

CONSTRUCTION AGREEMENT

CONTRACT #:	
PROJECT #:	
ACCT. CODE:	
DATE:	

PANATTONI CONSTRUCTION, INC., a California Corporation, hereafter called “Contractor”, with offices at 8775 Folsom Blvd., Suite 100, Sacramento, CA 95826, and _____, hereinafter called the “Subcontractor”, whose address is: _____ phone: _____, fax: _____, agree as follows:

Subcontractor having thoroughly informed himself of the conditions surrounding the work by thorough examination and comparison of all plans and specifications, and job site conditions insofar as they relate in any way to the work to be undertaken herein, agrees to complete the work described below in a workmanlike manner, in strict accordance the contract documents including the general and special conditions and details illustrative thereof, and in accord with Contractor’s schedule.

- 1. Project Name:** _____ **Project Location:** _____
Owner: _____
- 2. Scope of Work:** Subcontractor agrees to perform the following work: Provide all material, labor, equipment, hoisting and supervision required to _____
- 3. Contract Documents:** The contract documents shall consist of the Plans & Specifications; Safety Attachment; the Invitation to Bid, dated _____, and this Agreement. The Subcontractor’s proposal may be included for the sole purpose of establishing the scope of work to be performed. The provisions of this agreement shall take precedence over any conflicting terms of the Subcontractor’s proposal.
- 4. Plans & Specifications:** _____
- 5. Payment:** Contractor shall pay to Subcontractor, as full compensation for all the work hereunder the following amount:
and no/100----- \$
 - a. The above prices shall include all applicable Sales, Use, Franchise, Excise and other taxes, which may now or hereafter be levied.
 - b. In the event the above price is a unit price based on quantities, final payment shall be for actual quantities determined by the Engineer, or other representative of Contractor, upon completion of all work hereunder.
- 6. Time:** Subcontractor shall complete the work in accord with the Contractor’s schedule.
- 7. Time of Essence; Subcontractor’s Duties; Non-Assignability:** Time is the essence of this Agreement. The Subcontractor shall commence work promptly as directed by the Contractor, and prosecute same energetically and expeditiously, in full cooperation with the Contractor, other Subcontractors and in accord with the requirements of the general construction as determined by the Contractor until fully completed and accepted. He shall comply with all State and Federal health, safety and environmental laws, ordinances, codes and regulations of all governmental authorities relating to said work or workmen, employ labor under conditions satisfactory to the Contractor and discontinue the employment of any employees unsatisfactory to the Contractor; protect his work and the Project from damage caused by his activities; furnish and maintain all insurance policies hereinafter required; insure his own risk in or about the building project, including all his material, structures, tools and equipment used by him or his Subcontractors; remove and replace promptly all his defective or non-conforming work or material; and report in writing any errors, inconsistencies, or omissions relating to his work. He shall not assign or sublet this Agreement, or any portion hereof, nor any monies due or to become due him hereunder, without previous written consent of the Contractor; and not to deviate from said plans, specifications and details, except on written order of the Contractor. Subcontractor warrants that he is licensed to perform the work contracted for herein by all necessary public agencies and entities.
- 8. Subcontractor as Independent; Indemnity:** The Subcontractor shall protect and fully indemnify, defend and hold harmless the Owner, Contractor and Surety against all liability for claims and liens for labor, materials, equipment and supplies, including attorney fees, resulting therefrom which may accrue from labor employed by, or materials, equipment and supplies ordered by the Subcontractor. Subcontractor shall indemnify and defend and hold harmless the Contractor and Owner against any and all claims, suits or liability for injuries to property, injuries to persons, including death, and from any other claims, suits or liability, caused in whole or in part by any act or omission of the Subcontractor, or any of his officers, agents, employees or servants. The indemnity obligations herein shall survive the termination of this agreement for any reason and shall survive both Subcontractor’s and Contractor’s completion of their work on the

Project. In all instances, this indemnity obligation shall survive irrespective of whether Subcontractor's insurance coverage as required by this agreement has been maintained, changed, cancelled, or otherwise terminated since the termination of this agreement or since Subcontractor's or Contractor's completion of their work. Such indemnity provisions shall apply regardless of any active and/or passive negligent act or omission of Owner or Contractor or their agents or employees. Subcontractor, however, shall not be obligated under this Agreement to indemnify Owner or Contractor for Claims arising from the sole negligence or willful misconduct of Owner or Contractor or their agents, employees or independent contractors who are directly responsible to Owner or Contractor, or for defects in design furnished by such persons.

9. Insurance: Certificates of Insurance will be furnished to contractor prior to commencement of any work on the project.

Subcontractor shall, at its expense, procure and maintain insurance on all of its operations for a period of one year after completion of the project with companies acceptable to contractor, as follows:

- Workers' Compensation as required by law and Employers Liability: \$1,000,000;
- Commercial General Liability: \$1,000,000 per occurrence with a maximum deductible or Self Insured Retention of \$50,000, \$2,000,000 general aggregate, \$2,000,000 products aggregate including products and completed operations during life of the agreement; and,

- Additional Insured Endorsement naming Panattoni Construction Inc, contractor and the Owner, their officers, directors and employees and providing completed operations coverage to said additional insured; and,

(The CG2010/1185 form or its equivalent meets this requirement. We require coverage for liability arising from "your work" or "your operations". "Your ongoing operations" language is not acceptable.)

We will also accept a Blanket Insured Endorsement providing coverage to Contractor and the owner, their officers, directors and employees that meets the coverage requirements listed above.

- Primary Endorsement with the wording: "This insurance shall apply as primary insurance as respects liability of the designated additional insured, arising out of the insured's performance or operations as described in the additional insured endorsement. Any other insurance available to the designated additional insured shall apply on an excess basis".
 - Claims made forms are not acceptable
- Automobile Liability: \$1,000,000.
 - In addition to the above stated insurance requirements, Design and Design/Build subcontracts also require professional liability insurance coverage, including contractual liability insurance with a minimum limit of \$1,000,000 and a maximum deductible of \$25,000.
 - If the subcontractor or their subcontractors use any owned, leased, or chartered aircraft (including helicopters) in the performance of their contract, they shall maintain aircraft liability insurance of not less than \$10,000,000 per occurrence including passenger liability.
 - If the subcontractor or their subcontractors are required to perform remedial hazardous material operations in the performance of their contract, they shall maintain Contractor's Pollution Liability insurance of not less than \$1,000,000 per occurrence and name Panattoni Construction and Owner as additional insureds.
 - Policies shall have mandatory 30 day cancellation notice, except 10 day for non-payment.

10. Payments to Subcontractor; Liens: The Contractor shall pay or cause to be paid to the Subcontractor, for materials supplied and work performed, _____ of the approved value of said materials and work. Original invoices for monthly progress billings are due from the Subcontractor no later than the 25th of each month. Payment will be due to the subcontractor on or about the 25th of the following month. Subcontractor shall furnish to the Contractor, lien releases from laborers, material suppliers, or any other party furnishing items under this Agreement in a form acceptable to Contractor with the attached Application for Payment form, and it is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such releases are furnished. When the work is fully performed, accepted, and required guarantees furnished to the contractor, the entire amount retained shall be paid the Subcontractor not later than five days prior to the expiration date of the Subcontractor's "Mechanic Lien" period. Retention billings must be accompanied by all unconditional releases upon final payment for suppliers, and conditional releases from Subcontractor and its Subcontractors. All payments to the Subcontractor are subject to further conditions shown in this Agreement.

11. Subcontractor's Option to Cease Work: If the Contractor does not pay the Subcontractor through no fault of the Subcontractor within fifteen days from the time payment should be made, the Subcontractor may, without prejudice to any other remedy he may have, upon seven additional days written notice to the Contractor, stop his work until payment of the amount owing has been received.

12. Contractor's Right to Offset: The Contractor reserves the rights to retain out of the monies due or to become due to the Subcontractor, an amount sufficient to indemnify the Contractor against loss by reason of lien or claim against the Subcontractor,

including reasonable cost of litigation thereunder, if the Contractor might be held directly or indirectly liable for such lien or claim, until such liability shall cease to exist; to require as a prerequisite to making any payment to the Subcontractor, satisfactory evidence that the Subcontractor has paid or made arrangements satisfactory to the Contractor, at least 90% of the cost of the total work (labor, materials, taxes, etc.) for which such payment is to be made.

13. Changes to the Scope of Work; claims: The Contractor may, at any time after the execution of this Agreement, without invalidating this Agreement or any bonds, if any, or security furnished hereunder, and without notice to the sureties, add to, reduce or omit Subcontractor's scope of work; all such changes shall be authorized by written change order. Reductions or omissions shall be given in writing to Subcontractor not later than five (5) days prior to when the Work that has been reduced or omitted was scheduled to begin. When work is omitted or reduced, in whole or part, the Contractor shall pay, subject to the provisions of this Agreement, for all work actually performed. Subcontractor is not entitled to compensation or damage for any loss, including loss of profit or overhead relating to reduced or omitted work. All claims for unexpected conditions or delays must be given with in 5 days after subcontractor recognizes the condition or event giving rise to the claim. Except in an emergency, notice shall be given before proceeding with the Work.

14. Arbitration: Any controversy arising out of or relating to the performance or interpretation of this Agreement, or the work performed under this Agreement, is subject to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Arbitrated disputes shall be decided in accordance with California law. Any award entered in such arbitration proceeding shall be final, and may be specifically enforced in a court of competent jurisdiction. Subcontractor shall continue construction of the Project during the pendency of any arbitration proceedings, provided that Contractor continues to make progress payments to Subcontractor on undisputed work in accordance with the terms of this Agreement.

Contractor: _____

Subcontractor: _____

15. Contractor's Right to Terminate: If Subcontractor should neglect to prosecute the work diligently and properly or fail to perform any provision of this Agreement, the Contractor, after three days written notice to the Subcontractor, may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Subcontractor; or may elect to terminate this Agreement for material breach thereof. If Contractor elects to terminate, Subcontractor shall vacate the construction site and Contractor shall pay to Subcontractor any sums owed but unpaid to date. However, all costs incurred by the Contractor in performing the Subcontract Work, including reasonable overhead, profit and attorneys' fees, shall be deducted from any moneys due or to become due the Subcontractor under this Subcontract. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Price. If the unpaid balance of the Subcontract Price exceeds the expense of finishing the Subcontract Work, such excess shall be paid to the Subcontractor. Subcontractor shall have no further claims against Contractor by reason of this Agreement.

16. Clean and Orderly Premises: During the course of construction, the Subcontractor shall remove his waste materials and maintain the premises at all times in a safe, clean, and orderly condition. Upon completion of the work under this Agreement, the Subcontractor shall remove from the site all temporary structures and debris incident to his operation. If Subcontractor fails to clean up within two days after written notification by the Contractor to do so, the Contractor may proceed with that function as he deems necessary and in the manner he may deem expedient, and will deduct the cost thereof from monies due under this Agreement. Subcontractor shall comply with the job site rules and policies of Contractor.

17. Effect of Payment: No payment made under this Agreement, except the final payment, shall be conclusive evidence of performance of this Agreement, either in whole or in part, and no payment shall be constructed to be an acceptance of defective work or improper materials. In case of loss or destruction of said work by fire, earthquake, or any other cause, and in event that the Contractor is paid any money as payment for such loss or destruction, the Contractor shall pay a just share to the Subcontractor. Any riders or special conditions attached hereto shall become a part of this Agreement upon the signature of both parties being affixed thereto. In case of default of either party, nothing herein shall affect the rights of the injured party to adopt any legal means he may deem necessary to protect his interests and recover damages including reasonable attorney fees from the party in default.

18. Labor and Material Bond: With the execution of this Agreement, Subcontractor shall, if required by Contractor and at Contractor's expense, obtain a Labor and Material Bond and a Faithful Performance Bond in an amount requested by Contractor. Said bonds shall be secured by a surety company acceptable to the Contractor.

19. Damage to Work in Place: In the event that Subcontractor, its agents or employees should, by act or omission, cause damage to ongoing work in place, Contractor, having notified Subcontractor in writing, shall have the right to charge Subcontractor with the reasonable cost of repair or restoration, at Contractor's option, it may withhold sums due and owing to Subcontractor to pay the reasonable cost of said damage.

20. Title to Materials: Upon and after execution of this Agreement, all materials delivered to the construction jobsite, installed and paid for become and are property of the Owner, subject to Contractor's duty to pay for such materials in accordance with this Agreement.

21. Warranty: Subcontractor shall guarantee his work against all defects of materials and/or workmanship as called for in the plans, specifications and addenda; if no guarantee is called for, then for a period of one (1) year from the later of the date of final building inspection or Certificate of Occupancy. Subcontractor shall assign or cause to be assigned all warranties for equipment and products to the Owner as a condition of final payment.

22. Severability: To the best knowledge and belief of the parties this Agreement now contains, no provision that is contrary to Federal or State law or any ruling or regulation of a Federal or State agency. Should, however, any provision of the Agreement, at any time during its term be in conflict with any such law, ruling or regulation, then such provision shall continue in effect only to the extent permitted. In the event any provision of this Agreement is thus held inoperative, the remaining provisions of this Agreement shall, nevertheless, remain in full force and effect.

Contractors are required by law to be licensed and regulated by the Contractor's State License Board and must adhere to the local agencies licensing provisions in the City and/or County where Work is performed. Any questions concerning the responsibilities of a contractor may be referred to the registrar of the board whose address is:

California State Contractor's License Board, P.O. Box 26000, Sacramento, CA 95826

In Witness Whereof, the parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assigns on the day and year first above written.

**CONTRACTOR: Panattoni Construction, Inc.,
a California Corporation**

SUBCONTRACTOR:

BY: _____ Date: _____

BY: _____ Date: _____

Name

Print Name & Title

California License #759899

Corporation Partnership Proprietorship

State License # _____ Expires: _____

City License # _____ Expires: _____

County License # _____ Expires: _____

Workers' Comp. Policy # _____

Workers' Comp. Carrier: _____