

**AGREEMENT BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION PROJECT OF LIMITED SCOPE -
STIPULATED SUM PAYMENT**

Project Name: Momentum for Mental Health Rehab

Property Address: 202 W. Arbor Ave., Sunnyvale

Description of Work: Demolition Rebuild of Single Family Home

Contract Amount: _____
Start Date: _____
Completion Date: _____

**Owner: Momentum for Mental Health, A California Non Profit
Corporation**

438 N. White Road
San Jose, CA 95127
Phone: (408)261-7135

Contractor: _____
Address:
City:
Phone:
Fax:

Contractor's State License No.: _____

Insurance Coverage Expiration Date: _____

Date:

**AGREEMENT BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION PROJECT OF LIMITED SCOPE -
STIPULATED SUM PAYMENT**

Owner and Contractor, both named below, agree as follows:

1. Key Terms

- A. Date of Agreement:
- B. Owner: Momentum for Mental Health 438 N. White Road San Jose, CA 95127
- C. Contractor Name, Address & Phone No.: _____

- D. Name of Project: Momentum for Mental Health Rehab
Property description attached as Exhibit A
- E. Location of Project: 202 W. Arbor Avenue Sunnyvale, CA
- F. Description of Work: See Exhibit B
- G. CDBG/ HOME Assurances See Exhibit G
- H. Commencement Date: As set forth in Work Schedule as part of Exhibit E
- I. Final Completion Date: _____
- J. Contract Sum: _____
- K. Drawings: Described in or attached as part of Exhibit B
- L. Specifications: Described in or attached as part of Exhibit B
- M. Additional Insureds: City of Sunnyvale
Momentum for Mental Health
- N. Owner's Representative N/A

2. The Work

The project is partially funded with federal funds, all HOME, CDBG and Section 3 requirements must be adhered to (Exhibit G). Contractor will furnish all work, labor, tools, equipment, materials, supervision, scheduling, coordination, and contract administration necessary to construct and complete in a good, expeditious, workmanlike, and substantial manner the work as described in the Scope of Work (Exhibit D), and in accordance with the Drawings and Specifications (Exhibit B) and other Contract Documents (the "Work"). The Work may constitute or relate to the whole or a part of the Project. Any Work that does not conform to the Contract Documents or that is not otherwise reasonably acceptable to the owner may be rejected by Owner.

3. Commencement and Completion

Contractor shall begin work on the Commencement Date, and shall achieve Final Completion on the Final Completion Date, as specified in Section H. of Paragraph 1. The Work shall progress in accordance with the detailed work schedule set forth on Exhibit E (the "Work Schedule"). It is a material inducement for Owner to enter into this Agreement that Contractor shall have achieved Final Completion by the Final Completion Date. "Final Completion" shall mean when (i) the Work is satisfactorily completed, including all punch list items, (ii) all agencies with jurisdiction have approved the Work or portion thereof, including the issuance of final certificates of occupancy, (iii) clean-up has been completed as required under Paragraph 18 (Cleanup), and (iv) Contractor has delivered to Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed.

4. Time

The Commencement Date, Final Completion Date, Work Schedule (Exhibit E), and all other time limits stated in the Contract Documents, are of the essence of the Contract. By executing the Contract Contractor confirms that the Final Completion Date and the Work Schedule are reasonable time frames for performing the Work. Failure to comply with any such date, time or limit is a material breach of this Contract. Unless otherwise expressly stated, any reference in this Contract to "days" means "calendar days."

5. Delay Beyond Contractor's Control

If Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes, fire, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or by other causes which Owner determines may justify delay, then, provided Contractor first gives written notice of such cause to Owner within five days after the event, Contractor is excused for such delay ("Excused Delay"). In such case, the Commencement Date, Work Schedule, and/or Final Completion Date, as the case may be, shall be extended by a Change Order for such reasonable time as Owner may determine, subject to the provisions regarding Claims and Disputes (Paragraph 33).

Except as provided below, Contractor's sole remedy in the event of such delay shall be the extension of the Commencement Date, Work Schedule, and/or Final Completion Date, as provided in the preceding paragraph. Without limiting the generality of the foregoing sentence, Contractor shall not be entitled to compensation for any loss of productivity, impact damages or other consequential damages.

6. Liquidated Damages for Contractor's Unexcused Delay-

7. Contract Sum and Payments

Owner shall pay Contractor the Contract Sum, as set forth in Paragraph 1, in current funds for Contractor's performance of this Contract. The Contract Sum will be paid in installments as set forth in the Schedule of Values (Exhibit F).

A. *Retention.* A 10% retention will be withheld from each progress payment. The retention will be paid upon Final Completion.

B. *Savings on Allowances.* In the event the Schedule of Values or any other Contract Document includes a cost allowance for any component of the Work, then: (i) if the cost of any such item is less than the applicable allowance, the savings shall accrue 100% to Owner and (ii) if the cost of any such item exceeds the applicable allowance, the excess shall be borne 100% by Owner, but only if such excess cost is set forth in a Change Order issued by Owner (Paragraph 26).

C. *Progress Payment Requests.* Progress payments will be made, not more often than once per calendar month, based upon Work completed in accordance with the Contract Document and otherwise to the reasonable satisfaction of the Owner, based on written requests ("Progress Payment Requests"), subject to Owner's right to withhold payment for rejected Work. Properly completed Progress Payment Requests will be paid approximately 30 days from the date of Owner's receipt of such Progress Payment Request or as otherwise described in Exhibit F, Schedule of Values. Each Progress Payment Request must be accompanied by supporting data in such form and substance as Owner may require to confirm that the claimed portion of the Work has been properly performed, including but not limited to the following:

- (1) Vendor name, address, Tax ID # and invoice #.
- (2) Project Name
- (3) Clear description of the component of the Work to which the invoice applies.
- (4) Conditional Lien Waivers from all Subcontractors and sub-subcontractors, and all suppliers who supply more than \$1,000 worth of materials and/or labor to the Project, for the current invoice period, in accordance with the Required Lien Waiver and Release Forms (Exhibit G).
- (5) Unconditional Lien Waivers relating to the previous Progress Payment Request from all Subcontractors and sub-subcontractors, and all suppliers who supplied more than \$1,000 cumulatively in materials and/or labor to the Project, in accordance with Required Lien Waiver and Release Forms (Exhibit G).

A Progress Payment Request that does not include all required documentation will be considered incomplete, and will not be considered received and will not be processed until all required documents are received by the Mid-Peninsula Housing Coalition Construction Department. Any properly completed Progress Payment Request that has not been paid within 60 days after Owner's receipt thereof shall bear interest thereafter at the rate of one-half of one percent per month (6% per annum).

D. *Contractor's Warranty of Title to Work.* Contractor warrants that title to all Work covered by a Progress Payment Request will pass to Owner no later than the time of payment. Contractor further warrants that upon submittal of a Progress Payment Request, all Work for which payments have previously been made by Owner shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to Owner's interests.

E. *Payment for Approved Change Orders.* Approved Change Orders shall be billed as a separate line item. A copy of the approved Change Order with appropriate backup must be attached to the Progress Payment Request.

F. *Payments by Contractor.* Contractor shall pay each Subcontractor in a prompt and timely manner upon receipt of payment from Owner, out of the amount paid to Contractor on account of each Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. Contractor shall, by appropriate agreement with each Subcontractor, require each

Subcontractor to make payments to sub-subcontractors in similar manner. Owner has no obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law. However, Owner reserves the right to issue payment by joint check directly to Contractor and to any Subcontractor or material supplier who claims to remain unpaid for labor or materials provided for and incorporated into the Work. Additionally, Contractor will certify it has met prevailing wage standard as expressed in the applicable wage decision is CA30, Modification 0, issued 03/12/2010 and is in compliance with all provisions of HUD Form 2554 Supplementary Conditions of the Contract for Construction (attached as Exhibit J)

G. *Final Payment.* Owner shall make final payment, constituting the entire unpaid balance of the Contract Sum including the retention, upon Final Completion. The making of final payment shall constitute a waiver of claims by Owner except those arising from: (1) liens, claims, security interests or encumbrances arising out of the Work and unsettled; (2) failure of the Work to comply with the requirements of this Contract; or (3) terms of special warranties required by this Contract. Acceptance of final payment by Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Progress Payment Request. Contractor's final payment request shall include a Conditional Final Lien Release on the Owner's form. Within 10 days after receipt of final payment Contractor shall issue an Unconditional Final Lien Release on the Owner's form.

H. *Payment Not Acceptance.* A progress payment, final payment, or partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work not completed in accordance with this Contract.

I. *Withholding of Payments.* Owner may withhold payments on account of (i) defective Work not remedied, (ii) claims filed by third parties, (iii) failure of Contractor to make payments properly to Subcontractors or for labor, materials or equipment, (iv) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, (v) damage to Owner or another contractor, (vi) reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay, (vii) Contractor's failure to carry out the Work in accordance with the Contract Documents or (viii) Contractor's failure to meet the Owner's standard of work quality, in the reasonable judgment of the Owner.

J. *Accounting Records.* All records shall be maintained in accordance with Generally Accepted Accounting Procedures (GAAP), consistently applied. Subcontractors retained by Contractor on a "cost-plus" basis shall have the same obligations to retain records and cooperate with audits as are required of Contractor under this Section 7.J.. If any inspection by Owner of Contractor's records, books, correspondence, drawings, receipts, vouchers, memoranda, and any other data relating to the Contract Documents reveals an overcharge, including, without limitation, any untimely request for payment as described in Section 7.I, Contractor shall pay Owner upon demand an amount equal to the overcharge and the administrative expenses incurred in determining the overcharge. The requirements of this Section 7.J. shall not be applied to any portion of an overcharge that is the subject of a good-faith dispute between the parties.

8. The Contract

The Contract Documents form the Contract for Construction. The Contract Documents comprise (i) this Agreement Between Owner and Contractor for Construction Project of Limited Scope – Stipulated Sum Payment (the "Contract"), (ii) the Drawings and Specifications described in or attached as a part of Exhibit B (the "Drawings and Specifications"), (iii) all other Addenda and Exhibits incorporated into this Contract, and (iv) Modifications issued after execution of the Contract. A "Modification" is (a) a written amendment to the Contract signed by both parties, (b) a Change Order, or (c) a written order for a minor change in the Work issued by Owner. The Contract may be amended or modified only by a Modification. The term Contract Documents does not include shop drawings, product data, samples or

similar submittals. The intent of the Contract Documents is to include all terms and specifications necessary for the proper execution and completion of the Work by Contractor. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. No other agreements, oral or written, pertaining to the Work exist between the parties. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and a Subcontractor or sub-subcontractor, or between any persons or entities other than Owner and Contractor.

9. Interpretation of Contract, Drawings and Specifications

The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In case of a conflict in the Contract Documents the Contractor shall conform to whichever document requires the highest quality of work, product or process. If the Contract Documents fail to specify the quality of particular materials, finishes, equipment, etc., Contractor shall promptly notify Owner and Cooperate in good faith with Owner to agree upon a level of quality reasonably acceptable to the Owner.

10. Ownership and Use of Drawings and Specifications

Neither Contractor nor any Subcontractor, sub-subcontractor or material or equipment supplier shall own or claim a copyright in the drawings or specifications. All copies of them, except Contractor's record set, shall be returned or suitably accounted for to Owner, on request, upon completion of the Work. The drawings and specifications are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor, sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work, without the specific written consent of Owner. Contractor, Subcontractors, sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the drawings and specifications appropriate to and for use in the execution of their Work.

11. Contractor's Review of Applicable Laws, Field Conditions and Contract Documents

Contractor represents that it (i) has independently visited the site and investigated the site and all conditions that might affect the progress of the Work, (ii) has correlated personal observations with requirements of the Contract Documents, and (iii) is satisfied with those conditions and such correlation. Without limiting the generality of the foregoing, Contractor specifically represents that it has, in its role as installing contractor and not as a design professional, (a) familiarized itself with applicable building and related codes, rules, regulations, ordinances and laws bearing upon the Work consistent with the standard of care and industry standards applicable to Contractor, (b) carefully studied the Drawings, Specifications and other Contract Documents and compared them with each other and with information furnished by Owner and Owner's Representative, and (c) advised Owner in writing of any errors and inconsistencies in the Drawings and Specifications that it discovered and any changes to the Drawings and Specifications that, in Contractor's experience, will be required to complete the Work. Contractor represents that, except as Contractor may have advised Owner in a written notice prior to the execution of the Contract, the information obtained by Contractor as of the date hereof is sufficient in content and detail to complete the Work and to enable Contractor to deliver the Work with all appurtenant improvements, for the Contract Sum and in accordance with the Work Schedule.

12. Insurance Matters

A. *Insurance.* Owner and Contractor shall obtain insurance coverages as specified in Exhibit I.

B. *Waiver of Subrogation.* All insurance required under this Contract shall contain a waiver of subrogation as to Owner, its directors, officers and employees. Owner and Contractor waive all rights against each other and any of their Subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the

extent covered by property insurance obtained by Owner or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of 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 property damaged.

13. Applicable Law, Permits, Fees and Notices

Except to the extent otherwise provided in the Scope of Work (Exhibit D), Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work. Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work. Contractor shall promptly notify Owner if the Drawings and Specifications are observed by Contractor to be at variance therewith. If Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to Owner, Contractor shall assume appropriate responsibility for such work and shall bear the costs attributable to correction.

14. Labor and Materials

Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work, with the understanding that Contractor will be accessing electricity via the existing electric facilities at the property. Contractor shall keep the Project free of mechanics' liens recorded by or under its Subcontractors, sub-subcontractors and suppliers. If Contractor fails to make any payments required under this Paragraph, or if Contractor fails to keep the Project free of mechanics' liens incurred under Contractor or under its Subcontractors or sub-subcontractors, Owner may settle such claim or procure statutory lien release bonds, and Contractor shall on demand reimburse Owner for such claims and such bonds so paid plus reasonable attorneys' fees and any sums expended by Owner in the discharge of liens.

15. Subcontractors

A Subcontractor is a person or entity that has a direct contract with Contractor to perform a portion of the Work at the site.

A. As soon as practicable after execution of the Contract, Contractor shall furnish in writing to Owner the names of Subcontractors for each of the principal portions of the Work. Contractor shall not contract with any Subcontractor to whom Owner has made reasonable and timely objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Work Schedule (Exhibit E) shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's work. Contractor shall not be required to contract with anyone to whom Contractor has made reasonable objection.

B. Contracts between Contractor and the Subcontractors shall (1) require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's work, which Contractor by the Contract Documents assumes toward Owner, and (2) allow the Subcontractor the benefit of all rights, remedies and redress afforded to Contractor by the Contract Documents.

16. Supervision and Construction Procedures

Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall designate a qualified on-site supervisor, who may be named in the Scope of Work (Exhibit D); Contractor may not remove or replace the designated on-site supervisor without Owner's written consent, which Owner may not unreasonably withhold. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, Contractor shall be fully and solely responsible for the jobsite safety thereof unless Contractor gives timely written notice to Owner that such means, methods, techniques, sequences or procedures may not be safe.

17. Protection of Persons and Property

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees on the Work and other persons who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein; and (iii) other property at the site or adjacent thereto. Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. Contractor shall promptly remedy damage and loss to property caused in whole or in part by Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Contractor is responsible under this Paragraph, except for damage or loss attributable to acts or omissions of Owner or by anyone for whose acts Owner may be liable, and not attributable to the fault or negligence of Contractor. The foregoing obligations of Contractor are in addition to Contractor's indemnification obligations under Paragraph 20 (Indemnification by Contractor).

18. Cleanup

Contractor shall keep the site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Each day, Contractor shall remove from and about the Project waste materials and rubbish, and leave the Project in a neat and broom-clean condition. At completion of the Work, Contractor shall (i) remove from and about the Project waste materials, rubbish, Contractor's tools, construction equipment, machinery and surplus material, and (ii) thoroughly clean the Project, leaving it in a neat and broom-clean condition. If Contractor fails to clean up, Owner may do so at Contractor's expense.

19. Contractor's Miscellaneous Obligations

A. Contractor shall be responsible to Owner for acts, errors and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of Contractor or any of its Subcontractors.

B. Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. Contractor shall not permit employment of unfit persons not skilled in tasks assigned to them. The Work will be performed in and about an occupied apartment complex. The behavior of persons performing the Work could have an adverse impact on the residents, Owner's ability to rent apartments and provide resident services, and the business reputation and desirability of the apartment complex. If Owner or its property manager receives a complaint from any resident or visitor regarding the behavior of any employee or agent of Contractor or any Subcontractor, Contractor will immediately remove such person or cause such person to be removed from the job site and replace such person, or cause such person to be replaced.

C. If any employee of Contractor or any Subcontractor working on the Project is determined to be an unauthorized alien, Contractor will immediately remove, or cause to be removed, such individual from such work and replace, or cause to be replaced, such individual with another who is not an unauthorized alien.

D. Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

E. Contractor may make substitutions only with the consent of Owner, in accordance with a Change Order.

F. Contractor shall pay sales, consumer, use and other similar taxes which are legally enacted when bids are received or negotiations concluded.

G. Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

H. Contractor shall be responsible for cutting, fitting or patching required in order to complete the Work or to make its parts fit together properly.

I. Contractor shall pay all royalties and license fees; shall defend suits or claims for infringement of copyrights and patent rights and shall hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents provided by Owner, unless Contractor has reason to believe that there is an infringement of patent or copyright and fails to promptly furnish such information to Owner.

J. Contractor shall provide Owner access to the Work in preparation and progress wherever located.

K. With respect to any portion of the Work that, under the Scope of Work (Exhibit D) or as otherwise directed by Owner, requires submittal and review of shop drawings, product data, samples or similar submittals, (i) Contractor shall submit such items on a timely basis so as to cause no delay in the Work, and (ii) Contractor shall not perform such portion of the Work until such items have been reviewed and approved by Owner. The purpose of the submittal of such items is to demonstrate, for those portions of the Work for which submittals are required, the way the Contractor proposes to conform to the requirements set forth in the Contract Documents. Once any such item has been approved by Owner, Contractor's Work shall conform in full with the particulars of such item.

L. Before commencing any excavation or digging, Contractor shall make reasonable efforts to identify underground structures, including engaging an underground utility locating service.

M. Contractor is not authorized to use equipment, materials, supplies or facilities belonging to Owner or to a separate contractor performing other work at the Project ("Equipment"), unless specifically authorized to do so in a writing executed by the owner of the Equipment. Should Contractor, through its agents, employees, or Subcontractors, use any Equipment, whether such use is authorized or not: (i) Contractor shall do so at its own risk; (ii) Contractor shall examine the Equipment and satisfy itself as to the Equipment's condition before using any of the Equipment or permitting its employees, agents or subcontractors to do so; (iii) Contractor shall indemnify and hold the Owner (as well as the owner of the Equipment if a third party) harmless from and against claims, damages, losses and expenses, including attorneys'

fees and costs, resulting from any use of the Equipment by Contractor or its employees, agents or subcontractors; (iv) Contractor shall repair or replace, as necessary, any Equipment broken or damaged during such use; and (v) Contractor shall be fully liable for any unauthorized use of such Equipment.

N. Contractor represents and warrants that it is, and shall at all times remain, in full compliance with federal and state occupational safety and health administration ("OSHA") laws and regulations, including but not limited to the maintenance of an effective injury and illness prevention program, the provision of adequate safety and training programs for employees and routine inspections of equipment used in carrying out contractual duties. Contractor shall ensure that every Subcontractor, sub-subcontractor and supplier who provides services or supplies for the Work of this Contract is also, and shall at all times remain, in full compliance with OSHA laws and regulations. Contractor shall indemnify, defend and hold Owner harmless from and against any and all penalties, violations, assessments or damages, whether monetary or non-monetary, which result from any compliance failure or breach of this provision.

20. Indemnification by Contractor

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, Owner, its partners, lenders, consultants, agents and employees, from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts, errors or omissions of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, and regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such indemnification shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph.

With regard to claims against any person or entity indemnified under this Paragraph, by an employee of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

21. Items Furnished by Owner

Unless job-specific requirements provide otherwise, Owner shall furnish and pay for surveys and a legal description of the site. Contractor shall be entitled to rely on the accuracy of information furnished by Owner but shall exercise proper precautions regarding the safe performance of the Work. Except for permits and fees that are the responsibility of Contractor, Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

22. Owner's Right to Stop the Work

If Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out the Work in accordance with the Contract Documents, Owner may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of Owner to stop the Work shall not give rise to a duty on the part of Owner to exercise this right for the benefit of Contractor or any other person or entity.

23. Owner's Right to Perform Construction and to Award Separate Contracts

Owner reserves the right to perform construction or operations related to the Project with Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site, including similar provisions related to insurance and waiver of subrogation. If Contractor claims that such action by Owner has caused delay or additional cost to Contractor, Contractor shall make such claim as provided in Paragraph 33 (Claims and Disputes).

A. Contractor shall afford Owner and Owner's separate contractors, if any, reasonable opportunity at the site for introduction and storage of their materials and equipment and performance of their activities, and shall coordinate Contractor's activities with theirs.

B. Contractor shall reimburse Owner for obligations incurred by Owner to a separate contractor because of delays, improperly timed activities or defective construction of Contractor. Owner shall be responsible to Contractor for costs incurred by Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

24. Owner's Right to Demand Bond

At any time Owner may require Contractor to furnish a surety bond issued by a company authorized to do surety business in California on a form acceptable to Owner, guaranteeing that Contractor will perform all its obligations under the Contract and will pay for all Work and material furnished to the job. This bond shall be in an amount equal to the value of the Work remaining to be done under the Contract. Owner shall pay the premium on any such bond. Contractor's failure to furnish the bond within ten days after Owner's written demand shall constitute a material breach of this Contract and shall entitle Owner to eject Contractor from the Project and have the Work performed by others. In this event, Contractor shall promptly and peaceably vacate the premises, leaving at the site all tools, equipment, and materials supplied for completion of the work. If the cost of completing the Work exceeds the unpaid balance of the Contract Sum, Contractor shall, on demand, reimburse Owner for the difference. If the cost of completion is less than the unpaid balance of the Contract sum, Owner shall remit the difference to Contractor, to the extent necessary to reimburse Contractor for the portion of the Work actually completed by Contractor.

25. Owner's Representative

A. Owner may appoint an Owner's Representative, a progress payment Consultant and/or one or more other agents ("Owner's Agent"). The Owner's Representative will provide administration of the Contract and will represent Owner at all times for purposes of the Contract. One or more of the responsibilities of the Owner's Representative may be performed by the progress payment Consultant or other Owner's Agent.

B. The Owner's Representative will visit the site from time to time as appropriate to the stage of Contractor's operations (1) to become generally familiar with and to keep Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to protect Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner's Representative will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely Contractor's rights and responsibilities under the Contract Documents.

C. Based on the Owner's Representative's evaluations of the Work and of the Contractor's Progress Payment Requests, the Owner's Representative will review and certify the amounts due Contractor.

D. The Owner's Representative will have authority to stop Work and to reject Work that does not conform to the Contract Documents.

E. The Owner's Representative will, in a timely manner, review and approve or take other appropriate action upon Contractor's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

26. Changes in the Work

Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, by issuing written change orders (each a "Change Order") from time to time, in which case the Contract Sum and Work Schedule shall be adjusted in a fair and reasonable manner. Contractor shall sign and return to Owner a copy of each Change Order.

A. If Owner issues a Change Order and the parties are unable to agree on the amount of the adjustment in the Contract Sum, or the adjustment in the Work Schedule, Contractor shall nevertheless perform the Work as modified, and such disagreements shall be determined by negotiation, mediation or arbitration.

B. Owner may order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Work Schedule and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on Contractor, who shall carry out such written orders promptly.

C. If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents and such conditions could not reasonably have been anticipated or foreseen by Contractor, the Contract Sum and Work Schedule shall be equitably adjusted, and a Change Order reflecting such adjustment shall be issued.

27. Tests and Inspections

Tests, inspection and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority. Owner shall bear the costs of any tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, except that if any of the Work fails to pass any such test, then Contractor shall pay for any Subsequent testing of such Work.

28. Contractor's Warranty

Contractor agrees and warrants to Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty excludes remedy for damage or defect caused by (i) abuse, (ii) modifications not executed by Contractor, (iii) improper or insufficient maintenance, (iv) improper operation or (v) normal wear and tear and normal usage. This warranty shall survive acceptance of the Work under the Contract and termination of the Contract. It shall be in addition to the terms of any other warranty or obligation, such as manufacturer warranties, whether or not specified in the Contract Documents, any applicable special warranty required by the Contract Documents, or the terms of any general warranty and is not in lieu of any of them. This warranty shall not be construed to establish a period of limitation with respect to other obligations. All manufacturer and subcontractor warranties shall inure to the Owner upon completion of the contract work.

29. Correction of Work

Contractor shall promptly correct Work failing to conform to the requirements of the Contract Documents, whether discovered before or after Final Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, shall be borne by Contractor.

A. In addition to Contractor's obligations under Paragraph 28 (Contractor's Warranty), if, within one year after the date of Final Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Paragraph 3 (Commencement and Completion), or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner to do so unless Owner has previously given Contractor a written acceptance of such condition. Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if Owner fails to notify Contractor and give Contractor an opportunity to make the correction, Owner waives the rights to require correction by Contractor and to make a claim for breach of warranty.

B. Contractor agrees that with respect to any corrective work which relates to the habitability (such as water leaks, escape window operation, exit door operation, inoperable furnace etc.) of an apartment or life safety issues (such as fire sprinklers, fire alarms and site lightning), as reasonably determined by Owner, Contractor shall respond to Owner's notice and commence the corrective work as quickly as possible, but in any event within 24 hours, irrespective of whether such 24-hour period occurs on a weekend or legal holiday. All other corrective work will be commenced within 72 hours after receipt of notice from the Owner.

C. If Contractor fails to undertake required corrective work within the applicable period of time or fails to complete corrective work after such work has been initiated, then in either such event, Owner shall have the right, but not the obligation, to complete such corrective work. In such event, Contractor shall reimburse Owner upon demand for all costs and expenses incurred by Owner in completing the corrective work, together with an administrative fee equal to ten (10%) percent of the costs and expenses so incurred by Owner, and all such work shall be performed so as to minimize, to the extent reasonably practicable, disruption of Owner's operations.

D. For any portion of the Work performed after Final Completion, the Warranty Period shall run for a period of one year following the actual performance of such portion of the Work.

30. Hazardous Materials

A. *Definition of Hazardous Material.* "Hazardous Material" means, without limitation, any substance, chemical, compound or mixture that is (or that contains any substance, chemical, compound or mixture that is) defined as follows under the following statutes or regulations, as amended from time to time, or any successor statutes or regulations thereto:

(1) a "Hazardous Substance," "Hazardous Material," "Hazardous Waste" or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., the Hazardous Material Transportation Act, 49 U.S.C. Section 1801, et seq., or the Resource, Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq;

(2) "Extremely Hazardous Waste," a "Hazardous Waste," or a "Restricted Hazardous Waste," under Section 25115, 25117 or 25122.7 of the California Health and Safety Code, or as listed pursuant to Section 25140 of the California Health and Safety Code;

(3) a "Hazardous Material," "Hazardous Substance" or "Hazardous Waste" under Section 25281, 25316 or 25501 of the California Health and Safety Code;

(4) "Oil" or a "Hazardous Substance" under Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1321, as well as any other hydrocarbonic substance or by-product;

(5) any substance or material listed under Section 66680, et seq., or defined as hazardous or extremely hazardous pursuant to Section 66693 et seq., of Title 22 of the California Code of Regulations, Division 4, Chapter 30;

(6) any substance or material listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.8(a) of the California Health and Safety Code;

(7) a material that due to its characteristics of interaction with one or more other substances, chemical compounds or mixtures, damages or threatens to damage health, safety or the environment or is required by any law or public agency to be remediated, including remediation that such law or public agency requires in order for the property to be put to any lawful purpose; and

(8) any material the presence of which would require mediation pursuant to the guidelines set forth in the California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank.

B. *Definition of Environmental Laws.* "Environmental Laws" means all provisions of all Federal, State and local regulations and laws regulating or in any way affecting the transportation, possession, storage, use, removal and/or disposal of any Hazardous Material, including without limitation the warning and notice requirements of all such laws. "Environmental Laws" includes, without limitation, (i) Proposition 65 (the Safe Drinking Water and Toxic Enforcement Act of 1986), (ii) any laws relating to asbestos (including but not limited to California Health and Safety Code Sections 25910 through 25913 and 25915 through 25924) or polychlorinated biphenyl ("PCB") (including but not limited to Section 2601 of Title 15 of the United States Code, (iii) OSHA, (iv) CALOSHA, and (v) the Clean Air Act and related state acts).

C. *Definition of Existing Environmental Condition.* "Existing Environmental Condition" means the presence at the site of material found by a qualified specialist to be a hazardous or toxic material.

D. *Definition of Prohibited Materials.* "Prohibited Materials" means asbestos, polychlorinated biphenyl (PCB), urea formaldehyde, lead-based solder in plumbing, lead-based paint, or any other known hazardous substance whose use is prohibited by law at the time of construction.

E. *Compliance with Laws.* Contractor shall comply with all federal, state and local laws, rules and regulations concerning environmental pollution, health and safety. In addition, Contractor shall comply, and shall cause all persons under the control of Contractor to comply, with all Environmental Laws.

F. *Notification to Owner.* If Environmental Laws require Owner to notify or warn any person of the presence of any Hazardous Material, and such Hazardous Material will be or is being used on the site, Contractor shall, prior to harmful exposure of any person to such Hazardous Material, give written notice of the name and chemical composition thereof to Owner's Representative in compliance with Environmental Laws and in sufficient detail and time to (i) permit Owner and other contractors and employers on the site to comply with Environmental Laws, or (ii) allow Owner, acting through Owner's Representative, to forbid the use of such Hazardous Material on or in any way related to the site, which Owner may do in its sole

discretion. If Owner forbids the use of any Hazardous Material on the site, Contractor shall be responsible for finding and informing Owner of an appropriate substitute material, which shall be used solely with Owner's written approval.

G. *Prohibited Materials.* Contractor shall not incorporate into the Work or into any building, building component, improvement or structure, or otherwise leave on the site any Prohibited Materials, without Owner's prior written consent. Owner may, from time to time, require Contractor to furnish a certification that Contractor has not incorporated any Prohibited Materials, other than those that have been approved by Owner, into any building or other improvement on the site. Contractor shall be responsible for any damages and costs resulting from Contractor's failure to comply with this Subparagraph, including the cost of any clean-up and/or remediation.

H. *Cessation of Work.* In the event Contractor encounters on the site material reasonably believed to be hazardous or toxic which has not been rendered harmless (including without limitation asbestos and polychlorinated biphenyl (PCB)), and reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting therefrom, Contractor shall immediately stop Work in the area affected and report the condition to Owner both orally and in writing. Contractor shall, however, stop work only in the affected area and shall redeploy the Work in the areas of the site that are not affected by such condition. Owner shall retain at its own expense a qualified specialist to examine the suspected hazardous or toxic materials. Should the examination conclude that there is an Existing Environmental Condition, Owner at its own expense shall retain a separate contractor to perform any necessary clean-up or abatement. The Work in the affected area shall recommence when (i) Owner's qualified specialist has certified that any required remediation or removal has been completed, or that the material identified by the Contractor does not require any remediation or special procedure for removal, and/or (ii) Contractor has been provided a work plan to allow the Work to continue. Any delay or additional cost incurred by Contractor relating to the performance of the Work due to an Existing Environmental Condition that was not attributable to an act or omission of Contractor shall be set forth in a Change Order and the expense borne by Owner.

I. *Owner's Indemnification.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Contractor, Subcontractor, and agents and employees of either of them, from and against any claims, damages losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if:

(1) the material or substance presents the risk of bodily injury or death and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible personal property (other than the Work itself), and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity; or

(2) without negligence on the part of Contractor, Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents.

J. *Disclosure.* Owner discloses the existence of environmental conditions at the Project, as set forth in materials attached as Exhibit G (Environmental Notices).

K. ***Asbestos Notices.***

(1) ***ASBESTOS WARNING AND NOTICE.*** In buildings built and completed before 1980, decorative acoustic ceiling surfacing materials, wallboard surfacing texturing and wallboard joint compound surfacing material, drywall surfacing texture, linoleum and tile floor coverings and their glues, certain heating system duct wrappings and various

roof materials contain asbestos fibers. Do not disturb these materials or any other materials that you suspect may contain asbestos, unless you have been specifically authorized to do so and you have a work plan, approved by Owner, in place to control the exposures to asbestos and to protect human health and the environment. Contact building management immediately in the event of an accidental disturbance.

(2) *EPA Asbestos Notice: CANCER AND LUNG DISEASE HAZARD, AVOID CREATING DUST.*

(3) *California Proposition 65 Notice: WARNING: THESE BUILDINGS CONTAIN ASBESTOS, A CHEMICAL KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER.*

31. Termination by Contractor

If for a period of 30 days Owner fails to make any payment after it becomes due, through no fault of Contractor, Contractor may, upon seven additional days' written notice to Owner, terminate the Contract and recover from Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages applicable to the Project. Other than as specified in the preceding sentence, in any dispute between the parties over performance of the Work, the interpretation of this Contract, extra work, delay, disruption or otherwise, if the parties are unable to resolve such dispute by negotiation, Contractor shall nevertheless continue the Work diligently to completion, and will neither rescind this Contract nor stop the progress of the Work, but will submit such dispute to determination by mediation or arbitration, as provided in Paragraph 33 (Claims and Disputes).

32. Termination by Owner

Owner may terminate the Contract for cause if Contractor (i) refuses or fails to supply enough properly skilled workers or proper materials; (ii) fails to make payments to Subcontractors for materials or labor in accordance with the respective agreements between Contractor and the Subcontractors; (iii) disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; (iv) is not progressing toward completion of the Work in a timely manner satisfactory to Owner, (v) fails, in the judgment of Owner, to meet Owner's standard of work quality, or (vi) otherwise is guilty of substantial breach of a provision of the Contract. Such termination shall be effective immediately upon written notice to Contractor, after which Owner may, without prejudice to any other available remedy, (a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor, and (b) finish the Work by whatever reasonable method Owner may deem expedient. Upon Contractor's written request, Owner shall furnish to Contractor a detailed accounting of the costs incurred by Owner in finishing the Work. When Owner terminates the Contract as provided in this Paragraph, Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, and other damages incurred by Owner and not expressly waived, such excess shall be paid to Contractor, to the extent necessary to compensate Contractor for the portion of the Work actually completed by Contractor. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Owner.

In addition to Owner's right to terminate this Agreement for cause, as set forth above, Owner may terminate this Agreement without cause, upon ten (10) days written notice to Contractor for Owner's convenience. Upon termination for convenience, Contractor shall be entitled to payment for Work properly performed prior to notice of termination, and for costs incurred directly as a result of such termination; provided, however, that Contractor shall not be entitled to recover lost profits or similar consequential consideration.

33. Claims and Disputes

A. *Mediation Prior to Litigation.* In the event of any claim, dispute or other matter in question arising out of or relating to this Contract, the parties may endeavor to resolve the matter by mediation provided that both parties can come to a mutual agreement regarding conditions of mediation. Should the parties be unable to agree on conditions of mediation then they shall proceed to settle their dispute through litigation. Unless the parties agree otherwise, mediation shall be in accordance with the Construction Industry Mediation rules of the American Arbitration Association ("AAA") currently in effect. Request for mediation shall be filed in writing with the other party to this Contract and with the AAA. The request shall be made at least sixty (60) days prior to the commencement of litigation.

B. *Forum.* The forum for any mediation or litigation shall be, if possible, in the County of San Mateo, California, or otherwise in the county in which the Property is located.

C. *Damages.* Under no circumstances will Owner be liable for indirect, special or consequential losses or damages including, but not limited to, loss of profits or revenues. Contractor acknowledges that officers, directors and employees of Owner have no personal liability under this Agreement and Contractor covenants not to sue such officers, directors and employees in their individual capacity.

D. *Attorneys' Fees.* In the event of any litigation between Owner and Contractor concerning the performance of Contractor's services, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs from the other party

E. *Applicable Law.* This Agreement shall be governed by, and construed according to, the laws of the State of California.

F. *Mechanics' Lien.* If a claim, dispute or other matter in question relates to or is the subject of a mechanics' lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by litigation.

34. Miscellaneous Provisions

A. *Assignment of Contract.* Neither party to this Contract shall assign the Contract, or payments due under the Contract, without written consent of the other, except that Owner has the right to assign this Contract to a lender if required in connection with financing.

B. *Notice.* Any notice required or permitted under this Contract shall be deemed given, if in writing, on the earlier of deliver or five days after deposit in the U.S. Mail, first-class postage pre-paid, and addressed to the party at the address shown in this Contract, although such address may be changed by written notice from one party to the other as necessary.

C. *Governing Law.* The Contract shall be governed by the law of the State of California, and in any action involving this Contract venue shall be in San Mateo County. This Paragraph shall not prevent application of the Federal Arbitration Act to any dispute that may arise under this Contract.

D. *Severability.* If any provision of the Contract Documents is held invalid, such invalidity shall not affect other provisions of the Contract Documents that can be given effect without the invalid provision, and to this end each provision of the Contract Documents is severable.

E. *Exhibits.* Each Exhibit attached to this Agreement is deemed incorporated herein by this reference, even if it is not otherwise referred to in this Contract.

- | | |
|-----------|--------------------------------|
| Exhibit A | Bid Form |
| Exhibit B | Drawings and Specifications |
| Exhibit C | Environmental Reports |
| Exhibit D | Construction Bid |
| Exhibit E | Work Schedule |
| Exhibit F | Insurance Requirements |
| Exhibit G | CDBG/HOME Funding Requirements |

This Agreement entered into as of the day and year first written above.

AGREED AND ACCEPTED:

Owner:

By: _____

Contractor:

By: _____