

CONSTRUCTION CONTRACT FOR SUBCONTRACTOR

This Agreement dated _____ is between CATS 4 U, INC., located at 8755 Highway 128, Healdsburg, CA 95448, hereinafter "Contractor," Contractors License No. 465781 and _____ hereinafter "Subcontractor:" Subcontractor shall not assign, sublet or transfer this Agreement, or any part thereof, or make an assignment or transfer any monies payable to Subcontractor pursuant to this Agreement, without the prior authorization of Contractor.

Scope of Construction

1. a. Subcontractor shall furnish all labor and materials necessary to construct that scope of work described as

_____ according to _____ prepared for Contractor, on the real property located at _____
 _____. Subcontractor agrees to furnish all labor, materials, skill, equipment, scaffolding, insurance, storage and supplies, necessary to perform the work. The description of work to be performed and materials to be furnished by Subcontractor by reference to a section or sections of the plans shall not be deemed to limit the obligations of Subcontractor to perform work or materials coming within the general description of such work or plans. If a conflict arises between the plans and the work to which they relate, Subcontractor shall immediately advise Contractor of the nature of such conflict. Whether or not shown by the plans or specifications, the work includes any item of labor, service and/or materials reasonably implied or customarily furnished by a contractor performing work of the type described herein; or required to complete the work in compliance with any applicable law, ordinance or regulation of any Governmental Agency, including OSHA.

b. Subcontractor represents and warrants that it has thoroughly examined the plans, the site for the work to be performed hereunder, the relevant laws, codes, rules and regulations, and has ascertained the conditions to be encountered in the performance of its obligations hereunder. Subcontractor represents and warrants that it is entering into this Agreement solely in reliance, upon its own information and investigations, and not upon any statement or representation made by Contractor; this Agreement supersedes any earlier oral or written agreement.

c. The phrase "Contract Documents" is defined to mean and include this Agreement, the prime contract with Owner, together with its general supplementary and other conditions, addenda and modifications, plans and specifications, soil reports, Title 24 Calculation, structural calculation and any other documents pertaining to the construction. The project Manual and its Terms are specifically incorporated into this document.

Contract Price; Payment

2. Contractor shall pay Subcontractor \$ _____, hereinafter referred to as the "contract price," for labor and materials, as follows:

a. Within _____ (____) days of receipt of payment for progress billing as follows:

_____ % at _____	\$ _____
_____ % at _____	\$ _____
_____ % at _____	\$ _____
_____ % at _____	\$ _____
_____ % at _____	\$ _____
10 % retention _____	\$ _____

TOTAL \$ _____

Initials _____

Initials _____

b. Payment will be made each period for ninety percent (90%) of the value of the work completed, and the balance will be paid within sixty (60) days after Owners acceptance, e.g., issuance of a Certificate of Use or Completion. Acceptance of final payment hereunder by Subcontractor shall release Contractor of all claims except those previously submitted in writing. Subcontractor agrees to execute and deliver a Lien Release to Contractor as an express condition precedent to final payment and when Contractor is assured that the property on which the project was constructed is free from all subcontractor and/or material liens recorded or recordable pursuant to California Civil Code Sections 3115-3117 and all Stop Notices enforceable pursuant to California Civil Code Sections 3179-3210.

c. No payments made prior to completion and acceptance of the work shall be construed as evidence of acceptance of any part of Subcontractor's work. Contractor may make advance payments to Subcontractor to aid Subcontractor in performance of this contract. Subcontractor agrees that Contractor may decrease subsequent payments due Subcontractor to compensate for any advance payments. Subcontractor further agrees to repay Contractor if advance payments constitute overpayment.

d. Before each payment is made as provided herein, Subcontractor shall provide to Contractor a conditional release of lien satisfactory to Contractor for work done and/or materials and equipment furnished by Subcontractor to the Project. Contractor, at its option, may make any payment due under this Agreement by joint check payable to Subcontractor, and any appropriate trust, sub-subcontractor or material supplier. Further, Contractor may send the joint check directly to the trust, sub-subcontractor or supplier. Subcontractor shall provide any such documentation as required by Contractor to demonstrate his payments for labor, materials, union dues, taxes, etc.

e. It is understood that at the time of the execution of this agreement, the parties hereto are aware of the possibility of an increase in the wages of labor, and the prices of materials, and the possibility of governmental legislation affecting the hours of labor, the rate of wages, taxes or assessments relating to the work to be furnished pursuant to this Agreement. Subcontractor specifically waives any claim for increases arising out of the foregoing for any reason of any nature or kind.

f. Should the Contractor, in writing, direct any modification or addition to the work covered by the contract, contract price shall be adjusted accordingly. The change in the Contract Price caused by such a Contract Change Order shall be as agreed in writing, or if the parties are not in agreement as to the Contract Price, then the Subcontractor's actual cost for all labor, equipment, subcontracts and materials plus a Subcontractor's Fee of 10% shall be the change to the Contract Price. All claims for additional work shall be made in writing to Contractor within ten (10) days of Subcontractor being aware of any changed condition or right or ability to request a Change Order.

g. Where the project is ready for occupancy or use and major items or corrective or repair work remain to be completed and the cost thereof will exceed more than 1% of the contract price, then the Contractor may withhold payment of a sufficient amount to pay for completion of such work.

h. All sums received by Subcontractor from Contractor under this agreement are received by Subcontractor **in trust** of all labor, material, and appliances furnished in the performance of this agreement. No title to any payment, or any part of it, shall vest in Subcontractor, or be used for any other purpose, until Subcontractor has first paid in full for all labor and materials furnished to date of completion by Subcontractor, all persons who may have supplied labor, material, or other things used in the works under this agreement.

Time for Completion; Time of Essence

3. Time is of the essence in Subcontractor's performance of its obligations under this Agreement.

a. Within _____ (_____) days after execution of this agreement, Contractor will have the jobsite ready for commencement of construction and will have all approvals necessary. When jobsite is ready for Subcontractor, Subcontractor shall commence work within _____ (_____) days after written notice from Contractor. Subcontractor shall complete the work within _____ (_____) days after commencement.

b. Upon execution of this Contract, Subcontractor shall forthwith order all materials, supplies, equipment, and other items which shall be required for Subcontractor's full performance of its

obligations pursuant to this Agreement. Subcontractor shall in writing identify all suppliers and other persons from whom Subcontractor proposes to purchase or to contract for all necessary materials, labor, supplies, equipment and other items which may be required by Subcontractor in the full performance of its obligations hereunder. Subcontractor shall give Contractor no less than two (2) weeks written notice of any shortage or insufficiency of any such materials, labor, supplies, equipment and other items necessary for Subcontractor to complete the work, so as to avoid delay in following the project schedule, Subcontractor's failure to furnish such written notice shall constitute a material breach of this Agreement; the giving of such notice shall not excuse Subcontractor from its duty to follow the project schedule. Any substitute materials, equipment or supplies must be approved by Contractor and, as determined by Contractor, equal to or better than those originally to be installed in the work. Subcontractor's failure to follow the schedule shall constitute a material breach of this Agreement.

c. Liquidated damages per the terms of the Agreement will be deducted from the Subcontract total if work is not completed as provided.

d. Inclement weather will not be considered a cause of delay unless Contractor agrees that weather conditions prohibit the continuing of the work. No claims for additional compensation or damages for delays, whether in the furnishing of material by Contractor, or delays by other subcontractors to the Owner, or acts of God will be allowed by Contractor. Contractor reserves the right to suspend work for a reasonable period of time without payment of additional compensation. Should Subcontractor default in the proper performance of its work, thereby causing delay, Subcontractor shall be liable for any and all costs and damages. These include a penalty charge of \$ _____ per day of delay and any other consequential damages sustained by Contractor as a result thereof.

Correlation Between Plans, Specification, and Contract; Workmanship

4. a. The plans for the project, the specifications for the project, and this Contract are intended to supplement each other so that any work mentioned in one of those instruments but not in the others shall be performed in the same manner as if mentioned in all the instruments. Should a conflict arise between the instruments, the specifications shall control over the plans, and this Contract shall control over both the plans and the specifications. The Contract Documents are fully incorporated in this Agreement by this reference and Subcontractor and its subcontractors will be and are bound by any and all of the Contract Documents insofar as they relate in any part or in any way, directly or indirectly to the work covered by this Agreement.

b. Subcontractor shall perform the work in a workmanlike manner according to the highest standards of the trade and in accordance with the plans, the latest edition of the Uniform Building Code and local municipal building code requirements. In the performance of this Agreement, Subcontractor shall not employ any person not supervised by subcontractor or not skilled in work assigned to him. Any employee, subcontractor or material man of Subcontractor who is adjudged by Contractor to be incompetent, disorderly, unreliable or otherwise unsatisfactory shall immediately be removed from performing any work for or supplying materials to Subcontractor on the construction site upon notice from Contractor.

c. Should the performance of any work being performed by Subcontractor depend upon the proper performance of work by Contractor or any other subcontractor of Contractor whose work precedes the work of Subcontractor, commencement of any work to be performed by Subcontractor pursuant to this Agreement constitutes an agreement and affirmation by Subcontractor that work which preceded Subcontractor's work has been done in a proper fashion and manner. If Subcontractor covers improperly installed work of another subcontractor, Subcontractor shall be responsible for the correct installation of Subcontractor's work and the cost thereof. Subcontractor further agrees to pay the Contractor for any damage that may be caused to such other work by the Subcontractor or by its agents or employees.

Charges and Liens; Identification

5. Within ten (10) days of the commencement of work, Subcontractor **shall, in writing** identify all material suppliers and sub-subcontractors. The Subcontractor shall pay all charges incurred by him for labor and materials used in the construction of the project as they become due. Should Subcontractor fail to pay any such charge, the Contractor may pay the same on behalf of the Subcontractor and shall be reimbursed by the Subcontractor for the payment on request.

Indemnity Agreement

6. Subcontractor shall indemnify and hold Contractor free and harmless from any and all claims, losses, damages, injuries, and liabilities arising from the death or injury of any person or persons, or from the damage or destruction of any property or properties, caused by or connected with the performance of this Contract by subcontractors, agents or employees, except for damages arising from the sole active negligence of Contractor. Subcontractor shall carry C.G.L. insurance with a Certificate of Insurance naming the Contractor as an additional insured. Promptly on execution of the Contract and **prior** to commencement of any work, Subcontractor/Supplier **shall** deliver to the Contractor, Certificates of Insurance covering all policies providing the required insurance. Such certificate shall provide prior **actual** notice of cancellation, and shall be signed on behalf of the insurer by his authorized representative.

Insurance; License and Bonds

7. Subcontractor agrees to obtain and maintain at its own expense and until the completion of this project the following insurance and licenses:

- a. Workers' Compensation with Employer's Liability coverage as required by statute;
- b. Comprehensive General Liability covering Subcontractor's operations, sub-let operations, completed operations and contractual (as described in above). This insurance shall be in the minimum amount of:
 \$ _____ Combined single limits for bodily injury and property damage.
- c. Fire, extended coverage, theft insurance, etc., on Subcontractor's equipment, forms and temporary facilities; and
- d. Comprehensive automobile liability insurance, covering the use of all owned, non-owned or hired motor vehicles used in or about the performance of Subcontractor's work, indemnifying Contractor relative to liability for accidents to persons or property caused by such vehicles in the amount of \$1,000,000 combined single limits for bodily injury and property damage.
- e. City of jurisdiction business license in full force and effect.
- f. California State Contractors License for specific trades involved in work covered by this Agreement.

A Certificate of Insurance naming Contractor and Owner as additionally insured with endorsement form B CG 2010 11 85 together with evidence that the premiums have been paid for the above coverage's must be lodged with Contractor before the beginning of work. Further, Subcontractor shall lodge with Contractor a renewal certificate for each policy at least 10 days before the expiration of the policy. Failure to provide these documents shall delay all payments until Contractor received proper documentation.

Nothing herein shall be deemed to limit the risks assumed by Subcontractor to those for which insurance is required, or to affect, limit or impair the risks assumed by Subcontractor in any manner whatsoever, the intent of this Contract being merely to require insurance policies covering certain of the risk assumed by Subcontractor.

Subcontractor shall not cause any policies to be canceled or permit them to lapse prior to the issuance of the Certificate of Final Acceptance, and all insurance policies shall include a clause to the effect that the policy shall not be canceled or changed until 30 days after the Contractor has received actual written notice of such intended change or cancellation as evidence by returned receipt or registered or certified letter. Notice to Contractor shall be sent to them at the addresses set forth in the Introduction of this Agreement, as Contractor shall direct.

If required by Contractor, Subcontractor shall provide labor and material payment bond in the amount equal to the contract price. Cost for these bonds shall be added to the contract price by change order.

Subcontractor's Breach and Contractor's Power to Terminate Contract

8. a. Should Subcontractor breach any term or condition of this Agreement, or in the event of the assertion by any person of a claim or threatened assertion of lien or Stop Notice claims by persons employed by Subcontractor or furnishing material to Subcontractor, or any other monies claimed to be owing by Subcontractor pursuant to this Agreement or otherwise. Contractor may withhold from any monies due or to become due Subcontractor, such sums as Contractor, at its sole discretion shall deem necessary to protect Contractor from any loss, damage, expense or claim therefore, including litigation costs and warranty work. If Subcontractor breaches any provision of this Agreement, such breach shall be deemed a material breach of contract. Should Subcontractor fail to perform in accordance with any term of this Agreement or otherwise be in breach hereunder, Contractor may give notice of such breach to Subcontractor, identifying the lack of performance or breach of this agreement. Such breach by Subcontractor shall give Contractor the option of:

b. Without terminating this Agreement, require that Subcontractor shall at its own expense, replace and correct material or work determined by Contractor to be defective or not complying with this Agreement and cure such other defaults as may exist in the performance of Subcontractor's obligation hereunder, within forty-eight (48) hours after such notification or within eight (8) hours after notification of an emergency. The determination of an emergency shall be made by Contractor. Failure of Contractor to give notice to Subcontractor as herein provided shall not alter, diminish or restrict any of Subcontractor's obligations. Should Subcontractor fail to timely correct and repair defective materials and workmanship and otherwise cure its defaults hereunder, Contractor may, without further notice, do so at Subcontractor's expense, and the cost of such to Contractor, together with overhead and profit at fifteen percent (15%), shall immediately be payable by Subcontractor.

c. Without terminating this Agreement or the obligations of Subcontractor as to all of the work required to be performed or furnished, Contractor may perform such work required hereunder or may furnish any materials or other items required, as Contractor in its sole discretion may deem necessary to avoid delay in the progress of the work and in connection therewith. Contractor may itself or have others perform such work and Contractor may procure all necessary materials, equipment or other items required for the continued progress of such work. The cost to Contractor for such work or materials, equipment or other items shall be deducted from the contract price and if the cost of such work or materials or other items of any nature exceeds or may reasonable be anticipated by Contractor to exceed, the balance of the contract price, such express or anticipated excess shall be immediately due and owing from Subcontractor to Contractor and may be withheld from any funds due to Subcontractor under this Agreement or any other agreement with Subcontractor. "Cost to Contractor" as used in this Agreement shall mean actual cost to Contractor plus fifteen percent (15%) overhead and profit.

d. Terminating this Agreement with the option granted to Contractor of (1) itself completing the work required to be performed by Subcontractor or any portion thereof, or (2) having such work in whole or in part completed by others at the expense of Subcontractor. Subcontractor shall be liable for all damages suffered by Contractor by reason of Subcontractor's default in any provision of this agreement, and the exercise by Contractor of its option to terminate this Agreement shall not release Subcontractor of such liability.

Safety Precautions; Injuries; Clean Workplace

9. a. Subcontractor is legally responsible for compliance with Cal OSHA Safety Regulations and represents it has a Safety Manual, Safety Program and all necessary safety certificates and employee training. Further, Subcontractor shall take and comply with all reasonable safety precautions with respect to the Work, all safety measures initiated by Contractor and all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property, including specifically the Occupational Safety and Health Act of 1970 and the Construction Safety Act of 1969. Subcontractor shall immediately report to Contractor any injury to any of Subcontractor's employees at the job site. Subcontractor shall indemnify Contractor against loss by fines, penalties and corrective measures resulting from acts of omission or omission by Subcontractor, its agents, employs or assigns with respect to violation of safety requirements to this agreement, and agrees to reimburse or pay Contractor for all costs, expenses or liabilities Contractor may sustain as a result of delays and administrative proceedings resulting from such violations.

b. Subcontractor shall at all times keep the construction site free from accumulation of waste material or rubbish. Subcontractor will leave his workplace "broom clean" immediately after completing each phase. In the event of a dispute between Subcontractor, Contractor and/or any other subcontractor as to the responsibility for removal of rubbish, surplus material, tools, scaffolding or equipment from the construction site, Contractor may remove any such disputed item and allocate the cost of such removal to each subcontractor responsible therefore, such allocation to be binding upon Subcontractor. Any default by Subcontractor pursuant to this paragraph may be remedied by Contractor and the cost thereof, including Contractor's reasonable overhead and profit, shall be immediately due and payable by Subcontractor to Contractor.

Arbitration of Disputes

10. Should any dispute arise concerning the project, any provision of this Contract, or any provision of a subcontract which is subject to this Contract, the dispute shall be settled by a three panel arbitration of licensed construction professionals, each side choosing one arbitrator, and those two choosing a third, neutral, arbitrator who will chair the panel. Proceedings shall be held in accordance with the California Code of Civil Procedure (§§1280 et seq.) Any party to the dispute may, in the manner provided by the Code or Rules of Court, demand arbitration. The decision in writing of the arbitrator or arbitrators shall be final and conclusive as to all parties to the dispute. Should any party fail or refuse to appear or participate in the arbitration proceeding, the arbitrator or arbitrators so appointed by decide the dispute on the evidence presented in the proceedings by the other party or parties to the dispute. The arbitrator or arbitrators shall have power to award to any party or parties to the dispute any sums for costs, expenses, and attorney's fees that the arbitrator or arbitrators may deem proper. Judgment may be entered on the award in any Court of competent jurisdiction. This provision shall be binding on Contractor, Subcontractor, and any subcontractor or sub-subcontractor who shall sign this Contract or shall sign a contract that incorporates this Contract by reference. For disputes under \$10,000.00, one (1) arbitrator is acceptable.

Notices

11. Any and all notices or other matters required or permitted by this Contract or by law to be served on, given to, or delivered to either the Contractor or Subcontractor, by the other party of this Contract shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed, or in lieu of personal service, when deposited in the United States mail, certified mail, return receipt requested, addressed to the Contractor at CATS 4 U, INC., 8755 Highway 128, Healdsburg, CA 95448, or to the Subcontractor at _____. Either party may change the party's address for these purposes by giving written notice of the change to the other party in the manner provided in this paragraph.

Sole and Only Agreement

12. This instrument constitutes the sole and only agreement of the parties to this Agreement relating to the project and correctly sets forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Contract are of no force and effect.

Liability and Guarantee

13. If Subcontractor is a corporation, any individual who signs this Agreement on behalf of Subcontractor is jointly and severally liable for any breach of this Agreement.

Attorney's Fees

14. Should any litigation be commenced between the parties to this Agreement concerning the project, any provision of this Contract, or the rights and obligations of either in relation thereto, the party prevailing in the litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for that party's attorney's fees in the litigation.

Executed this _____ day of _____, 200____, at _____ County, California.

Contractor:

Subcontractor:

CATS 4 U, INC.

By _____
Contractors' License No: 465781

"NOTICE: BY INITIALING THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE BUSINESS AND PROFESSIONS CODE OR OTHER APPLICABLE LAWS. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Contractor

Subcontractor