

ENJ Excavating Limited

Construction Contract

GOLDPARK (PINEVALLEY) INC. (a.k.a. PINEVALLEY FOREVERGREEN, VAUGHAN, ONTARIO)

BF – Excavation, Backfill & Rough Grade

Effective Period: November 21st, 2018 Through to Completion of Phase 1

CONSTRUCTION AGREEMENT BETWEEN CONTRACTOR AND SUB-CONTRACTOR

Sub-Contractor:	ENJ EXCAVATING LIMITED	Effective Period:	Phase I
Trade Type:	EXCAVATION, BACKFILL & ROUGH GRADE	40' Units Included:	56
Project:	PINEVALLEY FOREVERGREEN, VAUGHAN	42' Units Included:	44
		50' Units Included:	32

BETWEEN:

GOLDPARK (PINEVALLEY) INC.
3300 Highway #7, Suite 400
Concord, Ontario L4K 4M3

(Hereinafter known as the "CONTRACTOR")

- AND -

ENJ Excavating Limited
13 Kenview Boulevard, Unit 25A
Brampton, Ontario, L6T 5K9

(Hereinafter known as the "SUB-CONTRACTOR")

DATED THIS, 21 day of November, 2018

REGARDING, PINEVALLEY FOREVERGREEN, LOCATED IN THE TOWN/CITY OF VAUGHAN, ONTARIO

(hereinafter known as the "PROJECT")

This contractual agreement (hereinafter known as the "AGREEMENT") shall legally bind the Contractor and Sub-Contractor to all provisions, conditions, stipulations, requirements, and processes contained herein, and in all schedules attached hereto, and as such shall govern both the Contractor and Sub-Contractor throughout the duration of this agreement. Under no circumstances shall this contract be amended, changed, or modified without the acceptance of the Contractor and Sub-Contractor named above. Furthermore, in the event of a dispute the terms, conditions, and provisions of this contract shall prevail no exceptions.

ARTICLE 01: THE PROJECT

- 01.01

The Sub-Contractor having fully inspected all site conditions and relevant documentation such as plans, drawings, and as such having formed his/her own independent evaluation of the general site conditions, limitations and requirements without relying on any representation of same by the Contractor, agrees to supply all materials required to complete the work as set out by this contractual agreement and all schedules attached hereto in accordance with the general intent and objectives of the project and to furnish all labour (skilled and/or general), tools, equipment, supplies, permits, licenses, inspections, and supervision required to successfully complete to the satisfaction of the Contractor all work as set out by this contractual agreement and all schedules attached hereto in accordance with the general intent and objectives of the project.
- 01.02

The Sub-Contractor understands and agrees that Contractor shall solely determine the construction schedules, order of lots, and processes. As such the Sub-Contractor agrees to comply with all requests and orders issued by the Contractor, no exceptions.
- 01.03

Timing is of the essence. The Sub-Contractor shall strictly adhere to the construction schedules, timetables, and production sequences/processes provided by the Contractor, at all times.
- 01.04

All municipal by-laws of the town/city where the project is located apply. Sub-Contractors shall govern themselves accordingly.
- 01.05

Routine inspections by the Contractor will take place as the Contractor sees fit. The Contractor reserves the right to inspect ALL vehicles going and in and out of the project site without notice. No Exceptions.

ARTICLE 02: LIST OF CONTRACT SCHEDULES

- 02.01

This Contractual Agreement shall contain the following Parts and Schedules:
- i)

Cover Page

ii)

Contract

iii)

Schedule A – Scope of Work

iv)

Schedule B – Contract Prices

v)

Schedule C – Unit Rates and Extras Pricing

vi)

Schedule D – Exterior Colour Packages (if applicable)

ARTICLE 03: WORK TO BE PERFORMED

- 03.01

The Sub-Contractor shall provide all necessary labour, supervision, materials, equipment, supplies, hardware, tools, planks, runways, scaffolds, lifting equipment, fuel, insurance, licenses, permits and inspections required to complete the work as set out by this contractual agreement and all schedules attached hereto.

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- 03.02
- All materials and/or supplies being furnished by the Sub-Contractor shall be new. Used, remanufactured, refurbished, and/or floor models (*display units*) will not be accepted by the Contractor unless written consent to do so has been issued to the Sub-Contractor by the Contractor. In the event that the Contractor does permit the Sub-Contractor to use materials and/or supplies which are used, remanufactured, refurbished, and/or a floor model the Sub-Contract must provide the Contractor the equivalent warranty against defects and workmanship which would have accompanied the new material and/or supplies. No Exceptions.
- 03.03
- The Sub-Contractor shall conform to the above requirements as well as the requirements of the Ontario Building Code, National Building Code, the municipality, and the most current CSA standards, WSIB, Occupational Health and Safety Act of Ontario as well as the requirements of all other authorities having jurisdiction. Comply with all local by-laws, including noise, odor, dust and hours of work.
- 03.04
- All work being performed by the Sub-Contractor must be completed in strict compliance with all plans, drawings, reports, colour selections, change orders, and optional upgrades and extras (*if any as provided by the Contractor by way of Construction Summary and/or Purchase Order*), site plans, specifications, and structural/architectural details (*hereinafter collectively known as the "CONSTRUCTION DOCUMENTS"*). It shall be the Sub-Contractor's responsibility to ensure that all Construction Documents being used by the Sub-Contractor are accurate and approved the Contractor prior to commencing any work.
- 03.05
- The Sub-Contractor shall only use architectural drawings, mechanical drawings, truss drawings, joist layouts, and site plans approved by the municipality and issued with building permit. The Sub-Contractor shall not use tender drawing sets, or drawing sets without the municipal stamps and approval for construction purposes. The Sub-Contractor must make certain that the drawings being used are in fact the construction sets.
- 03.06
- The Sub-Contractor agrees to begin and carry out all work within a maximum time frame of twenty four (24) hours of being notified to do so by the Contractor and shall continue to complete the work in a prompt, diligent, workmanlike manor causing minimal interference to the Contractor or any other Sub-Contractors and must adhere to the schedules of the Contractor.
- 03.07
- The Sub-Contractor agrees that the work shall be complete in every detail notwithstanding that every item necessary to do so may or may not be mentioned in the Construction Documents provided. The Sub-Contractor's expertise and good judgment to complete the assigned work is essential and as such items and/or labour which may not be mentioned on the Construction Documents that may or not be required to complete the assigned work as intended must be identified and incorporated in completing the work assigned and included in the contract price.
- 03.08
- The Sub-Contractor shall be permitted (*within reason*) to adjust the construction schedules, and/or turnaround times, during the course of construction after consulting and receiving permission from the Site Supervisor.
- 03.09
- The Sub-Contractor hereby agrees to supply only qualified labour with adequate experience and expertise required to complete the assigned work. Furthermore, the Sub-Contractor must ensure that all of his/her representatives working on their behalf (*including but not limited to: employees, 3rd party contractors, temporary labourers, etc...*) are adequately trained in all matters related to the work they are carrying out on the Sub-Contractor's behalf and all regulatory safety requirements pertaining to the working be performed.
- 03.10
- In the event that the Sub-Contractor fails to commence work as prescribed by the Contractor, or does not complete the work in accordance with the Construction Documents, or the general intent of the project, or to the satisfaction of the Contractor (*at the Contractor's sole discretion*) the Contractor may, in addition to its other remedies, terminate this Agreement, and the Sub-Contractor shall be responsible for all damages and/or costs arising out of such default.
- 03.11
- All work set out by this Agreement shall be carried out by the Sub-Contractor's own forces. The use of a 3rd party contractor shall only be permitted if approved by the Contractor in writing prior to the Sub-Contractor commencing work.
- 03.12
- The Sub-Contractor shall take sufficient precautions and care and use due diligence in carrying out this work to ensure that curbs, roads and any adjacent buildings, fencing, equipment or property are not damaged or otherwise adversely affected. Where such damage occurs, this trade contractor shall rectify it immediately and completely to, original condition, at its sole expense.
- 03.13
- The operations of this Sub-Contractor shall be conducted with full consideration of all proper rights of the owners and occupants of the adjacent premises and with the least inconvenience possible to them, and without any interference and/or interruptions to the operations to the said owners or occupants.

ARTICLE 04: CONTRACT PRICE AND PAYMENT

- 04.01
- The Contractor agrees to remunerate the Sub-Contractor in accordance with the fixed price rates as set out by Schedule "B" attached hereto. All prices shown in Schedule "B" are in Canadian Funds and do not Include the Harmonized Sales Tax (HST) if applicable.
- 04.02
- All invoices issued to the Contractor by the Sub-Contractor shall be processed in accordance with the Contractors payment procedures. Processing and Payment procedures are as follows:



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- a. All invoices dated and received prior to the 15th of the month (the Cut-off date) shall be processed and paid (*less the applicable ten percent (10%) lien holdback*) on the last business day of the following month.
- b. All invoices dated and received after the 15th of the month (the Cut-off date) shall be processed and paid (*less the applicable ten percent (10%) lien holdback*) on the last business day two (2) months after the month which the invoice was billed.

04.03 The Sub-Contractor does have the ability to request early payment terms, as per the following criteria and conditions:

- a. **Missing Cut-Off:** In the event that a Sub-Contractor does not meet 04.02.a, but requires payment by the last day of the following month, The Sub-Contractor may request (in writing) an advance payment from the Contractor. The Contractor shall charge the Sub-Contractor and deduct two and a half percent (2.5%) from the invoice (before HST) as a non-refundable early processing fee, and release payment to the Sub-Contractor as described in 04.02.a. HST will be paid in full per the invoice.
- b. **Early Payment:** In the event that a Sub-Contractor requests (in writing) payment earlier than set out in 04.02, the Contractor shall charge the Sub-Contractor and deduct five percent (5%) from the invoice (before HST) as a non-refundable early processing fee, and release payment to the Sub-Contractor within five (5) business days (*less the applicable ten percent (10%) holdback*). HST will be paid in full per the invoice.

04.04 All Sub-Contractor invoices/billings must be accompanied by a corresponding completion certificates signed by the Contractor’s Site Superintendent. It is the Sub-Contractor’s sole responsibility to acquire all required completion certificates from the Contractor’s Site Superintendent for the relevant work prior to billing/invoicing the Contractor for the work or any part thereof. It is understood that all Completion Slip numbers will be issued by the site construction office once a week and picked up at the site office on the Contractor’s designated day only. Sub-Contractor must submit to the site office a written request for completion slips one week prior to the Contractors issuance. Written request is to indicate the lots or items completed and declare that the work is 100% complete according to the contract. The request must be signed by the Sub-Contractor’s foreman. Completion slips will not be faxed to the Sub-Contractor. (For “Supply Only” contracts, site administrator will issue completion slip numbers to the supplier’s office upon verification of the goods delivered.) *All invoices must be dated no earlier than the date the completion slip is signed.*

04.05 All payments, weather progress or final, to be made by the Contractor to the Sub-Contractor are subject to the lien holdback provisions of the Construction Lien Act (Ontario) which entitles the Contractor to holdback ten percent (10%) of all payments owing to be released at a later date in accordance with the said act.

04.06 The Sub-Contractor agrees that no claim for lien will be filed against the property without first giving the Contractor written notice by way of registered mail of his/her intention to file a lien at least ten (10) business days prior to filing for said lien.

04.07 Neither the final payment nor any part thereof shall become due until the Sub-Contractor obtains and delivers to the Contractor a declaration of last supply and complete release of all lien rights arising out of this Agreement. Provided, however, that the Sub-Contractor may, as an alternative, furnish a bond satisfactory to the Contractor to indemnify the Contractor against any claim under such liens.

04.08 The Sub-Contractor agrees to maintain all of his financial affairs with his/her suppliers, employees, government, and 3rd party contractors in order and good standing at all times. As such the Sub-Contractor hereby authorizes the Contractor to pay any or all of the Sub-Contractor’s unpaid obligations on his/her behalf and deduct the equivalent amount(s) from the funds owed to the Sub-Contractor by the Contractor. Furthermore the Contractor shall be entitled to charge the Sub-Contractor a reasonable fee for overhead and administration for completing such payment(s) on the Sub-Contractor’s behalf, which in turn shall also be deducted from the funds owing to the Sub-Contractor by the Contractor.

04.09 Release of the ten percent (10%) holdback retained by the Contractor shall be released to the Sub-Contractor without interest in accordance with the Construction Liens Act, providing that the Sub-Contractor meets all of the following requirements:

- i) The subject premises are free and clear of all liens, claims, and/or charges, and there are no claims or demands against the Contractor or any other entity defined as “Owner” or “Contractor” in the Construction Liens Act, and that the Contractor or Owner has not been put on notice of any execution, seizure, or third party demand against the Sub-Contractor.
- ii) The Contractor is furnished with a certificate of good standing pursuant to the Workman’s Compensation Act, which certificate shall contain the name of the Sub-Contractor, the name of the project, and the Sub-Contractor’s registration number. Note: The name displayed on the WSIB certificate of good standing must be an exact match to the name the Sub-Contractor is displaying on his/her invoices, and the name contained in this Contractual Agreement.
- iii) The Contractor is furnished with evidence satisfactory to it that the Sub-Contractor has effected payment in full for all materials and services.
- iv) All services and/or materials/supplies provided by the Sub-Contractor relevant to the corresponding holdbacks is complete, free of defect(s) and satisfactory as determined at the sole discretion of the Contractor.
- v) All other requirements as set out by the Construction Liens Act have been adhered to by the Sub-Contractor.

04.10 If and when requested, the Sub-Contractor agrees to provide the Contractor with a performance bond (in form and content satisfactory to the contractor) in the amount stipulated by the Contractor, which amount shall be available to the Contractor forthwith, in the event of non-

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performance by the Sub-Contractor of any of the terms, conditions and provisions of this Agreement, including any and all schedules attached hereto.

- 04.11
- The Contractor shall not be responsible for the payment of any labour and/or materials not specifically provided for herein unless approved in writing by the Contractor’s head office with the issuance of a purchase order. Any requests for such payment(s) shall be submitted to the contractor with reference to the purchase order number and corresponding completion slip signed by the Site Superintendent. It shall be paid in accordance with the provisions of Schedule B.
- 04.12
- Prior to final payment at project end the Sub-Contractor must provide the Contractor with any and all operating manuals, maintenance manuals, log books, and/or instruction manuals *(if any)*.

ARTICLE 05: INVOICING PROCEEDURES

- 05.01
- All invoices must be submitted to the Contractor’s head office located at the following address:

GOLDPARK (PINEVALLEY) INC..
3300 Highway #7, Suite 400
Concord, Ontario
L4K 4M3

Phone: (905) 760-9595
Fax: (905) 760-9598
- 05.02
- All invoices submitted by the Sub-Contractor to the Contractor must contain a valid and corresponding completion certificate issued and signed by the Contractor’s Site Superintendent.
- 05.03
- It is the Sub-Contractor’s responsibility to ensure that the Contractor has on file at all times a valid WSIB certificate of good standing prior to invoicing for any work under this Agreement. WSIB certificates of Good Standing can be mailed, or faxed to the Contractor’s head office *(for address and phone numbers refer to 05.01)*.
- 05.04
- Faxed and/or emailed invoices are not acceptable. The Contractor shall only accept original invoices mailed by the Sub-Contractor to the Contractor’s head office *(for address and phone numbers refer to 05.01)*. No exceptions.
- 05.05
- Description of work performed, services rendered, and/or materials/supplies provided must be clearly displayed containing all pertinent information and descriptions. The Contractor reserves the right at the Contractor’s sole discretion to reject any invoice deemed incomplete, vague, and/or incorrect and demand that the Sub-Contractor revise any such invoice to meet the criteria(s), preferences, and/or format deemed acceptable by the Contractor.
- 05.06
- All invoices must clearly identify the project name and phase *(if any)* for which the work performed, services rendered, and/or materials/supplies provided occurred.
- 05.07
- All invoices must clearly identify the lot numbers for which the work performed, services rendered, and/or materials/supplies provided occurred. It is the Sub-Contractor’s sole responsibility to ensure that records of what work and/or materials provided by the Sub-Contractor are kept and identified on the corresponding invoices.
- 05.08
- All billings for materials supplied only, must be accompanied by copy of delivery slip and approved purchase order containing the Site Supervisors signature and approval having accepted said materials.
- 05.09
- All work performed under the Agreement as part of the standard contract as set forth by the Scope of Work *(Schedule A)* attached hereto, shall be billed/invoiced separately to any extras, upgrades, and/or optional items. All work and materials not identified by the Scope of Work *(Schedule A)* attached here to *(if any)* shall be billed separate to the contract amounts identify the corresponding purchase order number issued to the Sub-Contractor by the Contractor. Note: invoices for extras, upgrades, and/or optional items shall be held to same processing criteria as outlined in sections 05.01 through 05.07 inclusive and payment as outlined in all sections of Article 04.
- 05.10
- All delivery charges, environmental fees, fuel surcharges, premiums, duties, impost fees, and any other charges with the exception of any applicable taxes are included in contract amounts.
- 05.11
- All invoices submitted to the Contractor by the Sub-Contractor must be in Canadian funds and all applicable taxes must be itemized on the invoice. Note: The Sub-Contractor’s Business Number (HST number #71578 6125 RT0001) must appear on all invoices.

ARTICLE 06: STANDARD OF WORK

- 06.01
- The Sub-Contractor agrees to comply with all the rules, by-laws and regulations of every governmental or municipal authority relating to construction, payment of employment insurance, holiday pay and workers’ compensation. Further, where applicable, the work shall be completed in full compliance with directives of the Central Mortgage and Housing Corporation and Tarion Warranty Corporation *(Tarion)*.

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The Sub-Contractor shall obtain and pay for necessary permits, licences and certificates required for the performance of the work and shall pay all required fees *(with exception to the building permit applied for by the Contractor)*.

- 06.02
- The Sub-Contractor agrees to compare its working drawings with those approved by the local building and zoning department and Central Mortgage and Housing Corporation, if applicable, and to transfer any changes to its working drawings. The approved drawings will be available for comparison at the Site Superintendent’s office. All work shall be completed in accordance with the Ontario Building Code, National Building Code, local by-laws, Tarion, and if applicable, to the requirements of Central Mortgage and Housing Corporation, Ontario Housing Corporation, the Contractor’s mortgagee, and the Contractor’s Site Superintendent. The working drawings are the property of the Contractor and shall be returned to the Contractor when the work is completed.
- 06.03
- The Sub-Contractor agrees to guarantee all work and materials provided for such period of two years and agrees to correct any deficiencies forthwith after notice by the Contractor of same. Seven year material and workmanship shall be provided by Sub-Contractors performing structural work as defined by Tarion. The guarantee period shall start to run from the date of substantial performance as defined in the Construction Lien Act (Ontario).
- 06.04
- The Sub-Contractor acknowledges that it is under the general control of the Contractor and shall accede to the reasonable requests of the Contractor in the completion of its work so as to facilitate the timely completion of the project being built on the Site. The Sub-Contractor agrees that no changes shall be made or any additional work done in respect of the plans and specifications unless the same have been ordered by the Contractor in writing.
- 06.05.
- The Sub-Contractor shall complete all cutting, fitting or patching of its work that may be required to make several parts come together properly and fitted to receive work of other Sub-Contractors as shown on the working drawings. The Sub-Contractor agrees not to endanger any existing work by cutting, altering, digging or otherwise and shall not cut or alter the work of any other Sub-Contractor except with the written consent of The Contractor’s consulting engineer. The Sub-Contractor shall be held accountable forthwith for any costs associated to any damage to curbs caused by the Sub-Contractor’s vehicles, machinery or workers.
- 06.06
- The Sub-Contractor agrees to perform the work without leaving any waste or garbage and must leave the Site “broom clean” and in accordance with further reasonable requirements of the Site Superintendent, failing which, the Contractor may proceed to have this work done and shall deduct the cost of same from any payment owing to the Sub-Contractor.
- 06.07
- The Sub-Contractor agrees to correct any deficiencies forthwith after receiving written notification of same from the Contractor, failing which, The Contractor may attend to same at the Sub-Contractor’s expense. The Contractor will charge an hourly rate commensurate with trade practice together with an administrative fee of 15% total cost of correction with minimum One Hundred and Fifty Dollars (\$150.00) for any deficiencies corrected by The Contractor which shall be deducted from any amounts owing to the Sub-contractor by the Contractor. Further, the Sub-Contractor agrees to correct, at its own expense, any deficiencies or infractions that have been noted by Tarion, Central Mortgage and Housing Corporation, municipal building inspectors, the Contractor’s consulting engineer or pursuant to the provisions of the Tarion Warranty Corporation Act. The Contractor shall be entitled to direct the Sub-Contractor to make additions, alterations, cost deviations or other changes from the work specified for no additional payment unless otherwise agreed to in writing.
- 06.08
- The Sub-Contractor shall confine its machinery, storage of materials, and its work to limits indicated by by-law, permits or directions of the Contractor and shall not unreasonably encumber the Site with its materials. The Sub-Contractor shall not load or permit any part of the building under construction to be loaded with a weight that will endanger the Sub-Contractor’s or the building’s safety. The Sub-Contractor shall comply with The Contractor’s instructions regarding signs, advertisements, fires and smoking.
- 06.09
- The Sub-Contractor shall give its work constant supervision at the Site and shall, at all times, place a fully competent foreman in charge of the work at the Site who shall remain on site and in charge until all of the work is completed.
- 06.10
- The Sub-Contractor agrees to ensure that every worker employed on the Site shall be paid the applicable minimum wage in respect of the work performed at the Site.
- 06.11
- The Sub-Contractor shall comply with all construction requirements of the Contractor and all federal, provincial and municipal laws, by-laws, regulations and codes in force at the date of issuance of the building permits, including, but without limiting the generality of the foregoing:

(i)

The Ontario Building Code;

(ii)

CMHC Contractor’s Bulletins;

(iii)

Ontario Electrical Safety Code;

(iv)

The Occupational Health and Safety Act;

(v)

The Worker’s Compensation Act;

(vi)

Workplace Hazardous Materials Requirements

...and all regulations thereunder, amendments thereto or substitutions therefore, in connection with the presence of the Sub-Contractor at the Site and the supply of labour and/or material described in this Agreement and all schedules attached hereto. The Sub-Contractor shall be responsible for and shall forthwith correct or remedy any violations of such requirements, laws, regulations and codes in force at the date of

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this Agreement or issued or enacted during the course of the work. The Contractor may require the Sub-Contractor to furnish copies of any construction inspection reports the Sub-Contractor is required to obtain by municipal authorities or which become available to the Sub-Contractor.

- 06.12 Without restricting the generality of the foregoing, the Sub-Contractor represents and warrants to the Contractor that the Sub-Contractor is fully familiar with its obligations under the Occupational Health and Safety Act (the "OHSA") and agrees to fully comply with its obligations thereunder in carrying out the work described in this Agreement. The Sub-Contractor acknowledges that the Contractor is relying on the Sub-Contractor's representation and warranty as set out in this paragraph in entering into this Agreement. In particular and without limiting the obligations of the Sub-Contractor hereunder, the Sub-Contractor specifically agrees with the Contractor that:
- (i) It has an occupational health and safety policy written or reviewed within the year prior to the date of execution of this Agreement, has set up a program to implement such policy, shall post such policy at the Site where its workers will be most likely to see it and shall provide a copy of such policy to the Contractor;

(ii) It will take every precaution reasonable in the circumstances for the protection of its workers and other workers at the Site;

(iii) It will ensure that all obligations of the OHSA with respect to the appointment of health and safety representatives and joint health and safety committees are complied with and will co-operate with the Contractor and other Sub-Contractors in that regard;

(iv) It will comply with all of its obligations pursuant to the OHSA with respect to toxic substances ("WHMIS" requirements) including posting copies of any orders or directives from the Ministry of Labour, ensuring that all Hazardous Materials (as defined by the OHSA or regulations thereunder) brought on the Site by the Sub-Contractor are identified in the prescribed manner, ensuring that material safety data sheets ("MSDS") are prepared and distributed and posted as necessary, and ensuring that all worker instructions and training requirements of the OHSA are fully satisfied;

(v) It will fully co-operate with the Contractor and the Ministry of Labour in all matters relating to the OHSA and will provide to the Contractor, on request, evidence in writing of such compliance as is or should be available, including evidence of WHMIS training where applicable; and

(vi) It will require any of its forces to agree with it in writing to comply with all of the Sub-Contractor's obligations pursuant to the OHSA.
- 06.13 The Sub-Contractor shall, to the full extent permitted by law, defend, indemnify and save harmless the Contractor and its directors, officers, employees and agents from and against any and all claims, demands, losses, costs, damages, actions, suits, infractions, fines or proceedings directly or indirectly arising or alleged to arise out of the failure by the Contractor to comply with any of its obligations under the OHSA with respect to matters for which the Sub-Contractor is responsible pursuant to this Agreement.
- 06.14 If the Sub-Contractor should neglect to perform the work provided for herein in compliance with the OHSA to a substantial degree or repeatedly fails to comply with its obligations under the OHSA to a lesser degree, the Contractor may notify the Sub-Contractor in writing that the Sub-Contractor is in default of its obligations under this Agreement and shall instruct the Sub-Contractor to forthwith correct such default, failing which the Contractor shall have the right to terminate this Agreement and have the work completed by an alternative Sub-Contractor in which case the Sub-Contractor shall be responsible for any additional costs which the Contractor may incur.
- 06.15 The Sub-Contractor agrees to authorize and direct the Ministry of Labour to provide to the Contractor full particulars of the Sub-Contractor's safety records and any orders issued against the Sub-Contractor by the Ministry of Labour with respect to the two-year period immediately preceding this Agreement.
- 06.16 Prior to commencing the work, the Sub-Contractor shall provide evidence of compliance with the requirements of the Worker's Compensation Act including payments due thereunder and worker's compensation numbers, together with employment insurance numbers and shall further provide such clearances at the completion of the work and monthly during the course of construction, if the Contractor so requests. The Sub-Contractor shall, to the full extent permitted by law, defend, indemnify and save harmless the Contractor and its directors, officers, employees and agents from and against any and all claims, demands, losses, costs, damages, actions, suits or proceedings directly or indirectly arising out of obligations of the Contractor pursuant to the Workers' Compensation Act with respect to any employees of the Sub-Contractor.
- 06.17 The Sub-Contractor shall not employ any persons on the Site whose labour union affiliations or lack thereof may cause delay or stoppage of work or whose labour union affiliations or lack thereof are such as may result in delay in the execution of any part of the project of which the work described herein forms a part. In particular, such union affiliations or lack thereof shall not conflict with the Contractor's collective agreement with Local 183 of the Labourer's Union and Local 793 of the Machine Operators Union. Prior to commencement, the Sub-Contractor shall provide to the Contractor a certificate or letter from such union stating that the Sub-Contractor is in good standing with the appropriate union.
- 06.18 The Sub-Contractor understands and agrees that this Agreement is "Non-Exclusive" and in no way implies that the Sub-Contractor named herein is guaranteed all work or any part there of relevant to the scope of work attached hereto as Schedule A for the project named herein. The Contractor reserves the right to designate lots and employ the services of other Sub-Contractors who may or may not be completing similar duties to that of this Sub-Contractor. The Contractor reserves the right to employ multiple Sub-Contractors of the same discipline to complete the project as he sees fit.



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06.19 The Contractor shall at his sole and absolute discretion determine the quality of the work completed by the Sub-Contractor, and as such reserves the right not to accept any work performed by the Sub-Contractor and/or any Supplies and/or Materials Supplied by the Sub-Contractor.

ARTICLE 07: INSURANCE

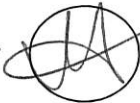
- 07.01 The Sub-Contractor shall provide, maintain and pay for comprehensive general liability and construction insurance, automobile liability insurance and all-risk contractors equipment insurance, in an amount minimum \$ 2, 000,000.00 per occurrence, naming the Contractor as an insured unless otherwise specified.
- 07.02 Unless otherwise specified, the duration of each insurance policy shall be from the date of commencement of the contract work until the date of the final certificate for payment of the prime contract. The policy shall be endorsed with an undertaking by the Insurer to provide the Contractor with not less than thirty (30) days written notice in advance of cancellation, change or amendment restricting coverage.
- 07.03 The Contractor will arrange for and maintain property insurance. It is the responsibility of the Sub-Contractor to be satisfied as to the adequacy of such insurance.
- 07.04 The Sub-Contractor and any of its forces shall be responsible for any deductible amounts under the policies as may be applicable to their operations and as established at the time of bidding.

ARTICLE 08: INDEMNITY

- 08.01 The Sub-Contractor shall indemnify and hold harmless the Contractor and its directors, officers, employees and agents from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings by third parties that arise out of, or are attributable to, the Sub-Contractor's performance of this Agreement (hereinafter called "claims"), provided such claims are:
- (a) Attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property; and
 - (b) Caused by negligent acts or omissions of the Sub-Contractor or anyone for whose acts the Sub-Contractor may be liable; and
 - (c) Made in writing within a period of six (6) years from the date of substantial performance of the prime contract as set out in the certificate of substantial performance of the prime contract or within such shorter period as may be prescribed by any limitation statute of the Province of Ontario.

ARTICLE 09: TERMINATION

- 09.01 In the event that the Sub-Contractor is adjudged bankrupt, makes a proposal in bankruptcy, makes a general assignment for the benefit of creditors or if a receiver is appointed on account of insolvency at any time before final payment is made, the Contractor shall have the right to hold back fifteen percent (15%) of the Contract Price until the expiration of the guarantee period as set out above. The Contractor agrees to hold these funds in trust for a period of one (1) year from the date of substantial performance and the Contractor shall have the right to use the amount held in trust to correct any defects arising from the Sub-Contractor's work.
- 09.02 In the event the Sub-Contractor refuses or neglects at any time to supply sufficient properly skilled workers or material of the proper quality, or fail in any respect to perform the work with promptness, diligence, within the Contractor's schedule, or fail in the performance of any of the provisions herein contained, the Contractor, in its sole discretion, may terminate this Agreement and enter on the Site and take possession for the purpose of completing the work under this Agreement, of all materials, tools, equipment and machinery of the Sub-Contractor and employ any other person to finish the work. In the event of such termination, the Sub-Contractor shall not be entitled to receive any further payments under this Agreement until all of the work is completed. If, on such completion, the unpaid balance of the amount to be paid under this Agreement exceeds the expense of the Contractor in finishing the work, the excess shall be paid by the Contractor to the Sub-Contractor provided that in the event such expense exceeds the unpaid balance, the Sub-Contractor shall pay the difference to the Contractor forthwith.
- 09.03 The Contractor shall have the right at any time before the commencement of the Work, by written notice to the Sub-Contractor, to terminate the Agreement at the Contractor's sole discretion, in which case the Sub-Contractor shall not be entitled to make any claim for loss and/or damage either direct or indirect of any kind or type.
- 09.04 Given that this Agreement in "Non-Exclusive" as explained in section 06.18 the Sub-Contractor relinquishes any and all rights to compensation for anticipated profits and/or costs for services, work, and/or or materials/supplies which have not been performed and/or delivered/installed, should this Agreement be terminated.
- 09.05 This Agreement can be terminated without warning and/or notice by the Contractor as his sole discretion should the following occur:
- a. The Sub-Contractor is found to be involved in actions and activities which are illegal, including but not limited to: theft, vandalism, assault, etc...
 - b. The Sub-Contractor and/or one of his/her employees, agents, 3rd party contractors etc... are found using drugs, and/or alcohol on the project site or are in any way intoxicated or impaired while performing work covered under Agreement.



CONSTRUCTION AGREEMENT BETWEEN CONTRACTOR AND SUB-CONTRACTOR

Sub-Contractor:	ENJ EXCAVATING LIMITED	Effective Period:	Phase I
Trade Type:	EXCAVATION, BACKFILL & ROUGH GRADE	40' Units Included:	56
Project:	PINEVALLEY FOREVERGREEN, VAUGHAN	42' Units Included:	44
		50' Units Included:	32

- c. The Sub-Contractor purposely sabotages other Sub-Contractor’s work or prevents other Sub-Contractor’s from carrying out their assigned tasks.

ARTICLE 10: ASSIGNMENT

- 10.01 The Sub-Contractor shall not assign this Agreement or any portion hereof without the prior written consent of the Contractor, which consent may be unreasonably withheld.

ARTICLE 11: ELECTRONIC CORRESPONDANCE

- 11.01 Notice may be given by either party to the other by delivering same to the addresses noted (or such other address as may be directed by the parties) by personal delivery or by facsimile transmission. The notice shall be deemed to be received on the date it was delivered or faxed.
- 11.02 Execution of documents requiring signatures and/or authorizations may be executed electronically via email and/or fax providing they are witnessed (if witness signature line is present), save and except this Agreement which must be an original document signed in the presence of all parties involved.

ARTICLE 12: THE AGREEMENT

- 12.01 The Sub-Contractor and Contractor for themselves, their heirs, estate trustees, administrators, successors, and permitted assignees, do hereby agree to the full performance of the covenants and agreements here in.
- 12.02 The Agreement, together with the General Conditions, and Special Conditions, Terms, and/or Stipulations contained herein including all Schedules attached hereto is the entire Agreement between the parties relating to the work and replaces any earlier agreements, and the parties agree that there are no other agreements, collateral agreements, warranties and/or contracts other than those expressed herein.

ARTICLE 13: FURTHER COVENANTS:

- 13.01 The Sub-Contractor further agrees and covenants:
- (a) to pay for all materials furnished and work and labour performed under this Subcontract, and to pay all taxes, Imposts, levies, assessments, premiums, fees or union dues relating thereto directly or indirectly, and to satisfy the Contractor thereupon whenever demand is made, and to indemnify the Contractor and the Owner against and save them and the Project harmless from and forthwith to discharge, any and all claims, suits, or liens therefore;
 - (b) to comply with the provisions of any applicable Construction, Builder’s or Mechanic’s Lien legislation applicable to the performance of the Work including, without limitation, any trust provisions thereof;
 - (c) to obtain and pay for all permits, licenses and official inspections made necessary by the performance of the Work, and to comply with all laws, ordinances and regulations applicable to the performance Work;
 - (d) to warrant that the Work shall conform to the requirements of this Subcontract and free of defects in materials and workmanship for a period of Two years from the date of final payment hereunder and the Sub-Contractor agrees to make good, at its own expense, during such period any defect in materials or workmanship which may occur or develop, or may be properly ordered modified by the Contractor or any governmental inspector as the result of any work, goods or materials provided by the Sub-Contractor, together with any direct or indirect damages resulting from such defect or of such making good;
 - (e) insofar as may be applicable generally or specifically to the performance of the Work and materials to be provided hereunder, the Sub-Contractor assumes towards the Contractor all of the obligations required of the Contractor under the Prime Contract, and shall be required to do all things and be bound by all rulings of the Consultant to the same degree as the Contractor is bound, all to the satisfaction of the Owner and the Contractor;
 - (f) to carefully examine all work (of the Sub-Contractor or others) near to or necessary to the Work, detect and notify the Contractor of all defects or delays therein, and cooperate with the Contractor and others in order to ensure that the work under the Prime Contract is properly integrated and functions properly;
 - (g) to assume the risk of loss of or damage to Work not fully or finally accepted by the Owner, or to materials, supplies, equipment or scaffolds used or consumed in the performance of the Work.

ARTICLE 14: GENERAL CONDITIONS:

- 14.01 All schedules attached hereto and initialled by the parties shall form part of this Agreement.
- 14.02 This Agreement shall be interpreted in accordance with the laws of the Province of Ontario.
- 14.03 Time shall be of the essence in this Agreement.



CONSTRUCTION AGREEMENT BETWEEN CONTRACTOR AND SUB-CONTRACTOR

Sub-Contractor:	ENJ EXCAVATING LIMITED	Effective Period:	Phase I
Trade Type:	EXCAVATION, BACKFILL & ROUGH GRADE	40' Units Included:	56
Project:	PINEVALLEY FOREVERGREEN, VAUGHAN	42' Units Included:	44
		50' Units Included:	32

- 14.04
- Changes in the Work. The Contractor shall have the right to order changes to the Work and shall do so in writing. The Sub-Contractor shall not undertake any changes or extra work without a written order from the Contractor stating the amount of, or basis for calculating, extra payment (if any); and any such written orders for changes will be considered incorporated into this Subcontract and governed by its terms. All quotations by the Sub-Contractor for changes requested by the Contractor will be broken down in sufficient detail to satisfy the Contractor. If the parties are unable to agree on the value of any changes to the Work, all costs or reduction in costs involved therewith shall be determined in accordance with the provisions of the Prime Contract dealing with compensation for changes to the Work.
- 14.05
- Delays. If the Sub-Contractor is delayed in the performance of the Work as a result of the occurrence of any event beyond the control of the Sub-Contractor, the time to complete the Work shall be extended for such reasonable time as the parties agree in writing. The Sub-Contractor shall not be entitled to payment for costs incurred by such delays unless such delays result directly from actions by the Contractor or Owner; in which case, the Sub-Contractor shall have no claim against the Contractor for such costs unless the Sub-Contractor submits to the Contractor a written notice, within five (5) days of the occurrence of any event giving rise to such costs, detailing the nature and amount of such claim.
- 14.06
- Withholding of Payment. The Contractor may withhold payments from the Sub-Contractor to such extent as may be considered necessary by the Contractor to protect the Contractor from loss on account of defective work or materials not remedied, or failure of the Sub-Contractor to perform any of its obligations hereunder. Upon completion of the "Project", the Contractor shall hold the average contractual value of three (3) homes or \$5000 (whichever is greater) until such time that the warranty period on the last house has expired. The Sub-Contractor hereby acknowledges and agrees that the Contractor may set-off against any payment obligation of the Contractor to the Sub-Contractor, and that the Contractor's obligation to pay the Sub-Contractor shall be reduced by any claim of any nature or kind by the Contractor against the Sub-Contractor, whenever arising, whether for a liquidated amount or not, whether or not arising from or related to this Subcontract and including any claim against the Sub-Contractor by any other person which has been assigned to the Contractor. Any right which the Sub-Contractor may have to assign rights under this Subcontract shall be subject to the Contractor's right of set-off as aforesaid and any rights acquired by any assignee shall be subject to such Contractor's right of set-off, irrespective of whether any claim by the Contractor against the Sub-Contractor arises before, upon or after the assignment to the assignee, or before, upon or after the Contractor is notified of such assignment.
- 14.07
- Waiver. The Contractor's payment to the Sub-Contractor, forbearance to complain or claim against the Sub-Contractor, or entry upon or partial or entire use or occupancy of any portion of the Work, shall not be deemed to be a waiver by the Contractor of any of its rights against the Sub-Contractor unless there is an express agreement in writing to that effect.
- 14.08
- Sub-Contractor Default. If the Sub-Contractor should be adjudged bankrupt, or make a general assignment for the benefit of creditors, or if a receiver is appointed because of the Sub-Contractor's insolvency, or if the Sub-Contractor becomes insolvent, or if the Sub-Contractor fails in the performance of any of its covenants or responsibilities herein contained or fails to prosecute the work with promptness and diligence, or otherwise delays the progress of the Contractor, the Contractor may, at its option, do one or more of the following: (a) terminate this Subcontract; (b) take possession of the Work and all materials, tools and machinery located on the site; and/or (c) perform or do anything the Sub-Contractor has failed to perform or do, either by the Contractor itself or by employing others for such purpose. In any of these cases, the Contractor may charge all costs, expenses, losses and consequential damages incurred by it including, without limitation, all legal fees (on a substantial indemnity basis) to the Sub-Contractor who covenants forthwith to reimburse the Contractor therefore.
- 14.09
- Delivery and Acceptance of Materials. If the Contractor accepts delivery on behalf of the Sub-Contractor of any of the Sub-Contractor's materials, supplies or equipment, whether or not the Sub-Contractor is then absent from the site, the Contractor shall not be liable for any deficiency or defect in quantity, quality, or content of what is delivered, nor shall the Contractor be deemed to have accepted such materials, supplies or equipment. The Contractor shall not be responsible for storage of any such materials, supplies or equipment.
- 14.10
- Compliance with Laws and Collective Agreements. The Sub-Contractor agrees to comply with all applicable labour laws, rules and regulations of any governmental authority and agrees that, in the performance of this Subcontract, the Sub-Contractor will only employ labour which is, and under conditions which are, from time to time satisfactory to the Contractor. The Sub-Contractor shall comply with those provisions of the Contractor's collective agreements relating to the Work. Should the Contractor be found liable for any breach of the Contractor's relevant collective agreements, the Sub-Contractor agrees to indemnify the Contractor in respect of any claims incurred by the Contractor by reason of the failure by the Sub-Contractor to comply with those collective agreements or its failure to meet the subcontracting provisions, if any, of such collective agreements.
- 14.11
- Health and Safety. The Sub-Contractor shall comply with the requirements of the *Workplace Safety and Insurance Act*, the *Occupational Health and Safety Act* and any related or similar Acts of the province or territory in which the Work is being done and shall comply with all other environmental protection legislation in effect at the time the Work is being done. The Sub-Contractor shall, if so required, furnish to the Contractor satisfactory evidence that the terms of this clause are being complied with. The Sub-Contractor shall familiarize itself with and shall comply with the Contractor's Safety Policy at all times during the progress of the Work.
- 14.12
- Shop Drawings and Submittals. (IF REQUIRED) (a) The term "shop drawings" means drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are to be provided by the Sub-Contractor to illustrate details of a portion of the Work. The Sub-Contractor shall submit shop drawings to the Contractor for its review with reasonable promptness and in orderly sequence so as to cause no delay in the Work or in the work of others. Shop drawings shall be submitted in the form of reproducible transparencies or prints as the Contractor may direct. At the time of submission, the Sub-Contractor shall notify the Contractor in writing of any deviations in the



CONSTRUCTION AGREEMENT BETWEEN CONTRACTOR AND SUB-CONTRACTOR

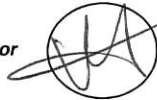
Sub-Contractor:	ENJ EXCAVATING LIMITED	Effective Period:	Phase I
Trade Type:	EXCAVATION, BACKFILL & ROUGH GRADE	40' Units Included:	56
Project:	PINEVALLEY FOREVERGREEN, VAUGHAN	42' Units Included:	44
		50' Units Included:	32

shop drawings from the requirements of this Subcontract. The term “By Others” or similar comments on shop drawings will not be recognized unless they specifically concur with the specifications. (b) The Sub-Contractor shall submit any samples required to be provided for approval to the Contractor with reasonably promptness and in orderly sequence so as to cause no delay in the Work or in the work of others; (c) The Sub-Contractor agrees to provide the Contractor with such information as the Contractor may demand from time to time to evaluate the progress and coordination of the work or to prepare and revise construction and coordination schedules. (d) The Sub-Contractor shall supply all as-built drawings, maintenance manuals, instructions, warranties, certificates and other similar documents as and when required by the Contractor and, in any event, no later than the Sub-Contractor’s final progress claim or two weeks before the Consultant’s final inspection, whichever is the earlier.

- 14.13
- It is understood that the entire Agreement or any part thereof between the Contractor and the Sub-Contractor is Conditional upon the Contractor securing construction financing (*if and where applicable*) for the project in an amount and upon terms and conditions satisfactory to the Contractor at its sole, absolute and un-reviewable discretion. Failing this condition, the Sub-Contractor agrees and understands that this Agreement shall be deemed terminated and the Contractor shall hold no responsibility to the Sub-Contractor in any capacity including monetary compensation as a result of this condition not being satisfied to the Contractor’s satisfaction.
- 14.14
- Verbal representation(s), agreement(s), do not under any circumstance constitute any formal acceptance by either the Contractor and/or Sub-Contractor and as such shall hold no bearing/liability of any kind on the activities of either the Contractor and/or Sub-Contractor relating to the work associated with this Agreement. No Exceptions.
- 14.15
- The Sub-Contractor shall be required to attend safety meetings organized by the Contractor (routine and/or random) at whatever locations chosen by the Contractor. Attendance and compliance by the Sub-Contractor is mandatory. The Sub-Contractor shall also maintain detailed occurrence reports of any injuries to his/her staff, workers, and/or suppliers, etc... which occur on the project premises, and shall furnish the Contractor with those reports upon each occurrence.
- 14.16
- Prior to commencement of any work by the Sub-Contractor, the Sub-Contractor shall thoroughly inspect the premises, location and any existing item(s)/materials which may be affected by this Sub-Contractor’s work and report in writing any existing defects or deficiencies to the Site Superintendent. In the event that this Sub-Contractor fails to report any existing damages premises, location and any existing item(s)/materials which may be affected by this Sub-Contractor’s work and the need arises to correct any such unreported defects or deficiencies the Sub-Contractor shall remove any materials installed by the Sub-Contractor to provide access to the Contractor to remedy any such damages at no cost whatsoever to the Contractor. Upon completion of any such remedial work carried out by the Contractor, the Sub-Contractor shall be responsible to re-install, re-supply, any and all materials, items, and labour removed by the Sub-Contractor as a consequence thereof. Commencement of work by the Sub-Contractor implies that Sub-Contractor has accepted all existing conditions and workmanship and materials by other Sub-Contractors.
- 14.17
- Discontinued or unavailable materials, colours and/or items that are to supplied and/or supplied and installed by this Sub-Contractor shall be substituted with materials, colours, and/or items of equivalent of great quality and as similar to the discontinued or unavailable materials, colours and/or items. It is the Sub-Contractor’s sole responsibility; to provide the Contractor with alternatives/substitutions well in advance should this situation occur. Final acceptance of any alternatives/substitutions shall be by the Contractor. No increase in price for any items affected as of a result thereof shall be permitted by the Contractor. Any and all alternatives/substitutions shall be completed for the same price as what the initial material, colour and/or item that has been discontinued or unavailable by the Sub-Contractor
- 14.18
- The Contractor shall not be responsible for the loading, unloading, hoisting, or handling of any materials, supplies, and/or items on behalf of the Sub-Contractor.
- 14.19
- This Agreement shall remain in effect through the effective period of Phase I.

ARTICLE 15: AFTER SALES SERVICE AND WARRANTY:

- 15.01
- The Sub-Contractor hereby agrees to guarantee all services rendered, work performed and/or materials/supplies supplied/installed for a period of two (2) years from the date of closing (*Closing defined as date that end user takes possession*). Which shall hereinafter be known as the “Warranty Period”.
- 15.02
- All Sub-Contractors shall in addition provide the Contractor with the same warranties and guarantees expected of the Contractor by the Tarion Warranty Corporation.
- 15.03
- All service work orders issued by the Contractor to the Sub-Contractor must be fulfilled and completed to the satisfaction of the Contractor in accordance with the Tarion performance guidelines. In addition, the Contractor reserves the right to deem any item which the Contractor at his sole discretion feels is deficient even if the repair in question falls within the acceptable parameters of the Tarion performance guidelines, and the Sub-Contract shall fulfill the service work order issued to him/her by the Contractor accordingly.
- 15.04
- Upon issuance of a service repair work order to the Sub-Contractor by the Contractor, the Sub-Contractor shall have a MAXIMUM of fifteen (15) CALENDER DAYS to complete all items contained on the service work order. The Sub-Contractor shall make all the necessary arrangements with the Owner/Occupant of the premises to schedule the repair and carry out all work necessary to remedy the deficient work. Contact information of the owner/occupant will be provided by the Contractor to the Sub-Contractor. In the event that the unit is not yet



CONSTRUCTION AGREEMENT BETWEEN CONTRACTOR AND SUB-CONTRACTOR

Sub-Contractor:	ENJ EXCAVATING LIMITED	Effective Period:	Phase I
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Project:	PINEVALLEY FOREVERGREEN, VAUGHAN	42' Units Included:	44
		50' Units Included:	32

occupied by the end user the Sub-Contractor shall schedule the appointment with the Contractor to gain access to the premises in order to fulfill the service work order issued to him/her. The Contractor reserves the right to hold payment for any invoices if any of the Sub-Contractor's service work orders remain incomplete for twice the acceptable days to complete.

- 15.05
- In the event that the Sub-Contractor does not fulfill a service work order within the time prescribed in section 15.04, the Contractor shall at his own discretion and without notice hire a 3rd party company, handyman, or use one of their own service men, to complete all necessary repairs as the Contractor feels are required at his own unfettered discretion and backcharge the Sub-Contractor for all costs incurred by the Contractor plus an administration charge of fifteen percent (15%) with a minimum charge of \$150 per occurrence, which shall be deducted from any amounts owing to the Sub-Contractor by the Contractor.
- 15.06
- In the event that the Sub-Contractor is unable to comply with a prearranged appointment, and does not provide a minimum of three (3) days' notice of his/her inability to fulfill the scheduled appointment as agreed, the Contractor shall backcharge the Sub-Contractor in the amount of Two Hundred and Fifty Dollars (\$250.00), which shall be deducted from any amounts owing to the Sub-Contractor by the Contractor.
- 15.07
- It is the Sub-Contractor's sole responsibility to ensure that upon completing the items contained on each service work order, to obtain the required sign-off (signatures) of the owners/occupants signifying their acceptance and satisfaction with the repairs carried out. No service work order shall be deemed as complete with the owners/occupant's signatures and acceptance.
- 15.08
- The Sub-Contractor shall mail, fax, email all signed completed work orders to the Contractor's head office upon completion, and within the MAXIMUM fifteen day (15) prescribed timeline as set out in 15.04. Failure to comply may result in further backcharges, and/or administration charges to the Sub-Contractor by the Contractor.
- 15.09
- All items repaired by this Sub-Contractor shall be warrantable for the full duration of the Warranty Period.
- 15.10
- All repairs completed by this Sub-Contractor shall meet all requirements of the OBC, Tarion, Electrical Safety Authority, Municipality, CMHC Contractor's Bulletins, and the Satisfaction of the Contractor. No Exceptions.
- 15.11
- All repairs carried out by this Sub-Contractor shall be completed in a workmanlike manor, without damaging any other items in the process. If the Sub-Contractor is required to damage other items in order to carry out his/her repairs, the Contractor must be notified in advance so that he can coordinate additional Sub-Contractors to carry out any repairs required as a result thereof. Any costs associated with making good, repairing, or correcting any items damaged in the process of the Sub-Contractor's repairs shall be backcharged to the Sub-Contractor plus an administration fee of fifteen percent (15%) with a minimum charge of \$150 per occurrence, which shall be deducted from any amounts owing to the Sub-Contractor by the Contractor.
- 15.12
- The Sub-Contractor is strictly prohibited from supply materials and/or performing any labour directly for the Contractor's clients (*Purchasers*) without the expressed written consent from the Contractor. Should the Sub-Contractor be found to have engaged in any private deals with the Contractor's clients (*Purchasers*) the Sub-Contractor must remove, dismantle, undo, and otherwise correct any and all work performed on the subject premises upon written direction to comply by the Contractor. The Sub-Contractor shall also be responsible for any and all costs incurred by the Contractor to remedy any other items and/or work affected by any such activities as determined by the Contractor.



CONSTRUCTION AGREEMENT BETWEEN CONTRACTOR AND SUB-CONTRACTOR

Sub-Contractor:	ENJ EXCAVATING LIMITED	Effective Period:	Phase I
Trade Type:	EXCAVATION, BACKFILL & ROUGH GRADE	40' Units Included:	56
Project:	PINEVALLEY FOREVERGREEN, VAUGHAN	42' Units Included:	44
		50' Units Included:	32

ACCEPTANCE

CONTRACTOR INFORMATION – GOLDPARK (PINEVALLEY) INC.

CONTACT: General Manager, Louis Previte

TELEPHONE: 905.760.9595 Ext. 246

FAX: 905.760.9598

E-MAIL: lprevite@goldparkhomes.com

ADDRESS: 3300 Highway #7, Suite 400

Concord, Ontario

L4K 4M3

SUB-CONTRACTOR INFORMATION – ENJ EXCAVATING LIMITED

CONTACT: Joe Medeiros

TITLE:

TELEPHONE: 905.799.0400

FAX: 905.799.0424

MOBILE: 416.936.5235

E-MAIL:

ADDRESS: 13 Kenview Boulevard, Unit 25A

Brampton, Ontario, L6T 5K9

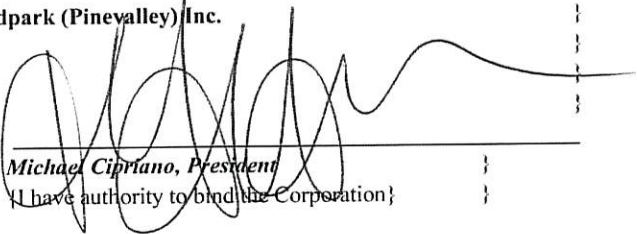
Workmen’s Compensation: Firm #: 210314ET Account 6450954 Expiry Date: 19-05-2019

Insurance Co & Policy # AVIVA CANADA Expiry Date: 22-02-2020

IN WITNESS WHEREOF the parties have executed this Agreement by the hands of its officers duly authorized in that behalf on the date first above written.

Contractor:

Goldpark (Pinevalley) Inc.

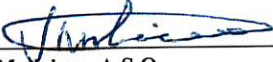
Per: 

Michael Cipriano, President

{I have authority to bind the Corporation}

Sub-Contractor:

ENJ Excavating Limited

Per: 

Joe Medeiros, A.S.O.

{I have authority to bind the Corporation}

* ALL PAGES OF THIS AGREEMENT MUST BE INITIALED BY BOTH THE CONTRACTOR AND SUB-CONTRACTOR IN THE SPACES PROVIDED *

CONSTRUCTION AGREEMENT BETWEEN CONTRACTOR AND SUB-CONTRACTOR

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		50' Units Included:	32

SCHEDULE - A
SCOPE OF WORK

Supply all labour, material, equipment, permits, and pay taxes and fees necessary to complete this scope of work, as per Project plans, specifications, in the accordance with the requirements of the National & Ontario Building Codes, Tarion and all other authorities having jurisdiction. Work to be completed as and when required by the Site Manager and include, but not limited to the following:

It is the sole responsibility of the Subcontractor to check with the Contractor’s Site Manager prior to starting any house to verify the Contractor’s exterior colour designations and check instructions regarding structural changes, upgrades and colours. The Subcontractor accepts responsibility for any errors by not doing so.

SECTION A: MOBILIZATION

- 1) All costs associated with mobilization, transportation, machinery floats, etc..., are included in the contract price.
- 2) If long term storage is required onsite the sub-contractor shall work with the site supervisor to ensure materials / items being stored are done in such a manner that does not interfere with the Contractor's activities on site.
- 3) All rented items required to complete the work outlined herein is included in the contract price.
- 4) All ladders, planks, walkways, scaffolding, lifting equipment, as well as all tools, hardware, tackle and materials required to complete the scope of work contained herein is included in the contract price.
- 5) This Sub-Contractor must visit the site prior to commencing work. Any site conditions that could potentially effect, or hinder the progress or quality of this Sub-Contractor's work as per the Drawings, Directions, Site Instructions, or Governing Building Codes and Construction Standards must be reported to the Contractor in writing. If work commences and no such issues are raised by the Sub-Contractor, then it will be mutually agreed that the Subcontractor has accepted the site conditions “As-Is”.
- 6) All work to be completed as per Contractor’s schedules, and as instructed by the Contractor.

SECTION B - MATERIAL / EQUIPMENT & HANDLING

- 1) The Sub-Contractor will provide, care for, and manage all materials and equipment required to perform their scope of work in its entirety. This includes: Ensuring that equipment is in good working order, materials necessary to complete their work as per the Contractor’s schedule is delivered and available on time, safe guarding against theft, vandalism and damages, and that operators/drivers of equipment requiring specific licenses are properly trained and licensed to do so.
- 2) The Sub-Contractor shall be responsible for all material handling including but not limited to: Loading, Unloading, Delivery Coordination, Quality Control Measures, Hoisting, etc...
- 3) All materials are to be used as they are delivered. On-site storage and Stockpiling are not permitted. As such any Issues which may arise as a result of site logistics, weather, theft, or any damage to stored or stockpiled materials shall be the sole responsibility of the Sub-Contractor.
- 4) The Sub-Contractor shall ensure that all material deliveries are carried out without obstructing the flow of traffic through the job site. Roads must remain accessible, and clean to all parties working/visiting the job site at all times. In the event that this is not possible, and the Sub-Contractor is required to obstruct the road to receive any of their deliveries, the Site Superintendent must be notified prior to the delivery taking place. Failure to notify the Site Superintendent of any potential road obstructions could result in the denial of service where the Sub-Contractor may be instructed to cease delivery operations immediately.
- 5) All materials and equipment brought to the job site by this Sub-Contractor shall be insured by the Sub-Contractor.



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- 6)
- All equipment brought to the job site by this Sub-Contractor must have all required documentation with it and available upon request. Including: Ownership, Insurance, maintenance logs, operator information and license, etc...
- 7)
- All waste, garbage, and debris generated buy this Sub-Contractor's work / activities shall be disposed of by the Subcontractor in the areas designated by the Site Supervisor. This shall be the sole responsibility of the Subcontractor. Any clean up, or debris removal work that must be completed by the Contractor on behalf of the Subcontractor shall be backcharged accordingly.
- 8)
- It is the Subcontractor's responsibility to ensure that all products supplied be installed precisely per the manufacturer's specifications and requirements and suggestions. Any variance from these requirements should be discussed with the Builder before any installation. Any costs which arise due to Subcontractor's negligence of the above aforementioned shall be solely his responsibility. **THE SUBCONTRACTOR MUST ENSURE TOTAL KNOWLEDGE OF THE PRODUCTS BEING USED**

SECTION C - WINTER PROTECTION (SEASONAL ITEMS)

- 1)
- All winter heat shall be supplied by this Sub-Contractor (if required). Should the Contractor at his own expense agree to Supply winter heat (propane/heaters) to the Sub-Contractor, the Sub-Contractor is required to maintain a log book of all propane bottles used by the Sub-Contractor for submission to the Contractor upon request.
- 2)
- Tarping, covers, etc... Shall be the responsibility of the Sub-Contractor and included in the contract price, where and when required unless otherwise agreed in writing by the Contractor. Should the Contractor agree to provide tarping, covers, etc. to the Sub-Contractor the Sub-Contractor must coordinate all installs and dismantling/removal.
- 3)
- Weather conditions do not constitute a reason for delays in work. It is expected that in the event of "lost days" due to weather conditions, that the Sub-Contractor will make a valid and verifiable effort to ensure that the Contractor's schedules are not compromised by way of Weekend Work (when permitted), Overtime, and/or introducing additional labour/crews to "catch up" and make up for any lost days.

SECTION D - GENERAL CONDITIONS AND WARRANTY

- 1)
- ABSOLUTELY** no additional work is to be performed for potential, homebuyers without express written approval from Contractor’s main office. The Subcontractor clearly understands and agrees that none of the Subcontractor’s forces, directly employed or contracted, including suppliers, shall deal with the Project’s Purchaser’s regarding any business activity. Any requests of additional work or modifications made by a purchaser directly to the subcontractor shall be reported immediately to the contractor’s head office and dealt with through the Contractor. The Subcontractor further understands and agrees that should the Subcontractor’s forces engage directly with a purchaser, the Subcontractor will be terminated and be responsible and reimburse the Contractor for all monies lost by the Contractor as a result of such direct activity, as calculated by the Contractor.
- 2)
- Work is to proceed in accordance with work schedules as provided by the Contractor.
- 3)
- It is agreed by both parties of this contract that the terms and conditions of the Tarion New Home Warranty Program shall be included and form part of this contract. As such, this Subcontractor agrees to make themselves familiar with the quality standards required of him under this program especially the Tarion Performance Guidelines.
- 4)
- All work must conform and be carried out in accordance with the Ontario Building Code, Local By-Laws, Tarion, CMHC, and as per all Plans, Drawings, Diagrams, Instructions, and Specifications provided.
- 5)
- All work is to be carried out in accordance with the Contractor's schedules. No exceptions.
- 6)
- All workmanship and Materials shall be warranted for a period no less than 2 (Two) years from the date that the home is occupied by the Contractor's client NOT date that the work was completed. The Tarion Warranty Corporation

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shall govern. Any items/deficiencies deemed Warrantable either the Contractor and/or the Tarion Warranty Corporation shall be the responsibility of this Sub-Contractor to correct.

- 7) All shop drawings associated with this Sub-Contractor's work must be submitted to head office prior to commencing work.
- 8) The Contractor reserves the right to inspect all vehicles (at his own discretion) entering or leaving the job site.
- 9) All Sub-Contractors must sign in and out at the Contractor's construction office prior to commencing any work or before vacating the job site.
- 10) Site parking will be controlled by the Site Superintendent. Parking of personal shall only be permitted in designated areas. Any damages caused to personally owned vehicles or equipment shall not be the sole responsibility of the Sub-Contractor.
- 11) It is understood that all Completion Slip numbers will be issued by the site construction office once a week and picked up at the site office on the Contractor's designated day only. Subcontractor must submit to the site office a written request for completion slips one week prior to the Contractors issuance. Written request is to indicate the lots or items completed and declare that the work is 100% complete according to the contract. The request must be signed by the Subcontractor's foreman. Completion slips will not be faxed to the Subcontractor. (For "Supply Only" contracts, site administrator will issue completion slip numbers to the supplier's office upon verification of the goods delivered.)

SECTION E - MATERIALS, INSTALLATION AND PERFORMANCE STANDARDS

- 1) This Sub-Contractor shall supply all labour and equipment necessary to complete excavation, backfill, driveway stone and rough grading.
- 2) Sub-Contractor shall check site cuts, staked dimensions and grades with Contractor plans before commencing excavation work; and report any discrepancies to the Contractor.
- 3) Sub-Contractor to ensure that all water boxes, fire hydrants, valves, cable/phone pedestals, trees etc.. are properly protected (by others) prior to commencement. No work is to commence if proper protection does not exist. Notify Contractor immediately if protection is deficient.
- 4) Excavate all basements, garages and porches to approved elevation depth and location in accordance with the drawings, surveyor's reference cut, instructions from the Contractor, Geotechnical Consultant and as dictated by existing soil conditions. Provide 2'-0" minimum clearance beyond the basement wall.
- 5) Excavations shall include all required step footings at front house wall.
- 6) Excavations shall be true, level and undisturbed.
- 7) Base Conditions are extra to contract. Should soil below underside of footing grade be organic or unsatisfactory for bearing capacity, Sub-Contractor shall report base condition and proceed to a greater depth only with written authorization from the Contractor.
- 8) Trenching for walk-out deck, walk up from basement or walk out basement and lookout basement lot conditions included as may be required.
- 9) Cast all excavated material clear of the excavation in front or behind the house as directed by the Contractor.
- 10) (If requested) Time to be split while excavating for export off lots or ~~subdivision~~ included standard to contract. (Truck time is extra to contract).
- 11) Trees are to be avoided and protected as directed by the Contractor during all phases of this contract.
- 12) Provide direct accessible ring roads and ramps for concrete trucks as required. Maintain re-work roads and ramps as required. Pull trucks if necessary, up to backfill stage.
- 13) Wet backfill material shall not be used to backfill foundations walls. Should a wet fill condition occur, it shall be the responsibility of the Sub-Contractor to notify the Contractor and wait for instructions prior to backfill operations.

CONSTRUCTION AGREEMENT BETWEEN CONTRACTOR AND SUB-CONTRACTOR

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- 14) Backfill external excavation of basements, garages including front porch and cold storage areas. Backfill shall be performed to ensure no unnecessary stress on lateral support of foundation walls. Backfill shall be performed to ensure no damage to weeping tile and drainage layer systems. Backfilling shall not commence until foundation wall and drainage systems have been inspected and passed.
- 15) Backfill all sewer, storm and water lines to required rough grade (excavation & install by others).
- 16) Backfill all units to the required rough grade elevation providing drainage slopes away from basements. This applies to the areas between units as well. Exclude rocks or foreign material from backfill. Waste materials are not to be buried anywhere on site. Excess fill to be neatly placed at rear of lot or as directed by Contractor.
- 17) Backfill garages and porches ready to receive stone for concrete pouring at backfill stage.
- 18) Backfill base conditions standard to contract.
- 19) Backfilling to rough grade elevations shall include grading and leveling for bricklayers once per lot if machine is on site. **Once only.**
- 20) Re-grade garages **once only** if required (grade levels to be marked) before Framing.
- 21) Balance excavated fill within approximately 5 lots as required by way of pushing fill.
- 22) Cut driveways (maximum 1' foot either side of driveway or as directed by Contractor). Spread and level 6" depth of stone.
- 23) Rough grade lots and boulevards according the surveyor's stakes to within 6 inches of final grade providing drainage slopes away from basements. Lots shall be left at grade ready to receive topsoil, including all required swales. Form banks at any grade changes during rough grading stage.
- 24) All float moves as required included in standard contract prices.
- 25) Sub-Contractor acknowledges that it has satisfied itself of all queries regarding the existing soil conditions and types of foundations to be excavated on each lot of the site.
- 26) **IT SHALL BE THE RESPONSIBILITY OF THIS SUB-CONTRACTOR:**
- To ensure familiarity with all stake-outs locations for underground utility lines and services prior to excavation and to assume full responsibility for any damages which might be caused on those lines. Stake-Outs to be called by Site Manager.
 - To ensure a solid footing base in his excavation, and where trenching is required for a stepping down of all or any part of the excavation below normal depth, he shall do so as per the Site Manager's instructions.
 - To ensure and protect all curb stops before and after excavation.
 - To pad curbs and sidewalks so as to eliminate the possibility of damage by machinery passing over.
 - To avoid removing or damaging surveyor's stakes, benchmarks or other reference points.
 - To avoid damage to buildings during the backfill or any grading stages. This includes during excavation
- 27) If optional extra machine rates are needed, it is the Sub-Contractor's responsibility to verify with the Site Manager the start Time and have time sheets signed by the Site Manager at the end of each day.
- 28) Sub-contractor to have foreman on site at all times to supervise their employees.
- 29) The Sub-contractor is to supply enough labour, equipment, and material as required for the Contractor's schedule. Contractor shall dictate schedules and quantity of units to be completed at a time. Any costs associated with any delays caused by the Sub-Contractor including but not limited to delayed closing compensation, shall be backcharged to the Sub-Contractor in full plus any applicable administration fees.
- 30) Stockpile Load and haul extra to Contract.
- 31) Sub-Contractor agrees and acknowledges that all services, material and labour rendered for the Sales Office (Lot 93) and Model Homes (Lots 92 and 94) are to be provided at no cost.

SECTION F – SITE RULES AND REGULATIONS:

This Subcontractor agrees with, and shall comply with the following "Project Rules". Non-compliance shall result in remedies allowed by the Contractor under this contract. "Rules" included but not limited to, are as follows:

- 1) Cross concrete at designated ramps only.
- 2) Access Roads to the Project site shall not be obstructed in any way, and, at all times roads shall be clear to allow fire trucks to enter the site and access all fire hydrants.
- 3) No storage of building materials on the access roads.
- 4) No parking on driveways or graded yards.

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- 5) No pets are allowed on the project at any time.
- 6) The consumption of illegal substances or alcohol will not be tolerated and is cause for immediate termination.
- 7) All trash must be placed in bins provided.
- 8) Do not set tools, materials, trash etc. on countertops, vinyl or ceramic areas.
- 9) Portable toilet facilities are provided for your convenience, use of facilities in house is prohibited.
- 10) Absolutely No Smoking permitted in houses.
- 11) No eating or drinking in homes after drywall.
- 12) Once floor surfaces have been finished with carpet, linoleum, vinyl or hardwood, outdoor footwear shall not be worn in the home.
- 13) Overnight camping out at the Home and adjacent lands is prohibited.
- 14) Loud or excessive noise from a radio or any other electronic device and profanity are prohibited.

SECTION G – SAFETY:

- 1) The Subcontractor shall at all times ensure that the health and safety of their staff and crews are paramount. As such the Subcontractor must ensure that any necessary safety training (i.e. Fall Protection, Propane Safety, etc...) required by their staff is up to date and any documentation associated with any such training is on site while their workers are present.
- 2) Prior to commencing work the Subcontractor must provide to the Contractor a copy of their Health and Safety Book which must be kept on site at all times in the Contractors construction office. If the Subcontractor does not provide a copy of their Health and Safety Book to the Contractor as required under this contract, the Contractor may choose to terminate or suspend the Subcontractor and/or withhold payment until such time as the Subcontractor furnishes the Contractor with their Health and Safety Book.
- 3) The Subcontractor shall be required regular safety meetings (at the Contractors discretion) on site, as requested by the Contractor.
- 4) All Subcontractors working with “Hot Work Operations” shall ensure that;
 - i) Combustible Material: All portable combustible material must be removed a minimum of 20 feet away from the working area and adjoining areas.
 - ii) Flammable Liquids or Vapours: Drums, tanks or other containers or explosive liquids or vapours must be cleaned and cleared of flammable or explosive liquids or vapours before work is done on them.
 - iii) Pre-Operation Precautions: When feasible, work area should be wetted down.
 - iv) Spark Control: Sheet metal guards, asbestos blankets and similar protection must be provided to prevent hot metal and sparks from falling on combustible material which cannot be moved.
 - v) Fire Protection: If the areas in which hot work operations are being performed are presently under operative sprinkler protection, the sprinklers in that area must be operative during welding or cutting operations. Suitable fire extinguishers or hand hose must be maintained near the operations, an extra person must be provided in the welding or cutting team whose sole responsibility is to watch for sparks and promptly use the extinguishing equipment.
 - vi) Post-Operation Precautions: After work, a thorough check must be made for smoldering fire in out-of-the-way places, and guard patrol protection must be maintained for a minimum of four hours.
 - vii) Other: During the course of construction, where a propane gas heater or other open flame heating device is used; the device will be positioned on fire resistive dry wall board, tied off to a wall or floor with not less than three (3) feet of clear space surrounding it.
- 5) “Hot Work Operations” shall be defined as follows:
 - i) The process whereby one or more of the parts to be joined is heated near or above its melting point and the heated surfaces are caused to flow together.
 - ii) The process of applying heat to red heat the spot to be severed, gouged or pieced, and the metal is burned in a jet of oxygen.

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- iii) Grinding operations that generates sparks.
- iv) Torch-on roofing operations.
- v) Roof tarring operations.

SECTION H – SERVICE REQUIREMENTS:

The Subcontractor agrees to comply fully with the Contractor’s pre-delivery inspection notification process as follows:

- 1) The pre-delivery inspection by the homeowner will be conducted approximately two (2) weeks prior to occupancy of the unit.
- 2) The Contractor will provide written notification to the Subcontractor of any deficiencies noted in the pre-delivery inspection, which are the Subcontractor’s responsibility to repair. Such notification shall be provided by the Contractor in accordance with Article Seven of the Agreement; and.
- 3) The Subcontractor agrees to respond to the Contractor within 24 hours of receipt of such notice and agrees to rectify any and all deficiencies forthwith and in any event prior to occupancy of the unit, failing which the Contractor may, at the Subcontractor’s expense, attend to such rectification (either itself or through another Subcontractor). All expenses of such rectification together with an administrative charge of \$150.00 shall be deducted from any monies owing to the Subcontractor.
- 4) Should approval be granted by the Contractor allowing the Subcontractor to rectify such deficiencies after occupancy by the Contractor’s Purchaser, it is the Subcontractors’ sole responsibility to contact the purchaser and schedule appointments to rectify such deficiencies. Further, the Subcontractor shall be responsible to have the Contractor’s service completion forms signed by the purchaser indicating the purchaser’s acceptance of the work. Should the Subcontractor fail to honour or attend appointments made with the purchaser, the Contractor shall immediately remedy the matter and proceed as described in paragraph (c).



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SCHEDULE - C
EXTRAS AND UNIT RATES

The following unit rates shall apply to work only deemed “EXTRA TO CONTRACT” except for items quoted separately at the request of the Contractor. Purchase Orders and/or Construction Summaries are required prior to proceeding with ANY work deemed extra to Contract.....No Exceptions.

Prices quoted below with the Exception of the Sub-Contractor’s Hourly Labour Rate include all materials, equipment, delivery and labour to complete and/or supply. All extras to contract must be covered by either the Contractor’s Construction Summary or the Contractor’s Purchase Order. Extras must be invoiced separately from contract work following the requirements of Article 5.

#	HEAVY EQUIPMENT RATES:	PRICE	Per (Unit)
1.	Excavator 330 CL	\$	Hour
2.	Excavator 336 D	\$	Hour
3.	Excavator 450 C	\$	Hour
4.	Loader 953	\$	Hour
5.	Loader 955	\$	Hour
6.	Loader 963	\$	Hour
7.	Loader 977	\$	Hour
8.	Dozer TD7G/450G	\$	Hour
9.	Dozer TD8H/650G	\$	Hour
10.	Dozer D3	\$	Hour
11.	Dozer D4	\$	Hour
12.	Dozer D6	\$	Hour
13.	Backhoe 416	\$	Hour
14.	Backhoe 420	\$	Hour
15.	Backhoe 430	\$	Hour
16.	Trucks Tandems	\$	Hour
17.	Trucks Tri-Axles	\$	Hour
18.	Skid Steer Loader (on Tracks)	\$	Hour
19.	Labour	\$	Hour
20.	Float Moves (Other)	\$	Machine
21.	Float Moves (Shovel)	\$	Machine

