



3940 E. Miraloma Ave  
 Anaheim, California 92806  
 Phone (714) 577-8060  
 Fax (714) 577-8064  
 www.facilitybuilders.com

SUBCONTRACT AGREEMENT

JOB: (JOB#)  
 Phase No. (PHASE CODE)

This Subcontract (referred to herein as the "Subcontract") is dated the ({ISSUED DATE} "Contract Date") by and between Facility Builders & Erectors, Inc. (FB&E), ("Builder") and (CONTRACTOR NAME), ("Contractor").

DEFINITION OF SUBCONTRACT TERMS

PROJECT: (PROJECT NAME)  
 (PROJECT ADDRESS)  
 (PROJECT ADDRESS)

OWNER: (The term "Owner" as used in the Contract Documents shall mean the following person or entity or the Owner's authorized representative):

(OWNER NAME)  
 (OWNER ADDRESS)  
 (OWNER ADDRESS)

BUILDER: Facility Builders & Erectors Inc.  
 3940 E. Miraloma Ave.  
 Anaheim, CA 92806  
 Ph: 714-577-8060 Fx: 714-577-8064  
 California Contractors License #670072

CONTRACTOR: (COMPANY NAME)  
 (CONTACT.DISPLAY.ADDRESS)  
 Ph: TELEPHONE Fx: FAX  
 (CA CONTRACTOR LICENSE #)

CONTRACT AMOUNT: (include amount of contract) (CONTRACT AMOUNT)  
(CONTRACT AMOUNT "NUM TO TEXT")

SCOPE OF WORK: Provide all supervision, materials, equipment, and labor to complete the following scope of work in accordance with all governing codes, all authorities having jurisdiction, contract documents, and to the acceptance of the representatives for Facility Builders & Erectors, Inc., (OWNER/CLIENT NAME), Inspector of Record (I.O.R.) and associated consultants and inspectors.

(INSERT SCOPE OF WORK)

**Inclusions:**

- Contractor has verified all quantities within their scope of work prior to submitting their proposal to FB&E.
- All incidental efforts necessary to complete this portion of work.
- Provide a detailed schedule of values for work to be performed.
- Produce all major long lead submittal items required to complete the scopes of work below within 10 days of acknowledged receipt of subcontract agreement.
- Provide a schedule of hourly labor rates to be used for this project.
- Provide emergency contact information with at least three people identified.
- Obtain a City of (NAME OF CITY) business license prior to commencing work.
- All work to be done to the approval and current construction standards of the governing authorities, and in accordance with contract documents.
- Provide lead supervisor for onsite coordination during all efforts associated with your work.

- FB&E Safety Standards and OSHA Guidelines. (See attached - FB&E Code of Safe Practices)
- Provide required Insurance Certificate(s) per FB&E insurance requirements (See attached – FB&E Insurance Requirements). Professional Liability no less than \$1,000,000 is also required for inspections/testing reports/engineering.
- If you subcontract any part of your scope of work, you must provide FB&E with your subcontractor's required Insurance Certificate(s).
- If required for your scope of work, please provide three (3) sets of submittals.
- Close-out documents as required.

**General Provisions:**

- Contractor has reviewed the project site and is fully cognizant of all the jobsite conditions and existing or new structures as related to the coordination and installation of his work.
- Contractor is responsible for the accuracy of quantities included in contractor's proposal. No additional monies are guaranteed to contractor due to inaccurate estimation and take-off procedures by contractor. If the actual scope of work changes by either additions or subtractions of quantities, contractor shall bring this to the attention of FB&E and any additions or deducts will be negotiated prior to the work starting. If there are any additions or deletions to the scope of work once work has begun, they will be handled as a standard change order.
- All material and debris to be disposed of at a legal landfill or recycle facility and handled in a legal and safe manner.
- Attendance is required for Progress and Safety meetings which will be conducted by FB&E with a responsible representative of all active Contractors on a regular basis to review job progress, safety, update construction schedules, establish trade priorities, and in general, coordinate project activities.
- Contractor shall keep work area clean and free from collection of debris caused by his work operation as required to provide a safe working environment for his employees, as well as other subcontractor's employees, on a daily basis or as deemed necessary by Contractor's Superintendent and or Safety Engineer.
- All applicable trades working on site are required to comply with FB&E's Written Silica Exposure Control Program. If you subcontract any part of your scope of work, your subcontractor's must also comply with FB&E's required Written Silica Exposure Control Program (See attached program)
- In addition each sub-contractor must submit their Silica Exposure Control Plan to Facility Builders & Erectors upon award of contract for review and approval.

**Exclusions:**

Item Number (ITEM #)	Description (EXCLUSIONS DESCRIPTION)
-------------------------	---

**Phase Breakdown:**

Item Number (ITEM #)	Phase (PHASE CODE)	Description (PHASE CODE DESCRIPTION)	Amount (DOLLAR AMOUNT)
-------------------------	-----------------------	---	---------------------------

SUBCONTRACT DOCUMENTS: The following documents form part of this Subcontract Agreement:

FB & E Code of Safe Practice, General Conditions, Preliminary Information, W-9 Form, Subcontractor Information Sheet, City Business License Letter, Insurance Requirements and Exhibits A-G Billing Forms - Monthly Billing Invoices, Progress Waiver and Release, Unconditional Progress Waiver and Release, Conditional Waiver and Release Upon Final Payment, Unconditional Waiver and Release Upon Final Payment, Change Order Request Form, and Guarantee . If the project is a Public Works project, these documents will be included - Exhibits AA, BB, CC, and DD – Labor Compliance & Labor Compliance Packet.

SEE THE PRELIMINARY INFORMATION SHEET FOR INSURANCE REQUIREMENTS AS TO THE COMPANY (IES) TO BE NAMED AS ADDITIONALLY INSURED ON THIS PROJECT.

1. PROJECT SCHEDULE: Anticipated Start Date: (DATE)  
Anticipated Completion Date: (DATE)

Job site Superintendents will schedule your specific effort within this overall schedule.

2. EXTRA WORK: Any alteration or deviation from plans or specifications, whether involving extra cost of materials or labor or not, will be executed only upon written order for the same as set forth in the accompanying General Conditions, and will become an extra charge or credit when approved in writing by all parties concerned. Provided, however, any alteration or deviation dictated and required by any provision of law, from plans and specifications shall be the responsibility of the Contractor, unless the deviation and/or change is specifically called to the Builder's attention by appropriate reference herein.

3a. COMMENCEMENT OF WORK/PROJECT POLICIES: Contractor agrees to be prepared to begin work within three (3) calendar days of written notice or approval and acceptance of this subcontract agreement by the undersigned Builder and Contractor agrees to commence work on a date selected by the Builder, provided Builder gives the Contractor three (3) calendar days notice in advance of the date of work commencement, and to continue said work diligently to completion with sufficient men and equipment upon the job at all times.

3b. This Contract has a zero tolerance regarding the following items:

- Alcohol and Drugs - The use of prior and/or on the job.
- Firearms - Not allowed on jobsite
- Pets - Not allowed on jobsite
- Loud Music - No loud music allowed
- Smoking - Smoking of any kind in finished spaces.

3c. Violation of any of this policy from the Contractor and / or his Subcontractors will result in immediate removal from jobsite. Said violation could be considered a Breach of Contract. Builder has sole discretion that this contract may be terminated and the contract will be completed as set forth in Section 4 below.

4. CORRECTION OF WORK: If the Contractor and/or his Subcontractors breach any of the provisions herein, it is agreed that the Builder shall, upon twenty-four (24) hours notice have the option to terminate the employment of the Contractor forthwith. In the event that Contractor at any time refuses or neglects to supply a sufficient number of properly skilled workmen or a sufficient quantity of materials and equipment of proper kind and quality, or fails in any respect to properly and diligently perform the Work covered by this Subcontract, or is adjudicated bankrupt, or files an arrangement proceeding, or commits any act of insolvency, or makes an assignment for benefit of creditors without Builder's consent, or is the subject of any levy, execution or garnishment, or fails to make prompt payment to or for its employees, laborers, subcontractors, suppliers or other indebtedness, or becomes delinquent with respect to contributions or payments required to be made to Health and Welfare, Pension, Vacation, Apprenticeship, or other employee benefit program or trust, or otherwise fails to perform fully any of the agreements herein contained. Builder may, after giving twenty-four (24) hours written notice to Contractor, and at Builders option, without terminating this Subcontract, provide any such labor, equipment, and materials as may be necessary and deduct the cost thereof from any money then due or thereafter to become due to Contractor under this Subcontract, or Builder may, at Builder's option, terminate this Subcontract or Contractors right to proceed with the Work and, in either event, Builder shall have the right to enter upon the Premises of the Project and take possession, for the purpose of performing or completing the Work included under this Subcontract, of all materials, equipment, tools, and appliances of Contractor, and may employ any other person or persons to finish the Work and provide the materials therefore. In case of such termination of this Subcontract or of Contractors right to proceed with the Work, Contractor shall not be entitled to receive any further payment under this Subcontract until the work undertaken by Builder on the Project is completed. At that time, if the unpaid balance of the amount to be paid under this Subcontract exceeds the expenses incurred by Builder in finishing Contractors Work, such excess shall be paid by Builder to Contractor, but, if such expense shall exceed such unpaid balance, then Contractor shall promptly pay to Builder the amount by which such expense exceeds such unpaid balance. The expense referred to in the last sentence shall include all expenses incurred by Builder for finishing the Work, for attorney's fees, and any damages sustained by Builder by reason of Contractors default, plus a markup of 15% General Overhead and 10% Profit on any and all of such expenses; and Builder shall have a lien upon all materials, tools, equipment, and appliances taken possession of, as aforesaid, to secure the payment thereof. The notice referred to in this paragraph will be sufficient and complete when mailed, e-mailed, faxed, delivered in person, or delivered in any other verifiable manner to Contractor.

5. PROJECT RELEASES: Contractor agrees to furnish appropriate and properly executed labor and/or material lien releases as set forth by way of Civil Code section 3262 and which are provided by way of attachment to this Agreement. This four-part lien project release system is to be adhered to by Contractor and all persons and suppliers involved with the work under this Agreement. FAILURE TO ABIDE BY THIS PROCEDURE MAY RESULT IN DELAY OF PAYMENT.

6. COMPLIANCE WITH APPLICABLE LAW: CONTRACTOR ACKNOWLEDGES THAT IT IS MANDATORY FOR EACH FOREMAN AND/OR SUPERVISOR TO HAVE A COPY OF THE COMPANY'S WRITTEN INJURY AND PREVENTION PROGRAM ON THE JOBSITE. THIS PROGRAM MUST COMPLY WITH THE CURRENT CAL-OSHA REGULATIONS, AND SPECIFICALLY SECTION 3203 OF THE GENERAL INDUSTRY SAFETY ORDERS, AND SENATE BILL 198. COMPLIANCE WITH THE LAW IS MANDATED BY THE STATE OF CALIFORNIA. IF UNSAFE CONDITIONS ARE NOTED ON THE JOBSITE, FACILITY BUILDERS & ERECTORS, INC. EMPLOYEES HAVE THE AUTHORITY AND RESPONSIBILITY TO SEE THAT THEY ARE CORRECTED. THIS AUTHORITY INCLUDES REMOVING UNSAFE EQUIPMENT OR PEOPLE FROM THE JOB SITE, INSTRUCTING YOUR PEOPLE TO CORRECT UNSAFE CONDITIONS TO COMPLY WITH THE SAFETY REGULATIONS CAN BE CONSIDERED, NON-PERFORMANCE UNDER THIS SUBCONTRACT, AND, AT THE CONTRACTORS SOLE DISCRETION, GROUNDS FOR TERMINATION.

Sub Initials

FB & E Initials

7. PAYMENT OF TAXES: Contractor agrees to hold the Builder, Owner, Architect and/or all supervisory personnel harmless from all expense of any nature relating to any and all federal and state taxes allocable to the labor and materials furnished and/or installed by the undersigned Contractor or his Subcontractors.

8. CONTRACTOR'S REVIEW OF PROJECT DOCUMENTS: Builder has available for inspection at its office all of the contract documents and plans described in this subcontract. All Contractors are bound by the terms and conditions of the Prime Contract between the Owner and Builder. This Sub-Contract represents and acknowledges that Contractor has examined all of the contract

documents and plans BEFORE signing this subcontract. The prime contract, general conditions, specifications, drawings and plans, are intended to supplement each other, and any work exhibited on or required by all, and the fact that specific reference to any item of work may be omitted from any plan or document shall not relieve Contractor from performing that work if it is exhibited on or referred to in any other plan or document. If there should be any actual conflict between the provisions of any such plans or documents, they shall be so interpreted that whatever work within the scope of this subcontract is required to be furnished by the Builder to the Owner is also required to be furnished by the Contractor to the Builder. All work shall be completed in strict compliance with all laws, rules and regulations of the governing public authorities having jurisdiction thereto including adherence to the State of California Industrial safety code.

9. CLEANUP: Contractor agrees to perform all clean-up pertinent to his work during the progress of the job and remove all resulting debris from the job site as often as required by the job conditions.

10. CLAIMS: A claim is a demand or assertion made in writing by Builder or Contractor seeking an adjustment in the Subcontract Price and/or Subcontract Time, an adjustment or interpretation of the Subcontract terms, or other relief arising under or relating to this Subcontract, including the resolution of any matters in dispute between Builder and Contractor in connection with the Project.

11. CLAIMS RELATING TO OWNER: In the case of any claim by Contractor resulting from the acts or omissions of Owner, Contractor agrees to be bound to Builder to the same extent that Builder is bound to Owner both by the terms of the Contract and by any and all decisions or determinations made there under. It is agreed that in the event the Contract contains a 'Dispute Clause', such clause is incorporated herein by reference as though fully set forth. As to any claims asserted by Contractor for or on account of acts or omissions of Owner or claims against Builder for which Contractor is alleged to be responsible, which claims are not disposed of by agreement, Contractor shall prosecute or defend such claims in Builder's name, in accordance with such Disputes Clause. Builder and Contractor shall cooperate in prosecuting or defending all claims relating to Owner. Contractor shall have full responsibility for preparation and presentation of such claims and defenses and shall bear all expenses thereof, including attorneys' and consultants' fees and all other associated costs. Contractor shall be bound by the procedure and final determinations as specified in any such Disputes Clause and shall not take any other action or actions with respect to any such claims and shall pursue no independent litigation or arbitration with respect thereto, other than to avail itself of any appellate procedures applicable to such Disputes Clause. Contractor shall not be entitled to receive any greater amount from Builder than Builder receives from the Owner on account of Contractor's claim(s), less any mark-ups or costs incurred by Builder and to which Builder is otherwise entitled, and Contractor shall accept such amount, if any, received by Builder from Owner as a full accord and satisfaction of all such claims for or on account of acts or omissions of Owner or its representatives. If Contractor fails to prosecute claims relating to acts or omissions of Owner or its representative(s) through the procedures of such Disputes Clause, it shall be barred from asserting such claims against Builder in any other proceeding. If Contractor fails to prosecute claims resulting from acts or omissions of Owner or Owner's Representative(s) or fails to defend claims by Owner relating to Contractor's Work, Builder shall have the right to prosecute or defend such claims at Contractor's sole expense. Contractor agrees to defend, indemnify and hold harmless Builder and its agents and employees from and against any and all liability, claims, judgments, actions, suits, proceedings, demands and any other loss, damage or expense arising directly or indirectly out of (a) all claims by Contractor in Builder's name for or on account of acts or omissions of Owner or its representatives, and (b) all claims by Owner against Builder relating to Contractor's Work (all of which are hereinafter referred to in this paragraph as "Claims"), regardless of any active and/or passive negligent act or omission on the part of Builder or its agents and employees, save and except only Claims arising through the sole negligence or sole willful misconduct of Builder, and will make good to and reimburse Builder for any expenditures, including reasonable attorney's fees, consultant's fees, costs, fines, penalties, corrective measures and any other reasonable expenses Builder may incur by reason of such Claims. Builder shall have the right to require Contractor to furnish Builder with security acceptable to Builder for Contractor's defense and indemnification obligations under this paragraph as a condition to Contractor's right to pursue a claim in Builder's name or defend a claim by Owner against Builder relating to Contractor's Work.

12. NOTICE: Contractor shall give Builder written notice of its intent to make claim whether for an extension of time or an adjustment in the Subcontract Price. The notice shall describe with particularity: (a) the occurrence(s) giving rise to Contractor's claim, and (b) the portion(s) of Contractor's Work known to be affected and shall be given in writing within five (5) days of the occurrence(s) upon which Contractor's claim is based. Within fifteen (15) days of the occurrence(s) upon which Contractor's claim is based, Contractor shall give Builder written notice of the recovery plan which Contractor believes will mitigate and/or eliminate the impact of the occurrence(s) on Contractor's Work. The giving of the notices required by this provision shall be a condition precedent to Contractor's right to make a claim, whether against Owner or Builder.

13. DISPUTES NOT INVOLVING OWNER: In the event of any dispute, claim or controversy with Builder or any other Contractor over any matter whatsoever, Contractor shall not cause any delay or cessation in or of Contractor's Work or the work of any other Contractor or of Builder but shall proceed under this Subcontract with the performance of the Work required thereby. If a dispute arises out of or relates to this Subcontract, or the breach thereof, the parties may endeavor to settle the dispute first through direct discussions. If the dispute cannot be resolved through direct discussions within thirty (30) days of the commencement of such discussions, the parties shall participate in mediation before recourse to arbitration or litigation. Unless the parties agree otherwise, the mediation shall be conducted in accordance with the Construction Mediation Rules of the American Arbitration Association.

14. ATTORNEYS' FEES: In the event either Builder or Contractor commences an action or demands arbitration against the other party, or against the surety of such party, in connection with any dispute or matter arising under this Subcontract, the party which prevails in that action or arbitration shall be entitled to recover from the other its attorney's fees, expert witness fees and costs of suit in reasonable amount, which shall be determined by the court or arbitrator and included in the judgment or award.

15. INSURANCE REQUIREMENTS AND SPECIFICATIONS: It is further agreed that the Contractor will carry all necessary Worker's Compensation, General Liability, and Auto Insurance for the necessary Protection of all parties concerned. Contractor

shall indemnify and hold harmless the Builder and Owner from all claims of liability resulting from contractor's operations as outlined below:

CONTRACTOR SHALL MAINTAIN IN FULL FORCE AND EFFECT AT ALL TIMES THE FOLLOWING INSURANCE COVERAGES:

15.1 Commercial General Liability with limits of liability not less than:	
Each Occurrence Limit	\$1,000,000.00
Personal & advertising Injury Limit	\$1,000,000.00
Products/Completed Operations Aggregate Limit	\$2,000,000.00
General Aggregate Limit	\$2,000,000.00

Commercial General Liability OR Commercial General Liability policy forms must include:

1. Premises/Operations coverage with no X, C or U exclusions,
  2. Products/Completed Operations coverage. Contractor agrees to maintain this coverage. Contractor agrees to maintain this coverage for a minimum of five years following completion of his work and to continue to provide appropriate certificates of insurance and endorsements naming Contractor and any other required interests as Additional Insured(s) for the entire five year period;
  3. Blanket Contractual liability coverage insuring the obligations assumed by Contractor in this Agreement; under an occurrence policy with a term expiring no less than 5 years after the Certificate of Substantial Completion is issued for the project,
  4. Broad Form Property Damage including completed operations or its equivalent;
  5. Coverage on an "Occurrence form. "Claim Made" forms are not acceptable;
  6. An endorsement naming Owner, Contractor and any other interested parties as additional insured including primary insurance wording and "Your Work".
  7. An endorsement stating: "Such insurance as is afforded by this policy for the benefit of the Contractor, the Owner and any other interested parties shall be primary insurance, and any other insurance maintained by Contractor. Owner and other interested parties shall be non-contributory. "However, this endorsement shall apply only to losses, claims, or liabilities arising out of the Contractor's operations or the operations of any one for whose actions the Contractor may be responsible;
  8. An endorsement stating that any aggregate limits apply on a per project basis.
- 15.2 Commercial Auto Coverage with limits of liability not less than \$1,000,000 each accident combined Bodily Injury and Property Damage Liability Insurance including but not limited to owned autos hired or non-owned autos AND shall name FACILITY BUILDERS & ERECTORS, INC. and Owner(s) as an Additional Insured and FACILITY BUILDERS & ERECTORS, INC shall be furnished with the appropriate endorsements from Contractor's insurance carriers.
- 15.3 Workers Compensation Insurance, including Employer's Liability Insurance with limits not less than \$1,000,000, for all of its employees in strict compliance with applicable State Workers Compensation Laws.
- 15.4 For Architects, Engineer and Design / Build Firms providing Professional Services – Errors and Omissions / Professional Liability Coverage with limits in accordance with applicable law or not less than \$1,000,000, whichever is greater, unless otherwise indicated in the scope of work, and including but not limited to coverage for design problems, economic loss, and consequential damages arising out of such design problems.
- 15.5 Contractor shall furnish certificates and endorsements to contractor, on a form acceptable to Contractor and underwritten by insurance companies with an A- VIII or greater rating according to the most current AM Best Rating Guide, and satisfactory to Contractor, prior to commencement of any work and prior to execution of this agreement, as evidence of the above insurance coverage. Each such certificate shall provide for a 30-day UNQUALIFIED notice to Contractor before cancellation, non renewal, or material reduction coverage.
- 15.6 If the Contractor fails to secure and maintain the required insurance or to furnish satisfactory certificates and endorsements, Contractor shall have the right, but shall not be obligated, to secure same in the name and for all the account of the Contractor in which event the Contractor shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith.
- 15.7 Satisfaction of Contractor's obligation pursuant to this paragraph shall not constitute a waiver of, nor limitation upon Contractor's indemnification of Builder, Contractor shall also maintain in full force and effect at all times, "All Risk Insurance" for theft or physical damage to all tools, equipment, and property obtained by or for Contractor to become a part of the work while stored at jobsite, at temporary locations or while in transit to the project or such temporary locations.
- 15.8 General liability Policies AND Commercial Auto Coverage shall name FACILITY BUILDERS & ERECTORS, INC and Owner(s) as an Additional Insured and FACILITY BUILDERS & ERECTORS, INC shall be furnished with the appropriate endorsements from Contractor's insurance carriers. Such insurance shall be primary and any other insurance maintained by FACILITY BUILDERS & ERECTORS, INC is excess and not contributing insurance with the insurance required hereunder.
- 15.9 Thirty (30) days notice to Contractor is required on Certificates for any material change or cancellation of said policies. Acceptances of insurance Certificates by the Contractor shall in no way limit or relieve the Contractor of the duties and responsibilities assumed in this subcontract agreement.

15.10 Subcontractor shall assume liability, save and hold harmless Contractor and its officers, agents and employees from and against any liability and loss, cost, damages, expenses, including attorney's fees, on account of claims for personal injury, including death sustained by any person or persons whomever, including employees of Subcontractors, and for injury to or destruction of property of a person or organization, including loss of use thereof, arising out of the performance of work under this subcontract, excepting only such matters caused by the active negligence, sole negligence or willful misconduct of the Contractor and/or Owner(s).

15.11 WAIVER OF SUBROGATION: Contractor waives all rights against Contractor, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by Commercial General Liability, Commercial Umbrella Liability, Business Auto Liability and Worker's Compensation and Employers Liability insurance maintained per requirements stated above.

15.12 Underground Fuel Tank Contractor shall assume liability, if the exposure poses an environmental risk, known or suspected, Pollution Liability with minimum limits of \$5,000,000.00 per occurrence.

Sub Initials

FB & E Initials

16. In consideration of the covenants and agreements hereof being strictly performed and kept by Contractor, including the supplies of all labor, materials and services required by this contract, Builder agrees to pay Contractor the sum set forth on page one (1) of this Agreement in the manner set forth in Paragraphs 21 ("Progress Payments") and 22 ("Release of Retention") of the accompanying General Conditions.

17. Contractor has an active safety program in conformance with SB 198 and will provide documentation if requested by FACILITY BUILDERS & ERECTORS, INC.

CONTRACTOR

FACILITY BUILDERS & ERECTORS, INC.

By X \_\_\_\_\_  
(Company Name)

By X \_\_\_\_\_  
(Project Manager Name), Project Manager

Kenneth B. Thomson, President  
(Signature required over \$50,000.00)

Date X \_\_\_\_\_

Date: X \_\_\_\_\_