

SHORT FORM PRIME CONTRACT BETWEEN OWNER & CONTRACTOR

This Agreement ("Contract") is made this _____ day of _____, 20____, between _____ ("Contractor") and _____ ("Owner") at _____.

The work described in Section 1 below shall be performed in accordance with all plans, specifications and other Contract documents for the project known as:

The name and address of the construction lender (if applicable) is:

Section 1. Scope. The Contractor agrees to furnish all labor, materials, equipment and other facilities required to complete the following work:

Section 2. Price and Payment. The Owner agrees to pay the Contractor for the strict performance of the work, the sum of \$ _____

(\$ _____) subject to adjustments for changes in the work as may be agreed to by the Owner and the Contractor, or as may be required under this Contract.

The Owner agrees to pay the Contractor in monthly progress payments for all work completed. Payments will be due and payable within thirty days of invoice. Final payment to the Contractor shall be made within forty-five days after substantial completion of the Contract and submission of the final invoice to Owner.

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Form AGCC - 01A
Revised 7/13

Section 3. Entire Agreement. This agreement represents the entire agreement between the Contractor and the Owner regarding the work described in Section 1, and supersedes any prior written or oral agreements or representations as to that work.

Section 4. Time. Time is of the essence of this agreement. The Contractor shall provide the Owner with a progress and completion schedule and shall conform to that schedule, including any changes to that schedule agreed to between the Owner and the Contractor or required by circumstances beyond Contractor's control.

Section 5. Differing Site Conditions. Contractor shall promptly, and before the following conditions are disturbed, notify the Owner in writing of any:

- (1) Hazardous Material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, or that the handling of which may subject Contractor to legal liability.
- (2) Subsurface or latent physical conditions at the site materially different from those indicated in the Contract Documents; or
- (3) Unknown physical or other conditions at the site of an unusual nature, materially different from those ordinarily encountered and generally recognized as inherent to work of the character provided for in the Contract.

The Owner shall promptly investigate such conditions. If the Owner finds that the worksite conditions do materially differ, or involve Hazardous Material, the Owner shall make an equitable adjustment in the Contract Price and the Contract Time for such work by issuing a change order under Article 15.

Section 6. Changes in Work. The work shall be subject to changes by additions, deletions or revisions by the Owner. The Owner shall notify Contractor of such changes by delivery of additional and/or revised drawings, specifications, exhibits or written orders.

Whenever an adjustment in the Contract price or Contract time is required because of Owner's change request, differing site conditions, errors in the plans and specifications, or other circumstances beyond the control of Contractor (including acts of any governmental authority, acts of a public enemy, fire, flood, unusual delay in transportation, abnormal weather conditions, labor disputes, strikes, lack of worksite access, acts of God, natural disasters, or acts of third parties), the Contractor shall submit to the Owner, within a reasonable time, a detailed estimate with supporting calculations and pricing, together with any adjustments to the Contract price and the Contract time. Pricing of the adjustment shall be in general accordance with the pricing structure of this Contract. However, to the extent that such pricing is inapplicable, cost of the change or the amount of the adjustment shall be determined based on the cost to the Contractor plus reasonable amounts for overhead and profit.

The Contractor shall not be obligated to perform changes in the work or additional work until the Owner has approved, in writing, the changes to the Contract price and the Contract time.

Section 7. Suspension of Work. The Contractor, at its option, may suspend work under the Contract as a result of the following: (1) Owner's failure to timely pay sums due to the Contractor, until such payment is made; (2) a dispute over payment for extra work, differing site conditions, changes by Owner or other circumstances beyond Contractor's control if such circumstance will cause the Contractor to suffer substantial

financial hardship if Contractor is required to continue the work; or (3) Owner's failure to provide Owner's ability to pay Contractor for the work remaining to be performed by Contractor.

Any suspension of work under this Contract will also suspend the progress and completion dates set forth in Section 4.

Section 8. Inspection of the Work. The Contractor shall make the work accessible at all reasonable times for inspection by the Owner. The Contractor shall inspect all material and equipment delivered to the job site by others to be used or incorporated in the Contractor's work.

Section 9. Site Access and Rights of Way. The Owner shall provide, no later than the date when needed by the Contractor, all necessary access to the site or sites upon which the Work is to be performed, including convenient access to the site or sites and any other site or sites designated in the Contract Documents for use by the Contractor. Owner shall continue to provide such access until completion of the Contract. Any delay in providing such access shall entitle the Contractor to an equitable adjustment in the Contract price and the Contract time.

Section 10. Surveys and Reports. The Owner shall furnish to Contractor for the Work, prior to the start of the Work, all necessary surveys and reports describing the physical characteristics, soil, geological and subsurface conditions, legal limitations, utility locations and legal descriptions that might assist the Contractor in properly evaluating the extent and character of the work required. The Owner shall provide all site surveys and baselines necessary for the Contractor to locate the principal parts of the Work and perform the Work.

Section 11. Permits, Licenses and Regulations. Unless otherwise provided in the Contract Documents, the Contractor shall obtain and pay for all permits and licenses of a temporary nature necessary for the prosecution of the Work. The Owner and Contractor shall assist the other in obtaining such permits and licenses. Unless otherwise provided, the Owner shall secure and pay for all permits, licenses and easements for permanent structures or permanent changes in existing facilities.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the performance of the Work. If the Contractor observes that drawings, specifications or other Contract documents are at variance with such laws, ordinances, rules and regulations, the Contractor shall promptly notify Owner of such variance. If any such variances result in any necessary changes in the Work, then Contractor shall be entitled to an equitable adjustment to the Contract price or Contract time.

Section 12. Termination. The Owner reserves the right to terminate the work for its convenience upon notice in writing to the Contractor. In such an event, the Contractor shall be paid its actual costs for the portion of the work performed to the date of termination, and for all of Contractor's incurred costs of termination, including demobilization and any termination charges by vendors and subcontractors, plus 20% of all of Contractor's actual and incurred costs for overhead and profit.

Should the Owner become insolvent or commit a material breach or default under the Contract, including, but not limited to, failure to pay timely undisputed sums due to the Contractor, then the Contractor may terminate this Contract.

Section 13. Insurance

13.1. The Contractor shall, at its expense, procure and maintain insurance of its operations under this Contract consisting of the following coverages:

- a. Workers' Compensation and Employers' Liability Insurance;
- b. Commercial General Liability Insurance covering Contractor's operations; and,
- c. Automobile Liability Insurance, including coverage for Contractor's owned, hired and non-owned automobiles.

13.2. The Owner shall, at its expense, procure and maintain insurance under this Contract consisting of the following coverages:

Builder's Risk Insurance. "All risk" Builder's Risk insurance (excluding the hazards of earthquake and flood) such insurance provides property insurance coverage for both Contractor and subcontractors including loss or damage to Contractor's work. Such insurance shall also apply to any of Owner's property in the care, custody or control of Contractor. Owner waives all rights of recovery against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

13.3. Waiver of Subrogation. Owner and Contractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by any property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

Section 14. Arbitration. Any controversy or claim arising out of or relating to this Contract or its alleged breach, which cannot be resolved by mutual agreement, shall be settled by arbitration in accordance with Construction Industry Rules of the American Arbitration Association in effect on the date of the Contract, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Owner and Contractor agree that, should Contractor be potentially or actually a party to a lawsuit or arbitration arising out of or connected to this Contract, Owner shall appear in, and be bound by the decision in, that lawsuit or arbitration. The prevailing party in any action or proceeding to enforce this Contract shall recover its reasonable attorneys' fees and costs (including expert witnesses) in that action or proceeding.

Section 15. Warranty. The Contractor warrants to the Owner that all materials and equipment furnished under this Contract shall be new unless otherwise specified and that all work under this agreement will be performed in a good and workmanlike manner, shall be of good quality, free from faults and defects, and in conformance with Contract documents.

Section 16. Special Provisions (including unit pricing, if applicable):

[Add Special Provisions, if any]

Contractors are required by law to be licensed and regulated by the Contractors State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects may be filed with 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, California, 95826.

STATE LAW REQUIRES ANYONE WHO CONTRACTS TO DO CONSTRUCTION WORK TO BE LICENSED BY THE CONTRACTORS' STATE LICENSE BOARD IN THE LICENSE CATEGORY IN WHICH THE CONTRACTOR IS GOING TO BE WORKING—IF THE TOTAL PRICE OF THE JOB IS \$500 OR MORE (INCLUDING LABOR AND MATERIALS).

LICENSED CONTRACTOR ARE REGULATED BY LAWS DESIGNED TO PROTECT THE PUBLIC. IF YOU CONTRACT WITH SOMEONE WHO DOES NOT HAVE A LICENSE, THE CONTRACTORS' STATE LICENSE BOARD MAY BE UNABLE TO ASSIST YOU WITH A COMPLAINT. YOUR ONLY REMEDY AGAINST AN UNLICENSED CONTRACTOR MAY BE IN CIVIL COURT, AND YOU MAY BE LIABLE FOR DAMAGES ARISING OUT OF ANY INJURIES TO THE CONTRACTOR OR HIS OR HER EMPLOYEES.

YOU MAY CONTACT THE CONTRACTORS' STATE LICENSE BOARD TO FIND OUT IF THIS CONTRACTOR HAS A VALID LICENSE. THE BOARD HAS COMPLETE INFORMATION ON THE HISTORY OF LICENSED CONTRACTORS, INCLUDING ANY POSSIBLE SUSPENSIONS, REVOCATIONS, JUDGEMENTS, AND CITATIONS. THE BOARD HAS OFFICES THROUGHOUT CALIFORNIA. PLEASE CHECK THE GOVERNMENT PAGES OF THE WHITE PAGES FOR THE OFFICE NEAREST YOU OR CALL 1-800-321-CSLB FOR MORE INFORMATION.

Dated: _____ Dated: _____

Owner:

Contractor:

By: _____ By: _____
(Name) (Name)

(Title) (Title)

(Address) (Address)

(Contractor's Licence Number)

NOTE: This document has important legal consequences. Consultation with an attorney prior to use or modification of this document is encouraged. Some contracts may require the use of special provisions not included in this form.