

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
THE CITY OF EAST PALO ALTO

THIS AGREEMENT, entered into this _____ day of _____,
20____, by and between the COUNTY OF SAN MATEO, hereinafter called
"County," and THE CITY OF EAST PALO ALTO, hereinafter called "City";

WITNESSETH:

WHEREAS, pursuant to Government Code §§ 51300 *et seq.*, County may contract with City for the performance of City functions by the appropriate departments and employees of County; and

WHEREAS, County owns certain property located at 2415 University Avenue, in the City of East Palo Alto, and the City leases some of that space for its municipal offices; and

WHEREAS, that lease agreement requires County to provide maintenance, the agreement permits City to install tenant improvements; and

WHEREAS, City has requested County to construct certain tenant improvements within the leased space, including remodeling of offices and interiors, and County, by and through the San Mateo County Department of Public Works, is willing to perform such services; and

WHEREAS, the County's construction of the tenant improvements at City's request is provided by the County in its capacity as a service provider, and not in the County's capacity as landlord.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO
AS FOLLOWS:

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated

by reference herein:

Exhibit A - Services

Exhibit B - Payments and Rates

Exhibit C - Project Schedule

Exhibit D - Schedule of Values

Exhibit E - Project drawings and specifications as provided to the County of San Mateo by the City of East Palo Alto's consultant KJR Design titled "Construction Plan" Rev 3 and dated 11-10-09,

2. **Services to be Performed by County**

In consideration of the payments set forth herein and in Exhibit "B," County shall perform services for City in accordance with the terms, conditions and specifications set forth herein and in Exhibits A", C, and E, which are collectively referred to as "the work".

3. **Payments**

In consideration of the services provided by County in accordance with all terms, conditions and specifications set forth herein and in Exhibit A" C, and E, City shall make payment to County based on the rates and in the manner specified in Exhibits B and D. The City is required to make the payments as set forth in Exhibits B and D, and may not withhold payment if the City determines that the quantity or quality of the work performed is unacceptable. In no event shall the City's total fiscal obligation under this Agreement exceed Two Hundred Twenty Four Thousand Seven Hundred Forty One dollars (\$224,741) exclusive of any additionally requested (Change Order) work.

4. **Term and Termination**

The term of this agreement shall commence upon execution by both parties. The parties expect and agree that the work will be performed between

May 1, 2010 and May 25, 2011, by which date all work described in Exhibits A, C and E will have been completed. Either City or County, by its Director of Public Works, may terminate this agreement either: (a) for its convenience and without cause upon 90 days written notice to the other party, or (b) immediately in the event of safety or security concerns resulting from continuing with the work. However, in the event of any termination, City shall pay County not later than 30 days after termination for all work performed and all expenses incurred in connection with this agreement.

5. **Relationship of Parties**

City agrees and understands that the work/services performed under this Agreement are performed as an independent contractor by the County and not as an employee of the City, and that neither party's employees or agents shall acquire any of the rights, privileges, powers, or advantages the other Party's employees.

6. **Mutual Hold Harmless**

a. It is agreed that County shall defend, save harmless and indemnify City, its officers and employees from any and all claims which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of County, its officers and/or employees.

b. It is agreed that City shall defend, save harmless, and indemnify County, its officers and employees from any and all claims for injuries or damage to persons and/or property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of City, its officers and/or employees.

c. In the event of concurrent negligence of County, its officers and/or employees, and City, its officers and/or employees, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this Agreement

shall be apportioned according to the California theory of comparative negligence.

- d. Notwithstanding any other provision of this section or this agreement, City shall defend and indemnify County, and its employees, agents, officers, and officials, from any and all claims arising from or relating to City's decision to enter into this agreement with County. Both parties expressly agree that it was City's decision to have County provide the work described in this agreement.

7. Insurance

(1) Worker's Compensation and Employer's Liability Insurance

Both parties shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, both parties certify, as required by Section 1861 of the California Labor Code, that they are aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and that they will comply with such provisions before commencing the performance of the work of this Agreement.

(2) Liability Insurance

Both parties shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance, self-insurance, or a combination thereof, as shall protect the party while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them.

Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability \$1,000,000
- (b) Motor Vehicle Liability Insurance \$1,000,000
- (c) Professional Liability \$1,000,000

8. **Compliance with Laws; Payment of Permits/Licenses**

~~Neither planning or building permits and/or fees are required or included in this agreement. All services to be performed by County pursuant to this Agreement shall be performed in accordance with all other applicable Federal, State, City, and municipal laws, including, but not limited to those that require the payment of prevailing wages.~~

9. **Retention of Records, Right to Monitor and Audit**

- (a) Both parties shall maintain all required records for three (3) years after the CITY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the City, a Federal grantor agency, and the State of California.
- (b) Reporting and Record Keeping: Both parties shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the other party.
- (c) Both parties agree to provide to the other party, to any Federal or State department having monitoring or review authority, to either party's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine

all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

10. **Merger Clause**

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

11. **Controlling Law**

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California, and any litigation arising from this agreement shall be venued in the Superior court in the County of San Mateo.

However, before filing a lawsuit, the parties shall attempt to resolve all disagreements informally, and with the assistance of a mediator to be selected by both parties.

12. **Notices**

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United State mail, postage prepaid, when deposited with a public telegraph

company for transmittal, charges prepaid; or by electronic mail and facsimile, addressed to:

In the case of City, to:

ML Gordon
City Manager's Office
2415 University Avenue
East Palo Alto, CA 94303

mgordon@cityofepa.org

In the case of County, to:

Manager
Construction Services Section
Department of Public Works
County of San Mateo
30 Tower Road
San Mateo, CA 94402

gmisculin@co.sanmateo.ca.us

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

CITY OF EAST PALO ALTO

COUNTY OF SAN MATEO

By: _____
City Manager, City of East Palo Alto

By: _____
Richard S. Gordon
President, Board of Supervisors
County of San Mateo

Date: _____

Date: _____

ATTEST:

By: _____
Clerk of Said Board

County of San Mateo

County's Signature

Date: _____

Long Form Agreement/Non Business Associate v 6/29/06

Exhibit "A"

In consideration of the payments set forth in Exhibit "B", and in accordance with project drawings and specifications as provided to the County of San Mateo by the City of East Palo Alto's consultant KJR Design titled "Construction Plan" Rev 3 and dated 11-10-09, based on which the contract amount herein provided is based, County shall provide the following services:

Project Management: Planning, budget monitoring; scheduling and assignment of field personnel in the respective trades; their coordination and sequencing of designated tasks and events; site inspections, on site pre-construction and progress meetings; issuing of Requests for Information, Change Order Requests, Invoices, Notices and Reports as may be necessary.

Administrative Support: Documentation, dispatching, daily reports and timecards; procurement of material and equipment; cost tracking; processing of invoices, payments for labor and materials, rentals, taxes, clerical and filing; close-out documentation.

Construction Services: Provide experienced field personnel and labor in the appropriate construction trades as required by the scope of the project with sufficient skills and numbers as to meet the project's schedule and requirements; tools and equipment; supply of consumable and permanent materials, public and personal safety equipment and protection.

* * *

Exhibit "B"

In consideration of the services provided by County in Exhibit "A", City shall pay County based on the following fee schedule:

Monthly Progress Payments: Upon the last week of each calendar month, or the first week of the subsequent month, the services performed within said month shall be assigned a mutually acceptable completion percentage of the established Schedule of Values (Exhibit D) of this agreement. The sum of these percentages shall be invoiced for payment within 30 days and shall not subject to retention.

* * *

Exhibit C - Project Schedule
 City of East Palo Alto
 Tenant Improvements

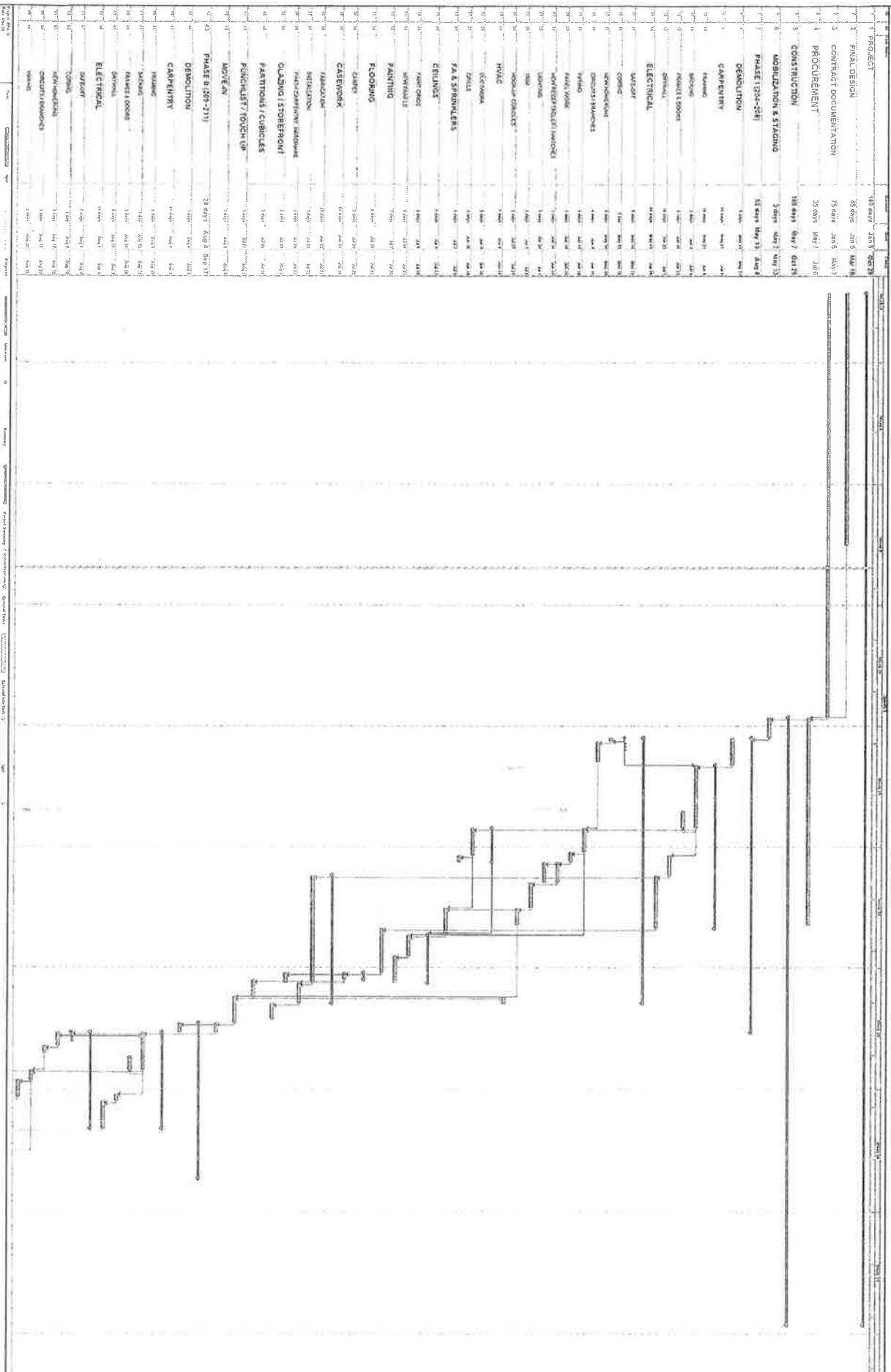


Exhibit C - Project Schedule
 City of East Palo Alto
 Tenant Improvements

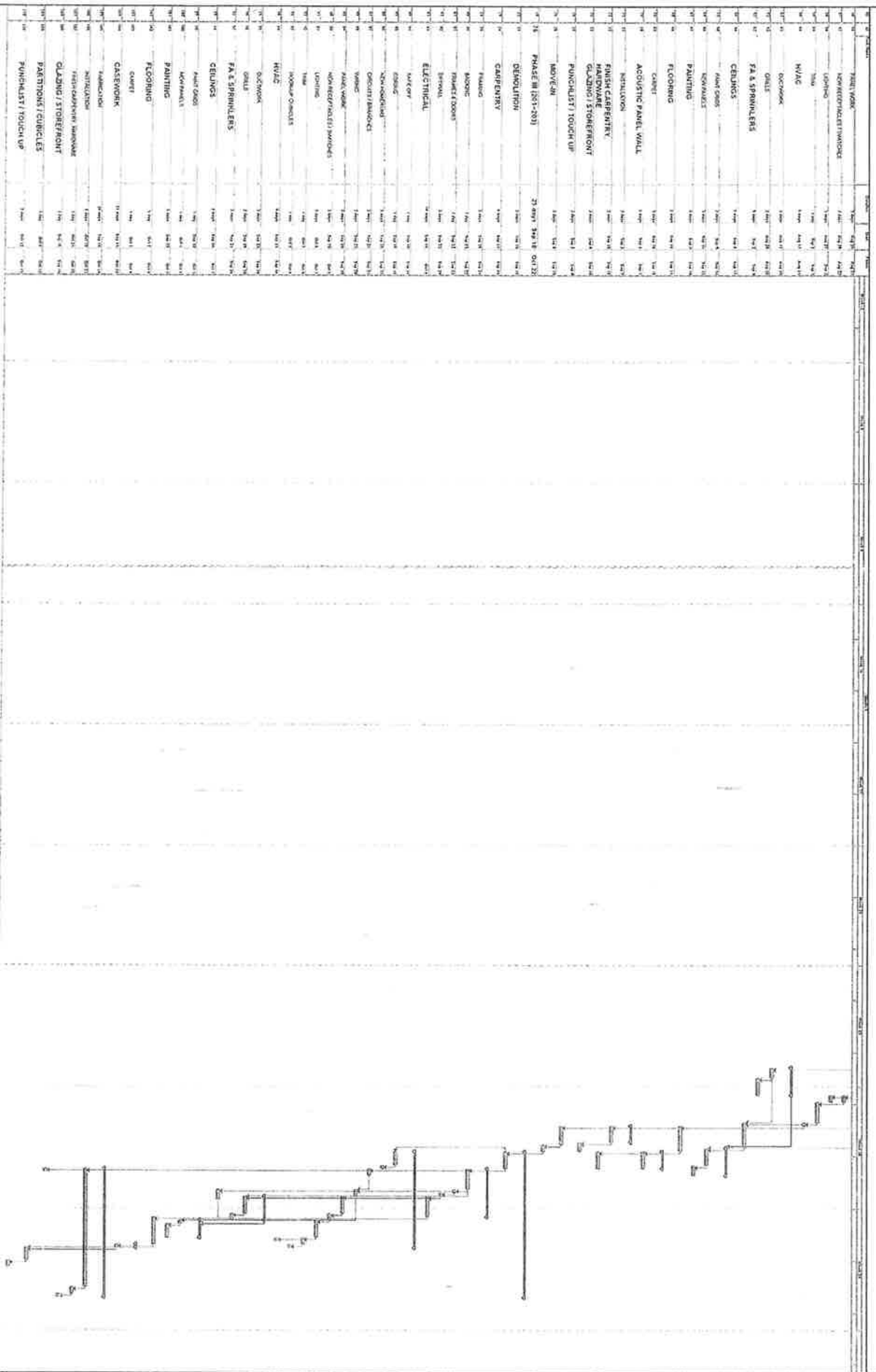


Exhibit C - Project Schedule
 City of East Palo Alto
 Tenant Improvements

Activity	Start	End	Duration	Predecessors	Resources
COBBLE PAVING & GRANITE	1/20/11	3/20/11	60 days		
FINAL PUNCH & CLEANING	3/20/11	5/20/11	60 days		
DEMOS					



City of East Palo Alto
 Tenant Improvements

EXHIBIT D
 SCHEDULE OF VALUES

APPLICATION FOR PAYMENT No. 01

Date

CONTRACT AMOUNT	COMPLETION %	PREVIOUS BILLING	CURRENT BILLING	RETENTION	CURRENT PAYMENT	BALANCE TO COMPLETE
Division 1 General Conditions	6,903		0.00	0.00	0.00	6,903
Division 2 Wood, Plastics & Composites	7,577		0.00	0.00	0.00	7,577
Division 6 Thermal & Moisture Protection	3,747		0.00	0.00	0.00	3,747
Division 8 Openings	24,687		0.00	0.00	0.00	24,687
Division 9 Finishes	100,594		0.00	0.00	0.00	100,594
Division 10 Special Construction	8,445		0.00	0.00	0.00	8,445
Division 15 Mechanical	16,436		0.00	0.00	0.00	16,436
Division 16 Electrical	56,351		0.00	0.00	0.00	56,351
CONTRACT AMOUNT 224,741						
CHANGE ORDERS						
01			0.00	0.00	0.00	0.00
REVISD CONTRACT						
TOTAL	\$ 224,741.00	0%	\$ -	\$ -	\$ -	\$ 224,741