

SWIM-SPA-POOL SUBCONTRACT AGREEMENT

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65 Pine Avenue Suite 310
Long Beach, CA 90802

THIS SUBCONTRACT
AGREEMENT IS
ENTERED INTO
THIS DATE:

PHONE (800) 555-5151 CELL (800) 555-5151

<i>and</i> PRIME/ GENERAL CONTRACTOR	NAME		
	PROJECT ADDRESS		STATE/ZIP PHONE
	ALTERNATE ADDRESS (IF ANY)		STATE/ZIP PHONE

LENDER: (If Any)

Subcontractor, hereinafter called "Subcontractor" agrees to perform the work described in the specifications as may be referred to herein by reference to the plans and specifications.

Work performed at _____

DESCRIPTION OF WORK:

Subcontractor shall perform the work described construction in accordance with plans and specifications on the property:

(Description of Work If Known)



- Check here if this space insufficient for complete specifications (attach specifications as original and each copy).
- Check here if there are plans (staple plans to original and each copy).

SCOPE OF WORK: All work necessary or incidental to complete work for the project in strict accordance with this subcontract and all terms and conditions hereof and as more particularly specified as (in): _____

with the following additions or deletions: _____

OTHER SPECIAL PROVISIONS: _____

PAYMENT Prime/General Contractor, _____, here agrees to pay to the Subcontractor for the satisfactory performance of the Subcontractor's work the sum of _____ and for extra work, if any, as follows: _____

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SCHEDULE OF PAYMENT(S): This schedule of _____ and is not conditioned upon Contractor first being paid by Owner. Contractor's obligation to pay Subc _____ is independent of Contractor receiving payment from Owner. _____

TIME AND SCHEDULING WORK: Subcontractor _____ to the jobsite or commence work until notified to do so by Contractor. Subcontractor shall commence work _____ written notice from Contractor. After Subcontractor commences work, Subcontractor will then complete _____ working days thereafter, subject to excusable delays. Working days are defined as Monday through _____ included. Scheduling of work, as provided for in this subcontract, is based on acceptable industry standards.

The subcontract provision for price and time included _____ on of the Subcontractor, if Subcontractor is not called upon to commence work within six (6) months from the _____ reement. Should this situation arise, Subcontractor is relieved of any responsibility to perform under this _____ shall be held harmless by Contractor of any liability associated with refusal to perform. Any amounts that _____ or interest at a rate of 1½% per month until paid or the maximum rate permitted by law, whichever is higher _____ or of this project may be the designated agent for the Contractor.

SOLE AGREEMENT: This Agreement, including _____ of, is expressly agreed to and constitutes the entire Agreement as of this date. No other Agreement or _____, expressed or implied, are a part of this Agreement unless specified herein.

IN WITNESS HEREOF the parties have accepted _____ or first above written.

SUBCONTRACTOR:

CONTRACTOR:

_____	(Name)	_____	(Name)
_____	(Address)	_____	(Address)
_____	(City, State, Zip)	_____	(City, State, Zip)
_____	(Phone)	_____	(Phone)
_____	(License)	_____	(License)

By:

X

(Signature)

X

(Signature)

TERMS AND CONDITIONS < Terms used by General

1. Permits and Licenses

Subcontractor shall obtain and pay for all permits and licenses governing the Subcontractor's specific work in sufficient time to allow progress of this work and that of others.

2. Extra Work

Subcontractor shall provide in a good and workmanlike manner labor and materials specified herein. Additional work not specified in the agreement will be provided only upon written authorization of Contractor. Payment for such additional work shall be provided in accordance with the Terms of Payment specified herein. In the event that there is an increase in the original scope of work or the extra work, then the price shall be at an identical unit price to the original scope of work.

In the event of an emergency condition, the General Contractor's supervisor may authorize the extra work. In any event, an order covering the emergency work shall be executed by the Subcontractor within 48 hours after the extra work is completed.

3. Labor and Material Releases

Subcontractor shall provide satisfactory proof of payment for labor and material releases covering work for each payment made and received from Contractor. Such releases provided by Subcontractor are only valid and conditioned upon receipt by Contractor in U.S. currency for full amount of said payment.

4. Extra Time

Time is of the essence of this agreement. Subcontractor shall complete work within 72 hours of proper notification by the Contractor. Subcontractor shall diligently pursue work through to completion. Subcontractor shall be responsible for delays incurred as a result of acts of neglect or omission of Owner, Owner's employees or agent, Contractor, Contractor's agents, other subcontractors, acts of God, stormy or inclement weather, strikes, lockouts, boycotts, or other union activities, extra work ordered by Contractor, acts of public enemy, riots or civil commotion, fire, failure to secure material through regular recognized channels, government priority or allocation of materials, failure of Contractor to provide payments when due, or delays caused by inspections or orders ordered by the inspectors of governmental bodies concerning the work, causes beyond control of Subcontractor.

5. Indemnity (Hold Harmless)

All of the work performed at the site of construction or in the delivery of materials or equipment to the site shall be performed by Subcontractor exclusively. Subcontractor shall indemnify and hold Contractor harmless from any claim, liability, loss, damage, or expense, including reasonable attorney's fees, award, fine or judgment, or arising out of the work, including without limitation, a claim, liability, loss, damage, cost, expense, award, fine or judgment, or reason of death or bodily injury to persons, injury to property, workmanship or materials, or design defects (if the design is the responsibility of Subcontractor), or arising by reason of Contractor's all negligent act or omission, regardless of whether such act or omission is active or passive. Subcontractor shall not be obligated to defend Contractor with respect to the sole negligence or willful and wanton act of Contractor, its agents or servants or other subcontractors who are not responsible to Contractor.

6. Insurance

Subcontractor shall carry, at Subcontractor's expense, the following insurance: Compensation insurance covering all Subcontractor's employees and public liability and property damage insurance covering Subcontractor's liability in the minimum amount of \$300,000 unless specified otherwise.

Subcontractor shall also carry automobile public liability and property damage insurance in an amount agreeable to Contractor.

At the commencement of work, Subcontractor agrees to provide to Contractor certificates of such coverage upon request of Contractor. Subcontractor agrees to maintain said insurance in full force and effect in accordance with the instruction herein. In the event that Subcontractor does not maintain said insurance, or said insurance shall for any reason lapse, then Contractor may purchase said insurance and charge Subcontractor therefor.

7. Bonds of Subcontractor.

At the time of the execution of this agreement or any time during its term, Subcontractor shall, if required by Contractor, execute a Performance Bond and Faithful Performance Bond in an amount equal to one hundred percent (100%) of the contract price. Said bonds shall be provided by corporate surety acceptable to Contractor and shall be in a form approved by Contractor.

8. Stoppage

Contractor shall have the right to stop work if payments are not made to Contractor. The work shall be stopped under an order of any court or arbitrator, or by Owner, or Contractor for a period of sixty (60) days, without fault of the Subcontractor, then Subcontractor may, at its option, upon five (5) days written notice, demand and receive payment for all work executed and materials supplied including an allowance for overhead and profit, proportionate to the work completed.

In the event of a delay as specified, Subcontractor guarantees that all materials furnished by Subcontractor will be a standard quality, free of defects, and will be installed or applied in a good and workmanlike manner. Labor and materials guaranteed for a period of one-year from the date of normal use and care, and provided Contractor has made all payments and all terms and conditions of this agreement are provided subject to the manufacturer's guarantee or warranty and not that of Subcontractor. THIS IS NOT A WARRANTY. ALL GUARANTEES EXPRESSED OR IMPLIED.

Subcontractor agrees to keep the premises in a neat and safe condition and to maintain Subcontractor's performance (or each day), Subcontractor shall keep the premises in neat broom-clean condition.

9. Arbitration

In the event any controversy shall arise between Subcontractor and Contractor with respect to any matter in question arising out of, or related to, the performance of the breach thereof, which the parties do not properly resolve, said controversy shall be decided by arbitration by and in accordance with the Construction Industry Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. This agreement so to arbitrate shall be enforceable under the prevailing arbitration law. The decision by the arbitrators shall be final, and judgment may be entered in any court having jurisdiction thereof. Administrative fees of the American Arbitration Association shall be paid equally by each party. However, in the event that the dispute between the parties is less than \$5000, then either party may choose to litigate the matter in the Small Claims Courts and the agreement to arbitrate shall not be binding.

The prevailing party in any dispute shall be entitled to its reasonable costs including attorney's fees.

TERMS AND CONDITIONS < Terms used by Sub

1. Asbestos and Hazardous Materials. Asbestos or other hazardous materials disturbance, removal or abatement is not provided for by the terms of this subcontract and in the event that asbestos or other hazardous material is encountered or discovered during the course of this project, it will be treated as extra work under Paragraph 11 of this Agreement. Subcontractor may stop work upon discovering asbestos or other hazardous material, until the terms of the "extra" are negotiated. Subcontractor, at his or her sole option, can require Owner or Contractor to be responsible for the cost of removal or abatement of asbestos or any other hazardous materials found on the job site.

2. Arbitration, Validity and Damages. Any controversy or claim arising out of or related to this contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the Arbitrator(s) may be enforced in any court having jurisdiction thereof. Claims within the monetary limit of the Small Claims Court shall be litigated in such court at the request of either party. Any claim filed in Small Claims Court shall not be deemed to be a waiver of the right to arbitrate. If a claim is filed in Superior Court in excess of the jurisdiction of the Small Claims Court may be filed in Superior Court, then the party filing in the Small Claims Court may do so pursuant to this paragraph.

In case one or more of the provisions of this Agreement or any provision hereof shall be invalid, unenforceable or illegal, the validity, enforceability and effect of the remaining provisions and other application shall not in any way be affected.

ANY DAMAGES FOR WHICH SUBCONTRACTOR MAY BE HELD RESPONSIBLE BY OWNER OR CONTRACTOR SHALL NOT, IN ANY EVENT EXCEED THE CONTRACT PRICE OF THIS AGREEMENT.

3. Reservation of Rights of Dispute. In the event that the Subcontractor deems it appropriate, to proceed with and complete any work which is the subject of a dispute between the Contractor and the Subcontractor as to whether such work is classified as a "change" or as an "extra," Subcontractor may, if it deems it appropriate, but is not required to, proceed with such work, and thereafter refer the dispute to arbitration in accordance with the Construction Industry Arbitration Rules of the Arbitration Association, to determine whether such work is in fact an "extra" without waiving any said rights, as well as determining the effect of such work.

4. Attorney Fees. In the event legal action or arbitration is instituted by either party of any term or condition of this subcontract, the prevailing party shall be entitled to recover of reasonable attorney fees in said action or arbitration, in addition to reasonable expenses incurred in the prosecution or defense of said action or arbitration.

5. Removal of Debris. Upon completion of the work, the Subcontractor shall remove all of its own debris and surplus materials from Owner's property in a neat and broom-clean condition. Subcontractor will not be held responsible for any pro-rated proportion of general clean-up of the premises or for the disposal of central scrap piles.

6. Failure to Make Payments. If Contractor fails to make the scheduled payments as defined in "Schedule of Payments," then Subcontractor shall have the option to cease the performance of any further work until such time said payment is received. If said payment is more than ten (10) working days late, Subcontractor shall consider such late payment as a material breach of this Subcontract Agreement and will not be bound to complete the balance of this subcontract. Subcontractor may then proceed as described herein for any and all damage incurred including but not limited to lost profits.

7. Retention. Contractor is authorized to withhold retention from Subcontractor to the extent that Owner withholds funds from Contractor for the work performed by Subcontractor. In no event shall Contractor withhold more than ten percent (10%) of payments due Subcontractor. All retentions must be paid to Subcontractor within five (35) days of the date the Subcontractor substantially completes a portion of the work.

8. Items Not Responsibility of Subcontractor. Unless specifically stated in this Agreement, Subcontractor shall not be held responsible for any existing or future applicable building regulations or ordinances, whether cited by the applicable code or not. Subcontractor is not responsible for any abnormal or unusual conditions. Correction of any such violations or abnormal conditions shall be considered additional work and shall be dealt with as hereinafter provided in Paragraph 11 for extra work.

9. Excusable Delays. If the Subcontractor is delayed in the performance of the work by conditions that could not be reasonably foreseen by Subcontractor or over which Subcontractor has no control or Subcontractor, which include, but are not limited to actions of God; fire; explosions or other casualty losses; strikes, boycotts, labor disputes; lockouts; hazardous material disturbance, abatement, or removal; or government body, then Contractor shall grant Subcontractor a reasonable extension of time. If additional work or cost is required of, or incurred by, Subcontractor because of the delay, then Subcontractor shall be entitled to compensation as provided in Paragraph 11.

10. Contractor's Responsibilities and OSHA Requirements. Waiver of Contractor's electric utilities from the serving agency to the point of entry at Owner's premises. The metering devices are required and are the responsibility of the Contractor.

In compliance with Federal and State law, Contractor agrees to make drinking water and toilet facilities available to all workers, or compensate Subcontractor for cost of rental units.

Contractor agrees to provide electricity at the job site to effect the work herein.

Contractor shall provide adequate job site storage and work area as required for the use of Subcontractor for work under this Agreement.

Contractor agrees to comply with all local, state, and national laws, including without limitation the provisions of the Accident and Safety Health Act of 1970 and the Occupational Safety and Health Act of 1969, and Subcontractor is not responsible for any liability arising from Contractor's noncompliance.

Contractor shall provide in a good and workmanlike manner only the materials specified therein. Additional work not specified in this Agreement shall be provided only upon written authorization of Contractor. However, in the event that the parties cannot agree on the sum necessary to compensate Subcontractor for the extra work, then Subcontractor shall be paid his actual costs for the additional work as well as his normal overhead and profit.

For any extra work performed, Contractor shall be compensated in an amount to be determined by the parties. The extra work is performed and such amount, including Contractor's normal overhead and profit shall be made as the extra work progresses, concurrently with the payments made under payments scheduled. However, in the event that an agreement cannot be reached, then Subcontractor may proceed upon the verbal authorization of the Contractor's job superintendent and request written confirmation of the Contractor within seventy-two (72) hours.

Assignment and Subcontracting. Subcontractor shall be allowed to assign any part of this contract or subcontract any portion of it without the written consent of Contractor.

Protection of Work. To the extent noted herein, Subcontractor will protect its own work and the work of others. To allow Subcontractor to protect the work, Subcontractor shall provide to Subcontractor adequate storage space and security on the job site. Once Subcontractor's work is completed, then Contractor shall be responsible for the protection of the work as well as the entire project.

If Contractor's work is damaged or destroyed during the course of Subcontractor's work, then Contractor shall agree to repair or replace said damaged work. If the work is damaged or destroyed as a result of actions beyond the reasonable control of the Subcontractor or the negligence of persons other than Subcontractor, then Subcontractor shall be responsible for the repair or replacement of the same. Compensation shall be determined as provided in Paragraph 11.

Conditions. In the event that Subcontractor encounters rock, ground conditions, utilities or other conditions unknown to Subcontractor and not foreseeable by Subcontractor, then Subcontractor shall immediately stop work and call Contractor's attention to such concealed conditions in writing. The contract price will be equitably adjusted in writing.

Contractor will procure at Contractor's expense and before the start of any work under this contract, fire insurance, with course of action and malicious mischief clauses attached. The insurance is to cover Contractor and Subcontractors as additional insured, and to protect Owner, Contractor, and construction lender as their interests may appear. If Contractor fails to do so, Subcontractor may procure to do so. If the project is damaged by any accident, disaster, or calamity such as fire, storm flood, earthquake, or by theft or vandalism, any work done by Subcontractor in rebuilding or restoring the project shall be paid for by the Contractor as provided in Paragraph 11 above. If, however, the cost of replacement of work already accomplished by Subcontractor exceeds 100 percent of the contract price, Contractor shall have the option to not proceed and in that event, shall pay Subcontractors usual overhead and a net amount of _____ percent, of all work performed by Subcontractor before cancellation.

Contractor will carry Worker's Compensation Insurance to protect Subcontractor's work force during the progress of the work. Contractor shall obtain and pay for insurance for its own employees and persons not under the control of Subcontractor.

Indemnification. Contractor shall indemnify and hold harmless Subcontractor from and against all claims arising from Contractor's use of the job site, or from Contractor's business or from any activity, work or things done, permitted or not, by Contractor or others in or about the job site or elsewhere, and shall further hold harmless Subcontractor from and against any and all claims arising from Contractor's default in the performance of any obligation on the Contractor's part under the terms of the Subcontract Agreement, or arising from any negligence in the performance of any obligation on the Contractor's part to be performed under the terms of the Subcontract Agreement, or arising from any negligence or any of Contractor's agents, Contractors, subcontractors, or employees, or from and against all costs, attorney's fees, expenses and liabilities incurred by Contractor or any of such claims or any action or proceeding brought thereon; or from and against any action or proceeding brought against Subcontractor by reason of any negligence of Contractor, upon notice from Subcontractor shall defend same at Contractor's expense by counsel satisfactory to Subcontractor.