

CONSTRUCTION SUBCONTRACT AGREEMENT

This Agreement is made this _____ day of _____, 20_____, between _____ (Contractor) and _____ (Subcontractor) (collectively the "Parties.") .

The work described in Section 1 below shall be performed in accordance with the prime contract between Contractor and _____ (Owner) and in accordance with all plans, specifications and other contract documents attached to or incorporated into the prime contract for the project known as:

_____. The Construction Lender (if applicable) is: _____

SECTION 1. SCOPE. Subcontractor agrees to furnish all labor, materials, equipment and other facilities required to complete the following work _____.

SECTION 2. PRICE AND PAYMENT. Contractor agrees to pay Subcontractor for the strict performance of his work the sum of: _____ (\$) (_____) or as set out in Section 15 below, subject to adjustments for changes in the work as may be directed in writing by Contractor. Payment shall be made in monthly progress payments of _____ percent (_____ %) of labor and material which have been incorporated into the work of improvement; progress payments to Subcontractor shall be made only with sums received by Contractor from Owner for work performed by Subcontractor as reflected in Contractor's applications for payment. Final payment of the balance owed to Subcontractor shall be due fourteen days after receipt by Contractor of final payment from Owner for Subcontractor's work. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor, and material and agrees to furnish same from its subcontractors, suppliers and/or materialmen in form satisfactory to Contractor prior to receipt of any payment. Contractor may, at its option make any payment or portion thereof by joint check payable to Subcontractor and any of its subcontractors, suppliers and/or materialmen. If owner or other responsible party delays in making any payment to Contractor from which payment is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. "Reasonable time" shall be determined according to the relevant circumstances, but in no event shall be less than the time Contractor, Contractor's sureties, and Subcontractor require to pursue to conclusion their legal remedies against Owner or other responsible party to obtain payment, including (but not limited to) mechanics' lien remedies. If the Subcontractor asserts a claim which involves, in whole or in part, acts or omissions which are the responsibility of the Owner or another party, including but not limited to claims for failure to pay, an extension of time, delay damages, or extra work, Contractor will present the Subcontractor's claim to the Owner or other responsible party. The Subcontractor shall cooperate fully with the Contractor in all steps taken in connection with prosecuting such a claim and shall hold harmless and reimburse the Contractor for all expense, including legal expense, incurred by Contractor which arise out of Contractor's submission of Subcontractor's claim to Owner or other responsible party. Subcontractor shall be bound by any adjudication or award in any action or proceeding resolving such a claim.

SECTION 3. ENTIRE AGREEMENT. This Agreement represents the entire agreement between Contractor and the Subcontractor and supersedes any prior written or oral representations. Subcontractor, its subcontractors, suppliers and/or materialmen are bound by the prime contract and any contract documents incorporated therein insofar as they relate in any way, directly or indirectly, to the work covered by this Agreement.

SECTION 4. TIME. Time is of the essence of this Agreement. Subcontractor shall provide Contractor with scheduling information in a form acceptable to Contractor and shall conform to Contractor's progress schedules, including any changes made by Contractor in the scheduling of work. Subcontractor shall coordinate its work with that of all other contractors, subcontractors, suppliers and/or materialmen so as not to delay or damage their performance.

SECTION 5. DELAY. Should Subcontractor delay Contractor, any other Subcontractor, or anyone else on the Project, Subcontractor will indemnify Contractor and hold Contractor harmless for any damages, claims, demands, liens, stop notices, lawsuits, attorneys' fees, and other costs or liabilities imposed on Contractor connected with said delay by Subcontractor.

SECTION 6 CHANGES IN WORK Subcontractor shall make no changes in the work covered by this Agreement without written direction from the Contractor Subcontractor shall not be compensated for any change which is made without such written direction No changes in the work covered by this Agreement shall exonerate any surety or any bond given in connection with this Agreement.

SECTION 7. CLAIMS. If any dispute shall arise between Contractor and Subcontractor regarding performance of the work, or any alleged change in the work, Subcontractor shall timely perform the disputed work and shall give written notice of a claim for additional compensation for the work prior to commencement of the disputed work Subcontractor s failure to give written notice prior to commencement constitutes an agreement by Subcontractor that it will receive no extra compensation for the disputed work.

SECTION 8 INSPECTION AND PROTECTION OF WORK Subcontractor shall make the work accessible at all reasonable times for inspection by the Contractor Subcontractor shall at the first opportunity inspect all material and equipment delivered to the job site by others to be used or incorporated in the Subcontractor s work and give prompt notice of any defect therein Subcontractor assumes full responsibility to protect the work done hereunder until final acceptance by the Architect Owner and Contractor.

SECTION 9. LABOR RELATIONS. Subcontractor shall maintain labor relations policies in conformity with the directions of the Contractor and shall be bound to and comply with all of the terms and conditions, including trust fund contributions, required by those labor agreements applicable to work performed under this Agreement to which the Contractor is bound. The specific agreements to which the Contractor is bound are listed in Section 16.

SECTION 10. TERMINATION. (i) Should Subcontractor fail to rectify any contractual deficiencies, including failure to pay its creditors, within three (3) working days

from receipt of Contractor's written notice, Contractor shall have the right to take whatever steps it deems necessary to correct said deficiencies and charge the cost thereof to subcontractor, who shall be liable for the full cost of Contractor's corrective action, including overhead, profit and actual attorneys' fees. (ii) Contractor may at any time and for any reason terminate Subcontractor's services hereunder at Contractor's convenience. In the event of termination for convenience, Subcontractor shall recover only the actual cost of work completed to the date of termination, in approved units of work or percentage of completion, plus fifteen percent (15%) of the actual cost of the completed work for overhead and profit. Subcontractor shall not be entitled to any claim or lien against Contractor, Owner or anyone else for any additional compensation or damages in the event of such termination.

SECTION 11. INDEMNIFICATION. To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Owner and Contractor and their agents and employees from claims, demands, causes of actions and liabilities of every kind and nature whatsoever arising out of or in connection with Subcontractor's operations performed under this Agreement. This indemnification shall extend to claims occurring after this Agreement is terminated as well as while it is in force. The indemnity shall apply regardless of any active and/or passive negligent act or omission of Owner or Contractor, or their agents or employees, but Subcontractor shall not be obligated to indemnify any party for claims arising from the sole negligence or willful misconduct of Owner or Contractor or their agent or employees or caused solely by the designs provided by such parties. The indemnity set forth in this Section shall not be limited by insurance requirements or by any other provision of this Agreement. All work covered by this Agreement done at the site or in preparing or delivering materials or equipment to the site shall be at the sole risk of Subcontractor until the completed work is accepted by Contractor.

SECTION 12. INSURANCE. Subcontractor shall, at its expense, procure and maintain insurance on all of its operations, with carriers acceptable to Contractor, and in amounts acceptable to Contractor and as required by the prime contract, including the following coverages:

12.1 Casualty Insurance

- a. Workers Compensation and Employer's Liability Insurance,
- b. Commercial General Liability insurance (ISO Form CG 00 01) covering all operations and

c. Automobile Liability insurance, including coverage for all owned, hired and non-owned automobiles. All insurance coverages shall be in amounts and for durations acceptable to Contractor and as required by the prime Contract.

Subcontractor shall name Contractor as an additional insured under the General Liability policy using ISO Form CG 20 10 Subcontractor shall provide certificates of insurance to Contractor prior to commencement of the work The certificates of insurance shall provide that there will be no cancellation nor reduction of coverage without thirty (30) days prior written notice to Contractor The certificate shall reflect all limiting or exclusionary endorsements amending the required ISO Form CG 00 01 The use of such limiting or exclusionary endorsements will be subject to the approval of Contractor The failure of Contractor to enforce in a timely manner any of the provisions of this Section 12 shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Agreement.

12.2 Property Insurance All work covered by this Agreement done at the site, or in preparing or delivering materials or equipment to the site, shall be at the sole risk of Subcontractor until the completed work is accepted by Contractor.

12.2.1 Waiver of Subrogation. Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by any property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

12.2.2 Builder's Risk. "All risk" Builder's Risk insurance (excluding the hazards of earthquake and flood) is normally purchased by Owner and such insurance provides property insurance coverage for both Contractor and Subcontractor including loss or damage to Subcontractor's work. It is the responsibility of Subcontractor to ensure his work is protected by such Builder's Risk insurance prior to the execution of this subcontract. If Builder's Risk coverage is not provided, Subcontractor shall obtain such coverage at his own expense. Subcontractor is also responsible for any deductible amounts incorporated into any property insurance policies.

SECTION 13. DISPUTE RESOLUTION. Any dispute resolution procedure in the prime contract shall be deemed incorporated in this Agreement, and shall apply to any disputes arising hereunder, except disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the prime contract, those which have been waived by the making or acceptance of final payment, and questions regarding the licensure of the subcontractor. Subject to compliance with all applicable laws including but not limited to those relating to false claims dispute and claim certifications and cost and pricing data requirements Contractor's sole obligation is to present any timely-filed claims by Subcontractor to the Owner under such procedure and, subject to the other provisions of this Agreement, to pay to Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled. For disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the prime contract, the parties hereto shall submit any and all disputes arising under or relating to the terms and conditions of the Subcontract to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association. No demand in arbitration shall be made after the date when the institution of legal or equitable proceedings based on such dispute would be barred by the applicable statute of limitations. In any dispute resolution between the parties, the prevailing party shall be entitled in addition to any other relief granted to recover its costs of participation including attorneys and experts fees An award rendered by an arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

SECTION 14 WARRANTY Subcontractor warrants to Owner and Contractor that all materials and equipment furnished shall be new unless otherwise specified and that all work under this Agreement will be performed in a good and workmanlike maimer, shall be of good quality, free from faults and defects and in conformance with the Contract Documents All

work not conforming to these requirements including substitutions not properly approved and authorized, may be considered defective The warranty provided in this section 14 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

SECTION 15 SPECIAL PROVISIONS (Including unit pricing if applicable)

SECTION 16. LABOR AGREEMENTS. The Contractor is signatory to the following labor agreements covering work on this project:

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE EFFECTIVE DATE FIRST WRITTEN ABOVE.

[CONTRACTOR]

[SUBCONTRACTOR]

BY:
ITS:

BY:
ITS: