

SHORT FORM STANDARD SUBCONTRACT

This Agreement is made this _____ day of _____, 20____, between

_____ (Contractor)
and

_____ (Subcontractor).

The work described in Section I 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 (which is incorporated herein by reference) for the project known as:

The Construction Lender (if applicable) is: _____

SECTION 1. SCOPE. Subcontractor agrees to furnish all labor, materials, equipment, services and other facilities required to complete the following scope of work as described in the prime contract:

SECTION 2. PRICE AND PAYMENT. Contractor agrees to pay Subcontractor for the strict performance of his work to the prime contract terms 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 within times provided by law of _____ percent (_____ %) of labor and material which have been incorporated into the work of improvement as provided in the prime contract; 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 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, as a condition to any payment from Contractor. 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, and may withhold payment on account of any dispute over Subcontractor's work or failure to comply with its obligations herein.



If owner or other responsible party delays in making any payment to Contractor from which payment to Subcontractor 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 person for whom a claim may be submitted, including but not limited to claims for failure to pay, an extension of time, impacts, delay damages, or extra work, Contractor will present the Subcontractor's claim to the Owner or other responsible party provided Subcontractor presents to Contractor competent supporting evidence in sufficient time for Contractor to legally do so. The Subcontractor shall cooperate fully with the Contractor in any and all steps Contractor takes 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 to Contractor by the prime contract and any contract documents incorporated therein to the same extent as Contractor is bound to Owner 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. Among other remedies for Subcontractor's delay, Contractor may supplement Subcontractor's work and deduct associated costs at Contractor's election.

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 and in compliance with all prime contract provisions. Subcontractor's failure to provide all applicable written notices 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 remedy 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 defend, 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 scope of work or operations performed under this Agreement and caused or alleged to be caused, in whole or in part, by any act or omission of Subcontractor or anyone employed directly or indirectly by Subcontractor or on Subcontractor's account related to Subcontractor's scope of work hereunder. 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 passively 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 active negligence, sole negligence, or willful misconduct of Owner or Contractor or their agents or employees, or arising solely by the designs provided by such parties. To the extent that Civil Code section 2782 limits the defense or indemnity obligations of Subcontractor either to Owner or Contractor, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by Subcontractor under law. The indemnity set forth in this Section shall not be limited by insurance requirements or by any other provision of this Agreement.

SECTION 12. INSURANCE. Subcontractor shall require each of its sub-subcontractors to have insurance as set forth under this section. In addition, Subcontractor shall provide the following insurance:

12.1 Subcontractor's Insurance. Before commencing the Work, and as a condition of any payment due under this Subcontract, Subcontractor shall, at its own expense, procure and maintain insurance on all of its operations under this Subcontract, whether the operations are by the Subcontractor or by anyone for whose acts Subcontractor may be liable. Insurance companies must be authorized to do business in the State of California and be A.M. Best rated A-VII or better. Coverage under all policies shall be acceptable to Contractor, which acceptance shall not be unreasonably withheld, and shall include coverage as follows:

(a) Workers' Compensation and Employer's Liability Insurance. If there is an exposure of injury under U.S. Longshore and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes

applicable to maritime employees, coverage shall be included for such injuries.

(b) Commercial General Liability Insurance. Subcontractor shall carry primary Commercial General Liability insurance (Insurance Services Office, Occurrence Form CG 00 01) covering all operations by or on behalf of Subcontractor providing insurance for bodily injury, personal injury, and property damage for the limits of liability indicated below. including but not limited to coverage for: (1) Premises and Operations. (2) Products and Completed Operations. (3) Contractual Liability, (4) Construction means, methods, techniques, sequences and procedures, including safety and field supervision. Such coverage shall not be subject to any of the following limiting or exclusionary endorsements: subsidence or earth movement, prior acts or prior work, action over - precluding indemnity for passive acts of Contractor contributing to injury of a Subcontractor's employee, contractual limitation – eliminating cover for assumed liability, supervisory or inspection service limitation, insured vs. insured cross suits, clauses terminating coverage after a designated period of time, residential or habitational limitation if the work includes residential or habitational work, classification limitation voiding coverage for work not specified, defense inside limits provision, and sub-subcontractor insurance coverage exclusions for failure to satisfy coverage conditions.

The limits of liability shall be not less than the amounts required of Subcontractor under the prime contract and in no event less than: \$1,000,000 Each Occurrence (Combined Single Limit for Bodily Injury and Property Damage) \$1,000,000 for Personal Injury Liability, \$2,000,000 Aggregate for Products-Completed Operations, and \$2,000,000 General Aggregate. The general aggregate limit shall apply separately to the Work. Claims Made coverage is not acceptable. Deductibles or Self Insured Retention amounts over \$10,000 are not acceptable.

(c) Automobile Liability Insurance, including coverage for owned, hired and non-owned automobiles. The limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

(d) Excess Liability Insurance. A \$1,000,000 Excess Liability Insurance policy shall be maintained over the General Liability and Automobile Liability coverage. Such Excess coverage shall not be subject to any of the limiting or exclusionary policy provisions or endorsements specified in Paragraph (b). 12.2 Subcontractor shall require all sub-subcontractors to maintain the same coverage as specified above.

12.2 Additional Insured Requirement. Owner, and Contractor, and any other entity which Contractor is required to name as an additional insured under the Prime Contract shall be named as additional insureds under the Commercial General Liability Policy required by this Section, and such insurance afforded the additional insureds shall apply as primary insurance. Any other insurance maintained by Owner or Contractor shall be excess insurance and shall not be called upon to contribute to Subcontractor's primary or excess insurance carrier's duty to defend or indemnify unless required by law. The excess insurance required above shall also afford additional insured protection to Owner, and Contractor. Such additional insurance coverage shall be provided by Subcontractor at no additional cost or expense to Contractor. The primary additional insured insurance coverage required by this Section shall be provided by Insurance Services Office, Additional Insured Endorsement Forms CG 20 10 and CG 20 37, or equivalent as expressly approved by Contractor. This Section shall, in no event, be construed to require that additional insured insurance coverage be provided to a greater extent than permitted under the statutes or public policy of the State of California. Subcontractor shall name Owner and any other entity which Contractor is required to name as an additional insured under the prime contract as an additional insured to the same extent Contractor is required to do so, and using the same forms that Contractor is required to designate Owner and such other persons, but only with respect to Claims arising out of or in connection with Subcontractor's obligations under this Subcontract. Subcontractor shall require sub-subcontractors to also comply with these provisions.

12.3 Certificates of Insurance. Certificates of insurance, including the required additional insured and other endorsements, including waivers of subrogation shall be furnished to Contractor prior to the performance of any work.

12.4 Maintenance/Cancellation of Insurance. There will be no cancellation or reduction of coverage of any required insurance without an unqualified, thirty (30) day, prior written notice to Contractor. Such notice may be sent by Subcontractor's insurance carrier, insurance broker, or Subcontractor. The insurance coverage for general liability and excess cover shall be renewed each year for at least four years and such renewal cover shall comply with the requirements of sections 12.2 and 12.3.

12.5 Waiver of Subrogation. Subcontractor waives all rights against Contractor, Owner, all other subcontractors, and their agents, officers, directors and employees, for recovery of damages to the extent such damages are covered by the Commercial General Liability and Workers' Compensation insurance required of Subcontractor. Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to property to the extent covered by any other insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance. Copies of General Liability and Worker's Compensation subrogation endorsements shall be provided to Contractor along with the certificates of insurance required by Section 12.3.

12.6 Special Provisions. Refer to Section 15 for special coverages including, as appropriate, such as:
 Professional Liability Requirements, Pollution Liability Requirements, Longshoreman & Harbor Workers/Other Marine Cover, Riggers Liability, Aircraft and Watercraft Liability, and Builder's Risk Provisions

SECTION 13. DISPUTE RESOLUTION. Any dispute resolution procedure in the prime contract 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, with respect to any disputes implicating Owner in whole or part, Contractor's sole obligation is to present any timely-filed claims by Subcontractor to the Owner under such procedures set forth in the prime contract 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 manner, shall be of good quality, free from faults and defects and in conformance with the prime contract. 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 prime contract.

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:

Contractors are required by law to be licensed and regulated by the Contractors State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, California, 95826.

Dated: _____ Dated: _____

CONTRACTOR:

SUBCONTRACTOR:

By _____ By _____

(NAME)

(NAME)

(ADDRESS)

(ADDRESS)

(CONTRACTOR'S LICENSE NO.)

(CONTRACTOR'S LICENSE NO.)

NOTE: This document has important legal consequences. Consultation with an attorney prior to execution of this document is encouraged. Some construction prime contracts may require the use of specialized provisions not included in this form.