

SUBCONTRACT AGREEMENT (SHORT FORM)

JOB NO: _____

ACCOUNT CODE: _____

This agreement is made this _____^d day of _____, 20__ 10__, by and between Mallen Construction, Inc. (Contractor) and _____ (Subcontractor) to perform the Work identified in Article 2 in accordance with the Project's Contract Documents.

PROJECT: _____
OWNER: _____
ARCHITECT: _____
CONTRACTOR: Mallen Construction, Inc.
SUBCONTRACTOR: _____

Article 1

CONTRACT PAYMENT. The Contractor agrees to pay Subcontractor for satisfactory performance of Subcontractor's Work the sum of _____ Dollars (\$ _____). Progress payments, less retainage of 10%, shall be made to Subcontractor for Work satisfactorily performed no later than Seven (7) days after receipt of payment from Owner for Subcontractor's Work. Final payment of the balance due shall be made to Subcontractor not later than Seven (7) days after receipt by Contractor of final payment from Owner for Subcontractor's Work. These payments are subject to receipt of such lien waivers, affidavits, warranties, and guarantees required by the Contract Documents or Contractor.

Article 2

SCOPE OF WORK.

- (a) Subcontractor shall furnish necessary labor, materials, services, tools, equipment and other things necessary to fully perform and complete the Work in cooperation with the other trades in a good and workmanlike manner to the satisfaction and acceptance of Contractor and Owner and perform all the Work as set forth herein (hereinafter referred to as the "Work").
- (b) No claim shall be made due to minor variations in the actual conditions of the premises from what is shown on the plans. Subcontractor shall examine the premises, note and ascertain the existing conditions at the site and the nature and location of the Work. All Work affected or governed thereby or required for the thorough and satisfactory execution and completion of his Work, whether indicated or specified or not, and regardless of quantity estimated, shall constitute part of this Subcontract and shall be performed without extra charge.
- (c) Subcontractor agrees to commence Subcontractor's Work herein described upon notification by Contractor, and to perform and complete such Work in accordance with Contract Documents and under the general direction of Contractor in accord with Contractor's schedule. This shall include all work necessary or incidental to complete the: _____

_____ Work for the Project as more particularly, though not specified in _____

Article 3

SCHEDULE OF WORK.

- (a) Subcontractor hereby acknowledges that time is of the essence with respect to the Contractor's completing the Project pursuant to the General Contract and that such completion is substantially dependent upon Subcontractor's performance of this Subcontract on or before the dates set forth in the Progress Schedule and/or Progress Meetings. Time, therefore, is of the essence in this Subcontract.
- (b) Subcontractor shall turn the Work over to Contractor in good condition and free and clear of all claims or liens arising from the performance of the Subcontract, and shall, at his expense, defend all suits and pay all claims arising from his performance of this Subcontract.
- (c) Subcontractor covenants and agrees that he shall not employ any labor which will interfere with labor harmony at the job site or with the introduction and storage of materials and execution of Work by other subcontractors. If Subcontractor breaches this covenant and such breach shall cause a stoppage or Work at the job site, Subcontractor shall be liable for all damages suffered by Contractor caused by such delay in completing the job, including specifically any penalty or liquidated damages in the General Contract imposed upon Contractor for failing to complete the job on the completion date set forth in such Contract.
- (d) Subcontractor shall, prior to submission of his first requisition for payment, supply to Contractor the name, address and telephone number of every supplier or Subcontractor furnishing materials and/or labor to Subcontractor for the Work covered herein and a cost breakdown of this Subcontract.
- (e) Subcontractor shall comply with all laws, ordinances and regulations relating to the manner of doing the work or to the supplying of the material at the job site, and shall provide safe working conditions for his employees, other employees and the public.
- (f) If any part of Subcontractor's work, depends for proper execution or results upon the work of any other Subcontractor, Subcontractor shall inspect and promptly report to Contractor any defects in such work that render it unsuitable for such proper execution and results. Subcontractor's failure to inspect and report shall constitute an acceptance of the other Subcontractor's work as fit and proper for the reception of Subcontractor's work.
- (g) Time is of the essence. Subcontractor shall provide Contractor with any requested scheduling information of Subcontractor's Work. The Schedule of Work, including that of this Subcontract shall be prepared by Contractor and may be revised as the Work progresses. Subcontractor recognizes that changes may be made in the Schedule of Work and agrees to comply with such changes without additional compensation. Subcontractor shall coordinate its work with all other contractors, subcontractors, and suppliers on the Project so as not to delay or damage their performance, work, or the Project.

Article 4

CHANGES.

- (a) Contractor may authorize changes to or deductions from the Work, said authorization to be effective and binding only when written (hereinafter referred to as "extra work").
- (b) Whenever extra work is requested by Contractor and the scope and nature of same is reasonably susceptible to lump sum quotation, Subcontractor shall provide such quotation within five (5) days of a request for same.
- (c) Any claim for compensation for extra work, whether lump sum or otherwise, must be presented to Contractor within five (5) days of authorization of the extra work. Claims for extra work received thereafter will not be considered. Proper claims for extra work shall be paid in accordance with this Subcontract Agreement.
- (d) Duly authorized extra work is hereinafter deemed included in the "Work". No dispute as to adjustments in the Contract Amount for extra work shall excuse Subcontractor from proceeding with the Work.
- (e) Contractor, without nullifying the Agreement, may direct Subcontractor to make changes to Subcontractor's Work. Adjustment, if any, in the contract price or contract time resulting from such changes shall be set forth in a Subcontractor's Change Order pursuant to the Contract Documents.

Article 5

FAILURE OF PERFORMANCE.

- (a) Should Subcontractor at any time fail to prosecute and complete the Work in accordance with the Progress Schedule or as herein provided or fail to diligently and continuously perform his Work, or if in the opinion of Contractor the Work of Subcontractor cannot be completed in the time period set forth, or if Contractor is notified or Subcontractor's failure to pay for any material or labor used on the Project, or in the event of a strike or stoppage or Work resulting from a dispute involving or affecting the labor employed by Subcontractor or his Subcontractors, or if Subcontractor fails to perform any of the requirements herein, then such event shall be deemed a default and Contractor shall notify Subcontractor to correct such default and shall specify in such notice the action to be taken and a reasonable date by which the default shall be corrected.
- (b) If a default occurs and is not corrected on or before the date specified in the notice to Subcontractor, Contractor shall be entitled to exercise either or both of the following remedies as well as any other remedies available, including but not limited to binding and consolidated arbitration in accordance with the terms of the General Contract or through litigation in a court of law.
 - (1) Contractor may immediately take any action necessary to correct such default, including specifically the right to provide labor, overtime labor and materials and may deduct the cost of correcting such default from payment due, or that may become due to Subcontractor.
 - (2) Contractor may terminate this Subcontract and the employment of Subcontractor, take possession of Subcontractor's materials, tools and equipment used in performing such Work, and employ another Subcontractor or use the employees of Contractor to finish the remaining Work to be performed hereunder. Contractor may deduct the costs of completing the remaining work from the unpaid contract price, and if the cost of completing the remaining Work exceeds the unpaid Contract amount, Subcontractor shall pay to Contractor such excess costs, including but not limited to overhead and attorney's fees.

Contractor, in any such event may also refrain from making any further payments under this Subcontract to Subcontractor until the entire project shall be fully finished and accepted by Owner, at which time, if the unpaid balance of the amount to be paid under this Subcontract shall exceed the expense incurred by Contractor to Subcontractor, but if such expenses and damages shall exceed such unpaid balance Subcontractor shall promptly pay the difference to Contractor if Contractor does not terminate the right of Subcontractor to proceed, Subcontractor shall continue with the balance of the Work. If Owner is damaged by reason of any breach by Subcontractor of this Subcontract the Subcontractor shall, subject to any defenses and offsets to which Subcontractor may be entitled under this Subcontract, pay Owner such damages.

Article 6

INSURANCE. SUBCONTRACTOR SHALL FURNISH CERTIFICATE LISTING MALLEN CONSTRUCTION INC AS CERTIFICATE HOLDER AND ADDITIONAL INSURED.

- (a) In consideration of the sum of One Dollar (\$1.00) paid by Contractor to Subcontractor, receipt of which is hereby acknowledged, for the indemnification hereinafter set forth. Subcontractor agrees to indemnify and save Contractor and Owner harmless against and from any and all claims arising from the conduct, management or performance of the Work, including without limitation, any and all claims arising from any condition or the Work arising from any breach or default of the part of Subcontractor in the performance of any covenant or agreement on his part to be performed, pursuant to the terms of this Subcontract or arising from any act or negligence of Subcontractor or any of his agents, Subcontractors, servants, employees or licensees, or arising from any accident, injury or damage whatsoever caused by any person, firm or corporation, brought thereon, and in case any action or proceeding is defended against Contractor, shall defend against such action or proceeding by counsel satisfactory to Contractor and Owner, unless such action or proceeding is defended against by counsel for any carrier of public liability insurance referred by herein.
- (b) Prior to commencing work, Subcontractor shall procure and maintain in force at Subcontractor's expense until the completion and final acceptance of the Work, the following insurance from companies satisfactory to Contractor in the indicated amounts. Workers' Compensation Insurance (Statutory Maximum at Job Site location) and Employees Liability Insurance, Comprehensive General Liability Insurance (\$1,000,000.00 combined single limit) including premises-operation, independent contractors, products completed operations hazard with contractual coverage and Comprehensive Automobile Liability Insurance (\$1,000,000.00 combined single limit) and shall furnish to Contractor duplicate of original copies of insurance certificates evidencing compliance with the foregoing insurance requirements, naming Contractor as additional insured. All policies shall provide for ten (10) day cancellation or change notice to Contractor in the event of any change in or cancellation of said policies. The indemnification obligations under Section 5a shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under Workers' Compensation Acts, Disability Benefit Acts or Other Employee Benefits Acts. Contractor and Subcontractor waive all rights against each other for damages by fire or other perils covered by property insurance set forth in the General Contract except for proceeds of insurance held by Owner as trustee. Mallen Construction Inc. shall be named additional insured on the certificate of insurance.

Article 7

INDEMNIFICATION. To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Owner, Architect, Architect's Consultants, and Contractor from all damages, losses, or expenses, including attorneys fees, from any claims or damages for bodily injury, sickness, disease, or death, or from claims for damages to tangible property, other than the Work itself. This indemnification shall extend to claims resulting from performance of this Subcontract and shall apply only to the extent that the claim or loss is caused in whole or in part by any negligent act or omission of Subcontractor or any of its agents, employees, or subcontractors. This indemnity shall be effective regardless of whether the claim or loss is caused in some part by a party to be indemnified. The obligation of Subcontractor under this Article shall not extend to claims or losses that are primarily caused by Architect or Architect's consultant's performance or failure to perform professional responsibilities. Subcontractor agrees to hold Mallen Construction, Inc. harmless in the event of damages or injuries due to any negligence of their part, and that they will pay all legal and defense costs associated with any damage or injury claims.

Article 8

WARRANTY. Subcontractor warrants its work against all deficiencies and defects in materials and/or workmanship and agrees to satisfy same without cost to Owner or Contractor for a period of one (1) year from the date of Substantial Completion of the Project or per Contract Documents, whichever is longer.

Article 9

SPECIAL PROVISIONS. _____

Mallen Construction, Inc. is a FEDERAL CONTRACTOR AND AN EQUAL OPPORTUNITY EMPLOYER.

In witness whereof, the parties have executed this Agreement under Seal, the day and year first written above.

Subcontractor Firm Name

Mallen Construction, Inc.
Contractor Firm Name

X _____
BY:

X _____
BY:

Subcontractors Federal Tax ID Number: _____