fixed rail,
or other rail systems), Subcontractor shall obtain Construction Liability – Railroads Endorsement – CA 20 70 or its equivalent.

c. **Workers’ Compensation and (b) employers’ liability-stop gap** – All Subcontractors of every tier shall provide coverage for industrial injury to their employees (or leased employees as applicable) in strict accordance with the provisions of the State or States in which project work is performed or where jurisdiction is deemed to be applicable. Workers’ Compensation shall be provided in a statutory form on either a state or, where applicable, federal (U.S. Longshore & Harbor Workers Act, Maritime-Jones Act, etc.) basis as required in the applicable jurisdiction.

Owner-operators are required to furnish Workers Compensation Certificates, notwithstanding any statutory exemptions. For states that do not require Workers’ Compensation Coverage, Owner/Operator shall elect into coverage under the Workers’ Compensation Laws of the governing state.

**Policy limits of not less than;**

**Workers Compensation:** Statutory

**Employers Liability / Stop Gap:**

$1,000,000 Bodily Injury by Accident – Each Accident

$1,000,000 Bodily Injury by Disease – Total Limit

$1,000,000 Bodily Injury by Disease – Each Employee

d. **Commercial Umbrella or Excess Liability Insurance** over Subcontractor’s primary Commercial General Liability, Business Auto Liability and Employers Liability / Stop Gap. All coverage terms required under the Commercial General Liability, Business Auto Liability and Employers Liability/Stop Gap above must be included on the Umbrella or Excess Liability Insurance. See Subsection below regarding “Trade Specific Umbrella/Excess Liability Limits”. Coverage shall be written on an occurrence form with policy limits not less than:

**Trade-Specific Umbrella/ Excess Liability Limits – See attached Matrix and below:**

**Tier 1 – Subcontractors**

Subcontractors included in **Tier 1 scopes of Work**, including but not limited to:

- Division 01 General Requirements
- Division 02 Existing Conditions specific to; site surveys and laser scanning.
- Division 04 Masonry (specific to dry placed stone, all others Tier 2)
- Division 10 Specialties (except signage connected to electrical Tier 2)
- Division 11 Equipment (except athletic, recreational, and play equipment Tier 2).
- Division 12 Furnishing (except manufactured casework or countertops Tier 2)
- Division 32 Exterior Improvements (specific to dry stacked stone, all others Tier 2)

The Tier 1 sections above shall provide, at a minimum, the following Umbrella / Excess Limits of Liability;

-$2,000,000 Each Occurrence
-$2,000,000 Personal & Advertising Injury
-$2,000,000 Aggregate (where applicable, following the terms of the underlying)

**Tier 2 - Subcontractors**

Subcontractors included in **Tier 2 scopes of Work**, including but not limited to,

- Division 02 Existing Conditions (except Site Surveys and laser scanning Tier 1)
- Division 03 Concrete
- Division 04 Masonry (except dry placed stone, Tier 1)
- Division 05 Metals
- Division 06 Woods, Plastics, and Composites
- Division 07 Thermal and Moisture
- Division 08 Openings
- Division 09 Finishes
- Division 10 Specialties (specific to signage connected to electrical, all others Tier 1)
- Division 11 Equipment (specific to athletic, recreational, and play equipment, all others Tier 1)
- Division 12 Furnishing (specific to manufactured casework or countertops, all others Tier 1)
- Division 13 Specialty Facility Components (except pre-engineered metal building which is Tier 3)
- Division 14 Conveying Equipment
- Division 21 Fire Suppression
- Division 22 Plumbing
- Division 23 Heating, Ventilation and Air Conditioning
- Division 25 Integrated Automation
- Division 26 Electrical
- Division 27 structured cabling
- Division 28 Electrical Safety and Security
- Division 31 Earthwork
- Division 32 Exterior Improvements (except dry stacked stone Tier 1)
- Division 33 Utilities

The Tier 2 sections above shall provide, at a minimum, the following Umbrella / Excess Limits of Liability:

$5,000,000 Each Occurrence
$5,000,000 Personal & Advertising Injury
$5,000,000 Aggregate (where applicable, following the terms of the underlying)

**Tier 3 - Subcontractors**

Subcontractors included in Tier 3 scopes of Work, including but not limited to;
- Division 13 Specialty Facility Components (specific to pre-engineered metal buildings)

The Tier 3 sections above shall provide, at a minimum, the following Umbrella / Excess Limits of Liability:

$10,000,000 Each Occurrence
$10,000,000 Personal & Advertising Injury
$10,000,000 Aggregate (where applicable, following the terms of the underlying)

**Crane Services Liability.** Should Subcontractors work include providing crane services, at a minimum, shall provide the following Umbrella / Excess Limits of Liability;

$10,000,000 Each Occurrence
$10,000,000 Personal & Advertising Injury
$10,000,000 Aggregate (where applicable, following the terms of the underlying)

The policy shall include coverage for Rigger’s Liability and shall not exclude coverage for damage to property being lifted. If not included in the required limits, Rigger’s Liability shall be provided in the
limits not less than the maximum value of the property lifted at any one time. BNBuilders will accept a separate Rigger’s Liability policy in lieu of Subcontractors provision of this coverage under its Commercial General Liability policy

If any tier or type of Subcontractor maintains Umbrella or Excess limits greater than what is required herein, such limits carried become what we require under this contract.

e. **Pollution liability** – Subcontractor shall provide evidence of Pollution Liability; specifically including coverage for mold, covering all operations necessary or incidental to the fulfillment of all contract obligations hereunder. Such insurance shall provide coverage for bodily injury, property damage (including loss of use of damaged property or of property that has not been physically injured), clean-up costs and remediation expenses (including costs for investigation, sampling, characterization, and monitoring), legal costs, defense costs, natural resource damage, transportation of pollutants on and off the project site, and non-owned disposal site liability if subcontractor’s scope of work (or subcontractor’s consultants) includes the responsibility of manifesting and disposing of contaminated material or waste from its activities. Coverage shall also extend to pollution conditions arising out of the subcontractor’s operations including coverage for sudden as well as gradual release arising from subcontractor’s operations including operations of any of its subcontractor’s or consultants. Such insurance shall provide coverage for wrongful acts, which may arise from all activities from the first point of subcontractor engagement and shall continue on a practice basis for not less than 36 months after completion, or the period of time subcontractor may be held legally liable for its work, whichever is longer. The retro date if any such coverage shall be prior to the commencement of subcontractor’s work.

**Trade – Specific Pollution Coverage and Limits:**

**Tier 1 – Pollution Liability**

Subcontractors included in **Tier 1 scopes of Work**, including but not limited to:
- Division 04 Masonry (except dry placed stone)
- Division 07 (except traffic coatings, vapor retarders, and joint protection)
- Division 08 Openings (specific to entrances, storefronts, and curtain walls, windows, skylights, louvers, and specialty glazing)
- Division 25 Integrated Automation
- Division 27 structured cabling (except if scope includes line voltage work)
- Division 28 Electrical Safety and Security

The Tier 1 sections above shall provide, at a minimum, the following Pollution Limits of Liability;

- **Such insurance shall be in the amount of not less than $1,000,000 per claim or occurrence and $1,000,000 annual aggregate.**

**Tier 2 – Pollution Liability**

Subcontractors included in **Tier 2 scopes of Work**, including but not limited to:
- Division 02 Existing Conditions (except if hazardous materials or abatement is required Tier 3)
- Division 03 Concrete
- Division 09 Finishes specific to High-Performance coatings
- Division 13 Specialty Facility Components
- Division 14 Conveying Equipment
- Division 21 Fire Suppression
- Division 22 Plumbing
- Division 23 Heating, Ventilation and Air Conditioning
- Division 26 Electrical
- Division 31 Earthwork (except if contaminated soils are indicated Tier 3)
- Division 32 Exterior Improvements (except dry stacked stone Tier 1)
- Division 33 Utilities

The Tier 2 sections above shall provide, at a minimum, the following Pollution Limits of Liability;

- **Such insurance shall be in an amount of $2,000,000 per claim or occurrence and $2,000,000 annual aggregate.**

**Tier 3 – Pollution Liability**

Subcontractors included in **Tier 3 scopes of Work**, including but not limited to:
- Division 02 Existing Conditions – required if hazardous materials or abatement is indicated
- Division 31 Earthwork – required if contaminated soils are indicated

The Tier 3 sections above shall provide, at a minimum, the following Pollution Limits of Liability;

- **Such insurance shall be in an amount of $5,000,000 per claim or occurrence and $5,000,000 annual aggregate.**

If Subcontractor maintains Pollution Liability limits greater than what is required herein, such limits carried become what we require under this contract.

**f. Professional Liability and/or Errors & Omissions** – Subcontractor shall provide evidence of Professional Liability insurance covering claims that arise from the actual or alleged errors, omissions or acts of the Subcontractor or any entity for which the Subcontractor is legally responsible, for the provision of all professional services necessary or incidental to the fulfillment of all contract obligations hereunder.

**Such insurance shall be in an amount of not less than;**

$1,000,000 each claim / $2,000,000 aggregate

If Subcontractor maintains Professional Liability limits greater than what is required herein, such limits carried become what we require under this contract.

The policy shall be effective from the date of commencement of all professional services in connection with the fulfillment of all contract obligations hereunder. The retroactive date in the current and future policies shall be prior to the commencement of all professional services. Coverage shall be maintained for a period not less than 36 months or the period of time Subcontractor may be held legally liable for its work, (whichever is longer) following the completion of the work; or an extended reporting period of 36 months following completion of the work shall be purchased.

Coverages shall not include any exclusion or other limitations related to scopes of services or project type or construction type, or delays in project completion and cost overruns.

**g. Additional Insured / Primary-NonContributory / Waiver of Subrogation Requirements**

To the fullest extent of coverage allowed under applicable law, all those listed in **1.1.4**, Additional Insured, shall be named as additional insured on a primary and non-contributory basis for all required lines of coverage except Statutory Workers Compensation and Professional Liability, arising out of “your work” with respect to work performed by or for the Subcontractor on behalf of
the Contractor. Contractor shall accept General Liability Additional Insured forms CG 20 10 11/85, CG 20 10 10/01 & CG 20 37 10/01 or their equivalent.

Additional Insured status shall be for all limits carried, not limited to the minimum acceptable as required herein. Subcontractor’s insurance shall be Primary as respects to Contractor and Owner, and any other insurance maintained by Contractor and Owner shall be excess and not contributing insurance with Subcontractor’s insurance until such time as all limits available under the Subcontractor’s insurance policies have been exhausted.

Additional Insured endorsements that contain comparative fault, vicarious liability or sole negligence limitations of the Contractor / Owner or any other party required by the contract, will not be accepted.

In the event that any policy provided in compliance with this agreement states that the coverage provided to an additional insured shall be no broader than that required by contract, or words of similar meaning, the parties agree that nothing in this agreement is intended to restrict or limit the breadth of coverage or limits available.

The additional insured status shall remain in full force and effect for the term of the contract plus the applicable statute of repose, or the amount of time you are legally liable, whichever is longer.

It is further agreed that the additional insured coverage required under this contract shall not be subject to any Defense Costs Endorsements such as Form IL 01 23 11 13, allowing for the recovery of defense costs by the insurer if the insurer initially pays defense costs but later determines the claims are not covered.

Contractor reserves the right, in its sole and subjective discretion, to reject any Additional Insured forms that are deemed not equivalent to what is required herein.

h. **Waiver of Subrogation** – Subcontractor shall provide a Waiver of Subrogation Endorsement naming those listed in the 1.1.4, for all lines of coverage.

1.1.4 **Primary Additional Insured’s:**
- Contractor – **BNBuilders, Inc.**
- Owner –
- Building Owner –
- Architect –

1.2 **Additional Requirements**

a. **Aircraft Liability.** If Subcontractor (or its subcontractors or suppliers, regardless of tier) use any owned, leased, chartered or hired aircraft of any type or any unmanned aerial vehicle (drones) in the performance of this contract, they shall maintain aircraft liability insurance in an amount of not less than **$10,000,000 per occurrence, including Passenger Liability.** Evidence of coverage in the form of a certificate of insurance shall be provided prior to the start of the Project.

1.3 **Property Insurance**

a. If Builder’s Risk or other property insurance is not provided by others under the Main Contract, the Subcontractor shall procure and maintain, at the Subcontractor’s own expense, property and equipment insurance of the Subcontract Work intended to become part of the project, including any property stored off the site, in transit or any of the Owner’s or Contractor’s property in the care,
custody or control of Subcontractor. Subcontractor and Subcontractor’s insurance carrier(s) hereby waive all rights of subrogation against Contractor and Owner for damage including loss of use.

b. Contractor neither represents nor assumes responsibility for the adequacy of the Builders Risk Insurance to protect the interests of the Subcontractor. It shall be the obligation of the Subcontractor to purchase and maintain any supplementary property insurance that it deems necessary to protect its interest in the Work, including without limitation off site stored materials and materials in transit.

c. If Builder’s Risk insurance purchased by the Owner or Contractor provides coverage for Subcontractor for loss or damage to Subcontractor’s work, Subcontractor shall be responsible for the insurance policy deductible amount applicable to damage to Subcontractor’s work and/or damage to other work caused by Subcontractor.

d. Subcontractor is solely responsible for loss or damage to its personal property including without limitation; tools, equipment, scaffolding, vehicles, temporary structures or property or materials created or provided under the Subcontract until delivered and accepted or installed at the Project Site. Any insurance provided by Subcontractor shall include a waiver of subrogation from insurers in favor of Contractor and Owner.

END OF ATTACHMENT A

Please submit your insurance certificate via email to:

Cert Holder Address:
BNBuilders, Inc.
C/O Parker, Smith, & Feek
Attn: Certificate Analyst
2233 112th Ave NE
Bellevue, WA 98004
myCOI@psfinc.com
425.709-3662
BNBuilders is using GCPay.com to process all your monthly progress payment applications. GCpay.com is a web based program that will make your monthly payment applications more efficient. Your initial Schedule of Values and all monthly payment applications must be submitted in this manner.

There is no charge to you the subcontractor for using GCpay.com

We will notify you via email, via GCPAY.com to register your company at the following link http://www.gcpay.com at GCpay.com and following your registration you will have access to the project information. If you have already registered for GCpay.com, we will notify you via email via GCPAY.com that the project information is accessible to you.

- Schedule of Values. We will provide you with the total amount of the contract and you will submit line item details of that amount for review and approval by our BNB project managers, the SOV must be submitted 10 days after contract award to GCpay.com, before the first application for payment can be submitted, the line items can be keyed in manually or you can upload an Excel spreadsheet.

- Change Orders. Approved change orders will be added to your Schedule of Values as a separate line item throughout the project. Your billings will include these approved change orders. You will not be able to bill for any unapproved change orders.

- Compliance Documentation. You will have access to a list of required compliance items and you will provide compliance documentation to us via document upload or email. If a compliance item is due to expire, you will be notified via email 30 days prior to expiration, please email your Project Accountant if you have any questions regarding documentation.

- Applications for Payment. You will submit payment applications to us on a monthly basis, see page 2 of attachment B for billing deadlines and GCpay.com will notify you via email one week in advance of the deadline for submitting your billing.

- Lien Waivers. You will be provided with BNB’s lien waivers appropriate times throughout the project. These will be emailed to you via GCpay.com and you also will have access to all lien waivers in GCPay.com.

If you have any questions regarding any of the BNBuilders billing information requested or required, please note in the subject line BNBuilders Job#, BNB Job NAME, brief topic- (ex. 117010.200, Spruce Elem – Construction – Waiver) and please send your email to:

SubaccountingSD@bnbuilders.com – San Diego Office/Projects
SubaccountingLA@bnbuilders.com – LA/OC Office/Projects
SubaccountingSF@bnbuilders.com – San Francisco Office/Projects

If you are having technical or functional issues with GCPay.com, please contact GCPay.com for 24/7/365 support via (877) 447-2584 or info@gcpay.com
This Supersedes Any and All Previously Received Billing Forms.

SUBCONTRACT BILLING INFORMATION
ATTACHMENT B

BILLING DEADLINE
- Please submit your Progress Billing to BNBuilders, Inc. by the 20th of the month, unless otherwise stipulated. This ensures that we can submit our payment request to the Owner by the 25th of the month.
- Subcontractor to submit Schedule of Values for review and approval via GCPay.com, 10 days after award of subcontract and prior to submitting the first application of payment.

BILLING DOCUMENTS
- Subcontractor Payment Application
- Conditional Waiver & Release Upon Progress Payment
- Affidavit of Subcontractor as well as Unconditional Progress Releases (Our Form) from your 2nd tier for the previous month.
- Affidavit of Union Benefits or a letter from the Union certifying payments through the month you are billing for.

PERFORMANCE AND PAYMENT BONDS
- If a Subcontractor Payment and Performance Bond is executed on this project per Attachment H, the affidavit information is not required to be submitted. In addition, Sub-tier Lien Releases will not be required.
- BNBuilders reserves the right to request the affidavit and Sub tier Lien Release information if the need arises.
- If a Payment and Performance Bond are not being provided, the Subcontractor shall provide all affidavit and Sub tier Lien Release information as outlined herein.

FINAL BILLING/RETENTION DOCUMENTS
- Subcontractor Payment Application
- Conditional Waiver & Release Upon Final Payment
- Affidavit of Subcontractor as well as 2nd Tier Unconditional Final Releases (Our Form)

  Or

- Conditional Final Release (Our Form) from 2nd tier. We will release all but what is owed the 2nd tier. Once we have received Unconditional Final Release from the 2nd tier, we will release remaining amount due.
- We can Joint Check the final amount due the 2nd tier. We will need our Conditional Final Release and our Joint Check Agreement. Contact Ben Moran for the Joint Check Agreement Form.

CAUSES FOR DELAY OF PAYMENT
- Unexecuted Contract Documents
- Expired or Non-Compliant Insurance
- Incomplete Billing Requirements

NOTE – BNBuilders reserves the right to require joint check agreements with any or all of Subcontractor’s sub-tier Contractors, Suppliers, Unions, Trusts, Labor and Industries and other Creditors at BNBuilders’ sole discretion. Subcontractor agrees to execute joint check agreements as required by BNBuilders.

ALL DOCUMENTS WILL BE SUBMITTED VIA GCPAY.com

Gemini Att B - California Subcontractor Billing GCpay V1.0
Subcontractor Payment Application

BNBuilders, Inc.
5825 Oberlin Drive, Suite 1
San Diego, CA  92121

From: ________________________________  Date: ________________________________
_____________________________________________________________________________
_____________________________________________________________________________
Phone: ________________________________  BNB Job No.: ____________________________
Fax: ________________________________  Contractor License Number: ________________
Email: ________________________________

Contract Summary:
1. Original Contract Amount $ ________________________________
2. Approved Subcontract Changes $ ________________________________
3. Total Revised Subcontract Amount (Line 1 + Line 2) $ ________________________________

Payment Application Summary:
Type of work: ________________________________________________________________

This payment request covers the time period from ________________________________ to ________________________________

4. Value of Work Completed to Date __________________________% $ ________________
5. Value of Stored Materials $ ________________________________
6. Total Completed and Stored to Date (Line 4 + Line 5) $ ________________________________
7. Less Retainage to Date 10% $ __________________________________________
8. Total Earned Less Retainage (Line 6 less Line 7) $ ________________________________
9. Less Total of Previous Applications $ ________________________________
   (Line 8 from Previous Application)
10. Amount of this Payment Application (Line 8 less Line 9) $ ________________________________
11. Total Value of unapproved extras or claims of which subcontract $ ________________________________
   changes have NOT been issued. List detail

Comments: ________________________________________________________________

_____________________________________________________________________________

Signature ________________________________  Date ________________________________

Gemini Att B - California Subcontractor Billing GCpay V1.0
CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT  
(CA CIVIL CODE 8132)

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT’S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: ______________________________________________

Name of Customer: _____________________________________________

Job Location: __________________________________________________

Owner: _______________________________________________________

Through Date: __________________________________________________

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _________________________________________________

Amount of Check: ________________________________________________

Check Payable to: ________________________________________________

Exceptions

This document does not affect any of the following:

(1) Retentions.

(2) Extras for which the claimant has not received payment.

(3) The following payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release: ________________________________

Amount(s) of unpaid payment(s): ________________________________

(4) Contract rights, including.

(A) a right based on rescission, abandonment, or breach of contract, and

(B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant’s Signature: ________________________________

Claimant’s Title: ________________________________

Gemini Att B - California Subcontractor Billing GCpay V1.0
UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT
(CA CIVIL CODE 8134)

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information
Name of Claimant: _______________________________________________
Name of Customer: _______________________________________________
Job Location: ___________________________________________________
Owner: ________________________________________________________
Through Date: __________________________________________________

Unconditional Waiver and Release
This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment: $_________________

Exceptions
This document does not affect any of the following:

(1) Retentions.
(2) Extras for which the claimant has not received payment.
(3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature
Claimant's Signature: ________________________________
Claimant’s Title: ________________________________
Date of Signature: ________________________________
CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT
(CA CIVIL CODE 8136)

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information:

Name of Claimant: _________________________________________
Name of Customer: ________________________________________
Job Location: _____________________________________________
Owner: __________________________________________________

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following checks are drawn:

Maker of Check: _________________________________________
Amount of Check: _______________________________________
Check Payable to: _______________________________________

Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: $______________

Signature

Claimant's Signature: _________________________________
Claimant's Title: _________________________________
Date of Signature: _________________________________
UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

(CA CIVIL CODE 8138)

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information
Name of Claimant: ___________________________________
Name of Customer: __________________________________
Job Location: _______________________________________
Owner: ____________________________________________

Unconditional Waiver and Release
This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Exceptions
This document does not affect the following:
Disputed claims for extras in the amount of: $_____________

Signature
Claimant's Signature: __________________________________
Claimant's Title: ______________________________________
Date of Signature: ______________________________________
INSTRUCTIONS FOR COMPLETING THE AFFIDAVIT OF SUBCONTRACTOR

• The Affidavit of Subcontractor must accompany each billing.

• If the subcontractor does not have any 2nd tier subcontractors or suppliers, please fill out the top portion and indicate “NO Subcontractors” or “NO Suppliers” in the middle.

• List all suppliers/2nd tier subs that have sent Preliminary Notices as well as any you will be incurring $5,000 or more with for the entire project.

• Adjusted total amount including change orders – The first line is for your portion excluding the supplier/2nd tier sub amounts listed. List the dollar amount you intended to incur with them – this amount can be adjusted as needed. The total at the bottom should equal your current contract value.

• Last month’s lien waiver is attached or forthcoming – Please indicate whether you are attaching the previous month’s unconditional release or if it is forthcoming. If no cost was incurred the previous month please indicate in the Supplier/Sub-sub Not Used Last Month column.

• Final Waivers Already Sent – If you have previously sent in an Unconditional Upon Final Release from the supplier/sub-sub please check the box and continue to list them on the Affidavit.

• All Supplier/2nd tier sub unconditional releases must be on our form.

• Progress payments will be held until all appropriate 2nd tier releases have been received. Example – All indicated 2nd tier unconditional showing paid to date thru June must be received prior to release of your July payment.

• Final payments will not be released until all 2nd tier Unconditional Upon Final releases have been received.
BNBuilders Contractor License Number: 799131

Affidavit of Subcontractor

State of ___________________________ County of ___________________________ in the position
of __________________________________ For __________________ a __________________________________

Hereinafter referred to as “Subcontractor”, and am authorized to execute this affidavit on behalf of Subcontractor, know that

1. That Subcontractor is a subcontractor to BNBuilders hereinafter referred to as “Contractor”, the general
contractor on ________________________________________________________________

2. That as an inducement to Contractor to advance monies to Subcontractor, and with knowledge that Contractor
will rely upon the representations made herein, the undersigned certifies that (a) except as specifically set forth
on Subcontractor Payment Application, this application makes claim for payment for all work performed on the Project during the period
for which payment is sought, there is no claim which is being omitted and applicant waives any right to make any claim
for any additional compensation relating to the period unless an exception is noted at this time, and (b) the following
listed firms and individuals are the only parties from whom Subcontractor has purchased materials, rented equipment, or
Subcontracted portions of Subcontractor’s work on said project (or has commitments or intends to purchase, rent or
subcontract) in an amount of $5,000 or more from the commencement of said project to the date of project completion.

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<th>Name of Supplier/Sub-Subcontractors</th>
<th>Adjusted total amount including change orders</th>
<th>Last month's lien waivers Attached</th>
<th>Last month’s lien waivers Forthcoming</th>
<th>Supplier/Sub-Sub Not used last month</th>
<th>Final Waivers already sent</th>
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I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed on _____________________________ 20____, at _____________________________

City and State

__________________________________________  ______________________________
SIGNATURE                             DATE

TOTAL ADJUSTED SUBCONTRACTOR AMOUNT

Gemini Att B - California Subcontractor Billing GCpay V1.0
INSTRUCTIONS FOR COMPLETING THE AFFIDAVIT OF UNION BENEFITS

• IF SUBCONTRACTOR IS NON-UNION, PLEASE FILL OUT THE TOP SECTION, INDICATE “NON-UNION” IN THE MIDDLE SECTION, ADD THE PERIOD THROUGH DATE AND LEAVE THE BOTTOM SECTION BLANK.

• THIS FORM MUST BE SUBMITTED MONTHLY, WHETHER YOU ARE UNION OR NON-UNION
Affidavit of Union Benefits

From: 
Name of Subcontractor

Business Address

City, State, Zip Code

Project: 
Project Name

Project Address

City, State, Zip Code

The undersigned subcontractor hereby certifies that all union trust benefits on behalf of the subcontractor’s employees are paid and current through ____________________________.

For Subcontractor:

Company Name

Name

Title

The undersigned union trust hereby certifies that in accordance with the trust’s records and to the best of their knowledge, the above named subcontractor has paid all benefits due for hours worked by its employees through the period ending ___________________________. This certification shall in no way relieve the subcontractor of responsibility for employee benefit contributions not reported or incorrectly reported and due.

Union Trust:

Name

Title

Address

Telephone
ATTACHMENT C – GENERAL SCOPE OF WORK

The “Attachment C and C.1” constitutes a portion of the ‘Agreement’ between the Contractor, BNBuilders, and the Subcontractor named above, for the referenced project. Subcontractor is to provide all supervision, labor, materials, tools, transportation, and equipment necessary for a complete installation of the project scope in the contract documents and as further clarified below.

This contract document shall be utilized in conjunction with the Subcontractor Master Contract as referenced on the Project Agreement as well as the Executed Owner contract. Where a conflict may occur between these documents the more stringent shall apply. Subcontractor shall require each sub-subcontractor and or any tiered vendors under their control to be bound by these terms and agreements.

SUBCONTRACTOR REVIEW ACKNOWLEDGEMENT
Subcontractor acknowledges by signing this contract that the documents listed below have been reviewed and accepted without revision and all requirements will be complied with as they apply to this project.

BNB QUALITY CONTROL PLAN
BNB CORPORATE SAFETY PLAN

SUBCONTRACTOR SUBMITTAL ACKNOWLEDGEMENT
Subcontractor acknowledges by signing this contract that the submittals, including but not limited to the following, are due to BNBuilders within ten (10) calendar days of contract award:

- SCHEDULE WORK ACTIVITY BREAKDOWN (w/hours by activity)
- PAYMENT SCHEDULE OF VALUES
- INSURANCE CERTIFICATE
- PERFORMANCE & PAYMENT BONDS (if required)
- PROJECT SPECIFIC SAFETY & ACCIDENT PREVENTION PLANS

ALTERNATES, UNIT PRICES AND ALLOWANCES:
- See Attachment C.1

SPECIFIC CLARIFICATION OF SCOPE (Including but not limited to):
- See Attachment C.1

SPECIFIC EXCLUSIONS:
- See Attachment C.1

SUBCONTRACT SUPPLEMENTARY CONDITIONS:

Gemini Att C - 00.00 - California General SOW V1.0
ARTICLE 1 – THE SUBCONTRACT DOCUMENTS
1. Refer to other portions of the contract documents.

ARTICLE 2 – MUTUAL RIGHTS AND RESPONSIBILITIES
2. Refer to other portions of the contract documents.

ARTICLE 3 – CONTRACTOR (Location Specific)
3. BNBuilders, Inc. is signatory to the following union and/or labor agreements:
   a. LIST UNIONS PER OFFICE/LOCATION HERE

   Subcontractor shall employ only union labor for work performed at the job-site normally performed by the above-listed trade unions.

ARTICLE 4 - SUBCONTRACTOR
4.2.3 Execution and Progress
   a. Subcontractor will be required to provide the appropriate project management and supervision throughout the duration of the project. Subcontractor will not change supervision during the performance of this scope of work without the written consent of BNBuilders.
      i. During periods of on-site activity (including sub-tier work), Subcontractor shall have the appropriate supervision who is accessible by the GC and has full authority to make decisions for the subcontractor regarding cost and schedule issues and capable of coordinating with other subcontractors and GC.
      ii. It is the responsibility of the subcontractor to ensure communication of all safety and work place rules to the subcontractor employees and subcontractors shall provide employee’s onsite who are fluent in the language necessary to communicate at all times.
   b. General administrative requirements include, but are not limited to, the following:
      iii. Subcontractor daily reports are to be turned in the morning of the following ‘business day’ and weekly planning progress reports are to be turned in on the Friday of the ‘report’ week. Crew hours must be tracked daily and totaled with previous work hours.
      iv. Subcontractor is required to attend and participate in weekly subcontractor meetings and OAC meetings as directed by BNBuilders.
      v. Subcontractor will be required to attend periodic 45 minute to 1 hour long pull plan schedule meetings. GC will provide advanced notice of meeting for you to prepare your tasks, manpower and logistic plans. This meeting will be a collaborative planning session for you to present your ideal schedule needs for discussion. We as a team will coordinate with all other trades to achieve the best plan based on all the contractors needs as well as the overall need of the project milestones.
      vi. Subcontractor’s representative is required to turn in a 6 week look-ahead schedule every Thursday morning. BNBuilders will send out the updated look-ahead schedule every Tuesday morning. Subcontractor’s on-site representative will attend the weekly jobsite progress meetings.
      vii. All deliveries need to be scheduled in advance with the BNB superintendent, unscheduled delivers may be subject to being denied entry to site if it is not properly coordinated and interferes with a previously coordinated event or delivery.
      viii. Subcontractor shall ensure that all employees, suppliers, and subcontractors are informed of and have agreed to be bound by the terms and conditions of the
Subcontractor’s executed NDA, if required, prior to being informed of any project specifics and/or employment on-site.

c. Includes all labor necessary to provide a complete installation of work under this scope of work. Installation shall be performed for all materials provided under this agreement. Supervision shall be supplied for crews while on-site with a dedicated contact person available at all times while crews are installing.

d. All items within this agreement shall apply not only to the Subcontractor for which this agreement has been executed with, but it shall also apply to any of the Subcontractor’s sub tiers (of any level), suppliers, and or material men which the Subcontractor pays in performance of this Agreement.

e. Submittal of shop and installation drawings, as required by the specifications, shall be submitted per the project schedule, and in a manner, which does not delay its approval or installation. All materials and components shall be as specified by the contract documents.

   ix. BNBuilders will review the Subcontractor's submittals, such as Shop Drawings, Product Data and Samples, but only for conformance to the appropriate Scope of Work established by the Contract Documents. Any notations, comments, or dimensions indicated on these submittals are for information only and are not to be construed as substitutes for the Subcontractor's own verification of dimensions and coordination with preceding, following and adjoining work; nor do they modify or waive any of the Subcontractor's contractual responsibilities or requirements as set forth in the Contract Documents.

   x. Subcontractor shall identify lead times for any all materials listed within the submittal and submit their information in a manner which does not delay the work.

f. Within 10 days of subcontract award, Subcontractor shall prepare and submit a detailed schedule for the work which coordinates with the project schedule for approval by BNBuilders. It is the responsibility of this Subcontractor to provide all resources and material required to adhere to the master project schedules and short interval schedules.

   xi. Subcontractor shall provide a total of the estimated hours, per major work activity prior to their first payment.

g. Provide necessary mobilizations as required to complete work per BNBuilders schedule.

h. Subcontractor is responsible for layout as necessary to complete the work. BNBuilders will provide gridlines only.

i. Subcontractor is responsible for all field measurement as necessary to properly detail, fabricate, stage, erect and install work under this scope of work.

j. Unless otherwise noted or directed, all Work shall be completed in accordance with each manufacturer’s recommendations and/or directions for best results. No preparatory step or installation procedure may be omitted unless specifically modified or exempted by these documents. Where Subcontractor is required to follow manufacturer’s directions, recommendations, instructions, and the like, but more than one manufacturer is involved in the Work, or its component parts, Subcontractor shall follow all manufacturers’ directions and recommendations. In the event of conflict between two or more manufacturers' directions and recommendations, Subcontractor shall submit such discrepancy or conflict to the Architect for resolution and instruction.

k. Storage of materials on site shall be coordinated with the GC’s Project Superintendent.

   xii. Laydown space will be made available at the sole discretion of the GC. Subcontractor shall coordinate and manage deliveries as needed or on a just-in-time depending upon the direction of the GC.
xiii. If stock piling of materials is approved by the GC for within the building, then the Subcontractor shall confirm with a licensed engineer that loading will not jeopardize the structural integrity of the building and or elevated deck.

l. Offsite storage, if required, will be the responsibility of the Subcontractor, including transportation, handling, rent, and insurance.

m. Subcontractor is responsible for the security of all materials stored both on and off site.

n. Subcontractor is responsible for receiving, off-loading, storage and protection of equipment and materials supplied under this agreement.

o. Subcontractor agrees to abide, follow and implement BNBuilders Quality Control Plan as it relates to its work activities.

p. Subcontractor will make preliminary site visits prior to installation of components to verify conditions are acceptable to begin installation. Proceeding with installation after site inspection indicates acceptance of substrate and site conditions.

q. Subcontractor shall be responsible for protecting finished surfaces while performing their scope of work.

xiv. Subcontractor is responsible for damage to surrounding materials and finishes as a result of their work. Subcontractor will be required to repair or pay for repairs because of subcontractor’s negligence.

xv. Trade damage shall be assessed to the party responsible wherever possible. Trade damage not claimed or directly assessable to a subcontractor shall be prorated to all subcontractors which had work in the affected area. The prorated ratio shall be determined by the number or work hours performed by the subcontractor in the affected area and that shall act as a percentage against the cost of repairs. Zoning shall be by building interior, exterior, and site unless otherwise agreed to in writing. Hours shall be tabulated from daily reports or certified payroll. In cases in which the subcontractor fails to provide daily reports Contractor shall utilize subcontractor’s total hours of work.

- Example of Subcontractors in Affected Area; Drywall is damaged in the hallway. Subcontractors working on the interior of the building were electrical, mechanical, painters, floor covering, and drywall/ACT trades. Those trades would be responsible for the non-assessable costs. Subcontractors not responsible would be exterior or site work subcontractors or subcontractors work which was completed prior to drywall.

- Example of Hours Calculation; Subcontractor “A” had 22 hours of work in the building. Resulting trade damage not directly assessable was $1,000, and the total of all subcontractor hours within the building was; 1,150-man hours. The total cost of un-assessable trade damage Subcontractor “A” is responsible for is 1.9% or $19 dollars.

r. Crew parking will be responsibility of the Subcontractor. Parking will not be allowed in the dirt areas without prior approval from the GC as well as means for the trade contractor to clean up the track out and repair the grade if disturbed.

s. Subcontractor shall adhere to any CMP and or site logistic plan which has been submitted to the AHJ and subsequently approved for the project. Subcontractor shall not deviate from this plan.

t. Subcontractor is required to provide proper coordination between other associated trades to ensure a complete and compatible installation of all components and materials. Requests for change order(s) related to lack of interdisciplinary trade coordination will not be considered.
u. Subcontractor specifically agrees to perform any premium time or shift work necessary to maintain the construction schedule, including final tie-ins, adjustments, and testing unless the delay is solely caused by others. All premium time must be conducted during the work week or Saturday. Sunday will only be permitted if Subcontractor has worked premium time during immediately previous work week and immediately previous Saturday. Each subcontractor is responsible for providing supervision during premium hours of their sub-tiers. BNBuilders is required to maintain supervision on-site during off hour activities. Supervision shall be billed at $125/hr. for off hours work.

v. Any delay caused directly by Subcontractor or their forces (i.e., equipment, material suppliers, 2nd tier subcontractors, management and office response, supervision or lack thereof, etc.) which results in additional field and/or management costs being incurred by BNBuilders, either internally or by the project Owners, will be passed along to that subcontractor via deductive change order.

w. The standard work hours for this project are tentatively scheduled for 7:00 AM through 3:30 PM Monday to Friday. Any request for work outside these times, or off-hour shifts, shall be made in writing and as part of Subcontractor’s work plan. BNBuilders reserves the right to change the hours for both the standard shift and off-hour shift to best suit the majority of work underway and to minimize impact to the community.

4.2.4 Lean Construction Principles

a. This project will utilize Lean construction principles in planning and implementation of the Work. This will include a milestone schedule, collaboratively created phase schedule, "make-ready" look-ahead plans, weekly work plans, and a method for measuring, recording, and improving planning reliability. It is agreed and understood that all trade packages and their appropriate sub tiers shall participate in Pull Planning sessions with each new phase of work with the purpose of creating a collaborative phase schedule and identifying constraints for each activity of work. Individuals who understand how the work will be performed shall be directly involved in the planning process. The schedule developed in these Pull Planning sessions will be used to create the 6-week look ahead schedule. The look-ahead schedule will track whether any constraints (issues that would prevent the work from being performed as planned) exist. It is every contractor's responsibility to actively identify and resolve constraints prior to the Work. Additionally, every contractor shall report variations from the plan for tracking planning reliability and assessing root cause of variations for purposes of continuously improving planning reliability.

   I. This project will be using the Last Planner System for improving the level of coordination, planning, and controlling of the scheduling of work for this project.

   II. This project will be utilizing the principles of 5S to improve jobsite cleanliness, safety and work efficiency. All tradespersons entering the site will receive training on the principles of 5S and will be expected to keep their workspace orderly.

   III. Due to site constraints BNBuilders will require just-in-time delivery principles for all materials coming to the site as a means to improve the flow of work on site, reduce clutter, reduce the potential of damaging finished materials, and eliminate the waste of moving material multiple times before it is installed in its final condition. These deliveries shall be closely coordinated with the superintendent and onsite staff through weekly planning sessions.

b. This project will implement modularization and prefabrication of building assembly systems in an effort to improve the quality of finished products and the efficiency and safety of onsite work. A fully coordinated building information model will assist in reviewing the shop and fabrication drawings of particular systems to determine opportunities for prefabrication of multi-trade assemblies and modularization of single trade building assemblies.
c. To streamline QA/QC activities and tracking of non-conforming work, Subcontractor shall secure its own license for PlanGrid (www.plangrid.com). BNBuilders will assist with training and implementation needs at the project level.

4.3 Permits, Fee, Notices, and Compliance with Laws
a. The Owner will obtain and pay for the general building permit. Subcontractor shall be responsible for obtaining and paying for all other permits, licenses, and fees necessary to complete its work under this agreement.
b. Trucking delivery times may be restricted by the city, the AHJ, or BNB. Any trucking permits required to make deliveries are the Subcontractor’s responsibility.
c. Subcontractor will comply with all federal, state, and local safety laws, regulations, ordinances, and requirements, including without limitation, OSHA, Cal/OSHA, and the California Penal Code (as applicable).

xvi. Any employees of the Subcontractor who may have regularly scheduled unsupervised access to children shall be subject to a Fingerprint Background Check through the California Department of Justice Live Scan Program and through the Federal Bureau of Investigation before General Contractor permits them to have such access to children. The cost for record checks shall be included as part of this contract.

xvii. Neither Subcontractor nor any of Subcontractor’s subcontractors of any tier shall utilize any employee at the site or permit any contact between children and any employee who has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under California Penal Code section 11165.2, the physical injury or death of a child under California Penal Code section 189 or 240 (except motor vehicle violations under California Vehicle Code Section 2100), sexual exploitation of a child under California Penal Code section 311.3, sexual offenses under California Penal Code sections 261-269b where a minor is a victim, promoting prostitution of a minor under sections 261 and 266h, the sale or purchase of a minor child under California Penal Code section 236, or violation of similar laws of another jurisdiction. Subcontractor and General Contractor shall remove from the work site any employee or individual who has engaged in such actions or who the Owner reasonably considers objectionable.

4.4 Safety Precautions and Procedures
a. Subcontractor agrees to abide, follow, and implement the requirements and guidelines of BNBuilders ‘Freedom from Danger’ Safety Plan as it relates to its work activities.
   i. BNB safety guidelines will be strictly enforced. Any safety violation will result in one written warning. A second infraction will result in permanent removal from the jobsite.

b. Subcontractor shall develop and submit the required project specific safety plan and accident prevention plan ten (10) working days PRIOR to starting work on site.

c. Subcontractor is responsible for providing all safety equipment required to perform their work. Employees without proper safety equipment will not be allowed on the project site.
   ii. If an employee is on-site and does not have the required PPE, BNBuilders may provide that employee with the following at the rate listed: Hardhats - $75/EA, Safety Glasses - $50/EA, Safety Vest - $400/EA, Gloves - $50/EA. All other items will be billed at cost plus 100% mark – up. We will track employees by obtaining their information, sending the info to Subcontractor and passing on these costs as a deductive change order to the overall contract value on a weekly basis.

   d. All Foreman onsite must have a valid OSHA 30 Hour Certification

e. Subcontractor shall enforce strict discipline and good order among the employees and other persons carrying out the work, including observance of any drug testing and all
smoking, tobacco, drug, alcohol, parking, safety, weapons, background checks, sexual harassment and other rules governing the conduct of personnel at the project site.

f. All Subcontractor’s on-site personnel are required to participate in the mandatory daily stretch and extend meetings on site. All persons are to be in full PPE at start of stretch. Failure to regularly attend these meetings will result in the GC imposing a $100 daily fine. This will be where all required safety announcements and meetings will be held. The lead from each crew will be asked to give a very brief description of that crew’s tasks for the day and the main hazards that others need to be aware of.

g. All subcontractors are required to participate in BNBuilders first day orientation. Orientation shall be scheduled at the discretion of the superintendent. It will be in the morning at 7:15 AM. BNBuilders requires 48-hour notice prior to needing an orientation. This orientation will include a safety orientation video (45 minutes long) and review of the site-specific safety concerns. Employees will be required to sign the safety sheets at the conclusion of the orientation. Follow up orientation may be required depending on Subcontractor’s safety performance during the course of the work.

h. Subcontractor shall provide at least one site safety inspection of the site per week while Subcontractor’s activities are occurring on-site.

i. Subcontractor is to provide Job Hazard Analysis (JHA) for each activity of work. JHA’s are to be reviewed by the Subcontractor’s employee’s and are required to be signed by each employee prior to starting the work activities. Once the JHA is complete it is to be turned in and reviewed by Site Superintendent

j. Safety systems installed by others shall not be altered without prior written authorization from BNBuilders. By receiving consent from BNBuilders, Subcontractor agrees to alter and replace safety systems to its original condition at no additional costs to BNB or Owner.

k. Subcontractor is responsible to provide adequate barricading, caution taping, and signage to protect others from injury or interfering with the Subcontractor’s activities. Subcontractor is required to review the area to be protected and the level of protection with BNBuilders during pre-construction meeting and in the weekly coordination meetings. Subcontractor is required to maintain the system during its use, relocation as work progresses, and removal at the end of the activity.

l. Subcontractor is responsible for utility shut-down procedures. These procedures shall be applied to both existing and new utilities as required by this project.
   i. All required shut downs of operating utilities must be scheduled with the Contractor, at least two weeks for minor, and four weeks for major shutdowns, prior to requested shut down date. All overtime required by the Utility shutdown shall be the responsibility of the subcontractor requiring such shutdown.
   ii. Subcontractor shall be responsible for repair or replacement of utilities indicated on the documents and or located prior to Subcontractor’s work, which are damaged by the subcontractor.
   iii. Subcontractor shall take all actions necessary to minimize the impact of damage to unknown and unidentified utilities and shall call for any and all necessary locates prior to beginning work. Subcontractor shall not be held responsible for damage to unknown utilities.

m. Subcontractor is responsible for providing proper ventilation where they are generating noxious fumes or harmful dust.

n. Fall protection measure shall be implemented as designated in the BNBuilders Freedom from Danger Safety Plan. Monitor system is not acceptable.

4.5 Cleaning up
a. Cleanup shall be performed on a daily basis. Subcontractor is responsible for providing and emptying their own waste cans, tipplers, etc. and haul-off large bulky debris (boxes, crates, etc.) created by work performed under this scope. Failure to maintain a clean work area will result in BNB cleaning up for you and back charging the cost of expended labor accordingly. The level of acceptance shall be as follows, no loose material on the ground, no piles of debris or dirt on concrete floors or finished surfaces, all garbage removed from the building / site as it accumulates, at a minimum it must all be removed at end of shift. All work benches, cutting stations, tool boxes must be neat and organized and have a garbage bin adjacent to them always. Cut offs must be swept consistently throughout the day. Nothing shall track out of the individual work areas at any time. All tools and equipment shall be neatly organized and maintained always. All material shall be stored on pallets, carts, racks or other methods to allow for easy maneuvering by pushing, pulling, forklift or pallet jack. Each trade contractor will be graded daily on cleanliness and organization. Failure to consistently meet the above standards will result in $500 a day fine until the situation is corrected to acceptable standard.

b. All cords and hoses shall be hung off the ground and neatly organized always. All cords shall be labeled with the responsible company’s name at each connection point. All cords shall have all required markings indicating compliance with all inspection requirements. All unused cords shall be rolled up and stored neatly away from access egress and main pathways. It is never acceptable to run over cords and houses with equipment without proper protection, subcontractor shall provide all necessary protection to ensure they are protected from equipment.

c. Subcontractor shall be responsible for clearing of debris and residue deposited on public, existing site roads, and this project’s site roads as result of executing this scope of work.

d. Subcontractor shall provide at least one laborer dedicated full time to cleanup for the duration of the subcontractor’s activities under this agreement if the Subcontractor has more than 5 persons (direct and tiered) on-site (averaged over the Subcontractor’s time on-site).

e. Failure to perform cleanup (after 24-hour notification) will result in the Contractor performing those duties on the Subcontractor’s behalf and processing a deductive change for the costs associated. Rate for cleanup activities shall be performed at $105 per man hour plus materials and equipment.

f. Tools, equipment, cords etc. shall be organized and stored properly at the end of each shift.

4.11 Contract Closeout

a. A pre-punch list will be required to be generated by the Subcontractor for its own work and its associated sub-tiers. This shall be provided to BNBuilders no later than ten (10) days before architects and engineers punch list. This list shall be provided in an organized format which shall be; by room, location within room, and then by assembly/system. This list shall be updated no later than every three (3) days or as deemed necessary by the project team until its completion. If the Subcontractor fails to provide this list within the noted time and or fails to accurate update their pre-punch items, then BNBuilders shall have the right to perform this work and update the list as required. Each punch walk, and subsequent update of the list shall be back-charged at an amount of $1,000 per occurrence.

b. Testing and training schedules shall be submitted by system and or component no later than four (4) weeks prior to substantial completion.

c. Turn-over packages;
i. A draft turn-over package shall be submitted eight (8) weeks prior to projects substantial completion or three (3) weeks prior to completion of Subcontractor’s work, whichever is earliest.

ii. Documents shall be submitted in a format and organized as requested by BNBUILDERS. Subcontractor shall confirm submission requirements prior to submitting documents.

iii. All final closeout documentation shall be submitted at least four (4) weeks prior to substantial completion.

iv. Closeout documentation must contain at a minimum; all warranty, operational and maintenance data, as-built, and any other information required by the contract documents. Number of copies, format, and media, shall be confirmed with BNBUILDERS prior to submission.

ARTICLE 5 – CHANGES IN THE WORK

5.4 Subcontractor specifically agrees to notify BNBUILDERS in writing to situations or circumstances that could delay work or give cause for claims for time extensions and/or additional cost prior to their occurrence and no later than as detailed in the Contract Documents. Documentation of delay and/or claim via daily report is not acceptable and Subcontractor specifically acknowledges this.

5.5 Additional pricing for any items requested by the Owner or BNBUILDERS shall be prepared in a manner which allows for a detailed and thorough understanding of the cost associated with the work. This shall require Subcontractor to provide quantity take-off information, productivity rates, sub tier quotes, material quotes, equipment rates, and labor rates. Subcontractor shall not apply any additional mark-ups to changes which are not identified in the overhead and mark-up sections below.

5.6 All requests for charge order pricing shall be submitted directly to BNBUILDERS for review and evaluation, no later than ten (10) days from the request for pricing unless otherwise indicated. Failure to meet this timeline shall prohibit Subcontractor from recovering any additional costs for this work.

5.7 Extra work authorizations and / or additional pricing request:

   a. Any work undertaken via an “extra work ticket” or “extra work authorization” (EWA) shall only be valid if it’s acknowledged by a project manager (PM) from the Contractor in writing. Superintendents, foreman, or field craft personnel are not authorized to acknowledge any extra time and or material tickets submitted by Subcontractor. BNBUILDERS may assign another individual other than the PM to acknowledge EWA’s but will only do so via a no cost change order to this contract. This person will not be changed via verbal communication.

   b. All EWA’s which are acknowledged by the Contractor must be followed up with all associated pricing no later than ten (10) days from the date of the Contractor’s acknowledgement; otherwise the extra work ticket is void.

   c. EWA’s shall not combine unrelated work activities nor shall they combine multiple days of work for the same activity without prior written consent by the Contractor.

   d. EWA pricing shall clearly describe the additional work being performed, which shall include at a minimum: the area the work was performed, the date and time the work occurred, a detailed listing of all materials and equipment utilized to execute the work, named person who performed the work, and itemized markups as allowed in the sections below. The EWA must also describe what the work is in reference to such as; RFI, ASI, CCD, or another responsible party who caused the work to occur. Without adequate information provided on the EWA, the Contractor has no means to assign proper
responsibility for the associated costs and therefore shall have no responsibility to reimburse the Subcontractor for any associated costs.

e. All extra work needs to be submitted with the BNBuilders Cost Issue number on the EWA proposal. This number will be given by the project manager upon request. All requests without an associated Cost Issue number will not be valid.

ARTICLE 6 – CLAIMS AND DISPUTES
6.1 Refer to Owner Agreement for Owner Claims and Disputes.

ARTICLE 7 – TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT
7.1 Refer to Owner Agreement for Termination, Suspension or Assignment of the Subcontract by the Owner.

ARTICLE 8 – THE WORK OF THIS SUBCONTRACT
8.1 Refer to “Specific Clarification of Scope” section of this document for requirements of this subcontract agreement.

ARTICLE 9 – DATE OF COMMENCEMENTS AND SUBSTANTIAL COMPLETION
9.1 Refer to other portions of the Contract Documents.

ARTICLE 10 – SUBCONTRACT SUM
10.2.2 Refer to “Alternates, Unit Prices and Allowances” section of this document for requirements of this subcontract agreement.

10.2.3 All rates shall include, but are not limited to, the following; all wages, OSHA/CalOSHA/DOSH/ADA, fees, job supervision costs, administration costs, profit, overhead, taxes, burdens, fringes, insurance, dues, safety, consumables, training, truck charges, etc.

10.2.4 Subcontractor fee is the allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (including project manager, project engineer, other engineers, project foreman, estimator, superintendent and their vehicles and clerical assistants), taxes (except for sales tax), employee per diem, subsistence and travel costs, warranty, safety costs, printing and copying, layout and control, quality control / assurance, purchasing, attorney fees, financing costs, small or hand tool (a tool that costs $500 or less and is normally provided by the performing contractor) or expendable charges, preparation of as-built drawings, impact on unchanged work, claim and change preparation, and delay and impact costs of any kind (cumulative, ripple, or otherwise), added to the total cost to the Owner of any kind on this project. No Fee shall be due, however, for direct settlements of Subcontractor claims by the Owner after substantial completion.

a. Unless specified within the Owner Contract Documents, the fee shall be limited in all cases to the following:

i. Subcontractor shall receive 10% of the costs of any materials supplied or work properly performed by Subcontractor’s own forces.

ii. Subcontractor shall receive 5% of the amount owed (less fee) directly to a lower-tier subcontractor or supplier for materials supplied or work properly performed by that subcontractor or supplier.

iii. Each lower-tier subcontractor of any tier shall receive 10% of the costs of any materials properly supplied or work performed by its own forces.

iv. Each lower tier subcontractor of any tier shall receive 5% of the amount it properly incurs for materials supplied or work properly performed by its suppliers or subcontractors of any lower tier.

v. None of the fee or mark-up percentages in this section shall be compounded.
vi. Small tools (above $500 but less than $1,000) and general safety shall not exceed 1.5% of labor costs.

vii. Tool or equipment rented via a third party shall be paid at actual invoiced amount. Equipment owned and then rented to the project via the subcontractor shall not exceed 75% of the fair market purchase value as established by The Rental Rate Blue Book by Data Quest as modified by the Caltrans Labor Surcharge & Equipment Rental Rate Book (if applicable). Mobilization and standby costs shall not be charged for equipment already onsite.

b. Cost of change in insurance or bond premium:
   i. Subcontractor’s liability insurance: the actual cost (expressed as a percentage submitted with the certificate of insurance and subject to an audit) of any changes in the Subcontractor’s liability insurance arising directly from the change work; and
   
   ii. Public works bond: The actual cost (expressed as a percentage submitted with evidence of bond ability and subject to audit) of the change in the Subcontractor’s premium for the statutorily or contractually required performance and payment bond arising directly from the changed work.

   iii. Upon request the Subcontractor shall provide the Owner with supporting documentation from its insurer or surety of any claimed cost.

c. Miscellaneous mark-up and percentages

ARTICLE 11 – PAYMENTS

11.1.11 This project ☒ IS ☐ IS NOT subject to the provisions of the California Prevailing Wage Law (Labor Code Section 1720, et seq.).

a. If applicable, Subcontractor agrees to fully comply with the Prevailing Wage Law, and any applicable rules or regulations, and any amendments to those statutes, rules, and regulations. Subcontractor understands and agrees to pay its employees the applicable prevailing wages as required by the Prevailing Wage Law. Subcontractor also agrees to comply with California Labor Code sections 1775(b)(2), (3), and (4), and 1777.7(e), with respect to each lower-tier subcontractor, including, but not limited to: monitoring each lower-tiered subcontractor’s compliance with the Prevailing Wage Law and use of apprentices, taking necessary corrective action to halt or rectify any failure by a lower-tier subcontractor to pay the specified prevailing rate of wages or to employ the required number of apprentices, and obtaining the affidavit required by Labor Code sections 1775 and 1777.7 before making final payment to the lower-tier subcontractor.

b. If required, a list of the prevailing wage rates as required per California Labor Code section 1720 et seq., and as furnished by the State of California Department of Industrial Relations, can be obtained at the following web site: https://www.dir.ca.gov/oprl/2019-1/PWD/index.htm or the Office of the Director - Research Unit, P.O. Box 420603, San Francisco, CA 94142, (415) 703-4774.
   
   i. Certified payroll shall be provided for all non-supervisory trade personnel performing work on-site. Electronic copies of this information shall be provided via e-mail to BNBuilders.

c. As required by California Labor Code section 1726, Subcontractor shall report any suspected violations of the Prevailing Wage Law to the California Labor Commissioner.

11.1.11.1 Within two weeks of subcontract award, Subcontractor shall prepare and submit a detailed Schedule of Values for approval via GCPay (www.gcpay.com). Once approved you will submit all Applications for Payment via GCPay.com. Each application for payment is due via GCPay by the 20th of each month. Subcontractors will receive all
notifications via email from GCPay.com for any billing activities. Subcontractor billing paperwork is provided online at GCpay.com and included in your Attachment B. Please see Attachment B for instructions for on GCPay.

11.1.11.2 All subcontractors will maintain as-built drawings onsite. BNBuilders will inspect these drawings in conjunction with the pay application process. Failure to keep as-built drawings up to date will result in withholding of payment by BNBuilders.

11.1.11.3 Progress payments for materials stored off-site will be made per conditions of the prime contract, and as approved by the Owner, and by protecting the Owners interests by segregating – labeling, and by transferring title to the materials and or equipment billed for. In no event, will the incremental billings be approved for the total value of the supply portion of the contract prior to materials / equipment being delivered to the project site.

ARTICLE 11.3 – FINAL PAYMENT
11.3.1 Refer to the Owner Agreement for Final Payment requirements of the Owner.

ARTICLE 12 – INSURANCE AND BONDS
12.1.1.1 Subcontractor shall provide an insurance certificate with required named additional insureds, insurance limits, and endorsements forms per the requirements in the Attachment A PRIOR to starting work on site. Certificates of Insurance are uploaded to MyCOI.com for review and approval. Instructions for MyCOI are included with your Attachment A.

12.2.1.1 Performance and Payment Bonds, naming BNBuilders as Obligee, in the amount of 100% of the Bid Package contract value including change orders ☑ IS ☐ IS NOT required to be provided by Subcontractor. Bonds must be rated A- or better by an AM Best Surety Company. Bond forms shall only be per Attachment H, AIA Document A312. If required, Bonds and Insurance Certificates are required to be submitted to the GC within 10 days of contract award and prior to any work being performed on site.

ARTICLE 13 – TEMPORARY FACILITIES, SERVICES, EQUIPMENT AND WORKING CONDITIONS
13.2 Subcontractor will be responsible for any cranes, non-standard forklifts or dedicated forklifts, elevated work platforms, scaffolding, lifts, swing stages, etc. required for the installation of their work. It is the Subcontractor’s responsibility to protect all surfaces from the use of their equipment and to perform any required repairs and or cleaning of other installations resulting from use of their equipment. If the BNBuilders forklift is required outside of the normal site hours, it shall be billed at $350/hr. (including operator) for unloading and moving subcontractor’s material.

13.3 Temp toilets will be provided by the Contractor.

13.4 Temp construction water source will be provided by the Contractor. Subcontractor shall be responsible for hoses (as needed) and for shutting off hose bibs so that no pressurized hose will be unattended during non-working hours. Subcontractor is responsible for distribution of drinking water to their own forces.

13.5 Electrical subcontractor shall provide temporary lighting per OSHA standards along with temp power distribution to points (including spider boxes) as directed by BNBuilders. All task lighting is the responsibility of the Subcontractor.

13.6 Temp power for small tools will be provided to areas of the project. Cords and distribution for individual task work items is the responsibility of Subcontractor. Extraordinary power requirements shall be the responsibility of the Subcontractor.

13.7 BNBuilders will provide recycling bins and dumpsters, which Subcontractor may utilize for debris that is non-hazardous; ‘use’ will be at the Project Superintendent’s discretion.
13.8 Subcontractor is responsible for any temporary on-site infrastructure needs required to support its work. This could include trailers, phones, office supplies, radios, etc.

13.9 Subcontractor shall provide temp heating, as deemed necessary for its work.

13.10 Subcontractor agrees that Contractor’s equipment will be available to the Subcontractor only at the Contractor’s discretion. Should Contractor allow use of its equipment and or its operator by Subcontractor, Subcontractor agrees that such operator shall be considered as the agent or servant of the Subcontractor and the Subcontractor shall be solely responsible for the acts of such operator during the time of the equipment use, and this shall also include returning equipment to storage yard or parking of said equipment at completion of activity. Subcontractor shall make a thorough inspection in writing to the Subcontractor’s satisfaction as the physical condition and capacity of equipment as well as the competency of the operator, there being no representations or warranties by the Contractor with reference to such matters. Subcontractor waives any and all claims against Contractor relating to the use by the Subcontractor of Contractor’s equipment or operators.

ARTICLE 14 – MISCELLANEOUS PROVISIONS

14.1 Refer to other portions of the Contract Documents.

ARTICLE 15 – ENUMERATION OF SUBCONTRACT DOCUMENTS

15.1 Refer to other portions of the Contract Documents.

END OF DOCUMENT
ATTACHMENT F
CALIFORNIA RIDER TO BNBUILDERS AIA A401 – 2017
MASTER FORM OF AGREEMENT BETWEEN
CONTRACTOR AND SUBCONTRACTOR

This California Rider (“Rider”) is attached to and made part of the Standard Form of Agreement Between Contractor and Subcontractor by and between BNBuilders, Inc. (“Contractor”), and _________ (“Subcontractor”) dated __________ (“Effective Date”) for the __________ Project (herein after the “Agreement”). In the event of any conflict between the provisions of this Rider and the provisions of the Agreement, including all Contract Documents thereto, the provisions of this Rider shall control. Unless otherwise specified, all capitalized terms herein shall have the meaning set forth in the Agreement.

1. Section 4.7 is hereby deleted and replaced in its entirety with the following:

§ 4.7 Indemnification
§ 4.7.1 To the fullest extent permitted by law and in accordance with Section 2782.05 of the California Civil Code (the “Civil Code”), the Subcontractor agrees to be responsible for and shall release, defend, indemnify, and hold harmless the Contractor, the Project Owner, any entities Contractor is required to indemnify in the Prime Contract, and agents, representatives, employees, volunteers, officers, managers, affiliates, parent companies, principals, board members, and directors of any of them (collectively, “Indemnified Parties”) for, from, and against costs, claims, actions, causes of action, damages, liabilities, losses, liquidated damages, fines, penalties, and expenses, including but not limited to attorneys’ and expert fees in the defense of such claims or in the enforcement of Subcontractor’s indemnity obligations hereunder (collectively, “Loss”) arising out of, related to, or resulting from, or allegedly related to or arising from:

(i) any negligent act or omission (whether passive or active), or any intentional act or omission in the performance of the Work, or any breach of any provisions of the Subcontract Documents, by the Subcontractor, a Sub-subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by an Indemnified Party indemnified hereunder;
(ii) any determination by a court or agency that Subcontractor is not an independent contractor or that Owner or Contractor is the employer or a joint employer of any of Subcontractor’s or any Sub-subcontractor’s employees or personnel;
(iii) any matters for which Subcontractor provides indemnification under the terms of the Subcontract Documents;
(iv) any claim, action, suit or proceeding by Subcontractor’s or Sub-subcontractors employees, including but not limited to workers’ compensation, unemployment and wage-and-hour claims;
(v) Infringement of any patent rights, which may be brought against the Contractor or Owner arising out of Subcontractor’s Work; and
(vi) Any violation or infraction by Subcontractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of Contractor’s or others’ equipment, hoists, elevators, or scaffolds.
Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to an Indemnified Party described in this Section 4.7.

§ 4.7.2 With regard to the indemnity and defense obligations arising under Section 4.7, such obligations shall arise regardless of whether such claim, damage, loss, or expense is caused in part by the concurrent or partial negligence of an Indemnified Party; however, Subcontractor’s obligations hereunder shall not apply to the extent (i) the Loss arises out of, pertains to, or relates to active or sole negligence or willful misconduct of an Indemnified Parity or defects in design furnished by any Indemnified Party, or (ii) the Loss does not arise out of, relate to, or is not connected with the scope of the Subcontractor’s Work under the Subcontract Documents. Any indemnity shall not extend to design errors or omissions of Architect or other design professionals, unless such design services are performed by or for Subcontractor under design-build criteria or performance specifications.

§ 4.7.3 In claims against any person or entity indemnified under this Section 4.7 by an employee of the Subcontractor, a Sub-subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 4.7.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Subcontractor or Sub-subcontractor under workers’ compensation acts, disability benefit acts or other employee benefit acts. For the purposes of the foregoing indemnification provision only and to the fullest extent allowed by applicable law, Subcontractor specifically waives immunity it may be granted under any such worker’s compensation, disability benefit acts or other employee benefit acts.

§ 4.7.4 Upon Subcontractor’s receipt of written tender of the claim consistent with Civil Code Section 2782.05(e) (the “Defense Notice”), Subcontractor shall timely provide written notice to the requesting Indemnified Party and to Contractor of its election as to the method by which it will satisfy its defense obligations. If Subcontractor elects to defend the claim with counsel of its choice pursuant to Civil Code Section 2782.05(e)(1), Subcontractor shall provide written notice of its election to the Indemnified Party and Contractor within thirty (30) days following its receipt of the Defense Notice. If Subcontractor elects to pay pursuant to Civil Code Section 2882.05(e)(2), no more than a reasonable allocated share of the Contractor’s or Indemnified Parties’ defense fees and costs, on an ongoing basis during the pendency of the claim, suit, or action, either by settlement or judgement. Subcontractor shall do so within thirty (30) days of receipt of an invoice from Contractor or the Indemnified Party. Subcontractor’s election and defense obligations hereunder shall not limit the defense, indemnity, and/or additional insured obligations of the Subcontractor’s insurance carriers to Contractor, Owner, or anyone who is to be named as an additional insured under the terms of the Subcontract Documents.

§ 4.7.5 If Contractor’s indemnity and/or defense obligation to Owner is broader in any respect than the provisions of this Section 4.7, the Subcontractor agrees to afford Owner and Contractor any such broader relief in addition to the relief afforded in this Section 4.7.
§ 4.7.6 The defense and indemnification obligations in this Section 4.7 shall survive the expiration or earlier termination of the Contract.

2. The following section is hereby added to the Master Subcontract Agreement

§ 6.1.6 To the greatest extent permitted by law, Subcontractor's sole remedy for delay, disruption or suspension of the Work, including without limitation any delay, disruption or suspension caused by the fault or negligence of Owner, Contractor (or any agent or representative thereof), or from any other cause whatsoever, shall be an extension of the time for performance.

3. Section 6.5 is hereby deleted and replaced in its entirety with the following:

§ 6.5 This Master Agreement and any Specific Project Agreement shall be governed by the laws of the State of California, without reference to its laws regarding choice of law. To the greatest extent permitted by law, Subcontractor's sole remedy for delay, disruption or suspension of the Work, including without limitation any delay, disruption or suspension caused by the fault or negligence of Owner, Contractor (or any agent or representative thereof), or from any other cause whatsoever, shall be an extension of the time for performance.

4. The following sections are added to the Master Subcontract Agreement:

§ 11.1.1 If Owner or another responsible party delays in making any payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. “Reasonable time” shall be determined according to relevant circumstances, but in no event shall be less than the time Contractor, Contractor’s sureties, and Subcontractor require to pursue to conclusion their legal remedies against Owner or other responsible party to obtain payment, including (but not limited to) mechanics’ lien remedies.

5. The following sections are added to the Master Subcontract Agreement:

§ 11.1.11 Wages, Fringe Benefits, Contributions and Payroll Reporting Requirements. California Labor Code Section 218.7 affects contracts entered into after January 1, 2018 and may be applicable to a Project. To the extent such code is applicable to a specific Project, this statute requires that a direct contractor shall assume and become liable for any debt owed to a wage claimant or third party on the wage claimant’s behalf, incurred by a subcontractor at any tier acting under, by, or for Contractor for the wage claimant’s performance of labor on the project. The liability under this law extends to any unpaid wage, fringe or other benefit payment or contribution including interest owed. Subcontractor (as used in this Section 11.1.11 shall include any lower tier subcontractor and any other entity or person contracted to provide services for the benefit of Subcontractor in performing this Master Subcontract Agreement or any Project Agreement, including but not limited to any parties contracting with Subcontractor’s lower tier subcontractors) shall pay not less than the minimum wage and premium when applicable pursuant
to Industrial Welfare Commission Wage Order No. 1—2001 and Labor Code Sections 510, 511, 514, and 1197. Subcontractor and any lower tiered subcontractors may also be obligated to pay a higher wage and/or fringe or other benefit payments or contributions pursuant to a contractual agreement between an employee and the subcontractor, or pursuant to a collective bargaining agreement. In addition, Subcontractor keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked for each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Subcontractor.

§ 11.1.11.1 Withholding. In addition to Contractor’s ability to withhold payment under the Subcontract Documents, Contractor may also withhold as “disputed” all sums owed if Subcontractor or a sub-tier subcontractor does not timely provide, after written request by Contractor, payroll information and documentation set forth in Sections 11.1.11, 11.1.11.2, 11.1.11.5, and/or 11.1.11.6 below.

§ 11.1.11.2 Certifications.

.1 As required by the Subcontract Documents and the California Labor Code, Subcontractor and Subcontractor’s sub-tier subcontractors are responsible for maintaining and providing upon request from the Contractor, any documentation regarding Award Information. “Award Information” includes, but is not limited to, documentation relating to the following for Subcontractor and each of Subcontractor’s sub-tier subcontractors: (1) the project name; (2) name and address of the Subcontractor; (3) contractor with whom the Subcontractor is under contract; (4) anticipated start date; (5) project duration; (6) estimated journeymen and apprentice hours; (7) contact information for its sub-tier subcontractors on the project; and (8) number of employees performing on the awarded project. Subcontractor shall provide Award Information for Subcontractor or any of Subcontractor’s sub-tier subcontractors to Contractor within the time requested by Contractor. For the purposes of this Section, “relating to” means documents that constitute, evidence, record, reflect, analyze, summarize, support, refute, or comment upon Award Information. Subcontractor shall maintain, and shall require Subcontractor’s sub-tier subcontractors to maintain, Award Information relating to this Master Subcontract Agreement or any Project Agreement for a minimum of four years after completion of the work that is required by the agreement.

.2 Contractor may withhold payment from Subcontractor if: (1) Award Information from Subcontractor or from Subcontractor’s sub-tier subcontractors is not provided within the time requested by Contractor; or (2) Award Information provided is insufficient to determine if Subcontractor or Subcontractor’s sub-tier subcontractors properly and fully disclosed all estimated labor force employees and corresponding workhours, including but not limited to journeymen and apprentices.

.3 In addition, before starting work on a Project under any Project Agreement, Subcontractor must (a) notify Contractor in writing whether it is a signatory to any union or labor agreement and/or has fringe or other benefit or payment contribution obligations, and (b) provide written confirmation that Subcontractor has neither failed to pay wages to any employee nor failed to make any fringe or other benefit payments or contributions on any Project in the last three years (with written verification by any union to which Subcontractor is signatory), otherwise Subcontractor must satisfactorily explain in writing the reason(s) for its failure to
pay wages or make fringe or other benefit payments or contributions. At any time during the course of this Master Subcontract Agreement or any Project Agreement, Subcontractor shall provide Contractor with written notice of any claim made against it for failing to pay wages or make fringe or other benefit payments or contributions. The information required to be provided by this paragraph must be certified under penalty of perjury by either the owner or an officer or director of the Subcontractor.

.4 At Subcontractor’s option, it can instead provide a payment and performance bond for a Project in place of providing the certified documentation required under this Paragraph subject to the requirements of such bonds under Section 11.1.11.3 below. Subcontractor's inability to cure its failure to satisfy these certification requirements or failure to provide a payment and performance bond upon 48 hours’ notice shall constitute sufficient grounds for termination of this Subcontract.

§ 11.1.11.3 Payment and Performance Bonds. Contractor shall have the right, prior to the execution of a Project Agreement or at any time during the course of a specific Project, to require the Subcontractor to furnish bonds executed by one or more financially responsible sureties, and in such form as the Contractor may reasonably prescribe, covering the faithful performance of the work set forth in the Project Agreement and payment of all obligations thereunder. At Contractor's sole discretion, the amount of the performance and payment bonds may be modified to an amount equal to at least 125 percent of the estimated amount of wage, fringe or other benefit payments or contributions for performance of labor on the Project.

§ 11.1.11.4 1-800 No. Telephone Hotline and Sign-In Sheet. Contractor shall have the right to establish and publish for any particular Project a 1-800 number for the purpose of Subcontractor's employees or third party owed fringe or other benefit payment or contribution claimants to report any failure on Subcontractor's part to pay wage, fringe or other benefit payments or contributions. Subcontractor is obligated to publish the 1-800 number to its employees and to any union to which Subcontractor is signatory and to advertise its purpose as a reporting function for Subcontractor's failure to pay wage, fringe or other benefit payments or contributions. Contractor shall also have the right to establish and provide a sign-in sheet at the jobsite. In the event Contractor elects to use a sign-in sheet, Subcontractor must require its employees who perform work on the Project to sign in and to provide the information requested on the sign-in sheet each day the respective employee performs labor on the Project.

§ 11.1.11.5 Payroll Records. In order to protect Contractor from the liability established by Labor Code Section 218.7 for the performance of labor on the Project, the following measures have been established and are required of Subcontractor to verify that each worker on the Project has been properly paid:

.1 Subcontractor shall submit to Contractor on a monthly basis complete and accurate certified payroll records in a form acceptable to Contractor for each week when labor is performed on the Project. Upon written request of Contractor, the payroll records must be certified under penalty of perjury by an owner, officer or director approved by the Contractor. A "Statement of Non-Performance" shall be submitted to Contractor for any work week when labor is not performed. Within five (5) business days of Contractor’s written request, Subcontractor shall submit all payroll records from the start of Subcontractor's work on the Project through the
final calendar month when Subcontractor's work is 100% complete, whether or not Subcontractor works in a specific month.

.2 In addition and within five (5) business days of Contractor’s written request, daily reports that include the identity of each sub-tier subcontractor, the project name, date, name of worker(s), beginning and ending time for each work period, and total hours worked by each employee shall be provided to the appropriate project representative of the Contractor. Subcontractor shall submit to Contractor a "Statement of Employer Payment" with the first submittal of certified payroll records. Thereafter, an amended copy of this statement shall be submitted for any work period when wages, fringe benefits and/or payments have been changed or modified.

.3 Subcontractor shall submit to Contractor, upon written request, a copy of a project-specific report of contributions paid to any applicable third party trust fund, plan or program on the employee's behalf. The report shall include the identity of each employee, the last four digits of the employee's Social Security Number, hours worked, applicable total fringe benefit contribution rates per hour, total contributions owed per employee, and the total amount of fringe benefits or contributions paid during the specified work period for all employees. A copy of the check paid to the applicable third party trust fund plan or program in the amount of total contributions that are due and owing or other satisfactory proof of payment shall be included with the report. Contractor reserves the right to demand releases from Subcontractor and the employees who performed work covered by the payment application.

.4 Contractor may coordinate with Subcontractor and/or any lower tiered subcontractor and the applicable trust fund(s) or third parties pursuant to a fund, plan or program which may include the verification of amounts due and the issuance of a joint check that will satisfy the Subcontractor's or lower tiered subcontractor's fringe benefits payment obligation.

.5 Should Contractor receive notice from the Division of Labor Standards Enforcement, a trust fund, joint labor management cooperation committee established pursuant to the federal Labor Management Cooperation Act of 1978, or other interested party about Subcontractor's failure to pay wages and/or fringe benefits in accordance with the above referenced statutes, Wage Order 16-2001, an employment contract or agreement, or a collective bargaining agreement, Contractor may retain sufficient sums from progress payments or retention to cover the alleged liability. Amounts retained may be held pending a final order, judgment, court order or dismissal of the case.

.6 Failure of Subcontractor to comply with the aforementioned requirements shall result in the withholding of Subcontractor's progress payment(s) and may be deemed a material breach of the Agreement. Failure of Subcontractor, to pay a wage claimant or a third party on a wage claimant's behalf in accordance with their agreement, shall result in the withholding of Subcontractor's progress payment(s) and/or retention and may be deemed a material breach of the Agreement.

§ 11.11.6 Right to Audit.
.1 Subcontractor acknowledges Contractor’s right to audit all records related to the work under this Master Subcontract Agreement or any Project Agreement. Subcontractor expressly agrees as part of its audit obligation to maintain, and require all of Subcontractor’s sub-tier subcontractors to maintain, records about the number of hours worked, salaries and wages, bonuses, commissions, health and pension plans, sick pay, pension pay, and deductions for payroll for all employees, including, but not limited to, time cards, cancelled checks, cash receipts, pay stubs, wage statements, trust fund forms, books, documents, schedules, forms, reports, daily reports, receipts, or other evidences that reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill, and any completed state and federal payroll forms, and any other specified records or documents referenced in Labor Code Sections 226 (a), 1174 (b), (c) and (d), and/or California Code or Regulations Section 16000, (“Payroll Records”) (collectively, “Payroll Records”). Subcontractor shall provide Payroll Records from Subcontractor or any of Subcontractor’s subcontractors to Contractor within the time requested by the Contractor. Subcontractor shall maintain, and shall require Subcontractor’s subcontractors to maintain, Payroll Records relating to this Subcontract for a minimum of four years after completion of the work that is required by this Master Subcontract Agreement or any Project Agreement.

.2 Contractor may withhold payment from Subcontractor if: (1) Payroll Records from Subcontractor or from Subcontractor’s sub-tier subcontractors are not provided within the time requested by Contractor; (2) Payroll Records provided are insufficient to determine if Subcontractor or Subcontractor’s subcontractors properly and fully paid any person(s); or (3) Payroll Records provided show the potential or possibility that any person(s) employed by Subcontractor or Subcontractor’s subcontractors have not been properly paid in accordance with the California Labor Code or the requirements of the Subcontract Documents.

§ 11.1.11.7 Final Payment and Final Certification. As a condition precedent to final payment, upon completion of its scope of work, Subcontractor shall furnish to Contractor job site payroll records/reports to the extent not already provided with each payment application as described above, and permit Contractor or its representative to audit Subcontractor's books and records and provide documentation as may be required to assure accuracy of those payroll reports/ records. The purpose of the final audit, among other things, is to verify Subcontractor fulfilled its obligations to pay wage, fringe or other benefit payments or contributions. Subcontractor shall also provide final written confirmation from contract trust funds or a third party owed fringe or other benefit payment or contribution on a wage claimant's behalf that Subcontractor made timely and correct contributions and payments. In addition, an owner, officer or director of Subcontractor must certify under penalty of perjury that Subcontractor has paid all wages on the Project. Subcontractor agrees that its failure to submit the documents required by this section or permit an audit of its payroll records will constitute grounds for withholding retention and any remaining contract balance and will qualify as a dispute under Sections 8800 and 8818 of the Civil Code and Section 7108.5 of the Business and Professions Code.

§ 11.1.11.8 Indemnity. Subcontractor agrees to indemnify, hold harmless and defend Contractor from any claims, complaints, withholdings, or any other legal matters related to any debt owed to a wage claimant employed by Subcontractor or any lower tiered subcontractor operating under its direction or any debt owed to a third party on a wage claimant's behalf and for any violation of
Industrial Welfare Commission Wage Order No. 16-2001 and/or any provision of the California Labor Code by Subcontractor or any lower tiered subcontractor operating under its direction. Subcontractor agrees to include similar defense and indemnification clauses in its contracts with lower tier subcontractors that specifically require lower tier subcontractors to defend and indemnify the Contractor.

6. The following sections are added to the Master Subcontract Agreement:

§ 14.11 Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans with Disabilities Act, the federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, and the California Family Rights Act. Upon request, Subcontractor shall submit certified payroll records to contractor no later than three (3) working days after labor has been paid. Subcontractor acknowledges that it has conducted its own independent investigation of the wage rates to be paid and whether its Work will be subject to prevailing wage requirements or the requirements of the Davis-Bacon Act and that it has not relied upon any statements or representations by Contractor with respect to such matters. On all projects subject to state or local prevailing wage requirements, Subcontractor shall comply with any applicable California prevailing wage laws. With respect to such projects, the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are attached hereto and incorporated herein by this reference. On all such projects, as a condition precedent to final payment, Subcontractor agrees to provide an affidavit that complies with the terms of Labor Code Section 1775(b)(4). Subcontractor acknowledges and agrees that it has performed its own investigation as to the applicability of California prevailing wage laws, the federal Davis-Bacon Act, or any similar laws, regulations, or contract requirements; Subcontractor shall comply with all applicable laws, regulations, or other requirements concerning payment of wages and conditions of employment, and record keeping in accordance therewith. Subcontractor agrees to furnish certified payrolls promptly upon demand and further agrees to cooperate fully in any effort by Contractor to verify compliance with labor laws and regulations, including requirements under the Davis-Bacon Act or the California Labor Code. Such cooperation shall include, without limitation, furnishing copies and originals of records and providing access to employees or witnesses for interviews and statements. In addition to and without derogation to any other rights that Contractor may enjoy, Contractor may withhold sufficient funds to protect Contractor against any claims related to labor requirements, including without limitation, requirements under the Davis-Bacon Act or the California Labor Code. Subcontractor agrees that the amounts set forth as the Contract Price shall be deemed to be full compensation for compliance with such laws, regulations, or requirements, including payment of all applicable wage rates, and that no additional compensation will be owed to Subcontractor in the event that Subcontractor is required thereunder to pay higher wages or incur additional costs that Subcontractor contends that it did not anticipate.

§ 14.12 To the extent applicable to any Project, Subcontractor agrees to comply with all applicable skilled and trained workforce requirements, including under Public Contract Code sections 2600 through 2603. This includes monthly reporting by Subcontractor and all of Subcontractor’s subcontractors. Subcontractor further agrees that Contractor shall be entitled to withhold subcontract amounts consistent with Public Contract Code sections 2600 through 2603 in the event that Subcontractor or any of its sub-tier subcontractors fail to comply, in whole or in part, with applicable skilled and trained workforce requirements. Subcontractor agrees to provide Contractor with a sworn affidavit of compliance with all skilled and trained workforce requirements prior to Contractor’s final payment to Subcontractor becoming due. LIQUIDATED
DAMAGES: SUBCONTRACTOR ACKNOWLEDGES THAT THE ACTUAL DAMAGES LIKELY TO RESULT TO CONTRACTOR FROM SUBCONTRACTOR’S NON-COMPLIANCE WITH THE SKILLED AND TRAINED WORKFORCE PROVISIONS ARE DIFFICULT TO ASCERTAIN ON THE DATE THIS MASTER SUBCONTRACT AGREEMENT AND/OR ANY PROJECT AGREEMENT IS ENTERED INTO AND MAY BE DIFFICULT OR COSTLY FOR CONTRACTOR TO PROVE IN THE EVENT OF A BREACH. THEREFORE, THE PARTIES INTEND THAT THE PAYMENT OF LIQUIDATED DAMAGES IN THE AMOUNT OF FIVE THOUSAND DOLLARS ($5,000) PER MONTH, UNLESS A DIFFERENT AMOUNT IS SPECIFICALLY SET FORTH IN A PROJECT AGREEMENT, WOULD SERVE TO REASONABLY COMPENSATE CONTRACTOR FOR CONTRACTOR’S ACTUAL DAMAGES SUSTAINED, AND NOT AS A PENALTY, DUE TO A BREACH BY SUBCONTRACTOR OF ITS OBLIGATIONS UNDER THE SKILLED AND TRAINED WORKFORCE PROVISIONS, AND SUBCONTRACTOR AGREES TO PAY THIS AMOUNT TO CONTRACTOR FOR EACH MONTH AND FOR EACH PROJECT THE SUBCONTRACTOR IS IN BREACH OF THE SKILLED AND TRAINED WORKFORCE PROVISIONS. THE PARTIES AGREE THIS AMOUNT OF LIQUIDATED DAMAGES BEARS A CLOSE AND REASONABLE RELATIONSHIP TO THE AMOUNT OF HARM THAT CONTRACTOR COULD REASONABLY ANTICIPATE AT THE TIME OF ENTERING THIS THIS MASTER SUBCONTRACT AGREEMENT AND/OR ANY PROJECT AGREEMENT.

§ 14.13 At its sole expense, Subcontractor will comply with all provisions of "Proposition 65" (California State Drinking Water Act of 1986, California statutes) which shall include, but not be limited to, posting with the prior written submission to, at the time submittals are made and with the written permission of Contractor, any required notices. Subcontractor shall not use or bring on to the Project any of the chemicals or compounds listed by the California State Attorney General from time to time under the provisions of Proposition 65 (the “List”) without delivering a clear written notice, at the time submittals are written, to Contractor and OWNER informing them of the dates and locations where such items shall be delivered, used, or stored. Notwithstanding anything to the contrary contained or indicated herein or in any of the Contract Documents or purchase orders or anywhere else, Subcontractor shall not incorporate into the Work, or allow to be incorporated into the Work, any of the items on such List without specific advanced written notice having first been delivered to Contractor prior to Subcontractor becoming actually contractually obligated to purchase or take delivery thereof from its suppliers, and then only to the extent the Contractor gives clear written approval of the uses proposed in the notice. The notice shall contain clear descriptions of the type, amount, uses, locations and content of such items incorporated into or used in said work. Subcontractor expressly acknowledges and agrees that it shall indemnify and hold harmless Contractor and the Owner from any and all claims, demands, suits, or liability of whatsoever nature by reason of the use or possession of the items set forth on the List on the subject project.

§ 14.14 The Contractor may be signatory to various labor agreements. The Subcontractor agrees to be bound by all Master Labor Agreements and/or Project Labor Agreements to which the Contractor is bound with regard to Work performed under any Work Authorization or this Master Agreement, including all extensions thereof, and shall submit all grievances to arbitration, pursuant to the provisions of such Master Labor Agreements or Project Labor Agreements and any and all extensions thereof. Subcontractor specifically recognizes that Master Labor Agreements and Project Labor Agreement may be renewed and modified (with consequent price increases) during the course of this Contract and herby assents thereto. Subcontractor may request
§ 14.15 On public works projects with the State of California or any subdivision thereof, the time period for payment of amounts (if any) which Contractor is obligated by any Work Authorization or this Master Agreement to pay retention shall be within seven (7) days after receipt of retention by Contractor, subject to Contractor’s right to withhold for the grounds set forth in any Work Authorization or this Master Agreement or otherwise provided by law; additionally, on such state or local projects, the percentage of retention withheld (when there are no additional reasons for withholding) shall not exceed the percentage required to be withheld under Contractor's contract with the Owner.

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

IN WITNESS WHEREOF, the undersigned have executed this Rider as of the Effective Date of the Agreement.

BNBuilders, Inc.                 <Insert Subcontractor Legal Name>
CONTRACTOR (Signature)       SUBCONTRACTOR (Signature)
«Ron A. Montoya, Director of Operations»
(Printed name and title)       «  » «  »
(Printed name and title)

Contractor’s License No.: 
Contractors UBI No.: ________________
CONTRACTOR:
(Name, legal status and address)

SURETY:
(Name, legal status and principal place of business)

OWNER:
(Name, legal status and address)

CONSTRUCTION CONTRACT
Date: 
Amount: 
Description:
(Name and location)

BOND
Date:
(Not earlier than Construction Contract Date)
Amount: 
Modifications to this Bond: 

CONTRACTOR AS PRINCIPAL
Company: (Corporate Seal)
Signature: 
Name and Title: 

SURETY
Company: (Corporate Seal)
Signature: 
Name and Title: 

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.
§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety’s obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner’s property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety’s expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety’s obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,
- have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant’s obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety’s expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety’s failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney’s fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety’s total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney’s fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner’s priority to use the funds for the completion of the work.
§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:
   .1 the name of the Claimant;
   .2 the name of the person for whom the labor was done, or materials or equipment furnished;
   .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
   .4 a brief description of the labor, materials or equipment furnished;
   .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
   .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
   .7 the total amount of previous payments received by the Claimant; and
   .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms “labor, materials or equipment” that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor’s subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 16.5 The Surety agrees that electronic signatures (whether digital or encrypted) and/or and scanned copies of original signatures of this document is intended to authenticate this bond and shall have the same force and effect as manual signatures and original copies. Such electronically signed or scanned/PDF versions of the AIA Document A312TM, Payment Bond and Performance Bond shall be fully enforceable against the Surety.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company: (Corporate Seal)
Signature: ««»
Name and Title: «»
Address: «»

SURETY
Company: (Corporate Seal)
Signature: ««»
Name and Title: «»
Address: «»
**Performance Bond**

**CONTRACTOR:**
(Name, legal status and address)
« »« »
« »

**SURETY:**
(Name, legal status and principal place of business)
« »« »
« »

**OWNER:**
(Name, legal status and address)
«BNBuilders, Inc. »« »
«»

**CONSTRUCTION CONTRACT**
Date: « »
Amount: $ « »
Description: (Name and location)
«Subcontractors Legal Name»
«Address
BNB Project Number: XXXXXXX.XXX
Subcontract Number: XXXXXXX.X-XX »

**BOND**
Date: « »
(Not earlier than Construction Contract Date)
« »
Amount: $ « »
Modifications to this Bond: «X» None « » See Section 16

**CONTRACTOR AS PRINCIPAL**
Company: (Corporate Seal)
Signature: Name and Title: « »« »

**SURETY**
Company: (Corporate Seal)
Signature: Name and Title: « »« »

(Any additional signatures appear on the last page of this Performance Bond.)

**AGENT or BROKER:**
« »
« »

**OWNER’S REPRESENTATIVE:**
(Architect, Engineer or other party:)
« »
« »

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.
§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety’s obligation under this Bond shall arise after

1. the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor’s performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner’s notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety’s receipt of the Owner’s notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner’s right, if any, subsequently to declare a Contractor Default;

2. the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3. the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety’s obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety’s expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner’s concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

2. Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
2. additional legal, design professional and delay costs resulting from the Contractor’s Default, and resulting from the actions or failure to act of the Surety under Section 5; and
3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety’s liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.
§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

The Surety agrees that electronic signatures (whether digital or encrypted) and/or and scanned copies of original signatures of this document is intended to authenticate this bond and shall have the same force and effect as manual signatures and original copies. Such electronically signed or scanned/PDF versions of the AIA Document A312™, Payment Bond and Performance Bond shall be fully enforceable against the Surety.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL                                      SURETY
Company:                        (Corporate Seal)        Company:                        (Corporate Seal)
Signature:                      Signature:          Name and Title:          Name and Title:
Name and Title: « »          « »                        Address:                      Address:
Address: « »                        « »

User Notes: Gemini Att H Performance Bond V1.0
Tips for Using MyCOI powered by Parker Smith and Feek

Once you have successfully registered for the MyCOI platform, the following tips will help you and your agent with your Certificate of Insurance.

- Web Browsers that should be used for MyCOI
  - Google Chrome
  - FireFox
- Once you receive your first notification from mycoi@psfinc.com, please save the link to your favorites in your web browser for future use.
- If you have agents who handle different policy lines, please enter the agent for each line for example
  - Mary Sue Agency Provides Workers Comp
  - John Smith Agency provides GL, Auto, Umbrella, Pollution, etc.
- Adhere to the Insurance Requirements in the Attachment A for successful creation of your Certificate of Insurance.
- Upload your Certificate of Insurance in **ONE .pdf per PROJECT**. If you upload the Accord and the endorsements in separate .pdfs, it will automatically get rejected.
- MyCOI generates communication via email from the system automatically. Please be aware of these notifications coming to your email.
- The email notifications will be sent to the primary contact first – which is your agent.
- If your agent becomes non-responsive, then you the “Subcontractor” will be sent the notification.
- The Non-compliance emails that you receive will always contain the link for upload to a specific project, however, if you save your link in your favorites you can access this link at any time to upload COI’s for BNB Projects.
- All Requests will be shown to the left of the portal page.
- Agents will see Insurance Requirements and Additional Insureds for each requested COI.
- Agents will see the “upload” button to the right of the portal, underneath the “help” button.
- Training Materials and Resources are available through the Agent Portal “Help” page.

Here is a Sample of the Agent/Subcontractor Portal, the help icon is located on the right-hand side of the portal:
In an effort to help understand where each COI stands in the compliance review process, completed requests will move from “Open Request” to Pending Review:

MyCOI@psfinc.com will also address the following technical issues with our site:
- Updating/Changing your agent or vendor contacts
- Answering questions regarding MyCOI
- Resending non-compliance emails and links
- Answering questions regarding your Certificate of Insurance

BNBuilders and Parker, Smith and Feek are partners together in tracking compliance for our Subcontractors Certificates of Insurance via the MyCOI platform.
TIPS FOR USE IN GCPay.com

Once you have completed your registration and saved the web link to GCPay in your bookmarks, the following information will help you through the workflow and roles of GCPay.com.

**BNBuilders Accounting Team will:**
- Link your subcontract to the GCPay Billing Platform
- Review information for your 2nd Tier Suppliers, including the Affidavit of Subcontractor
- Accept or Reject your lien Waivers
- Verify that your Affidavit of Union Benefits is current

**BNBuilders Project Management Team will:**
- Review, approve or reject your schedule of values, which is the amount of your original subcontract value
- Approve or Reject your Application for Payment
- Process Change Orders

**For Technical Issues within GCPay, please contact GCpay support via phone or email for the following:**
- Navigation and help with the site
- Login and Password Resets
- Uploading issues for documents
- Setting up or changing your Company Settings
- Guide you in adding users to your projects

The following link will take you to a video training for GCPay.com

https://vimeo.com/268470217/1d4491e835

GCPay web-based application also offers hints throughout the application, access these by clicking on the (?) as shown below:
TIPS FOR USE IN GCPay.com

The following steps will help you through the GCpay billing and submission process:

Logging in:
• You will receive a notification that your project is now listed in GCpay
• A Sample of your Dashboard:

<table>
<thead>
<tr>
<th>Juno Jump Phase II</th>
<th>117005.100</th>
</tr>
</thead>
<tbody>
<tr>
<td>Webster Elementary</td>
<td>117006.100</td>
</tr>
</tbody>
</table>

Schedule of Values:
• Submit your Schedule of Values for your Original Subcontract Amount:

![Schedule of Values](image)

Application for Payment:
• Submit your AFP for on-going or completed work
• Lien Waivers - Use the ones provided on the site and submit with your AFP
• Suppliers/Liabilities Tab –
  • Use the “Add Vendor” button to add your suppliers company information
  • Add the Estimated contract value, this value can be updated as you continue to submit your monthly AFP
  • Update current supplier payment values
    • Due this period
    • Final Paid
    • Supplier Lien Waivers are sent by our Accounting team via Gcpay.com

• Screen Shot of AFP:

![Screen Shot of AFP](image)
TIPS FOR USE IN GCPay.com

Choose the Liabilities Tab:
- Click Add Vendor (green plus symbol)

- Enter the information requested, if you have any suppliers to list, your liabilities tab should look like the example below:

- If you have no third-party suppliers, click the check box as indicated below:

- Upload your Affidavit of Subcontractor to the Documents Tab, this document is required even if you have no suppliers to report:

- Click Submit
  - The system will not allow you to submit your AFP without all the required documentation. You will see links of what you need to submit with your AFP.
**Change Orders**

- Change orders will not appear in GCpay unless your original schedule of Values (Original Contract Value) is submitted and approved by the BNB Project Team.
- Change Orders can be billed on your AFP once you see them in the below Change Order Screen, these values will automatically appear in your SOV to change your contract amount.

**Compliance**

- This tab will help you understand and indicate the following:
  - **Affidavit of Union Benefits**
    - Expired – Please upload current Union Benefits Statement from the prior month
    - Verified – Document has been received and is compliant
  - **Certificate of Insurance** - THIS DOCUMENT IS TO BE UPLOADED TO MYCOI, please reference the Attachment A with instructions included with your subcontract. This will only give you visibility to the status of your Certificate of Insurance
    - Verified – Policy Line has been received and is compliant
    - Required – Policy line is not compliant – Upload entire COI to MyCOI
    - Expired – Policy line is expired and not compliant – Upload COI to MyCOI
  - If the following two fields show up as a Compliance piece, then these are required per your Attachment A
    - Professional Liability
    - Pollution/Environmental
  - If Performance and Payment Bonds are a requirement per your subcontract, you will see if they have been accepted or not by BNBuilders.
    - Verified = Received and accepted
    - Required = Required
Checklist:

- When submitting your Schedule of Values or Application for Payment, the below screen shot requires that you check the box, acknowledging that you will not upload your Certificate of Insurance to GCPay, our billing website. Certificates of insurance need to be uploaded to MyCOI, per your Attachment A.
- The check box states:
  - Please do not upload your Certificate of Insurance to GCPay. All Certificates of Insurance need to be uploaded to MyCOI per the instructions provided on your Attachment A. If you upload your Certificate of Insurance to GCPay, you are at risk of the COI not being processed. Please coordinate with your insurance agent.