



KEMP BROS
CONSTRUCTION

STANDARD SUBCONTRACT AGREEMENT

Contract No.: «ContractNo»

Subcontractor VID: «SubID»

CSLB No.: «LicenseNo»

Contact: «SubEstimatorName»

Phone: «SubPhone»

This Agreement is made at Santa Fe Springs, California day «ContractDate» of «ContractDate», «ContractDate»,
between

CONTRACTOR

KEMP BROS. CONSTRUCTION, INC.

10135 Geary Avenue, Santa Fe Springs, CA 90670

and

SUBCONTRACTOR

«SUBCONTRACTOR»

«Address», «City», «STATE» «Zip»

On or about April 18, 2025, Contractor entered into a prime contract with:

OWNER

Name of Owner

Address; City, State Zip

to perform the following work:

Name of Project

Address; City, State Zip

Contract No.

Financed by:

CONSTRUCTION LENDER (if applicable)

NONE

Said work is to be performed in accordance with the Prime Contract and the plans and specifications. Said plans and specifications have been prepared by or on behalf of:

ARCHITECT

Architect Name

Address; City, State Zip

SECTION 1. ENTIRE CONTRACT

The phrase "Contract Documents" is defined to mean the plans, specifications and all other contract documents attached to or incorporated into the Prime Contract, and includes:

Attachment "A" – Contract Documents

Attachment "B" – Scope of Work

Contractual Obligations Project Package (COPP)

for the project known as **Name of Project** and located at **Location and Address; City, State Zip**. Subcontractor certifies that it is fully familiar with all of the terms of the Contract Documents, the location of the jobsite, and the conditions under which the work is to be performed and that it enters into the Agreement based upon its investigation of all such matters and is not relying on any opinions or representations of Contractor. This Agreement represents the entire agreement between Contractor and Subcontractor and supersedes any prior oral or written agreements or representations. The Contract Documents are incorporated into this Agreement by reference, and insofar as they relate in any way, directly or indirectly, to the work covered by this Agreement. Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Contract Documents, including, but not limited to, all applicable terms and provisions thereof. Where, in the Contract Documents, reference is made to Contractor, and the work or specifications therein pertain to Subcontractor's trade, craft or type of work, such work or specifications shall be interpreted to apply to Subcontractor instead of Contractor.

SECTION 2. SCOPE

Subcontractor agrees to furnish all labor, materials, equipment, and other facilities required to perform the work to complete:

«Trade»

See Attachment "B"

In the event of any dispute between Contractor and Subcontractor over change order requests, change directives, claims, and other matters pertaining to the scope of Subcontractor's work under the Contract Documents, Subcontractor will not stop work but will prosecute the work diligently to completion. Subcontractor has the right to submit the dispute for resolution in accordance with Section 17. To the extent any claim or dispute is the result of an act or omission of the Owner or another party as set forth in Section 6, Subcontractor must still prosecute the work diligently to completion while submitting such claim or dispute to any dispute resolution procedures set forth in the Prime Contract as applicable.

SECTION 3. CONTRACT PRICE

Contractor agrees to pay Subcontractor for the strict performance of its work the sum of: «Contractamt»'s Dollars («ContractAmt»), in accordance with Attachment B, subject to additions and deductions for changes in the work as may be directed by Contractor.

SECTION 4. PAYMENT SCHEDULE

Contractor agrees to pay to Subcontractor in monthly progress payments of ninety-five percent (95%) of labor and materials which have been incorporated into the work, with funds received by Contractor from Owner for work performed by Subcontractor as reflected in Contractor's applications for payment. Such monthly progress payments shall be made ten (10) days after receipt of payment from the Owner by Contractor. Subcontractor agrees to provide a Schedule of Values to Contractor in sufficient detail to identify the Subcontractor's complete scope of work for Contractor's use in determining the monthly percent complete of Subcontractor's work and Subcontractor acknowledges and agrees that an approved Schedule of Values is a condition precedent to payment. Progress Billings must be submitted to Contractor no later than the 20th of the month to be processed for payment. No request for a change order shall be included on any invoice(s) until such request has been incorporated into an executed subcontract change order.

If Owner or other responsible party delays making payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor so long as there is no dispute as to whether the requested payment is owed to Subcontractor. Reasonable time shall be deemed the time it takes Contractor to pursue to conclusion its legal remedies against Owner or other responsible party to obtain payment, but in no event more than one year. Moreover, nothing herein shall be deemed to limit Subcontractor's separate mechanic's lien, stop notice or payment rights against the project property or funds. This provision does not apply to any claim by Subcontractor that Contractor has passed through to Owner or another third party as set forth in Section 16. For such claims, Contractor is not obligated to pay any amount claimed until the claim is resolved in favor of Subcontractor through the applicable dispute resolution procedure.

Final payment to Subcontractor shall be made seven (7) days after the entire work required by the Prime Contract has been fully completed in conformity with the Contract Documents and has been delivered to and accepted by Owner, Architect, and Contractor, and upon receipt of funds received by Contractor from Owner in final payment for work under the Prime Contract. With respect to all payments that may be due under this Agreement, Subcontractor agrees to provide and certify, when required by Contractor, all payroll affidavits, receipts, vouchers, releases of claims for labor and material, and other documentary evidence credibly establishing that Subcontractor has paid all its workers for their labor on the Project, and all other obligations for the Project, and agrees to provide and certify same from its subcontractors, suppliers and/or materialmen performing work or furnishing materials under this Agreement, all in form satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such documents have been provided, certified and approved. Contractor, at its option, may make any payment due hereunder by check made payable jointly to Subcontractor and its subcontractors, suppliers and/or materialmen who have performed work or furnished materials under this Agreement. Any payment made hereunder prior to completion and acceptance of the work, as referred to above, shall not be construed as evidence of acceptance or acknowledgment of completion of any part of Subcontractor's work.

SECTION 5. TIME

Time is of the essence of this Agreement. Concurrent with the Subcontractor signing and returning this Agreement to Contractor, Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of its work in a form acceptable to Contractor. Subcontractor shall conform to Contractor's progress schedule and all revisions or changes made thereto. Subcontractor shall prosecute its work in a prompt and diligent manner in accordance with Contractor's progress schedule without delaying or hindering Contractor's work or the work of other contractors or subcontractors. Subcontractor shall coordinate the work covered by this Agreement with that of all other contractors, subcontractors, suppliers and/or materialmen and of the Contractor, in a manner that complies with Contractor's schedule. In the event Subcontractor fails to maintain its part of the Contractor's schedule, it shall, without additional compensation, accelerate the work as Contractor may direct until Subcontractor's work is in accordance with such schedule. Contractor shall have the right to decide the time and order in which various portions of the work shall be installed and the relative priority of the work of Subcontractor and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the work of Subcontractor on the premises. Should Subcontractor be delayed in the prosecution or completion of the work by the act, neglect or default of Owner, Architect or Contractor, or should Subcontractor be delayed waiting for Owner or Contractor furnished materials, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or in the event of a lock-out by Contractor, then the time herein fixed for the completion of the work shall be extended the number of days that Subcontractor has thus been delayed, but no allowance or extension shall be made unless a claim therefore is presented in writing to Contractor within a reasonable time, but in no event shall it be later than 72 hours prior to Contractor's requirement to provide notice to Owner under the Prime Contract. Failure by Subcontractor to provide timely notice will prejudice Contractor's rights under the Prime Contract. Under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire project within the time allowed Contractor by Owner for such completion.

SECTION 6. CHANGES IN THE WORK

Subcontractor shall make all changes in the work described in the Contract Documents and this Agreement pursuant to Contractor's written direction. Such change or written direction shall not invalidate this Agreement.

If applicable, the contract price stated in Section 3 and the time for Subcontractor's performance shall be adjusted by appropriate additions or deductions mutually agreed upon before Subcontractor performs the changed work. Subcontractor shall supply Contractor with all documentation necessary for Contractor to substantiate any proposed change in cost or time. If Contractor and Subcontractor cannot agree on the amount of the addition or deletion, Subcontractor shall nonetheless timely perform the work as changed by Contractor's written direction. Once Subcontractor receives Contractor's written direction, Subcontractor is solely responsible for timely performance of the work as changed by the written direction.

If a dispute arises between Contractor and Subcontractor about whether certain work is a change in the scope described in Section 2, Subcontractor shall timely perform the disputed work. If Subcontractor intends to submit a claim for the disputed work, it shall give prompt written notice to Contractor before proceeding with the work. In addition, Subcontractor shall submit its written claim for additional compensation for that work within a reasonable time, but in no event shall it be later than 72 hours prior to Contractor's requirement to provide notice to Owner under the Prime Contract. Failure by Subcontractor to provide timely notice will prejudice Contractor's rights under the Prime Contract. Subcontractor's written claim shall have sufficient detail for Contractor to make an evaluation of the merits of the claim. Subcontractor's failure either to give the written notice before proceeding with the work or to submit the written claim, as provided above, constitutes an agreement that it is waiving its rights to be compensated for the disputed work.

Contractor may request that Subcontractor submit change order proposals or other cost estimates in accordance with this Agreement and the Prime Contract. Subcontractor agrees to provide requested proposals with sufficient substantiation to meet the requirements of this Agreement and the Prime Contract, within the time required by the Prime Contract, so that Contractor can meet its obligations to Owner. Should Subcontractor fail to timely submit requested proposals or estimates, Subcontractor acknowledges that Contractor will be obligated to submit such proposals or estimates on their behalf and Subcontractor shall be bound by such submission. Subcontractor further agrees that it will be responsible for the direct costs incurred by Contractor in preparing and submitting proposals or estimates on Subcontractor's behalf. If Contractor requests that Subcontractor submit change order proposals or other cost estimates as a result of a change directive from Owner as permitted by the Prime Contract, then Subcontractor shall follow the same procedures discussed in this Section. Subcontractor acknowledges that any claim it may have resulting from an Owner change directive must strictly adhere to the claim submission requirements in the Prime Contract and that recovery of any losses or damages on said claim is limited to whatever amount Owner agrees to pay or whatever amount a court of competent jurisdiction or arbitration panel determines as part of a final adjudication of the claim.

If the Subcontractor intends to assert a claim which involves, in whole or in part, acts or omissions which are the responsibility of the Owner or another party, including but not limited to, claims for failure to pay, an extension of time, delay damages, or extra work, Subcontractor will strictly comply with the requirements of the Prime Contract in that regard with the express understanding that failure to strictly comply will prejudice Contractor's rights and may invalidate Subcontractor's claim. Any notice of claim from Subcontractor must clearly state that it is a contractual notice and must be in a form that complies with this Agreement and the Prime Contract. Communications in emails, daily reports, meeting minutes or other form(s) that do not comply with this Section shall not be considered proper or effective contractual notice. Contractor will present the Subcontractor's reasonable and verified claims to the Owner or other responsible party. The Subcontractor shall cooperate fully with the Contractor in all steps taken in connection with prosecuting such claims and shall hold harmless and reimburse the Contractor for all expenses, including legal expense, incurred by Contractor which arise out of Contractor's submission of Subcontractor's claims to Owner or other responsible party. Subcontractor shall be bound by any adjudication or award in any action or proceeding resolving such claims.

No change, alteration, or modification to or deviation from this Agreement, the Contract Documents, Prime Contract, plans, or specifications, whether made in the manner provided in this section or not, shall release or exonerate, in whole or in part, any bond or any surety on any bond given in connection with this Agreement, and no notice is required to be given to such surety of any such change, alteration, modification, or deviation.

SECTION 7. BONDING OF SUBCONTRACTOR

Concurrently with the execution of this Agreement, Subcontractor shall, if required by Contractor, execute a labor and material bond and a performance bond, each in an amount equal to one hundred percent (100%) of the Contract Price. Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form satisfactory to Contractor. Contractor shall pay the bond premium on said bonds up to 1.5% of the original contract amount unless otherwise provided herein or in the Contract Documents.

SECTION 8. LIENS

Should a labor or material supplier or other vendor to Subcontract assert a lien, stop payment notice, as well as the commencement of any suit to enforce said lien or stop payment notice, Subcontractor shall pay and satisfy any such lien, stop payment notice or judgment as may be established by the decision of the court in any suit to enforce the lien or stop payment notice. Subcontractor agrees within ten (10) days after written demand to cause the effect of any such stop payment notice or lien to be removed from the premises, and in the event Subcontractor shall fail so to do, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or

stop payment notice to be removed or dismissed and the cost thereof, together with actual attorneys' fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such lien or suit provided it causes the effect thereof to be removed, promptly in advance, from the premises, and still further do such things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such liens or suits.

It is understood and agreed that the full and faithful performance of this Agreement on the part of Subcontractor (including the payment of any obligations due from the Subcontractor to Contractor, and any amounts due to labor or materialmen furnishing labor or material for said work) is a condition precedent to Subcontractor's right to receive payment for the work performed, and any monies paid by Contractor to Subcontractor under the terms of this Agreement shall be impressed with a trust in favor of labor and materialmen furnishing labor and material to Subcontractor on the work herein subcontracted.

SECTION 9. DAMAGES CAUSED BY SUBCONTRACTOR'S DELAYS

If Subcontractor should default in performance of the work described in Section 2 or should otherwise commit any act which causes delay to the Prime Contract work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including liquidated damages sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's delays.

SECTION 10. PROTECTION OF WORK

Subcontractor shall secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance of its work by Architect, Owner and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the work and the workmen of Contractor, Owner, and other subcontractors from its operations.

Subcontractor shall be liable for any loss or damage to any work in place or to any equipment and materials on the jobsite caused by it or its agents, employees, or guests.

SECTION 11. CLEAN-UP

At all times during construction, Subcontractor shall perform its work to maintain their work area in a clean, safe, and orderly condition. At the direction of Contractor, Subcontractor shall legally dispose of all materials, temporary structures, debris and waste incident to its operation and clean all surfaces, fixtures, equipment, or any other item or area relative to the performance of this Agreement.

SECTION 12. PROVISIONS FOR INSPECTION

Subcontractor shall at all times furnish to Contractor and Owner, and its representatives safe and ample facilities for inspecting materials at the site of construction, shops, factories or any place of business of Subcontractor and its subcontractors and materialmen where materials under this Agreement may be in course of preparation, process, manufacture or treatment. Subcontractor shall furnish to Contractor and Owner, as often as required by Contractor and Owner, full reports of the progress of the work at any place where materials under this Agreement may be during preparation or manufacture. Such reports shall show the progress of such preparation and manufacture in such details as may be required by Contractor and Owner, including, but not limited to, any plans, drawings, or diagrams during preparation.

SECTION 13. LABOR RELATIONS

13.1 Subcontractor shall keep a representative at the jobsite during all times when Subcontractor's work is in progress, and such representative shall be authorized to represent and bind Subcontractor as to all phases of the work. Prior to commencement of the work, Subcontractor shall provide written notification to Contractor who Subcontractor's representative is to be, and in the event of any change of representative Subcontractor shall notify Contractor who the new representative is to be prior to such change becoming effective.

Where applicable, Subcontractor agrees to be bound and to comply with all the terms and conditions of the labor agreements listed in Section 25 Labor Agreement to the same degree and extent as if Subcontractor were a party to those agreements, including payments into the employee benefit trust funds required by the labor agreements listed in Section 25, and including Subcontractor's submission to, and Subcontractor's compliance with, the arbitration and other dispute resolution requirements of the labor agreements listed in Section 25. Subcontractor agrees to comply with the terms and provisions contained in such agreements for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve any jurisdictional dispute, Subcontractor agrees, at its own cost and expense, upon request of Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

Subcontractor acknowledges that terms and conditions of the labor agreements with the union(s) listed herein below may require that Subcontractor comply with additional labor agreements with unions affiliated with the AFL-CIO but not listed. When the terms and conditions of the below-referenced labor agreement(s) so require, Subcontractor shall perform its jobsite work pursuant to all terms and conditions of any appropriate labor agreement with a union affiliated with the AFL-CIO.

Should there be picketing on Contractor's jobsite, and Contractor establishes a reserved gate for Subcontractor's purpose, it shall be the obligation of Subcontractor to continue the proper performance of its work without interruption or delay.

Subcontractor further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing jobsite work of the type covered by any of the labor agreements specified below to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to it.

13.2 Subcontractor hereby acknowledges that it is thoroughly familiar with all Certification programs such as DBE/MBE/LBE/WBE/DVBE/SBE/CBE/OBE requirements pertaining to the project. If the Subcontractor claims status as a Certified Subcontractor, the Subcontractor shall take all steps necessary and shall make all necessary records available to the Contractor and the Owner to assure that Subcontractor is in compliance with such requirements. If any sub-subcontractor or supplier of the Subcontractor is designated as or is required to be a Certified Subcontractor, Subcontractor agrees to be responsible for insuring that said sub-subcontractor or supplier meets all applicable requirements. Subcontractor acknowledges that Contractor is relying upon Subcontractor's representations regarding the validity of Subcontractor's status, if any, as a Certified Subcontractor and that misrepresentation of the status of Subcontractor or any of its sub-subcontractors or material suppliers is a material breach of this Agreement and grounds for immediate termination. In the event of termination as the result of material misrepresentation of the status of the Subcontractor as a Certified Subcontractor, Subcontractor shall not be entitled to any compensation not already paid.

13.3 Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans With Disabilities Act, the federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, and the California Family Rights Act. Upon request, Subcontractor shall submit certified payroll records to Contractor no later than three (3) working days after labor has been paid.

SECTION 14. RECOURSE BY CONTRACTOR

14.1 Failure of Performance.

14.1.1 Right to Adequate Assurance. When reasonable grounds for insecurity arise with respect to Subcontractor's performance, Contractor may in writing demand adequate assurance of due performance. Subcontractor's failure to provide within ten (10) days of the demand such assurance of due performance as is adequate under the circumstances of the particular case is a default under Section 14.1.2 of this Agreement.

14.1.2 Notice to Cure. If Subcontractor at any time refuses or neglects to supply enough properly skilled supervision, workers or proper materials, or fails to properly and diligently prosecute the work covered by this Agreement, or fails to make prompt payment to its workers, subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or fails to provide adequate assurance pursuant to Section 14.1.1, or is otherwise guilty of a material breach of any provision of this Agreement, and fails within forty-eight (48) hours after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then Contractor, without prejudice to any rights or remedies, shall have the right to any or all of the following remedies for default:

- (a) supply such number of workers and quantity of materials, equipment and other facilities as Contractor deems necessary for completion of Subcontractor's work or any part thereof which Subcontractor has failed to complete or perform, and charge the cost thereof to Subcontractor, who shall be liable for the payment of same including reasonable profit, and actual attorneys' fees incurred as a result of Subcontractor's failure of performance;
- (b) contract with one or more additional contractors to perform such part of Subcontractor's work as Contractor shall determine will provide the most expeditious completion of the total work and charge the cost thereof to Subcontractor; and
- (c) withhold payment of any monies due Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor; and
- (d) undertake any other action that Contractor deems reasonably necessary to cure the default under the circumstances.

Subcontractor will be responsible for all costs incurred by Contractor, including attorneys' fees, necessitated by Subcontractor's failure to cure and Contractor's exercise of its contractual remedies. If the costs and expenses incurred by Contractor in remedying Subcontractor's default exceed the unpaid balance under the Subcontract, Contractor may offset the difference against any amounts due Subcontractor from any other subcontract or agreement that Subcontractor has with Contractor. In the event of an emergency affecting the safety of persons or property, Contractor may proceed as above without notice.

14.1.3 Termination for Default. If Subcontractor fails to commence and satisfactorily continue correction of a default within forty-eight (48) hours after receipt by Subcontractor of the notice issued under Section 14.1.2, then Contractor may terminate Subcontractor's right to perform all or any part of its work under this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor to complete Subcontractor's work without any further compensation to Subcontractor for such use. Contractor also may furnish those materials and equipment, and/or employ such worker(s) or subcontractor(s) as Contractor deems necessary to maintain the orderly progress of the work.

In such case, Subcontractor shall be entitled to no further payment until the balance of Subcontractor's work has been completed. At that time, all of the costs incurred by Contractor in performing Subcontractor's work, including a markup of fifteen percent (15%) for overhead and profit on such expenses, plus actual attorneys' fees as provided above, shall be deducted from any monies due or to become due Subcontractor. Subcontractor shall be liable for the payment of any amount by which such expenses may exceed the unpaid balance of the Contract Price. If Contractor's decision to terminate under this provision is found to be wrongful, that action will be treated as a Termination for Convenience in accordance with Section 14.1.4.

14.1.4 Termination for Convenience. Contractor may at any time and for any reason terminate Subcontractor's services and work at Contractor's convenience. Termination shall be by service of written notice to Subcontractor's place of business.

Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor or, at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such work as may be necessary to preserve and protect the work already in progress and to protect material and equipment on the jobsite or in transit thereto.

Where the Prime Contract was Terminated for Convenience by Owner, Subcontractor shall be entitled to Final Payment in accordance with the allowable costs provided within the Prime Contract. Contractor shall have no liability to Subcontractor greater than what Owner pays for Subcontractor's work.

In all other cases, upon such termination, Subcontractor shall be entitled to payment in accordance with Section 4 as follows for all completed yet unpaid work: (1) the actual direct costs incurred by Subcontractor including sub-tier subcontractor(s), labor, material, and equipment, plus (2) fifteen percent (15%) of the cost of the work referred to in item (1) above for overhead and profit. Any previously performed and paid for work is to be considered as complete and represent the entire payment for said work and will not be included in any calculations for consideration above and beyond what has previously been paid. Subcontractor shall not be entitled to any claim or lien against Contractor to Owner for any additional compensation or damages in the event of such termination and payment. Subcontractor will provide all reasonable documentation in support of requested costs.

14.1.5 Grounds for Withholding Payment. Contractor may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to the extent necessary to protect Contractor from loss, including costs and actual attorneys' fees, on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claims; (3) failure of Subcontractor to make payments properly to its subcontractors or for material, labor or fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (5) damage to Contractor or another subcontractor; (6) penalties assessed against Contractor or Subcontractor for failure of Subcontractor to comply with state, federal or local laws and regulations; (7) failure to comply with COPP requirements and obligations; (8) Subcontractor's default on another subcontract or agreement with Contractor where the costs and expenses to remedy that default exceeds the contract balance on that subcontract or agreement; or (9) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Agreement. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Subcontractor.

14.2 Bankruptcy.

14.2.1 Termination Absent Cure. Upon the appointment of a receiver for Subcontractor or upon Subcontractor making an assignment for the benefit of creditors, or if Subcontractor seeks protection under the Bankruptcy Code or commits any other act of insolvency, Contractor may, absent any applicable legal limitation, terminate this Agreement upon giving forty-eight (48) hours written notice, by certified mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee:

- (a) promptly cures all defaults;
- (b) provides adequate assurance of future performance;
- (c) compensates Contractor for actual pecuniary loss resulting from such defaults; and
- (d) assumes the obligations of Subcontractor within the statutory time limits.

14.2.2 Interim Remedies. If Subcontractor is not performing in accordance with the schedule of work at the time of entering an order for relief, or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to accept this Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Section as are reasonably necessary to maintain the schedule of work. Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, but not limited to, reasonable overhead, profit and actual attorneys' fees incurred as a result of Subcontractor's non-performance.

Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Price.

SECTION 15. INDEMNIFICATION

15.1.1 Subcontractor's Performance. With the exception that this Section 15 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the public policy of the State of California, Subcontractor shall indemnify and save harmless Owner and Contractor, including their officers, agents, employees, affiliates, parents and subsidiaries, and each of them ("Indemnitees"), 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 work to be performed under this Agreement 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) and/or any other claims asserted by others against Contractor, caused or alleged to be caused in whole or in part by any act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable regardless of whether such personal injury or damage or claim is caused by a party indemnified hereunder with the understanding, however, that in no event shall Subcontractor's indemnity obligations extend to any such claims to the extent they are the result of the active negligence or willful misconduct of Contractor.
- (b) 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) Claims for infringement of any patent rights which may be brought against Indemnitees arising out of Subcontractor's work.

- (d) Claims and liens (see Section 8) for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages resulting to Indemnitees from such claims or liens.
- (e) Subcontractor's failure to fulfill the covenants set forth in each subpart of Section 13, Labor Relations.
- (f) Failure of Subcontractor to comply with the provisions of Section 16 Insurance.
- (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 Contractor's or others' equipment, hoists, elevators, or scaffolds (see Sections 16 and 20).

The indemnification provisions of this Section 15 shall extend to Claims occurring after this Agreement is terminated as well as while it is in force. Such indemnity provisions apply regardless of any passive negligent act or omission of Indemnitees. Subcontractor, however, shall not be obligated under this Agreement to indemnify Indemnitees for Claims arising from the active or sole negligence or willful misconduct of Indemnitees or independent contractors who are directly responsible to Indemnitees.

Subcontractor's indemnity obligations set forth in Section 15 shall also extend to any and all claims for delay damages, impact damages, loss of productivity damages, and any other claims for damages by any person or entity arising out of or in connection with Subcontractor's work to be performed under this Agreement.

Subcontractor's duty to defend is separate and distinct from the duty to indemnify and shall immediately arise when a claim is asserted against Indemnitees in connection with the performance of Subcontractor, or those for whom Subcontractor is liable, in connection with this Agreement, and regardless of whether others may owe Indemnitees a duty of defense and/or indemnity.

The indemnity rights and obligations identified in this Agreement shall be, and are, the only indemnity rights and obligations between the parties, in law or equity, arising out of or related to this Agreement and the Project or any claims asserted in relation thereto.

15.1.2 Subcontractor shall:

- (a) At Subcontractor's own cost, expense and risk, defend all Claims as defined in Section 15.1.1 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Indemnitees;
- (b) Pay and satisfy any judgment or decree that may be rendered against Indemnitees, arising out of any such Claim; and/or
- (c) Reimburse Indemnitees for all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section 15.

15.2 Risk of Loss

All work covered by this Agreement 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.

SECTION 16. INSURANCE

16.1 See COPP for Insurance Requirements.

SECTION 17. DISPUTE RESOLUTION PROCEDURE

17.1 Except as otherwise described below, any and all disputes between Contractor and Subcontractor arising out of or related to this Agreement shall be submitted to binding arbitration before the American Arbitration Association, pursuant to the Construction Industry Arbitration Rules then in effect, except that notwithstanding the amount of the dispute, there shall be a single arbitrator mutually agreeable to both parties who is an experienced construction lawyer with previous arbitrator experience.

17.2 With regard to the appointment of an arbitrator, and notwithstanding anything to the contrary in the Rules, in no event shall the AAA have the right or power to administratively appoint an arbitrator under Rule R-12(b) or any other similar or equivalent Rule. Instead, if the parties are unable to agree upon an acceptable arbitrator after the procedures found in Rule R-12 of the Rules have been exercised on two successive occasions, then the AAA shall provide the parties with a third list of names of persons chosen from the AAA's National Roster, which shall contain only five names. Said third list shall then be submitted by the parties to a court of competent jurisdiction for the appointment of the arbitrator under California Code of Civil Procedure section 1281.6. The arbitration shall be held in the Los Angeles California offices of the AAA.

17.3 Notwithstanding the foregoing arbitration provisions, in the event Contractor or Owner institutes an action or arbitration against the other, and either Contractor or Owner asserts a claim against Subcontractor within that action or arbitration, the dispute resolution procedures contained in the prime contract between Contractor and Owner shall prevail over the arbitration provisions in this Agreement.

17.4 Any arbitration held in accordance with Section 17 shall be governed the procedural provisions of the Federal Arbitration Act rather than state arbitration procedures.

SECTION 18. COMPLIANCE WITH ALL LAWS AND SAFETY PRACTICES

Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes affecting or relating to this Agreement or its performance, including, but not limited to, those with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention and safety program of Owner and Contractor.

Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards and statutes.

SECTION 19. WARRANTY

Subcontractor warrants to Owner and Contractor that all materials and equipment furnished shall be new unless otherwise specified and that all work under this Agreement shall be performed in a good and workmanlike manner, shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this Section 19 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

SECTION 20. USE OF CONTRACTOR'S EQUIPMENT

In the event Subcontractor shall use Contractor's equipment, materials, labor, supplies or facilities, Subcontractor shall reimburse Contractor at a predetermined rate, except as provided in Section 14.1.2 or as otherwise stated herein. Further, Subcontractor assumes all responsibility for physical damage to such equipment, materials, labor, supplies, or facilities used by Subcontractor or its agents, employees or permittees. If Contractor's employees are used by Subcontractor, Subcontractor shall have full responsibility for all acts or omissions of Contractor's employees regarding Subcontractor's use or employment of them. Subcontractor accepts all of Contractor's equipment, materials, labor, supplies or facilities as furnished.

SECTION 21. ASSIGNMENT OF CONTRACT

Subcontractor shall not, without written consent of Contractor, assign, transfer or sublet any portion or part of the work required by this Agreement, nor assign any payment hereunder to others.

SECTION 22. CORPORATE SUBCONTRACTORS

In the event Subcontractor is a corporation, this agreement will be signed by the President and Secretary of the corporation, and the said officers, and any other officer or director signing this agreement on behalf of the corporation, do, jointly and severally, guarantee to Contractor the full and faithful performance of this agreement by Subcontractor, and do further agree, jointly and severally, that they shall be personally liable to Contractor for the full and faithful performance this agreement in every case where Subcontractor does not supply a corporate surety bond to Contractor to guarantee the faithful performance hereof. Failure of Contractor to request a faithful performance bond from Subcontractor shall not affect the obligation assumed by the officers and directors signing this agreement on behalf of Subcontractor.

SECTION 23. INDEPENDENT CONTRACTOR

Subcontractor is an independent contractor and shall, at its sole cost and expense, and without increase in the Contract Price, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the work; obtain all trade-related permits and licenses for such work, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries, or other remunerations paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that all the foregoing obligations have been fulfilled.

SECTION 24. MATERIALS AND WORK FURNISHED BY OTHERS

In the event the scope of work includes installation of materials or equipment furnished by others or work to be performed in areas to be constructed or prepared by others, it shall be the responsibility of Subcontractor to examine and accept, at the time of delivery or first access, the items so provided and thereupon handle, store and install the items with such skill and care as to insure a satisfactory completion of the work. Use of such items or commencement of work by Subcontractor in such areas shall be deemed to constitute acceptance of such work by Subcontractor. Loss or damage due to acts of Subcontractor shall be charged to the account of Subcontractor and deducted from monies otherwise due Subcontractor under this Agreement.

SECTION 25. LABOR AGREEMENTS

The Contractor is signatory to the following labor agreements covering work on this project:

Carpenters - any carpentry work to be performed on the project must be performed by a Subcontractor both signatory and in good standing with the Carpenters union.

SECTION 26. UNIT PRICES

Not Used

SECTION 27. PREVAILING WAGES (applies only to Prevailing Wage projects)

27.1 If required by the Prime Contract, Subcontractor shall be required to pay prevailing wages to all employees working on this project subject to the provisions of Labor Code Sections as identified in the attached COPP, all included herein by reference as set forth in full with copies available from Contractor's main office upon request.

27.2 Contractor shall monitor Subcontractor's payment of the specified general prevailing hourly wage rates to Subcontractor's employees for Subcontractor's classifications of work, by periodic review of Subcontractor's certified payroll reports and records.

27.3 Should Subcontractor fail to pay employees the specified prevailing wage rate or fail to submit timely certified payroll reports to Contractor when requested, Contractor shall withhold sufficient funds due Subcontractor for work performed on this project and shall charge Subcontractor for the cost of any damages, fees, penalties or any other charges assessed against Contractor due to Subcontractor's failure to comply with this Section, and all administrative fees directly or indirectly attributable to Subcontractor's failure to make such payments or failure to submit certified payroll reports. Contractor shall release any payments withheld for this purpose, less administrative fees noted herein, upon receipt of certified evidence that Subcontractor has fulfilled Subcontractor's prevailing wage requirements as noted above.

27.4 Prior to receiving final payment, Subcontractor shall provide an affidavit to Contractor signed under penalty of perjury that Subcontractor has paid the specified general prevailing wage rates to Subcontractor's employees for this project and any amount due pursuant to Labor Codes.

SECTION 28. MISCELLANEOUS PROVISIONS

All contractors are required by law to be licensed and regulated by the State of California Contractor's State License Board.

The State of California requires all contractors bidding or working on any public work projects to register with the State Department of Industrial Relations (DIR) and pay an annual registration fee.

CONTRACTOR

KEMP BROS. CONSTRUCTION, INC.

Date: _____

By _____
Gregory S. Solaas, Chief Executive Officer

10135 Geary Avenue
Santa Fe Springs, CA 90670
Contractor's License No. 149816

SUBCONTRACTOR

If Corporation this agreement must be signed by the President and Secretary

«SUBCONTRACTOR» _____
Company Name

Date: _____

By _____
Signature of President / CEO

Print/Type Name

By _____
Signature of Corporate Secretary

Print/Type Name

«Address» _____
Address

«City», «STATE» «Zip» _____
City, State Zip

«LicenseNo» _____
Contractor's License No.

List all unions you are signatory to (type N/A if not applicable): _____
