

**PURCHASE AND INSTALLATION AGREEMENT**

(authorized use for purchase orders or subcontracts \$250,000 and under)

<b>Unger Construction Company</b> 910 X Street Sacramento, CA 95818-8589 Phone: 916-325-5500 Fax: (916) 325-5460		<b>Project Information:</b>	
		<b>Project Name:</b>	<b>Commitment #:</b>
		<b>Effective Date:</b>	<b>Job #:</b>
		<input type="checkbox"/> <b>No Deposit</b>	<b>Vendor #:</b>
		<input type="checkbox"/> <b>Deposit: \$ _____</b> (___%) of Vendor's Price)	<b>Delivery Date:</b>
<b>Vendor:</b>		<b>Ship To:</b>	
<b>Legal Entity Name</b> Address City, State Zip Attn: Phone: Fax: E-mail:		Project Address City, State Zip Attn: Phone: E-mail: <input type="checkbox"/> <b>FOB</b> <input type="checkbox"/> <b>Special delivery instructions in Exhibit 2</b>	
<b>Exhibits:</b>			
<input type="checkbox"/> Exhibit 1: Terms and Conditions		<input type="checkbox"/> Exhibit 5: Project Schedule	
<input type="checkbox"/> Exhibit 2: Scope of Work		<input type="checkbox"/> Exhibit 6: Site Logistic Plan	
<input type="checkbox"/> Exhibit 3: Construction Document List		<input type="checkbox"/> Exhibit 11: Prime Contract	
<input type="checkbox"/> Exhibit 4: Insurance Requirements			
<b>Business Terms:</b>			
<b>Unger and Vendor agree as follows:</b>			
<input type="checkbox"/> Purchase of Goods Only		<input type="checkbox"/> Retention ___% of Vendor Price	
<input type="checkbox"/> Purchase and Installation of Goods ("Work")		<input type="checkbox"/> Union Trade	
<input type="checkbox"/> Payment and Performance Bond ___% of Vendor Price		<input type="checkbox"/> Submittals Required per §9	
<b>Additional Insured:</b>			

Cost Code	Description of Goods	Amount
<b>Total Vendor Price</b>		\$

<b>Unger Construction Company, Inc.</b>  Signature: _____ [insert name, title] License No. 301690	<b>[insert Vendor's Name]</b>  Signature: _____ [insert name, title] License No. _____
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**EXHIBIT 1 – BUSINESS TERMS AND CONDITIONS**

1. **CONTRACT DOCUMENTS.** The Contract Documents include this Purchase and Installation Agreement ("P.O.") inclusive of all Exhibits indicated on page 1 of this P.O. All terms and conditions of the Exhibits identified on page 1 of the P.O. are incorporated by reference as though set forth in detail. By execution of this P.O., Vendor is bound and obligated to Unger to the same extent that Unger is bound to the owner under its prime contract and Vendor therefore assumes all of the same obligations, liabilities, and responsibilities that Unger has assumed toward Owner with respect to the Goods as defined on page 1 of this P.O. and/or the Scope of Work set forth in Exhibit 2 (as applicable).

(a) **Project Manual.** The following forms and information are included in the Project Manual ("PM") at the Project site office and also posted to Unger's website at <https://www.ungerconstruction.com/subcontractors>. By execution of this P.O., Vendor acknowledges that it has recently reviewed and become familiar with all forms and policies included in the Project Manual and will adhere to Unger's protocol for billing procedures and while performing its Work. The most current Project Manual is incorporated into this P.O. by reference.

<b>TAB 1</b>	<b>Billing Procedures</b>
1A	California Lien Waiver and Release Forms
1B	W-9 Form
1C	Prevailing Wage Information
<b>TAB 2</b>	<b>Safety, Health, and Environmental Subcontractor Required Safety Information</b>
2A	Pre-Mobilization Checklist
<b>TAB 3</b>	<b>Procure Use</b>
<b>TAB 4</b>	<b>Unger's Collective Bargaining Agreement</b>
<b>TAB 5</b>	<b>PINS Use</b>

2. **UNCONDITIONAL ACCEPTANCE.** Acceptance of this P.O. must be made on the exact terms and conditions contained in the Contract Documents. No changes to the terms and conditions will be deemed to result from any changes proposed by Vendor unless the same are expressly accepted in writing per Section 8. Conflicts between Exhibits to this P.O. will be resolved in favor of the terms in the P.O. Vendor's execution of the P.O., or commencing performance or making deliveries under this P.O. constitutes acceptance of said terms and conditions.

3. **DELIVERY.** Shipment and delivery will be in strict accordance with the instructions contained in this P.O. All deliveries will be F.O.B. jobsite unless otherwise expressly noted on the face of this P.O. Vendor must give Unger 24 hours' notice before delivery of any Goods. A detailed packing slip must be included with each shipment of Goods. Delivery of Goods to the site will be at the direction of Unger.

(a) **Risk of Loss.** Notwithstanding the terms of shipment or any confirmation documents, the risk of loss will not pass to Unger until: (1) after delivery to the Project site or other place designated on the face of this P.O., and Unger's inspection and acceptance of the Goods (provided Vendor is not also installing); or (2) after Vendor has completed the Work in accordance with the Contract Documents and the Work has passed inspection by all governmental authorities with jurisdiction over the Project (if Vendor is furnishing and installing the Goods). The Vendor, or any person except for Unger or owner, will not reserve a security interest in the Goods.

4. **PERFORMANCE, INSPECTION, AND NON-CONFORMING GOODS.**

(a) **Purchase Only.** If Vendor is not installing the Goods, Unger will inspect delivered Goods for proper quantities and visible shipping damage, and provide Vendor with notice of any shortage or visible shipping damage within 10 business days of delivery. Vendor will comply with all federal and state laws, ordinances and regulations bearing on the production, shipment, and delivery of the Goods. Unger will have the right to inspect and test the Goods at Vendor's plant any time before shipment, and to conduct additional inspections at any time after delivery of the Goods. The Goods may also be subject to inspection by owner or an inspector with jurisdiction over the Project. Regardless of whether inspections are conducted, Vendor remains liable for all defects and non-conforming Goods, and will be liable for all re-inspection, re-fabrication, re-shipment and return costs for nonconforming Goods. Vendor will not replace rejected Goods unless directed to do so by Unger in writing, and if requested, will replace the Goods, as well as all affected work necessary to avoid delays to the Project Schedule. In the alternative, Unger may, in its sole discretion, seek an equitable reduction in the Vendor's Price; repair the Goods at Vendor's sole expense; or seek replacement of the Goods from another vendor, and Vendor agrees to reimburse Unger on demand for all loss, damage, costs, attorneys and consultants' fees, and other charges incurred or made by Unger in connection with such replacement order together with interest thereon at the maximum amount permitted by law.

(b) **Furnish and Install.** Vendor warrants that it is authorized to do business in the State of California and is a California licensed contractor properly licensed by all necessary governmental authorities for performance of the Work. In addition to the terms and conditions in Subsection (a) above, Vendor will provide all labor, Goods, services, tools, equipment, hoisting, and other appurtenances necessary for proper completion of the Work including obtaining and paying for all permits, licenses, tests and official inspections. All Work will be timely performed in an efficient and workmanlike manner in accordance with the Scope of Work set forth in Exhibit 2, the Contract Documents, and approved Submittals and consistent with the degree of care and skill customarily exercised by California state licensed specialty contractors experienced in performing Work of similar size, scope, and complexity. Vendor will supervise and direct the Work of its employees, laborers and any subcontractors using its best skill and attention, and always enforce strict discipline and good order among the same. Vendor is solely responsible for all construction means, methods, techniques, sequences, safety, cleanliness and procedures, and for coordinating all portions of the installation of the Work. At a minimum, Vendor must comply with Unger's Safety, Health, and Environmental Program set forth in Project Manual. Vendor is responsible for the acts and omissions of its employees, laborers, subcontractors of every tier, and their agents and employees. Vendor will not employ any unfit person or anyone not skilled in properly performing the Work. Upon final completion of the Work, Vendor will remove all trash and debris from its operations.

5. **LABOR.** Unger is signatory with the Cement Masons, Carpenters, and Laborers union. Vendor will independently verify whether or not Unger's union agreements apply to manufacture of the Goods. Vendor will be bound by Unger's union agreements to the extent applicable and permitted by law, and will utilize labor and subcontractors in compliance with Unger's union agreements. Vendor will similarly bind its lower tier subcontractors. If there is picketing at the Project site and Unger establishes a reserved gate for Vendor's use, Vendor will continue proper performance of its Work under this P.O.

(a) Vendor will comply with any trade union requirements for which it is signatory. Unger will have the right to request that Vendor submit certified payroll records in accordance with Labor Code section 218.7 (f) (1) and 226 (a) as part of its payment request. Vendor will certify under penalty of perjury that records maintained and submitted by Vendor and its subcontractors are true and accurate. If Vendor is delinquent in the payment or payments to the appropriate health and welfare, pension, vacation and apprenticeship fund or funds, regardless of the job in connection with which the delinquency occurred, Unger will have the right to first deduct the full amount of the delinquency from payments to be made to Contractor under this P.O. Unger will also have the right to pay the amounts so deducted directly over to the appropriate fund or funds.

6. **TAXES.** Vendor will deliver the Goods free and clear of all federal, state, and local taxes, including income, excise, use, and sales taxes, and customs and import duties or tariffs.
7. **PAYMENT.** All amounts invoiced will be paid in U.S. Dollars unless otherwise specified on page 1 of this P.O. Vendor will electronically submit payment requests per the Billing Procedures and Forms set forth in TAB 1 of the Project Manual. As a condition for payment, Vendor will provide a bill of sale and completed California State conditional and unconditional waiver and release forms (as applicable) evidencing that Vendor's suppliers and subcontractors have been paid. Unger may withhold from any amounts due or to become due to Vendor, a sufficient amount to protect Unger from any claims, damages or liabilities arising out of Vendor's breaches of this P.O., including but not limited to claims for mechanics liens or stop payment notices asserted against owner, Unger or other alleged claims arising out of Vendor's performance or obligations under this P.O. Unger's right to withhold will continue until the situation has, in Unger's sole discretion, been satisfactorily remedied or adjusted by Vendor. For Goods that are procured and paid for but not delivered, Vendor will provide an executed UCC-1 Financing Statement upon request by Unger or Owner. No payment made by Unger under this P.O. will be construed to be an acceptance of defective or non-conforming Goods or defective or non-conforming installation of the Goods or Work. Additional
- (a) **Purchase of Goods Only.** The Amount specified on page 1 for each item is a lump sum amount that includes the cost of the Goods and all taxes and duties levied by federal, state, municipal, or other governmental authorities per Section 6 above, as well as all charges for packing, loading, shipping, and unloading. The express payment terms included on page 1 of the P.O. govern and control. If no express terms are stated in the P.O., amounts properly payable and not otherwise disputed by Unger will be paid within 30 calendar days of invoice date or receipt of Goods, whichever is later. Final payment is not due until 30 days after Vendor provides Unger with warranties, operation and maintenance manuals (if applicable), and all other close-out documents required by the Contract Documents. If the retention box is check on page 1 of this P.O., retention will be withheld until Final Payment is due.
- (b) **Furnish and Installation.** The Amount specified on page 1 for each item is a lump sum amount that includes all Work as defined in Section 4(b), taxes and duties levied by federal, state, municipal, or other governmental authorities per Section 6 above, as well as all charges for packing, loading, shipping, and unloading. Vendor's invoice will set forth the Goods delivered to the Project, the dates of delivery and installation, and the Unit Price for each item multiplied by the number of items delivered. Under no circumstances can progress payments for the Work exceed Vendor's Price minus retention. If no retention is identified in the "Business Terms" section, the retention amount for this agreement will default to 10%. Retention will be release with Final payment. Final payment will be made within 30 calendar days of completion of start-up and testing (if applicable), completion of punch-list items, and delivery of warranties, operation and maintenance manuals (if applicable), and close-out items to Unger, and final acceptance by Unger, owner, and any governmental authority with jurisdiction over the Project.
8. **CHANGES.** Through executed change order, Unger may make any change, including, without limitation, additions or deductions in quantities ordered, changes in the Plans and Specifications (Exhibit 3), or delivery time. If unit prices are designated in Exhibit 2 of this P.O., the unit prices will control all price adjustments for quantity changes. If the P.O. does not include unit prices, Unger and Vendor will equitably adjust the Vendor's Price based upon good faith negotiations. Costs for labor and materials will be at prevailing rates in the location of the Project. If Unger and Vendor cannot agree, final determination will be made in accordance with the dispute resolution process set forth in Section 14. No change will relieve Unger or Vendor of their obligations as to the Goods or Work. Claim for adjustment by Vendor must be asserted in writing within 10 days from the date the request for change unless mutually agreed otherwise. Changes will be binding on Unger only through executed change order. An executed change order is full and final settlement of changes in the Vendor's Price or time and completely resolve any claim by Vendor regarding compensation or time arising from or related to the subject of the change order.
- a) **Submission of Change.** Subcontractor must provide notice and a rough order of magnitude of a Subcontractor change to Unger within 2 business days of receipt of information from Unger that

Subcontractor believes constitutes a change in the Work or Subcontractor's knowledge of a changed condition that impacts the Work. Subcontractor will provide a complete cost proposal, including any change in Subcontract Time, within 5 business days unless a longer period of time is requested and agreed to by Unger.

9. **SUBMITTALS/DRAWINGS.** Vendor will prepare and submit all submittal data required by the Plans and Specifications or requested by Unger, including, without limitation, all shop drawings, product data, performance information, or other submittals ("Submittals"), no later than 15 calendar days after P.O. Effective Date or according to the Project Schedule (Exhibit 5). It is not incumbent upon Unger to discover any mistakes, errors, or deviations from the requirements of the Drawings and Specifications in the Submittals. Vendor will be responsible to Unger for the accuracy and conformity of its Submittals with the Contract Documents. Vendor will specifically identify any deviations in the transmittal document accompanying the Submittal. Any required re-submittal will be made promptly to avoid delays to the Project Schedule; in the absence of direction from Unger, re-submittals will be made within 10 calendar days of Vendor's receipt of re-submittal requirements. Final approval of Submittals will not relieve Vendor from responsibilities for unauthorized changes, deviations, omissions or other errors of any sort, or the failure of the Goods or Work to comply with the Contract Documents, or code requirements. Unger and owner are entitled to rely on the adequacy, accuracy and completeness of professional certifications concerning the performance criteria of the Goods, including but not limited to calculations and performance requirements included in product data. Time for delivery or installation will not be extended for delays in the Submittal process. If the time for delivery is set as a period of time from receipt of approved Submittals, that duration will be reduced by any period of avoidable delay caused by Vendor in the Submittal/re-Submittal process.
10. **TIME.** Time is of the essence with respect to delivery and installation dates set forth on page 1 of this P.O. and as further defined in the Project Schedule (Exhibit 5), as may be amended by Unger. If delivery or installation for any reason fail to be timely, Vendor will be liable for all damages suffered as a result of such failure. No extension of time will be considered unless Vendor has provided written notice and a request for extension within 3-business days of the event giving rise to the delay.
11. **WARRANTY.** Vendor warrants that all Goods are new, of good quality, free from defects, and conforming to the provisions of the Plans and Specifications. Vendor further warrants that the Goods are merchantable and fit for a particular purpose or the intended use. Warranty does not include ordinary wear and tear, abuse, or lack of proper maintenance. For a period of 1 year commencing from the delivery of the Goods, or from completion and acceptance of the Work (as applicable), and for longer periods specified in the Plans and Specifications, or pursuant to manufacturer's warranty, Vendor will repair or replace any and all deficient or defective Goods or installed Work, including removal, freight in and out, and reinstallation expenses, provided that the Goods or Work (as applicable) were properly maintained and used, together with any other work that is damaged during repair or replacement. All other warranties implied by law or usage of trade are incorporated into this P.O. and will apply to the Goods and/or Work. All warranty work will be commenced within 10 days written notice, or such shorter period as may be necessary under the circumstances. The Goods and/or Work were ordered by Unger in reliance on the express warranties, as well as those implied by law or usage of trade. Unger's remedies pursuant to this paragraph are in addition to, and not a limitation on, all other remedies allowed by law. All warranty obligations survive termination of this P.O. At Unger's request, Vendor will assign in full and deliver to owner, at no cost to Unger, all applicable warranties, including those provided by Vendor's subcontractors or suppliers.
12. **INDEMNIFICATION.** To the fullest extent permitted by law, Vendor will defend (with counsel acceptable to Unger), indemnify, and hold the Unger, owner, and their respective officers, directors, agents, employees, affiliates, parents, and subsidiaries ("Indemnitees") harmless from and against any and all claims, demands, causes of action, damages, costs, expenses (including legal, expert witness, and consulting fees and costs), losses, or liabilities, in law or equity, arising out of, or resulting from, product liability claims, and the actual or alleged acts or omissions in the performance of furnishing the Goods or performing the Work by Vendor, its employees, subcontractors, suppliers, or anyone for whom Vendor and its subcontractors and suppliers may be liable. Nothing contained herein requires Vendor to defend,

indemnify, and hold harmless the Indemnitees for Indemnitees' active negligence or willful misconduct. The indemnity and defense obligation set forth in this paragraph will not be limited by the insurance requirements set forth in this P.O., and the insurance provisions will not be limited by the scope of this indemnity. Such indemnity and defense obligation includes, without limitation, each of the following: (i) claims of infringement or violation of any copyrights, patent rights or similar rights; (ii) claims of injury or damage to tangible property or persons, including sickness, disease, and death; (iii) claims based on negligent acts or omissions of Vendor, or any of its employees, subcontractors or suppliers at the Project site; (iv) claims arising from defects, actual or alleged, in materials, products, or services furnished or supplied by Vendor; (v) claims arising from non-compliance with labor provisions set forth in Section 5; (vi) attachments or liens by creditors, or others claiming to have acquired rights against Vendor; and (vii) any mechanic's liens, stop payment notices or bond claims asserted by anyone claiming a right to payment for work, labor, services, equipment or materials supplied to or at the request of Vendor provided Unger has paid Vendor for said Goods or Work. Defense and indemnification obligations survive termination of this P.O.

13. **INSURANCE.** If Vendor is performing Work, Vendor will procure insurance coverage in the amounts set forth below and pursuant to **Error! Reference source not found.** Vendor agrees to carry (i) Commercial General Liability Insurance covering personal injuries (including sickness, disease, and death) in the amount of \$1,000,000 per occurrence and \$2,000,000 in aggregate, \$2,000,000 in products and completed operations coverage (for a period of 10 years after final completion), and \$1,000,000 personal and advertising injury; and (ii) automobile liability insurance covering bodily injuries (including death) in the amount of \$1,000,000 each accident; and (iii) Umbrella/Excess Liability Insurance in the amount of \$2,000,000 per occurrence. Unger, Project owner, property owner, and other entities required by the prime contract must be named additional insureds on these policies. If Vendor is performing Work, Vendor will provide and maintain Workers' Compensation Insurance in conformity with the laws of the state of California with Employer's Liability Insurance in the amount of \$1,000,000 per occurrence. Vendor will submit written proof of insurance and additional insured endorsements to Unger for all policies except for Worker's Compensation before entrance at the Project. Subcontractors will be required to carry similar types of insurance coverage as Vendor. Insurance requirements survive termination of this P.O.

(a) Vendor's insurance is primary and non-contributory to any similar insurance maintained by Unger for its own benefit. Endorsements must list the specific Project name and number, and an "all California operations statement" is not allowed. All Commercial General Liability endorsements must include ongoing operations, product-completed operations, and must be on a primary and non-contributory basis. All insurance must be placed with insurers that are admitted or licensed to issue insurance in the State of California. All insurers must maintain an A.M. Best rating of at least A- or better and a financial classification of VII or better. The amounts and types of insurance will conform to the minimum terms, conditions, and coverages of the Insurance Service Office (ISO) policies, forms, and endorsements in effect when the P.O. is executed.

(b) Vendor and subcontractors waive all rights against Unger, its agents, officers, directors, and employees, as well as any additional insureds for recovery of damages to the extent these damages are covered by the workers' compensation, commercial general liability, or auto liability maintained, except such rights as Vendor or Unger may have to the proceeds of the insurance. This waiver does not apply to faulty workmanship. If any applicable policies of insurance require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of those policies will cause them to either provide a "blanket waiver" endorsement or a waiver of subrogation endorsement that includes the name and location of the Project.

14. **DISPUTE RESOLUTION.** If a dispute arises between Unger and Vendor, the dispute will first be addressed in a face to face business negotiation between senior executives from Unger and Vendor. This meeting will be for the express purpose of exchanging and reviewing all pertinent documents and information relating to the claim; freely and candidly discussing the merits of the claim and each party's position; and reaching agreement upon a reasonable compromise. Notice of claim must be given to the other party within 5 business days of event giving rise to the claim. The business negotiation will be

scheduled at a mutually agreeable time and location. Legal representation is not permitted. All decisions will be recorded in writing and signed by Unger and Vendor.

(a) **Disputes Between Only Unger and Vendor.** If the dispute is just between Unger and Vendor and does not involve any other party related to the Project, and the dispute is not resolved through informal business negotiations, either party may demand mediation. Before agreeing to mediation, each party will execute a disclosure confirming that each party understands the confidential nature of the mediation proceedings and materials pursuant to California Evidence Code section 1129. Request for mediation will be filed in writing with the other party and with the American Arbitration Association or other mutually agreed mediator, and the mediation will be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. The parties will select a mediator within 15 days and will share the mediator's fee and any filing fees equally. Agreements reached in mediation will be enforceable as settlement agreements in any court having jurisdiction over the matter. If the Parties are unable to resolve the dispute by mediation, then the parties may proceed with the claim through judicial reference in accordance with California Code of Civil Procedure section 638 through 645.2.

(i) A demand for judicial reference must be made within the time frame for filing a civil action and under no circumstance after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. The Referee must be a retired judge of the State of California with significant experience in construction disputes, who will hear, determine and try all claims arising from this P.O. in accordance with California Code of Civil Procedure section 638-645.2. The parties may, if the Court appoints the Referee, obtain the disqualification of anyone appointed as Referee on the same basis and under the same procedures of CCP section 170.6 regarding peremptory challenges. The parties will share the Referee's fees and any administrative costs associated with the reference, and no party may recover costs under CCP section 1032 or otherwise. California rules of evidence, civil procedure, and rules of court are applicable. However, the parties may, but are not required to, mutually agree to place restrictions on discovery pursuant to Code of Civil Procedure section 2016.030. All matters will be venued in Sacramento.

(b) **Disputes Involving Other Parties.** If the dispute arises from the Project and involves other parties, Vendor will be bound to the dispute resolution process set forth in Unger's prime contract. Unger will provide Vendor with copy of dispute resolution provisions in prime contract upon written request.

## 15. TERMINATION

(a) **Termination for Convenience.** Unger will have the right to terminate the P.O., in whole or in part, without the consent or fault of Vendor, and without liability, at any time upon 7 days written notice to Vendor. If the Goods are not specifically manufactured for Unger (custom order), Vendor will be entitled to payment for only those Goods delivered and accepted by Unger. If the Goods are a custom order, Unger will pay Vendor actual cost through the date of termination plus 15% markup for overhead and profit provided Vendor: (i) assigns all subcontracts, purchase orders, or other agreements related to this P.O. to Unger upon written request; (ii) delivers to Unger all completed or partially completed Goods upon Unger's written request; and (iii) delivers to Unger all warranties, Submittals, and other documents related to the Goods. The amount due is subject to audit at Unger's request per Section 18, and payment will not exceed the total Vendor's Price under any circumstance. All payments under this Section are subject to the payment provision in Section 7, and any dispute will be resolved in accordance with Section 14.

(b) **Termination for Default.** Upon 7 business days written notice, and Vendor's failure to commence curing the default, Unger will have the right to terminate the P.O. in whole or in part, if Vendor: (i) fails to make delivery in accordance with the agreed delivery date; (ii) fails to observe or comply with any of the other instructions, terms, conditions, or warranties required by the Contract Documents.; (iii) fails to make progress endangering full and timely performance of the P.O., (iv) materially breaches a term or condition of this P.O.; or (v) is subjected to any proceedings by or against it involving bankruptcy or insolvency, for appointment of a receiver or trustee, or for an assignment for the benefit of its creditors. The effective date of termination will be 7 business days from the written notice unless Vendor has

commenced curing, to the satisfaction of Unger. If Vendor is terminated for default, Vendor will not receive further payment, and Unger will be entitled to all legal or equitable remedies available. If a court of competent jurisdiction deems that termination of the Vendor was wrongful or otherwise improper, the termination will be deemed a termination for convenience under Section (a).

16. **COMPLIANCE WITH THE LAW.** Vendor's performance will strictly conform with applicable laws, regulations, safety orders, labor agreements and working conditions to which it is subject, including, but not limited to, all State, Federal and local non-discrimination in employment provisions, and all local regulations and building codes.
17. **SAFETY DATA SHEETS (SDS).** Vendor will submit to Unger all SDS required by law. The SDS must contain all information required by Title 29 Code of Federal Regulations, Part 1910, as amended. All hazardous compounds must be clearly labeled as to content, with appropriate warnings noted, and name and address of the manufacturer listed. If Vendor is performing Work, Vendor's employees using these compounds must be trained in protective handling and potential hazards before the Goods arrive on site. Vendor performing Work will comply fully with all California State and Federal laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, the handling and storage of a Hazardous Substance or Material, accident prevention, safety equipment and practices and will comply with Unger's Safety, Health, and Environmental Subcontractor Required Safety Information (See, PM, Tab 2).
18. **NOTICE.** Any notice required or permitted under this P.O. may be served personally, by overnight commercial carrier, or by email directed to the address of the party shown on page 1 of this P.O. If personal delivery, Notice will be effective upon personal delivery, or 3 business days after being sent either via registered or certified mail return receipt requested or 1 business day after being sent by overnight commercial courier providing next business day delivery.
19. **GOVERNING LAW.** This P.O. will be governed by and construed under the laws of the State of California without regard to California conflict of law provisions. Unger and Vendor agree that any claim or enforcement of a judgment or alternative dispute award will be filed with the appropriate court of law and in accordance with the venue (if any) stated in Unger's prime contract.
20. **INTERPRETATION AND SEVERABILITY.** The terms and conditions of this P.O. will be interpreted in accordance with their plain meaning, and not strictly for or against either party. Any rule of construction or interpretation to the contrary will be of no force or effect. If a court of competent jurisdiction finds any term or provision of this P.O. to be void or unenforceable for any reason, that term or provision will be severed and the remainder of the P.O. will remain in full force and effect to the maximum extent permitted by law.
21. **NO THIRD PARTY BENEFICIARIES, NO ASSIGNMENT.** Unger and Vendor have entered into this P.O. solely for their respective benefit, and no third party (including employees) will be entitled to any benefit or remedy. Vendor will not assign or transfer any of its rights or obligations under this P.O. without Unger's prior written consent. Any unauthorized assignment will be void and will constitute a material breach of the P.O. Vendor will cooperate with Unger regarding any assignment and subordination of lien rights to lender providing construction financing for the Project.
22. **MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES.** Unger and Vendor agree to waive all claims against each other for any consequential damages, as defined under California law, that may arise out of or relate to this P.O. Consequential damages include, but are not limited to, damage arising from rental expenses, loss of income, profit, unabsorbed overhead, loss of business, the services of employees, or loss of reputation, principal office overhead and expenses, and loss of bonding capacity. The provisions of this Section will apply to the termination of this P.O.
23. **WAIVER.** No action or failure to act by Unger waives any right or duty afforded it under the P.O. and an action or failure to act will not constitute approval of or acquiescence in a breach of the P.O., unless specifically agreed to in writing by Unger.



24. **COUNTERPARTS.** The P.O. may be executed in counterparts, each of which will be deemed an original, and all of which when taken together will constitute one instrument. A copy of this P.O. executed and delivered by facsimile, email in ".pdf" format, or any electronic signature complying with the California Uniform Electronic Transactions Act and the U.S. federal ESIGN Act of 2000 (e.g., www.docusign.com) will be deemed to have the same legal effect as delivery of an original executed copy.
25. **CSLB NOTICE.** If Vendor is performing work, contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within 4 years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, CA 95826.
26. **ENTIRE AGREEMENT.** The Contract Documents contains the entire agreement of the parties relating to the subject matter set forth in this P.O., and may be amended only by a writing signed by Vendor and Unger.

SAMPLE

**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

**1. SUBCONTRACT PRICE BREAKDOWN.**

Cost Code:	Base Bid Line Items:	Amount
		\$
		\$
		\$
		\$
		\$
		\$
		\$
	[insert Allowances]	\$
	[insert Allowances]	\$

**Subtotal Direct Costs** \$

Payment and Performance Bond (if applicable) \$

**Subcontract Price** \$

Note: Allowances (if any) include all Work described in Section 4.1 of the Subcontract.

**1.1 Alternates and Unit Pricing.** The following alternate prices and/or unit prices may be applied at Unger’s option for changes in the Work pursuant to Article 6 of the Subcontract. However, the prices indicated herein are unit prices which include all materials, labor, taxes, insurance, shipping, overhead, profit, and any other charges of the Subcontractor and its suppliers in connection with the Work and therefore are not subject to any further mark-up. Work covered by these alternate prices and /or unit prices will be performed in strict accordance with the applicable provisions of the Subcontract.

[insert item]	add \$_____ (L.S. or each)
[insert item]	add \$_____ (L.S. or each)
[insert item]	deduct (\$_____) (L.S. or each)

**2. WORK.**

**2.1 Construction Documents.** The Construction Documents listed in Exhibit 3 generally describe the scope of Work. Subcontractor acknowledges and understands that all Work must comply with applicable building codes. If there is a conflict between the applicable building codes and the Construction Documents, the applicable building code will govern.

**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

**2.2 Definition.** With respect to specific scope items, the word “Provide” means furnish and install completely, including all costs for labor, material, equipment, delivery, storage, hoisting, tools, and any other facilities and appurtenances necessary to properly complete the Work.

**2.3 Specific Scope.** The Work includes but is not necessarily limited to the following: [List specific scope items only]

- 2.3.1 Provide
- 2.3.2 Provide
- 2.3.3 Provide
- 2.3.4 Provide
- 2.3.5 Provide
- 2.3.6 Provide
- 2.3.7 Provide

**3. SCHEDULE.**

**3.1 Schedule.** In addition to the requirements set forth in Article 5 of the Subcontract, the Subcontract Price includes the following key dates:

- 3.1.1 [insert NTP date]
- 3.1.2 [insert dates for key submittals]
- 3.1.3 [insert dates for ordering long lead items]
- 3.1.4 [insert any phasing requirements]
- 3.1.5 [insert fabrication and shipping schedule]
- 3.1.6 [other]

**4. LABOR.**

**4.1 General.** Field labor costs limited to hours of labor performed by workers directly employed by Subcontractor whether performing Work on-site or at off-site locations. Performance of Work at off-site locations is subject to Unger's approval. Labor rates must be inclusive of basic hourly wages, payroll taxes, and employer benefit payments for health and

**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

welfare, pensions, vacations/holidays, supplemental dues, and training, plus any other benefits or payments required by law or applicable collective bargaining agreements. Labor costs associated with foremen and lead-men are included in field labor and all self-performed Work will be compensated as field labor.

**4.2 Labor Rates (excluding OH & P).**

Classification	Standard Time	Time and a Half	Double Time
Detailing			
Shop Labor			
Foreman			
Journeyman			
5 <sup>th</sup> Period Apprentice			

**4.3 Prevailing Wage.** If this Project is subject to prevailing wage per the Business Terms Sheet, see Tab 1C of the Project Manual for prevailing wage information.

**4.4 Compliance with Labor Code Sections 218.7 (f) (1) and (2).** If Subcontractor is a union trade and the box in the Business Terms Sheet requiring certified payroll is checked, Subcontractor must comply with certified payroll requirements per Tab 1C of the Project Manual.

**4.5 Unger's Labor Agreement.** See, section 3.9.2 of the Subcontract and Tab 4 of the Project Manual regarding Unger's labor agreements.

**5. SAFETY.**

**5.1 General.** Unger's Safety, Health, and Environmental Subcontractor Required Safety Information is set forth in Tab 2 of the Project Manual. See, also Section 3.13 of the Subcontract regarding safety.

**5.2 Premobilization Meeting.** Subcontractor is required to have a pre-mobilization meeting 2 weeks before mobilization to the Project site as noted in greater detail in Tab 2 of the Project Manual.

**5.3 Safety Supervision.** Subcontractor will provide safety supervision at all times when Work is being performed at the site. Subcontractor will conduct jobsite safety meetings, and comply with all safety standards as noted in Section 3.13 of the Subcontract and addressed in greater detail in Tab 2 of the Project Manual.

**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

**6. SPECIAL PROVISIONS**

**6.1**  **Sustainability.** This Project is subject to the following sustainability requirements:

6.1.1 [insert sustainability requirements]

**6.2**  **DBE/WBE Participation.** DBE/WBE participation is required for this Project. Subcontractor must participate at \_\_\_\_\_ percent.

**6.3 Signage.** [often there are restrictions. Insert requirements or restrictions here]

**6.4 Work Hours.**

6.4.1 Standard jobsite work hours will generally be between 7:00 a.m. and 3:30 p.m., Monday through Friday. Any Work that must be performed on-site during non-standard hours must be coordinated with Unger's superintendent at least 72 hours before beginning the non-standard work hours shift.

6.4.2 No Work may be performed on-site without Unger field supervision personnel present at the jobsite.

6.4.3 Subcontractor will be responsible for additional Unger supervision costs incurred during non-standard work hours which are resultant from Subcontractor error or failure to perform its Work per the Project Schedule and 3-week work plan.

**6.5 Materials and Equipment.** All delivery, material, and equipment storage must be coordinated with Unger's superintendent and in accordance with the Site Logistics Plan set forth in Exhibit 6.

6.5.1 Subcontractor will coordinate onsite material and equipment storage in advance of deliveries with Unger's superintendent. As much as is practicable, Subcontractor will adopt a "just in time delivery" method for delivering materials and equipment to the jobsite in lieu of stockpiling large quantities of material and equipment onsite.

(a) Subcontractor will securely store all its jobsite materials to prevent the occurrence of any condition that could contribute to a hazardous condition, material contamination, fire, explosion, or other calamity. Subcontractor will advise Unger, in writing, of any material storage conditions onsite which could contribute to the above conditions.

(b) Subcontractor will protect materials from adverse weather.

6.5.2 Subcontract Price includes all unloading, rigging, distribution and protection, including all material handling equipment required. Subcontractor's foreman is to be present for all deliveries. A copy of all FOB documentation will be given to Unger's superintendent on the same day of delivery.

**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

6.5.3 The Project site is not secured, so consideration should be given to risks associated with stockpiling materials on the jobsite. Subcontractor is responsible for protection, damage, or loss of any stockpiled material.

6.5.4 Material and Labor Escalation . Material and labor escalation is included in the Subcontract Price. No further labor and material escalation will be allowed under this Subcontract including from any tier-subcontractors or suppliers.

**6.6 Temporary Facilities.**

6.6.1 Site Logistics. Unger will designate specific areas for jobsite office trailers, jobsite materials storage, and staging areas for deliveries. Location of Subcontractor's site facilities are to be coordinated with the Site Logistics Plan set forth in Exhibit 6 and Unger's superintendent before mobilization.

(a) Subcontractor will continuously maintain site facilities and staging yards in a neat, orderly, and safe manner.

(b) While every effort will be made to minimize disruption to the temporary facilities areas throughout the various construction phases, it may become necessary for trailers and materials to be relocated as the various areas of the site are developed. Such relocations will be planned in advance with the foremen/superintendent representing Subcontractor. Subcontractor is responsible for relocation of their trailers and materials, and removal of any debris as directed by Unger's superintendent.

(c) Upon completion of the Work, and as directed by Unger's superintendent, Subcontractor will remove its trailer, all equipment, materials and debris from the Project site, and return the areas to a neat and orderly condition.

6.6.2 Temporary Communications. Subcontractor will provide and maintain all applicable communications and data service connections for field offices. Subcontractor will provide its own jobsite telephone and data services.

6.6.3 Temporary Water. Subcontractor will provide and maintain all required potable water required for its construction field personnel, as well as water required for, and in connection with, its construction operations such as dust control related to the Work. Unnecessary waste of water will not be permitted.

6.6.4 Temporary Power and Lighting. Unger will provide temporary power at the jobsite for small tools and temporary lighting. Unger will place temporary power distribution boxes throughout the building interiors after concrete slabs and deck slabs have been placed. Subcontractors requiring power for high electrical demand tools and equipment are to provide their own power to serve these tools and equipment.

(a) Unger will provide temporary lighting at paths of travel and as needed for jobsite safety. Disciplines requiring additional lighting in other areas may utilize their

**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

own moveable lighting systems. Power and lighting devices are to comply with CAL OSHA requirements and be of appropriate design and construction for use on a commercial construction jobsite.

(b) Electrical service to a distribution panel will be provided at the jobsite trailers compound. Subcontractors are responsible for providing connectivity from the distribution panel to their trailer(s).

6.6.5 Temporary Fences. Unger will provide necessary temporary fencing and gates required for the Project site. Unger will maintain the Project site fence through Final Completion of the Project. Gates will remain closed and locked during off-hours.

6.6.6 Temporary Sanitary Facilities. Unger will provide and maintain all required temporary toilets and hand washing facilities for use of construction personnel and field labor through Final Completion of the Project. Workers are prohibited from using any Owner restroom facilities.

**6.7 Fuel Storage.** All on-site fuel storage must be in double containment storage or include a spill containment system. Bulk fuel storage is not allowed on the jobsite. Subcontractors are to make arrangements for refueling services to minimize any on-site fuel storage.

**6.8 Scaffolding, Hoisting.** Subcontractor will provide all bracing, hoisting, cranes, rigging, forklifts, ladders, scaffolding and other equipment necessary for the performance of the Work. This will include appropriate traffic control, flagmen, and all necessary safety precautions. Subcontractor shall notify Unger's project superintendent in writing before site mobilization of hoisting or lifting operations. Subcontractor will also coordinate with other disciplines whose work may be affected by the lifting or hoisting operations.

6.8.1 If Subcontractor is providing a crane, Subcontractor will prepare, for review only, engineered hoisting plans showing hoist locations, pad specifications matching existing S.O.G., out-rigger loads, pick points, boom swing, setting points and crane limits. Any changes from the hoisting plan are to be brought to Unger's attention in writing prior to performing any Work. Subcontractor will coordinate the hoisted loads so as not to overload the structure. Pre-sort deck and split truck deliveries as needed to accommodate structural steel erector's hoisting schedule.

**6.9 Housekeeping.**

6.9.1 Subcontractor will maintain the area where Work is being performed in accordance with Section 3.17 of the Subcontract.

6.9.2 Dust generated by this Work will be kept to a minimum.

6.9.3 Subcontractor will clean truck tires just before leaving the construction site.

**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

6.9.4 Subcontractor will remove all scrap, un-used, or improper materials from the jobsite.

6.9.5 Remove trash, including hazardous waste, from the site. Comply with specified construction waste management program, recycling and LEED requirements (to the extent applicable) and provide all paperwork verifying compliance.

6.9.6 Subcontractor will provide and utilize appropriate washout and disposal facilities and procedures for their tool and equipment cleanup. Under no circumstance will the sewer or storm water system be utilized for disposal of the waste water from such cleanup activities.

**6.10 Field Operations.**

6.10.1 Testing and Inspection will be in accordance with Section 3.11 of the Subcontract.

(a) All inspection or testing requests are to be submitted to Unger's superintendent in writing **no later than 2:00 p.m.** the day before the requested inspection. Early morning inspections must be submitted **before Noon** on the day before the requested inspection. Special testing and inspection procedures may require additional advance notice.

(b) Inspection requests must be written in a format acceptable to Unger's superintendent and the IOR (if applicable), including sufficient information to clearly indicate the type of inspection required, the exact areas involved in the inspection, the date and timeframe requested for the inspections to be conducted, and the contact information of the person(s) representing the Subcontractor.

(c) Work delays or additional costs caused by late inspection requests, or by Work not being ready for inspection when the inspection is made as requested, will be at the sole cost and expense of Subcontractor.

6.10.2 Subcontractor will closely coordinate with Unger and other subcontractors to maintain traffic in all areas of construction and to maintain Owner's access to adjoining areas at all times. Subcontractor will provide radios for staging of trucks and communication with Unger's superintendent.

6.10.3 Subcontractor will provide the required maintenance of any on-site equipment after regular working hours.

6.10.4 Subcontractor will protect surrounding areas from damage while performing its Work and will repair damage to existing structures or utilities at no cost to Unger or Owner.

6.10.5 Subcontractor's daily reports, documenting their crew and activities performed, will be turned in daily to Unger's Superintendent.



**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

6.10.6 [insert parking availability. For example, Off-site parking is available]

6.10.7 [insert any site specific security, badging, or drug-testing requirements. For example, All personnel must attend the site security training course and be drug –tested prior to commencement of the Work. Obtain security badges for personnel working in certain areas. The cost of owner-required security escorts will be shared with this Subcontractor in direct proportion to its crew size]

**6.11 Quality Assurance.** Subcontractor is required to participate in Unger’s quality assurance program.

6.11.1 Subcontractor will attend meetings with Unger and other Project Team Members (including the IOR, if applicable) to determine the criteria defining an acceptable quality standard expected of the Work, and then implementing effective controls to achieve the desired outcome.

6.11.2 Subcontractor will provide mockups of systems or components as specified in the Construction Documents, or when deemed necessary to establish the acceptable standard of fit and finish.

6.11.3 The Construction Documents represent the minimum standard required for the Work. The intent of the QA program is to deliver the greatest value to the client in an efficient manner. The QA program operates as an ongoing process as the Work progresses to minimize or eliminate Punch List corrections at Completion of the Work.

6.11.4 Work or processes not meeting the acceptable level of quality will be corrected at the Subcontractor’s sole expense. Subcontractor will be responsible for any additional costs associated with rescheduling the work of others resulting from correction of unacceptable Work.

**6.12 Record Documents.**

6.12.1 Subcontractor will continuously maintain record drawings of all changes made during the performance of the Work. Record drawings include accurate “as-built” dimensional information for buried or concealed portions of the Work. Subcontractor will update the record drawings maintained in Unger’s jobsite office on a monthly basis, as a precondition of approval of monthly progress billings. Subcontractor will deliver a reproducible set of record drawings to Unger upon Completion of the Work, and as a condition to Final Payment per Section 7.5 of the Subcontract.

6.12.2 Subcontractor is responsible for monitoring elevations and alignment of as-built conditions with instrument readings on every floor, and presenting results to Unger immediately. Costs for remedial work required to correct out of tolerance conditions are the responsibility of Subcontractor.

**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

**7. EXCLUSIONS.**

**7.1 General.** The following is specifically excluded from the Work:

7.1.1 [insert exclusions]

7.1.2 [insert exclusions]

SAMPLE



## EXHIBIT 4 – INSURANCE REQUIREMENTS

### 1. TRADITIONAL INSURANCE COVERAGE

**1.1 General.** If the traditional insurance coverage box is checked in the Business Terms Sheet, Subcontractor will carry workers compensation, commercial general liability, automobile liability, excess/umbrella liability, tools and equipment insurance per the limits set forth in the Business Terms Sheet. Depending on location of the Project and Subcontractor's scope of Work, Subcontractor may also be required to carry riggers liability, railroad liability, contractor's pollution liability, and/or professional liability insurance as indicated in the Business Terms Sheet by checked box. All coverage must be not less than the amounts specified in the Business Terms Sheet. All insurance coverage will be pursuant to the Business Terms Sheet and in accordance with this Exhibit 4.

### 2. MINIMUM COVERAGE APPLICABLE TO ALL REQUIRED INSURANCE

**2.1 Coverage.** All commercial general liability (including off-site CGL if there is an OCIP), commercial automobile liability and any umbrella/excess policies must be written on an occurrence basis and comply with the following provisions.

**2.1.1 Workers Compensation/Employer's Liability.** Coverage will include insurance as required by California state law and employer's liability coverage per the Business Terms Sheet.

**2.1.2 Commercial General Liability (CGL).** Primary CGL coverage must be issued on policies at least as broad as ISO form CG 001 12 07 with limits and excess coverage in the amounts listed in the Business Terms Sheet. Minimum limit requirements set forth in the Business Terms Sheet may be met by a combination of primary limits and excess coverage. The insurance will cover all operations of the Subcontractors, its tier-subcontractors, suppliers, and equipment vendors and include coverage for: (i) premises, operations and mobile equipment liability; (ii) completed operations and products liability; (iii) contractual liability for liability assumed under this Subcontract; (iv) broad form property damage liability; (v) medical and personal injury liability including coverage for sickness and death; (vi) explosion, collapse, and underground hazards; (vii) personal and advertising injury; (viii) severability of interests; and (ix) cross-liability. Per Project Aggregate Endorsement Required. Additionally, Subcontractor's CGL policy must not have a wrap/wrap-up/OCIP/CCIP/CIP exclusion that applies to the Work or Project that is the subject of this Subcontract, or a subsidence and/or earth-movement exclusion if Subcontractor or its tier-subcontractors are performing civil site work, foundation, or infrastructure as part of their Work.

(a) **Rigger's Liability Endorsement.** If Subcontractor is providing a crane or performing Work that requires hoisting or lifting equipment, Subcontractor will procure an endorsement to its CGL policy for rigger's liability coverage. The rigger's liability endorsement must cover property damage to personal property of others in Subcontractor's care, custody, or control. The coverage must apply to property damage caused by an accident while lifting, lowering, or moving personal property of others.

## EXHIBIT 4 – INSURANCE REQUIREMENTS

2.1.3 Automobile Liability. Commercial Automobile Liability Insurance will be issued on policies at least as broad as ISO Form CA 00 01, CA 00 05, CA 00 12 or CA 00 20 and must cover accidents occurring on-site and off-site with each accident and excess limits not less than those stated in the Business Terms Sheet. This insurance will apply to all owned, leased, non-owned or hired vehicles to be used by the insured in connection with the performance of its obligations under this Subcontract. The insurance will include uninsured and underinsured coverage and any statutorily required “No Fault” benefits. The insurance must also include an MCS 90 endorsement for clean-up of hazardous material spills.

2.1.4 Excess Policies. Umbrella/excess policies must be following form or written on policies with coverage at least as broad as each and every one of the underlying policies, including completed operations and contractual liability, with limits not less than those stated in the Business Terms Sheet.

2.1.5 Tools and Equipment. With respect to Subcontractor's operations, it will purchase, maintain and pay for all-risk contractor's equipment floater on all machinery, tools, equipment and other similar property in an amount at least equal to their fair market value.

2.1.6 Railroad Protective Liability. Subcontractor will purchase and maintain a railroad protective liability policy if its Work is on or within 50 feet of a railroad or affects any railroad property including but not limited to tracks, bridges, tunnels, and switches.

2.1.7 Contractor's Pollution Liability Coverage. If the Contractor's pollution liability box is check in the Business Terms Sheet, Subcontractor will provide contractor's pollution liability coverage that includes coverage for third-party liability with limits not less than those set forth in Business Terms Sheet. Subcontractor will cause tier-subcontractors to carry pollution liability coverage if appropriate for their portion of the Work. If pollution coverage is issued on a claims-made basis, the retroactive date will be prior to the commencement of the Work performed under the Subcontract and maintained for 10 years after Final Completion. The policy will provide the following: (a) inclusion of contractual liability coverage; (b) inclusion of hazardous transporters pollution liability coverage; (c) no limitation or exclusion for claims by one insured party against another insured; (d) severability of interests; (e) natural resource damages coverage; and (f) mold coverage.

2.1.8 Professional Liability Coverage. If Subcontractor is performing design build portions of the Work per Exhibit 7, Subcontractor will provide professional liability insurance, or cause its tier-consultant to provide professional liability insurance, covering damages caused by Subcontractor's or its tier-consultants negligent acts, errors, or omissions arising out of the performance of professional services or the Work for which Subcontractor or its tier-consultant is legally liable.

**2.2 Term of Insurance Policies.** Commercial general liability will be obtained before commencement of construction and will be maintained in force for 10 years following Final Completion. Workers compensation insurance, automobile liability, rigger's liability and railroad protective liability will be in force from the inception of this Subcontract through Final

## EXHIBIT 4 – INSURANCE REQUIREMENTS

Completion. Professional liability policies must be in place before commencement of design and remain in place for 10 years after Final Completion.

**2.3 Qualifications and Rating.** All insurance will be placed with insurers that are admitted or licensed to issue insurance in the State of California. All insurers will have an A.M. Best rating of A- or better and a financial classification of VII or better.

**2.4 Standard Forms.** To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions, and coverages of the Insurance Service Office (ISO) policies, forms, and endorsements in effect when this Subcontract is executed.

**2.5 Insurance Certificates and Copies of Policies.** Before commencing any Work under this Subcontract, Subcontractor will provide Unger with insurance certificates and endorsements reflecting the insurance required by this Subcontract and specifically naming Unger, Owner, and other additional insureds set forth in the Business Terms Sheet on all liability policies except for professional liability and workers compensation insurance. Primary Non-Contributory Endorsement required by this Subcontract for Auto Liability and General Liability Policies.

**2.6 Tier-Subcontractors' and Tier-Consultants' Insurance.** Subcontractor will cause its tier-subcontractors and tier-consultants (if any) to carry worker's compensation, commercial general liability and commercial automobile liability insurance with similar coverage at appropriate limits for their respective portion of the Work. Depending on location of the Project and tier-subcontractor's portion of the Work, Subcontractor may require its tier-subcontractor to carry railroad liability, rigger's liability, pollution liability, or professional liability as appropriate. Subcontractor will require its tier-subcontractors and tier-consultants (if any) to name Subcontractor, Unger, Owner, and other parties set forth in the Business Terms Sheet as additional insureds on their commercial general liability and automobile liability policies. Subcontractor will cause all tiers and their respective insurance companies to waive their rights of subrogation per Section 3.8 against Subcontractor, Unger and the additional insureds set forth in the Business Terms Sheet.

**2.7 Primary Insurance.** All liability policies required by this Subcontract are primary and non-contributory to any similar insurance maintained by Unger or Owner for their respective benefit.

**2.8 Waivers of Subrogation.** Subcontractor and its tier-subcontractors and tier-consultants waive all rights against Unger and Owner, as well as any additional insureds identified in the Business Terms Sheet for loss or damage to the extent reimbursed by any insurance applicable to the Work, except such rights as Unger, Subcontractor and its tier-subcontractors, or Owner may have to the proceeds of the insurance or to the extent prohibited by any applicable policy. A waiver of subrogation is effective as to a person or entity even though that person or entity would otherwise have a duty of defense and indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the loss. General Liability, Auto Liability,

## EXHIBIT 4 – INSURANCE REQUIREMENTS

Pollution Liability and Workers' Compensation require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of those policies will cause them to either provide a "blanket waiver" endorsement or a subrogation endorsement that includes the name of the Project and the location of the Project site.

**2.9 No Limitation.** Nothing in this Exhibit 4 limits, in any way, the extent to which Subcontractor or any of its tier-subcontractors or tier-consultants may be held responsible for payment of damages resulting from their professional services, operations, or Work. Subcontractor's obligation to procure insurance is separate and independent of, and does not limit Subcontractor's or its tier-subcontractors' or tier-consultants' contractual indemnity and defense obligations under the Subcontract or applicable law.

**2.10 Evidence Prior to Final Payment.** Prior to receipt of final payment under the Contract Documents, Subcontractor will provide evidence that its insurance coverage is effective, as required by this Exhibit 4.

**2.11 Modifications Only in Writing.** The coverage and limits of insurance required by this Exhibit may not be altered, modified, or changed except as expressly agreed to in writing. No course of dealing or acceptance of certificates or policies will constitute a waiver of any of these insurance requirements.

### 3. OCIP COVERAGE (IF APPLICABLE).

**3.1 General.** If the Owner Controlled Insurance Program box is checked in the Business Terms Sheet, the Owner is providing a wrap policy for certain liability insurance for this Project. The OCIP will provide insurance coverage to all "Enrolled Subcontractors" as further defined in the OCIP Manual attached to this Exhibit 4 as Attachment A. It is anticipated that the OCIP will cover on-site commercial general liability and excess liability coverage and that Subcontractor and its tier-subcontractors and tier-consultants (if any) will carry the following additional coverage per Article 2: worker's compensation, off-site commercial general liability, automobile liability, tools and equipment insurance per the limits set forth in the Business Terms Sheet; and may have to carry railroad protective liability, rigger's liability, contractor's pollution liability, and professional liability insurance depending on location of the Project and Subcontractor's scope of Work and if indicated in the Business Terms Sheet. By execution of the Subcontract, Subcontractor acknowledges that it has reviewed the OCIP Manual and understands that the OCIP does not provide all coverage required for Subcontractor's Work, and therefore Subcontractor agrees to provide the additional insurance coverage at the required minimum limits in accordance with the Business Terms Sheet, the OCIP Manual, and as further described in Article 2 of this Exhibit 4, subject to the provisions in Section 3.4 below. The OCIP coverage will be maintained by Owner throughout construction of the Project and for longer periods as described in the OCIP Manual. To the extent that there is a conflict between the coverage requirements set forth in the Business Terms Sheet and the attached OCIP Manual, the coverage requirements with the higher required limits and greater coverage will govern.

## EXHIBIT 4 – INSURANCE REQUIREMENTS

**3.2 OCIP is Primary Coverage.** The OCIP coverage will be triggered first with respect to the Work and is primary and non-contributory to other insurance coverage carried by Owner or Unger. All limits and coverages required of the Subcontractor in this Exhibit 4 for claims not covered by the OCIP are primary and non-contributory over any other insurance or self-insurance program carried by Owner or Unger.

**3.3 Completed Operations.** In addition to the 10 year OCIP coverage for completed operations, Subcontractors will carry the limits required in the attached OCIP Manual for re-work required during the warranty period.

**3.4 Excluded Parties.** All "Excluded Parties" as defined under the OCIP, will be required to obtain and maintain insurance per their respective written agreements, which at a minimum must include workers compensation, commercial general liability, excess/umbrella liability, automobile liability, tools and equipment insurance per the limits set forth in the Business Terms Sheet, and may also include contractor's pollution liability and professional liability insurance depending on Subcontractor's scope of Work if indicated in the Business Terms Sheet. All required insurance will be in accordance with Article 2 and must be obtained before performing any portions of the Work, and maintained throughout performance of the Work. Excluded Parties will deliver certificates of insurance and required endorsements to the Unger and Owner before commencing any portion of the Work in connection with this Project. Subcontractor, through written agreement, will pass-through to all tier-subcontractors and tier-consultants: (i) insurance requirements per Article 2 and will include Subcontractor, Owner, Unger as well as those parties set forth in the Business Terms Sheet as additional insureds on all liability policies other than workers' compensation and professional liability; and (ii) the waiver of subrogation provisions set forth in Section 2.8. Subcontractor will ensure that the certificates of insurance and endorsements indicate that Subcontractor and its tier-subcontractors, and tier-consultants are in compliance with the insurance limits indicated in their respective agreements.

**3.5 Subrogation.** There is no waiver of subrogation or recovery by the Unger against Subcontractor and its tier-subcontractors and tier-consultants for claims not covered by the OCIP. However, Subcontractor and its tier-subcontractors and tier-consultants waive all rights of subrogation and recovery against the Unger, Owner, and other parties insured under the OCIP, and other additional insureds set forth in the Business Terms Sheet for claims that are not covered under the OCIP by appropriate agreement, written where legally required for validity. The policies must provide such waivers of subrogation by their respective insurance companies by endorsement or otherwise. A waiver of subrogation and recovery is effective as to the person or entity even though that person or entity would otherwise have a duty of defense and indemnification, contractual or otherwise, and did not pay the insurance premium directly or indirectly. If any applicable policies of insurance require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of those policies will cause them to either provide a "blanket waiver" endorsement or a subrogation endorsement that includes the name of the Project and the location of the Project site.



**EXHIBIT 5 – PROJECT MILESTONE SCHEDULE**

See attached Project Schedule, [INSERT FILE NAME], with a print date of ####/####, and a data date of ####/####.

SAMPLE

**EXHIBIT 6 – SITE LOGISTICS PLAN**

**(SEE ATTACHED)**

SAMPLE

**EXHIBIT 11 – PRIME CONTRACT  
(SEE ATTACHED)**

SAMPLE