

Sample California
Subcontract -
All sample
attachments
available by
request.



Job No. _____
Subcontract No. _____
Cost Code _____
Cost Code _____
Vendor No. _____

SUBCONTRACT AGREEMENT

AGREEMENT made this date day of month, year

between	Subcontractor Name Subcontractor Address City, State, Zip Attn: Phone: (hereinafter "Subcontractor")	and	Swinerton Builders Address City, State, Zip Attn: Phone: (hereinafter "Contractor")
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Project is: project name	Located at: jobsite address
Owner: name	City/State/zip: city/state
Date of General Contract: date	Architect: name

Contractor and Subcontractor agree as set forth below:

- The Subcontract Documents consist of this Subcontract Agreement, Swinerton Builders Subcontract Terms and Conditions attached hereto and the Contract Documents as defined therein, and the following Attachments: (If not applicable please state "N/A")

- | | |
|---|---|
| <input type="checkbox"/> T/C Subcontract Terms and Conditions _____ | <input type="checkbox"/> I Safety, Health, Environmental Minimum/MPS _____ |
| <input type="checkbox"/> A Insurance/Bonding Requirements _____ | <input type="checkbox"/> J MBE\WBE\DVBE Construction Program _____ |
| <input type="checkbox"/> B Document List _____ | <input type="checkbox"/> K Contract Modification _____ |
| <input type="checkbox"/> C Scope of Work (ST and Trade Specific) _____ | <input type="checkbox"/> L Prevailing Wage _____ |
| <input type="checkbox"/> D Contract Recapitulation _____ | <input type="checkbox"/> M Virtual Design & Construction Guidelines _____ |
| <input type="checkbox"/> E Billing Procedures _____ | <input type="checkbox"/> N LEED Project Procedures _____ |
| <input type="checkbox"/> F Project Schedule _____ | <input type="checkbox"/> O N/A _____ |
| <input type="checkbox"/> G Project Procedures Manual _____ | <input type="checkbox"/> P N/A _____ |
| <input type="checkbox"/> H Collective Bargaining Agreement _____ | <input type="checkbox"/> Q Quality Management Requirements _____ |

- Subcontractor shall execute the following Scope of Work in accordance with the Subcontract Documents:

Brief description of scope of work (Scope of Work continues on Attachment C)

- Contractor shall pay Subcontractor for performance of the Work the Sum of \$ _____
written amount Dollars
subject to additions and deletions and retention as provided in the Subcontract Documents.
- Subcontractor shall provide 100% Performance and Payment Bonds, pursuant to the Terms and Conditions Yes No
- Subcontractor shall provide certified payroll Yes No

Accepted, upon the Terms and Conditions above-stated.

Subcontractor name _____, Subcontractor

SWINERTON BUILDERS, Contractor

By: _____

By: _____

Print Name, Title _____

Name, Title name/title _____

Subcontractor's License No: _____

Swinerton Builder's License No: number



SUBCONTRACT TERMS AND CONDITIONS

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1. CONTRACT DOCUMENTS

- (a) The term "Contract Documents" is defined to mean and include the prime or general contract between the Owner and Contractor, including all drawings and specifications, general and special or supplementary conditions and all other documents or attachments incorporated in the prime contract.
- (b) Subcontractor certifies that it is fully familiar with all the terms of the Contract Documents, the location of the job site, and the conditions under which the work is to be performed and that it enters into this Subcontract based upon its investigation of all such matters and is not relying on any opinions or representations of Contractor. This Subcontract represents the entire agreement between the parties. The Contract Documents are incorporated in this Subcontract by reference, and Subcontractor and its subcontractors will be and are bound by the Contract Documents insofar as they relate in any way, directly or indirectly, to the work covered by this Subcontract. Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Contract Documents, to the extent of the work provided for in this Subcontract, and that where reference is made to Contractor in the Contract Documents, and the work or specifications therein pertains to Subcontractor's trade, craft, or type of work, then such work or specification shall be interpreted to apply to Subcontractor instead of Contractor.
- (c) The misplacement, addition or omission of a word or character shall not change the intent of this agreement or the drawings and specifications. Drawings and specifications are complementary and are to be taken in conjunction. Subcontractor shall promptly report to Contractor in writing any discrepancies or errors which come to its attention in the Contract Documents or this agreement.
- (d) Subcontractor confirms that the Work performed by Subcontractor on the Project, prior to the date on which this Agreement is fully executed, is subject to the terms and conditions of the contract Documents and that all representations and warranties made by Subcontractor herein are retroactive to the date on which Subcontractor commenced Work on the Project.

2. PERFORMANCE OF THE WORK

- (a) Subcontractor agrees (a) that materials and equipment furnished by Subcontractor shall conform strictly to the Contract Documents, (b) to furnish all materials within the time specified herein, with all necessary certificates and permits for installation and erection of same, and to layout, install and erect same and complete said work within the time specified, according to the Contract Documents and to the satisfaction of Owner, Architect and Contractor, (c) to furnish all scaffold and equipment (including equipment for hoisting) that may be necessary to do its work expeditiously and to provide traffic and safety controls at all times while using such equipment on the job site, (d) to remove and replace any defective materials or work forthwith on notice from Architect or Contractor and to bear the expense of making good all work of others, including the Contractor, which is destroyed or damaged by such removal and replacement, (e) to perform the work entirely at Subcontractor's risk, (f) to provide all proper and sufficient and necessary safeguards against all injuries and damage whatsoever, and to comply with all safety requirements imposed by law, (g) to secure and pay for those permits required by the Contract Documents to be secured for the work applicable to this Subcontract, (h) to provide a full-time competent superintendent acceptable to Contractor who shall have authority to act on behalf of Subcontractor and who shall attend all meetings as requested by Contractor and who shall supervise the work hereunder.
- (b) Subcontractor shall prepare, and obtain approval as required by the Contract Documents for, all shop drawings, details, samples, and do all other things necessary and incidental to the prosecution of its work all in conformance with Contractor's progress schedule. Subcontractor shall submit a schedule of values for approval at the commencement of the work. Approval of shop drawings, submittals, details and samples by Contractor shall not relieve Subcontractor of its obligation to perform its work according to the terms and consistent with the intent of the Contract Documents.
- (c) The installation of the Subcontractor's work will be considered evidence of its acceptance of the conditions as being correct and to its approval. The entire responsibility for proper configurations and dimensions for prefabrications of any part of the work shall rest with Subcontractor.

3. SCHEDULE

- (a) Time is of the essence of this Agreement. Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of its work in a form and by a date acceptable to Contractor. Subcontractor shall conform to Contractor's progress schedule and all revisions or changes made thereto. Subcontractor shall prosecute its work in a prompt and diligent manner in accordance with Contractor's progress schedule without delaying or hindering Contractor's work or the work of other contractors or subcontractors. Subcontractor shall coordinate the work covered by this agreement with that of all other contractors, subcontractors, and of Contractor, in a manner that will facilitate the efficient completion of the entire work. In the event Subcontractor fails to maintain its part of Contractor's schedule, it shall, without additional compensation, accelerate the work as Contractor may direct until Subcontractor's work is in accordance with such schedule. Contractor shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time and order in which various portions of the work shall be installed and the relative priority of the work of Subcontractor and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the work of Subcontractor. Subcontractor agrees to notify Contractor, in writing within 48 hours, of any delays or anticipated delays in the performance of the work and to state

the cause of said delays. If Contractor is so notified, then, should the cause be a condition upon which the Owner permits extension of time in the Contract Documents, Contractor will apply for such extension.

- (b) No claims for additional compensation or damages for delays, including, but not limited to, delays by separate contractors, other subcontractors or Owner, shall be recoverable from Contractor, and the above-mentioned extension of time for completion shall be the sole remedy of Subcontractor; provided, however, that in the event Contractor obtains additional compensation from Owner on account of such delays, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances. In the event that Contractor prosecutes a claim against Owner for additional compensation for any delay, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorney's fees, to the extent that said claim is made by Contractor at the request of or for the benefit of Subcontractor.
- (c) If Subcontractor should default in performance of the work or otherwise commit any act which causes delay to the prime contract work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default.
- (d) Subcontractor agrees to submit on a weekly basis, and at the time of submission of progress payment requests, a report, in a form satisfactory to Contractor, itemizing on a weekly basis actual quantities of work performed and, on a daily basis, manpower and equipment employed by Subcontractor on the project.

4. **WARRANTY**

Subcontractor warrants to Owner, Architect and Contractor that all materials and equipment furnished shall be new unless otherwise specified and that all work under this subcontract shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this Paragraph 4 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

5. **CHANGES IN THE WORK**

- (a) Contractor may at any time, by written change order, and without notice to the Surety or Sureties on Subcontractor's bonds, make changes in the work to be performed hereunder, within the general scope hereof. If such changes cause an increase or decrease in the cost of the work or in the required time for its performance, an equitable adjustment shall be made. If Contractor and Subcontractor cannot agree on the cost or time of performance for the change order work, Subcontractor shall nevertheless timely perform the work as directed by Contractor.
- (b) Subcontractor shall make no changes in the work nor shall it be entitled to any additional compensation unless first authorized in writing by Contractor.
- (c) No increase in compensation of the Subcontractor or extension of time for performance shall be allowed for change order work unless the Subcontractor makes application therefor, in writing, to Contractor within seven (7) days from the date on which Subcontractor receives a notification of change in the work, (or three days prior to the time within which Contractor must submit a change order request or quotation to Owner pursuant to the terms of the Contract Documents, whichever is earlier), whether the notification instructs Subcontractor to proceed or not-to-proceed with the work. Subcontractor's application must include a detailed breakdown of all costs and any schedule delays. If Subcontractor does not submit an application in this time period, Contractor will assume that the change in the work results in no change to the compensation of the Subcontractor or the time required for the performance of work. The Contractor will quote the Owner accordingly and Subcontractor will be responsible to perform the changes defined in the change order with no adjustment to Subcontractor's compensation or time required for the performance of the work.

6. **PAYMENT**

- (a) Contractor agrees, in consideration of the full and complete performance of the work by the Subcontractor in accordance with the terms and provisions hereof, to pay or cause to be paid to the Subcontractor the Subcontract Sum. Subcontractor understands that all payments to Subcontractor will be made only from a special fund and a specific source, namely, from payments made by Owner from time to time to Contractor in respect of work performed by Subcontractor. Contractor shall make payments to Subcontractor within ten (10) days after receipt by Contractor of payment from Owner for the work of Subcontractor for which payment has been made (or within such shorter period as may be required by law).
- (b) In the event Contractor is not paid by Owner any sum claimed due by Subcontractor, then Contractor's obligation to make payment to Subcontractor with respect to the time for payment to Subcontractor shall, in addition to any other conditions set forth in this Subcontract or the Contract Documents, be subject to the following conditions precedent:
 - (i) If Contractor does not pay Subcontractor sums claimed due under the Subcontract as a result of nonpayment by the Owner and such nonpayment is thereafter "finally adjudged" (as hereafter defined) to have been caused by a breach by Contractor of the Prime Contract, then Contractor shall pay to Subcontractor such sum as is due under this Subcontract,

inclusive of and limited to simple interest thereon at the rate of 10% per annum accruing from the date such sum was first due and owing to Subcontractor as set forth above. The term "finally adjudged" as used in this Paragraph (i) shall mean the date final judgment is entered in any action by Contractor against Owner for recovery of sums due under the Prime Contract.

- (ii) If Contractor does not pay Subcontractor sums claimed due under the Subcontract as a result of nonpayment by the Owner and such nonpayment is caused by the Owner's insolvency, bankruptcy, or lack of sufficient assets, or for reasons other than a breach by Contractor of the Prime Contract as provided in Paragraph (i) above, then Subcontractor's right to payment shall be conditioned upon the passage of such time as may be reasonable and necessary for Contractor to fully exercise and exhaust to final judgment its legal, extra judicial and appellate rights and remedies for collection of sums unpaid by Owner, together with the passage of such additional time as reasonably necessary for execution by Contractor of any final judgment entered in its favor. Simple interest only on such sums as are due to Subcontractor under this Paragraph (ii) shall accrue and be payable to Subcontractor at the rate of 10% per annum commencing from the expiration of the reasonable time reserved to Contractor in this Paragraph (ii) for recovery and collection from Owner.
 - (iii) Subcontractor agrees to preserve and maintain its mechanic's lien and stop notice rights with respect to the project and to exercise and exhaust those rights in the event that Contractor does not pay Subcontractor sums due under the Subcontract as a result of payment default on the part of the Owner under the Prime Contract.
 - (iv) Nothing contained herein shall be interpreted as releasing or waiving any statutory mechanic's lien, bond or stop notice right reserved to Subcontractor under the law; provided however, that Subcontractor agrees in the event Subcontractor asserts a claim against any statutory or common law payment or performance bond issued in connection with the Project, the surety to such bond and the Contractor (if Contractor is a principal on the bond) shall have the right to assert as a defense to such claim, the nonoccurrence of any conditions to payments set forth in this Subcontract, including without limitation the failure or delay of payment to Contractor.
 - (v) If any portion of this Section 6 is determined to be void, voidable or illegal, such portion shall be deemed severed from the other portions of this Section 6 that are not void, voidable or illegal and such other portions shall be enforceable in accordance with their terms.
- (c) Contractor shall retain from progress or other payments hereunder ten percent (10%) of the amount due until after final acceptance of the work by the Architect and Owner and until ten (10) days after Contractor's receipt of final retention payment from Owner. All billings for work performed during a calendar month shall be made on Contractor's standard forms "Progress Payment Request" and "Conditional Waiver and Release Upon Progress Payment" and must include a schedule of values itemizing in detail work completed and materials and equipment put in place during such month. No other form of payment request will be accepted. Payment requests must be delivered to Contractor sufficiently early as to not delay timely submission of Contractor's progress payment requests to Owner.
 - (d) Subcontractor, as requested by Contractor, shall furnish certified copies of all payrolls in the manner prescribed by Contractor. Contractor reserves the right to require mechanics' lien, stop notice, materialman and bond claim releases (including releases from lower tier subcontractors) and payment affidavits in duplicate with each application for progress payments and on final payment. Contractor also reserves the right to require Subcontractor to execute an Unconditional Waiver and Release form as to previously paid progress payments if required by the Contract Documents or the Owner. No payment will be made until required releases and affidavits have been received and approved by Contractor.
 - (e) Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if allowed in the Contract Documents and approved in advance by the Contractor, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by Subcontractor of bills of sale or such other procedures satisfactory to Contractor to establish Owner's title to such materials or equipment or otherwise protect Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.
 - (f) Contractor may withhold or, on account of subsequently discovered evidence, may nullify, the whole or part of any payment to protect Contractor from loss on account of (a) defective work not remedied; (b) third party claims filed or reasonable evidence indicating probable filing of such claims; (c) failure of Subcontractor to make payments properly to its subcontractors or for materials, equipment, labor or fringe benefits; (d) reasonable doubt that the work under this agreement can be completed for the balance of the Subcontract Price then unpaid; (e) damage to Contractor, a separate contractor or another subcontractor; (f) reasonable doubt that the work under this agreement can be completed within the time required herein and that the balance of the subcontract price then unpaid would be sufficient to cover the actual or liquidated damages resulting from the anticipated delay; (g) penalties assessed against Contractor or Subcontractor on account of Subcontractor's failure to comply with state, federal or local laws and regulations; (h) persistent failure to carry out the work under this Subcontract in accordance with the Contract Documents; or (i) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Subcontract. When the reason(s) for withholding payment is/are rectified, such amounts as are then due and owing shall be paid or credited to Subcontractor.

- (g) Contractor reserves the right to make payment by joint check or by direct check to Subcontractor's materialmen or sub-subcontractors or to any other person or entity who has performed work or furnished materials under this Subcontract and may have a claim or a right of action against Contractor, Contractor's Surety, or the project under any law; provided, however, that Contractor shall not be obligated to exercise the right reserved herein for the benefit of any person or entity other than itself. Subcontractor agrees that Contractor shall have the right to determine the manner in which payment shall be made.
- (h) Any payment made hereunder prior to completion and acceptance of the work shall not be construed as evidence or acknowledgment of proper completion of any part of Subcontractor's work.

7. **INDEMNIFICATION**

- (a) Subcontractor specifically obligates itself to indemnify and hold Contractor harmless against claims, damages, losses, costs, expenses, and liabilities arising out of, resulting from, or relating to work performed under this agreement to the same extent that Contractor is obligated, under the Contract Documents, to indemnify Owner or any other person or entity against such claims, damages, losses, costs, expenses and liabilities. Notwithstanding the foregoing or any other provisions of the Contract Documents, Subcontractor obligates itself as a minimum, as follows:
 - (i) To protect, defend, indemnify and hold Owner and Contractor harmless from any and all claims, suits, liability, expense, penalties, fines, or damages for any alleged or actual violation or infringement by Subcontractor or Subcontractor's employees or subcontractors of any law, statute, codes, safety or occupational health orders, rules, regulations, standards, orders or any patent or patent right in connection with this agreement or anything done hereunder; and
 - (ii) To protect, defend, indemnify and hold Owner and Contractor (including their officers, agents, consultants and employees) harmless from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, (including attorney's fees) resulting from injury to or death of any person (including Subcontractor's employees) or damage to property of any kind, which injury, death or damage arises out of or is in any way connected with the performance of work under this agreement. Subcontractor's aforesaid indemnity and hold harmless obligation shall apply to any acts, omissions, willful misconduct, negligent conduct, or other fault of any person or entity, including but not limited to Subcontractor's agents, employees, subcontractors and suppliers, whether active or passive, and whether or not sole or concurrent with that of any other person or entity; except that this indemnity obligation shall not require that Subcontractor indemnify any of the persons or entities named as indemnitees herein against claims arising from his, her, or its sole negligence or willful misconduct.
- (b) With respect to claims against any person or entity indemnified in Paragraph 7(a) above, asserted by an employee of Subcontractor, by an employee of one of Subcontractor's subcontractors, by an employee of anyone directly or indirectly employed by them, or by an employee of anyone for whose acts they may be liable, the indemnity obligations under Paragraph 7(a) shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor or Subcontractor's subcontractors under worker's compensation acts, disability acts, or other employee benefit acts.
- (c) All indemnity obligations under this Subcontract shall apply to claims arising both before and after completion of the work under this agreement and to claims arising both before and after the termination of this agreement.
- (d) The indemnity obligations set forth in this or in any other provision of this agreement shall not be construed to negate, abridge, or reduce any other rights of indemnity accorded by law to the persons or entities indemnified.
- (e) Subcontractor further agrees to protect and fully indemnify the Owner and Contractor against all liability for (i) mechanic's liens, stop notice claims and payment bond claims made by any sub-subcontractor, suppliers, laborers, rental companies, or the like, and (ii) claims and liens for labor taxes, materials, appliances, equipment, and supplies whatsoever, including any costs, attorney's fees, and incidental damage resulting therefrom; and for failure by Subcontractor or any party acting on Subcontractor's behalf to comply with all laws, ordinances and regulations of all governmental authorities in any manner relating to Subcontractor's work.
- (f) Contractor shall be entitled to recovery of its attorney's fees and costs associated with enforcing any indemnity contained hereinabove.

8. **INSURANCE**

- (a) Subcontractor shall, at its own expense, procure not less than the insurance coverages and limits of insurance as specified within the Insurance Appendix, which is attached to the Subcontract Agreement and is an integral part of this agreement. Such insurance shall be maintained with insurers, policy forms and deductibles satisfactory to Contractor and the Owner. If Subcontractor uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth within the Insurance Appendix, Subcontractor agrees to amend, supplement or endorse the existing coverage to do so, at no additional cost to Contractor.

- (b) Subcontractor will also carry any other insurance specified in the Contract Documents for protection of Owner, Contractor and Subcontractor, and will keep all policies and endorsements in force as long as may be necessary to protect any of the above. Any acceptance of insurance certificates or endorsements by Contractor shall in no way limit or relieve the Subcontractor of its duties and the responsibilities assumed by him in this agreement.
- (c) At minimum, Subcontractor shall carry Workers' Compensation, General Liability and Automobile Insurances. Such General Liability coverage shall be endorsed to add the Owner and Contractor as additional insureds on the Subcontractor's policy for liabilities arising out of Subcontractor's work. The limits, scope of coverage and additional insurance requirements of the Subcontractor are more fully outlined in the Insurance Appendix.
- (d) On execution of the Subcontract and prior to commencement of work, Subcontractor shall file on forms acceptable to Contractor a certificate of insurance and additional insured endorsement properly executed and signed by an authorized representative on behalf of the insurer(s) evidencing the above coverages and conditions as specified in the Insurance Appendix. Subcontractor shall maintain the required insurance and additional insureds for the period of time for which the Subcontractor may be held legally liable for its work. Also, the required certificates of insurance and additional insured endorsements shall be provided and maintained by the Subcontractor during the warranty period of Subcontractor's work. Subcontractor further agrees, upon written request by Contractor or Owner, to furnish copies of any insurance policies, certified by an authorized representative of the insurer(s).
- (e) Subcontractor shall be responsible for payment of the deductible for any Builder's Risk/Course of Construction Insurance ("Builder's Risk") claim regardless of whether such coverage is procured by the Owner, Contractor or Subcontractor. Subcontractor shall be responsible for payment of the deductible in proportion to its percentage of the entire loss (covered under the Builder's Risk Policy), as calculated prior to the application of the policy deductible.

9. **BONDS**

- (a) Any indemnities or bonds provided in the Contract Documents are hereby assumed by the Subcontractor to the extent of its work and it hereby agrees to furnish, concurrently with the execution hereof, a performance bond in an amount equal to full Subcontract Sum and a payment bond in an amount equal to full Subcontract Sum with a corporate Surety or Sureties listed in the most current United States Department of the Treasury-Federal Register. Bonds shall contain terms and be in a form satisfactory to Contractor and Owner conditioned upon faithful performance by him of each and all of the provisions hereof. Contractor reserves the right to require performance and payment bonds on any subcontract even though not required by the Contract Documents. If Subcontractor fails to provide the bonds specified herein within three (3) days after demand by Contractor, Contractor shall have the right to terminate this agreement and Subcontractor shall have no right to payment for any work performed prior to such termination.
- (b) If change order work results in an increase in the Subcontract Sum, Subcontractor shall provide bond riders evidencing that the penal sum of the bonds has been increased to equal the adjusted Subcontract Sum. The cost of such increase in bond coverage shall be at Subcontractor's expense and included in said change orders.

10. **SAFETY**

- (a) Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention and safety program of Owner and Contractor. Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, standards and statutes.
- (b) Subcontractor will furnish Contractor with copies of all accident reports, promptly reporting any accident or injury to any of the employees, agents or servants of Subcontractor used or utilized on this project.
- (c) Subcontractor shall furnish Contractor with current Material Safety Data Sheets for hazardous materials prior to delivery of any hazardous materials to the job site. The Subcontractor shall inform the Contractor of any precautionary measures to be taken to protect employees.
- (d) Subcontractor agrees that it is Subcontractor's sole responsibility to employ labor in accordance with all applicable safety codes, including but not limited to State and Federal Safety Codes, and under conditions satisfactory to Contractor.

11. **CLEAN-UP**

At all times during the course of performing the work under this Subcontract, Subcontractor shall perform its work, including any necessary clean-up, so as to maintain the Project site in a clean, safe and orderly condition. Upon completion of the work under this Subcontract, Subcontractor shall (a) clean all surfaces, fixtures, equipment and other items which are a part of the work under this Subcontract or may have been soiled by such work, and (b) remove from the job site and legally dispose of all temporary structures, debris, waste, and other items incidental to Subcontractor's operations, including all hazardous materials, which do not constitute a permanent part of the Project. Subcontractor shall follow all directions of Contractor in regard to clean-up both during the course of

the work and at the completion of Subcontractor's work. Contractor shall be entitled to backcharge Subcontractor for the costs of clean up if Subcontractor fails to clean up its work within forty-eight (48) hours after demand by Contractor.

12. **PROTECTION OF WORK**

- (a) Subcontractor shall effectually secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance by Architect, Owner and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the work and the workers of Contractor, Owner and other subcontractors from its operations.
- (b) Subcontractor shall be liable for any loss or damage to its work in place or its materials on the job site. Subcontractor shall also be liable for any loss or damage to any work in place or any damage to equipment and/or materials on the job site caused by him or its agents, employees or guests.

13. **USE OF CONTRACTOR'S EQUIPMENT**

In the event Subcontractor shall use Contractor's equipment, materials, labor, supplies or facilities, Subcontractor shall reimburse Contractor at a predetermined rate. Further, Subcontractor assumes all liabilities connected therewith and all responsibility for physical damage to such equipment, materials, labor, supplies, or facilities used by Subcontractor or its agents, employees, or permittees. In the event that Contractor's employees are used by Subcontractor, Subcontractor shall have full responsibility for all acts or omissions of Contractor's employees with regard to Subcontractor's use or employment of them. Subcontractor accepts any and all of Contractor's equipment, materials, labor, supplies or facilities as furnished. The use by Subcontractor of Contractor's equipment or employees must be approved by Contractor.

14. **CLAIMS AND DISPUTES**

All claims by Subcontractor relating to Subcontractor's work, including without limitation, any claimed adjustment to the Subcontract Price and any claimed delay in prosecution of Subcontractor's Work (collectively a "Claim"), shall be submitted to Contractor within seventy-two (72) hours after the occurrence of the event giving rise to the Claim (or prior to the time within which Contractor must submit a claim to the Owner pursuant to the terms of the Contract Documents, whichever is earlier). Claims must be in writing in sufficient detail, dated, and signed by an officer or authorized representative of Subcontractor. Subcontractor's Claims will be allowed by Contractor if and to the extent they are allowed by Owner. Any Claim not timely submitted shall be deemed waived by Subcontractor. Unless otherwise agreed in writing, Subcontractor shall continue to prosecute Subcontractor's Work and maintain the Project Schedule pending resolution of any Claim. Any failure of Subcontractor to continue diligent and timely prosecution of Subcontractor's Work shall be deemed a material breach of the Subcontract, entitling Contractor to all remedies provided hereunder, as well as other remedies which may exist as a matter of law.

15. **CLAIMS RESOLUTION PROCEDURE**

- (a) In the event of any dispute or claim between Contractor and Owner which directly or indirectly involves Subcontractor's Work, or in the event of any dispute or claim between Contractor and Subcontractor which directly or indirectly involves Subcontractor's Work, or in the event of any dispute or claim between Contractor and Subcontractor which directly or indirectly involves a claim against Owner for either additional compensation or an extension of time under the Contract Documents, Subcontractor agrees to be bound to Contractor and Contractor agrees to be bound to Subcontractor by all decisions, findings or determinations made by the person so authorized in the Contract Documents, by an administrative agency, court of competent jurisdiction, or arbitration panel, whether or not Subcontractor is a party to the proceedings before said person, agency, court or panel. If any dispute or claim is prosecuted or defended by Contractor, Subcontractor agrees to cooperate fully with Contractor and to furnish all documents, statements, witnesses and other information required by Contractor for such purpose and shall pay or reimburse Contractor for all expenses and costs, including reasonable attorney's fees, incurred in connection therewith to the extent of Subcontractor's interest in such claim or dispute. It is expressly understood and agreed in connection with the determination of such claims or disputes that, as to any and all work done and agreed to be done by Subcontractor, and as to any and all damages, if any, incurred by Subcontractor in connection with the Project, Contractor shall never be liable to Subcontractor to any greater extent than Owner is liable to Contractor. If a dispute between Contractor and Subcontractor is not subject to the dispute resolution procedure set forth in the Contract Documents, then the dispute resolution procedure set forth in paragraphs (b) and (c) below shall apply.
- (b) **MEDIATION**. Subcontractor agrees, upon the request of Contractor, to submit a dispute to a mediator and to negotiate in good faith to reach an agreement with respect to the dispute. Any such mediation proceedings shall be under the auspices of and governed by the rules of the Construction Industry Mediation Rules of the American Arbitration Association. In such event, neither party shall proceed with arbitration or litigation until the completion of mediation proceedings. The costs of the mediator shall be shared equally by the parties.
- (c) **ELECTION OF ARBITRATION OR LITIGATION**. In the event of a dispute between contractor and Subcontractor, contractor may elect to arbitrate such dispute in the manner provided below, or to litigate the dispute in a forum with jurisdiction to decide the dispute. Any arbitration proceeding shall be conducted in accordance with the Construction Industry Rules of the American Arbitration Association, provided, however, that only one arbitrator shall hear the dispute. The award rendered by the arbitrator shall be final and judgment may be entered upon in accordance with applicable law in any court having jurisdiction.

- (d) **ENFORCEABILITY OF ELECTIONS/WAIVER OF JURY.** If the elections afforded Contractor in paragraphs (b) and (c) above hereof are not enforceable, then both parties shall be bound to arbitrate all disputes in which the disputed amount is less than \$50,000, and shall litigate any dispute involving a higher amount. In the event that any dispute between the parties is litigated in any court in any jurisdiction, the parties hereby agree to waive the right to a jury trial, and agree that their dispute will be determined by a judge (the parties specifically acknowledging that the nature and complexity of construction disputes is such that matters are better and more efficiently decided by a judge rather than a jury).
- (e) **FEDERAL ARBITRATION ACT.** The arbitration rights set forth herein shall be specifically enforceable under the Federal Arbitration Act, 9 U.S.C. 1, et seq., the parties agreeing that the transactions contemplated hereunder will have an effect on interstate commerce.

16. **CONTRACTOR'S REMEDIES**

- (a) If Subcontractor or any of Subcontractor's subcontractors, suppliers, materialmen or laborers, shall at any time:
- (i) refuse or neglect to supply a sufficient number of properly qualified workers or a sufficient quantity of materials of proper quality;
 - (ii) abandon Subcontractor's work or fail in any respect to promptly and diligently prosecute Subcontractor's work;
 - (iii) fail to promptly pay subcontractors, suppliers, materialmen, rental companies or laborers;
 - (iv) fail to accelerate Subcontractor's work as required by Paragraph 3 hereof;
 - (v) give Contractor a reasonable basis to doubt that Subcontractor's work can be completed for the unpaid portion of the Subcontract Sum or within the required time;
 - (vi) declare bankruptcy or make a general assignment for the benefit of creditors or files for bankruptcy, assigns assets for the benefit of creditors, becomes insolvent or be unable to pay its obligations as they mature;
 - (vii) otherwise fail to perform any of the agreements and obligations set forth in the Subcontract, these Terms and Conditions or the Contract Documents; or
 - (viii) default in the performance of any contract or agreement with Contractor, whether related to the Project or otherwise; then Subcontractor shall be in default herein.
- (b) In any such event, Contractor may pursue any remedies available by common law or statute, including but not limited to one or more of the following:
- (i) withhold any sums due or thereafter to become due to Subcontractor under the Subcontract and any other contract, whether related to the Project or otherwise and during such period such withheld amounts shall not accrue interest;
 - (ii) provide and/or supplement any labor and materials as Contractor shall determine to cure such default and deduct the cost thereof from any money then due or thereafter to become due to Subcontractor under the Subcontract or any other contract, agreement, or otherwise;
 - (iii) terminate the Subcontract, in which case all contracts whether written or oral between Subcontractor and persons or entities providing labor, material or equipment pertaining to Subcontractor's work shall be deemed assigned to Contractor, and Subcontractor hereby appoints Contractor as its attorney-in-fact to enforce the provisions of such contracts, provided that nothing herein shall obligate Contractor to honor such contracts, and;
 - (iv) take possession of all the materials, tools, equipment and appliances belonging to Subcontractor at the Project site without any further compensation to Subcontractor, and either complete Subcontractor's work or contract with any other person or persons to complete Subcontractor work and provide the material therefore; in which case if the unpaid portion of the amount to be paid under the Subcontract exceeds the charges, expenses and damages sustained by Contractor in completing the work or as a result of such defaults, such excess shall be paid by Contractor to Subcontractor, but if such charges, expenses, and damages exceed said unpaid portion, Subcontractor shall pay the difference to Contractor immediately upon demand; or
 - (v) offset and apply any amounts due Contractor as a result of such default against any earned but unpaid amounts owing to Subcontractor by Contractor under the Subcontract, including without limitation, any retainage held by Contractor, any amounts owed to Subcontractor under any other contract, whether related to the Project or otherwise.

Prior to exercising the remedies in this Section 16, Contractor shall provide Subcontractor written notice of default and not less than forty-eight (48) hours to cure such default. Subcontractor shall have the opportunity to remedy, to Contractor's satisfaction, the default, deficiency or failures which are the basis of Contractor's termination notice within the forty-eight (48) hour notice

period. Contractor's remedies are cumulative, and the exercise of one remedy shall not restrict Contractor, at the same time or thereafter, from exercising any other remedy set forth herein or provided by applicable law.

In the event a termination of this Subcontract is found not to have been warranted under this or any other provision of this Subcontract, the total compensation and damages that Subcontractor is entitled to recover on account of such termination shall be limited to the compensation that would have been payable to Subcontractor under the provisions of this Subcontract as if the Subcontract has been terminated for Contractor's convenience pursuant to subparagraph (c) of this Paragraph 16 at that point.

- (c) Contractor may at any time and for any reason terminate Subcontractor's services and work for Contractor's convenience. Such termination shall be by written notice to Subcontractor at Subcontractor's place of business.

Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the work and the placing of orders for materials, equipment and supplies in connection with the performance of this Subcontract, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor, or at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such work as may be necessary to preserve and protect the work already in progress and to protect material and equipment on the Project site or in transit thereto.

Upon such termination, Subcontractor shall be entitled to payment of the following amounts, which shall constitute full satisfaction of all claims by Subcontractor for payment on account for work performed under this Subcontract: (1) the actual cost of the work completed in conformity with this Subcontract through the date of termination; plus (2) such other costs actually incurred by Subcontractor as are payable to Contractor under the Prime Contract and approved by Owner; plus (3) a reasonable sum for overhead and profit. There shall be deducted from the amount determined as provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of termination.

Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages in the event of such termination and payment.

- (d) Upon the appointment of a receiver for Subcontractor or upon Subcontractor making an assignment for the benefit of creditors or if Subcontractor seeks protection under the Bankruptcy Code or commits any other act of insolvency, Contractor may terminate this Agreement upon giving forty-eight (48) hours written notice, by certified mail, to Subcontractor and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to Subcontractor, Contractor may terminate this subcontract by giving forty-eight (48) hours written notice, by certified mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee:
- (i) promptly cures all defaults;
 - (ii) provides adequate assurance of future performance;
 - (iii) compensates Contractor for actual pecuniary loss resulting from such defaults; and
 - (iv) assumes the obligations of Subcontractor within the statutory time limits.

17. **LABOR RELATIONS AND SUBCONTRACTOR EMPLOYEES**

- (a) Subcontractor shall comply with all of the provisions of any collective bargaining agreements executed by or on behalf of Contractor. Contractor shall have no liability to Subcontractor for any costs, expenses or liability resulting from any stoppage of work, however caused, arising out of a labor dispute or controversy. Subcontractor shall be liable for any and all costs, including but not limited to compensatory and liquidated damages, resulting from work stoppages or other labor disputes associated with Subcontractor, Subcontractor's employees or the subcontractor(s) or suppliers of Subcontractor. Should there be picketing on Contractor's job site and Contractor establishes a reserved gate, it shall be the obligation of Subcontractor to continue the proper performance of Subcontractor's work without interruption or delay.
- (b) Subcontractor shall employ only competent, well-disciplined workers to perform the Work hereunder and Subcontractor agrees to immediately remove and replace any employee(s), including Subcontractor's superintendent, whom Contractor, Owner or Architect deems unsatisfactory.

18. **MISCELLANEOUS PROVISIONS**

- (a) **ARCHITECT**

The term "Architect" or "Architect/Engineer" as used herein includes anyone appointed to be the Owner's designated representative to supervise on its behalf the work of the Contractor.

(b) **TAXES**

The compensation payable to Subcontractor as herein provided includes all sales, gross receipts, excise and other taxes and is not subject to any addition on account of taxes which are now or may hereafter be levied. It is hereby agreed that Subcontractor is an independent contractor within the purview of the Internal Revenue Code, the Federal Social Security Act, and any and all unemployment insurance laws, both State and Federal, and is solely responsible to the Federal and State Government for all payroll taxes, deductions, and contributions under such laws.

(c) **ASSIGNMENT**

Any assignment, subletting or delegation, by operation of law or otherwise, in whole or in part, by Subcontractor of this agreement, of the work to be performed or of any claims arising hereunder without the prior written consent of Contractor shall be void.

Contractor shall not recognize or be bound by any assignment of any right to payment earned or to be earned by performance hereunder by Subcontractor unless and until Contractor shall receive written notice which reasonably proves the assignment and identifies the rights assigned. Any assignment hereunder shall be subject to, and Contractor reserves, all rights and remedies possessed by or available to Contractor by law or under this agreement as against Subcontractor, its sureties and assigns including, without limitation, rights of set-off, to retain moneys, to amend or modify this agreement, and to assert all other defenses and claims whether or not arising under this agreement.

The making of any assignment by Subcontractor or any consent thereto by Contractor shall in no event relieve Subcontractor or its sureties hereunder of any of their obligations, duties, responsibilities or liabilities.

(d) **FAIR EMPLOYMENT AND AFFIRMATIVE ACTION**

The Subcontractor agrees to be bound by and comply with all applicable Fair Employment Practices, Provisions and Regulations of Federal, State or other Governmental authority having jurisdiction including the provisions of Executive Order No. 11246, and Title VII of the Civil Rights Act of 1964, including amendments or revisions thereof, relating to nondiscrimination in employment, and any affirmative action provisions (including MBE or WBE requirements) contained in the Contract Documents or required by applicable law.

(e) **ENTIRE AGREEMENT**

The Subcontract Documents represent the entire agreement between the parties and supersede any prior representation, statement or agreement, oral or written, with regard to the subject matter herein. No modification hereto shall be valid unless it is in writing and signed by both parties.

(f) **WAIVER**

Waiver by Contractor of any particular default by Subcontractor shall not affect or impair Contractor's rights in respect to any subsequent default of the same or of a different nature.

(g) **NOTICES**

All notices provided hereunder shall be in writing and mailed to the other party at the address stated on the Subcontract Agreement.

(h) **CONTRACTOR'S LICENSE**

Contractors are required by law to be licensed and regulated by the Contractors State License Board. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, 9821 Business Park Drive, Sacramento, California 95827. Mailing Address: P.O. Box 26000, Sacramento, California 95826.

(i) **SEVERABILITY**

If any term of provision of this Subcontract Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of the Subcontract Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Subcontract shall be valid and be enforced to the fullest extent permitted by law.

(j) **GOVERNING LAW AND VENUE**

This Subcontract Agreement shall be construed and enforced in accordance with the laws of the State of California, and venue for any legal action shall be in California.

Job Name/Location
Swinerton Builders Job No. _____
Date
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These requirements are **SPECIFIC** to this job,
as per Owners requirement. **Please submit a
Certificate and Endorsement specific to this job.**

ATTACHMENT "A" INSURANCE & BONDING APPENDIX

A. Insurance Requirements

1. Subcontractor shall, at its own expense, maintain in effect not less than the following coverages and limits of insurance which shall be maintained with insurers, policy forms and deductibles satisfactory to Swinerton Builders and the Owner. If Subcontractor uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, Subcontractor agrees to amend, supplement or endorse the existing coverage to do so, at no additional cost to Swinerton Builders.

a) **Workers' Compensation and Employer's Liability Insurance**

State Workers' Compensation - coverage as required by law.

Employer's Liability with limits not less than each of the following:

\$1,000,000	each accident for bodily injury;
\$1,000,000	policy limit for bodily injury by disease;
\$1,000,000	each employee for bodily injury by disease.

Waiver of Subrogation Endorsement is required in favor of Swinerton Builders and the Owner.

b) **General Liability and Umbrella/Excess Insurance**

Subcontractor shall carry a Commercial General Liability Policy provided on or equivalent to ISO CGL Form No. CG 00 01 10 01. Policy must include coverage for premises operations, completed operations, contractual liability and broad form property damage. Subcontractor shall provide limits as required for your trade in accordance with subsection i or ii below. If the policy is in excess of a Subcontractor SIR (self-insured retention), the amount of such SIR must be clearly identified on the Certificate of Insurance. Swinerton Builders reserves the right to reject the application of such SIR, or require the Subcontractor to provide a bond on the SIR at no additional cost to Swinerton Builders.

- i) **Specified Trades:** (Defined as Excavation, Shoring, Demolition, Crane related work, Exterior Skin, Steel Erection, Roofing, Waterproofing, Fire Protection, Mechanical, Electrical and **Plumbing**, Metal Decking over three (3) stories, or other trades as Swinerton may specify). Swinerton Builders reserves the right to amend the required limits of insurance commensurate with the Subcontractor's risk. The Limits of Liability for Bodily Injury and Property Damage under this section shall not be less than:

\$5,000,000	each Occurrence;
\$5,000,000	Products/Completed Operations Aggregate;
\$5,000,000	General Aggregate – Per Project -.

- ii) **All Other Trades:** The Limits of Liability for Bodily Injury and Property Damage under this section shall not be less than:
- | | |
|-------------|--|
| \$2,000,000 | each Occurrence; |
| \$2,000,000 | Products/Completed Operations Aggregate; |
| \$2,000,000 | General Aggregate – per project-. |
- c) **Automobile Insurance**
\$1,000,000 C.S.L. (Combined Single Limit) and shall cover owned, hired and non-owned automobiles.
- d) **Umbrella/Excess Insurance** – If needed to meet the requirements of a., b., and c above.
- e) **Professional Liability Insurance (Errors and Omissions)**
All Subcontractors with design responsibility shall provide the following additional coverage: A Professional Liability Policy (Errors and Omissions) with Limited Contractual Liability Coverage in favor of Swinerton Builders and Owner and a deductible no greater than \$25,000 per claim. Any SIR must be clearly identified as such on the Certificate of Insurance and is subject to Swinerton’s approval. This insurance shall be maintained for not less than the duration of the project and five (5) years following completion of construction. Retroactive date of such policy must be on or before the date Subcontractor began offering professional services. Limit of liability shall be not less than \$1,000,000 Per Claim.
- f) **Asbestos, Lead, and/or Remediation Trades**
Asbestos and/or Lead Liability: If work contemplates asbestos or lead abatement, Subcontractor shall provide such insurance coverage on an occurrence basis for claims arising out of abatement, removal, storage, transportation and disposal activities with a limit of liability not less than \$5,000,000 per occurrence.
Environmental Impairment Liability: If work contemplates handling or hauling other pollutants, subcontractor will provide insurance to coverage, among other things, claims arising out of all hazardous material and hazardous waste remediation, storage, transportation, and disposal. Such insurance shall be written on an occurrence basis with no sunset clause, or on a claims-made basis with a minimum 5 year extended reporting period (tail) with limits of not less than \$5,000,000 each Occurrence (if written on an occurrence basis) or, \$5,000,000 each Claim (if written on a claims-made basis).

2. The General Liability and Umbrella/Excess and shall contain the following:
 - a) Project Specific Additional Insured Listing:
 - Swinerton Builders, its parent and affiliated companies;
 - Owner;
 - Other parties as required by Owner and/or necessitated by construction activities.
 - b) An Additional Insured Endorsement adding as an additional insured each party noted in Section 2a of this attachment, or otherwise identified in the Prime Contract, as respects liabilities arising out of Subcontractor's work under this contract (including Products/Completed Operations) on the ISO CGL Endorsement CG 20 10 11 85 "Owners, Lessees or Contractors (Form B)", or the two ISO CGL Endorsements CG 20 10 10 01 and CG 20 37 10 01; these two endorsements together are an acceptable alternate to the "11 85" form.
 - c) Primary Insurance Clause - The insurance coverage required hereunder and/or provided by the Subcontractor apply on a primary basis with any other insurance policy(s) of Swinerton Builders, the Owner and those additional insured entities as identified in the Prime Contract being excess and not contributing. Such Primary Insurance Clause shall be included on the Additional Insured Endorsement.
 - d) Waiver of Subrogation Endorsement is required in favor of Swinerton Builders and the Owner.
 - e) Cross Liability coverage as would be achieved under the standard ISO separation of insureds clause.
 - f) Provision or endorsement stating that such insurance, subject to terms and conditions usual to Standard General Liability and Umbrella/Excess Liability Policies, applies to the liability assumed by Subcontractor under this contract.
3. Modified Occurrence Liability Policies are **not** acceptable. Claims Made General Liability Policies are **not** acceptable. Subcontractors providing such insurance will be considered in default of the requirements of this Subcontract Agreement.
4. On execution of the Subcontract and prior to commencement of work, Subcontractor shall file on forms acceptable to Swinerton Builders a certificate of insurance properly executed and signed by an authorized representative on behalf of the insurer(s) evidencing the above coverages and conditions to Swinerton Builders. Subcontractor shall maintain the required Insurance and Additional Insureds for the period of time for which the Subcontractor may be held legally liable for its work. Also, the required Certificates of Insurance and Additional Insured Endorsements shall be provided and maintained during warranty period of the Subcontractor's work. Subcontractor further agrees, upon written request by

Job Name/Location
Swinerton Builders Job No. _____
Date
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**These requirements are SPECIFIC to this job,
as per Owners requirement. Please submit a
Certificate and Endorsement specific to this job.**

Swinerton Builders or Owner, to furnish copies of such policies, certified by an authorized representative of the insurer(s).

5. All Insurance coverage provided by the Subcontractor shall be through acceptable insurance carriers licensed in the state(s) where work is being performed with a minimum A.M. Best Company standard of A-:VII or greater.
6. All Subcontractor's policies shall contain an endorsement providing that written notice shall be given to Swinerton Builders and Owner at least **thirty (30)** days prior to termination, non-renewal, cancellation or reduction of coverage in the policy. The certificate must have the following cancellation wording crossed out: "...ENDEAVOR TO..." and "...BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES."
7. Subcontractors will be required to participate in Builder's Risk policy deductibles as outlined in Subcontract terms.

B. Bonding Requirements (If required in Subcontract Agreement)

1. Payment and Performance Bonds to be in the amount of 100% of the contract.
2. Swinerton Builders bond forms are issued with Subcontract Agreements. These are the **only** forms that will be accepted and must appear without revision. Forms must be signed and notarized for both Principal and Surety. Exhibit A-2 is samples of the payment and performance bonds.
3. Surety Bond Carriers will be deemed acceptable if listed in the most current United States Department of the Treasury – Federal Register for a treasury limit not less than the amount of the contract or if approved by Swinerton Builders.
4. For all change orders causing additions greater than either \$100,000 or 50% of the previously bonded amount of the subcontract, Subcontractor will be responsible for obtaining Consent of Surety in the form of an increase rider which shall increase the original bond to an amount equal to the new subcontract amount.
5. Premiums are to be paid by Subcontractor.

These requirements are SPECIFIC to this job,
 as per Owners requirement. Please submit a
 Certificate and Endorsement specific to this job.

Sample Certificate of Insurance

Subcontractor's
 Insurance Broker

Name of
 Subcontractor
 (It should
 match the
 name as
 written in the
 Subcontract)

Claims Made
 or Modified
 Occurrence
 is **not**
 acceptable

This section
 is to
 evidence
 Professional
 Liability or
 Pollution
 Liability if
 required

This section
 should
 reference the
 job number,
 project name,
 and/or location

ACORD		CERTIFICATE OF LIABILITY INSURANCE			DATE (MM/DD/YY)
PRODUCER Agency Manager, Inc. 2500 Bond Street University Park, IL 60466 Phone No. 800-999-5368 Fax No.		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			08/02/01
INSURED Subcontractor 123 Main Street San Francisco, CA 45678		COMPANIES AFFORDING COVERAGE COMPANY A Selective Insurance Company COMPANY B Indemnity Insurance COMPANY C State Fund COMPANY D			
COVERAGES THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT	123456789	08/01/06	08/01/07	GENERAL AGGREGATE \$ 2,000,000
					PRODUCTS - COM/OP AGG \$ 1,000,000
					PERSONAL & ADV INJURY \$ 1,000,000
					EACH OCCURRENCE \$ 1,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTO <input checked="" type="checkbox"/> NON-OWNED AUTOS	234567891	08/01/06	08/01/07	COMBINED SINGLE LIMIT \$ 1,000,000
					BODILY INJURY (Per person) \$
					BODILY INJURY (Per accident) \$
					PROPERTY DAMAGE \$
B	<input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO	456789123	08/01/06	08/01/07	AUTO ONLY - EA ACCIDENT \$
					OTHER THAN AUTO ONLY \$
					EACH ACCIDENT \$
					AGGREGATE \$
C	<input checked="" type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	345678912	08/01/06	08/01/07	EACH OCCURRENCE \$ 1,000,000
					AGGREGATE \$ 1,000,000
					<input checked="" type="checkbox"/> WC STATU- TORY LIMITS <input type="checkbox"/> OTH- ER
					EL EACH ACCIDENT \$ 1,000,000
OTHER					EL DISEASE - POLICY LIMIT \$ 1,000,000
					EL DISEASE - EA EMPLOYEE \$ 1,000,000
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS General Liability - Certificate Holder is an Additional Insured per attached Form CG 20 10 11 85. RE: Much Needed Renovation Project Job No					
CERTIFICATE HOLDER Swinerton Builders		CANCELLATION OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.			
ACORD 25-S (1/95)		AUTHORIZED REPRESENTATIVE _____			

Current dates
 are required

The two "each
 occurrence"
 boxes should
 total at least as
 much as
 required in
 your contract

The totals in
 each box
 should be at
 least \$1 million

This should name
 Swinerton Builders with
 the full address

Signed by the
 Broker only

This wording
 should be "X"d
 out

These requirements are SPECIFIC to this job,
as per Owners requirement. Please submit a
Certificate and Endorsement specific to this job.

Sample Additional Insured Endorsement

*This policy number
should be the same as
that listed for General
Liability on the Certificate
of Insurance*

*The Named Insured
should always be the
same as the "Insured"
name on the Certificate
(It should also read
exactly the same as in
the Subcontract
Agreement)*

POLICY NUMBER : COMMERCIAL GENERAL LIABILITY
NAMED INSURED:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS (Form B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART .

Name of Person or Organization:

SCHEDULE

Swinerton Builders, its parent and
affiliated companies; Owner; other
parties as required by Owner and/or
necessitated by construction activities

(If no entry appears above, information required to complete this endorsement will be shown in the
Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization
shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or
for you.

It is further agreed that such insurance as is afforded by this policy for the benefit
of the above Additional Insured(s) shall be primary insurance as respects any
claim, loss or liability arising out of the Named Insured's operations, and any
other insurance maintained by the Additional Insured(s) shall be excess and
non-contributory with the insurance provided hereunder.

It is agreed that the above policy contains a standard cross liability or severability
of interest clause.

CG 20 10 11 85

Copyright, Insurance Services Office, Inc., 1984

*Should list out the
project, name,
location, and/or
project number that
the Subcontract
Agreement refers to*

*This is where the
Additional Insureds
should be listed
exactly as noted here*

*The primary wording, as required
in the contract, is typed
onto the Additional Insured
Endorsement here. The
severability of interest clause is
often typed here too.*

*This is the standard
endorsement number
(CG 20-10) and 11 85
edition date is required by
the Subcontract
Agreement*

Job Name/Location
Swinerton Builders Job No. _____
Date
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**These requirements are SPECIFIC to this job,
as per Owners requirement. Please submit a
Certificate and Endorsement specific to this job.**

BOND NO. _____
PREMIUM _____

SUBCONTRACT PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, That we «**SUBCONTRACTOR**», as Principal, and _____ as Surety, are held and firmly bound unto **SWINERTON BUILDERS** as Obligee, in the penal sum of «**CONTRACTAMT1**» and no/100 dollars (\$«**CONTRACTAMT2**») lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH, That Whereas, the Principal entered into a certain agreement which is hereto attached and made a part hereof, with the Obligee dated «**SUBCONTRACTDATE**», for labor, material, equipment and services, complete plans, specifications, addenda thereto and in accordance with Subcontract No. «**SUBCONTRACTNO**» being part of the work covered by a contract dated on or about «**CONTRACTDATE**», between «**OWNERNAME**», «**OWNERADDRESS**», hereinafter called Owner, and the said Obligee for «**PROJECTNAME**», «**PROJECTADDRESS**», which contract and the specifications and general conditions thereof are hereby incorporated herein and shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, if the said Principal shall pay promptly and in full the claims of all persons, firms or corporations, performing labor or furnishing equipment, materials, or supplies incurred in connection with the contract to be performed under said agreement, and shall indemnify and save harmless the Obligee from all loss, liability, costs, damages, penalty, attorney's fees or expenses for all taxes, insurance premiums, any and all applicable contributions, allowances or other payments or deductions, however termed, required by statute or union labor agreement, including voluntary payment thereof by the Obligee necessary to insure orderly prosecution of work or other items or services used in, upon or for or incurred in connection with the contract to be performed under said agreement, then this obligation shall be of no effect, but otherwise it shall remain in full force and effect.

It is a condition hereof that any change, alteration, modification or amendment of any nature whatsoever that may be made in the terms of said agreement, any change in the character or scope of the work to be performed, or the method of performance, under said agreement or modification of said agreement or in the time for completion thereof, any change in the manner, time or amount of payment as provided therein, any change of any nature whatsoever that may be made in the terms of the contract between the said Obligee and the Owner or any change that may be made in the performance of the work under said agreement by the Principal, assented to by the Obligee, whether made under express agreement or not, may be made without notice to the Surety and without affecting the obligations of the Surety on this bond and without requiring the consent of the Surety, and no such change or changes shall release the Surety from any of its obligations hereunder, the Surety hereby consenting to and waiving notice of any such change, alteration, modification or amendment.

Subject to the priority of the named Obligee with respect to recovery up to the penal sum of this bond, persons who have supplied or furnished labor, material machinery, equipment or supplies to the Principal for use in the prosecution of the work provided for in said contract shall have a direct right of action against said Principal and Surety under this bond.

IN WITNESS WHEREOF, the said Principal and Surety have hereunto set their hands and seal, this _____ day of _____, 20 _____.

9/06
Exhibit A-2

PRINCIPAL: _____
Signature
Name/Title: _____
SURETY: _____
Signature
Name/Title: _____

Job Name/Location
Swinerton Builders Job No. _____
Date
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**These requirements are SPECIFIC to this job,
as per Owners requirement. Please submit a
Certificate and Endorsement specific to this job.**

BOND NO. _____
PREMIUM _____

SUBCONTRACT PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That we «**SUBCONTRACTOR**», as Principal, and _____ as Surety, are held and firmly bound unto **SWINERTON BUILDERS** as Obligee, in the penal sum of «**CONTRACTAMT1**» and no/100 dollars (\$«**CONTRACTAMT2**») lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH, That Whereas, the Principal entered into a certain agreement which is hereto attached and made a part hereof, with the Obligee dated «**SUBCONTRACTDATE**», for labor, material, equipment and services, complete per plans, specifications, addenda thereto and in accordance with Subcontract No. «**SUBCONTRACTNO**» being part of the work covered by a contract dated on or about «**CONTRACTDATE**», between «**OWNERNAME**», «**OWNERADDRESS**» hereinafter called Owner, and the said Obligee for «**PROJECTNAME**», «**PROJECTADDRESS**» which contract and the specifications and general conditions thereof are hereby incorporated herein and shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, if the said Principal shall fully indemnify and save harmless the Obligee from all loss, liability, costs, damages, penalty, attorney's fees or expense which Obligee may incur by reason of failure to well and truly keep and perform each, every and all of the terms and conditions of said agreement on the part of the said Principal to be kept and performed, including but not limited, to completion within the time specified of all work covered by said agreement, performance of all obligations, and guarantees of the Obligee relating to such work under the contract with the Owner; then this obligation shall be of no effect, but otherwise it shall remain in full force and effect.

It is a condition hereof that any change, alteration, modification or amendment of any nature whatsoever that may be made in the terms of said agreement, any change in the character or scope of the work to be performed, or the method of performance, under said agreement or modification of said agreement or in the time for completion thereof, any change in the manner, time or amount of payment as provided therein, any change of any nature whatsoever that may be made in the terms of the contract between the said Obligee and the Owner or any change that may be made in the performance of the work under said agreement by the Principal, assented to by the Obligee, whether made under express agreement or not, may be made without notice to the Surety and without affecting the obligations of the Surety on this bond and without requiring the consent of the Surety, and no such change or changes shall release the Surety from any of its obligations hereunder, the Surety hereby consenting to and waiving notice of any such change, alteration, modification or amendment.

It is a further condition hereof that no other than the named Obligee and the successors, administrators, or assigns of the Obligee shall have the right of action under this bond.

IN WITNESS WHEREOF, the said Principal and Surety have hereunto set their hands and seal, this _____ day of _____, 20 _____.

9/06
Exhibit A-2

PRINCIPAL: _____
Signature

Name/Title: _____

SURETY: _____
Signature

Name/Title: _____