

SHORT FORM STANDARD SUBCONTRACT

This Agreement is made this 29th day of **September, 2008**, between **Consulting Engineers, LLP** (Contractor) and **Sweet Heart Electric** (Subcontractor). The work described in Section 1 below shall be performed in accordance with the prime contract between Contractor and **Galaxy Independent School District** (Owner) and in accordance with all plans, specifications and other contract documents attached to or incorporated into the prime contract for the project known as **Galaxy Independent School District – Athletic Additions**. The Construction Lender (if applicable) is: **N/A**

SECTION 1. SCOPE. Subcontractor agrees to furnish all labor, materials, equipment and other facilities required to complete the following work:

Furnish labor and materials for a complete electrical installation in accordance with the project plans and specifications per Sweet Heart Electric Proposal Letter dated September 11th, 2008.

SECTION 2. PRICE AND PAYMENT. Contractor agrees to pay Subcontractor for the strict performance of his work the sum of: **One hundred forty-seven thousand six hundred dollars (\$147,600.00)**, or as set out in Section 15 below, subject to adjustments for changes in the work as may be directed in writing by Contractor.

Payment shall be made in monthly progress payments of 100 percent (**100%**) of labor and material which have been incorporated into the work of improvement; progress payments to Subcontractor shall be made only with sums received by Contractor from Owner for work performed by Subcontractor as reflected in Contractor's applications for payment. Final payment of the balance owed to Subcontractor shall be due ten days after receipt by Contractor of final payment from Owner for Subcontractor's work. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor, and material, and agrees to furnish same from its subcontractors, suppliers and/or materialmen in form satisfactory to Contractor, prior to receipt of any payment. Contractor may, at its option, make any payment or portion thereof by joint check payable to Subcontractor and any of its subcontractors, suppliers and/or materialmen.

If owner or other responsible party delays making payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. "Reasonable time" shall be determined according to the relevant circumstances, but in no event shall be less than the time Contractor, Contractor's sureties, and Subcontractor require to pursue to conclusion their legal remedies against Owner or other responsible party to obtain payment, including (but not limited to) mechanics' lien remedies.

If the Subcontractor asserts a claim which involves, in whole or in part, acts or omissions which are the responsibility of the Owner or another party, including but not limited to claims for failure to pay, an extension of time, delay damages, or extra work, Contractor will present the Subcontractor's claim to the Owner or other responsible party. The Subcontractor shall cooperate fully with the Contractor in all steps taken in connection with prosecuting such a claim and shall hold harmless and reimburse the Contractor for all expense, including legal expense, incurred by Contractor which arise out of Contractor's submission of Subcontractor's claim to Owner or other responsible party. Subcontractor shall be bound by any adjudication or award in any action or proceeding resolving such a claim.

SECTION 3. ENTIRE AGREEMENT. This Agreement represents the entire agreement between Contractor and the Subcontractor and supersedes any prior written or oral representations. Subcontractor, its subcontractors, suppliers and/or materialmen are bound by the prime contract and any contract documents incorporated therein insofar as they relate in any way, directly or indirectly, to the work covered by this Agreement.

SECTION 4. TIME. Time is of the essence of this Agreement. Subcontractor shall provide Contractor with scheduling information in a form acceptable to Contractor and shall conform to Contractor's progress schedules, including any changes made by Contractor in the scheduling of work. Subcontractor shall coordinate its work with that of all other contractors, subcontractors, suppliers and/or materialmen so as not to delay or damage their performance.

SECTION 5. DELAY. In the event that Subcontractor's work is delayed for any reason, including acts of the Contractor, Subcontractor's sole remedy shall be an extension of time equal to the period of delay, provided Subcontractor has given Contractor written notice of the commencement of delay within 48 hours of its occurrence. In the event that Contractor, in its sole discretion, should seek compensation from the Owner as a result of any delay, Subcontractor shall be entitled to an equitable portion of any amount recovered by Contractor, minus an aliquot share of the cost of pursuing said claim. This provision shall not be construed to require the Contractor to pursue any delay claim against the Owner or any other party.

SECTION 6. CHANGES IN WORK. Subcontractor shall make no changes in the work covered by this Agreement without written direction from the Contractor. Subcontractor shall not be compensated for any change which is made without such written direction. No changes in the work covered by this Agreement shall exonerate any surety or any bond given in connection with this Agreement.

SECTION 7. CLAIMS. If any dispute shall arise between Contractor and Subcontractor regarding performance of the work, or any alleged change in the work, Subcontractor shall timely perform the disputed work and shall give written notice of a claim for additional compensation for the work prior to commencement of the disputed work. Subcontractor's failure to give written notice prior to commencement constitutes an agreement by Subcontractor that it will receive no extra compensation for the disputed work.

SECTION 8. INSPECTION AND PROTECTION OF WORK. Subcontractor shall make the work accessible at all reasonable times for inspection by the Contractor. Subcontractor shall, at the first opportunity, inspect all material and equipment delivered to the job site by others to be used or incorporated in the Subcontractor's work and give prompt notice of any defect therein. Subcontractor assumes full responsibility to protect the work done hereunder until final acceptance by the Architect, Owner and Contractor.

SECTION 9. LABOR RELATIONS. Subcontractor shall maintain labor relations policies in conformity with the directions of the Contractor and shall be bound to and comply with all of the terms and conditions, including trust fund contributions, required by those labor agreements applicable to work performed under this Agreement to which the Contractor is bound. The specific agreements to which the Contractor is bound are listed in Section 16.

SECTION 10. TERMINATION. (i) Should Subcontractor fail to rectify any contractual deficiencies, including failure to pay its creditors, within three (3) working days from receipt of Contractor's written notice, Contractor shall have the right to take whatever steps it deems necessary to correct said deficiencies and charge the cost thereof to Subcontractor, who shall be liable for the full cost of Contractor's corrective action, including overhead, profit and actual attorneys' fees. (ii) Contractor may at any time and for any reason terminate Subcontractor's services hereunder at Contractor's convenience; in the event of termination for convenience, Subcontractor shall recover only the actual cost of work completed to the date of termination, in approved units of work or percentage of completion, plus ten percent (10%) of the actual cost of the work for overhead and profit. Subcontractor shall not be entitled to any claim or lien against Contractor or Owner for any additional compensation or damages in the event of such termination.

SECTION 11. BONDING OF SUBCONTRACTOR. Concurrently with the execution of this Agreement, Subcontractor shall, if required by Contractor, execute a labor and material bond and performance bond, in amount equal to one hundred percent (100%) of the Contract price. Said bonds shall be executed by a corporate surety acceptable to and Contractor and on bond forms provided by Contractor. If Contract price increases by twenty percent (20%) or more Subcontractor will provide an increase rider from surety. If there is a cardinal change in scope of Contract, Subcontractor will provide a consent of surety from surety.

SECTION 12. INDEMNIFICATION. To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Owner and Contractor and their agents and employees from claims, demands, causes of actions and liabilities of every kind and nature whatsoever arising out of or in connection with Subcontractor's operations performed under this Agreement. This indemnification shall extend to claims occurring after this Agreement is terminated as well as while it is in force. The indemnity shall apply regardless of any active and/or passive negligent act or omission of Owner or Contractor, or their agents or employees, but Subcontractor shall not be obligated to indemnify any party for claims arising from the sole negligence or willful misconduct of Owner or Contractor or their agents or employees or caused solely by the designs provided by such parties. The indemnity set forth in this Section shall not be limited by insurance requirements or by any other provision of this Agreement. All work covered by this Agreement done at the site or in preparing or delivering materials or equipment to the site shall be at the sole risk of Subcontractor until the completed work is accepted by Contractor.

SECTION 13. INSURANCE. Subcontractor shall, at its sole expense, procure and maintain insurance on all of its operations, with carriers acceptable to Contractor, and in amounts acceptable to Contractor and as required by the prime contract, including the following coverage:

- a. **Worker's Compensation and Employer's Liability Insurance** as required by Law, including a Waiver of Subrogation endorsement issued in favor of Ward Consulting Engineering, LLP.
- b. **Comprehensive General Liability or Commercial General Liability Insurance** covering all operations. Form is to be Occurrence only, claims made, and modified claims forms are not acceptable. Limits are to be no less than \$1,000,000 per occurrence for Bodily Injury, Property Damage, Products and Completed Operations and Personal Injury Liability, with a \$2,000,000 general aggregate. The general aggregate must apply on a per project basis. Ward Consulting Engineering, LLP is to be named additional insured using ISO form CG2010 11/85 or its equivalent.
- c. **Automobile Liability Insurance**, including coverage for all owned, hired, and non-owned automobiles. Limit is to be no less than \$1,000,000 combined single limit for bodily injury and property damage.

All insurance coverage shall be in amounts and for duration acceptable to Contractor and as required by the prime contract. Carriers providing such coverage must be acceptable to Contractor and have an A.M. Best's rating of at least A-VI. Subcontractor shall provide certificates of insurance to Contractor on a standard Acord certificate of insurance form, copies of all requested endorsements must be attached thereto. The certificates of insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to Contractor. The failure of Contractor to enforce in a timely manner any of the provisions of this Section 12 shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Agreement.

SECTION 14. DISPUTE RESOLUTION. Any dispute resolution procedure in the prime contract shall be deemed incorporated in this Agreement, and shall apply to any disputes arising hereunder, except disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the prime contract, those which have been waived by the making or acceptance of final payment, and questions regarding the licensure of the subcontractor. Subject to compliance with all applicable laws, including but not limited to those relating to false claims, dispute and claim certifications, and cost and pricing data requirements, Contractor's sole obligation is to present any timely-filed claims by Subcontractor to the Owner under such procedure and, subject to the other provisions of this Agreement, to pay to Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled. For disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the prime contract, the parties hereto shall submit any and all disputes arising under or relating to the terms and conditions of the Subcontract to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association. No demand in arbitration shall be made after the date when the institution of legal or equitable proceedings based on such dispute would be barred by the applicable statute of limitations. In any dispute resolution between the parties, the prevailing party shall be entitled, in addition to any other relief granted, to recover its costs of participation, including attorneys' and experts' fees. An award rendered by an arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

SECTION 15. WARRANTY. Subcontractor warrants to Owner and Contractor that all materials and equipment furnished 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 the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this section 14 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

SECTION 16. SPECIAL PROVISIONS (Including unit pricing, if applicable): **N/A**

SECTION 17. LABOR AGREEMENTS. The Contractor is signatory to the following labor agreements covering work on this project:

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 must be filed within 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.

Dated: September 29th, 2008

Dated: _____

Contractor:

Ward Consulting Engineering, LLP

By: _____
(representative's name)

Subcontractor:

By: _____
(representative's name)

Address:

**555 Estimating Avenue
Galveston, TX**

Contractor's License No:
68449

Address:

Contractor's License No.

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