

# BATSON-COOK CONSTRUCTION

## SHORT FORM SUBCONTRACT AGREEMENT

This Subcontractor Agreement (“Agreement”) is made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Batson-Cook Company, P. O. Box 151, West Point, Georgia 31833 (“Contractor”), and \_\_\_\_\_ (“Subcontractor”). This Agreement relates to Work to be performed by Subcontractor at the \_\_\_\_\_ (“Project”) owned by \_\_\_\_\_ (“Owner”), whose architect is \_\_\_\_\_ (“Architect”).

In consideration of the mutual covenants set forth herein, Contractor and Subcontractor agree as follows:

- Subcontractor’s Work. Contractor employs Subcontractor as an independent contractor to perform the following Work at the Project: \_\_\_\_\_  
\_\_\_\_\_ (“Subcontractor’s Work”). Subcontractor’s Work shall be provided under the general direction of Contractor and in strict accordance with this Agreement and the Contract Documents for the Project, as same are defined in the contract between Contractor and Owner (the “Contract Documents”), and including, without limitation, those documents dated \_\_\_\_\_ as issued by \_\_\_\_\_, Architects for the Project. The Contract Documents are hereby referred to and incorporated herein and shall be binding upon Contractor and Subcontractor insofar as same are applicable to Subcontractor’s performance of the Subcontractor’s Work. Subcontractor shall be bound to Contractor in all respects as Contractor is bound to Owner under the Contract Documents. Upon Subcontractor’s written request, Contractor will provide to Subcontractor copies of any portions or all of the Contract Documents.
- Subcontract Price. Contractor shall pay Subcontractor for the satisfactory performance of the Subcontractor’s Work the sum of \$\_\_\_\_\_, subject to the payment requirements and provisions of the Contract Documents and subject to any change orders or adjustments for untimely or improper performance of Subcontractor’s Work set forth in Section 5 below.
- Construction Schedule. Time being of the essence, Subcontractor agrees to perform Subcontractor’s Work in accordance with Contractor’s schedule of work for the Project (the “Construction Schedule”), as same may be adjusted by Contractor from time to time. Contractor shall have the right to decide the time, order and priority in which the various portions of Subcontractor’s Work shall be performed and all other matters relative to the conduct of the Subcontractor’s Work and Subcontractor shall comply therewith.
- Payment. Subcontractor shall be paid as and when provided in the Contract Documents, provided that the rate of retainage withheld from Subcontractor shall be \_\_\_\_\_ percent (\_\_\_\_%). Subcontractor shall comply with all provisions of the Contract Documents and provide all

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documentation required by the Contract Documents (e.g., lien waivers, affidavits, evidence of payment for labor and material, insurance documentation, etc.) as a condition precedent to Subcontractor's right to receive payment as provided herein. In addition, receipt by Contractor of payment for Subcontractor's work from the Owner shall be a condition precedent to Contractor's obligation to make payment to Subcontractor for Subcontractor's work and Subcontractors entitlement to receipt of the same. If Subcontractor requests in writing, Contractor shall provide to Subcontractor any information that Contractor has on the financial arrangements made by Owner to fund the costs of construction at the Project.

5. Changes, Claims and Delays. Contractor may order Subcontractor to make changes in Subcontractor's Work which are within the general scope of this Agreement and in such event adjustments in the Subcontract Price or Subcontract Time, if any, resulting from such changes shall be set forth in a written Subcontract Change Order issued by Contractor. No such adjustment shall be made for any changes performed by Subcontractor that have not been so ordered in writing by Contractor.

Subcontractor agrees to make all claims for which the Owner is or may be liable in the manner provided in the Contract Documents for like claims by Contractor upon the Owner. Notice of any such claim shall be given by Subcontractor to Contractor one (1) week prior to the beginning of Subcontractor's Work on the changed Work or the event for which such claim is to be made, or immediately upon Subcontractor's first knowledge of the event, whichever shall first occur, otherwise such claim shall be deemed waived. In every event such notice must be given to Contractor within the time period set forth in the Contract Documents for claims asserted by Contractor, less five (5) business days. For unresolved claims of the Subcontractor based on the acts or omissions of the Owner or someone for whom the Owner is responsible, as the sole remedy of Subcontractor therefor Contractor agrees to permit Subcontractor to prosecute said claim, in the name of the Contractor, for the use and benefit of the Subcontractor in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner.

In the event the Subcontractor asserts a claim other than a delay claim or a claim described in the paragraph immediately above, which claim is based on the acts or omissions of the Contractor or someone for whom the Contractor is responsible, Subcontractor shall provide Contractor written notice of such claims within five (5) days of the beginning of the event for which such claim is made, otherwise such claim shall be deemed waived, and any such claim that is unresolved shall be resolved in accordance with the provisions of Section 11 below.

If the progress of Subcontractor's Work is substantially delayed without the fault or responsibility of the Subcontractor, then the time for performance of the Subcontract work shall be extended by change order to the extent such an extension is obtained by the Contractor under the Contract Documents and the Construction Schedule shall be revised accordingly. The Contractor shall not be liable to the Subcontractor for any damages or additional compensation as a result of delays caused by the Contractor, or for delays caused by any other person unless Contractor has first recovered the same on behalf of the Subcontractor from said person, it being agreed by the Subcontractor that apart from recovery from said person, the Subcontractor's sole and exclusive remedy for delay shall be an extension of time for the performance of the Subcontractor's Work.

If the Contract Documents provide for liquidated damages or other damages for delay and such damages are so assessed, then Contractor may assess same against Subcontractor in proportion to Subcontractor's share of the responsibility for such delay.

6. Warranty. Subcontractor warrants its work against all deficiencies and defects and materials and/or workmanship and as called for in the Contract Documents. Subcontractor shall satisfy all such warranty obligations which appear within the warranty period established in the Contract Documents without cost to the Owner or the Contractor. If the Contract Documents do not specify a warranty period, the warranty period shall be one (1) year from the date of substantial completion of the Project. Subcontractor shall execute any special guaranties or warranties that are required in the Contract Documents for Subcontractor's Work prior to final payment to Subcontractor.
7. Subcontractor's Obligations. Subcontractor, in the performance of Subcontractor's Work, shall have those obligations set forth in the Contract Documents. Commencement by Subcontractor of Subcontractor's Work shall indicate acceptance of all related substrate conditions, and by such commencement, Subcontractor waives any claims based on or relating to such substrate conditions. Additionally, Subcontractor shall comply with those obligations and terms set forth in Articles 8 and 9 of Contractor's standard "Subcontract for Building Construction" in effect as of the date of execution of this Agreement. Upon written request, Contractor shall provide a full and complete copy of the terms of said Articles 8 and 9 to Subcontractor.
8. Contractor's Remedies. If Subcontractor refuses or fails to supply sufficiently properly skilled workers, proper materials, or fails to maintain the Construction Schedule in the performance of Subcontractor's Work, or fails to make prompt payment to its workers, sub-subcontractors, or suppliers, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or avails itself of any debtor relief provisions of any law or is subject to same (including bankruptcy, receivership, etc.). or is otherwise guilty of a breach of a provision of this Agreement or the Contract Documents, and fails within three (3) working days after receipt of written notice from Contractor to commence and continue satisfactory correction of such default with diligence and promptness, Contractor, without prejudice to any other rights or remedies it may have, shall have the right to: (i) supply such number of workers and quantity of materials, equipment and other facilities as Contractor deems necessary for the completion of Subcontractor's Work or any part thereof which Subcontractor has failed to complete and charge the cost thereof to Subcontractor, who shall be liable for the payment of same including reasonable overhead, profit and attorney's fees; (ii) contract with one or more other contractors to perform such part of Subcontractor's Work as Contractor shall determine appropriate and charge the cost thereof to Subcontractor; and (iii) withhold payment of any monies due Subcontractor pending corrective action to the satisfaction of Contractor. In the event of an emergency affecting the safety of persons or property, Contractor may proceed as above without notice to Subcontractor. Further, if Subcontractor fails to commence and satisfactorily continue correction of a default as described above after receipt of said notice, then contractor may issue a second written notice to Subcontractor by certified mail terminating this Agreement and Subcontractor's right to complete Subcontractor's Work. Contractor may utilize any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor to complete Subcontractor's work. All cost incurred by Contractor in performing the Subcontractor's Work, including reasonable overhead, profit and attorney's fees, shall be deducted from any monies due or to become due to Subcontractor and Subcontractor shall be liable for the payment of any amount by which such expenses may exceed the unpaid balance of the Subcontract Price specified herein.

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In the event of a suspension or termination by the Owner of the Contractor's performance of Work at the Project, Contractor shall so notify Subcontractor and in such event Contractor's liability to Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Contract Documents. Contractor may order Subcontractor in writing to suspend, delay, interrupt or terminate all or any part of Subcontractor's Work for such period of time as may be determined to be appropriate for the convenience of the Contractor, and in such event, Subcontractor shall only be due payment for work performed to the date of notice of such termination for convenience plus the reasonable cost of demobilization and less prior payments made; provided, however, that in no case shall Contractor be obligated to make payment to Subcontractor for any overhead or profit on any of the Subcontractor's Work which is not completed by Subcontractor to Contractor's satisfaction. Neither the Subcontract Price nor the Subcontract Time shall be adjusted for any suspension, delay, interruption or termination to the extent that the performance would have been so suspended, delayed, interrupted, or terminated by the fault or negligence of Subcontractor. If Contractor wrongfully exercises any option under this section, Contractor shall be liable to Subcontractor solely for the reasonable value of Subcontractor's Work performed prior to Contractor's wrongful action, including reasonable overhead and profit thereon, less prior payments made.

9. Indemnification. To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless the Owner, Architect, Contractor (including Contractor's affiliates, parents and subsidiaries and any of their officers, directors, agents and employees), any other Indemnitees (the "Indemnitees") as required in the contract between the Contractor and the Owner (the "Owner Contract") and other Contractors and Subcontractors and all of their agents and employees from and against all claims, damages, loss and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of the Subcontractor's Work, to the extent caused or alleged to be caused in whole or in part by any negligent act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts or omissions the Subcontractor may be liable, regardless of whether it is caused in part by a party indemnified hereunder.

If the Project is located in Florida or this Agreement is controlled by Florida law, Subcontractor's obligation to defend, indemnify and hold harmless a party indemnified hereunder for liability associated in whole or in part with such party's own acts, omissions or defaults shall be limited to a maximum liability equal to the amount of general liability insurance coverage available to Subcontractor on this Project, or One Million Dollars (\$1,000,000.00), whichever amount is greater. Contractor and Subcontractor acknowledge that this amount bears a reasonable commercial relationship to this Subcontract and is incorporated by reference into the Project Specifications and the bid documents, all in accordance with Section 725.06, Florida Statutes. The parties acknowledge that One Hundred Dollars (\$100.00) of the Contract Price set forth in Article 2 above is separate and independent consideration for the indemnity agreements of Subcontractor set out herein, and such amount shall be payable to Subcontractor by Contractor irrespective of Subcontractor's performance hereunder.

10. Insurance. Subcontractor shall continuously maintain the insurance required as set forth herein at all times that it is performing any work whatsoever or is otherwise present at the Project jobsite and through the period for which the Subcontractor and Contractor may be held liable for their work. The insurance shall have the minimum limits and coverage set out below, or the minimum limits and
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coverage set forth in any requirements of the Contract Documents, or the full policy limits and coverage carried by Subcontractor, whichever is greatest. The provision by the Subcontractor of the insurance coverage required in this Exhibit B shall not limit the Subcontractor's liability in any way. Subcontractor shall provide the insurance required herein on behalf of Contractor and any other Indemnitees set forth in the contract and represents and warrants that this insurance will provide liability coverage to Contractor and the Indemnitees for their own negligence, whether passive or active, to the extent permitted by law, if this negligence is associated with, arises out of or results from Subcontractor's Work. This insurance shall include contractual liability insurance covering the Subcontractor's indemnity obligations set forth in the preceding Section 9. Subcontractor shall maintain the following:

**A. Commercial General Liability Insurance with the following features:**

1. Occurrence-based coverage at least as broad as the Commercial General Liability ISO form CG 0001 (2004 edition).
2. Limits not less than:
  - \$1,000,000 per occurrence
  - \$1,000,000 personal injury & advertising injury
  - \$2,000,000 per project/general aggregate
  - \$2,000,000 products/completed operations aggregate
3. Coverage must include but shall not be limited to: underground explosion & collapse, Ongoing operations and completed operations additional insured coverage for Contractor, the Indemnitees, and any other entities that Contractor may reasonably require (collectively, the "Additional Insureds") provided by one or more of the following ISO Endorsements or their equivalents:
  - a) **CG 20 33 10 01** (Additional Insured – Owners, Lessees or Contractors – Automatic Status when required in Construction Agreement with You)
  - b) **CG 20 10 10 01** (Additional Insured-Owners, Lessees or Contractors- Scheduled Persons or Organization)
  - c) **CG 20 37 07 04** (Additional Insured – Owners, Lessees or Contractors – Completed Operations)
4. Products/completed operations coverage for the Additional Insureds must be maintained for a period of five years after the acceptance of and final payment for Subcontractor's work or through the period of the applicable statute of repose, whichever is longer.
5. Rights of subrogation against the Additional Insureds are waived via ISO Endorsement CG 24 04 10 93 or its equivalent.
6. The CGL policy shall apply on a **primary, non-contributory basis and coverage afforded to the Additional Insureds shall be at least as broad as coverage afforded to Subcontractor as Named Insured.**
7. Without limitation, the CGL policy and Subcontractor's CGL carrier shall provide independent defense counsel for any Additional Insured reasonably approved by that Additional Insured at carrier's expense, and if Subcontractor's CGL carrier shall fail to do so, Subcontractor shall do so or shall pay all costs of such independent counsel.
8. **30 Day Notice of Cancellation**

**B. Commercial Automobile Liability Insurance with the following features:**

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1. Occurrence basis covering “any auto,” including all owned, hired, borrowed, rented, leased, non-owned autos.
2. Minimum combined single limit of \$1,000,000 per occurrence for bodily injury, including death, and property damage.
3. **Coverage for the Additional Insureds.**
4. **Waiver of Subrogation Endorsement CA 04 44 or its equivalent in favor of the Additional Insureds**
5. **30 Day Notice of Cancellation**

**C. Umbrella and Excess Liability Insurance with the following features:**

1. Coverage that provides excess coverage for Employers Liability, Commercial General Liability, and Auto Liability, with the same features as described in sections A, B, and D herein, with limits not less than \$5,000,000.
2. Subcontractor acknowledges that it will provide Umbrella and Excess Liability Insurance on behalf of the Additional Insureds and that the Umbrella and Excess Liability Insurance will be subject to vertical exhaustion before any other Primary, Umbrella or Excess Policies or any other insurance obtained by the Additional Insureds will be triggered and that the total amount of insurance coverage provided by its insurance carriers, whether primary, excess, umbrella or other, shall apply as first tier/ following form coverage with respect to the Additional Insureds. Any other insurance maintained by the Additional Insureds shall be excess of Subcontractor’s policy and shall not be called upon to contribute to satisfy any loss within the limits specified and required above. Subcontractor shall furnish umbrella/excess policy language evidencing coverage to apply on a **primary and non-contributory basis to the Additional Insureds.**
3. **30 Day Notice of Cancellation.**

**D. Workers’ Compensation/Employers Liability Insurance with the following features:**

1. Workers’ Compensation including Occupational Disease meeting the statutory requirements of the State in which the work is to be performed.
2. Employers’ Liability with minimum policy limits of \$500,000 each accident, \$500,000 disease aggregate, and \$500,000 disease per employee.
3. **Waiver of subrogation form WC 00 03 13 or its equivalent in favor of the Additional Insureds**
4. Alternate Employer Endorsement (NCCI form #WC 00 03 01 A) naming Contractor as Alternate Employer if Subcontractor is or is using an employee leasing firm or will supply equipment with operator.
5. USL&H and/or Jones Act where applicable.
6. **30 Day Notice of Cancellation.**

**E. Certificates of Insurance and Endorsements**

Prior to commencing Work, Subcontractor shall furnish Contractor with certificate(s) of insurance executed by a duly authorized representative of each insurer, as evidence of compliance with the insurance requirements set forth above and below. **Such certificates of insurance shall be accompanied by copies of endorsements evidencing coverage afforded to Contractor and Owner as Additional Insureds (Indemniteses), and endorsements reflecting insurer’s concurrence with waiver of recovery or subrogation rights.**

Subcontractor shall maintain in effect all insurance coverage required herein at Subcontractor's sole expense and with insurance companies acceptable to Contractor. All such insurance policies shall contain a provision that the coverages afforded thereunder shall not be cancelled, non-renewed, or restrictively modified until at least thirty (30) days prior written notice has been given to Contractor. Certificates of such insurance, or if requested by Contractor, certified copies of policies providing such coverage, shall be provided to Contractor prior to the commencement of Subcontractor's Work. Failure to obtain and maintain the insurance coverages required herein shall be a material breach of this Agreement and Contractor may terminate this Agreement and Subcontractor's rights hereunder therefore without notice.

11. Dispute Resolution. All disputes solely between Contractor and Subcontractor shall be decided by Arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect or the rules of such other independent dispute resolution firm chosen by Contractor to conduct such arbitration proceedings. This Agreement to arbitrate shall be specifically enforceable under prevailing arbitration law. All arbitration proceedings shall be held in office facilities designated by Contractor in Atlanta, Georgia unless the parties otherwise mutually agree. Unless otherwise agreed in writing by Contractor, Subcontractor shall carry on Subcontractor's work and maintain the construction schedule pending Arbitration and in such event Contractor shall continue to make payments in accordance with the provisions of this Agreement.

In the event that the dispute involves the Owner or other persons not parties to this Agreement, the dispute shall be resolved in accordance with the dispute resolution proceedings of the Contract Documents; without limitation, Subcontractor shall be subject to such provisions and may be added as a party to any dispute resolution process between the Contractor and another person if Subcontractor or Subcontractor's Work is in any way involved therein or associated therewith.

12. Special Provisions. The special terms and conditions set forth on attached Schedule "A" are hereby incorporated herein and made a part of this Agreement as if fully set forth herein.

In witness whereof, Contractor and Subcontractor have executed this Agreement, as of the day and date first set forth above.

**CONTRACTOR:**

**SUBCONTRACTOR:**

**Batson-Cook Company**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

**SPECIAL TERMS AND CONDITIONS**

SAMPLE