



PROFESSIONAL SERVICE AGREEMENT COST PLUS / NOT TO EXCEED

This Agreement, made and entered into at San Fernando, California on March 16, 2021, by and between Bernards Bros., Inc. (hereinafter "Contractor"), located at 555 First Street, San Fernando, CA 91340 and Acme Construction, located at P.O. Box 1234, Los Angeles, CA 90001.

RECITALS

Contractor has entered into a Prime Contract with UC Anywhere (hereinafter "Owner"), located at 123 Any Street, Los Angeles, CA 90001 to perform the following construction work: Sample Project. Said work is to be performed in accordance with the Prime Contract and the plans and specifications. Said plans and specifications have been prepared by or on behalf of XYZ Architects.

SECTION 1 - ENTIRE CONTRACT

Company certifies and agrees that he is fully familiar with all of the terms, conditions and obligations of the Prime Contract and Contract Documents, the location of the job site, and the conditions under which the work is to be performed, and that he enters into this Agreement based upon his investigation of all of such matters and is in no way relying upon any opinions or representations of Contractor. It is agreed that this Agreement represents the entire agreement. It is further agreed that the Prime Contract and Contract Documents are incorporated in this Agreement by this reference, with the same force and effect as if the same were set forth at length herein, and that Company and his sub-consultants will be and are bound by any and all of said Prime Contract and Contract Documents insofar, as they relate in any part or in any way, directly or indirectly to the work covered by this Agreement. Company agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Prime Contract and Contract Documents, to the extent of the work provided for in this Agreement. The term "Contract Documents" is defined to mean and include those items listed in Attachment A, which is an integral part of this Agreement.

SECTION 2 - SCOPE

Survey as described in Attachment C.

SECTION 3 - PROFESSIONAL SERVICE FEE

Company's cost of work plus a fee, not to exceed Thirteen Thousand Dollars (\$13,000) as further defined in Attachment C.

subject to additions and deductions for changes in the work as may be agreed upon

SECTION 4 - GENERAL AGREEMENT PROVISIONS

General Agreement Provisions are included and are an integral part of this Agreement.

SECTION 5 - SPECIAL PROVISIONS

Attachments A, B, C, and D are an integral part of this Agreement. Progress payment retention shall be 5.00% as further described in Attachment B.

IN WITNESS WHEREOF: The parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assignees on the day and year first above written.

Acme Construction

Bernards Bros., Inc.

By _____
Name Title

By _____

Corporation Partnership Proprietorship

Professional Engineering License (as applicable)

Contractor's State License No. 302007

GENERAL AGREEMENT PROVISIONS

A. INSURANCE - Before Company performs any work at, or prepares or delivers materials to, the site of construction, Company shall furnish certificates of insurance evidencing the insurance coverages required by this Agreement and such certificates shall provide that the insurance is in force and will not be canceled without ten days written notice to Contractor. Company shall maintain all of the insurance coverages in force until the work under this Agreement is fully completed. The requirement for carrying insurance shall not derogate from the provisions for indemnification of Contractor by Company under paragraph B of these General Agreement Provisions. Company shall require its Subcontractors of any tier performing work at the jobsite to maintain insurance of the type and in minimum limits as shown in Attachment D. Supplementary insurance requirements are included in Attachment D which is an integral part of this Agreement.

B. INDEMNITY - Company shall, to the fullest extent permitted by law, and as it relates to all work covered by this Agreement, done at the site of construction or in preparing or delivering materials or equipment, or any or all of them, to the site, indemnify, defend and hold Contractor and any subsidiary, parent or affiliate corporations and companies of Contractor, and all of their directors, officers, agents and employees (collectively, "Contractor") harmless from all claims, liability, losses, damages, costs, expenses, awards, fines or judgments arising by reason of (i) the death or bodily injury to persons, (ii) injury to property, (iii) design defects (for design within Company's scope), or (iv) any other loss, damage, claim or expense of any nature or kind whatsoever asserted against Contractor by any entity or individual; including any of the same resulting from Contractor's alleged or actual passive negligent act or omission; however, Company shall not be obligated under this Agreement to indemnify Contractor with respect to the active or sole negligence, or willful misconduct, of Contractor. Company's duty to defend is separate and distinct from the duty to indemnify and shall arise immediately upon the date when Contractor tenders in writing a claim to Company in accordance with the requirements of California Civil code Section 2782(e) and/or 2782.05(e), as applicable, when a claim is asserted against Contractor in connection with the performance of Company, or those for whom Company is responsible, relative to this Agreement, and regardless of whether others may owe Contractor a duty of defense and/or indemnity.

With the exception that this Section B of the Agreement shall in no event be construed to require indemnification by Company to a greater extent than permitted under the statutes or public policy of the State within which the construction work as described in the Recitals of this Agreement will be performed, Company shall defend, indemnify, and save harmless Owner, including its officers, directors, partners, joint venturers, agents, employees, affiliates, parents and subsidiaries, and each of them, as well as any other persons that Contractor is required to indemnify and defend under the Contract Documents, of and from any and all claims, to the same extent that Contractor is required to defend and/or indemnify Owner and such other persons, but only with respect to claims arising out of or in connection with Company's obligations under this Agreement.

The express indemnity rights and obligations identified in this Agreement shall be, and are, the only indemnity rights and obligations between Contractor and Company, in law or equity, arising out of or related to the construction project that is the subject of this Agreement or any claims asserted in relation thereto.

C. TIME - Time is of the essence of this Agreement. Company agrees to punctually and diligently perform all parts of his work at the time scheduled by the Contractor, which shall be subject to change by the Contractor (with reasonable notice afforded the Company) as deemed necessary or convenient to the overall progress of the project. In this connection, Company agrees that he will keep himself continually informed of the progress of the job and will, upon his own initiative, confer with the Contractor so as to plan his work in coordinated sequence with the work of the Contractor and of others and so as to be able to expeditiously undertake and perform his work at the time most beneficial to the entire project; however, he shall not proceed with any phase of his work ahead of the time designated by the Contractor.

D. CHANGES IN THE WORK - Company hereby agrees to make any and all changes, furnish the materials and perform the work that Contractor may require, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Contract Price stated herein, and pro rata to the same. Company shall adhere strictly to the plans and specifications unless a change therefrom is authorized in writing. Under no conditions shall Company make any changes, either as additions or deductions, without the written order of the Contractor and Contractor shall not pay any extra charges made by the Company that have not been agreed upon in writing by Contractor; and, in no event, shall Contractor make payment for any such extra charges unless and until the Contractor itself receives payment from Owner. Company shall submit immediately to the Contractor written copies of his firm's cost or credit proposal for changes in the work. Disputed work shall be performed as ordered in writing by the Contractor and the proper cost or credit breakdowns therefore shall be submitted without delay by Company to Contractor. Company shall give notice of claim relating to any work for which extra compensation is asserted within 30 days after such work is performed or Company shall be deemed to have abandoned any claim therefore.

If the Company initiates a substitution, deviation, or change in the work, which affects the scope of the work or the expense of other trades, Company shall be liable for the expense thereof.

No change, alteration or modification in or deviations from this Agreement or the plans or specifications, whether made in the manner herein provided or not, shall release or exonerate, in whole or in part any surety on any bond given in connection with this Agreement and neither Owner nor Contractor shall be under any obligation to notify the surety or sureties of any such change.

E. DAMAGES CAUSED BY DELAYS - Should Company default in the proper performance of his work, thereby causing delay to the prime contract work, he shall be liable for any and all loss and damages, including liquidated damages, sustained by Contractor as a result thereof. Company shall not be liable under this paragraph if such default be caused by strikes, lockouts, acts of God, or other reasons beyond the control of Company, concerning which, however, notice of occurrence of same shall be given in writing immediately by Company to Contractor.

F. ASSIGNMENT OF CONTRACT - Company shall not, without written consent of Contractor, assign, transfer, nor sublet any portion or part of the work required by this Agreement nor assign any payments hereunder to others. Contractor may assign or transfer the whole or part of this Agreement, and his rights hereunder, to any corporation, individual, or partnership.

G. NOTIFICATION OF CONTRACTOR - Any act or omission of Contractor which Company might claim as an excuse for his own failure to perform shall be deemed waived by Company unless he shall notify Contractor of his intention to assert such excuse within ten days after the occurrence of any such act or omission. Company waives any right it might have to assert the provisions of California Civil Code Section 1654 against Contractor.

H. COMPETENCY OF COMPANY PERSONNEL - Employees or consultants retained by the Company shall be satisfactory to the Contractor. Company shall keep competent and sufficient supervision satisfactory to Contractor at the job site during all times when Company's work is in progress, and such supervisor(s) shall be authorized to represent Company as to all phases of the work. Prior to commencement of the work, Surveyor shall notify Contractor who Company's supervisor(s) is (are) to be, and in the event of any change of representative(s) Surveyor shall notify Contractor who the new representative(s) is (are) to be prior to such change becoming effective.

I. LABOR RELATIONS - Should there be picketing on the Contractor's jobsite, and the Contractor establishes a reserved gate for the Company's purposes it shall be the obligation of the Company to continue the proper performance of his work without interruption or delay. Company further promises and agrees that he will bind and require all of his consultants/vendors performing jobsite work to agree to all of the foregoing promises and undertakings, to the same extent as herein.

J. CONTINUOUS PERFORMANCE DURING A DISPUTE - In the event of a dispute between Contractor and Company over the scope of Company's work under this agreement, or any other dispute regarding the parties' rights and obligations under this agreement, Company shall follow the written direction of Contractor and shall not delay, postpone or otherwise hinder the progress of the work. Company shall give written notice of claim relating to any work for which extra compensation is claimed within 7 days (or within a lesser time period if required elsewhere in the Contract Documents) after Company becomes aware of its claim, or Company shall be deemed to have abandoned any claim therefore. In the event of such a dispute, it is understood that Company reserves all of its contractual rights as it proceeds under protest pursuant to Contractor's written direction.

K. INDEMNITY CLAUSE FOR EQUAL EMPLOYMENT OPPORTUNITIES VIOLATIONS - Company shall, at his own expense, conform to the equal employment opportunity policies of the Contractor, and in addition, shall comply with all equal employment opportunity requirements promulgated by any

governmental authority, including, without limitation, the requirements of the Civil Rights Act of 1964, 42 United States code, Section 1983, Executive Orders 11246, 11375 and 11478, the California Fair Employment Practices Act, the California Plan, any other applicable statute or ordinances, plans or programs, inclusive, and all successors and amendments thereto, and all plans, programs, standards and regulations which have been or shall be promulgated or approved by the parties or agencies which administer said Acts or Orders (hereinafter collectively referred to as EEO laws). Company shall have and exercise full responsibility for compliance hereunder by itself, its agents, employees, material men and subcontractors with respect to its portion of the work on this Project; it shall directly receive and respond to, defend and be responsible for any citation, order, claim, charge, or criminal or civil actions, arising by reason of the failure of Company or its agents, employees, material men and subcontractors to so comply, regardless of whether such non-compliance results from active or passive acts or omissions or whether such non-compliance is the sole or a contributory cause of any of those matters against which Company is obligated hereunder to indemnify and hold harmless Contractor. Company shall indemnify and hold harmless Contractor from and against any liability loss (including any loss of profits or prospective advantage occasioned by the suspension, cancellation or termination of any contract, or Contractor's eligibility therefore), damage, costs, claims, awards, judgments, fines, expenses, including litigation expenses, claims or liability for harm to person or property, expenses incurred pursuant to or attendant to any hearing or meeting or any other applicable costs which may be incurred by Contractor resulting from Company's failure to fulfill the covenants set forth in this paragraph.

L. LIENS - Company shall at all times indemnify and save Contractor and Owner harmless against all liability for 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 Contractor or Owner from such claims or liens. Further, in case suit on such claim is brought, Company shall defend said suit at his own cost and expense, and will pay and satisfy any such lien or judgment as may be established by the decision of the court in said suit. Company agrees within ten (10) days after written demand to cause the effect of any suit or lien to be removed from the premises, and in the event Company shall fail so to do, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed and the cost thereof shall be immediately due and payable to Contractor by Company. Company may litigate any such lien or suit provided he causes the effect thereof to be removed, promptly in advance, from the premises, and shall further do such things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such liens or suits.

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

M. RECOURSE BY CONTRACTOR - In the event that Company defaults at any time by refusing or neglecting to supply a sufficient quantity of materials of proper quality, or is adjudicated bankrupt, or files an arrangement proceeding, or commits any act of insolvency, or makes an assignment for the benefit of creditors without Contractor's consent, or fails to make prompt payment to his subcontractors, suppliers and/or laborers, or fails in any respect to properly and diligently prosecute the work covered by this Agreement, or otherwise fails to perform fully any of the agreements herein contained, Contractor may, at his option, after giving written notice to Company: supplement Company's work efforts by providing or causing to be provided any design, engineering, labor, materials, equipment, subtrade, or any other type of work or payment as may be necessary to cure the default of Company; and/or terminate Company's right to proceed with a portion of or the remainder of Company's work in which event Contractor shall have the right to enter upon the premises of the project and take possession, for the purpose of completing the work included under this Agreement, of Company's materials, tools, and appliances, and may employ any other person(s) or firm(s) to finish Company's work and provide the materials therefore. In the case of termination of the remainder of Company's work Company shall not be entitled to receive any further payment under this Agreement until the work undertaken by Contractor in his prime contract is finished. In the case of such supplementation or termination of Company's work, Contractor shall be entitled to recover all expenses and damages incurred for completing Company's work including, but not limited to, the cost of: design, engineering, labor, materials, equipment, subtrade work, general conditions, onsite supervision, insurance, bonds, and any payments made on behalf of Company plus a markup of fifteen percent on all such expenses and damages, hereinafter referred to collectively as Completion Costs. Such Completion Costs shall be deducted from any payment then due or to become due to Company. If the unpaid balance of the amount to be paid under this Agreement exceeds the Completion Costs incurred by Contractor the excess shall be paid by Contractor to Company as it becomes due under the terms of this Agreement; but, if the Completion Costs exceed such unpaid balance, then Company shall promptly pay to Contractor the amount by which the Completion Costs exceed such unpaid balance and Contractor shall have a lien upon all Company's materials, tools and appliances taken possession of, as aforesaid, to secure the payment thereof. The notice referred to in this Paragraph H will be sufficient and complete when handed to a supervising employee employed by Company or when sent to Company at his address shown in this Agreement or sent via facsimile or e-mail to the then current facsimile number or e-mail address of the Company.

Contractor may withhold, or on account of subsequently discovered evidence, nullify the whole or a part of any payment under Attachment B Payment, to such extent as may be necessary to protect Contractor from loss on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of Company to make payments promptly to his subcontractors or for material, labor, or for fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (5) damage to another subcontractor. In the event Contractor elects to withhold funds on account of any of the referenced items above, Contractor may withhold one hundred fifty percent of the value of such item or items. When the above grounds are removed, such amounts as are then due and owing shall be paid or credited to Company.

Any sum or sums chargeable to the Company or any of Company's affiliates, parent company, related entities or subsidiaries under any provision of this Agreement or any other agreement with Contractor or any party related to Contractor (except to the extent of personal injury or other damages covered by Company's insurance where Company's insurer acknowledges coverage and assumes all liability), may, at the election of the Contractor, be deducted from any payments otherwise due or to become due to the Company or its payment and performance bond surety(ies) under this or any other agreement between the Contractor or any party related to Contractor (including any subsidiary or affiliate of Contractor, any entity which is at least fifty percent owned or controlled by the owners of Contractor, or any joint venture in which Contractor or any of the foregoing is a venturer) and the Company with any remaining amounts due to Contractor to be paid by Company, or the Contractor may pursue the Company for such amounts and recover damages.

N. TERMINATION OF AGREEMENT, SUSPENSION OF WORK - In the event the prime contract is terminated prior to its completion, Company shall be entitled only to payment for the work actually completed by it at the pro rata of the price herein set forth unless Contractor itself receives additional compensation or damages on account of such termination; in which event, Company shall be entitled to such proportion of the additional compensation or damages actually received as is equitable under all of the circumstances. Nothing herein contained shall require Contractor to make any claim against Owner for such additional compensation or damages in the event of termination before completion, and it is specifically agreed that the failure of Contractor to prosecute any such claim against Owner shall not entitle Company to any claim for additional compensation or damages against Contractor.

Notwithstanding the preceding paragraph, Contractor reserves the absolute right to terminate this Agreement for convenience. In the event of termination without cause, Company shall be entitled to payment only as follows: An amount equal to the lesser of the Agreement value of the work performed through the date of termination, or the actual direct costs for labor, materials, and equipment incurred by Company for the work completed plus a sum equal to fifteen percent (15%) of such costs for headquarters, supervision, overhead, and profit, reduced by the amount of all payments made to Company prior to such termination. Title to all materials included in the computation of such costs and of all purchase orders placed by Company for labor and/or materials shall pass to Contractor upon payment to Company.

Upon receipt of notice of Contractor's termination for convenience, Company shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor or, at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Company 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.

Should the Owner suspend the entire work or any part which includes the Agreement work for the convenience of the Owner and such suspension is not

due to any act or omission of Contractor, or any other person or entity for whose acts or omissions Contractor may be liable, Contractor shall notify Company in writing and, upon receiving notification, Company shall immediately suspend the Agreement work. To the extent provided for under the prime contract and to the extent Contractor recovers such on Company's behalf, the Agreement price and the Agreement time shall be equitably adjusted by Agreement Change Order for the cost and delay resulting from any such suspension.

O. ARBITRATION - Except as otherwise described below, any and all disputes between Contractor and Company arising out of or related to this Agreement shall be submitted to binding arbitration before the American Arbitration Association, pursuant to the Construction Industry Arbitration Rules then in effect, except that notwithstanding the amount of the dispute, there shall be a single arbitrator mutually agreeable to both parties who is an experienced construction lawyer with previous arbitrator experience. In addition, the arbitration shall be governed by the procedural provisions of the Federal Arbitration Act, rather than state arbitration procedures. Notwithstanding the foregoing arbitration provisions, in the event Contractor or Owner institutes an action or arbitration against the other, and either Contractor or Owner asserts a claim arising out of or related to Company's performance within that action or arbitration, the dispute resolution procedures contained in the prime contract between Contractor and Owner shall prevail over the arbitration provisions in this Agreement. In any arbitration or action between Contractor and Company arising out of or in any way related to this Agreement, and notwithstanding any contrary or different language or provision in the Prime Contract, Contractor and Company shall bear their own attorney fees and costs in connection with any such arbitration or action.

SAMPLE