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AN EQUAL OPPORTUNITY EMPLOYER

SUBCONTRACT NO.(Please Refer to This Number
in All Correspondence & Invoices)**FLINT BUILDERS, INC. CONTRACT NO.****PROJECT:**

This Subcontract, dated the _____ day of _____, is entered into between FLINT BUILDERS, INC., a California corporation with offices at **401 Derek Place, Roseville, CA 95678**, and _____ ("Subcontractor") with offices at _____, Phone _____, Fax _____, Email _____.

Flint Builders, Inc., on the _____ day of _____, entered into a Contract (the "Contract") with _____ (the "Owner") with offices at _____, where Flint Builders, Inc. agreed to fully and faithfully perform all the labor and furnish all the material for the complete construction of _____ (the "Project") in accordance with the plans, specifications and addenda referred to in the Contract and the General and Special Conditions thereof.

Flint Builders, Inc. desires to subcontract to Subcontractor the furnishing of all labor, material, tools, supplies, facilities, supervision, administration and equipment and performing all work (the "Work") necessary in the following portion or subdivision of the erection and completion of said Project to be performed in accordance with the General and Special Conditions of the Contract between the Owner and Flint Builders, Inc. and the plans and specifications prepared by _____ (the "Architect") including addenda _____, and alternates _____, and the Project Schedule as prepared and updated by Flint Builders, Inc. (collectively the "Contract Documents"), which Work, without limitation, is more specifically described as follows:

for the sum of _____ Dollars (\$) (the "Subcontract Sum").

The following Exhibits are attached to and by this reference made part of this Subcontract:

- Exhibit "A" - "General Requirements"
- Exhibit "B" - "Scope of Work"
- Exhibit "C" - "Insurance Requirements"
- Exhibit "D" - "List of Drawings"
- Exhibit "E" - "Conditional & Unconditional Waiver and Release Forms"
- Exhibit "F" - "Bond Forms"
- Exhibit "G" - "Labor Code Requirements" or "Davis Bacon Act Requirements"
- Exhibit "H" - "Sales Tax Exemption Conditions" or "N/A"
- Exhibit "I" - "TERO Tribal Employment Rights Ordinance"
- Exhibit "J" - "Job Specific" or "N/A"

Flint Builders, Inc. and Subcontractor agree as follows:

1. Bonds.

N/A OR A Performance Bond and a separate Payment Bond, each in an amount equal to 100% of the Subcontract Sum and executed by a California admitted surety insurer, are required to be furnished by Subcontractor on the forms provided in Exhibit F herein. Provided said bonds were not included in Subcontractor's bid, Flint Builders, Inc. will pay for Subcontractor bonds at actual surety invoiced amount, without Subcontractor markup. Subcontractor to provide Surety's invoice to Flint Builders, Inc.

2. Subcontractor Representations.

2.1 Subcontractor acknowledges receipt of Flint Builders, Inc.'s "Statement of Substance-Free Workplace Policy" and "Statement of Firearms, Weapons-Free Workplace Policy". Subject to applicable law Subcontractor further agrees to be bound by these policies as part of this Agreement. Subcontractor represents and agrees that it has carefully examined and understands this Subcontract and the other Contract Documents, including but not limited to the Contract, has investigated the nature, locality and site of the Work and the conditions and difficulties under which it is to be performed, and that it

enters into this Subcontract on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of Flint Builders, Inc., the Owner or any of their respective officers, agents or employees.

2.2 The commencement of the Work by Subcontractor on the site of the Project shall constitute the legal and binding acceptance by Subcontractor of this Subcontract if received by Subcontractor prior to the commencement of such Work without exception, unless explicitly agreed to in writing, by Flint Builders, Inc., prior to such commencement of work. For purposes of this paragraph the mobilization of equipment, delivery of materials or the performance of actual labor on the Project site, whichever occurs first, shall constitute a “commencement” of Work by Subcontractor. Flint Builders, Inc. reserves the right, however, to insist on a signed Agreement prior to making any payment to Subcontractor.

3. Subcontractor Duties.

3.1 With respect to the Work to be performed and furnished by Subcontractor hereunder, Subcontractor agrees to be bound to Flint Builders, Inc. by each and all of the provisions of the Contract and the other Contract Documents, (collectively the “General Contract”), and to assume toward Flint Builders, Inc. all of the duties, obligations and responsibilities that Flint Builders, Inc. by the General Contract assumes toward the Owner. Subcontractor agrees further that Flint Builders, Inc. shall have the same rights and remedies against Subcontractor as the Owner has against Flint Builders, Inc. under the terms and provisions of the General Contract with the same force and effect as though every such duty, responsibility, right or remedy were set forth herein in full. The terms and provisions of this Subcontract with respect to the Work to be performed and furnished by Subcontractor hereunder are intended to be, and shall be, in addition to and not in substitution for any of the terms and provisions of the General Contract. This Agreement and the provisions of the General Contract are intended to supplement and complement each other and shall, where possible be so interpreted. If, however, any provision of this Agreement irreconcilably conflicts with a provision of the General Contract, the provision imposing the greater duty or obligation on Subcontractor, as determined by Flint Builders, Inc., shall govern. The General Contract shall be available for inspection by Subcontractor upon its request at the office of Flint Builders, Inc. during normal business hours.

3.2 Subcontractor shall furnish at its sole cost and expense all materials, equipment, tools and labor and all other things necessary to fully perform and complete all of the above set forth portion or subdivision of the Project in accordance with the General Contract and this Subcontract. Subcontractor further agrees to supply all necessary materials, labor, supervision and administration in sufficient quantities and with sufficient equipment and tools to perform the Work efficiently and expeditiously.

3.3 Subcontractor shall, insofar as permitted by law, employ labor in the performance of Subcontractor’s Work as will work harmoniously with other labor employed on the Project and, as such further labor is employed on the Project, will continue to work harmoniously with other Project labor. Subcontractor shall not cause, in whole or in part any work stoppages or strikes on the Project. If Subcontractor causes, in whole or in part, any work stoppages or strikes on the Project, Subcontractor shall promptly take whatever steps that are legally available to terminate the work stoppage or strike and shall be responsible to Flint Builders, Inc. and the Owner for all costs and impacts to the Project. Upon demand by Flint Builders, Inc., Subcontractor shall resolve and terminate disputes among the trades involving all or a portion of Subcontractor’s Work, including but not limited to the procedures for settling jurisdictional disputes as set forth in any collective bargaining agreements and appropriate proceedings with the National Labor Board. If Subcontractor is permitted to subcontract any of Subcontractor’s work, Subcontractor agrees to require its subcontractors, and their subcontractors, if any, to be bound in a like manner.

4. Schedule. Time is of the essence. Flint Builders, Inc., with input from Subcontractor, shall develop the “Project Schedule”. Subcontractor shall commence the Work under this Subcontract when notified by Flint Builders, Inc. and shall complete the Work covered by this Subcontract as required in the Project Schedule in a diligent manner so that progress or completion of the Project will not be delayed and in such a manner that Flint Builders, Inc., any other subcontractors, and any separate contractors of the Owner shall not be delayed or impeded in their work. Subcontractor shall participate and cooperate in the development of the Project Schedule and other efforts to achieve timely completion of the Work by providing information on the timing and sequence of operations so as to meet Flint Builders, Inc.’s overall schedule requirements. Flint Builders, Inc. will update the Project Schedule as required by the Contract Documents. Subcontractor shall continuously monitor the Project Schedule, including any revisions thereto, and other work on the Project so as to execute the Work in accordance with the requirements of the Project Schedule. Subcontractor agrees to be responsible for, carry out, and perform all time guarantees upon work or materials referred to in the General Contract relating to any labor performed or material furnished under this Subcontract.

5. Supervision. All of the Work performed under this Subcontract is the sole and absolute responsibility of Subcontractor; shall be initiated, managed, performed and completed by qualified, competent, skilled and reputable supervisors, administrators, mechanics and laborers; shall be in full compliance with the General Contract and this

Subcontract; and shall meet the approval and acceptance of Flint Builders, Inc. and the Owner or its authorized representative.

6. Safety. Subcontractor agrees that the prevention of accidents to workmen and property engaged upon or in the vicinity of the Work is its responsibility. Subcontractor agrees to comply with all Federal, State, Municipal and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety as shall be applicable to the Work, including, among others, the Federal Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder, and with the safety standards established during the progress of the Work by Flint Builders, Inc.. Subcontractor acknowledges the receipt of Flint Builders, Inc.'s "Construction Safety Requirements" and further agrees to be bound by these policies as part of this Agreement.

6.1 When so ordered, Subcontractor shall stop any part of the Work which Flint Builders, Inc. deems unsafe until corrective measures satisfactory to Flint Builders, Inc. have been taken. Subcontractor agrees that it shall not have nor make any claim for damages arising from such stoppages. Should Subcontractor fail to take appropriate corrective measures in a timely manner, Flint Builders, Inc. may do so at the cost and expense of Subcontractor and may deduct the cost and expense thereof from any payments due or to become due to Subcontractor. Failure on the part of Flint Builders, Inc. to stop unsafe practices shall in no way relieve Subcontractor of its responsibility therefore.

6.2 Subcontractor will follow the provisions of all applicable statutes and ordinances which require persons or firms doing excavation to do so only after giving notice to utility companies and obtaining information on the location of utilities (such as "one-call" systems).

7. Hazardous Materials. Subcontractor shall at all times comply with all rules and regulations of any municipality, state or federal environmental, environmental protection, and toxic waste and hazardous substances laws, ordinances and regulations, and how they relate to the Work, and shall be equally responsible for actions and inactions of subcontractors, sub-subcontractors, and any other agents or independent contractors of Subcontractor. Subcontractor shall be deemed to, and shall, have included in the Subcontract Sum the containment, removal, disposal or neutralization of all toxic wastes and hazardous substances created, generated or transported to or from the Project site in conjunction with the Work. Subcontractor will be responsible for identifying toxic wastes and hazardous substances generated, released, caused by or resulting from the Work and notifying Flint Builders, Inc. of its presence in writing as soon as it is identified. The terms "toxic wastes" and "hazardous substances" shall have the same meaning as defined under federal environmental laws and regulations. At all times Subcontractor shall defend, indemnify and hold harmless Flint Builders, Inc. from any and all expenses, costs, damages, suits, fines, assessments, penalties and/or causes of action, including attorney's fees through all investigations, negotiations, hearings or appeals, relating to or arising out of Subcontractor's failure to strictly comply with the terms of this paragraph.

8. Compliance With Laws.

8.1 Subcontractor acknowledges that Federal Executive Order 11246 as amended; Vietnam Era Veteran Readjustment Assistance Act, as amended (VEVRAA); and Section 503 of the Rehabilitation Act of 1973, as amended are incorporated herein by reference. Subcontractor shall not discriminate against any applicant for employment because of race, color, religion, gender, age, national origin, sexual preference, disability, veteran status or any other protected classification, and shall ensure that employees are treated during employment without regard to their race, color, religion, gender, age, national origin, sexual preference, disability, veteran status or any other protected classification. Subcontractor further agrees to fully comply with any and all laws, statutes, regulations, orders and directives, presently or hereafter imposed by local, state or federal governments, or any agencies thereof, with respect to nondiscrimination in employment, civil rights laws and fair employment practices, and mandated reporting requirements thereof, including, but not limited to, the California Labor Code, the California Fair Employment and Housing Act and the California Family Rights Act. Subcontractor acknowledges its Labor Code compliance requirements set forth in Exhibit G.

8.2 Subcontractor hereby acknowledges that it is thoroughly familiar with all DBE/MBE/WBE/DVBE requirements pertaining to the Project. If Subcontractor claims status as a DBE/MBE/WBE/DVBE, Subcontractor shall take all steps necessary and shall make all necessary records available to Contractor and Owner to assure that Subcontractor is in compliance with such requirements. In the event that any sub-subcontractor or supplier of the Subcontractor is in compliance with such requirements. In the event that any sub-subcontractor or supplier of the Subcontractor is designated as or is required to be a DBE/MBE/WBE/DVBE, Subcontractor agrees to be responsible for insuring that said sub-subcontractor or supplier meets all applicable requirements. Subcontractor acknowledges that Contractor is relying upon representations regarding the validity of Subcontractor's status, if any, as a DBE/MBE/WBE/DVBE and that misrepresentation of the status of Subcontractor or any of its sub-subcontractors or material suppliers is a material breach and grounds for immediate

termination of this Subcontract. In the event of termination as the result of material misrepresentation of the status of the Subcontractor as a DBE/MBE/WBE/DVBE, Subcontractor shall not be entitled to any compensation not already paid.

9. Insurance. Subcontractor agrees to procure, pay for and maintain in full force and effect during the course of the performance of the Subcontract all insurance required by the laws of the state in which the Work covered by this Subcontract is being performed, and in such form and amounts as described in **Exhibit C** which is attached hereto and incorporated into this Subcontract. Subcontractor shall not commence the Work nor receive any payment hereunder until Certificate of such insurance is furnished to Flint Builders, Inc. Subcontractor's insurance coverage shall be primary, with Flint Builders, Inc.'s, the Owner's and any other insurance being non-contributory and excess over Subcontractor's coverage. All insurance policies procured, paid for and maintained by Subcontractor for the Work performed under this Subcontract must contain a Waiver of Subrogation rights against that of the Owner, Flint Builders, Inc., its parent, owners, officers, subsidiaries and affiliate companies, their agents, employees, directors, servants, and insurers. All policies required of Subcontractor according to the provisions of this Paragraph shall provide that the Owner, Architect and Flint Builders, Inc., its parent, owners, subsidiaries and affiliate companies, their agents, employees, directors, servants, and insurers be named as Additional Insured under such Subcontractor's insurance policies.

9.1 Flint Builders, Inc. shall have no duty to Subcontractor or to any of its insurers or their insurance agents to review any certificates or copies of insurance furnished to Flint Builders, Inc. or to determine whether the terms of each certificate or policy of insurance comply with the insurance-related provisions of the Subcontract. A failure of Flint Builders, Inc. to detect that Subcontractor has not submitted certificates, or proper certificates, or is otherwise not in compliance with the insurance-related provisions of the Subcontract shall not be construed as a waiver or other impairment of any of Flint Builders, Inc.'s rights under such insurance-related provisions.

9.2 If Subcontractor fails to procure and maintain such insurance, in addition to the option of declaring Subcontractor in default for breach of a material provision of this Subcontract, Flint Builders, Inc. shall have the right, but not the duty, to procure and maintain the same insurance, or other insurance that provides Flint Builders, Inc. with equivalent protection, and Subcontractor shall furnish all necessary information to make effective and maintain such insurance. At the option of Flint Builders, Inc., the cost of said insurance purchased by Flint Builders, Inc. shall be charged against and deducted from any monies then due or to become due to Subcontractor or Flint Builders, Inc. shall notify Subcontractor of the cost thereof and Subcontractor shall promptly pay such cost.

9.3 Subcontractor shall identify by certificate any Residential, Mold, EIFS, Silica or other major exclusions that impact Subcontractor's ability to insure its risk. If the Project includes any Residential components or the proposed design includes EIFS systems, then Subcontractor shall obtain appropriate endorsements acceptable to Flint Builders, Inc. as a condition of this Subcontract.

9.4 Subcontractor shall at its own expense provide insurance coverage for materials stored off the site after written approval of Flint Builders, Inc. at the value established in the approval, and also for portions of the Work in transit until such materials are permanently incorporated into the Work. The risk of loss for material and equipment provided by this Subcontract, whether in a deliverable state or otherwise, shall remain with Subcontractor. Any damages to the material and equipment or loss of any kind occasioned in transit shall be borne by Subcontractor, notwithstanding the manner in which the goods are shipped or who pays the freight or other transportation costs.

10. Indemnity.

10.1 Subcontractor's Indemnification and Defense of Contractor. With the exception that this Section 10.1 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the statutes or public policy of the State of California, Subcontractor shall defend, indemnify, and save harmless Contractor, including officers, directors, partners, joint venturers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or in connection with Subcontractor's obligations under this Subcontract. Subcontractor's duties under this Section 10.1 shall apply to Claims for, but not limited to:

- (a) Personal injury, including but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Owner, Contractor, or any other Subcontractor and/or damage to property of anyone (including loss of use thereof) caused or alleged to be caused in whole or in part by any act or omission of Subcontractor, its employees, agents, sub-subcontractors and others for whom Subcontractor is responsible.

- (b) Damages and penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the action or inaction of Subcontractor.
- (c) Patents. Subcontractor hereby agrees to defend, indemnify and hold harmless Flint Builders, Inc. and the Owner from and against any and all liability, loss or damage and to reimburse Flint Builders, Inc. and the Owner for any costs, including legal fees and expenses, which Flint Builders, Inc. and the Owner may incur because of claims or litigation on account of infringement or alleged infringement of any letters patent or patent rights by reason of the Work, or materials, equipment or other items used by Subcontractor in its performance.
- (d) Claims and liens (see Section 9) for labor performed or materials used or furnished to be used in performance of the Work, including all incidental or consequential damages resulting to Contractor from such claims or liens.
- (e) Subcontractor's failure to fulfill the covenants set forth in each subpart of Section 8.
- (f) Failure of Subcontractor to comply with the provisions of Section 9.
- (g) 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 or others' equipment, hoists, elevators or scaffolds.
- (h) Any failure or alleged failure to comply with the terms of this Subcontract or the Contract Documents.

10.2 The indemnification requirements of this Section 10 shall extend to Claims occurring after this Subcontract is terminated as well as while it is in force. Such indemnity provisions apply to the fullest extent permitted by law, regardless of any passively negligent act or omission of Contractor or its agents or employees. Subcontractor, however, shall not be obligated to indemnify Contractor for Claims arising from the active negligence, sole negligence, or willful misconduct of Contractor, or its agents, employees or independent contractors who are directly responsible to Contractor, or for defects in design furnished by such persons or Claims that do not arise out of the Work.

10.3 Except as otherwise provided by the statutes or public policy of the State of California, Subcontractor's obligations under this Section do not affect, and are not affected by, the insurance required of Subcontractor pursuant to Section 10.

With respect to Claims by an employee of Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone for whose acts it may be liable, the indemnification obligation under this Section shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

Subcontractor shall promptly pay and satisfy any judgment or decree that may be rendered against Contractor or its agents or employees, or any of them, arising out of any Claim covered by this Section 10.

10.4 Defense of Claims.

- (a) With respect to any Claims against Contractor as to which Subcontractor owes to Contractor a defense obligation, Subcontractor, having considered its options available at law, hereby elects to proceed under California Civil Code Sections 2782(e)(2) and/or 2782.05(e)(2), and further agrees that upon final resolution of any such Claim, any reimbursement for defense fees and costs previously paid by Subcontractor shall be governed by such provisions of the California Civil Code.
- (b) Subcontractor shall at Subcontractor's own cost, expense and risk, defend (with counsel designated by Contractor) all Claims as defined in Section 10.1 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Contractor, subject to the provisions of Civil Code Sections 2782(e)(2) and/or 2782.05(e)(2).
- (c) Subcontractor shall reimburse Contractor or its agents or employees for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section 10.

10.5 Risk of Loss. All Work done at the site or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of Subcontractor exclusively until the completed Work is accepted by Contractor and Owner. The parties recognize that the waiver of subrogation provision and the builder's risk insurance provision described in Exhibit C may reduce the risk of loss and property damage indemnification obligations of Subcontractor.

10.6 Subcontractor's Indemnification and Defense of Owner and Others. With the exception that this Section 10.6 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the statutes or public policy of the State of California, Subcontractor shall defend, indemnify, and save harmless Owner, including its officers, directors, partners, joint venturers, agents, employees, affiliates, parents and subsidiaries, and each of them, as well as any other persons that Contractor is required to indemnify and defend under the Contract Documents, of and from any and all Claims, to the same extent that Contractor is required to defend and/or indemnify Owner and such other persons but only with respect to Claims arising out of or in connection with Subcontractor's performance under this Subcontract.

10.7 Sub-subcontractor Indemnity. Subcontractor shall ensure that its sub-subcontractors of every tier also fully indemnify and defend Contractor, Owner and any other persons that Contractor is required to indemnify and defend under Contract Documents, to the same extent that Contractor is required to indemnify and defend such persons.

10.8 Construction of Section. Notwithstanding any of the provisions of this Section 10.8, if it is finally determined by a court of competent jurisdiction that any of such provisions are void or unenforceable under governing law, then such provisions shall be deemed stricken from this Subcontract and the remaining provisions shall remain in full force and effect and shall be construed to provide for the maximum defense and indemnification obligation by Subcontractor permitted by law.

10.9 No Limitations. In furtherance to, but not in limitation of the indemnity provisions in this Subcontract, Subcontractor hereby expressly and specifically agrees that its obligation to indemnify, defend and hold harmless as provided in this Subcontract shall not in any way be affected or diminished by any statutory or constitutional immunity it enjoys from suits by its own employees or from limitations of liability or recovery under worker's compensation laws.

11. Remedies For Non-Performance.

11.1 Should Subcontractor at any time, whether before or after final payment:

- a) refuse or neglect to supply a sufficiency of skilled workers or materials of the proper quantity or quality;
- b) fail in any respect to prosecute the Work with promptness and diligence;
- c) cause by any act or omission the stoppage, interference or delay of or damage to the work of Flint Builders, Inc. or of any other contractors or subcontractors on the Project; or
- d) fail in the performance of any terms and provisions of this Agreement or of the General Contract; or,
- e) Should the Owner and/or Owner's Representative or Architect determine that the Work or any portion thereof is not being performed in accordance with the General Contract, then in any of such events, Flint Builders, Inc. shall have the right to declare Subcontractor in default.

11.2 In the event of a default on Subcontractor's part, Flint Builders, Inc. shall have the right, in addition to any other rights and remedies provided by this Subcontract, the General Contract or by law, after three (3) days written notice delivered to Subcontractor or mailed to its last known address:

- a) to perform and furnish through itself and/or through others any such labor and materials for the Work; and,
- b) to deduct the cost thereof from any funds due or to become due to Subcontractor under this Subcontract; and,
- c) to terminate this Subcontract, in whole or in part; and,
- d) to enter upon the Premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, all of which Subcontractor hereby transfers, assigns and sets over to Flint Builders, Inc. for such purpose; and,
- e) to employ any person or persons to complete the Work and provide all the labor, materials, services, equipment and other items required therefore; and,
- f) to charge to Subcontractor an Administrative Fee of 15% of all costs incurred by Flint Builders, Inc. in exercising the above remedies, plus actual attorneys' fees incurred as a result of Subcontractor's failure of performance.

If a default is declared by Flint Builders, Inc., any and all Subcontractor's lower-tier subcontracts, purchase orders, rental agreements and other contracts at the sole option and discretion of Flint Builders, Inc. shall be deemed to be assigned by operation of this Subcontract to Flint Builders, without any further action by, or conduct of, Subcontractor.

11.3 In case of such termination of this Subcontract by Flint Builders, Inc., Subcontractor shall not be entitled to receive any further payment under this Subcontract until the Work shall be wholly completed to the satisfaction of Flint Builders, Inc., the Owner and the Architect and accepted by them. Upon such final acceptance, if the unpaid balance of the Subcontract Sum under this Subcontract shall exceed the cost and expense incurred by Flint Builders, Inc. in completing the Work, as stated above, such excess shall be paid by Flint Builders, Inc. to Subcontractor. However, if such cost and expense to complete the Work shall exceed the unpaid balance, then Subcontractor and its surety, if any, shall pay the difference to Flint Builders, Inc. upon demand. Such cost and expense shall include not only the cost of completing the Work, but also all losses, damages, costs, administrative fees, fines, penalties and expenses (including legal fees and expenses incurred in defending claims arising from such default and in seeking recovery of such fees and expenses from Subcontractor and/or its surety), and disbursements sustained, incurred or suffered by reason of or resulting from Subcontractor's default. An itemized statement thereof or the checks or other evidence of payment shall be prima facie evidence of the fact and extent of Subcontractor's liability.

11.4 Flint Builders, Inc. shall have the right to set off any amounts Subcontractor owes to Flint Builders, Inc. under this Subcontract or by law against the remaining balance under this Subcontract, or against any amounts due Subcontractor under any other agreements with Flint Builders, Inc..

12. Delays. Should the progress of the Work be delayed, obstructed or interfered with through any fault, action or failure to act by Subcontractor or any of its officers, agents, employees, subcontractors or suppliers so as to cause any additional cost, expense, liability or damage to Flint Builders, Inc. or the Owner, including legal fees or expenses incurred in defending claims arising from such delay or seeking reimbursement and indemnity from Subcontractor and its surety hereunder, Subcontractor and its surety agree to compensate and indemnify Flint Builders, Inc. and the Owner against all such costs, expenses, damages and liabilities.

12.1 In addition, Subcontractor, at Flint Builders, Inc.'s direction and at Subcontractor's own cost and expense, shall work such overtime as may be necessary to make up for all time lost in the completion of the Work and in the completion of the Project due to such delay. If Subcontractor fails to make up for the time lost by reason of such delay, Flint Builders, Inc. has the right to use other subcontractors or suppliers and to take whatever other action Flint Builders, Inc. deems necessary to avoid delay in the completion of the Work and the Project, the cost of which shall be borne by Subcontractor. In the event Subcontractor delays timely performance of the Work or to the completion of the Project, either by its acts or omissions, and such delays result in Flint Builders, Inc. being charged by the Owner with actual or liquidated damages, then Subcontractor, in addition to being responsible for delay damages to Flint Builders, Inc., other subcontractors and/or suppliers, shall reimburse Flint Builders, Inc. the full amount of all such actual or liquidated damages and charges resulting from the delays caused by Subcontractor. Flint Builders, Inc. may offset any such damages against any remaining balances due to Subcontractor.

12.1.1 In the event of any delay, to the extent Subcontractor is responsible as provided herein, Flint Builders, Inc. may hold Subcontractor responsible including, without limitation, withholding from Subcontractor's Subcontract Amount balance the amount of: a. the per day dollar amount for liquidated damages as set forth in the Contract Documents for each day of delay the Owner may assess Flint Builders, Inc., plus, b. a reasonable amount for damages sustained by Flint Builders, Inc., other subcontractors, vendors and suppliers for delays caused by Subcontractor. Subcontractor's Subcontract Amount balances are not in any manner a limitation of Subcontractors' liability to Flint Builders, Inc. for such liquidated damages and/or any other damages. Said liquidated damages sum is agreed upon as a reasonable estimate of the damage the Owner will sustain daily by reason of the failure of Subcontractor to complete the work within the time stipulated for which the Owner will hold Flint Builders, Inc. responsible, it being agreed that the exact damage resulting by such failure will be impossible or unreasonably difficult for the Owner to ascertain. To the extent such liquidated damages are not withheld by the Owner against Flint Builders, Inc.'s final payment, all such withheld monies which are otherwise due Subcontractor shall be paid to Subcontractor. The liquidated damages set forth in this Subparagraph 12.1.1 do not preclude any other claim Flint Builders, Inc. may have against Subcontractor for direct delay or other damages.

12.2 In the event delays in the critical path for performance of the Work are caused by Flint Builders, Inc., the Owner, the Architect or some other subcontractor, and not due to any fault, neglect act or omission of Subcontractor, its officers, agents, employees, subcontractors or suppliers, an extension of time for the completion of this Subcontract shall be granted for a period of time equal to the delay caused to Subcontractor; provided, however, that Subcontractor shall not be entitled to any such extension of time unless Subcontractor (1) notifies Flint Builders, Inc. in writing of the cause(s) of such delay within 48 hours of the commencement thereof and (2) demonstrates that it could not have anticipated or avoided such delay, hindrance

or interference, and has used all available means to minimize the consequences thereof. Such extension of time shall be in lieu of and in full satisfaction of any and all claims whatsoever of Subcontractor against the Owner, the Architect, Flint Builders, Inc. or other subcontractors causing such delay.

13. Changes In The Work. Flint Builders, Inc. may, at any time, on written order without notice to the surety and without invalidating this Subcontract, make changes (including without limitation additions, deletions, alterations, revisions, substitutions or derivations) in the Work and Subcontractor agrees to proceed with the Work as directed by Flint Builders, Inc.'s written order. Any claim for an extension of time for completion or for adjustment of the Subcontract Sum shall be made in writing by Subcontractor within two (2) days after Flint Builders, Inc. directs performance of the extra or changed work. To be clear, any order directing a change in the Work must be in writing to be valid. If the changed work is of urgency, Flint Builders, Inc. may require negotiation immediately on any cost or time increase. Subcontractor shall perform such extra or changed work, and the Subcontract Sum shall be adjusted by the amount as agreed to by the parties. Notwithstanding the payment provisions of this Subcontract as provided in Paragraph 21 below, it is an express condition precedent, however, that payment or a grant of additional time shall not be due to Subcontractor for such changed or extra work until Flint Builders, Inc. has received payment or additional time adjustment from the Owner for said changed or extra work, and that such extra or changed work has been performed to the satisfaction of Flint Builders, Inc. and the Owner by Subcontractor.

13.1 Subcontractor shall be responsible for any costs incurred by Flint Builders, Inc. for changes of any kind made by Subcontractor that increase the cost of the work for either Flint Builders, Inc. or any other subcontractors when Subcontractor proceeds with such changes without a written order therefor.

13.2 For changes in the Work approved by Flint Builders, Inc. as provided herein, Subcontractor shall be paid for Overhead, General Conditions (including insurance and bonds) and Fee an amount consistent with the Contract Documents. In the absence of such conditions, Subcontractor shall be paid for Overhead, General Conditions and Fee as follows:

Work Performed by Subcontractor's Own Forces:	15% of the cost
Work Performed by Sub-subcontractor (all tiers):	5% of the cost

13.3 To overcome delays for which Subcontractor is not, in whole or in part responsible for, Subcontractor shall work overtime or extra shifts to overcome any such delays and shall be paid for overtime if and only if directed specifically, in writing, by Flint Builders, Inc.. Any such extra compensation shall further be based upon hours shown on daily time sheets, which have been submitted to, and approved by Flint Builders, Inc.. Only the premium portion of such approved overtime, exclusive of any markups for overhead and/or fee, shall be considered for any such extra compensation.

14. Taxes. The Subcontract Sum includes all sales, excise, transportation, unemployment compensation, social security, and any other taxes and old age benefits presently existing or subsequently imposed and levied and Subcontractor agrees to pay all of the above and to conform to all applicable municipal, state and federal laws in connection with such taxes. Subcontractor further agrees, on behalf of itself and all sub-tier subcontractors, to withhold taxes from the wages and salaries of all employees of Subcontractor and pay the same in accordance with the federal and state laws and regulations pertaining thereto. The Subcontract Sum includes federal, state and municipal taxes now levied or in force or hereafter imposed on any and all tangible personal property sold or transferred to Flint Builders, Inc. under this Subcontract and Subcontractor agrees to pay such tax or taxes on such property, the cost of which is included in the Subcontract Sum.

15. Liens. Subcontractor shall promptly pay when due all its project creditors, together with the project creditors of all those below it in the contractual chain.

15.1 If the General Contract involves private work, Subcontractor shall keep the property and improvements free and clear of all mechanic, materialmen and similar lien claims or statements. In the event any such lien is filed, asserted or claimed, Subcontractor shall immediately secure its release either by paying the lien claimant, by filing a lien release bond, or by any other means permitted by law. If not so released, Flint Builders, Inc. may retain an amount equal to 150% of the lien or claim and may pay the claimant and offset that amount, plus any legal fees from the amount so retained. If the General Contract involves public work, Subcontractor shall promptly pay and secure releases from all of its project creditors, including all those below it in the contractual chain, who are entitled to assert claims against Flint Builders, Inc. or its surety on the General Contract bonds.

15.2 If any claim or lien is made or filed with or against Flint Builders, Inc., the Owner, the Project, the Premises or the Project funds by any person claiming that Subcontractor or any subcontractor or other person under subcontract to Subcontractor, or any person or entity employed or engaged by Subcontractor at any tier, has failed to make payment for any labor, services, materials, equipment, taxes or other obligations furnished or incurred in connection with the Work, or if Subcontractor or any subcontractor or other person under subcontract to Subcontractor, or any person or entity employed or engaged by Subcontractor at any tier causes damage to the Work or any other work on the project, or if Subcontractor fails to

perform or is otherwise in default of any term or provision of this Subcontract, Subcontractor shall pay and satisfy any such claim or lien within ten (10) days after within demand to do so, and in the event Subcontractor fails to do so, Flint Builders, Inc. shall have the right to retain from any payment then due or thereafter due an amount which Flint Builders, Inc. deems sufficient to (1) satisfy, discharge and/or defend against any such claim or lien, (2) make good any such nonpayment, failure, damage or default, and (3) defend, indemnify and hold harmless Flint Builders, Inc. and the Owner against any and all losses, damages and costs, including legal fees and expenses, incurred by either or both of them. Flint Builders, Inc. shall require proof that any such nonpayment, claim or lien is fully satisfied, dismissed and discharged before any remaining retained funds will be released. Flint Builders, Inc. shall, in addition, have the right to apply and charge against Subcontractor so much of the amount retained as may be required for the foregoing purposes and Subcontractor shall pay and reimburse Flint Builders, Inc. and the Owner all such losses, damages, and costs incurred by them which exceed the retained funds.

16. Assignment. To the fullest extent permitted by law, Subcontractor agrees that it shall not assign, sell, transfer, delegate or encumber any rights, duties or obligations arising under this Subcontract including, but not limited to, any right to receive payments hereunder, without the prior written consent of Flint Builders, Inc. in its sole discretion and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. In the event Subcontractor assigns, sells, encumbers or otherwise transfers its right to any funds due or to become due under this Subcontract as security for any loan, financing or other indebtedness ("Assignment"), notification to Flint Builders, Inc. of such Assignment must be sent by certified mail, return receipt requested, to Flint Builders, Inc. and the Assignment shall not be effective as against Flint Builders, Inc. until Flint Builders, Inc. provides its written consent to such Assignment. Subcontractor agrees that any such Assignment shall not relieve Subcontractor of any of its agreements, duties, responsibilities or obligations under this Subcontract and the Contract Documents and shall not create a contractual relationship or a third party beneficiary relationship of any kind between Flint Builders, Inc. and such assignee or transferee. This provision does not apply to the assignment upon default provision described in Section 11.2 above.

17. Non-Conforming Work. Subcontractor shall provide sufficient, safe and proper facilities at all times for inspection by the Architect, the Owner or Flint Builders, Inc. of the Work in the field, at shops or at any other place where materials required hereunder are in course of preparation, manufacture, treatment or storage. Subcontractor shall, within twenty-four (24) hours after receiving written notice from Flint Builders, Inc. to that effect, proceed to remove from the site any materials condemned by the Architect, the Owner, or Flint Builders, Inc., whether installed, in progress or in storage, and to take down all portions of the Work which the Architect, the Owner or Flint Builders, Inc. has condemned in writing, as unsound or improper, or as in any way failing to conform to the drawings, specifications and addenda and shall take full financial responsibility for all damage caused by such removal, including, but not limited to any costs associated with temporary construction, materials, facilities or re-work performed by Flint Builders, Inc. and/or other subcontractors deemed necessary by Flint Builders, Inc. for the protection of other construction materials, property or workmen in the interim. In the event that all or any portion of the Work as condemned should be of such a nature, or the time available should be so limited, that in the judgment of the Architect, the Owner or Flint Builders, Inc. it would not be expedient to order the same replaced or corrected, Flint Builders, Inc., at its option, may deduct from the payments due or to become due to Subcontractor such amount or amounts as in the opinion of the Architect or the Owner shall represent the difference between the fair and reasonable value of the Work so condemned and its value had it been executed in conformity with the General Contract.

18. Guarantee/Warranty. For a period equal to that imposed upon Flint Builders, Inc. under the General Contract, but in no event less than one year from the date of the Owner's final acceptance of the Work, Subcontractor guarantees and warrants that the Work complies with the General Contract requirements and is free from defects in material and workmanship. Subcontractor shall remain liable for defects in the Work for the same period Flint Builders, Inc. remains liable to the Owner under the General Contract, or as required by law, whichever is greater. This guarantee/warranty shall include, but is not limited to, the cost of all labor, material and related items necessary to correct any such defect, plus the cost of repairing any damage to other items which may have been caused by the defective material or workmanship. If Subcontractor fails to begin warranty work within forty-eight (48) hours of being notified that such work is necessary, Flint Builders, Inc. may, at its option, perform the necessary remedial work or secure its performance by others and charge Subcontractor with the cost thereof, plus a 15% Administrative Fee. Nothing in this paragraph shall shorten the statute of limitations on any action by Flint Builders, Inc. for breach of contract, negligence or other cause of action against Subcontractor.

19. Clean Up. Subcontractor is responsible for its own "clean-up" and keeping the Work areas "broom clean". If Flint Builders, Inc. determines the Work area to be unsatisfactorily cleaned, Flint Builders, Inc. will so advise Subcontractor. If Subcontractor fails to commence cleaning procedures within twenty-four (24) hours and continue to clean said area to Flint Builders, Inc.'s satisfaction, Flint Builders, Inc. may without further notice execute and complete such clean-up activities as Flint Builders, Inc. deems necessary and charge the cost to Subcontractor or deduct such cost from payments due to Subcontractor.

19.1 Subcontractor is responsible to clean the mud and gravel off its vehicles (including vehicles operated by its subcontractors and suppliers) prior to leaving the site. Any mud or gravel that is tracked onto the surrounding roads shall be removed immediately. Flint Builders, Inc. has the right to clean up surrounding roads immediately upon Subcontractor's failure to do so, the cost of which shall be deducted from the Subcontract Sum.

20. Protection of Work. Subcontractor is responsible for protection of its material, equipment and installation until the final acceptance by the Owner and the Architect. Subcontractor acknowledges that Flint Builders, Inc.'s Builders' Risk Insurance Policy, if required by the General Contract between Flint Builders, Inc. and the Owner, has a deductible amount per occurrence in the amount of . Should a claim concerning materials intended to be incorporated or incorporated into the Project be filed against Flint Builders, Inc.'s Builders' Risk Insurance Policy, Subcontractor shall pay the deductible amount. If said claim exceeds the deductible amount, then any sums due thereafter shall be paid for as stated in the General Contract and/or Flint Builders, Inc.'s Builders' Risk Policy. Should Subcontractor and/or Flint Builders, Inc. or other Subcontractors be involved with the occurrence of loss, the deductible amount will be prorated, based on the amount due each claimant as relating to the total cost of loss. All claims shall be resolved in accordance with Flint Builders, Inc.'s Builders' Risk Policy Provisions. Flint Builders, Inc. encourages Subcontractor to obtain and pay for supplemental insurance covering the deductible amount for any stored materials at the job site but not incorporated into the Project. All materials in transit or stored off site by Subcontractor may not be covered by Builders' Risk Insurance, and are stored at the sole risk of Subcontractor, even if Subcontractor has received payment for said materials.

21. Payment. In consideration of faithful and timely performance by Subcontractor of all the covenants and the conditions aforesaid, Flint Builders, Inc. agrees to pay Subcontractor, subject to other provisions hereof, including authorized additions and deletions, the Subcontract Sum. Payment shall only be due for the portion of the Work actually completed to the satisfaction of Flint Builders, Inc., the Architect and the Owner. Flint Builders, Inc. and Subcontractor expressly agree that all payments due to Subcontractor under this Agreement shall be made by Flint Builders, Inc. out of funds received by Flint Builders, Inc. from the Owner. Upon receipt of such payment from the Owner, Flint Builders, Inc. will then promptly pay Subcontractor those amounts received from the Owner for Subcontractor's Work. Subcontractor agrees that if the Owner fails to make progress payment(s) or final payment to Flint Builders, Inc., Flint Builders, Inc. shall have sixty (60) days to make such payment to Subcontractor after Flint Builders, Inc. has exhausted all reasonable efforts, through legal proceedings and otherwise, to collect from the Owner, or others responsible on the Owner's behalf, such amounts due Subcontractor, and that Flint Builders, Inc. may deduct the pro-rata portion of its costs and attorney fees for such collection efforts from the amount due Subcontractor. Unless otherwise agreed in writing, Subcontractor shall carry on the Work and maintain the Contractor's schedule pending Flint Builders, Inc.'s efforts to collect such amounts due Subcontractor. Subcontractor also agrees that in no event shall Flint Builders, Inc. be responsible for payment to Subcontractor if Subcontractor's failure to perform its obligations under this Agreement has been asserted as a reason for the Owner's failure to make such payments to Flint Builders, Inc.

21.1 Within fifteen (15) days from the date payment is requested, Subcontractor shall furnish Flint Builders, Inc. with a tabulated breakdown of the portion of the Work included in the Payment Request, listing items of the work in sufficient detail as determined by Flint Builders, Inc. to easily facilitate payment requests to be checked by Flint Builders, Inc. as the work progresses.

21.2 Each payment request or invoice must be received by Flint Builders, Inc. by the **20th** day of the month to be processed with Flint Builders, Inc.'s payment application that month. Progress payment applications must be submitted by Subcontractor each month in an amount equal to percent (%) of the estimated value of the labor, materials and equipment incorporated in the construction and materials and equipment suitably stored at the Project site, less the aggregate of previous payments. Subcontractor shall furnish, on behalf of itself, all lower tier subcontractors, material and equipment suppliers and vendors, with each progress payment request Unconditional Waiver and Release Upon Progress Payment (**Exhibit E attached**) from prior payments and Conditional Waiver and Release Upon Progress Payment (**Exhibit E Attached**) for the current pay request properly executed by an authorized representative of Subcontractor and/or sub-subcontractors, suppliers and vendors, returned to FLINT BUILDERS, INC. prior to issuance of subsequent payments. FLINT BUILDERS, INC. reserves the right to request original notarized lien releases from Subcontractor and its lower tier subcontractors, material and equipment suppliers and vendors. Invoices and payment requests received that are inaccurate or without substantiation, or after said day of the month will be held until corrected and substantiated, and then processed with the following month's payment application.

21.3 Promptly after receipt by Flint Builders, Inc. of payment from the Owner, Flint Builders, Inc. shall make payment in the amount and to the extent received from the Owner, less any applicable retainage or other set off.

21.4 Subcontractor shall submit its request for partial payment conforming to the standard Flint Builders, Inc. billing form, with schedule of values attached thereto, representing a true and accurate estimate of the Work completed, and

materials stored during the immediately preceding month or such other immediately preceding period as directed by Flint Builders, Inc.. In addition, if allowed by the General Contract, all invoices and insurance certificates shall be included for all stored materials in an off-site storage area applicable to the payment request.

21.5 Subcontractor shall, additionally with each payment request and, pursuant to Exhibit I of this Subcontract Agreement, submit copies of certified payrolls to document proper payment to Subcontractor's and Subcontractor's subcontractors hourly employees during the covered billing period.

21.6 All sums tentatively earned by Subcontractor by partial or complete performance of the Subcontract Work and any balance of the unearned Subcontract Amount shall constitute a fund for the purpose of:

- a) First, full completion of Subcontractor's Work;
- b) Second, payment of any back charges or claims due Flint Builders, Inc. from Subcontractor on any project;
- c) Third, payment to the sub-subcontractors. Laborers, material and service suppliers of Subcontractor who have filed valid and enforceable bond claims (if project is bonded by Flint Builders, Inc. or Subcontractor).

Such tentative earnings shall not be due or payable to Subcontractor or anyone else claiming in Subcontractor's place or stead, including but not limited to a Trustee in bankruptcy, receiver or assignee of Subcontractor, until and unless Subcontractor's Work is fully and satisfactorily completed and any amounts under (a), (b) or (c) above are fully paid and satisfied. Flint Builders, Inc. may demand written evidence of Subcontractor's financial capability to perform and that Subcontractor has made such payments at any time.

21.7 If Flint Builders, Inc., in its sole discretion, deems it necessary, Subcontractor agrees to receive each of its progress payments and final payment in the form of multiple checks issued jointly between Subcontractor's lower tier subcontractors and major material suppliers and Subcontractor. Lower tier subcontractors that are to receive part or all of their progress payments as joint checks shall additionally submit with their Payment Requests all invoices from each lower tier subcontractor and major supplier and the net payments to be issued to each.

21.8 Payments otherwise due to Subcontractor may be withheld by Flint Builders, Inc. on account of defective work performed by Subcontractor and not remedied, claims filed by third parties arising out of Subcontractor's work, failure of Subcontractor to comply with certified payroll requirements, or upon the presentation of reasonable evidence indicating the probability of the filing of such claims, failure of Subcontractor to make payments to its subcontractors or materialmen for work done or material furnished, or a reasonable doubt that the Subcontract Work can be completed for the balance then owing Subcontractor by Flint Builders, Inc., or Subcontractor delays which hinder the successful, timely progress or completion of the Project. Additionally, it is specifically agreed that Flint Builders, Inc. possesses the right of setoff relative to any monies due and owing Flint Builders, Inc. by Subcontractor, from whatever source.

21.9 No partial payment, or certificate therefore, shall constitute acceptance or approval by Flint Builders, Inc. of the Work or material for which the partial payment is made. No partial payment shall constitute a waiver by Flint Builders, Inc. of any right to require fulfillment of all the terms of this Subcontract. Neither the final payment nor any partial payment, nor any certificate for either, shall constitute acceptance by Flint Builders, Inc. of defective work or improper materials or of any element of Subcontractor's performance determined to be at variance with this Subcontract.

22. Final Payment. Final payment of retainage will be made to Subcontractor after the completion of the project and the Work hereunder is accepted in writing by the Owner, and a complete release of any and all claims against Flint Builders, Inc. has been executed by Subcontractor (and all of its subcontractors and suppliers) has been delivered to and approved by Flint Builders, Inc.. It is specifically understood and agreed that all payments to Subcontractor are dependent, as an express condition precedent, upon Flint Builders, Inc. receiving contract payments, including retainage from the Owner. Subcontractor, in submitting its request for final payment, shall include therewith, from itself, all lower tier subcontractors, each material and equipment supplier and vendor, a fully and properly executed Conditional Waiver and Release Upon Final Payment (**Exhibit "E"**). Within fifteen (15) days of receipt of such final payment Subcontractor shall furnish, from itself, all lower tier subcontractors, material and equipment suppliers and vendors, a fully and properly executed Unconditional Waiver and Release Upon Final Payment to Flint Builders, Inc. (**Exhibit "E"**). FLINT BUILDERS, INC. reserves the right to request original notarized lien releases from Subcontractor and its lower tier subcontractors, material and equipment suppliers and vendors. Should there be any claim, lien or unsatisfied obligation, whether before or after final payment is made, Subcontractor shall deliver payment to Flint Builders, Inc. an amount equal to whatever cost Flint Builders, Inc. and/or the Owner must pay to discharge or defend against any such claim, obligation, lien or action brought, or any judgment thereon and all costs, including legal fees and expenses and a 15% Administrative Fee, incurred in connection therewith.

23. Claims. Any claim which Subcontractor may have against Flint Builders, Inc., including but not limited to claims for alleged extra work, changed conditions, breach of this Subcontract or claims that Flint Builders, Inc. was negligent in connection with or relating to the Project, shall be set forth in detail in writing and delivered to Flint Builders, Inc. within five

(5) calendar days after the factual basis for each claim first arises. Any claims not so submitted shall be deemed waived by Subcontractor. Claims not timely made, in writing, by Subcontractor shall be deemed to have been abandoned and waived. The acceptance and consideration of any claim out of time by Flint Builders, Inc. shall not create any precedent nor "course of dealing" between Flint Builders, Inc. and Subcontractor, nor shall it waive Flint Builders, Inc.'s right to insist on strict adherence by Subcontractor to the contract claims procedures.

23.1 Subcontractor shall not delay or suspend the Work because of the pendency of or the denial by Flint Builders, Inc. of any such claim or because of the continuance of the condition out of which the claim arose, but shall proceed diligently in performing the Work while the claim is being resolved by negotiated agreement or being fully adjudicated. In the event Subcontractor asserts that it should receive additional compensation because of an act or omission on the Owner's part, or someone for whom the Owner is responsible, Subcontractor shall promptly submit the claim to Flint Builders, Inc. in writing at least three (3) working days before the date Flint Builders, Inc. is required to submit such claims under the General Contract. If timely submitted with all documentation required by the General Contract, and subject to the reasonable approval of Subcontractor's claim by Flint Builders, Inc. as provided in Sub-Paragraph 23.3 below, Flint Builders, Inc. will, on behalf of Subcontractor, submit the same to the Owner for its consideration. Failure of Subcontractor to submit such claims in a timely and proper manner shall result in a waiver of such claim and Flint Builders, Inc. is not required to submit it to the Owner, and Subcontractor shall be bound to the same consequence which Flint Builders, Inc. would suffer under the General Contract.

23.2 Subcontractor shall fully cooperate with Flint Builders, Inc. in the submission of such pass through claims, shall prepare all supporting data and do everything else necessary to properly present the claims, including payment of legal fees incurred by Flint Builders, Inc. to prepare, submit and negotiate or otherwise resolve such claim. Should the Owner allow and pay additional compensation to Flint Builders, Inc. on account of such pass through claim asserted by Subcontractor, Flint Builders, Inc. will pay the same to Subcontractor, less Flint Builders, Inc.'s overhead, costs, expenses, legal fees and a 15% Administrative Fee.

23.3 It shall be an express condition precedent to any obligation on the part of Flint Builders, Inc. to make payment of any cost, reimbursement, compensation or damages to Subcontractor hereunder, including, but not limited to claims arising from changes in the Work or delays, that Flint Builders, Inc. shall first be determined to be entitled to such compensation on behalf of Subcontractor and then receive such payment from Owner. Subcontractor expressly acknowledges that Flint Builders, Inc. is not obligated or required to pursue Subcontractor's claim against the Owner if Flint Builders, Inc., in its sole discretion, after review of Subcontractor's claim, has deemed the claim to lack merit in whole or in part.

23.4 If at any time a controversy should arise between Flint Builders, Inc. and Subcontractor with respect to any matter in this Subcontract which Flint Builders, Inc. determines is not a claim, dispute or controversy which should involve or be asserted against the Owner, the decision of Flint Builders, Inc. relating to the subject of the controversy shall be followed by Subcontractor.

24. Dispute Resolution.

24.1 Mediation. If a dispute arises that cannot be resolved through direct discussions, the parties shall participate in mediation under the Construction Industry Mediation Rules of the American Arbitration Association before recourse to any other form of binding dispute resolution. The location of the mediation shall be in Sacramento County, California, unless the parties agree on another location. Once one party provides written notice of mediation with the other party and with the American Arbitration Association, the parties agree to commence such mediation within sixty (60) days of the notice of the request. Either party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person to the other party and to the mediator. Engaging in mediation is a condition precedent to any other form of binding dispute resolution. Agreements reached in mediation shall be binding and enforceable as any other settlement agreement.

24.2 Arbitration. If the dispute has not been resolved by mediation, unless the Contract Documents require otherwise, the claims, disputes or other matters in question between the parties to this Subcontract which arise out of or relate to this Subcontract, whether in contract or tort, shall be subject to and decided by arbitration, with a single arbitrator. Such arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules (supplemented with the Large Complex Construction Rules and without regard to the Supplementary Procedures for Consumer-Related Disputes) of the American Arbitration Association currently in effect. The location of the arbitration shall be in Sacramento County, California, unless the parties agree on another location. The arbitrator shall be selected from a panel of experienced construction arbitrators on the large complex case panel. The award of the arbitrator shall be final and binding and judgment upon the award may be entered in accordance with applicable law. In any arbitration the Arbitrator shall have no power to render an award which has the effect of altering or amending or changing in any way any provisions of this Subcontract. Notwithstanding other provisions in the Subcontract, choice of law provisions to the contrary, this agreement to arbitrate

shall be governed by the Federal Arbitration Act, 9 U. S. C. §1 et seq., which shall not be superseded or supplemented by any other arbitration act, statute or regulation except as specifically set forth in this paragraph.

24.3 In no event may the demand for arbitration be made after the date when institution of legal or equitable proceeding based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. If the American Arbitration Association refuses to conduct the arbitration and the parties cannot agree upon an arbitrator, then the party seeking arbitration may apply to a court for appointment of an arbitrator.

24.4 Subcontractor agrees to joinder or consolidation of any other person in any arbitration involving the Project. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

24.5 Stay of Proceedings. Resolution of disputes between Subcontractor and Flint Builders, Inc. involving in whole or in part disputes between Flint Builders, Inc. and the Owner shall be stayed pending conclusion of any dispute resolution proceeding between Flint Builders, Inc. and the Owner.

24.6 Third-Party Litigation. In the event the Owner or Flint Builders, Inc. are sued in court by a third party who is not required to arbitrate, and the dispute involves Subcontractor or the Work, the parties agree that Subcontractor may be joined into that lawsuit by the Owner or Flint Builders, Inc. without any requirement for arbitration or mediation, and Subcontractor consents to the venue and jurisdiction of such court.

24.7 The prevailing party in any arbitration or legal action between the parties relating to this Agreement shall recover from the other party reasonable legal costs, including attorneys and consultants fees, in connection with such action. The prevailing party is a party who recovers at least 75% of its total claims in the action or who is required to pay no more than 25% of the other party's total claims in the action.

25. Termination. It is understood that the basic assumption underlying the mutual obligations and responsibilities entered into by the parties to this Subcontract is the continued performance with respect to the General Contract that exists between Flint Builders, Inc. and the Owner. If, for any reason, the General Contract between Flint Builders, Inc. and the Owner is breached, rescinded or terminated, Flint Builders, Inc. shall have the right to immediately terminate this Subcontract. In no event shall Flint Builders, Inc. be obligated to Subcontractor for any anticipatory profits or any damages including, but not limited to, consequential damages incurred by Subcontractor as a result of the termination of this Subcontract, unless approved and paid by the Owner. Subcontractor agrees that Flint Builders, Inc.'s decision or determination regarding the pro rata share of any monies received from the Owner as damages or compensation for said breach, rescission or termination of the Agreement shall be final and conclusive and that Subcontractor shall have no claim or cause of action against Flint Builders, Inc. for any reason or greater amount.

25.1 Flint Builders, Inc. shall have the right at any time by written notice to Subcontractor, to terminate this Subcontract without cause and require Subcontractor to cease work. In the event of such a termination for convenience, Subcontractor shall be entitled to payment pursuant to the terms of the Subcontract for the portion of the Work actually completed as of the date of termination, together with reasonable costs of demobilization and such other reasonable costs as may be encountered by Subcontractor and directly attributable to such termination, less the total of all previous payments made to Subcontractor, provided that such amount may be reduced by all amounts for which Subcontractor is liable or responsible. However, Subcontractor shall only be entitled to profit on that portion of the work actually completed and approved for payment to the date of termination together with retainages withheld from prior payments. Subcontractor waives any claim for loss of anticipated profits or other damages including, but not limited to, consequential damages, in the event Flint Builders, Inc. exercises this clause.

26. Miscellaneous.

26.1 No one, other than the parties hereto, their successors, trustees and assigns, shall be entitled to bring action on this Subcontract or the Performance Bond provided by Subcontractor, it being the express intent of the parties that this Subcontract shall not be for the benefit of any third party.

26.2 Any term or provision of this Subcontract which is held to be invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Subcontract or affecting the validity or enforceability of any of the terms or provisions of this Subcontract in any other jurisdiction.

26.3 This Subcontract, together with the documents referred to or incorporated herein by reference, constitute the complete, fully integrated, agreement between the parties. No agent or employee of either party possesses the authority to make, and the parties shall not be bound by nor liable for, any statement, representation, promise or agreement not set forth

herein. All negotiations, offers, discussions or agreements made prior to this Agreement not included herein are hereby voided. No change order, amendment or modification of the terms hereof shall be valid unless reduced to writing and signed by authorized representatives of both Flint Builders, Inc. and Subcontractor. Any article, section, paragraph or other headings contained in this Subcontract are for reference purposes and shall not affect in any way the meaning or interpretation of this Subcontract.

26.4 The terms and provisions shall extend to and be binding upon the successors, trustees and assigns of the parties hereto, and shall be governed and controlled, except as expressly provided herein or as required by the General Contract, by the laws of the State of California and/or federal law applicable in the State of California.

26.5 Subcontractor agrees to comply with the provisions and any applicable local, state or federal ordinance, regulation, status, or other mandate regarding affirmative action and/or minority/women’s business enterprise participation.

26.6 Subcontractor shall confine operations at the Project site to areas permitted by Flint Builders, Inc. and shall not unreasonably encumber the Project site with materials or equipment. Subcontractor is responsible for any damage caused to adjacent property or access roads by Subcontractor, its subcontractors or suppliers during the course of the Work including, but not limited to, soil erosion or run off due to failure to maintain all required storm water runoff protection on the site at all times.

26.7 Failure by Flint Builders, Inc. in any instance to insist upon observance or performance by Subcontractor of any terms, conditions, or provisions of this Agreement or the General Contract shall not be deemed a waiver by Flint Builders, Inc. of any such terms, conditions or provisions, and observance or performance thereof; no waiver shall be binding upon Flint Builders, Inc. unless the same is in writing signed by Flint Builders, Inc. and shall then be for particular instance referred to in writing only; waiver of any one breach shall not be deemed a waiver of any other breach; payment of any sum by Flint Builders, Inc. to Subcontractor with knowledge of any breach shall not be deemed to be a waiver of such breach or any other breach.

26.8 This Subcontract Agreement has not been altered in any manner from its original form as sent by Flint Builders, Inc. to Subcontractor, except for required signature and dates, and as clearly marked and initialed (as approval) by Flint Builders, Inc.. Any changes to this Subcontract Agreement, including all Exhibits hereto, not initialed (as approved) by Flint Builders, Inc. will not be binding on the Parties.

FLINT BUILDERS, INC.

(SUBCONTRACTOR)

By: _____

By: _____

Title:

Print Name: _____

Title: _____

FEI or SS # _____

Business Type _____

(Corporation, Partnership, Sole Proprietorship)

Contractor’s License Type and Number:

REMIT ADDRESS FOR PAYMENTS IF DIFFERENT FROM MAILING ADDRESS _____

Exhibit "A"
To Subcontract Agreement

General Requirements for the Construction of
JOB NAME HERE

Contract #XXXX

I. General Provisions

- 1. Payment Applications.** This Subcontract Agreement has been assigned a Flint Builders, Inc. contract reference number of **XXXX-40XX**. Subcontractor shall use this reference number for Invoices, Change Orders and other accounting documents submitted to Flint Builders, Inc., or risk delay in the processing of payment(s) to Subcontractor.

On or before the close of business on the twentieth, (20th), day of the month, Flint Builders, Inc. must receive all Subcontractor Pay Applications at Flint Builders, Inc.'s job-site or mailed to 401 Derek Place, Roseville, CA 95678. These pay applications shall include projections of the Work to be completed before the end of the respective month. Flint Builders, Inc. shall provide a Flint Builders, Inc. Pay Application Form which must be used for all applications submitted.

- 2. Permits & Approvals.** Subcontractor is responsible for application, approval and payment for all permits and approvals required for the specific performance of Subcontractor's Work not otherwise covered under the general building permit.
- 3. Existing Conditions/Work of Others.** In all cases of interconnection of its Work with existing or other work, Subcontractor shall verify at the site all dimensions relating to such existing or other work. Subcontractor shall promptly rectify any errors due to Subcontractor's failure to verify all such grades, elevations, locations or dimensions without any increase to the Contract Price.
- 4. Existing Conditions/Building Authorities.** Subcontractor has visited the premises and is fully cognizant of the location of the jobsite and is thoroughly familiar with the existing buildings, adjacent conditions, underground utilities, etc. and has complete knowledge of all applicable state and local building and other agencies' codes applicable to this Subcontractor's scope of work. Subcontractor further warrants that Subcontractor shall change, alter or supplement his work as directed by governmental and building official authorities immediately upon said direction and at no charge to the Contract Price, provided such change, alteration or supplement does not materially change the Scope of Work.
- 5. Work of Others.** If any part of Subcontractor's Work depends upon the work of the Owner or another subcontractor, Subcontractor shall, prior to proceeding with the Work, promptly report to Contractor any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of Subcontractor to report discrepancies or defects shall constitute an acceptance of Owner's or other subcontractor's work as fit and proper to receive Subcontractor's Work, except as to defects that may subsequently become apparent in work by others.

Should Subcontractor cause damage to the work or property of Owner or another subcontractor, Subcontractor shall, upon due notice, promptly attempt to remedy or otherwise settle with such other subcontractor by agreement, or otherwise to resolve the dispute.

- 6. Inspections.** Subcontractor shall cooperate with the on-site inspector to the fullest extent as required by the Contract Documents, drawings and specifications.

Subcontractor shall provide a minimum of 48-hour notice when site testing/inspection is required. Subcontractor will not contact the inspector directly without going through Contractor's field management representative.

Subcontractor shall submit a fabrication inspection schedule to Contractor and notify Contractor 30 days in advance of the manufacture of material required to be inspected/tested in accordance with the

Exhibit "A"
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General Requirements for the Construction of
JOB NAME HERE

Contract #XXXX

Contract Documents. Material shipped prior to having satisfactorily passed required inspections shall not be incorporated into the work and Subcontractor shall bear all costs arising there from.

7. **Sequenced Work.** Perform work when and as directed by Contractor. Temporarily omit any section or portion of the Work that may be required by Contractor and later fill in such sections or portions, when directed, at no additional cost. Perform any work-sequence that may be normally required by Contractor at no additional cost. Include any and all site mobilizations as required to complete the Work.
8. **Shop Drawings.** The Subcontractor shall prepare and submit to Contractor such shop drawings as may be necessary to describe completely the details and construction of the Work. Approval of such shop drawings by Contractor and/or Architect shall not relieve the Subcontractor of its obligations to perform the Work in strict accordance with the Plans, Specifications, the Additional Provisions hereof and the other Contract Documents, nor of its responsibility for the proper matching and fitting of the Work with contiguous work and the coordination of the Work with other work being performed on the site.
9. **Coordination with Other Trades.** It shall be the responsibility of the Subcontractor to expedite the submission of all necessary and required submittals, including coordination drawings, in reasonable quantities as required by Contractor, to assure the timely procurement of materials. Subcontractor shall coordinate the on-site placement of material and/or tools & equipment with Contractor so as not to impede operations by others that are working concurrently on the site. The designated storage place, if any, shall be kept neat and clean and all damages thereto, or to its surroundings, shall be repaired by this Subcontractor at no additional cost.

Subcontractor shall coordinate and cooperate in all respects, during every phase of Subcontractor's performance of the work, with Owner, Contractor, Architect, other Subcontractors, utility provider and any public authority or third party who may be employed or engaged in activity on or near the site in relation to the project. Subcontractor recognizes and acknowledges that its coordination and cooperation obligations are essential terms of the Subcontract, and shall include, without limitation, making work areas available to other subcontractors, and occasional disruptions to Subcontractor's performance of the work.

10. **As-Built Documents.** Subcontractor includes the continuous maintenance and final submission of as-built documentation and delivery to Contractor upon completion of his work, and prior to final payment. This includes retaining the services of a licensed surveyor, if required, to perform an as-built survey upon completion of the work. As-built documents shall be maintained at Subcontractor's site office and shall be current at all times during the progress of the work. Contractor may request periodic submission or review of in-progress as-built documents to ensure continuous compliance throughout the project.

Subcontractor is to provide as-built drawings locating all embed placement, including any required surveying to insure that any deviations from Subcontractor's shop drawings are identified prior to fabrication of work by others.

11. **Mock-ups.** All costs associated with "mock-up" work (where applicable) required to coordinate Subcontractor's work with that of another subcontractor are included. The intent of such mock-ups includes, without limitation, establishing final design, construction sequencing, dimensions, coordination and quality of the workmanship that are to be continued and expected once such mock-ups have been approved by the Architect, Consultants, Owner and Contractor. Mockup testing shall be performed by others.
12. **Site Access.** Subcontractor and its affiliates and sub-subcontractors shall limit equipment and vehicle usage to the Contractor designated ingress, egress and service areas. Upon request by Contractor, all

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equipment and material shall be removed from designated ingress, egress and service areas immediately. All unauthorized vehicles and/or non-compliant vehicles on the project site will be removed or towed at Subcontractor’s expense.

Subcontractor shall bear the full responsibility and cost for permits, and all other traffic control associated with his deliveries to the satisfaction of Contractor, Cal Trans and other agencies having jurisdiction.

- 13. Parking** – Subcontractor is responsible for all employee parking and travel time between any parking area and the project site work area. No onsite or offsite parking will be provided for Subcontractor’s staff, labor force, suppliers or sub-subcontractors. Note: Construction workers, employees, nor suppliers shall be allowed to use the existing facility’s parking lots and spaces. Subcontractor shall be responsible for and hold Contractor harmless from any costs associated with towing, removing, relocating, damages, fines, or other expenses resulting from Subcontractor’s failure to abide this notification.
- 14. SWPPP** – Development and initial implementation of the Project’s Storm Water Pollution Prevention Plan shall be by others. However, Subcontractor shall comply with all best management practices (BMPs) mandated by the SWPPP and shall restore any of the Plan’s measures disturbed or destroyed by Subcontractor at its sole expense.
- 15. Site Communications** – Subcontractor shall purchase for its site superintendent and foreman a two-way communications radio system that is fully compatible with Contractor’s project system.
- 16. Site Deliveries.** All deliveries of material shall coordinate with Contractor’s field personnel in accordance with the site logistics plan and/or the hoisting program as applicable. Subcontractor shall schedule all deliveries in advance, as required by the Contractor’s Superintendent. Subcontractor Price includes off-hour deliveries, as deemed necessary by Contractor.

The Subcontractor, in making or ordering shipments, shall not consign or have consigned materials, equipment or any other items in the name of Flint Builders, Inc.. Flint Builders, Inc. is under no obligation to make payments for charges on shipments made by or to the Subcontractor, but may at its option, pay such charges, in which case the Subcontractor shall reimburse Flint Builders, Inc. for the amount of such payments plus a service charge of 25% of the amount so paid.

- 17. Material/Equipment Loading** – Subcontractor shall limit material and equipment loads on the structure to loads only specifically approved or specified by the engineer of record, including location, weight and dynamics. Subcontractor shall provide a temporary loading plan for approval by the Structural Engineer prior to delivering materials to the site for which such loads are imposed on the structure. Subcontractor shall pay for Structural Engineer’s review and recommendations, if required. Notwithstanding the above, Contractor still maintains the right and authority to determine where materials can be stocked.

Subcontractor shall have sole responsibility for loads imposed by equipment, on shoring and/or site utilities, including tanks, duct banks and vaults, used by or in the employ of Subcontractor.

To the fullest extent permitted by law, Subcontractor shall indemnify Flint Builders, Inc. from and against any and all claims, damages, and expenses, including, without limitation, attorneys' fees arising out of death or injury of any person, or damage to the property of any person, including the property of Subcontractor or its other contractor(s), caused by breach or negligence, including Flint Builders, Inc.'s, relating to the use by Subcontractor or its other contractor(s) of any vehicle or equipment of Flint Builders, Inc..

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- 18. Containment of Debris.** In planning and performing the Work, every effort shall be made to minimize the noise, fumes, dirt, vibration, liquids, dust and any other physical intrusion into the balance of the project and facility. The reduction of dust generated by excavation and other construction activities will be achieved by using construction industry-accepted methods such as watering the site and covering load material in trucks.
- 19. Protection of the Work.** Subcontractor shall be responsible for formulating and implementing a security program for the protection of its Work, materials and equipment. The security program shall be designed to protect work in progress and materials stored at the Site or other locations. Subcontractor will also exercise caution to ensure structure and finishes are not damaged during equipment and/or material delivery and/or installation.
- 20. Temporary Site Offices.** Subcontractor is not entitled to an on-site project office, but may be granted permission by Contractor for limited space at any time during the course of the project. Where granted, Subcontractor shall be responsible for providing and maintaining on-site trailers/job-site offices, changing areas for their personnel, including all required utility connections and utility usage costs and material staging areas for Subcontractor’s work. Locations of the above must be reviewed and approved in writing by Contractor or as otherwise instructed by Contractor. Subcontractor includes the costs of relocation of his office/changing/storage areas and temporary utilities to allow the work of the following trades to proceed or as otherwise instructed by Contractor.
- 21. Scaffolding.** Subcontractor includes all required scaffolding, working platforms, ladders, and other temporary works (including required permits) necessary for completion of his work in accordance with job progress. Scaffolding must be inspected by a competent person, prior to use, each day. If scaffolding, ladders or other temporary works are provided by Flint Builders, Inc. for use by the Subcontractor, Subcontractor is responsible for all daily inspections and training and will hold Flint Builders, Inc. harmless from damage or injury. Subcontractor shall not alter or dismantle any scaffold or temporary works without prior written consent of Flint Builders, Inc. Superintendent.
- 22. Temporary Lighting & Power**
Flint Builders, Inc. shall provide main temporary power service and one temporary 120/208V electrical panel (or spider box) per floor. Temporary panel shall feed 4 quad GFI receptacles on 20 amp 120V breakers. Subcontractor is responsible for distribution thereafter as required for its work. Subcontractor shall provide all extension cords and maintenance thereof for its work. Any power other than 120V receptacles shall be the responsibility of Subcontractor. Contractor shall not provide power for welding machines.
- Contractor shall provide general site lighting meeting OSHA minimum requirements. Subcontractor shall provide all additional task lighting for its work as required.
- 23. Utility Location.** Subcontractor includes notification of all utilities, USA Dig and any other regulatory agencies having jurisdiction, prior to beginning excavation for the work for utility locations and assumes all responsibility for damage to said utilities if they occur as a result of the actions of this Subcontractor, his employees or any sub-subcontractors. Such notifications must be made with sufficient lead times so as not to delay the performance of Subcontractor’s work in accordance with the project schedule.

II. Safety & Cleanup

- 1. Subcontractor’s Site Safety Plan.** Subcontractor shall submit its project specific safety program to Contractor prior to the start of the work. In addition to the requirements of OSHA, the project specific program shall provide, for inclusion in the master site safety program the following;
- 24 hour emergency contact person, and phone number

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- (2) Alternate emergency contacts
- Listing of site personnel with CPR, First Aid and OSHA (8, 10 or 30 hour) Training
- Contractor's Incident & Injury Free (IIF) Program
- Safety & Environmental Management System (SEMS)
- Other as required by Contractor

2. **Safety Meetings and Inspections.** Subcontractor shall make daily safety inspections and submit a recording of each to Contractor using the form provided to Subcontractor by Contractor. Subcontractor shall hold weekly toolbox safety meetings with its workforce and submit weekly minutes to Contractor's superintendent along with its daily reports. Subcontractor shall also attend project wide safety meetings at times and locations determined by Contractor.
3. **Material Safety Data Sheets (MSDS).** Subcontractor, its affiliates, sub-subcontractors and material suppliers shall provide and Subcontractor shall review and submit to Contractor (and where required, Public Agencies with Jurisdiction) three (3) copies of Material Safety Data Sheets, listing all health or other hazards, for all material, including commonly used construction material, to be incorporated in or used in the prosecution of the Work. Subcontractor shall take care to NOT submit MSDS's for materials not used on or delivered to the site.

Subcontractor, its affiliates and sub-subcontractors shall train their employees regarding any and all Hazardous Substances present on the job site. Prior to an employee commencing work at the job site, Subcontractor shall provide Contractor with Certificates of Hazardous Communication Training (in a form to be provided with the sub-subcontractors) for all employees working at the job site, certifying that their employees have been trained within the past twelve months regarding any and all Hazardous Substances that may be present on the job site.

4. **Site Visitors.** Subcontractor shall insure that all its personnel and site visitors wear hard-hats, safety glasses, and all other appropriate safety protection as required by OSHA, at all times while on the job site. Subcontractor shall ensure that all visitors check in at Contractor site office. Further, Subcontractor shall ensure that all visitors who are not covered by its certificate of insurance complete and sign Contractor Project Site Liability Waiver prior to entry onto the site. These waivers shall be available at Contractor site office.

Subcontractor shall be responsible to obtain all security clearances for its employees, agents, subcontractors and suppliers.

5. **Cleanup and Waste Removal.** This Subcontractor shall be responsible for daily cleanup and removal of all debris to an approved and appropriate dumpsite. If a dispute arises between Subcontractor and another subcontractor as to their responsibility for cleaning up, assessment of the cleanup will be determined solely by Contractor. Upon completion and before final acceptance of the work, any remaining debris and protective coverings and rubbish, left over materials, tools and equipment shall be removed by Subcontractor from the jobsite.

Subcontractor shall participate in the recycling program and separate his waste and depositing it into appropriate containers as designated by Contractor.

Subcontractor shall include a line item in its Schedule of Values for clean up costs, in the amount of 3% of the total subcontract value, or \$5,000 whichever is greater. A prorated portion of said amount may be applied monthly to this item in each of the Payment Applications submitted by Subcontractor. Should Subcontractor fail to meet its obligations with regard to clean-up, Contractor may at its sole discretion withhold that portion of the payment until the following period, and may continue to withhold such payments until such time as Subcontractor satisfactorily complies with the provisions herein.

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6. **Material & Equipment Storage.** Subcontractor shall not encumber the site with any materials or equipment without prior, explicit written permission from Contractor's Superintendent. Subcontractor shall remove and or relocate material and equipment as directed by Contractor, at its own expense.
7. **Quality Control Plan.** Subcontractor agrees to participate in and support the project's Quality Control Plan. Reports, as called for in the Plan shall be submitted to Flint Builders, Inc.'s project manager or representative of his choosing, or as appropriate, the Subcontractor shall assist such representative in the report's preparation.
8. **Fire Watch.** Subcontractor shall take necessary measures and safeguards to protect the work, including but not limited to providing fire watch during and for at least 30 minutes after the use of welding or other such burning techniques or equipment used in the construction of the Work. Hot Work permits shall be obtained from Contractor within 24 hours prior to performance of such Hot Work activity. For all other work, Subcontractor shall provide sufficient watchmen as necessary to ensure the safety of the site, general public and the proper protection of the work at all times.
9. **Flag/Watch Persons.** Subcontractor will provide flagmen/watch persons as required for the safe access and egress from the jobsite of his vehicles and sub-subcontractor's vehicles. Subcontractor shall be responsible for maintaining the cleanliness of all access areas and care shall be taken so as not to deposit debris on the surrounding streets.
10. **Hoisting by Subcontractor.** Prior to commencing work at the jobsite, Subcontractor shall file its annual crane certifications with Contractor.
11. **Safety Enforcement.** All Contractor safety requirements are mandatory and will be followed by all site personnel regardless of tier or contractual relationship. Subcontractor shall not be entitled to any additional costs to comply with any government agency or Contractor safety requirements. Contractor has the authority to write up safety notices to Subcontractor for non-compliance of actions or conditions; Subcontractor has the responsibility to observe and correct said conditions or acts in a timely manner.

III. Other Provisions

1. **Regarding Weather Delays** - Subcontractor includes in the contract sum the project area's normal rainfall average included in Subcontractor's Performance Schedule.
2. **Resources.** Subcontractor shall provide sufficient resources at all times to maintain progress of the job. A shortage of labor in the industry or the location of the Project shall not be accepted as an excuse for not properly manning the job.
3. **Certified Payroll.** Subcontractor shall be required to provide certified weekly payroll reports showing payment of wages and benefits to each employee. This requirement applies regardless of whether or not this is a Prevailing Wages project. Furthermore, such certification shall be provided under penalty of perjury for falsification of such documents provided hereunder.
4. **RFI's.** Subcontractor acknowledges that the project will require an above average submission of Requests for Information (RFI's) and that no monetary claims, extensions of time, or personnel costs will be entertained as a result of the anticipated number of RFI's.
5. **Allowances.** Unless otherwise provided in the Contract Documents, allowances shall cover all costs to Subcontractor. Whenever the actual cost of an allowance item included in the work is more than or less than the allowance, the allowance amount shall be adjusted to the actual cost by change order.

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- Payments for allowance items should be made in accordance with the normal progress payment procedures of the contract. The impact, if any, on Owner's decisions with respect to the utilization of the allowance items on other aspects of the work on or Subcontractor's schedule will be affected in accordance with the change order procedures of this Subcontract.
6. **Daily Reports.** Subcontractor shall submit daily reports that describe manpower, deliveries, incidents, lost time injuries, work performed, where and in what quantities the work was installed and other relevant information, on a daily basis to Contractor. Daily Reports shall not include opinions or subjective commentary of any kind. Any reports containing subjective or editorial comments or any information other than facts shall be rejected and the Subcontractor will be required to re-submit a new Daily Report in its place.
 7. **Meetings.** Subcontractor's field supervisor and project manager shall attend a preconstruction meeting with Contractor prior to start of Work, to review scope of Work, work site policies, safety requirements and other relevant information. Additionally, Subcontractor shall attend all regularly scheduled meetings as requested by Contractor. Such attendance at all meetings shall be included in the Subcontract Price, and any such representative attending the above mentioned meetings shall have the authority to make decisions and commitments on behalf of Subcontractor.
 8. **Secure Facility.** Subcontractor shall be responsible to obtain all security clearances that may be required for its employees, agents, subcontractors and suppliers.
 9. **Jobsite Decorum.** In addition to any policy which may be enforced by the Owner with regard to worker behavior, Subcontractor, its employees, agents, vendors, and subcontractors shall exercise appropriate decorum for the jobsite. Playing of am/fm radios or other sources of recorded music, including those with headphones, shall not be allowed on the jobsite. Subcontractor shall control its employees, agents, vendors and subcontractors so as to prevent unwanted interaction with Owner's staff, personnel, clients, or visitors, or any other member of the public at large.
 10. **Field Directives.** At no time shall Subcontractor proceed with work outside of the scope of the Work described in the Subcontract (and its Change Orders) without explicit written directive, given and signed by Flint Builders, Inc.'s project manager. Should Subcontractor perform any work outside of the scope of the Subcontract solely on the basis of verbal direction of anyone, such work shall be considered to be within the scope of the Subcontract, and payment for that work will be denied by Flint Builders, Inc.. Signatures on daily time tickets, or field work orders written by the Subcontractor shall not be considered to constitute explicit written directive given by the project manager.
 11. **Days.** All days are defined as calendar days; i.e. 1 week = 7 days = Monday through Sunday unless otherwise defined in the Contract Documents.
 12. **Schedule.** This Subcontractor will adhere to the schedule of milestones and durations as established by the Contract. The progress to meet those milestones will be of utmost importance. Missing a milestone date will precipitate issuance of a recovery plan by the Subcontractor acceptable to the Contractor, so as to ensure corrections are made to meet the next milestone date.
 13. **O & M Manuals.** Where training of Owner personnel is required by the Specifications, Operations and Maintenance manuals shall be due a minimum of 45 days prior to such scheduled training. Additionally, any lesson plans required by the Contract Documents shall be submitted 14 days prior to any such scheduled training sessions.
 14. **Billing of Close-out Documents and Attic Stock.** Subcontractor shall include 5% of the value of the Subcontract Price as a separate line item in the Schedule of Values for Close-Out. Submission of Close-Out documentation and material, including without limitation, as-built drawings, O & M

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To Subcontract Agreement**

**General Requirements for the Construction of
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Contract #XXXX

manuals, training manuals, warranties, special tools, attic stock, etc. shall be made as far in advance of completion of the Work as is practical, and at a minimum 60 days prior to Subcontractor’s final Application for Payment, to allow proper review and comment prior to payment thereof.

- 15. Warranty:** Upon receiving written acceptance by both the Architect as well as the Contractor, the Subcontractor is to provide a 12-month warranty for this scope of work, unless noted otherwise in the Contract Documents. Any warranties required in the Contract Documents to be in excess of one (1) year shall be included with the submittals for approval by Flint Builders, Inc. and the Architect.

Exhibit “ B ”
Work Category 0 Title
To Subcontract Agreement between
Subcontractor and Flint Builders, Inc.
Furnish and Install

DESCRIPTION OF SUBCONTRACTORS SCOPE OF WORK

The scope of work specifically includes, but is not limited to the following:

- 1.0 GENERAL:** Throughout the Exhibit “B”, the word “furnish” shall mean: deliver FOB jobsite, unload by Subcontractor’s own equipment, to a location determined by or acceptable to the Contractor’s Superintendent. “Provide” shall mean furnish and install the Work in its final, intended state and location, in or on the building or site, as applicable.
- 1.1 **Compliance.** All work must be performed in accordance with applicable laws, ordinances, rules, regulations and orders of public authorities with jurisdiction (the “Public Agencies with Jurisdiction”)
- 1.2 **Purchase of Plans & Specifications.** Upon Contract award, Contractor will issue (1) field set and (1) office set of the contract plans and specifications to Subcontractor. As Subsequent Documents are published for the Project, (1) field set and (1) office set of each shall be issued to the Subcontractor. Subcontractor will purchase additional sets of contract plans and specifications as well as updates, bulletins or revisions to the contract plans and specifications from **Consolidated Reprographics**, located at _____.
- 1.3 **Layout.** Contractor shall provide layout of **every other major gridline (i.e. A, C, E; 1, 3, 5)**, on every floor on the concrete formwork and on the finished slab. Contractor shall provide **two benchmarks** for elevation control on at least one of the core walls. All other layout is by this Subcontractor. Subcontractor is solely responsible for proper layout of the work, and for all lines and measurements for all the work executed under the Contract Documents.
- 1.4 **Concrete Structure.** Subcontractor understands that the structure above the podium level is post-tensioned concrete and that unless noted otherwise by the Engineer of Record, no drilling, coring, fastening etc. to the structure will be permitted unless approved in writing by the Contractor which will be conditioned on the receipt of satisfactory x-rays/ ultra sound or other appropriate non destructive testing by the Subcontractor. Electronic submittals if required will be in AUTOCAD latest version format.
- 1.5 **Occupied Facilities.** Subcontractor understands that the Project is located within the boundaries of an operating facility and limitations of access, travel, parking and congestion exist in this area. The Subcontractor agrees to take great care while working at the site and to follow all of Contractor’s rules regarding site usage.
- 1.6 **LEED.** Subcontractor shall include in its bid, one Leadership in Energy and Environmental Design (LEED) workshop.
- 1.7 **Project Logistics Plan.** Attached in Project Information and Procedures Manual is a plan that indicates the proposed layout of the fencing, project offices, hoists, tower cranes and other temporary facilities that are intended for the construction of the project. Contractor reserves the right to amend this plan.
- At temporary facilities locations, such as the entry points for hoists, block-outs for cranes, etc., patching, repairs, fill-in and ‘comeback’ as related to the proper completion of this Subcontractor’s operation shall be completed at the direction of the Contractor and is included as part of this Subcontract.
- 1.8 **Project Hoisting Plan.** Attached in Project Information and Procedures Manual is the Project Hoisting Plan which includes instructions for Subcontractor’s use of the Contractor supplied cranes and man/material hoists. Where this plan, together with the logistics plan are not sufficient for Subcontractor’s needs, Subcontractor shall provide additional equipment, manpower or materials as required and approved by Contractor.
- 2.0 SPECIFIC PERFORMANCE:** Furnish all engineering, drawings, submittals, labor, materials, tools, equipment, hoisting, scaffolding, temporary construction and appurtenances as required to perform the work for the Crane Rental

and Operating Labor, as called for in the Contract Drawings and Specification Sections 00000, as well as applicable provisions of Division 1 - General Requirements, and other sections listed below:

SPECIFICATION SECTION	SPECIFICATION SECTION TITLE
------------------------------	------------------------------------

INCLUSIONS:

2.1 Provide ...

3.0 CLARIFICATIONS:

3.1 **Intent.** Subcontractor acknowledges and agrees that the intent and meaning of the Contract Documents is such that the Subcontractor shall provide installation that is complete with all items, related and/or incidental work, and appurtenances necessary, incidental to or customarily included, even though each and every item may not be specifically called out or shown on the drawings and/or specifications. Additionally, Subcontractor represents and agrees that it has conducted a thorough examination of the Contract Documents (including but not limited to their sufficiency) and the work to be performed by Subcontractor pursuant to this Agreement will result in fully functional and operable systems and/or installations regardless of whether or not all required work is included or indicated therein.

4.0 EXCLUSIONS:

4.1 Temporary power

5.0 UNIT PRICES: In accordance with paragraph 2.0, inclusive of Overhead and Profit. Unit prices are good for the duration of the Project.

6.0 ALTERNATES:

7.0 EQUIPMENT RATES:

Equipment rates are inclusive of all equipment for Subcontractor and Subcontractor's lower tier Subcontractors, which include all fuel, maintenance, profit and overhead (including, but not limited to, management, supervision, engineering, services, consumables, supplies, tools, cleaning devices, testing devices, warehousing, temporary facilities, safety equipment, insurance, taxes, licenses, permits, profit, overhead (both jobsite and home office), fees and all other items, tangible or intangible). The rates for equipment shall not include any labor. It shall be solely Flint Builders, Inc.'s option to utilize these rates for any modifications of Subcontractor's scope of work.

**Exhibit “C”
To Subcontract Agreement**

**Insurance Requirements for the Construction of
Job Name Here**

Project #XXXX

Insurance: Subcontractor and its subcontractors, if any, of any tier (accepted by Flint Builders, Inc. per Paragraph 9 of the Subcontract Agreement) shall at its (their) expense, procure and maintain insurance on all of its operations under this Subcontract whether its operations are by the Subcontractor or by anyone for whose acts subcontractor might be liable, in companies authorized to do business in the State of California with a Best’s Insurance Rating of A VII or better or otherwise acceptable to Flint Builders, Inc. as follows:

1. Workers’ Compensation and Employer’s Liability Insurance. Workers’ Compensation insurance shall be provided as required by any applicable law or regulation. Employer’s Liability insurance shall be provided as in amounts not less than \$1,000,000.00 each accident for bodily injury by accident, \$1,000,000.00 policy limit for bodily injury by disease and \$1,000,000.00 each employee for bodily injury by disease. If there is an exposure of injury to Subcontractor’s employees under the U.S. Longshoremen’s and Harbor workers’ Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims. If work is outside of California Subcontractor needs to include All States Endorsement

2. General Liability Insurance.

2.1. Subcontractor and its subcontractors of any tier shall carry primary Commercial General Liability insurance covering all operations by or on behalf of the Subcontractor providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- a. Premises, Operations and Mobile Equipment.
- b. Products and Completed Operations for a period of time equal to California’s statute of repose.
- c. Contractual Liability, including subcontractor’s bodily injury, insuring the obligations by the Subcontractor in this agreement.
- d. Broad Form Property Damage (including Completed Operations)
- e. Explosion, Collapse and Underground Hazards.
- f. Personal Injury Liability.
- g. Liability of independent contractors.
- h. Construction means, methods, techniques, sequences and procedures, including safety and field supervision.

2.2. The limits of liability for the insurance described in this Section shall not be less than:

- \$1,000,000.00 each occurrence (combined single limit for bodily injury and property damage)
- \$1,000,000.00 for personal injury liability
- \$2,000,000.00 aggregate for products-completed operations
- \$2,000,000.00 general aggregate

The “general aggregate” limit shall apply separately to Subcontractor’s and all tiered sub-subcontractor’s work under this contract.

2.3. Items 2.1.1-2.1.8 above shall not be subject to any of the following limiting or exclusionary endorsements:

- a. Subsidence or earth movement
- b. Prior acts or prior work
- c. Action over – precluding indemnity for passive acts of Contractor contributing to injury of a Subcontractor’s employee
- d. Contractual limitation – eliminating cover for assumed liability
- e. Supervisory or inspection service limitation

**Exhibit “C”
To Subcontract Agreement**

**Insurance Requirements for the Construction of
Job Name Here**

Project #XXXX

- f. Insured vs. insured cross suits
- g. Clauses terminating coverage after a designated period of time
- h. Residential or habitational limitation if the Work includes residential or habitational work
- i. Classification limitation limiting coverage for work to be performed
- j. Defense inside limits provision
- k. Sub-contractor insurance coverage exclusions for failure to satisfy coverage conditions

3. “Claims Made” and “Modified Occurrence” Policy forms.

General Liability Insurance provided by Subcontractor and all tiered sub-subcontractors under a “Claims Made” policy form are not acceptable.

4. Umbrella Liability Insurance.

- 4.1 Covering all operation by or on behalf of the Subcontractor, providing the same coverages as in the insurance the underlying primary General Liability, Auto Liability and Employers Liability:
- 4.2 The limits of liability for the insurance described in this Section shall not be less than:
 - \$1,000,000.00 each occurrence
 - \$1,000,000.00 aggregate for products-completed operations
 - \$1,000,000.00 general aggregate

5. Additional Insured (General Liability and Automobile Insurance).

- 5.1. **Flint Builders, Inc. and _____ (Owner)** *[Include the architect and its consultants if the Contract between Flint Builders, Inc. and Owner require Flint Builders, Inc. to list them as additional insureds.]* and their officers, directors and employees, shall be named as additional insureds under Subcontractor’s and all tiered sub-subcontractor’s insurance policies.
- 5.2. Coverage for Flint Builders, Inc. and Owner *[Include the architect and its consultants if the Contract between Flint Builders, Inc. and Owner require Flint Builders, Inc. to list them as additional insureds.]* and their officers, directors and employees as additional insureds, and to do so to the extent allowable by law, on a primary and noncontributing basis, including both premises-operations and products/completed operations coverage and will show evidence of endorsement on the face of the certificate of insurance. Provide a policy provision or an endorsement with coverage at least as broad as Insurance Services Office (ISO) Additional Insured endorsement forms CG 2010 11 85 or CG 2010 7 04 and CG 2037 7 04, or equivalent, under Subcontractor’s and all tiered sub-subcontractor’s policies, if any. This Section 5 shall, in no event, be construed to require that additional insured insurance coverage be provided to a greater extent than permitted under the statutes or public policy of the State of California.
- 5.3. The policy shall be endorsed to stipulate that the insurance afforded the additional insured’s shall apply as primary insurance and that any other insurance or self-insurance maintained by Flint Builders, Inc. or Owner shall be in excess only and shall not be called upon to contribute with this insurance.

6. Automobile Liability Insurance.

Subcontractor and all tiered sub-subcontractors shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall be not less than \$1,000,000.00 combined single limit each accident for bodily injury and property damage.

7. Certificates of Insurance.

**Exhibit “C”
To Subcontract Agreement**

**Insurance Requirements for the Construction of
Job Name Here**

Project #XXXX

- 7.1. As evidence of the insurance required by this Agreement, certificates shall be furnished by Subcontractor and all tiered sub-subcontractors to Flint Builders, Inc. before any work hereunder is commenced by Subcontractor or any tiered sub-subcontractor. The certificates of insurance shall be issued using ACORD 25 (2010 – 05) forms and shall provide that there will be no cancellation or lapse in coverage without thirty (30) days prior written notice to Flint Builders, Inc.
- 7.2. The following will be endorsed to add to the policy:
“The insurance company agrees that policy No. _____ shall not be canceled or materially changed or allowed to lapse until 30 days after Flint Builders, Inc., 401 Derek Place, Roseville, CA 95678, has received written notice of cancellation of change or lapse, as evidenced by return receipt of registered letter and it is agreed further that, as to lapsing, such notice will not be valid if mailed more than 45 days prior to the expiration date shown on this policy.”
- 7.3. The Certificate of Insurance furnished as evidence of Comprehensive General Liability or Commercial General Liability insurance carried by the Subcontractor and all tiered sub-subcontractors shall include a copy of the policy provision or the additional insured endorsement adding the Flint Builders, Inc., Owner, and, if required in Paragraph (d) of this Exhibit C, the Architect and its consultants as Additional Insured and shall provide that insurance for such additional insureds as primary insurance and that other insurance maintained by the Flint Builders, Inc., Owner and Architect and its consultants, if applicable, shall not be called upon for contribution.

8. Waiver of Subrogation

All insurance policies of the Subcontractor and all tiered sub-subcontractors must contain a Waiver of Subrogation rights against that of Flint Builders, Inc., the Owner and, if applicable, the Architect and its consultants, and must be included on the certificate of insurance. It must state that “A Waiver of Subrogation also applies in favor of the certificate holder.”

9. Miscellaneous

- 9.1. Standard ISO Form CG 00 01 exclusions will be allowed. Allowance of any additional exclusions or coverage-limiting endorsements is at the sole discretion of the Contractor.
- 9.2. If the Work is of a substantial maritime nature, special maritime coverages such as Longshore and Harbor Workers, Jones Act and Protection and Indemnity coverage shall be required as set forth in Section 26.
- 9.3. If the Work includes design/build work or services, Subcontractor shall obtain Professional Liability coverage, with stipulating amounts of coverage of at least \$2,000,000.00 per claim with a deductible of not more than \$50,000.00 per claim.
- 9.4. If the Work involves the moving, lifting, lowering, rigging or hoisting of property and/or equipment, Subcontractor shall obtain Rigger’s Liability coverage to insure against loss or damage to such property or equipment.
- 9.5. If the Work involves the remediation of, or creates an exposure to, any hazardous materials, Subcontractor shall maintain Contractor’s Pollution Liability coverage.
- 9.6. The required insurance shall be subject to the approval of Flint Builders, Inc., but any acceptance of insurance certificates Flint Builders, Inc. shall in no way limit or relieve Subcontractor or any tiered sub-subcontractor of the duties and responsibilities by him in this Agreement. If higher limits or other forms of insurance are required in the Contract Documents, Subcontractor and all tiered sub-subcontractors will comply with such requirements.
- 9.7. Flint Builders, Inc. may take such steps as are necessary to assure Subcontractor’s and all tiered sub-subcontractor’s compliance with the obligations under this Exhibit C are performed. In the event Subcontractor and/or any of its sub-subcontractors, of any tier, fail to maintain any insurance coverage required under this Subcontract Agreement, Flint Builders, Inc. may obtain such coverage and charge the

**Exhibit “C”
To Subcontract Agreement**

**Insurance Requirements for the Construction of
Job Name Here**

Project #XXXX

expense to Subcontractor, or terminate this Subcontract Agreement. Subcontractor shall include the provisions of this entire Exhibit C in any subcontracts it issues for any work to be performed on the Project, and shall further require that the provisions of this Exhibit C be included in any subcontracts issued by its subcontractors, of any tier. No payment for any work performed under the Subcontract shall be due and payable until the requirements of this Exhibit C have been met to the reasonable satisfaction of Flint Builders, Inc.

- 9.8. Subcontractor shall provide Flint Builders, Inc. copies of insurance policies for insurance coverages required by this subcontractor agreement and Exhibit C hereto when requested in writing.

**Exhibit “D”
To Subcontract Agreement**

**List of Drawings for the Construction of
Job Name Here**

Contract #XXXX

Sheet	Description	Date

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 progress 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 progress 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: _____

Date of Signature: _____

Exhibit "E"

**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 check is 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: _____

Exhibit "E"

**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 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: _____

Bond No.: _____

EXHIBIT F**SUBCONTRACT PERFORMANCE BOND
FLINT BUILDERS, INC. OBLIGEE**

KNOW ALL MEN BY THESE PRESENTS: That _____
 _____ (here insert the
 name and address, or legal title of Subcontractor) as Principal, hereinafter called Principal, and _____
 _____ (here
 insert the name and address of Surety) as Surety, hereinafter called Surety, are held and firmly bound unto
 FLINT BUILDERS, INC. as Obligee, hereinafter called Obligee, in the amount of _____
 _____ DOLLARS (\$ _____), for the payment
 whereof Principal and Surety bind themselves for the performance of the Subcontract set forth below,
 their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these
 presents.

WHEREAS, Principal has by written agreement dated _____ entered
 into a Subcontract with Obligee for _____
 _____ in accordance with Drawings and
 Specifications prepared by _____
 _____, which Subcontract is by reference made a part
 hereof, and is hereinafter referred to as the Subcontract.

NOW, THEREFORE, the parties agree as follows:

1. **EFFECT OF OBLIGATION.** If the Principal performs the Subcontract, then this bond shall be null and void; otherwise it shall remain in full force and effect. Provided further, the Surety's total obligation shall not exceed the penal amount of this bond.
2. **ALTERATION NOTICE WAIVER.** The Surety hereby waives notice of any change, alteration or extension of the Subcontract, including but not limited to the Subcontract price and/or time, made by the Obligee.
3. **PRINCIPAL DEFAULT.** Whenever the Principal shall be, and is declared by the Obligee to be in default under the Subcontract, with the Obligee having performed its obligations in the Subcontract, the Surety after receipt of written notice of the default from the Obligee may promptly remedy the default, or shall promptly notify the Obligee of its election that the Surety shall immediately proceed in one of the following methods to remedy the default:
 - 3.1 **COMPLETE SUBCONTRACT.** Complete the Subcontract in accordance with its terms and conditions; or
 - 3.2 **OBTAIN NEW CONTRACTORS.** Obtain a bid or bids formally, informally or negotiated for completing the Subcontract in accordance with its terms and conditions, and upon

determination by the Surety of the lowest responsible bidder acceptable to the Obligee, or negotiated proposal, or, if the Obligee elects, upon determination by the Obligee and the Surety jointly of the lowest responsible bidder, or negotiated proposal, arrange for a contract between such party and the Obligee; or

3.3 PAY OBLIGEE. Determine the total amount for which it is liable to the Obligee and pay the Obligee that amount as soon as practicable. This obligation shall not negate or limit the Surety's obligation to make monthly payments to the Obligee as provided below in this Bond prior to paying the total amount.

The Surety shall timely make available each month as work progresses sufficient funds to pay the cost of completion. The final amount of such funds shall be reduced by the balance of the Subcontract Amount received by Obligee and then due Principal per the Subcontract. The cost of completion includes the responsibilities of the Principal for the entire cost as defined in the Subcontract including, but not limited to, those relating to the correction of defective work and completion of the Subcontract, the Obligee's legal and design professional costs resulting directly from the Principal's default and liquidated and actual damages. The term "balance of the Subcontract Amount", as used in this paragraph, shall mean the total amount payable by the Obligee to the Principal under the Subcontract and any amendments to it, less the amount properly paid by the Obligee to the Principal per the Subcontract.

4. RIGHT OF ACTION. No right of action shall accrue on this bond to or for the use of any person or entity other than the Obligee named herein, its heirs, executors, administrators, assigns or successors.

5. ATTORNEY'S FEES AND COSTS. Notwithstanding Paragraph 1 above, in the event Obligee brings legal action to enforce Surety's obligations under this Bond, the prevailing party in such action shall be entitled to recover its attorney's fees together with the costs of suit.

Signed and sealed this _____ day of _____ A.D., _____,

IN THE PRESENCE OF:

_____(Seal)
Subcontractor (Principal)

(Witness or Attest)

By: _____

Title: _____

(Here insert name of Surety)

By: _____
Attorney-in-fact

_____(Seal)

Bond No.: _____

EXHIBIT H**SUBCONTRACT LABOR AND MATERIAL PAYMENT BOND
FLINT BUILDERS, INC. OBLIGEE**

KNOW ALL MEN BY THESE PRESENTS: THAT _____
 _____ (here insert the
 name and address, or legal title, of Subcontractor) as Principal, hereinafter called Principal, and _____
 _____ (name, corporate state and home
 office city of Surety) as Surety, hereinafter called Surety, are held and firmly bound unto FLINT
 BUILDERS, INC. as Obligee, hereinafter called Obligee, for the use and benefit of claimants as herein-
 below defined in the amount of _____ DOLLARS (\$ _____
) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators,
 successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated _____ entered into a
 Subcontract with Obligee for _____
 in accordance with Drawings and Specifications prepared by _____
 _____ (here insert full name and title) which
 Contract is by reference made a part hereof, and is hereinafter referred to as the Subcontract.

If the Principal shall promptly make payment directly or indirectly to all Claimants as defined in this
 bond, for all labor, material and equipment used in the performance of the Subcontract, then this bond
 shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following
 conditions:

1. TIME FOR CLAIM. The Principal and Surety hereby jointly and severally agree with the Obligee
 that every Claimant, who has not been paid in full before the expiration of a period of ninety (90)
 days after the date on which the last of such Claimant's work or labor was done or performed, or
 materials were furnished by such Claimant, for which claim is made, may have a right of action on
 this bond. The Obligee shall not be liable for the payment of any costs or expenses including
 attorneys' fees which the Obligee may incur in connection with its defense of any such right of action.
2. RIGHT OF ACTION. No suit or action shall be commenced on this bond by any Claimant:

2.1 Unless Claimant, other than one having a direct contract with the Principal, shall have
 given written notice to the Surety named above and either Principal or Obligee, within ninety (90)
 days after such Claimant did or performed the last of the work or labor, or furnished the last of the
 materials for which said claim is made, stating with substantial accuracy the amount claimed and the
 name of the party to whom the materials were furnished, or for whom the work or labor was done or
 performed. Such notice shall be served by mailing the same by registered mail or certified mail,
 postage prepaid, in an envelope addressed to the Surety and either Principal or Obligee, at any place
 within the United States where an office is regularly maintained for the transaction of business, or
 served in any manner in which legal process may be served in the state in which the aforesaid Project
 is located, however, such service need not be made by a public officer.

2.2 After the expiration of one (1) year from the date (1) on which the Claimant gave the notice required by Subparagraph 2.1, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone on the Project, whichever first occurs. Any limitation embodied in this bond, which is prohibited by any law controlling the Project, shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

2.3 Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

- 3. CLAIMANT. A Claimant is defined as an individual or entity having a direct contract with the Principal to furnish labor, materials or equipment for use in the performance of the Subcontract or any individual or entity having valid lien rights which may be asserted in the jurisdiction where 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 Subcontract, architectural and engineering services required for performance of the work of the Principal, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
- 4. AMOUNT OF BOND. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith by the Surety. In no event shall the Surety's total obligation exceed the penal amount of this bond.
- 5. ALTERATION NOTICE WAIVER. The Surety waives notice of any alteration or extension of the Subcontract, including but not limited to the Subcontract price and / or time, made by the Obligee. This waiver shall not apply to the time for suit provided by Paragraph 2 hereunder.

Signed and sealed this _____ day of _____ A.D., _____.

IN THE PRESENCE OF:

_____(Seal)
Subcontractor (Principal)

(Witness or Attest)

By: _____

Title: _____

(Here insert name of Surety)

By: _____
Attorney-in-fact

_____(Seal)

**Exhibit “G”
To Subcontract Agreement**

Davis Bacon Compliance Requirements
Enter Job Name Here

Contract #XXXX

1. Without limitation, the provisions of the Davis Bacon Act, Reorganization Plan of 1950, Title 29 CFR Parts 1,3,5,6 and 7, 40 USC § 276A are incorporated into this Subcontract and Subcontractor agrees to comply with these provisions as required to complete its work on the Project. Specifically, without limitation, Subcontractor agrees to:
 - a. Pay all workers not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed.
 - b. Pay all workers not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter.
 - c. Adhere to the compliance measures outlined herein for any second tier subcontractor that Subcontractor chooses to use on this Project.
 - d. Submit certified payroll records to Flint Builders, Inc. on a weekly basis. Records shall be provided no later than seven (7) days following the employee payment date.
 - e. Submit to Flint Builders, Inc. within five (5) days of a written request all payroll records as defined by Title 29, Part 3.
 - f. Comply with the applicable requirements and joint apprenticeship standards as required by Title 29 CFR § 5.16.

2. Subcontractor agrees to indemnify and hold harmless Flint Builders, Inc. for any violations of the Davis Bacon Act, Reorganization Plan of 1950 provisions, which are caused by Subcontractor’s inability or failure to comply with said provisions. Additionally, should Flint Builders, Inc. incur additional cost associated with Subcontractor’s refusal, inability or failure to comply with the California Labor Code requirements, Subcontractor shall reimburse Flint Builders, Inc., through deductive Change Order to this Subcontract Agreement, at the following hourly rates: Certified Payroll Administrator- \$55.00 per hour; Certified Payroll Supervisor-\$80.00 per hour; Project Manager \$115.00 per hour; Executive/Principal - \$175 per hour. Flint Builders, Inc. assumes no risk in providing payroll compliance services, and provides such services at its sole discretion, in cooperation with, or in addition to Subcontractor. Services provided by Flint Builders, Inc. shall in no way alter or negate the indemnity, hold harmless or any other provision to the benefit of Flint Builders, Inc. under this Subcontract Agreement or at law.

**Exhibit “G”
To Subcontract Agreement**

Labor Code Compliance Requirements

Contract #XXXX

Enter Job Name Here

1. Without limitation, the provisions of California Labor Code, specifically Sections 1771, 1775, 1776, 1777.5, 1813, and 1815, are incorporated into this Subcontract and Subcontractor agrees to comply with the California Labor Code as required to complete its work on the Project. Specifically, without limitation, Subcontractor agrees to:
 - a. Pay all workers not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed.
 - b. Pay all workers not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter.
 - c. Adhere to the compliance measures outlined in Labor Code 1775(b) for any second tier subcontractor that Subcontractor chooses to use on this Project.
 - d. Submit certified payroll records to Flint Builders, Inc. on a weekly basis. Records shall be provided no later than five (5) days following the last day of each workweek.
 - e. Submit to Flint Builders, Inc. within five (5) days of a written request all payroll records as defined by the California Code of Regulations Section 16000, “Payroll Records”.
 - f. Comply with the applicable requirements and joint apprenticeship standards as required by Labor Code 1777.5.

2. Subcontractor, prior to receiving final payment for work performed on the Project, shall sign the below affidavit, under penalty of perjury, certifying that Subcontractor has paid the required general prevailing rate of per diem wages to its employees for the proper craft needed to fulfill the obligations of the Subcontract.

3. Subcontractor agrees to indemnify and hold harmless Flint Builders, Inc. for any violations of the California Labor Code provisions, which are caused by Subcontractor’s inability or failure to comply with said provisions. Additionally, should Flint Builders, Inc. incur additional cost associated with Subcontractor’s refusal, inability or failure to comply with the California Labor Code requirements, Subcontractor shall reimburse Flint Builders, Inc., through deductive Change Order to this Subcontract Agreement, at the following hourly rates: Certified Payroll Administrator- \$55.00 per hour; Certified Payroll Supervisor-\$80.00 per hour; Project Manager \$115.00 per hour; Executive/Principal - \$175 per hour. Flint Builders, Inc. assumes no risk in providing payroll compliance services, and provides such services at its sole discretion, in cooperation with, or in addition to Subcontractor. Services provided by Flint Builders, Inc. shall in no way alter or negate the indemnity, hold harmless or any other provision to the benefit of Flint Builders, Inc. under this Subcontract Agreement or at law.

Exhibit "G"
To Subcontract Agreement

Labor Code Compliance Requirements
Enter Job Name Here

Contract #XXXX

SUBCONTRACTOR AFFIDAVIT

I, _____ declare under penalty of perjury that:

1. I am the _____ of _____ and I am
(Owner, Officer, Partner) (Company)

responsible for the payment of persons employed

by _____ who performed work on
(Company)

the _____, in the classification(s)
(Project)

of _____

The labor performed by these workers can best be described by _____

2. During the payroll periods commencing on _____ and ending
on _____ all persons employed by my company on this project have been
paid the specified general prevailing rate of per diem wages for the specified craft of classification pursuant
to Labor Code Section 1771.

3. No Apprentices were dispatched in response to my submission of a DAS 140, "Public Works Contract
Award Information", and therefore all workers were classified as Journeyman.

Or

4. _____ Apprentice(s) worked a total of _____ hours and _____

Journeyman worked a total of _____ hours establishing an apprentice/journeyman

ratio in hours of _____ to _____ .

Executed this _____ day of _____ 200____ ,

at _____ , California.

(Signature)

Exhibit "H"
To Subcontract Agreement

Sales Tax Exemption Conditions
Enter Job Name Here

Contract # XXXX

Materials and fixtures are eligible for tax exemptions defined by the Board of Equalization (Regulation 1616). The following requirements apply:

1. Both Flint Builders, Inc. and the Subcontractor must hold a valid Sellers Permit issued by the State Board of Equalization.
2. Title to all Materials (that will be permanently attached to realty) and Fixtures used in this project shall transfer to Flint Builders, Inc. at the time of delivery to the _____ (Owner Name) located at _____ (Jobsite Address) and prior to the installation or fabrication by the Subcontractor or Contractor.
3. The subcontractor acknowledges receipt of a Flint Builders, Inc. Resale Certificate and the Tribal Exemption Certificate. (Exhibit H, pages 2 - _____).
4. Subcontractors will prepare and send an invoice for the materials and fixtures to Flint Builders, Inc. prior to or, on the date of delivery to the Indian Reservation. All invoices and bills of lading must designate: "Shipping- F.O.B. Reservation". The invoice should be sent as often as materials/fixtures are delivered.
5. Subcontractors, on the bottom in "Remarks" of Flint Builders, Inc. Pay Application form, will record the monthly total of the invoices from item 5 (above). All other amounts on the pay application will be completed to include labor and materials. Subcontractors will be paid the "Total Due This Invoice" from the Flint Builders, Inc. Pay Application.
6. The total sale price of materials or fixtures used in this project, exclusive of the charge for installation and without Sales Tax, shall be the sum of _____ Dollars (\$ _____).