

BERKELEY CEMENT, INC.  
MASTER SUPPLIER AGREEMENT

**Preamble**

**BERKELEY CEMENT, INC.** of Alameda County, California located at 1200 Sixth Street, Berkeley, CA 94710 (“Contractor”), and \_\_\_\_\_[NAME] of \_\_\_\_\_ County, California (“Supplier”), located at: \_\_\_\_\_ agree as follows:

**1. Responsible Supplier**

Supplier warrants that \_\_\_\_\_[he, she or it] is a properly licensed to conduct business in California and is presently active with the Contractors State License Board of the California Department of Consumer Affairs.

**2. Performance of Requested Construction Work**

Supplier will furnish all labor and materials necessary to perform the work described in the Supplier Work Authorization document Contractor and Supplier may enter into during the duration of this Master Supplier Agreement (“Agreement”) at the location described in the Supplier Work Authorization pursuant to all the terms, general conditions, plans, drawings and specifications described in the Supplier Work Authorization document and this Agreement and pursuant to the Prime Contract, including all terms, general conditions, plans, drawings, and specifications, between Contractor and General Contractor or Owner on the project assuming these documents and relationships exist at the time the work is to be performed.

**3. Contract Price**

Contractor will pay Supplier the agreed upon price stated in the Supplier Work Authorization document for labor and materials provided.

**4. Payment**

4.1 Contractor will pay Supplier the agreed upon price stated in the Supplier Work Authorization pursuant to the payment schedule stated in the applicable Supplier Work Authorization document. If payment from the Owner for Suppliers work is not received by Contractor, through no fault of Supplier, Contractor will make payment to Supplier within a reasonable period of time for the work satisfactorily performed.

4.2 Based upon applications for payment submitted to the Contractor by the Supplier, corresponding to Applications for Payment submitted by the Contractor to the Architect, and certificates for payment issued by the Architect, the Contractor shall make progress payments on account of the Supplier Work Authorization sum to the Supplier as provided below and elsewhere in this Agreement and the Supplier Work Authorization.

4.3 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

4.4 Provided an invoice for payment is received by the Contractor not later than the 30<sup>th</sup> day of the month, the Contractor shall include the Supplier’s work covered by that invoice in the next Application for Payment which the Contractor is entitled to submit to the Owner’s representative. The Contractor shall pay the Supplier each progress payment within ten working days after the Contractor receives payment from the Owner.

Payments may, in Contractor’s sole and absolute discretion, be made by checks jointly payable to Supplier and any persons to whom Supplier owes monies in connection with Subcontract Work.

4.5 If an invoice for payment is received by the Contractor after the application date fixed above, the Supplier's work covered by it shall be included by the Contractor in the next Application for Payment submitted to the Owner's representative.

## 5. Final Payment

5.1 Before issuance of the final payment, the Supplier, if required, shall submit evidence satisfactory to the Contractor that all payrolls and bills for materials and all known indebtedness connected with the Supplier's work have been satisfied and all mechanics' liens relating to Suppliers work have been released.

## 6. Charges and Liens

6.1 Supplier must pay all charges incurred by \_\_\_\_\_ [him, her or it] for labor and materials used in the connection of the work described in the Supplier Work Authorization as they become due. If Supplier fails to pay any such charge, Contractor may pay the charge on Supplier's behalf and will be reimbursed by Supplier, on request, for the payment. Contractor, however, will not be entitled to collect from Supplier any greater amount under this paragraph than the amount actually paid by Contractor in settlement or discharge of the charge.

6.2 The Supplier shall pay for materials, equipment and labor used in connection with the performance of this Agreement and the Supplier Work Authorization through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

6.3 Prevention of Liens. Supplier shall, at all times, prevent the filing, recording or perfecting of any mechanic's liens or similar claims for payment which may affect Owner or the Project and which arise out of the Work.

6.4 Elimination of Liens. Within ten (10) calendar days after written demand, Supplier shall cause the effect of such mechanic's liens or similar claims to be removed from the Project. Nothing contained herein shall limit Suppliers right to defend against any such lien or claim, provided it first both causes the effect thereof to be removed from the Project and does any other act necessary to prevent Owner from withholding any monies from Contractor by reason thereof. Supplier shall timely prosecute any such defense and shall immediately pay and satisfy any lien, claim or judgment that is established or awarded notwithstanding such defense.

6.5 Lien Releases. Conditional Waiver and Release upon Progress Payment Lien Releases must be submitted with all Suppliers Payment Applications. The Conditional Waiver and Release upon Final Payment must be submitted with the final payment application. Unconditional Waiver and Release upon Progress Payment Lien Releases must be submitted within three days of receipt of payment by Contractor. Unconditional Waiver and Release upon Progress Payment Lien Releases must also be received from all third tier suppliers that filed Preliminary Notices prior to the release of the next progress payment to Supplier. Unconditional Waiver and Release upon Final Payment Lien Releases must be received within two days of receipt of final payment from Contractor.

## 7. Examination by Supplier

Supplier has by careful examination ascertained the following: (1) the nature and location of the work described in the Supplier Work Authorization; (2) the character, quality, and quantity of the materials, equipment, and facilities necessary to complete the work; (3) the general and local conditions pertaining to the work; and (4) all other matters that in any way can affect the performance of this Agreement and the Supplier Work Authorization by Supplier. Supplier enters into this Agreement and the Supplier Work Authorization solely because of the results of that examination and not because of any representations pertaining to the work to be performed, the project or the completion of the work made to \_\_\_\_\_ [him, her or it] by Contractor or any agent of Contractor and not contained in this Agreement or the Supplier Work Authorization.

## 8. Supplier

Supplier will fully inform and advise all subcontractors/suppliers hired by it in connection with the performance of the work of the provisions contained in this Agreement and the Supplier Work Authorization and of Contractor's requirements contained therein, and (1) will not enter into any agreement with any such Sub-subcontractors/supplier inconsistent with the provisions contained therein, and (2) will secure performance of the work to be rendered by such Sub-subcontractors/supplier in accordance with and as required by the provisions of this Agreement and the Supplier Work Authorization. No sub-subcontractor/supplier shall be engaged by Supplier in connection with the work unless such Sub-subcontractor/supplier has been approved by Contractor. Notwithstanding Contractor's approval of any Sub-subcontractor hired by Supplier, Supplier shall be solely responsible for (1) the payment of such Sub-subcontractor/supplier, (2) the work performed by such Sub-subcontractor/supplier, and (3) directing and supervising such Sub-subcontractor/suppliers.

## 9. Indemnity Agreement

Supplier shall defend and save harmless Owner and Contractor, and their partners, officers, directors, employees, authorized representatives, agents, and insurers and each of them, from and against any and all liens, suits, actions, administrative proceedings, claims, demands, damages, incidental and consequential damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind of nature (collectively "Claims"), arising out of or in any way connected with the Work, including, but not limited to, those Claims which are in any manner directly or indirectly caused, occasioned or contributed to in whole or part, or claimed to be caused, occasioned or contributed to, in whole or in part, by any act, omission, breach of contract, negligence, whether active or passive, of Supplier or anyone acting under its direction, control or on its behalf, and without any showing of any fault by Supplier, even though the same may have resulted from the joint, concurrent or contributory negligence, whether active or passive, of Contractor, Owner or any other person or persons, unless the claim is cause exclusively by the sole negligence or willful misconduct of Contractor or its agents, servants or independent contractors directly responsible to Contractor. Without limiting the generality of the foregoing, the scope of indemnity shall include injury or death to any person or persons and damage to any property, regardless of where located, including the property of Owner and Contractor. It is specifically understood and agreed that this indemnity is intended to be the maximum indemnity in favor of Contractor permitted under California Law. Supplier shall reimburse Contractor and its partners, officers, directors, agents or employees for any and all fees, costs or expenses (including without limitation attorneys' fees) incurred by each of them in connection with the enforcement of the indemnity granted in this paragraph 12.1. All indemnity obligations under this paragraph 12.1 shall apply during the period of this Agreement, and shall survive the expiration or termination of this Agreement until such time as action or account of any matter covered by such indemnity or other obligations are barred by the applicable statute of limitations.

## 10. Workers Compensation Insurance

10.1 Supplier, at \_\_\_\_\_ [his, her or its] own cost and expense, must procure and maintain during the continuance of this Agreement a policy of workers' compensation or employers' liability insurance for the protection of \_\_\_\_\_ [his, her or its] employees (including executive, managerial, and supervisory employees) engaged in the work described in the Supplier Work Authorization, and must, on demand, deposit with Contractor a certificate evidencing the policy.

## 11. Supplier's Insurance

11.1 Supplier shall provide and maintain at Suppliers expense insurance coverage for comprehensive general liability, property damage and auto in a form, amount and with a carrier satisfactory to Contractor and, when required, to arrange for a certificate of Insurance to be issued to Contractor from the carrier, which shall name Contractor and Owner as named additional insureds on all insurance and shall include clauses providing that the insurance shall not be canceled or reduced without 30 days advance notice to Contractor. Such insurance afforded the additional insureds shall apply as primary insurance and any other

insurance maintained by Contractor or Owner shall not be called upon to contribute with this insurance. **Please refer to Berkeley Cement Inc's. attached Insurance Addendum (Conditions of Insurance).**

11.2 Supplier must require each of \_\_\_\_\_ [his, her or its] Subcontractor's/Suppliers employed by \_\_\_\_\_ [him, her or it] to perform labor on the project to do the following: (1) to procure and maintain during performance of the labor, at that Subcontractor's/Supplier's own cost and expense, a policy of workers' compensation or employer's liability insurance for the protection of that Subcontractor's/Supplier's employees (including executive, managerial, and supervisory employees) engaged in work on the project, and (2) to deposit with Supplier a certificate satisfactory to Contractor evidencing that insurance.

## 12. Safety Precautions and Procedures

12.1 Supplier shall strictly adhere to all safety requirements, regulations and protocols as may be required for the Project in the Subcontract Documents. In addition, Supplier shall conduct its own weekly project safety meetings for all its personnel performing work on the Project. Supplier shall indemnify Contractor and Owner for all claims, losses and damages, including attorneys' fees and costs, which may be incurred by Contractor and/or awarded against Contractor as a result of Supplier's failure to so adhere to all safety requirements, regulations and protocols.

12.1.2 Supplier is required to perform the Work in a safe and reasonable manner. Supplier shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

- a) employees and other persons at the site;
- b) materials and equipment stored at the site or at offsite locations for use in performance of the Work; and
- c) All property and structures located at the site and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

12.1.3 Supplier shall give all required notices and comply with all applicable rules, regulations, orders and other lawful requirements established to prevent injury, loss or damage to persons or property.

12.1.4 Supplier shall implement appropriate safety measures pertaining to the Work and the Project, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers, and establishing proper notice procedures to protect persons and property at the site and adjacent to the site from injury, loss or damage.

12.1.5 Supplier shall exercise extreme care in carrying out any of the Work that involves explosive or other dangerous methods of construction or hazardous procedures, materials or equipment. Supplier shall use properly qualified individuals or entities to carry out the Work in a safe and reasonable manner so as to reduce the risk of bodily injury or property damage.

12.1.6 Damage or loss not insured under property insurance which may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of the Supplier, or anyone for whose acts the Supplier may be liable, shall be promptly remedied by the Supplier. Damage or loss attributable to the acts or omissions of the Contractor and not to the Supplier shall be promptly remedied by the Contractor.

12.1.7 Supplier is required to designate an individual at the site in the employ of the Supplier who shall act as the Suppliers designated safety representative with the duty to prevent accidents. Unless otherwise identified by Supplier in writing to the Contractor, the designated safety representative shall be Suppliers project superintendent.

12.1.8 Supplier has an affirmative duty not to overload the structures or conditions at the site and shall take reasonable steps not to load any part of the structures or site so as to give rise to an unsafe condition or create an unreasonable risk of bodily injury or property damage. Supplier shall have the right to request, in writing, from Contractor loading information concerning the structures at the site.

12.1.9 Supplier shall give prompt written notice to Contractor of any accident involving bodily injury requiring a physician's care, any property damage exceeding Five Hundred Dollars (\$500.00) in value, or any failure that could have resulted in serious bodily injury, whether or not such an injury was sustained.

12.1.10 Prevention of accidents at the site is the responsibility of Contractor, Supplier, and all other subcontractors, persons and entities at the site. Establishment of a safety program by Contractor shall not relieve Supplier or other parties of their safety responsibilities. Supplier shall establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by Contractor and Owner, including, but not limited to, requirements imposed by the Subcontract Documents. Supplier shall comply with the reasonable recommendations of insurance companies having an interest in the Project, and shall stop any part of the Work that Contractor deems unsafe until corrective measures satisfactory to Contractor shall have been taken. Contractor's failure to stop Suppliers unsafe practices shall not relieve Supplier of the responsibility therefore. Supplier shall notify Contractor immediately following an accident and promptly confirm the notice in writing. Each party to this Agreement shall indemnify the other party from and against fines or penalties imposed as a result of safety violations, but only to the extent that such fines or penalties are caused by the party's failure to comply with applicable safety requirements. Supplier shall furnish copy of its "safety program" to Contractor prior to beginning the Work.

### **13. Attorney's Fees**

If any legal action or proceeding arising out of or relating to this Agreement is brought by either party to this Agreement, the prevailing party will be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs and expenses incurred in the action or proceeding by the prevailing party.

### **14. Sole and Only Agreement**

This instrument and any duly executed Work Authorization constitute the only agreement relating to the work Supplier is to perform. These instruments set forth the rights, duties, and obligations of each to the other during the duration of this Agreement. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement or Work Authorization are of no force and effect.

### **15. Assignments by Supplier**

This Agreement is for the personal services of Supplier in performing the work described in the Supplier Work Authorization. Supplier may not assign this Agreement, Supplier's right to moneys becoming due under this Agreement, or Supplier's duties under this Agreement to any other person or entity without written consent of Contractor.

### **16. Unlawful Harassment**

Contractor is committed to providing a work environment free of unlawful harassment. Contractor's company policy prohibits sexual harassment and harassment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age, sex, sexual orientation or any other consideration made unlawful by applicable federal, state or local law or ordinance or regulation. Contractor's unlawful harassment policy applies to all persons involved in the operation of the Contractor and

prohibits unlawful harassment by any employee of the Contractor, including supervisors and co-workers, as well as by any person doing business with or for the Contractor. Supplier agrees to accept and adopt, and cause its sub-subcontractors/suppliers to accept and adopt, this policy as part of this Subcontract.

Executed \_\_\_\_\_ [DATE], at Alameda County, California.

**CONTRACTOR: BERKELEY CEMENT, INC.**

\_\_\_\_\_  
Scott A. Fadelli, Corp Secretary  
California Contractor's License Number: 290755  
Business address: 1200 Sixth Street, Berkeley, CA 94710

**SUPPLIER:** \_\_\_\_\_.

\_\_\_\_\_ [SIGNATURE OF OFFICER]

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
California Contractors License Number: \_\_\_\_\_  
Business address: P.O. Box 1022, Modesto, CA 95353

SAMPLE

Supplier Insurance Addendum "A" (Conditions of Insurance)  
To  
The Supplier AGREEMENT  
Between  
Berkeley Cement, Inc. and \_\_\_\_\_.

This Addendum is attached and incorporated into the above referenced Supplier Work Authorization between the parties, as the parties desire to amend said document. In the event of any conflict, inconsistency or ambiguity between the terms and provisions of this Addendum and those of the above referenced Supplier Work Authorization between the parties, this Addendum shall govern.

Immediately send a copy of this information to your insurance broker for compliance.

1.0 Supplier shall, at its own expense, maintain in effect at all times during the performance of the work under the contract not less than the following coverage and limits of insurance which shall be maintained under forms of policies and from companies satisfactory to the Contractor and Owner. The insurance company must have a financial rating of at least A-VII as defined by A.M. Best Company. Copies of policies shall be provided when requested.

2.0 Workers' Compensation and Employer's Liability Insurance. Workers' Compensation insurance shall be provided as required by any applicable law or regulation. **A waiver of subrogation endorsement is required in favor of the Contractor and Project Owner.**  
Employer's Liability Insurance shall be provided in amounts not less than:

- \$1,000,000 each accident for bodily injury by accident
- \$1,000,000 policy limit for bodily injury by disease
- \$1,000,000 each employee for bodily injury by disease

If there is an exposure of injury to Suppliers 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.

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

- (1) premises and operations;
- (2) products and completed operations;
- (3) broad form contractual liability;
- (4) broad form property damage (including completed operations);
- (5) explosion, collapse and underground hazards;
- (6) personal injury liability./advertising injury; and
- (7) mold coverage (if mold, or fungus coverage is excluded on the general liability policy then supplier shall provide evidence of this coverage on the pollution liability policy (See Section 10 below).

**A waiver of subrogation endorsement is required in favor of the Contractor and Project Owner for GENERAL LIABILITY INSURANCE**

- One of the following coverage forms is required:
- Comprehensive General Liability
  - Commercial General Liability (Occurrence)

Attachment A - Insurance Requirements

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3.1 A "claims made" policy form is not acceptable without prior approval.

3.2 A "modified occurrence" policy is not acceptable

3.3 Minimum Limits of Liability.

3.3.1 Comprehensive General Liability Form  
\$2,000,000 each occurrence Bodily Injury and Property Damage  
\$2,000,000 aggregate

3.3.2 Commercial General Liability Form  
\$1,000,000 each occurrence Bodily Injury and Property Damage  
\$50,000 Fire Damage  
\$5,000 Med Expense  
\$2,000,000 Personal Injury  
\$2,000,000 General Aggregate  
\$2,000,000 aggregate for Products – Completed Operations

3.3.3 EXCESS LIABILITY

\$	Each Occurrence
\$	Aggregate

3.4 Per Project Aggregate. The policy must have an endorsement providing that the general aggregate limit applies separately to this project.

4.0 Automobile Liability Insurance. Supplier 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 combined single limit each accident for bodily injury and property damage.

5.0 Certificates of Insurance. Certificates of Insurance, as evidence of the insurance required by this Agreement, shall be furnished by Supplier to Contractor before any work hereunder is commenced by Supplier. The Certificates of Insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to Contractor. **The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be crossed out on the certificate.**

5.1 Certificates including additional insured endorsement shall be furnished for two (2) years following completion of the project.

6. Additional Insured Endorsement and Primary Insurance Clause. The Bodily Injury and Property Damage Liability policies shall include a provision or endorsement, at least as broad as the (Form B) CG20 10 11 85 as published by Insurance Services Offices (ISO), naming as additional insured any person or organization for whom Supplier is required by written contract, agreement or permit to name. **The endorsement shall also provide that such insurance is primary insurance with respect to the interest of the Contractor and Owner and that any other insurance maintained by the Contractor and Owner is excess and not contributing insurance with the insurance requirement hereunder.**

**(A sample Form B is attached hereto).**

7.0 Insurance Requirements for Sub-subcontractors. The Supplier shall ensure that all tiers of their Subcontractors and/or Suppliers shall procure and maintain insurance in like form and amounts including the Additional Insured requirements, all as set forth in Paragraph 3.0. Copies of the certificate must be provided prior to the sub-subcontractors and/or Suppliers entering the site.

8.0 Aircraft Insurance. If the Supplier or their Subcontractors use any owned, leased, chartered or hired aircraft of any type (including helicopters) in the performance of this contract, they shall maintain aircraft liability insurance in an amount of not less than \$10,000,000 per occurrence including Passenger Liability. Evidence of coverage in the form of a Certificate of Insurance shall be provided prior to the start of work.

9.0 Professional Liability Exposures. A \$1,000,000 Professional Liability insurance policy shall be carried if Supplier or their subcontractor is to provide any professional services, including but not limited to, design or design build services to the project. Evidence of coverage in the form of a Certificate of Insurance shall be provided prior to the start of work.

- 10.0 Hazardous Materials/Pollution Liability/Mold Coverage. Supplier shall provide a Contractors Pollution liability policy with coverage for mold or fungus with limits of \$2,000,000 per occurrence if the general liability policy has exclusion for losses due to mold or fungus. In addition, if Supplier, or their Subcontractors are required to perform remedial hazardous material operations such as asbestos containing materials, contaminated soil etc. they must carry a "Contractor's Pollution Liability" policy with limits not less than \$2,000,000 per occurrence and not less than \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage, naming Contractor as additional Insured.
- 10.1 Automobile Pollution Liability - If Supplier or their subcontractors haul hazardous waste they must carry Automobile Liability Insurance with a \$2,000,000 combined single limit per occurrence for Bodily Injury and Property Damage applicable to all hazardous waste hauling vehicles and include MCS 90 coverage.
- 11.0 Builders Risk Insurance. Contractor and Supplier waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by Builder's Risk or any other property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If the policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.
- Upon written request of Supplier, Contractor shall provide Supplier with a copy of the Builder's Risk policy of insurance or any other property or equipment insurance in force for the project and procured by Contractor. Supplier shall satisfy itself as to the existence and extent of such insurance prior to commencement of Supplier's work.
- If Builder's Risk insurance purchased by Owner or Contractor provides coverage for Subcontractor for loss or damage to Subcontractor's work, Subcontractor shall be responsible for the insurance policy deductible amount applicable to damage to Subcontractor's work and/or damage to other work caused by Subcontractor.
- If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Contract Documents, Supplier shall procure and maintain at its own expense property and equipment insurance for portions of Supplier's work stored off the site or in transit.
- If Owner or Contractor has not purchased Builder's Risk or equivalent insurance including the full insurable value of Supplier's work, then Supplier may procure such insurance at its own expense as will protect the interests of Supplier and its subcontractors in the work. Such insurance shall also apply to any of Owner's or Contractor's property in the care, custody or control of Supplier.
- 12.0 Riggers Liability - Should Supplier's work involve the rigging of property, Supplier shall carry "Riggers Liability Insurance" to insure against physical loss or damage to the property being lifted. Evidence of coverage shall be provided in the form of a Certificate of Insurance.
- 13.0 Acceptance by Contractor. The required insurance shall be subject to the approval of Contractor, but any acceptance of insurance certificates by Contractor shall in no way limit or relieve Supplier of the duties and responsibilities by said Supplier in this Agreement. If higher limits or other forms of insurance are required in the Contract Documents, Supplier will comply with such requirements.