



**B.C. ROAD BUILDERS AND HEAVY CONSTRUCTION ASSOCIATION
STANDARD FORM OF SUB-CONTRACT
BETWEEN CONTRACTOR AND SUB-CONTRACTOR**

THIS AGREEMENT made this _____ day of _____, 20____

- Between -

(the "Contractor")

- and -

(the "Sub-Contractor")

The Contractor having entered into a written Contract dated the ____ day of _____, 20____

with _____

(the "Owner") (the contract, the "Prime Contract") to construct

(the "Project").

THE CONTRACTOR AND SUB-CONTRACTOR AGREE AS FOLLOWS:

1. THE WORK AND PRICE: The Sub-Contractor shall supply all the labour, supervision, materials, tools, consumable supplies and equipment necessary to and shall construct, install and complete that certain scope of work for the Project (hereinafter called "the Work"), as specified by reference to the terms, plans, drawings, conditions, specifications, schedules and addenda (together, "Terms") of the Prime Contract, or as qualified herein, as set out in Schedule A for the price(s) set out in Schedule B.

2. INCORPORATION BY REFERENCE OF PRIME CONTRACT: Except as qualified by Article 1 above and Schedules A and B, but subject to Article 5 below, the Terms of the Prime Contract in respect of the Work are incorporated herein by reference and govern, *mutatis mutandis*, the rights and obligations as between the Contractor and Sub-Contractor.

3. PROGRESS PAYMENTS: The Sub-Contractor shall make written application for payment to the Contractor for that portion of the Work performed during the prior month which shall be delivered in such time and in such form as to enable the Contractor to meet the Contractor's progress payment application requirements under the Prime Contract. Payment equal to the value of the Work performed by the Sub-Contractor at the prices stated in this Agreement based on the measure of Work certified by the payment certifier under the Prime Contract (the "Payment Certifier"), less a holdback (the "Holdback") equal to ____% of the certified value, shall be made by the Contractor to the Sub-Contractor: *(Choose one of the following options; strike out the remaining option(s))*

- (a) upon the earlier of the date the Owner is required to pay the Contractor and 30 days after receipt of the application for payment by the Contractor.
- (b) upon the earlier of the date the Owner is required to pay the Contractor and 60 days after receipt of the application for payment by the Contractor.
- (c) upon the earlier of the date the Owner is required to pay the Contractor and 90 days after receipt of the application for payment by the Contractor.
- (d) once the Contractor receives payment from the Owner.

4. RELEASE OF HOLDBACK: For Projects to which the Builders Lien Act applies, the Contractor shall release and pay to the Sub-Contractor the Holdback on expiry of the Holdback Period as defined in the Builders Lien Act. Otherwise, the Contractor shall release and pay the Sub-Contractor the Holdback upon substantial performance of the Work, achieved when the Work is ready for use or is being used for the



purpose intended as certified by the Payment Certifier. In both instances, the Contractor may withhold any amount reasonably required to secure the completion of deficiencies, payment of which shall be made upon their rectification as certified by the Payment Certifier.

5. CONFLICT WITH PRIME CONTRACT: In the event of any conflict between this Agreement and the Prime Contract, this Agreement shall govern absent express agreement in respect of specific provisions in Schedule A.

6. TIME OF PERFORMANCE: The Sub-Contractor agrees to prosecute the Work in compliance with its contractually agreed schedule and to do so in coordination with the Contractor's schedule, or if no schedule is agreed upon, the Sub-Contractor agrees to prosecute the Work in compliance with the schedule agreed to between Owner and Contractor as it relates to the Work. Revisions to the Sub-Contractor's schedule as required from time to time will be effected by Work Order addressing adjustments to the schedule and consequent adjustments to the Sub-Contract price(s). If the Sub-Contractor is delayed in the performance of the Work as a result of an act or omission of the Contractor or anyone employed or engaged directly by the Contractor for which the Contractor is not entitled to an extension of the Contractor's schedule or to re-imburement from the Owner, the Sub-Contractor nevertheless shall be entitled to an extension of the Sub-Contractor's schedule and to payment of the Sub-Contractor's direct costs attributable to the delay including, but not limited to, equipment ownership costs incurred during standby, overhead and supervision. If the Sub-Contractor is delayed in the performance of its Work as a result of circumstances entitling the Contractor to a schedule extension and/or additional payment under the Prime Contract, then the Sub-Contractor shall be entitled to a corresponding extension of the Sub-Contractor's schedule and/or a corresponding payment for the Sub-Contractor's costs attributable to the delay, provided the Subcontractor has given notice of such delay in such time and manner as to allow the Contractor to meet its notice requirements under the Prime Contract.

7. CONTRACT BONDS: Upon execution of the Agreement, the Sub-Contractor shall furnish in a form reasonably satisfactory to the Contractor the following bond(s):

- (a) A Performance Bond in an amount equal to \$_____ OR to ____% of the price of the Work; and
- (b) A Labour and Material Payment Bond in an amount equal to \$_____ OR to ____% of the price of the Work.

8. INSURANCE: The Sub-Contractor shall maintain continuously during the currency of this Agreement: (a) WorkSafeBC coverage; (b) automobile liability insurance; (c) general liability insurance for bodily injury and property damage; and, if applicable, (d) aircraft and watercraft liability insurance. All liability policies shall be in amounts and coverage, and with deductibles, reasonably acceptable to the Contractor which, unless after specific approval by the Contractor to the contrary, shall not be less than the amount which is required of the Contractor under the Prime Contract. The general liability insurance policy shall be endorsed to name the Contractor, and Owner if required by the Prime Contract, as insured but only with respect to liability arising out of the Subcontractor's performance of the Work. The Sub-Contractor shall provide the Contractor with certificates of insurance which shall show, in addition to the type and limits of insurance, an undertaking by the insurers that such policies are in force and will not be cancelled or annulled except upon ten (10) days' notice in writing to the Contractor. In the event the Sub-Contractor fails to provide the required policy coverage and supporting documentation, the Contractor, at its sole discretion, may place insurance sufficient to cover the operations of the Sub-Contractor with respect to the Work and charge the costs of the same to the Sub-Contractor.

9. INDEPENDENT CONTRACTOR: The Sub-Contractor shall be and remain an independent contractor. No partnership, joint venture, or agency involving the Contractor is created by the Agreement or by any action of the parties under the Agreement.



10. CONTRACTOR'S RIGHT TO TERMINATE AGREEMENT: If the Sub-Contractor commits an act of bankruptcy or a receiving order is made against it, or if the Sub-Contractor abandons the Work or if the Work is unreasonably delayed by the Sub-Contractor, the Contractor may, by written notice, without prejudice to any other right or remedy the Contractor may have, terminate the Sub-Contractor's right to continue with the Work in whole or in part or terminate the Agreement, and in either case the Contractor may thereupon complete said Work with its own forces or contract with other parties for its completion using such measures as in the Contractor's reasonable opinion are necessary for its completion. All reasonable costs and expenses (including overhead) incurred in taking over such Work by the Contractor shall be deducted from any monies then due or becoming due to the Sub-Contractor and no further payments will be made to the Sub-Contractor until the Work is completed, provided that in the event of a shortfall, the Sub-Contractor shall be liable to pay such amount to the Contractor on demand.

11. SUB-CONTRACTOR'S RIGHT TO TERMINATE AGREEMENT: If the Sub-Contractor has not received a progress payment from the Contractor when due, or the Contractor commits an act of bankruptcy or a receiving order is made against it, the Sub-Contractor may terminate the Agreement on _____ days written notice and recover payment for: *(Choose one of the following options; strike out the remaining option(s))*

- (a) all Work performed prior to the date of termination and for all losses sustained by reason of such termination including profit lost in respect of the remaining term of the Agreement, calculated as expected gross revenues less the direct costs which would have been incurred in performing the Work.
- (b) all Work performed prior to the date of termination and for all losses sustained by reason of such termination including ____% of the cost of the balance of Work under the Agreement on account of profit lost in respect of the remaining term of the Agreement.
- (c) all Work performed prior to the date of termination plus reimbursement, the direct expenses incurred by the Sub-Contractor in the re-assignment of its personnel and that of its subcontractors, any reasonable amounts due and owing to subcontractors or suppliers on account of termination and costs incurred by the Sub-Contractor in protecting the Work, less, in each case, any sums or credits due to the Contractor accruing prior to or after the date of termination.

12. COLLECTIVE BARGAINING AGREEMENTS: If applicable, any collective bargaining agreements are attached as Schedule C to this Agreement.

13. CHANGES TO WORK: The Contractor may order additions to, deletions from or alterations incidental to the Work (any of which constitutes a "Change to Work") by written notice to the Sub-Contractor (a "Work Order") on receipt of which the Sub-Contractor shall promptly proceed with the performance of the Work Order.

When a Change to Work results in additional costs or savings to the Sub-Contractor in performing the Work, the amount payable for the Work shall be adjusted up or down by an amount agreed between the parties, or, if no amount is agreed to, based on the prices stipulated in this Agreement, or, where neither of the aforementioned methodologies is applicable, based on: *(Choose one of the following options; strike out the remaining option(s))*

- (a) estimated or actual costs of labour, materials and equipment incurred or saved to the extent possible by reference to actual or agreed rates for equipment and labour and actual material costs, inclusive of indirect costs, overhead and profit, which overhead and profit shall not exceed _____ %.
- (b) the costs of labour, materials and equipment incurred or saved as calculated by reference to the rates contained in the most recent B.C. Road Builders & Heavy Construction Association Equipment Rental Rate Guide.

14. COMPLIANCE WITH LAWS: The Sub-Contractor shall observe and comply with the provisions of all laws, by-laws, regulations and ordinances applicable to the Work or the performance of the Work. The Contractor shall provide all applicable permits and licenses for the Work unless otherwise agreed.



15. ASSIGNMENT: Neither the Contractor nor the Sub-Contractor shall assign this Agreement in whole or in part except with the prior written consent of the other.

16. PAYMENT FOR LABOUR AND SUPPLIES: The Sub-Contractor shall keep current all accounts with those supplying labour, equipment, materials and/or supplies used in the performance of the Work. If the Sub-Contractor fails promptly to pay or settle such accounts when due the Contractor may, upon written notice, pay such sums as necessary to satisfy such accounts and set-off sums so paid against any monies otherwise payable to the Sub-Contractor under this Agreement; provided that if such payments made by the Contractor exceed the balance of monies due to the Sub-Contractor, it shall be liable to pay the Contractor for such excess on demand.

17. DISPUTES: If a dispute arises between the Contractor and the Sub-Contractor, the parties will first attempt to negotiate a settlement. If negotiation is unsuccessful, the parties agree to submit the dispute to mutually agreed upon mediation within 60 days of the end of negotiations. If mediation does not resolve the dispute, either party may seek redress in any court of competent jurisdiction. Pending resolution of any dispute, the Sub-Contractor shall proceed diligently with the performance of the Work.

If any dispute results from non-payment by the Owner to the Contractor, the Contractor agrees to diligently pursue its claim for payment from the Owner. The Sub-Contractor agrees to provide reasonable cooperation to the Contractor in relation to the claim. Should the Contractor not diligently pursue its claim for payment from the Owner, the Contractor shall assign that portion of the claim related to the Work or the proceeds of such claim to the Sub-Contractor upon written request by the Sub-Contractor.

18. INTEREST: If payments are not made in accordance with the provisions of this Agreement, interest shall be paid at ___% per annum calculated and compounded monthly.

19. WARRANTY: The Sub-Contractor warrants the Work free from defects and performed and completed in accordance with the Agreement. The Contractor shall give the Sub-Contractor prompt notice in writing of defects in the Work arising within the warranty period stipulated in the Prime Contract, or if none is stipulated in the Prime Contract, ___ months from the completion of the Work, in which case the Sub-Contractor shall be entitled at its own expense promptly to correct them.

20. SHOP OR AS-BUILT DRAWINGS: The Sub-Contractor shall provide to the Contractor all shop drawings and as-built drawings relevant to the Work at the times and as specified in the Prime Contract, or as may reasonably be requested by the Contractor.

21. CONTRACTOR'S BONDS: The Sub-Contractor is notified that the Contractor has posted a Labour and Material Payment Bond with the Owner in the amount of ___% of the Prime Contract price, bearing identification number _____ and issued by _____.

_____.

22. NOTICES: Notice under the Agreement shall be given to:

The Contractor at:

The Sub-Contractor at:



Notice under the Agreement shall be given in such time as to enable the Contractor to meet the Contractor's notice requirements under the Prime Contract.

23. SUCCESSORS AND ASSIGNS: This Agreement shall bind the parties and their successors and assigns.

24. ADDITIONAL PROVISIONS: Any additional provisions are as outlined in Schedule D to the Agreement.

SIGNED AND DELIVERED:

CONTRACTOR: _____

Per: (Signature) _____ Per: (Signature) _____

Name: _____ Name: _____

Title: _____ Title: _____

SUB-CONTRACTOR: _____

Per: (Signature) _____ Per: (Signature) _____

Name: _____ Name: _____

Title: _____ Title: _____



SCHEDULE A



SCHEDULE B



SCHEDULE C



SCHEDULE D