

MASTER SUBCONTRACT AGREEMENT

This Master Subcontract Agreement ("Agreement") dated _____ is made in San Jose, California and is by and between **C & J Contracting, Inc.**, 331 Commercial Street, San Jose, California 95112-4404, telephone: (408) 374-6025, "Contractor," and

Subcontractor Name

Address

Telephone Number

This Agreement is intended to be a master Subcontract between the parties and cover all General Conditions for Subcontractor's performance. For each project, Contractor shall issue a Construction Subcontract to Subcontractor that will address the following:

- a. The Project Contract No.
- b. The Project name and location.
- c. The name and address of the Owner.
- d. A detailed description of the scope of work to be performed by Subcontractor.
- e. The price to be paid to Subcontractor and any specific payment schedule that deviates from this Agreement.
- f. The name and address of the Construction Fund holder, if any.
- g. Any Special Conditions for the specific project.

If any of the terms of the Construction Subcontract are in direct conflict with this Master Subcontract Agreement, the terms of the Construction Subcontract shall govern.

DATE _____ Contractors License No. **B467104** Subcontractor's License No _____

Firm Name: **C & J Contracting, Inc.** _____
(Contractor's Firm Name)

Firm Name: _____
(Subcontractor's Firm Name)

By: _____
(Contractor or Agent Sign here)

By: _____
(Subcontractor or Agent Sign here)

Christopher S. Reno, President
(Print Name And Title)

(Print Name And Title)

TERMS and CONDITIONS

§1. Plans, Specifications and Subcontract. The plans, specifications the Construction Subcontract and this Agreement are intended to supplement each other. In case of conflict, however, the provisions of the prime contract between the owner and the contractor regarding conflict shall apply. If there is no such provision, the plans shall control the specifications, and the provisions of the Construction Subcontract agreement shall control over this Agreement.

§2. Labor and Material. Subcontractor shall pay all valid charges for labor and materials used on the work covered by any subcontract agreement, but is excused from charges received in any period during which contractor is required to pay for any labor or materials ordered by subcontractor on the project. If Contractor, in its sole discretion, pays for labor or materials properly chargeable to Subcontractor, Subcontractor shall immediately reimburse the Contractor.

§3. Extra Work. The subcontract price set forth in the Construction subcontract shall be deemed to be full compensation for all work and materials furnished by the Subcontractor whether specifically called for by the Construction contract, plans, or specifications, or not. No additional compensation shall be paid to the Subcontractor unless a written notice to that effect is agreed to in writing by Contractor.

§4. Destruction of Premises. If the project is destroyed by fire or other catastrophe, the subcontractor will be paid for all work performed theretofore, and shall, at Contractor's sole option, be relieved of any further obligations under the Construction Subcontract.

§5. Delay. Subcontractor shall be excused for any delay in completion of the work covered by the Construction Subcontract caused by acts of God, acts of the owner or the Contractor or the owner's or Contractor's agent, labor troubles not the fault of the Subcontractor, extra work, failure by Contractor to make progress payments when due and other contingencies unforeseen by Subcontractor and beyond the reasonable control of Subcontractor.

§6. Attorney Fees. If either party becomes involved in litigation arising out of the subcontract agreement or the performance thereof, the cost in such litigation, or in a separate suit, shall award attorney fees to the prevailing party including fees to enforce any award or judgment. 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.

§7. Bankruptcy. This is a personal services Agreement. If the Subcontractor should become bankrupt, or become a debtor under Title 11 of the United States Code voluntarily or involuntarily or make an assignment for the benefit of creditors, or a trustee or receiver is appointed to take possession of a substantial portion of the assets of Subcontractor, the Subcontractor, or his trustee in bankruptcy, shall be paid the reasonable value of all work theretofore performed, and the obligations of all parties under this subcontract agreement shall thereupon terminate. In determining reasonable value under this paragraph, the subcontract price shall be deemed to be reasonable.

§8. Notices. Any notice required or permitted under the subcontract agreement may be given by ordinary mail at the address contained in the subcontract agreement, 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 mail.

§9. Trade Unions. Subcontractor will comply with all terms and conditions of any applicable master labor agreement covering the work to be done under the project, and will prevent the occurrence of any strike, slowdown or other labor difficulty or dispute arising out of the presence of subcontractor on the job or the activities of subcontractor.

§10. Arbitration. If the prime contract calls for arbitration, and an arbitration concerning or related to Subcontractor's work is commenced between the owner and the Contractor, Subcontractor will, upon demand of Contractor, become a party to such arbitration proceedings and shall submit to any award, which may be rendered therein.

If the prime contract calls for arbitration of disputes, arbitration shall be had in accordance with the Rules of the American Arbitration Association, or the California Code of Civil Procedure, or the rules of the specific neutral arbitration body as set forth in the Prime Construction contract of the specific project, if any which are in effect at the time the demand for arbitration filed. Should any party refuse or neglect to appear or participate in arbitration proceedings, the arbitration is empowered to decide the controversy in accordance with whatever evidence is presented. The arbitrator is authorized to award any party or parties such sums as he shall deem proper, including attorney fees, for the time, expense and trouble or arbitration.

§11. Alternates. The Subcontractor shall not deviate from the requirements or 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.

§12. Insurance. Before work commences under any subcontract, the Subcontractor shall furnish certificates of insurance evidencing that Subcontractor has placed in force valid insurance covering its full liability under the Workers Compensation laws of the State of California and Comprehensive Bodily Injury and Property Damage insurance fully protecting Prime Contractor and Owner as set forth in Exhibit "A" (attached).

§13. Prohibition of Assignment. Subcontractor may not assign the Construction subcontract or this Agreement, or any payment due there under to any other party without the written consent of the Contractor.

§14. Attorneys Fees. In any action arising out of or relating to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs, including costs of enforcement.

§15. No Modification. No modification, amendment, or waiver of any of the provisions contained in this Agreement, or any future representation, promise, or condition in connection with the subject matter of this Agreement, shall be binding upon any party to this Agreement unless made in writing and signed by the Parties to this Agreement.

§16. Severability. In the event that any provision of this Agreement should be held to be void, voidable, unlawful, or for any reason unenforceable, the remaining provisions or portions of this Agreement shall remain in full force and effect.

§17. Entire Agreement. This Agreement is a "complete and exclusive statement of the terms of the agreement" between the Parties, as that phrase is used in section 1856, subdivision (b), of the California Code of Civil Procedure, except in so far as documents are required to be completed to give effect to the terms of this agreement.

§18. Governing Law. This Agreement shall be construed in accordance with, and governed by, the internal substantive law of the State of California, regardless of the choice of law provisions of California or any other jurisdiction.

§19. Counterparts. This Agreement may be executed in any number of counterparts, and each counterpart shall be deemed an original and taken together shall constitute one and the same Agreement that shall be binding and effective as to all the signatories.

§20. Additional Provisions. The Special Provisions and Exhibit "A" attached hereto are a part of this Agreement.

SPECIAL PROVISIONS

1. **SAFETY** - A safety program is required of the Subcontractor and shall be in conformance with OSHA safety rules and practices including without limitation the following:
 - Weekly "tailgate" safety meetings with all Subcontractor's personnel on each job site to discuss safety practices in particular application to each project.
 - The Subcontractor shall instruct his personnel in the safe and proper operation of tools and equipment and be sure that all guards, fences and other safety devices are in place and in working order
 - The Subcontractor's personnel shall wear proper clothing including hard hats and work boots as appropriate for the work being performed.
 - The Subcontractor shall continuously inspect all work, equipment and materials, to discover and determine any unsafe conditions and shall be solely responsible for discovery, determination and correction of any such conditions.
2. **CLEANLINESS** - Cleanliness is of prime importance and essential to the proper operations and completion of each project. The Subcontractor shall remove from the working areas all construction debris caused by his forces on a daily basis, in order to maintain a neat, clean and safe condition. Upon completion of any portion of work, the Subcontractor shall promptly remove all equipment and materials that would obstruct any work or access by others. All equipment, materials and debris shall be removed from the premises immediately upon final completion of the work and before final payment is made. If the Subcontractor fails to comply with any of the foregoing, the same may be accomplished by the Contractor at the Subcontractor's expense. Subcontractor is responsible for the clean up and disposal of its own debris on a daily basis.
3. **COMPETENT EMPLOYEES** - Subcontractor shall employ only competent, careful and orderly persons upon his work. Upon notification by Contractor that the conduct of any person employed by Subcontractor is unsatisfactory, then Subcontractor shall immediately remove such person from the work.
4. **PICKETING** - Should there be picketing at the Contractor's jobsite and Contractor establishes a reserved gate for the Subcontractor's use, it shall be the obligation of the Subcontractor to continue the proper performance of his work. The Subcontractor agrees to continue the proper performance of his work and meet all manpower requirements notwithstanding the presence of pickets at the reserved gate established for Subcontractor's use.
5. **NO SEPARATE CONTRACTS** - The Subcontractor shall not contract directly with the owner, tenant or any other party aside from C & J Contracting, Inc. for any work on each project, related to each project or the project premises unless approved in writing by contractor.
6. **TIME** - Time is of the essence of this subcontract and of all provisions hereunder.
7. **PERFORMANCE BY SUBCONTRACTOR** - Subcontractor agrees to commence work immediately when notified by Contractor, and to conduct and perform the work continuously and with reasonable diligence in strict accordance with Contractor's time schedule, and in accordance with Contractor's directions as to the specific units to be commenced and completed at any particular time. Should said time schedule be changed by order of owner or Architect or Contractor, Subcontractor agrees to proceed as directed by Contractor, except in case of delays caused by acts of God, general strikes, or by Owner or Architect; and to cooperate in related work and in no manner to interfere with the work of Contractor or of other subcontractors; and to provide, at his expense, such additional shifts and overtime necessary to meet time schedule. Inability of Subcontractor to complete the work in the time provided shall, at the option of the Contractor, constitute a default on the part of Subcontractor hereunder.
8. **DEFAULT AND BREACH** - In the event Subcontractor shall for any reason neglect, fail or refuse to fully and truly keep or perform any promise, condition, term, or covenant of this Agreement, or its separate Construction Subcontract or if Subcontractor shall fail to keep a reasonable number of employees working at all times on said work, or for any reason shall neglect, fail or refuse to comply with any instructions by Contractor, then Subcontractor shall be in default and breach hereunder and

Contractor may, without prejudice and in addition to any other right or remedy in this subcontract or any accompanying Construction Subcontract operation of law, specify said default and breach by written notice to Subcontractor. If Subcontractor thereupon fails to remedy said default and breach within 72 hours from the time of dispatch of said notice, Contractor may without further notice engage other help or Subcontractor to complete the work agreed to be done by Subcontractor and the amount paid to such other help or subcontractor shall be deducted from the amounts payable to Subcontractor hereunder and in any accompanying Construction Subcontract. Should said amount exceed the balance due Subcontractor, then such excess shall be immediately due and payable by Subcontractor to Contractor. In the event of such default as aforesaid, the payment schedule heretofore specified shall be of no force and effect and no monies whatever shall be due to Subcontractor until the whole of the work agreed to be performed hereunder has been completed to Contractor's approval and any other breach or default by Subcontractor has been cured to Contractor's satisfaction. For the purpose of completing said work by other help or subcontractors, Contractor is hereby authorized to take possession of and use all materials, appliances, tools and equipment on the site as well as all materials in course of preparation, wherever located.

9. **ASSUMPTION OF RESPONSIBILITY** - Subcontractor assumes full responsibility for the accuracy of all lines, levels, measurements, property lines, and reference lines in connection with said work. In all cases where dimensions are governed by conditions already established, the responsibility for correct knowledge of such conditions shall rest entirely on Subcontractor. No variation from specified lines or grades or dimensions shall be made except on the written authority of the Contractor. Subcontractor acknowledges its responsibility, prior to entering into the Construction Subcontract, to investigate and fully familiarize itself with all laws, ordinances, customs, practices, conditions and regulations applicable to its work under the Construction Subcontract. This includes without limitation the availability and adequacy of personnel, workers, material, supplies, equipment, power, utilities, fuel, etc., and with respect to each of the foregoing, the cost and suitability thereof, with the prevailing wage scales, union scales, benefits and working conditions, craft jurisdictions; site consideration and restrictions, underground conditions, prevailing weather and climatologically conditions and history; and any other factors that may affect Subcontractor's work. The Subcontractor hereby warrants and agrees that it has investigated all such matters and familiarized itself therewith to the extent that it, in its sole discretion, deems necessary. Subcontractor further agrees that Contractor shall not be liable to Subcontractor on any claim for additional payment or additional time or any claim whatsoever if such claim directly or indirectly results from or arises out of Subcontractor's failure to investigate and familiarize itself sufficiently with the conditions under which work is to be performed.
10. **RELATED WORK** - By commencement of work Subcontractor acknowledges that all related, adjacent, or dependent work services, utilities, and materials are acceptable to him, and waives any and all claims for damages or extras with respect to defects or failure thereof.
11. **INSPECTIONS** - Subcontractor shall be responsible to stand for its own designated inspections.
12. **EXPRESS CONTRACTUAL INDEMNITY AND HOLD HARMLESS** - If Contractor has a claim made against it or becomes involved in litigation or arbitration because of alleged damages, injury, or loss arising out of or related to the activities of or the work performed by Subcontractor or its sub-subcontractors, the Subcontractor shall indemnify Contractor against, hold it harmless from and defend Contractor from all claims, loss, liability, and expense, including attorney's fees. This indemnity shall be provided even if Contractor is partly responsible for the claim, damage, injury or loss, but Subcontractor shall not provide indemnity against claims or losses adjudged to be caused by the sole negligence or willful misconduct of Contractor or its employees.

MANNER OF PAYMENT - When any monies are payable by Contractor to Subcontractor under each subcontract, Subcontractor shall make written application therefore to Contractor and shall deliver to Contractor a statement, sworn to if required, showing in detail and as completely as possible all work done or caused to be done by Subcontractor and assuring Contractor that all obligations and liabilities created or incurred by Subcontractor in the performance or doing thereof to said date have been paid in full. Contractor shall have the right to require Subcontractor to furnish, in support of such application, Subcontractor's original payrolls for all labor and all receipted bills and to include as part of said application a complete statement of all money properly due for material and on account of other subcontract of Subcontractor. Contractor may further require Subcontractor to furnish evidence

satisfactory to Contractor of the payment of Subcontractor of all accrued liabilities by Subcontractor in the performance of these obligations, including by way of illustration, employment, withholding and social security taxes, returns thereof and depository receipt records evidencing deposit thereof as required by law, and Contractor may impose as a condition precedent to any payment to Subcontractor the satisfaction of all of the foregoing. No payment or any advance of money by Contractor to Subcontractor shall be deemed to be a waiver by Contractor of the method of payment or of the amount herein agreed to be paid on the terms, covenants and conditions as are herein set forth nor be deemed to be an acceptance of any work up to the date of such payment or advance.

13. **SUBCONTRACTOR'S PERMITS, LICENSES** - Subcontractor shall obtain at his own expense and without charge to Contractor or Owner, all permits and licenses, and comply with all laws, ordinances, rules, regulations, orders and requirements of the City, County, State and Federal governments and of any board or Commission or other duly qualified body having jurisdiction, which shall or might affect or apply to the work; and shall maintain a valid Contractor's license and all other licenses and permits as are required by the State of California and any local jurisdiction.
14. **USE OF GENERAL CONTRACTOR'S EQUIPMENT** - Subcontractor agrees that the use of any of Contractor's equipment, or storage facility by Subcontractor, given, loaned or rented to Subcontractor, shall be on the distinct understanding that Subcontractor uses said equipment, or storage facility at his own risk, and takes the same "as is" and after Subcontractor has satisfied himself by examination as to the condition thereof, and Subcontractor hereby assumes all responsibility for and shall defend and hold Contractor harmless from any claims for damages whatsoever resulting from the use of same, whether such damages result to his own employees or property or to the employees or property of others, and shall on demand return all such equipment, or storage facility to Contractor in as good a condition as when received.
15. **GUARANTEE** - Subcontractor agrees at his own expense to make good any loss or damage arising from any defect in materials or workmanship furnished under this Agreement or any Purchase Order issue hereunder, including in particular, but without limitation, all corrective work, arising out of the work to be performed by Subcontractor hereunder, for a period of one year from the date of filing of Notice of Completion. Upon Contractor's notification Subcontractor shall proceed with due diligence, and in any case within seven (7) days from the date of such notification, at his own expense, to replace any defective material or perform any labor necessary to correct any defect in the work, and upon failure of Subcontractor to do so, Contractor may, at Subcontractor's expense, furnish such materials or labor as are necessary to bring the work up to the required standard.
16. **TERMS OF PAYMENT** - On or before the 25th day of each month as the Work progresses, Subcontractor shall submit to Contractor, in the form required by Contractor, a written requisition for payment showing the proportionate value of the work installed to the end of that month, from which shall be deducted: a retainer of Ten Percent (10%); all previous payments; and all charges for services, materials, equipment and other items furnished by Contractor to or chargeable to the Subcontractor; and the balance of the amount of such requisition, as approved by Contractor and the Owner, and for which payment has been received by Contractor from Owner, the receipt of which shall be a condition precedent to Subcontractor being paid herein, shall be due and paid to Subcontractor on or about the thirtieth (30th) day of the succeeding month.

The final payment shall be due on the thirty-fifth (35th) day after completion and acceptance of the entire Work of improvement and acceptance of Subcontractor's Work by Contractor and the Owner, provided first, however, that (1) Contractor shall have received final payment on account of Subcontractor's Work from Owner, the receipt of which shall be a condition precedent to Subcontractor being paid herein, (2) the Subcontractor shall have furnished evidence satisfactory for Contractor that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment or taxes or other items performed, furnished or incurred for or in connection with Subcontractor's Work, and (3) the Subcontractor shall have executed and delivered in a form satisfactory to Contractor a General Release running to and in favor of Contractor and the Owner.

Exhibit A

INSURANCE AND OTHER REQUIREMENTS

PRIOR TO ANY Subcontractor WORKING ON ANY JOB AND IN ORDER FOR C & J Contracting, Inc. TO PROCESS YOUR INVOICE(S), please ensure that all insurance and other requirements listed below are submitted and complied with as follows:

Provide a copy of your current Contractor's State License
Provide a signed IRS Form W-9, Request for Taxpayer Identification Number and Certification
Provide a copy of your current City Business License for where the Job is located

CERTIFICATES OF INSURANCE AND OTHER REQUIREMENTS

1. Original signed Certificate of Insurance
2. A "Written Notice Prior to Expiration or Cancellation" must be mailed by your agent 30 days in advance or 10 days in advance for non-payment, to the address provider below.
3. The Certificate of Insurance from Subcontractor must include C & J Contracting, Inc. and the owner if requested, as "ADDITIONAL INSURED" on the General Liability policy.
4. The Certificate of Insurance should reference the actual "ADDITIONAL INSURED ENDORSEMENT FORM" and the form must be attached and forwarded to C & J Contracting, Inc.. The form must be issued in a CG2010/1185 Form or equivalent providing products/completed operations protection to the Additional Insured(s).
5. In addition, the General Liability certificate must include a "WAIVER OF SUBROGATION" in favor of C & J Contracting, Inc. and the owner with respect to Property, Liability, and Workers Compensation coverage.
6. Certificates of Insurance must be "Job Specific" referencing the job.
7. All policies shall be provided by carriers with a minimum A.M. Best rating of A-VII or better and satisfactory proof of same shall be furnished to C & J Contracting, Inc. (Exception: State Fund).

MINIMUM LIMITS OF INSURANCE

<u>GENERAL LIABILITY:</u> Waiver of Subrogation Required Damage Primary Wording Required	Claims Made or Modified Occurrence policy forms are NOT acceptable. Coverage must be written on a Occurrence form including Owners and Contractors Protective, Broad Form Property and Personal/Advertising Injury. Minimum Limits are as follows: \$1,000,000 Each Occurrence Bodily Injury/Property Damage. \$2,000,000 General Aggregate Per Project \$1,000,000 Products/Completed Operations Aggregate.
<u>PROPERTY:</u> Waiver of Subrogation Required	Subcontractor is responsible for insuring all Contractors Tools, Equipment, and Materials being installed. Evidence of Property Insurance is required.
<u>AUTO LIABILITY COVERAGE:</u> Waiver of Subrogation Required acceptable.	Limits: \$1,000,000 Bodily Injury/Property Damage per occurrence covering all Hired, Owner and Non-owned vehicles. An insurance carrier who is non-admitted in California is not acceptable.
<u>WORKERS COMP:</u> Waiver of Subrogation Required	Limits: \$1,000,000 Employers' Liability each accident, each employee disease, policy limit disease.
<u>EXCESS LIABILITY:</u>	Limits: \$2,000,000 Each Occurrence and \$2,000,000 Aggregate

ANY SUBCONTRACTOR YOU MAY CONTRACT WITH SHOULD SATISFY THE SAME INSURANCE REQUIREMENTS MENTIONED ABOVE. NO SUBCONTRACTOR MAY MAN THE JOB, AND NO PAYMENTS WILL BE MADE, UNTIL ALL THE REQUIRED DOCUMENTS ARE ON FILE IN OUR OFFICE.