

SUBCONSULTING AGREEMENT

This Agreement, effective this ____ of __, [Click here and type Year], by and between CONDON-JOHNSON & ASSOCIATES, INC. located at 480 Roland Way, Suite 200, Oakland, CA 94621, P.O. Box 12368, Oakland, California 94604 (hereinafter "CONTRACTOR") and [Click here and type Consulting Company] located at [Click here and type Consultant's Address] (hereinafter "SUBCONSULTANT").

WITNESSETH:

WHEREAS it has been agreed that the preparation of design plans and calculations for the PROJECT: Name of the Project, CONTRACTOR Job No. [Click here and type CJA Job No.] located at [Click here and type Project Address] shall be transmitted to CONTRACTOR at the time(s) indicated herein:

WHEREAS the CONTRACTOR desires to employ SUBCONSULTANT to provide services in connection with the design and preparation of plans for said PROJECT.

WHEREAS the SUBCONSULTANT represents it is licensed, qualified and willing to perform such services in accordance with the terms of this agreement.

NOW, THEREFORE, in consideration of the covenants, agreements and promises of the parties herein contained, CONTRACTOR and SUBCONSULTANT agree as set forth below.

ARTICLE 1 SCOPE OF WORK

A. SUBCONSULTANT shall perform services described in EXHIBIT A – Scope of Work, attached hereto and by this reference made a part hereof, in connection with the PROJECT (hereinafter referred to as “This Part of the Project”). A copy of all portions of the “Prime Contract” pertinent to SUBCONSULTANT’s responsibilities and schedule of services is provided in EXHIBIT B, attached hereto and by reference made a part hereof. SUBCONSULTANT shall perform its services in the manner and to the extent CONTRACTOR is bound by the “Prime Contract” to perform services for the GENERAL CONTRACTOR. SUBCONSULTANT shall coordinate This Part of the Project with all other parts of the Project. Should the SUBCONSULTANT become aware of any defect in its work or the work of others on which SUBCONSULTANT’s work relies, prompt written notice thereof shall be given to CONTRACTOR by SUBCONSULTANT.

B. SUBCONSULTANT is an independent contractor for This Part of the Project and is responsible for the means and methods used in performing services under this Agreement. CONTRACTOR shall be the general administrator and coordinator of the services for the PROJECT and shall facilitate the exchange of information among the SUBCONSUTANTS engaged by CONTRACTOR for the PROJECT as necessary for the coordination of their services. GENERAL CONTRACTOR’S instructions for the Project and SUBCONSULTANT’s communications concerning This Part of the Project shall be forwarded only through the CONTRACTOR.

C. SUBCONSULTANT shall check its work for accuracy before final submission and shall be required without additional compensation to correct any errors in its work. SUBCONSULTANT shall also be responsible for any damages incurred by CONTRACTOR as a result of SUBCONSULTANTS negligent acts, errors, or omissions and acceptance of the work product by CONTRACTOR shall not relieve the SUBCONSULTANT of this responsibility, regardless of whether CONTRACTOR has reviewed and/or disclaimed responsibility for the work.

ARTICLE 2 CONTRACTOR'S RESPONSIBILITIES

A. CONTRACTOR shall furnish to SUBCONSULTANT information provided by OWNER regarding its requirements for This Part of the Project.

B. CONTRACTOR shall only review the SUBCONSULTANT's work for general compliance with OWNER'S requirements and for overall coordination with the services required for the PROJECT.

ARTICLE 3 COMPENSATION AND PAYMENT

A. SUBCONSULTANT shall be compensated for its services in accordance with the provisions of EXHIBIT C – Compensation and Payment, attached hereto and by this reference made a part hereof.

B. SUBCONSULTANT shall submit monthly invoices to CONTRACTOR, which shall be accompanied by such supporting documentation as may be reasonably required by CONTRACTOR. Payment shall be made by CONTRACTOR within ten (10) days of CONTRACTOR'S receipt of acceptable invoice.

ARTICLE 4 TIME OF PERFORMANCE

SUBCONSULTANT shall commence, perform and complete its services on, during and within the period of time provided in EXHIBIT D - Time of Performance, attached hereto and by this reference made a part hereof. SUBCONSULTANT agrees that its sequence and timing of services will be coordinated with the requirements of CONTRACTOR and its other SUBCONSULTANTS.

ARTICLE 5 CHANGES IN WORK

CONTRACTOR reserves the right, without impairing this Agreement, to order changes or alternations in the work to be performed hereunder. If changes or alterations ordered affect the cost or progress of the work, adjustments shall be made in the time for performance of this work or compensation owing to SUBCONSULTANT, as the case may be, as mutually agreed upon between CONTRACTOR and SUBCONSULTANT.

ARTICLE 6 INDEMNITY

SUBCONSULTANT shall defend and indemnify CONTRACTOR and Owner from and against any and all claims of any nature whatsoever, including damages to property, or personal injuries, including death, to persons, and from all settlements reached or judgments recovered therefore, including all expenses incurred in defending such claims, including court costs, attorney's fees, costs of enforcing this provision and other expenses, arising out of the negligent errors, omissions or acts of the SUBCONSULTANT in its performance of this Agreement.

ARTICLE 7 INSURANCE

7.1 General Requirement. Prior to starting work, the SUBCONSULTANT shall obtain at his expense the insurance required herein and by the Contract Documents and shall furnish satisfactory written evidence in the form of certificates, to the CONTRACTOR, that the SUBCONSULTANT has complied with such requirements and that the insurers shall provide at least thirty (30) days prior notification of cancellation of or modification to said policies. The following insurance shall be required except to the extent that additional insurance is required by the Contract Documents in which case such additional insurance shall also be required. No payments will be made until all insurance requirements have been met.

7.2 Commercial General Liability Insurance. SUBCONSULTANT shall provide commercial general liability on an Occurrence form in the amount of \$2,000,000 combined single limit for bodily injury and/or death and/or property damage liability including:

- (A) Premises and operations coverage with no exclusion for X, C and U hazards.
- (B) Products and completed operations coverage.
- (C) Blanket contractual coverage.
- (D) Broad form property damage coverage (including completed operations)
- (E) An endorsement naming OWNER and CONTRACTOR as additional insured as respects all operations performed by or on behalf of the named insured.
- (F) Per project limit applies.
- (G) Claims made policy form or modified occurrence liability policies are not acceptable.

Additional Insured:

Condon-Johnson & Associates, Inc*.
Owner

*Including their respective officers, directors, agents, employees, affiliates, parents subsidiaries, and/or entity that Contractor is required by contract to name as additional insured (or Indemnify).

- (I) An endorsement on Form CG20101185 or by an endorsement providing coverage at least as broad, providing that such insurance as is afforded under the SUBCONSULTANT'S policy is primary insurance as respects the OWNER and CONTRACTOR and that any other insurance maintained by OWNER and/or CONTRACTOR is excess and non-contributing with the insurance required hereunder. The limits will apply separately to each.
- (J) A per project General Aggregate under the commercial general liability policy or a \$1,000,000 Umbrella Liability policy, if limits of underlying General Liability do not total \$2,000,000.00 Aggregate.

7.3 Comprehensive Automobile Liability Insurance. Comprehensive auto liability in the amount of \$1,000,000 combined single limit for bodily injury and/or death and/or property damage liability including:

- (A) Owned autos
- (B) Hired or borrowed autos
- (C) Non-owned autos

7.4 Workers' Compensation and Employers' Liability Insurance. SUBCONSULTANT shall provide WORKERS' COMPENSATION AS REQUIRED BY LAW AND EMPLOYERS' LIABILITY INSURANCE WITH A LIMIT OF NOT LESS THAN \$1,000,000. This insurance shall contain a waiver of subrogation against the OWNER and CONTRACTOR. SUBCONSULTANT to provide USL&H when required by Prime Contract between Owner and General Contractor.

7.5 The SUBCONSULTANT will provide CONTRACTOR with a certificate of insurance as evidence of professional liability insurance in the amount of \$2,000,000 to CONTRACTOR and will maintain this amount throughout the life of this Agreement and for three (3) years following completion of the project work. The Retro-Active Date shall be no later than the date upon which services are first performed under this agreement or the date this agreement is signed, whichever is earlier.

ARTICLE 8 TERMINATION

A. This Agreement may be terminated by either party upon ten (10) days written notice in the event of the other party's substantial failure to perform in accordance with the terms hereof. CONTRACTOR may terminate this Agreement for convenience upon ten (10) days written notice. This Agreement terminates automatically upon CONTRACTOR'S notification to SUBCONSULTANT of its termination under the Prime Agreement's. Upon such notice, SUBCONSULTANT shall immediately discontinue all work and services upon the effective date of termination.

B. If the termination is for the convenience of CONTRACTOR or due to the failure of CONTRACTOR to perform, SUBCONSULTANT shall be paid for satisfactory work and services performed by it as provided in EXHIBIT C. SUBCONSULTANT shall have no claim for lost profits or any other damages.

C. If the termination is due to the failure of the SUBCONSULTANT to fulfill its obligations under this Agreement, SUBCONSULTANT shall be liable to CONTRACTOR for any additional cost occasioned in order to prosecute This Part of the Project to completion by contracting with others or performing the work itself.

D. If, after notice of termination for failure to fulfill obligations under this Agreement, it is determined that SUBCONSULTANT had not so failed or the termination is rescinded, the SUBCONSULTANT shall be paid as provided in EXHIBIT C upon performance of the services required.

E. The rights and remedies of either party provided herein are in addition to any other rights and remedies provided by law.

ARTICLE 9 OWNERSHIP OF DOCUMENTS

All documents, information and other data to be furnished by SUBCONSULTANT to CONTRACTOR under this Agreement shall be delivered to and become the property of CONTRACTOR and may be used by CONTRACTOR without restriction.

ARTICLE 10 ACCESS TO RECORDS

SUBCONSULTANT shall maintain all books, documents, design calculations, papers, and accounting records and shall make such materials available at its offices at all reasonable times during the period of CONTRACTOR's contract with the Owner and for three (3) years from the date of final payment under such contract, for inspection by CONTRACTOR, or Owner.

ARTICLE 11 ARBITRATION

A. All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association unless the Prime Agreement at EXHIBIT B is an agreement for only professional services in which case only such claims, counterclaims, disputes and such other matters in question not exceeding the sum of \$200,000 will be so decided. The arbitrators will not have jurisdiction to consider any claim, counterclaim, or other matter in question where the damages sought are in the nature of punitive damages or, if the Prime Agreement at EXHIBIT B is an agreement for only professional services, where the amount in controversy exceeds the sum of \$200,000. This agreement to arbitrate and any other agreement or consent to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.

B. Notice of demand for arbitration must be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other

matter in question would be barred by the applicable statute of limitations.

C. No arbitration arising out of or related to this Agreement shall include, by consolidation or other manner, any person not a party to this Agreement except for Owner and CONTRACTOR's other SUBCONSULTANT who may be joined at CONTRACTOR's sole election.

D. The limitations contained in paragraphs A and C may be waived in whole or in part by the written consent of both parties.

E. The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modification or appeal except to the extent permitted by Sections 10 and 11 of the Federal Arbitration Act (9 U.S.C. Sections 10 and 11).

**ARTICLE 12
SUCCESSORS AND ASSIGNS**

A. CONTRACTOR and SUBCONSULTANT each is hereby bound and the successors and assigns of CONTRACTOR and SUBCONSULTANT are hereby bound to the other party to this Agreement and to the successors and assigns of such other party, in respect of all covenants, agreement and obligations of this Agreement.

B. The SUBCONSULTANT shall not assign this Agreement, or any part hereof, or subcontract any of the work or services to be performed hereunder without the prior written approval of CONTRACTOR.

C. IN WITNESS WHEREOF, The parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assignees on the day and year first above written.

SUBCONSULTANT:

CONTRACTOR:

[Click **here** and Type Consultant]

Condon-Johnson & Assoc., Inc.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

- Corporation
- Partnership
- Proprietorship

California Engineer's License
No. _____

Expiration Date: _____

Classification: _____

Federal Tax I.D. # or Social Security Number _____

THIS CONTRACT HAS IMPORTANT LEGAL CONSEQUENCES. CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

Rev. 09/04