



October 17, 2016

«Company»
 «Address»
 «City», «State_» «Zip»
 PHONE #: «Phone»
 FAX #: «Fax»

SA #:
 JOB # / NAME:
 PROJECT MGR:
 PROJECT MGR PHONE #:

Enclosed is your Service Agreement with Ghilotti Construction Company, Inc. for the above-referenced project. Please SIGN & RETURN BOTH COPIES of the Agreement, along with any required documents as indicated below, to the corporate office at 246 Ghilotti Avenue, Santa Rosa, CA 95407 Attn: Contract Administrator within 5 working days of receipt or prior to performing any work, on or off site.

Herein you will find the following documents; those marked "Required" need to be returned in order for your service agreement to be processed:

	<u>Required</u>	<u>Not Required</u>
Service Agreement (2 originals)	X	
Insurance Certificates (per #5 on pg 2 of agreement)	X	
Certified Payroll / Fringe Benefits Statement <i>(Submit two (2) copies of all certified payrolls and non-performance statements directly to Project Administrator on job)</i>	X	
CSLB Pocket License (copy)		X
DBE Requirement Your company was utilized to help fulfill the DBE commitment on this project. Please ensure that any work performed by your firm on this project is with DBE forces.	<u>YES</u>	<u>NO</u> X

Your service agreement will not be fully-executed until all required documents are received; nor will any payments be released. Proceeding with work prior to receipt of a fully-executed contract will mean Service Provider has agreed to all terms and conditions of service agreement without modification. Please do not modify service agreement without prior approval. All scope of work questions should be directed to the project manager listed above. All contract related questions should be directed to the undersigned. Please see GCC's website www.ghilotti.com for electronic versions of these documents.

Sincerely

Courtney Mills
 CONTRACT ADMINISTRATION

— Engineering Contractor —



SERVICE AGREEMENT NO.:
 VENDOR CODE: «Vendor_»

«Company»
 «Address»
 «City», «State_» «Zip»

JOB:
 JOB OWNER:
 JOB LOCATION:

PHONE: «Phone»
 FAX: «Fax»

CONTACT: CONTACT NAME

Date of Order 10/17/16	Terms 10 th Prox-N30th/Mo	Job No.	Phase Code See Below
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COST CODE	DESCRIPTION	UNIT OF MEASURE	QUANTITY	UNIT COST	EXTENSION
					\$ 0.00
					\$ 0.00
					\$ 0.00
					\$ 0.00

Note: «Company»'s quotation dated _____ is hereby made a part of this service agreement. In the event of a conflict between service provider's proposal language and GCC's service agreement language, GCC's service agreement language will prevail. Inconsistent bid terms and conditions shall be void.

ADDITIONAL INFORMATION (see subsequent pages of this service agreement for conditions)

 «Company»'S Rep., Title

 Thomas Smith, Estimating Manager

— Engineering Contractor —

CONDITIONS FORMING PART OF THIS AGREEMENT

1. In accordance with applicable plans and specifications.
2. All quantities are approximate and subject to revision by the engineer.
3. ALL INVOICES MUST BE BILLED ACCORDING TO THE ITEM NUMBERS ABOVE.
4. The term Service Providers shall refer to and include (but is not limited to) the following: Service Providers, Subcontractors, Professional Service Providers, and Trucking Companies.
5. Insurance Requirements: Service Providers will maintain Commercial General Liability Insurance with limits at a minimum of \$1,000,000 each occurrence / \$2,000,000 general aggregate (limits to apply per project). GCC, Owner, including officers, directors, agents and employees as an additional insured, including completed operations. Additional Insured endorsements shall not contain and provision or definition that requires any form of negligence on the part of the Service Provider. Said policy shall include a Waiver of Subrogation in favor of the additional insureds. Coverage shall be primary and all coverages maintained by GCC and Owner will be non-contributory. There shall be no provision or definition which would exclude coverage for claims brought by employees of the owner, GCC, subcontractors. If any portion of work contains residential construction, Service Provider shall not have a residential exclusion that voids coverage. Automobile Liability covering all owned, non-owned, and hired automobiles with limits at a minimum of \$1,000,000 each occurrence. GCC and Owner will be named as an additional insured. Those companies performing/providing any form of professional service will maintain professional liability coverage with limits at a minimum of \$1,000,000. Professional Liability coverage will remain in effect for five (5) years after project completion; any form of retro date shall not be advanced past the date of original service. Pollution Liability Coverage where applicable. Workers' Compensation Insurance as required by statute; coverage shall include a waiver of subrogation in favor of GCC and Owner. Policies shall contain a notice of cancellation where carrier will mail to GCC 30 days notice prior to cancellation date; 10 days for non-payment of premium. Subcontractor's insurance coverage shall not contain any form of subsidence and/or earth movement exclusion. If project owner requires higher limits than GCC's standard minimum insurance requirements, GCC has the right to modify this agreement to meet the project requirements. An excess or umbrella liability policy may be used to satisfy the limits requirements. **SERVICE PROVIDER AUTHORIZES GCC TO CONTACT THEIR INSURANCE AGENT AS NECESSARY TO OBTAIN THE REQUIRED INSURANCE CERTIFICATES AND ENDORSEMENTS NECESSARY TO SATISFY THE CONTRACTUAL REQUIREMENTS FOR THIS PROJECT.**
6. Obligation to Defend and Indemnify Claims
6.01 Claims Defined. For the purposes of the Service Provider's obligation to Defend and Indemnify Claims, "Claims" shall be defined as all "Claims" arising out of or in connection with Service Provider's operations to be performed under this Agreement including, but not limited to:
 - (a). Personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Service Provider, Owner, GCC, or any other Service Provider and/or damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part by any act or omission of Service Provider or anyone directly or indirectly employed by Service Provider or anyone for whose acts Service Provider may be liable regardless of whether such personal injury or damage is caused by a party indemnified hereunder.
 - (b). Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the action or inaction of Service Provider.
 - (c). Infringement of any patent rights which may be brought against the GCC or Owner arising out of Service Provider's work.
 - (d). Claims and liens for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages resulting to GCC or Owner from such claims or liens.
 - (e). Service Provider's failure to fulfill the covenants set forth in the "Labor Relations" section of this Agreement.
 - (f). Failure of Service Provider to comply with the provisions set forth in the "Insurance" Section of this Agreement.
 - (g). Any violation or infraction by Service Provider of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of GCC's or others' equipment, hoists, elevators, or scaffolds.
 - (h). Any claim that the Service Provider's work was defective, failed to comply with the terms and conditions of this Agreement (including but not limited to the Building Code, and Project Plans & Specifications), or delayed the completion of the Project.
 - (i). Any other claim arising out of, or in connection with Service Provider's operations to be performed under this Agreement.

6.02 Service Provider's Obligation to Defend and Indemnify Owner and GCC from Claims

In no event shall this obligation to defend Ghilotti Construction Company, Inc. (GCC) and the Owner be construed to be greater than permitted under the State of California statutes, including Civil Code sections 2782 & 2782.05. This obligation to defend shall be construed to provide Indemnitees with the maximum scope of indemnity and duty to provide an immediate defense permitted by California Law. Service Provider shall defend and indemnify Owner and GCC, including their officers, agents, employees, affiliates, parents and subsidiaries, and each of them, ("Indemnitees") of and from any and all "Claims" as defined in this Section, demands, causes of action, damages, penalties, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever arising out of or in connection with Service Provider's operations to be performed under this Agreement. The Obligation to Defend Claims shall extend to Claims occurring after this agreement is terminated as well as while it is in force. This indemnity provision is not intended to and shall not in any way limit the extent of any insurance coverage available to GCC under any insurance policy purchased and maintained by Service Provider.

6.03 Limitations

- (a). Except where the Owner or GCC is a "Residential Builder" as defined by California Civil Code §§ 911 & 2782, the Service Provider's Obligation to Defend and Indemnify Claims applies regardless of any active and/or passive negligent act or omission of all Owner or GCC or the Indemnitees, (note that the Owner may qualify as a Residential Builder but GCC is not, therefore the broader duty to defend applies to GCC in that instance).
- (b). If the Owner or GCC is a "Residential Builder" as defined by California Civil Code §§ 911 & 2782, (such party is herein referred to as "Residential Builder" whether the designation applies to the Owner only, the GCC only, or both), then all provisions of this Section will apply with the sole exception that the Service Provider is not obligated upon until "Final Resolution" of the "Residential Claims" to indemnify the Residential Builder and Indemnitees, (hereinafter referred collectively as the "Residential Builder") to the extent the Residential Claims are determined to be the result of negligence of the Residential Builder or the Residential Builder's other agents, other servants, or other independent contractors who are directly responsible to the Residential Builder, or for defects in design furnished by those persons, or to the extent the claims do not arise out of, pertain to, or relate to the scope of work in this Agreement. "Final Resolution" of the "Residential Claims" occurs at the conclusion of the claim whether by settlement, litigation, or arbitration, and in such cases involving a Residential Builder only, the Final Resolution shall be determined instead by the principles of comparative equitable indemnity. Pending Final Resolution, Service Provider is obligated to provide a defense of the Residential Claims as provided in this Section despite allegations of Residential Builder's negligence without prejudice to adjustment at the time of Final Resolution of the Residential Claims. If any provision or term of this Section that is determined by California Law to be unenforceable, or void then only that term shall not be enforced. All remaining terms of this Section shall be enforced with the intent that the Service Provider agrees to provide the maximum duty to defend and indemnify the Residential Builders, Indemnitees, Owner and GCC permitted by law.
- (c). Service Provider shall not be Obligated to Defend Claims under this agreement for Claims arising from the sole negligence or willful misconduct of Residential Builder, Owner or GCC or their agents, employees or independent contractors who are directly responsible to Residential Builder or Owner or GCC.
- (d). This indemnity provision is not intended to and shall not in any way limit the extent of any insurance coverage available to Residential Builder, Indemnitees, or GCC under any insurance policy purchased and maintained by Service Provider.
- (e) Pending the "Final Resolution" of the "Residential Claims", Service Provider shall immediately at its own cost, expense and risk, defend the Residential Builder, Indemnitees and GCC from all Claims as defined in this Section, including, but not limited to, governmental agencies or employees of Service Provider, successor owners, tenants, guests, invitees of the Owner and its successors against GCC or Owner or their agents or employees or any of them.

6.04 OCIP & Cooperation Regarding Claims. If the project is insured by an Owner Controlled Insurance Program, (OCIP), then Service Provider agrees at Service Provider's sole cost to participate in and cooperate with all requirements of the OCIP. At the written request of GCC or Owner, including the procedure specified in Title 7, of Part 2, of Division 2 of the California Civil Code, or in GCC's, Prime Contractor's or Owner's alternative procedures, Service Provider also agrees to have a representative of any applicable insurance carrier of Service Provider participate in any proceeding. If GCC becomes a party to an action or arbitration arising in whole or in part from the Service Provider's Work, GCC may join Service Provider in any such action.

6.05 Procedure

(a). If any Claim arising out of or in connection with the Service Provider's operations as defined in this Section is presented against GCC or the Owner or any of the Indemnitees defined in this Section, (the "Indemnitees"), the Indemnitees shall promptly notify Service Provider in writing, and the Service Provider shall defend the Indemnitees from said Claims and reimburse Indemnitees within 10 days of delivery to Service Provider, for all costs and expenses incurred in defending the Claims, including but not limited to paying for the Indemnitees' attorney's fees and costs, expert and consultants fees and costs, litigation fees and costs, additional Architect-Engineer-Designers' fees and costs incurred in defending said Claims. Service Provider shall promptly pay and satisfy any judgment or decree that may be rendered against the Indemnitees, or any of them, arising out of any such Claim; and/or reimburse Indemnitees for any and all legal expense incurred by any of them in connection herewith or in enforcing the Service Provider's Obligation to Defend and Indemnify as specified in this Section. Time is of the essence.

(b). Such defense obligation shall arise immediately upon written notice of Claim being provided to Service Provider, and includes, without limitation, the obligation to defend Indemnitee with respect to any alternative dispute resolution proceeding authorized under this Contract as well as matters related to investigation and resolution of Claims, including, without limitation, Claims brought pursuant to statute by homebuyers, successive homebuyers or homeowners associations. It is the parties' intention that any of the Indemnitees shall be entitled to obtain summary adjudication of Service Provider's duty to defend and/or duty to indemnify the Indemnitees at any time. Payment by any Indemnitee is not a condition precedent to enforcing such Indemnitees' rights to indemnification and/or defense under this Contract.

(c). Service Provider's defense obligation shall apply regardless of the fault or negligence of Service Provider or Service Provider's Agents, whether or not the Claim has any merit, and regardless of the fault, concurrent negligence (whether active or passive), any act or omission to act, or misconduct by any Indemnitee. Service Provider's duty to defend the Indemnitees, includes without limitation, the defense of the Indemnitees against Claims for which any of the Indemnitees may be strictly liable and applies whether or not the issue of Service Provider's liability, breach of this Contract or other obligation or fault has been finally determined and whether or not any of the Indemnities have paid any sums or incurred any detriment, arising out of or resulting directly or indirectly from Service Provider's performance of the Work.

(d). To the extent one or more Construction Defect Claims are asserted against one or more Indemnitees giving rise to a duty to defend, Service Provider will satisfy its defense obligation in accordance with California Civil Code § 2782(c) – (e). Within ninety (90) days after written notice of the Construction Defect Claim is provided to Service Provider, Service Provider must provide written notice to the Indemnitees that it will satisfy its defense obligation under this paragraph. Service Provider must choose to satisfy its defense obligation with regard to a Construction Defect Claim by electing either of the following choices:

- i) Service Provider agrees to defend and control the defense of any Construction Defect Claim or portion thereof to which the defense obligation applies above subject to the rules and laws concerning conflicts of interest. Service Provider shall engage and retain counsel acceptable to the Indemnitees to defend such claim. Said defense by Service Provider shall be a full and complete defense of the Indemnitees to the extent alleged to be caused by Service Provider, including any vicarious liability claims against the Indemnitees resulting from the Work. Service Provider's defense obligation shall include the engagement of professionals, experts and/or consultants reasonably necessary to the provision of said full and complete defense of the Indemnitees. Accordingly, Service Provider shall be solely responsible for all defense costs and expenses related to Service Provider's defense of the Indemnitees including, without limitation, all attorneys' fees, court costs and all other professional, expert and/or consultants' fees and costs. In the event of a material, current, actual, or unwaivable conflict of interest, the Indemnitees do not waive, release or relinquish their right to the appointment of separate counsel; or
- ii) The Indemnitees shall be entitled to select the attorney and experts engaged to defend the Indemnitees against the Construction Defect Claim and to control and make all decisions, in their sole and absolute discretion, related to said claim. Service Provider agrees to pay, on an ongoing basis during the pendency of the claim, a reasonable allocated share of the fees and costs incurred by the Indemnitees in defending said claim. The Indemnitees shall, in their sole discretion, determine Service Provider's allocated share. The Indemnitees shall determine said allocation after careful consideration of the nature of the allegations, potential liability exposure, the Work, and the number of parties with allegations related to their scope of work. The Indemnitees and Service Provider agree that share allocation at the commencement of the Construction Defect Claim may be difficult to calculate and that the methodology identified herein may be altered as necessary to achieve an allocation determination that is reasonable. Service Provider shall pay the Indemnitees its allocated share within thirty (30) days of receipt of an invoice from the Indemnitees.

Indemnitees agree to reimburse Service Provider that portion of Service Provider's allocated share that is not attributable to or arise out of the Work by or for Service Provider. Such reimbursement obligation shall arise upon entry of judgment, issuance of a binding arbitration award or execution of a final settlement agreement that allocates the Indemnitees' and Service Provider's proportionate liability ("Final Determination"). In the event of a dispute between the Indemnitees and Service Provider arising out of Service Provider's allocated share, such dispute shall be resolved through binding arbitration; however, such dispute may only be raised after such share has been subject to reallocation upon Final Determination. The parties may elect to retain a mutually selected arbitrator or panel of arbitrators, or conduct the arbitration in accordance with the Construction Industry Dispute Resolution Procedures of the American Arbitration Association in effect at such time. Notice of the demand for arbitration shall be filed in writing with the other party and/or with the American Arbitration Association. Unless otherwise agreed by the parties, the arbitration shall take place within thirty (30) days of the appointment of the arbitrator(s). The award rendered by the arbitrator or arbitrators shall be final, binding, and non-appealable, and judgment may be entered thereon in accordance with the applicable law of any court having jurisdiction thereof. Notwithstanding the foregoing, if the Indemnitees are bound to any alternative dispute resolution procedure with any homebuyers (or homeowners association), Service Provider agrees to be bound by, and to participate in such other procedures, to the extent the Service Provider's Work is an issue in such other proceeding.

(e). Evidence of insurance procured by Service Provider will be deemed admissible in any legal proceeding and/or arbitration for any purpose, including evidence that the parties expressly bargained for a commercially reasonable risk allocation. The indemnification obligations of Service Provider under the Contract shall not be limited by the amounts or types of insurance (or the deductibles or self insured retention amounts of such insurance) which Service Provider is required to carry under this Contract. The right to indemnification from Service Provider shall be in addition to Indemnitee's separate rights under the insurance to be provided by Service Provider under this Agreement.

6.06 Damages for Breach. Service Provider agrees that the Indemnitees will suffer severe damages if Service Provider breaches this Obligation to Defend and Indemnify Claims as specified in this Section. Such damages would be extremely difficult and impractical to precisely compute. Service Provider therefore agrees that, as liquidated damages, and not as a penalty, Service Provider will pay Indemnitees in addition to all "Out of Pocket Damages", (defined as damages, judgments, fees, costs, & losses resulting from the Service Provider's failure to defend and indemnify Claims), Service Provider will pay to Indemnitees an additional sum equal to hundred twenty-five percent (125%) of all "Out of Pocket Damages" suffered by the Indemnitees as liquidated damages caused by the breach of Obligation to Defend and Indemnify Claims as provided in this Section.

7. All work covered by this agreement done at the site or in preparing or delivering materials or equipment to the site shall be at the sole risk of service provider until the completed work is accepted by GCC.
8. If owner or other responsible party delays making payment to GCC from which payment to Service Provider is to be made, GCC and its sureties shall have a Reasonable Time to make payment to Service Provider. "Reasonable Time" shall be determined according to the relevant circumstances, but in no event shall be less than the time GCC, GCC's sureties, and Service Provider require to pursue to conclusion their legal remedies against Owner or other responsible party to obtain payment, including (but not limited to) mechanics' lien remedies and collection of a final judgment. During said Reasonable Time, GCC is not obligated to pay any of the Service Provider's late charges, interest charges, attorney's fees and costs, or collection fees and expenses. The Service Provider shall cooperate fully with the GCC in all steps taken in connection with prosecuting such a claim and shall hold harmless and reimburse the GCC for all expense, including legal expense, incurred by GCC which arise out of GCC's submission of Service Provider's claim to Owner or other responsible party. Service Provider shall be bound by any determination, adjudication or award in any action or proceeding, including Service Provider's entitlement to recover all or a portion of the Service Provider's attorney's fees and cost, resolving such a claim. If a progress and/or final payment from Owner or other responsible parties for the work is not received by GCC, through no fault of Service Provider, GCC will make payment to Service Provider after GCC has been afforded the Reasonable Time (as defined in this Section) to obtain payment from Owner or other responsible parties as provided in this section. Nothing in this Section shall be interpreted to require the Service Provider to waive its right to pursue its mechanic's lien and stop notice remedies at its expense, nor waive the Service Provider's right to payment from GCC after GCC as completed all legal remedies against the Owner or other responsible parties, less the Service Provider's equitable share of the GCC's expenses incurred in pursuing the recovery of the funds due Service Provider from the Owner or other responsible parties, including but not limited to GCC's attorney's

fees and costs, consultant and expert fees and costs, court costs, interest costs, and all costs and expenses incurred by GCC pursuing the legal remedies against the Owner and other responsible parties.

9. Agreement to Arbitrate Limited.
 - (a). Intent. It is the intent that the dispute resolution procedures contained in the Prime Contract be consistently applied to all Service Providers in a consolidated proceeding in order to achieve a consistent resolution in the most efficient manner, including any award of attorney's fees and costs.
 - (b). Disputes under Prime Contract with Arbitration. Any dispute resolution procedure including but not limited to any agreement Arbitrate disputes between Owner, (and/or the Customer of GCC) and GCC in the prime contract shall be deemed incorporated in this Agreement, and shall apply to any disputes arising hereunder.
 - (c). Disputes with Other Service Provider/Supplier with Arbitration Agreement. Any dispute resolution procedure including but not limited to any agreement to Arbitrate disputes between another Service Provider/subcontractor/supplier and GCC, relating to work performed by Service Provider, but does not involve the Owner, shall be deemed incorporated in this Agreement, and shall apply to any disputes arising hereunder.
 - (d). If there is no agreement to arbitrate disputes between GCC and the Owner, (or the GCC's Customer), or there is no agreement to Arbitrate disputes between another Service Provider/supplier and GCC, relating to work performed by Service Provider, but does not involve the Owner, then the dispute will be resolved through the California Court system.
 - (e). Consolidated Arbitration Proceedings. To the extent not prohibited by their contracts with others, the claims and disputes of Owner, GCC, and Service Provider and other Service Providers, suppliers and/or material men involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding. In this event, it shall be the responsibility of Service Provider to prepare and present GCC's case, to the extent the proceedings are related to this Agreement. Should GCC enter into arbitration with the Owner or others regarding matters relating to this Agreement, Service Provider shall be bound by the result of the arbitration to the same degree as the GCC.
 - (f). No Limitation of Rights or Remedies. This Section shall not be deemed a limitation of any rights or remedies which Service Provider may have under any federal or state mechanics' lien laws or under any applicable labor and material payment bonds unless such rights or remedies are expressly waived by it.
 - (g). Limitation of Liability of GCC in Pursuing Claim on Behalf of Service Provider. Subject to compliance with all applicable laws, including but not limited to those relating to false claims, dispute and claim certifications, and cost and pricing data requirements, GCC's sole obligation is to present any timely-filed claims by Service Provider to Owner and, subject to the other provisions of this Agreement, to pay to Service Provider the proportionate part of any sums paid by the Owner to which Service Provider is entitled.
10. Attorney's Fees. If the event the parties become involved in litigation or arbitration with each other arising out of this Agreement or other performance thereof in which the services of an attorney or other expert are reasonably required, the prevailing party shall be fully compensated for the cost of its participation in such proceedings, including the cost incurred for attorneys' fees, expert witness fees/costs, attorney's fees on appeal, copy costs, exhibit costs, fees and costs associated with execution upon any judgment or order, special transcript costs, appointment of a special master, arbitrator or discovery referee. Unless judgment goes by default, the attorneys' fee award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorneys' fees actually incurred in good faith, regardless of the size of a judgment, it being the intention of the parties to fully compensate for all attorneys' fees and experts' fees paid or incurred in good faith. Service Provider's right to recover Attorney's Fees and Costs arising out of payment dispute between Service Provider, GCC and/or other party responsible for payment are subject to the provisions contained in section 8 above of this Agreement: 1) "During said Reasonable Time, (to collect funds from Owner or other responsible party) GCC is not obligated to pay any of the Service Provider's late charges, interest charges, attorney's fees and costs, or collection fees and expenses". 2) "Service Provider shall be bound by any determination, adjudication or award in any action or proceeding, including Service Provider's entitlement to recover all or a portion of the Service Provider's attorney's fees and cost, resolving such a claim." 3) In the case of a dispute under the prime contract dispute resolution provisions, Service Provider shall be limited to such attorneys' fees and other costs as may be provided for under the prime contract, (if GCC is not entitled to recover from Owner its attorney's fees and costs, then neither does Service Provider against GCC). It is the intent that the dispute resolution procedures contained in the Prime Contract be consistently applied to all subcontractors/service providers in a consolidated proceeding in order to achieve a consistent resolution in the most efficient manner, including any award of attorney's fees and costs.
11. Termination for Default. If Service Provider fails to commence and satisfactorily continue correction of a default within forty-eight (48) hours after receipt by Service Provider of the Notice to Cure, then GCC may terminate

Service Provider's right to perform under this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to Service Provider to complete Service Provider's work without any further compensation to Service Provider for such use. GCC also may furnish those materials and equipment, and/or employ such workers or Service Providers as GCC deems necessary to maintain the orderly progress of the work. In such case, Service Provider shall be entitled to no further payment until the balance of Service Provider's work has been completed. At that time, all of the costs incurred by GCC in performing Service Provider's work, including a markup of twenty five percent (25%) for the GCC's Fee on such expenses, plus actual attorneys' fees as provided above, shall be deducted from any moneys due or to become due Service Provider. Service Provider shall be liable for the payment of any amount by which such expenses may exceed the unpaid balance of the Contract Price.

12. The terms relating to termination for convenience contained in the Prime Contract are incorporated into this subcontract. Under no circumstances shall Service Provider be entitled to more compensation than GCC receives for Service Provider's work from the Owner or GCC's customer as a consequence of the termination for convenience. GCC may at any time and for any reason terminate Service Provider's services and work at GCC's convenience. Cancellation shall be by service of written notice to Service Provider's place of business. Upon receipt of such notice, Service Provider shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to GCC or, at the option of GCC, give GCC the right to an assignment of those contracts or obligations, including all benefits to be derived there from. Service Provider shall thereafter do only such work as may be necessary to preserve and protect the work already in progress and to protect material and equipment on the job site or in transit thereto. Upon such termination, subject to payment from Owner or GCC's customer, Service Provider shall be entitled to payment in accordance with the Payment Conditions contained in this Agreement only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Service Provider as are permitted by the prime contract and approved by Owner. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Service Provider prior to the date of the termination of this Agreement. In no event shall payment due hereunder exceed the amount due for approved units of work or percentage of completion. The foregoing payment shall be the sole and exclusive compensation to Service Provider in the event of a suspension or termination for convenience, and Service Provider hereby expressly waives any and all other claims including those related to lost profits, consequential damages or incidental expenses.
13. Grounds for Withholding Payment. GCC may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to the extent necessary to protect GCC from loss, including costs and actual attorneys' fees, on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of Service Provider to make payments properly to its Service Providers or for material, labor or fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (5) damage to another Service Provider; (6) penalties assessed against GCC or Service Provider for failure of Service Provider to comply with state, federal or local laws and regulations; (7) the filing of presentation of any "Disputed Claim" by Service Provider; or (7) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Agreement. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Service Provider.
14. Payments will be withheld until a signed Service Agreement is received by GCC.