

## Standard Form of Agreement Between Contractor And Subcontractor

Project Information	Subcontract Information
<b>Project No.</b> <b>Title</b> <b>Address</b>  <b>City, State, Zip</b> ,	<b>Subcontract No.</b> <b>Issue Date</b> <b>Subject</b>  <b>Retainage Percentage (%)</b> <b>Work</b> % <b>Stored Mat'l.</b> %

Contractor	Subcontractor
<b>Contact</b> <b>Title</b> <b>Company</b> <b>Address</b>  <b>City, State, Zip</b> , <b>Phone</b> <b>Fax</b> <b>Email</b>	<b>Contact</b> <b>Title</b> <b>Company</b> <b>Address</b>  <b>City, State, Zip</b> , <b>Phone</b> <b>Fax</b> <b>Email</b>

Owner	Other Information
<b>Owner Rep</b> <b>Title</b> <b>Company</b> <b>Address</b>  <b>City, State, Zip</b> , <b>Country</b> <b>Phone</b> <b>Fax</b>	<b>Subcont Amt</b> <b>Subcont Type</b> <b>Subcont N.T.P.</b> <b>Est. Start Date</b> <b>Est. Sbst Comp</b> <b>Est. Finish Date</b> <b>Liquid Damages</b> per day

*(Ask for a copy of this job's "Preliminary Lien Information Sheet" prior to filing your 20 Day Notice)*

### Project Description

### Scope of Work

This Subcontract includes all labor, materials, and equipment necessary to:

### Inclusions

Included in the Contract are the following inclusions:

Inclusion	Description

### Exclusions

Excluded from the Contract are the following exclusions:

Exclusion	Description

### Alternates

Included in the Contract are the following alternates:

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**Alternate No.**      **Description**

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## Documents

Included in the Contract are the following documents:

<b>Document</b>	<b>Title</b>	<b>Date</b>	<b>Pages</b>
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## Addenda

Included in the Contract are the following addenda:

<b>Addendum</b>	<b>Title</b>	<b>Date</b>	<b>Pages</b>
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## Specifications

Included in the Contract are the following specifications:

<b>Specifications</b>	<b>Title</b>	<b>Date</b>	<b>Pages</b>
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## Schedule of Values

Included in the Contract are the following schedule of values:

<b>Item No.</b>	<b>Description</b>	<b>Quantity</b>	<b>Units</b>	<b>Unit Price</b>	<b>Total Price</b>
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Total =

## ENTIRE CONTRACT

Subcontractor certifies and agrees that he is fully familiar with all of the terms, conditions and obligations of the Contract Documents, as hereinafter defined, the location of the job site, and the conditions under which the work is to be performed, and that he enters into this Agreement based upon his investigation of all such matters and is in no way relying upon any opinions or representations of Contractor. It is agreed that this Agreement represents the entire Agreement. It is further agreed that the Contract Documents, including the prime contract, plans, specifications, all materials and documents referred to in said Contract Documents, and the Construction Schedule attached hereto as Exhibit "A", are incorporated in this Agreement by this reference, with the same force and effect as if the same were set forth herein, and that Subcontractor is bound by all of said contract Documents insofar as they relate in any way to the work covered by this Agreement.

Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Contract Documents, such that wherein said Documents reference is made to Contractor and the work or specification therein pertains to Subcontractor's trade, craft, or type of work then such work or specification shall be interpreted to apply to Subcontractor instead of Contractor. If a conflict occurs between the Owner contract and this Subcontract, this Subcontract shall take precedence.

## OWNER RELATIONSHIP

Subcontractor acknowledges and understands that this contract is executed by and between Contractor and Subcontractor for the purpose of performing work for the benefit of Owner as identified in the Contract Documents. Therefore, Subcontractor agrees that the performance by Subcontractor of his obligations described in the Contract Documents is a duty owed to the Contractor and, additionally, is a duty owed to the Owner as a third party beneficiary.

## PAYMENT SCHEDULE

Contractor agrees to pay Subcontractor in monthly payments of 100 - % of labor furnished and materials which have been placed in position and for which payment has been made by Owner to Contractor. The remaining % shall be retained by Contractor until he receives final payment from Owner. Notwithstanding the foregoing, Subcontractor agrees that Contractor shall withhold said final payment until after Contractor has received from Subcontractor, and approves, final "Record Document" drawings, operation and maintenance manuals, extra stock, written warranties and guarantees covering the work completed under the terms of this Agreement. Subcontractor shall prepare and submit monthly pay requests accompanied by labor, material and subcontract lien releases so as to be received at Contractor's office by not later than the 25th of the month to facilitate inclusion in Contractor's current month pay request to the Owner. Subcontractor pay requests received after the 25th of the month will be included in Contractor's subsequent month pay request to the Owner and remittance to Subcontractor will be accordingly deferred until Contractor receives subsequent month payment from Owner.

Any payment made hereunder prior to completion and acceptance of the work shall not be construed as evidence of acceptance of any part of Subcontractor's work.

*Print Date: 6/25/09*

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Subcontractor \_\_\_\_\_ / SCC \_\_\_\_\_

*(Revised May 2009)*

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This document, when fully executed, as accepted, shall constitute authorization to proceed with the work described herein.

Subcontractor: Response:  Accept  Do Not Accept

\_\_\_\_\_  
Company

\_\_\_\_\_  
By, Officer of Company (Print Legibly) Title

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
License Classification Expiration Date

*(Make copy of CSLB certificate showing current license and attach to Subcontract)*

\_\_\_\_\_  
Contractor

GEORGE BRONSTEIN OWNER  
By (Print Legibly) Title

\_\_\_\_\_  
Signature Date

845493 B 8/31/2010  
License Classification Expiration Date

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1. **Plans, Specifications, and Permits.** The plans, specifications and this subcontract are intended to supplement each other. In case of conflict, however, the plans shall control the specifications, and the provisions of the subcontract shall control both the plans and specifications.

2. **Labor and Material.** Subcontractor shall pay all valid charges for labor and materials used on the work covered by this subcontract, but is excused from this obligation for bills received in any period during which Contractor is in arrears in making progress payments to Subcontractor. If Contractor is required to pay for any labor or materials ordered by subcontractors on the project, Subcontractor shall immediately reimburse Contractor

3. **Alternates.** The Subcontractor shall not deviate from the requirements of the plans and specifications as to materials and equipment to be furnished or the method of performing the work unless prior written approval has been obtained from the project owner. The Subcontractor warrants that any alternate equipment, material or method proposed by the Subcontractor will achieve all performance standards established by the contract documents.

4. **Notice.** Any notice required or permitted under this subcontract may be given by ordinary mail at the address contained in this subcontract, but such address may be changed by written notice given by one party to the other from time to time. Notice shall be deemed received in the ordinary course of the mails.

5. **Time.** Time is the essence of this Agreement. Subcontractor agrees to commence its work within 48 hours after receipt of notification to commence from Contractor and to complete said work in conformance with Contractor's progress schedule. In the event that Subcontractor is unable to provide the labor and/or materials in accordance with the schedule which has been made a part of this Agreement, Contractor may, after giving 24 hours written notice to Subcontractor, terminate Subcontractor's right to proceed and complete and provide the labor and/or materials from any other person or persons as Contractor, in its sole and absolute discretion, considers appropriate. Any increase in the cost of labor and/or material resulting from such termination and completion of the work by Contractor shall be borne by the Subcontractor. Should Subcontractor default in the proper performance of this work thereby causing delay to Contractor, it shall be liable for any and all loss and damages sustained by Contractor as a result thereof. Contractor shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time and order in which the various portions of the work shall be done and the priority of the work of other subcontractors and all matters representing the timely and orderly conduct of the work of Subcontractor. It is Subcontractor's responsibility to coordinate all work with the project superintendent. In the event that the actual start date of the work varies, it is understood that the overall duration of the work shall remain the same. Any costs or damages incurred by the Contractor associated with the delays to the attached Construction Schedule or due to Subcontractor's lack of performance shall be charged against this Subcontract. Subcontractor acknowledges that minor adjustments to the schedule may be required through project construction, and agrees to accomplish such minor adjustments at no increase in price.

6. **Changes in the Work.** Subcontractor hereby agrees to make any and all changes, furnish the materials and perform the work that Contractor may require, at a reasonable addition to, or reduction from, the Contract Price stated therein. Under no conditions shall Subcontractor make any changes, either as additions or deductions, without the written Extra Work Order approved by the project superintendent, or Change Order approved by the project manager, of the Contractor, specifying the nature of the change and the authorized adjustment to the Contract Price. Contractor shall not be liable for cost of changes in the Work which have not been authorized by the written, and approved, Extra Work Order or Change Order.

In case of a dispute, if the Subcontractor contends that any work or materials furnished by the Subcontractor should be paid for as extra work, the Subcontractor must give the Contractor a written notice to that effect within thirty days after the work or materials in question are furnished. Otherwise, it will be presumed that the Contractor and Subcontractor have agreed that such work or materials are within the scope of the original contract and that no additional compensation will be paid.

7. **Damages Caused By Delays.** Should Subcontractor default in the proper performance of this work, thereby causing delay to the prime contract work, it shall be liable for any and all loss and damages, including liquidated damages, sustained by Contractor as a result thereof.

8. **Bonding.** It is expressly understood and agreed that Contractor shall have the right to demand of Subcontractor and Subcontractor shall have the duty to provide either (at the sole discretion or election of Contractor) a personal guaranty or a performance bond assuring the full performance and fulfillment by Subcontractor of its obligations described in the Contract Documents, including timely completion, sound workmanship, the use and installation of defect-free materials and timely payment to any Sub-Subcontractor and/or Material Supplier, which personal guaranty or performance bond shall be furnished by Subcontractor within five (5) days after written demand has been made thereof. Contractor shall reimburse Subcontractor for cost of bond if required.

9. **Liens.** Subcontractor shall at all times indemnify and hold Contractor and Owner harmless against all liability for claims and liens for labor performed or materials used or furnished to be used on the job, by Subcontractor and its lower tier subcontractors, including any costs and expenses for attorney's fees and all incidental or consequential damages resulting to Contractor or Owner from such claims of liens.

10. **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.

11. **Labor Stoppage Or Delay.** Subcontractor acknowledges that Contractor is not signatory to collective-bargaining agreements with any unions. Contractor acknowledges that Subcontractor may be signatory to collective-bargaining agreements with one or more unions. Notwithstanding its signatory status, Subcontractor shall be responsible for fulfilling its obligation to perform timely as provided herein irrespective of any work stoppage, picketing, or delay due to a labor dispute, including a jurisdictional dispute.

Should a labor dispute of any kind occur at the site of the Work, or any picketing of any employer or person employed at the site of the Work take place by any labor organization, either of which results in a refusal to work by Subcontractor's employees, or a threatened refusal to work, Subcontractor agrees to take all action permitted by law, and by the lawful provisions of any collective bargaining agreements to which it is signatory, to minimize delay and to continue the timely performance of the work under this Subcontract Agreement.

In the event that a labor dispute at the site of construction results in picketing of Contractor or of any Subcontractor, including Subcontractor, at the site, and a reserved gate system is established at the site of construction, Subcontractor agrees to ensure that it, its employees, and its suppliers, will utilize the entrance to the site designated for Subcontractor's use pursuant to the reserved gate system. Subcontractor further agrees to supply skilled workers and to perform its work promptly, without delay, and without regard to the existence of picketing at the site of construction.

In the event of a jurisdictional dispute involving Subcontractor, or its employees, at the site of construction, Subcontractor agrees to take whatever action it believes necessary to have such dispute resolved under the applicable provisions of any collective-bargaining Agreement to which Subcontractor is signatory, or to file, or cooperate with Contractor or other subcontractors in the filing of, any necessary charge, claim or action to have the National Labor Relations Board resolve the dispute.

If Subcontractor or the employees of the Subcontractor fail or refuse to perform due to a labor dispute, Contractor shall have the right, after giving 24 hours written notice to Subcontractor, to terminate Subcontractor's right to proceed with the work and may complete the work in any manner and with any other person or persons as Contractor in his sole and absolute discretion considers appropriate. In such event, Subcontractor shall be liable for and Contractor shall have a right to recover from Subcontractor, the difference, if any, between the Subcontractor's bid price for the performance of work pursuant to this Agreement and the greater cost to Contractor of obtaining the performance of such work by any other person or persons. This remedy shall be in addition to, and not in lieu of, any other remedy available to Contractor by the terms hereof, and Contractor's exercise of this right shall not be considered an election of remedies or exclusive of any other remedy available to Contractor.

12. **Recourse By Contractor.** In the event that Subcontractor at any time refuses or is unable for any reason to supply sufficient workmen, or commits any act of bankruptcy, or files any petition under the Bankruptcy Act with the United States District Court, or makes an assignment for benefit of creditors without Contractor's consent, or fails to make prompt payment to its suppliers or laborers, or fails in any respect to properly and diligently execute the work covered by this Agreement, or otherwise fails to perform fully the agreements herein contained, Contractor may, after giving

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48 hours written notice to Subcontractor, terminate Subcontractor's right to proceed with the work and complete the work in any manner and with any other person or persons as Contractor in his sole and absolute discretion considers appropriate. Any increase in the cost of the work resulting from such termination and completion of the work by Contractor shall be borne by Subcontractor. Contractor may withhold any payments due Subcontractor to protect Contractor from loss on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of Subcontractor to make payments properly to its Subcontractors or for material, labor, or for fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; or (5) damage to another Subcontractor. The failure of Contractor to enforce a provision of this Agreement shall not be deemed a waiver for any purpose.

**13. Termination For Default.** If Subcontractor fails to commence and satisfactorily continue correction of a default within 48 hours after receipt of notice issued by Contractor, Contractor may terminate Subcontractor's right to perform under this Agreement and use any materials, implements, equipment, appliances or tools furnished or belonging to Subcontractor to complete Subcontractor's work without any further compensation to Subcontractor for such use. Contractor also may furnish those materials and equipment, and/or employ such workers or subcontractors as Contractor deems necessary to maintain the orderly progress of the work.

In the event this Agreement is terminated by Contractor for cause, Subcontractor shall not be entitled to receive any further payment until the balance of Subcontractor's work has been completed. At that time, if the amounts earned but not paid Subcontractor before said termination exceed the expenses incurred by Contractor (including all direct costs of every kind) plus a markup of fifteen (15%) percent for overhead and profit in finishing Subcontractor's work, any excess shall be paid by Contractor to Subcontractor; however, if such expense shall exceed the said amount earned and unpaid, Subcontractor shall promptly pay to Contractor the excess.

**14. Termination For Convenience.** Contractor reserves the absolute right to terminate this Agreement. In the event this Agreement is terminated prior to its completion for any reason other than for cause, Subcontractor shall be entitled only to payment for the portion of work actually completed, including an equitable allowance for overhead and profit. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages in the event of such termination and payment

**15. Bankruptcy. Termination Absent Cure:** Upon the appointment of a receiver for Subcontractor or upon Subcontractor making an assignment for the benefit of creditors, or if Subcontractor seeks protection under the Bankruptcy Code or commits any other acts of insolvency, Contractor may, absent any applicable legal limitation, terminate this Agreement upon giving 48 hours written notice, by certified mail, to Subcontractor and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to Subcontractor, Contractor may terminate this Agreement by giving 48 hours written notice, by certified mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee:

- promptly cures all defaults
- provides adequate assurance of futures performance
- compensates Contractor for actual pecuniary loss resulting from such defaults; and
- assumes the obligations of Subcontractor within the statutory time limits.

**Interim Remedies:** If Subcontractor is not performing in accordance with the schedule of work at the time of entering and order for relief, or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to accept this Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Section as are reasonably necessary to maintain the schedule of work.

Contractor may offset against such sums due or become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and actual attorney's fees incurred as a result of Subcontractor's non-performance.

Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Price

**16. Indemnification Of Contractor/Owner.** Subcontractor hereby assumes responsibility and liability for any and all damages or injury of any kind or nature whatsoever (including death resulting therefrom) to all persons, whether employees of the Subcontractor or otherwise, and to all property caused by, resulting from, arising out of or occurring in connection with Subcontractor's execution of the work performed at the

site of construction or in preparing or delivering materials or equipment to the site. Subcontractor shall indemnify and hold the Contractor and Owner, its officers, agents, servants, and employees harmless from and against any claim, liability, loss, damage, cost, award, fine, judgment or expense, including reasonable attorney's fees and legal disbursements, with respect to or arising out of the work and arising by reason of the death or bodily injury to persons, injury to property, defects in workmanship or materials or design defects (if the design originated with Subcontractor or its agent) or arising by reason of Contractor's or Owner's alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, and regardless of Subcontractor's fault or contributory conduct. However, Subcontractor shall not be obligated to indemnify Contractor and/or Owner with respect to the sole negligence or willful misconduct of Contractor and/or Owner, its agents, servants and employees, or other subcontractors who are directly responsible to Contractor and/or Owner. Should any claims for such damages or injury (including death resulting therefrom) be made or asserted, Subcontractor agrees to and does hereby assume, on behalf of Contractor and Owner, its officers, agents, servants and employees, the defense of any action at law or equity which may be brought against Contractor and/or Owner, its officers, agents, servants or employees upon or by reason of such claims and to pay on behalf of Contractor and/or Owner, its officers, agents servants and employees, upon its demand, the amount of any judgment that may be entered against Contractor and/or Owner, its officers, agents, servants or employees in any such action. This Indemnity obligation shall continue following expiration of this Agreement, and following completion of Subcontractor's work, until the applicable statute of limitations for such claims has expired.

In the event that any such claim, loss, cost, expense, liability, damage or injury arises or is made, asserted or threatened against Contractor and/or Owner, its officers, agents, servants and employees, Contractor shall have the right to withhold any payments due or to become due to Subcontractor in an amount sufficient in its judgment to protect and indemnify Contractor and/or Owner and its officers, agents, servants and employees from and against any and all such claims, loss, cost, liability, damage or injury, including legal fees and disbursements, or Contractor, in its discretion may require Subcontractor to furnish a surety bond satisfactory to Contractor guaranteeing such protection, which bond shall be furnished by Subcontractor within five (5) days after written demand has been made thereof.

**17. Subcontractor's Liability Insurance.** Within ten (10) calendar days of signing this Agreement, and prior to commencing any work under this Agreement, Subcontractor and sub-Subcontractors shall furnish an executed Certificate of Insurance to Contractor specifying that Subcontractor has obtained and is covered by a Commercial General Liability policy, an Automobile Liability policy, and, unless specifically exempted by law, a Workers' Compensation and Employer Liability policy, applicable to the Work under this Agreement, issued by one or more properly licensed admitted insurance companies, each of which shall be rated A-VIII or higher by AM Best in at least the amounts set forth below:

General Liability---Commercial General Liability (occurrence-based)

General Aggregate	\$2,000,000
Products- Comp/Ops Agg	\$2,000,000
Personal & Adv Injury	\$1,000,000
Each Occurrence	\$1,000,000

Policy shall not contain exclusions for mold and/or fungus damage. If policy contains such an exclusion, provide Contractor's Pollution Liability.

Automobile Liability

Any Auto, Hired Autos, Non-Owned Autos - \$1,000,000 (combined single limit)

Workers' Compensation and Employer's Liability

Workers' Compensation	statutory coverage limits
Employer's Liability	\$1,000,000 (each accident)
\$1,000,000 (disease-policy limit)	\$1,000,000(disease-each employee)

Include a Waiver of Subrogation endorsement in favor of Sandstone Construction and Owner.

Contractor's Pollution Liability

Per Claim \$1,000,000

Provide CPL if CGL contains exclusion for mold and/or fungus damage.

Installation Floater or Personal Property of Others (if needed)

Replacement value of project-specific materials and/or equipment stored at the jobsite or in an approved location or facility (bonded warehouse), or your company site, or in transit to the jobsite. Policy shall be written on a "Special" Broad Perils Form, covering "all risks" of direct physical loss or damage to the property. Include a Waiver of Subrogation endorsement in favor of Sandstone Construction and Owner.

Subcontractor Equipment

Subcontractor's equipment shall be insured by an "all risk" Contractor's equipment policy covering value of equipment used at jobsite. Include a Waiver of Subrogation endorsement in favor of Sandstone Construction and Owner.

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Subcontractor's Commercial General Liability policy shall at a minimum provide liability coverage for bodily injury, property damage, products-completed operations, Contractor's protective and contractual liability for the liability assumed under this Subcontract Agreement; and its Workers' Compensation Policy shall include coverage for Employer's liability. If Subcontractor believes that it is exempted by law from the obligation to provide Workers' Compensation Insurance, Subcontractor shall submit evidence satisfactory to Contractor to establish its entitlement to such an exemption as a condition precedent to performance of Work under this Agreement. Compliance with the insurance requirements herein is a condition precedent to both performance of the Work, and payment of any Work performed. Contractor shall have the right to withhold payments to Subcontractor for failure to comply with Insurance requirements.

Subcontractor shall name Contractor and Owner as an additional insured under Subcontractor's Commercial General Liability Policy, and shall, within ten (10) calendar days of signing this Agreement, and prior to commencing any work, provide to Contractor with ISO form CG 20 10 07 04 or its equivalent, and supplemented by ISO Form CG 20 37 07 04 or its equivalent, showing that Contractor and Owner are named as additional insured, including additional insured status for Products and Completed Operations claims under its Commercial General Liability Policy. The insurance required by virtue of this provision must be primary insurance and non-contributory, and must be fully collectible prior to any other insurance the Contractor may have or be entitled to. The insurance required above must be maintained in full force until the work required under this Agreement is completed. The Certificate of Insurance shall contain an endorsement providing that the policies of insurance required above shall not be cancelled by Subcontractor or Subcontractor's insurers without first giving Contractor thirty (30) calendar days advance notice in writing (ten (10) days for non-payment of premium). In the event Contractor has not received the Certificate of Insurance within the ten (10) calendar day period, or in the event that Contractor receives written notice from the Insurer(s) that Subcontractor's insurance has been cancelled, Subcontractor agrees that Contractor may procure the required insurance and charge Subcontractor for all premiums, plus twenty-five percent (25%) for Contractor's overhead, and that Contractor may deduct such sums from any amount s due Subcontractor. However, nothing contained in this paragraph shall in any way relieve Subcontractor from the complete and absolute responsibility of obtaining and maintaining the insurance as specified in this Agreement.

**18. Design Services.** If the work under this Contract requires the Subcontractor or licensed design professional to provide design services, Subcontractor and licensed design professional shall ensure the adequacy, accuracy and completeness of said design services. In addition, Subcontractor and licensed design professional shall provide Design Errors and Omissions and Professional Liability Insurance coverage for said design services in an amount not less than \$1 million dollars (per claim and in the aggregate) and maintain said policy for four (4) years after completion of the project. Policy must be in place before design starts. Subcontractor shall indemnify and hold harmless Contractor as specified in Section 16, "Indemnification Of Contractor/Owner", elsewhere in this Agreement. Subcontractor shall name Contractor and Owner as an additional insured under Subcontractor's Professional Design Liability Policy, and submit endorsement certificate within ten (10) calendar days of signing this Agreement.

**19. Waiver Of Subrogation.** The Subcontractor's General Liability insurance policy shall contain a Waiver of Subrogation where-by Subcontractor's Insurance Carrier waives all rights of subrogation against Contractor, Owner and its agents.

**20. Destruction Of Premises.** Contractor and Subcontractor waive all rights against each other and against other subcontractors and Owner for loss or damage to the extent reimbursed by Builder's Risk or any other property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If the policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide 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.

**21. Arbitration.** Any controversy or dispute in which the amount in controversy or dispute is \$100,000 or less (exclusive of attorneys fees and litigation costs) regarding (1) the meaning or interpretation of any provision of this Subcontract, including this arbitration provision, or (2) the performance or non-performance by either party to this Subcontract of any obligation imposed by the provisions of this Subcontract, shall and must be resolved by the parties through final and binding arbitration. Any such arbitration shall be conducted pursuant to the Construction Industry Arbitration rules and procedures of the American Arbitration Association, unless other rules and procedures are mutually agreed to by

the parties, and any arbitration so conducted shall be held in San Diego County, California.

Any other controversy or dispute between the parties shall be resolved by way of judicial action initiated within the applicable statute of limitations period of time in the proper court; provided, however, that should such judicial action be initiated by one party, the other party may demand in writing that the controversy or dispute shall be submitted to final and binding arbitration, and, in that event, the dispute shall be arbitrated in San Diego County, California, under and pursuant to the Construction Industry Arbitration rules and procedures of the American Arbitration Association, unless other rules and procedures are mutually agreed to by the parties. To perfect the party's right to arbitrate the controversy or dispute under the preceding sentence, a written demand for arbitration must be served upon the other party within 90 calendar days from the service of any complaint in such action on the requesting party.

**22. Obey All Laws.** All work covered under this Subcontract Agreement must conform to Federal, State, County, City and all other governing agencies' laws, codes, and licensing requirements and specifications. Subcontractor is obligated to comply with the Project Storm Water Pollution Prevention Plan (SWPPP) and is responsible for adherence to its requirements as well as all associated governing authority requirements. In the event that Subcontractor violates any SWPPP requirement which results in any fine, levy or penalty, Subcontractor shall be liable for all associated damages, including but not limited to all remedial action, fines, levies or penalties.

**23. Lawful Hiring.** Subcontractor shall comply with all Federal, State and local laws with respect to the hiring, retention and payment of its employees. In particular, Subcontractor shall comply with the terms of the 1986 Immigration Reform & Control Act. Subcontractor shall not hire any illegal alien for the performance of any work under the terms of this Agreement. Subcontractor shall be responsible for the review and certification of its employees with respect to their right to legally work and remain in the United States. Subcontractor hereby indemnifies and holds harmless Contractor from any liability or responsibility which may occur as a result of Subcontractor's failure to comply with Immigration Act requirements. If, as a result of such failure by Subcontractor, Contractor is cited or otherwise charged, Subcontractor shall, at its own expense, actively defend and protect Contractor against such citation or charge. Further, in the event that, as a result of such failure by Subcontractor, Contractor is required to pay any fine, penalty or forfeiture, said fine, penalty or forfeiture shall be paid by Subcontractor.

**24. Safety.** Subcontractor represents and warrants to Contractor that it is aware of all safety requirements of OSHA and all other governing bodies and the safety provisions of all applicable codes as such requirements and provisions relate to work to be completed under this Agreement. Subcontractor shall apply for and maintain all necessary OSHA permits as required for his scope of work. Subcontractor agrees to provide all safety equipment as required and to comply with all such provisions and requirements and to perform work under this Agreement in a safe manner with the highest regard for safety of its employees and all other individuals at the job site. Subcontractor further agrees to maintain its tools, equipment and moving vehicles in a safe operating condition and take all other actions necessary to provide a safe working environment for performance of the work. In the event that Subcontractor violates any safety requirement which, by direction of any governmental agency, results in a suspension of any work on the project, Subcontractor shall be liable for all damages or expense resulting from such suspension. Subcontractor hereby indemnifies and holds Contractor harmless from any liability or responsibility which may occur as a result of Subcontractor's failure or alleged failure to comply with all applicable safety regulations including, but not limited to, OSHA and Cal-OSHA rules, policies, and regulations. If, as a result of such failure by Subcontractor, Contractor is cited or otherwise charged, Subcontractor shall, at its own expense, actively defend and protect Contractor against such citation or charge. Any sanctions, whether in the form of monetary fines, penalty of forfeiture, or in the form of any restrictions, limitations or suspension of any contracting license or privilege, resulting from Subcontractor's failure to comply with said regulations, shall be borne solely by Subcontractor, and Subcontractor hereby specifically indemnifies and holds harmless Contractor from any such sanction.

**25. 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 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 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

**26. Use of Contractor's Equipment.** Subcontractor shall not use Contractor's equipment or facilities unless prior approval is obtained from

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Contractor. Upon request, Subcontractor shall reimburse Contractor at the prevailing rate charged by rental companies for comparable items. In the event Subcontractor uses Contractor's equipment, Subcontractor assumes full responsibility for its use, safety, and operation, agrees not to allow anyone not proficient in its use to operate it, and further agrees to be fully liable to and shall reimburse Contractor or its insurer for theft of or vandalism to the equipment, as well as any damage to the equipment or to persons or property arising from Subcontractor's use of the equipment. Subcontractor also agrees to hold Contractor free and harmless from, and to indemnify and defend Contractor concerning, any claims, actions, demands, damages, liabilities, or expenses, including attorney's fees, arising out of the use of such equipment or facilities by Subcontractor or its agents or employees.

**27. Assignment Of Contract.** Subcontractor shall not, without written consent of Contractor, assign, transfer, or sublet any portion or part of the work required by this Agreement nor assign any payments hereunder to others. Contractor may assign or transfer the whole or part of this Agreement and its rights hereunder, to any corporation, individual, or partnership.

**28. Independent Contractor.** Subcontractor is an independent Contractor and shall, at its sole cost and expense, and without increase in Contract Price, comply with all laws, rules, ordinances, and licensing regulations of all governing bodies having jurisdiction over the Subcontractor and the work. Subcontractor shall maintain a current and active license at all times in the classification covered under his scope of work, and shall not allow his license to expire without first giving Contractor thirty (30) calendar days advance notice in writing. Subcontractor shall indemnify and hold harmless Contractor as specified in Section 16, "*Indemnification Of Contractor/Owner*", elsewhere in this Agreement, and shall assume responsibility and liability for any and all damages or injury of any kind or nature whatsoever should Subcontractor allow his license to expire during the course of the work.

**29. Clean-Up.** During the course of construction, Subcontractor shall maintain the premises in a clean and orderly condition. Within twenty-four (24) hours of completion of its work, Subcontractor shall remove from the site all temporary structures, debris and waste caused by his work and shall clean all surfaces, fixtures and equipment. If Subcontractor fails to perform a clean-up function within twenty-four (24) hours after notification from Contractor to do so, Contractor may proceed with that function as it judges necessary and charge the related cost and expense to Subcontractor. It is agreed that Contractor shall have the right to charge Subcontractor a pro-rata share or the actual cost for trash removal during construction and upon completion of the project.

**30. Attorney Fees.** If either party becomes involved in litigation arising out of this subcontract or the performance thereof, the court in such litigation, or in a separate suit, shall award attorney fees to the prevailing party. Unless judgment goes by default, the attorney fee award shall not be computed in accordance with any court schedule, but shall be as such as to fully reimburse all attorney fees actually incurred in good faith, regardless of the size of the judgment, it being the intention of the parties to fully compensate for all attorney fees paid or incurred in good faith.

**31. Bid Proposal.** Contractor acknowledges receipt of Subcontractor's bid proposal, which shall not be considered a part of the Contract Documents or part of this subcontract. In case of conflict between the subcontract and the bid proposal, the provisions of the subcontract shall prevail.