



# SUBCONTRACT AGREEMENT

Fax:

SUBCONTRACTOR

Date:

Phone: , Fax:

Subcontract No.:

Subcontract Title:

Job No.:

Project:

Project Manager:

Phone:

Fax:

("Contractor") and the party named above ("Subcontractor") hereby agree that the work specified below ("work") shall be performed by Subcontractor in accordance with all of the provisions of this Subcontract Agreement ("Subcontract"). Subcontractor understands that Contractor has entered into a contract with ("owner"), for the construction of ("project") to be constructed on property under the Owner's control, located at according to the plans and specifications prepared for the project by

Subcontractor represents that it has carefully examined the plans and specifications and the location of the project and is familiar with and has satisfied itself as to the nature, location and the amount of the work, Subcontractor's access thereto and ability to perform the work, the terms of this Subcontract and all incorporated documents, as well as the requirements of quality, quantity and availability of labor, materials, equipment, facilities and other items required for the performance of the work and the climatic, physical and other conditions which may be encountered in the performance of the work, and assumes all risks relating to these matters.

Subcontractor agrees to execute this Subcontract with all Articles and Exhibits attached and incorporated herein. No payments will be made on this Subcontract until a signed copy of this order has been returned to Contractor. However, commencement of work will constitute acceptance of this Subcontract, including all terms and conditions.

Contractor and Subcontractor, in consideration of the Subcontract amount, agree as follows:

### ARTICLE 1 - WORK:

Except as otherwise provided, Subcontractor shall supply and furnish at the location where the work is to be performed all labor, materials, tools, scaffolding, apparatus, supplies, equipment, machinery, transportation, supervision, insurance, taxes, permits and fees, and technical, professional and other services, and shall perform all operations necessary as required for the satisfactory performance and completion of the following work:

Subcontractor warrants that it shall examine the work installed by others that affects Subcontractor's work, and that if any apparent defects exist, Subcontractor shall immediately notify Contractor in writing. Subcontractor shall not proceed until such defects are corrected or Subcontractor is given written authorization to proceed that is signed by an officer of Contractor. In the event Subcontractor fails to give notice as required herein, Subcontractor shall be deemed to have waived any claim with respect to such defects.

### ARTICLE 2 - COMPENSATION

As full consideration for the complete and satisfactory performance of the work, Contractor shall pay to Subcontractor:

### ARTICLE 3 - DOCUMENTS INCORPORATED

Except to the extent inconsistent with this Subcontract and continuation sheets, the following documents are by this reference incorporated and made a part of this Subcontract and are referred to collectively as the "contract documents."

- A. The contract between Contractor and Owner together with the general, supplementary, special, and other conditions, and any general requirements thereof.
- B. The following addenda between Contractor and Owner and all modifications incorporated prior to the date of this Subcontract:
- C. The plans, specifications, drawings, clarifications and other technical data prepared for the project including all modifications incorporated prior to the date of this Subcontract. The contract documents are to be construed together so that all of the work called for or indicated anywhere therein relating to Subcontractor's work is to be done by Subcontractor. In case of discrepancy within the contract documents, the provisions of this Subcontract shall take precedence. In the event of conflicting clauses or terms within this Subcontract, the clause or term which imposes the greater duty on Subcontractor shall govern.
- D. All generally and specifically applicable trade, industry and governmental standards, guidelines and codes.

**ARTICLE 4 - TIME OF COMMENCEMENT AND COMPLETION**

Subcontractor shall start the work upon receipt of written notice to proceed or issuance of Subcontract from Contractor and shall execute the work with diligence and dispatch so as to maintain the schedules and milestones established by Contractor. Subcontractor agrees to complete work as rapidly as possible so as to cause no delay to Contractor or any other Subcontractor on the project and to maintain work progress in accordance with the project schedule.

Subcontractor is cautioned that schedules and milestones are subject to review and revision and in such event, the revisions will be made available for Subcontractor's information at Contractor's project site. It is Subcontractor's sole responsibility to attend project meetings, keep itself informed

of any revisions and conform to any such revisions.

**ARTICLE 5 - CONTRACTUAL RELATIONSHIP**

Subcontractor is bound to Contractor by the terms of the contract documents and assumes toward Contractor, with respect to Subcontractor's work, all of the obligations and responsibility which Contractor has assumed toward Owner by the contract documents. Subcontractor agrees that if any portion of the work covered hereunder is further subcontracted (as provided in ARTICLE 20 of this Subcontract) such additional Subcontractor, of any tier, shall be identified in a separate and distinct contract for this project with Contractor's job project number and such additional Subcontractors shall be bound by the terms of this Subcontract so far as applicable to its work, including but not limited to the insurance requirements set forth in ARTICLE 22.

It is agreed that whenever the word "Architect" or "Engineer" is used in this Subcontract, it means any other person to whom Contractor or Owner has delegated the authority to supervise and accept or reject the work performed and the materials furnished by Contractor or Subcontractor under this agreement. The existence or exercise of such Architect's or engineer's authority shall not lessen or impair any rights, power or discretion therein reserved by Contractor.

**ARTICLE 6 - ENTIRE AGREEMENT**

This Subcontract embodies the entire agreement between Contractor and Subcontractor. The parties shall not be bound by or be liable for any statements, representations, promises, inducements, or understandings of any nature or kind not set forth in this Subcontract or in the documents incorporated by reference in this Subcontract. No changes, amendments or modifications of any of the terms or conditions of this Subcontract shall be valid unless made in writing and signed by the party to be charged. There are none now, and there will not be any oral agreements for payment of any amount of money in excess of the fixed amount stated in the Subcontract. Subcontractor also understands and agrees that this paragraph is an extremely important provision and that it cannot be orally modified.

**ARTICLE 7 - CONTRACTOR'S EQUIPMENT**

Subcontractor agrees that Contractor's equipment and operators of such equipment will be available to Subcontractor only at Contractor's discretion, and only pursuant to a written agreement; and only on the basis of established rates and charges, including overhead and fee. Subcontractor assumes complete responsibility for the use or operation of said equipment regardless of existence of a written agreement, and will defend, indemnify, and hold harmless Owner and Contractor for and against any damage, claim, liability, costs or expense, including attorney fees, arising in any manner whatsoever out of Subcontractor's use or operation of said equipment or use of same for Subcontractor's benefit, irrespective of who actually operated this equipment, including for damages to the equipment itself.

**ARTICLE 8 - ORDER OF PERFORMANCE OF WORK**

Subcontractor agrees that because of the requirements of coordination of work, revisions, and other reasons that may develop during the work, Contractor may have to adjust Subcontractor's schedule, but, when Subcontractor's work is called for, time is of the essence of this Subcontract on the part of Subcontractor. Subcontractor agrees to commence and to complete Subcontractor's work within the date or time set forth in ARTICLE 4, and to do Subcontractor's work at such time and such quantity and in such manner as may be directed by Contractor and as required for the best possible progress of the construction of the project. It is understood that Contractor, Owner, other Contractors and Subcontractors may be working at the site of the work during the performance of this Subcontract. Subcontractor agrees that it shall conduct Subcontractor's work so as to facilitate and not interfere with or delay the work of Contractor, Owner, or any other Contractor or any other Subcontractor employed on the project.

Subcontractor shall maintain close contact with the project at all times and Subcontractor shall be wholly responsible for the installation of Subcontractor's work in the project in the proper sequence and at the proper time. Subcontractor agrees to immediately commence any part of the Subcontractor's work when notified to do so by Contractor. Subcontractor shall have all necessary materials available to commence work at least five days prior to the date specified for the commencement of Subcontractor's work.

**ARTICLE 9 - EXTENSION OF TIME - WAIVER OF DAMAGES FOR DELAY**

Any request by Subcontractor to extend the time for commencement and completion must be in writing, state the grounds for the request, and no extension of time shall be binding on Contractor unless agreed to in writing. If the prosecution or completion of Subcontractor's work shall be delayed, or be about to be delayed, because of fire, earthquake, cyclones, casualties or events of like nature, or causes wholly beyond the control and without the fault or negligence of Subcontractor and which were not foreseeable by Subcontractor at the time this Subcontract was entered into, Subcontractor shall, within five days after the commencement of any such delay, give to Contractor written notice of delay and of the anticipated results of the delay. Within five days after the termination of any such delay, Subcontractor shall file a written notice with Contractor specifying the actual duration of the delay. Failure to give either of the above notices shall be grounds for denial of an extension of time. If Contractor determines that the delay was beyond the control and without the fault or negligence of Subcontractor and not foreseeable by Contractor or Subcontractor at the time the Subcontract was entered into, Contractor shall determine the duration of the delay and may extend the time of performance of the Subcontract, provided that Contractor is able to obtain such extension of time from the Architect or Owner. Subcontractor hereby waives recovery for any damages suffered by reason of the delays contemplated in this Article. An extension of time shall constitute Subcontractor's sole and exclusive remedy for such delay.

**ARTICLE 10 - UNEMPLOYMENT INSURANCE, TAXES, CONTRIBUTIONS AND ASSESSMENTS**

Unless stated otherwise in this Subcontract, Subcontractor shall pay all sales or use taxes, excise taxes, income taxes, value-added taxes, social security taxes, unemployment compensation taxes, worker's compensation premiums, and other payroll taxes or contributions for unemployment insurance, old age retirement benefits, life pensions, annuities and similar benefits in respect to the material or labor furnished under this Subcontract which may now or hereafter be imposed by law or collective bargaining agreement. Subcontractor shall further comply with all laws, statutes, rules and regulations applicable to the compensation paid to its employees, and shall maintain suitable forms, books of account, and records. The compensation agreed to be paid to Subcontractor includes amounts for, and Subcontractor shall be liable for and shall indemnify, defend and hold harmless Contractor and Owner from all such taxes, contributions, any interest accrued and penalties imposed, and all taxes, excises, assessments, liabilities for unpaid back wages and benefits and any other charges, liabilities, or penalties imposed or levied by any government agencies or authority on or because of the work, or any materials, equipment, services or supplies furnished or used in the performance of this Subcontract.

**ARTICLE 11 - INSPECTION AND CORRECTION OF MATERIALS AND WORKMANSHIP; ACCEPTANCE**

The work and all equipment furnished and work performed in connection with it shall at all times be subject to inspection by Contractor, Owner or Architect. Subcontractor shall, at its own expense, provide safe and proper facilities and all samples, documents, drawings and lists necessary for such inspection. If Subcontractor covers all or any portion of the work prior to any inspection or test by Contractor, Owner or the Architect, all costs of any necessary uncovering or replacing shall be borne solely by Subcontractor. Neither the failure to make such inspections or to discover defective workmanship, or materials or equipment or approval of payment or payment to Subcontractor for such work, materials, or equipment, shall be conclusive evidence of the performance of the work, either wholly or in part, and no payment shall be construed as an acceptance of defective work or improper material, nor shall payment prejudice the rights of Contractor or Owner thereafter to correct or reject work or materials as hereinafter provided.

If any material, equipment, or any part of the work is determined by Contractor, Owner or Architect, either during the performance of the work, or on final inspection, or during any applicable guarantee period, to be defective or not in compliance with the requirements, Contractor or Owner shall notify Subcontractor in writing that such material, equipment or work is rejected. Following notice of rejection, Subcontractor shall, at its own expense, immediately replace and correct such defective material, equipment or work by making the same comply strictly with all requirements. Compliance with applicable requirements following the completion of corrective work by Subcontractor shall be determined solely by Contractor or Architect.

**ARTICLE 12 - REMOVAL OF DEBRIS AND WASTE MATERIAL**

Removal of rubbish and dirt caused by Subcontractor's work shall be done by Subcontractor whenever required by Contractor. If not, such removal may be performed by Contractor at Subcontractor's expense. The project site at all times shall be maintained in an orderly and clean condition. Subcontractor shall keep the project site free of all dirt and rubbish caused by Subcontractor's work and in a condition satisfactory to Contractor.

**ARTICLE 13 - LABOR CONDITIONS**

Subcontractor agrees, to the extent permissible under Federal law and applicable State laws, to be bound by the terms and conditions of any project labor agreements executed by Contractor and applicable to the work to be done under this Subcontract, including the terms and provisions of any such agreements providing for the assigning of work or settlement of jurisdictional disputes. Subcontractor agrees that if any portion of the work covered is further subcontracted (as provided in Article 20 of this Subcontract), any additional Subcontractor of any tier shall be bound by and observe the provisions of this clause to the same extent as Subcontractor, and Subcontractor further agrees that a copy of this clause imposing such obligations upon further Subcontractors shall be included in any further Subcontract.

Subcontractor's employees shall be skilled in their trade. Any employee of Subcontractor may be refused admittance to the project site or may be requested to leave the project site at any time by Contractor. Contractor shall not be required to provide any reason for the action. In the event any employee or employees of Subcontractor are so barred from the project site Subcontractor shall immediately replace such employee(s) with employee(s) satisfactory to Contractor.

**ARTICLE 14 - EQUAL OPPORTUNITY CLAUSE**

During the performance of this Subcontract, Subcontractor agrees not to discriminate against any employee or applicant for employment because of race, national or ethnic origin, age, religion, disability, sex, sexual orientation, veteran status, or any other characteristic protected under applicable Federal or State law. Further, Subcontractor agrees to maintain compliance with all Federal, State and local laws, regulations, executive orders, and lawful requirements with respect to equal opportunity, affirmative action, and nondiscrimination, including but not limited to the provisions of the Equal Opportunity Clauses as promulgated by Section 202 of Executive Order 11246, dated September 24, 1965, as amended, and found at CFR 60- 1.4(a), 300-5(a) and 741.5(a), all of which are deemed incorporated herein by reference, and in addition, if applicable, such rules as may be applicable to this Agreement as a U. S. Government subcontract. Further, Subcontractor agrees to execute all required certificates of assurance required to obtain and perform this contract by Contractor, Owner or Subcontractor. When so executed, such certificates of assurance are incorporated in this Subcontract. Subcontractor assumes all liability for failure to comply with the provisions of this Article and agrees to indemnify and hold Contractor harmless for any non-compliance. Subcontractor represents and warrants that it has had full opportunity to familiarize itself with all obligations imposed upon it by Federal, State and local laws, regulations, rules and ordinances, and that it is familiar with and in full compliance with same, including but not limited to all laws, regulations, rules and ordinances referenced in or applicable to the Work of the Owner-Contractor agreement.

**ARTICLE 15 - OTHER APPLICABLE LAWS**

Subcontractor agrees that it will comply with all other applicable Federal, State and local laws, regulations, rules and ordinances, including the standards incorporated by reference in Article 3 of this Subcontract, in producing the goods and supplies or performing the work to be furnished under this Subcontract, and agrees to furnish Contractor, upon request, certificates to that effect and in the form as Contractor may from time to time require. Subcontractor shall further comply specifically with Contractor's safety policy, all applicable Federal, State and local safety laws, standards, rules, and regulations, and Subcontractor assumes all liability for failure to comply with the provisions of this paragraph. Subcontractor represents and warrants that it has had full opportunity to familiarize itself with all obligations imposed upon it by Federal, State and local laws, regulations, rules and ordinances, and that it is familiar with and in full compliance with same, including but not limited to all laws, regulations, rules and ordinances referenced in or applicable to the Work of the Owner-Contractor agreement.

**ARTICLE 16 - INDEMNITY AND DEFENSE**

Subcontractor agrees to defend and indemnify Contractor, Owner, and any other person who Contractor agreed under a contract to defend or indemnify, from and against any and all, alleged or actual, damage, claim, liability, loss, demand, injury, and expense, including attorney fees, costs, and interest, in any way arising out of or otherwise caused by Subcontractor's Work, actions, or omissions.

**ARTICLE 17 - PATENT INDEMNITY**

It is agreed that the contract price includes amounts for the Subcontractor's payments of all royalties and costs arising from patents, trademarks and copyrights in any way involved in Subcontractor's work. Subcontractor agrees to indemnify, defend and hold harmless Contractor, Owner and their representatives from any claims, losses, costs, damages, judgments and expenses, including attorney fees, incurred by Contractor, Owner or their representatives as a result of or in connection with any claims or actions based upon infringement or alleged infringement by reason of the use of any patent or trademark or copyright reflected in any design, device, material or process furnished or employed under the Subcontract by Subcontractor, its employees, agents, suppliers and vendors.

**ARTICLE 18 - WARRANTY**

Subcontractor agrees to properly make good, without cost to Contractor or Owner, any and all defects due to faulty workmanship and/or materials, and any resulting damage to any other portion of the project for the period of time which Contractor is responsible to Owner under the contract with Owner. If no such period is stated in the contract documents, then Subcontractor's warranty shall be for the period of time Contractor is or might be liable under any applicable Statute of Limitations, but in no case less than one year from the date of Substantial Completion unless otherwise stated. The warranty provided in this Article shall be in addition to and not in limitation of any warranty or remedy required or provided by law or by the contract documents. Subcontractor further agrees to assign to Contractor, or to such persons or entities as Contractor may designate, including the Owner, all applicable factory and manufacturers' warranties covering any goods, components or materials incorporated into, installed, furnished or provided to the work by Subcontractor, its employees, agents, suppliers and vendors. Subcontractor shall also ensure that the applicable warranty periods shall not commence to run until final acceptance of the work by the Owner. Subcontractor further agrees, upon delivery of the goods, components or materials to furnish to Contractor, or such persons or entities as Contractor may designate, including Owner, all owners' manuals, warranty certificates, title documents, and any other factory or manufacturer-issued documentation covering the goods, components or materials.

**ARTICLE 19 - TERMINATION**

- A. Partial: At the option of Contractor, this Subcontract may be terminated in part if Subcontractor fails to perform or timely perform a portion of the work. To do so, Contractor may issue unilateral written change orders deleting that portion of work and price. Contractor may in addition backcharge Subcontractor for any additional cost, plus standard overhead and markup. The backcharge may be deducted from amounts owed to Subcontractor and if it exceeds amounts owed by Contractor to Subcontractor, Subcontractor agrees to pay Contractor the balance.
- B. Complete: This Subcontract may be terminated in its entirety by Contractor as follows:
- (1) It is agreed that if Contractor's contract for the work under which this Subcontract is issued should be terminated, Contractor has the right to terminate this Subcontract by written notice to Subcontractor by mail or electronic mail.
  - (2) Should Subcontractor fail to prosecute the work or any part of it with promptness and diligence or fail to perform any of the provisions of the Subcontract, fail to comply with Safety requirements of Contractor, MIOSHA and OSHA, or go into liquidation other than as part of a solvent corporate reorganization, enter into an assignment for the benefit of its creditors or become insolvent and unable to complete this Subcontract, then Contractor, after three days written notice (by mail or electronic mail) to Subcontractor, may terminate Subcontractor's right to proceed with the work. In the event of such termination, Contractor may take possession for the purpose of completing the work included in this Subcontract, of all materials, tools, scaffolding, machinery, equipment and appliances, and may employ or contract with any other person or persons to finish the Subcontract and to provide the materials to do so, or Contractor may itself provide any labor or materials and perform any part of the work. If Contractor takes possession of the work, or employs or contracts with any other person or persons to finish the work, Subcontractor shall not be entitled to receive any further payment under this Subcontract until the work is wholly finished, at which time, if the unpaid balance of the amount to be paid on this Subcontract shall exceed the expenses incurred by Contractor (including Contractor's standard overhead and markup) in finishing the work, then the unpaid balance, after deducting any loss or damage by reason of Contractor's taking possession of the work, including damages for delays, shall be paid to Subcontractor by Contractor. In the event the expenses, compensation, costs and damages incurred in finishing the work, including attorney fees, exceed the unpaid balance, Subcontractor and its sureties, if any, shall be liable for and shall pay the excess to Contractor. The failure of Contractor to exercise any of the rights under this Article shall not excuse Subcontractor from compliance with the provisions of this Subcontract nor prejudice the rights of Contractor to recover damages for Subcontractor's default or breach of any of the terms of this Subcontract.
- C. Notwithstanding the above, Contractor has the right to terminate this Subcontract for its convenience upon written notice to Subcontractor. If so, Subcontractor will be paid its share of the Subcontract amount proportionate to the percentage of its work completed and other reasonable cancellation costs incurred as a result of the termination. No payments will be made for anticipated overhead and profit, and prior to making any payments under this clause for cancellation costs, Contractor shall have the right to audit Subcontractor's records.

**ARTICLE 20 - ASSIGNMENT**

The Subcontract shall not be assigned, sublet, delegated or further subcontracted by Subcontractor, in whole or in part, without the prior written consent of Contractor. If granted, any such written consent incorporates by reference all of the requirements of the contract documents and this Subcontract, including the documents incorporated by reference in Article 3 of this Subcontract.

**ARTICLE 21 - PAYMENT**

- A. Subcontractor agrees that as a condition precedent to Contractor's obligation to make any payment to Subcontractor under this Subcontract, Contractor must receive payment for Subcontractor's work from Owner. In the event that Contractor does not receive all or any part of the payment from Owner in respect to Subcontractor's work, whether because of a claimed defect, deficiency in Subcontractor's work retainage, or for any other reason, Contractor shall not be liable to Subcontractor for any sums in respect thereto.

- B. On the day of each month established by Contractor, Subcontractor shall deliver to Contractor's main office a detailed statement acceptable to Contractor, and if required, supported by receipts, vouchers, certified payroll, material bonds, etc., showing values of all materials delivered and work completed up to the established billing date for which payment is requested. Monthly and final payments will be made to Subcontractor within ten days after receipt of payment by Contractor from Owner. Any final remaining percentage will be forwarded to Subcontractor within ten days of receipt by Contractor from Owner. Subcontractor must use forms and procedures acceptable to Contractor and Owner, including, but not limited to, AIA G702 and G703 billing forms.
- C. Prior to submission of the first statement, Subcontractor will deliver to Contractor for review and approval a detailed breakdown of the contract sum showing a schedule of values for the various parts of the work. Once accepted, this schedule of values will be used as a basis for checking Subcontractor's monthly statements.
- D. As a condition precedent to payment to Subcontractor, with the second and each succeeding monthly request for payment, as well as the final payment, Subcontractor shall submit a Sworn Statement and waivers of lien or bond claim showing all payments made for labor and materials and on account of all work covered in the previous month's request for payment. Subcontractor's waivers of lien and/or bond claims must be on Contractor's form, and must affirmatively set out that Subcontractor has no claims for additional compensation or for extension of time, or set forth the particular details of same. Sworn Statements and waivers of liens or bond claim may be required to be submitted by Subcontractor, suppliers, and further Subcontractors at any tier.
- E. The final payment on this Subcontract shall be payable upon completion of the project as provided in the contract between Contractor and Owner, and, after Subcontractor shall have furnished Contractor and Owner with a release of all claims against Contractor and/or Owner arising under or from this Subcontract.
- F. It is agreed that in the event Contractor shall incur any cost or expense of any nature preparing for prosecution of any claim against Owner or in the defense of any claim by Owner, whether by means of negotiations, arbitration, or legal action, arising out of Owner's failure to or refusal to pay Contractor for work done by Subcontractor under or arising out of this Subcontract, Subcontractor shall be liable and shall promptly reimburse Contractor for all such costs and expenses including actual and reasonable attorneys' fees.
- G. Subcontractor agrees that any amount owing at any time from Subcontractor (or its sub-subcontractors or suppliers) to Contractor on this Subcontract, or any other contract or transaction, may be set-off by Contractor against any amount due (or to become due) to Subcontractor for services, labor or material on this Subcontract. Subcontractor shall specify in all its sub-subcontract and supplier agreements that amounts payable by Subcontractor thereunder shall be subject to set-off by Subcontractor on behalf of Contractor, for amounts owing to Contractor by the sub-subcontractors and suppliers.
- H. Upon payment by Contractor, Subcontractor shall hold such payment in trust for the benefit of its laborers, sub-subcontractors and material suppliers, and shall promptly pay its laborers, sub-subcontractors and material suppliers the amounts to which they are entitled. Subcontractor shall save and keep the project structures and improvements, the real property upon which the project is situated, the interests of the Owner, and the contract proceeds or other monies now due or hereafter to become due, free from all construction or other liens, or other claim against contract proceeds. If Subcontractor fails, within five (5) days' after written notice, to remove any liens or claim against the Owner, the property, or contract proceeds, by bonding or otherwise as directed by Contractor, Contractor shall have the right (but not the obligation) to retain sufficient funds out of any money due, or thereafter to become due by Contractor to Subcontractor to pay the same (and all costs incurred by reason thereof); and Contractor may pay or bond said lien or claim and costs out of any funds at any time in the hands of Contractor and otherwise attributed to the scope of work of this Subcontract.
- I. If Contractor alleges breach of another Subcontract executed by this same Subcontractor or a related party, Contractor may exercise a right of offset and hold payments due from this Subcontract. until the alleged breach from the other Subcontract(s) is resolved.

**ARTICLE 22 - INSURANCE AND BONDS****A. INSURANCE**

- (1) Subcontractor agrees at its sole expense to provide and keep in force at all times during the performance of Subcontractor's work insurance or workers compensation and employer's liability, commercial general liability insurance and umbrella (excess) liability insurance. The commercial general liability insurance shall include bodily injury and property damage insurance covering this contract as an insured contract to insure the indemnity agreed to for contract under Article 16 of this Subcontract.
- (2) The commercial general liability coverage form of Subcontractor's insurance shall be on the most recent ISO form CG 00 01 or equivalent.
- (3) The commercial general liability policy shall name Contractor and any other party as required by Contractor's contract with Owner, as Additional Insured. Such additional insured coverage shall be non-contributory and primary coverage for the additional insureds. The form used for additional insured coverage of Contractor shall be on Form CG 2010, 1985 edition or equivalent and shall include products/completed operations hazard coverage for all Additional Insureds. All required coverages, including Additional Insured and completed operations coverages, shall be kept in effect for the duration of the applicable statute of repose.
- (4) Additionally, Subcontractor agrees to provide and keep in force automobile liability, bodily injury and property damage insurance, including coverage for owned, non-owned and hired vehicles.
- (5) Subcontractor agrees to furnish insurance certificates and Additional Insured endorsements before entering the project site and starting work. At Contractor's request, Subcontractor will also provide copies of the actual policies in addition to the certificates. All deductibles shall be subject to Contractor approval and changed at Contractor's request. Certificates shall indicate any deductibles over \$5,000. Certificates shall disclose any exclusion endorsements such as exclusions for completed operations or explosion, collapse and underground hazards, residential work, EIFS, or any other endorsed deletion of standard coverages.

- (6) The minimum limits for Subcontractor's policies are as follows, unless contract documents require higher minimum limits:
- Commercial general liability: \$1 million Occurrence, \$2 million Products and Completed Operations Aggregate, \$2 million General Aggregate Combined Single Limit Coverage (or \$1 million Bodily Injury and \$1 million Property Damage) The General Aggregate shall be on a per project basis. Products and Completed Operations coverage will be included as described in Article 22, A.(3).
  - Auto Liability: \$1 million Combined Single Limit coverage (or \$1 million Bodily Injury and \$1 million Property Damage).
  - Employer's Liability: \$500,000
  - Worker's Compensation: Statutory coverage for the state in which the work is performed.
  - Umbrella Liability: \$1 million Occurrence excess of the above primary limits and shall apply to the Additional Insureds until exhaustion of the full actual policy limit before any insurance policy of Contractor. Contractor's liability insurance shall be in excess of any and all insurance obtained by Subcontractor.
  - Pollution Liability: \$2 million Occurrence (required only for scopes of work involving soil disturbance and/or hazardous materials remediation).
- (7) In the event of loss or damage resulting from perils to material, equipment, or structures owned by Subcontractor, Subcontractor will look solely to its insurance for reimbursement for any such loss or damage. Subcontractor, in signing this agreement, agrees to hold harmless Owner and Contractor for any loss or damage to such materials, equipment, and structures.
- (8) All policies shall be endorsed to provide a minimum of 30 days' notice to Contractor of cancellation, and a copy of same endorsement shall be provided to Contractor.
- (9) Compliance or non-compliance by Subcontractor with the foregoing requirements as to carrying insurance and furnishing certificates and policies shall not relieve the Subcontractor of its liabilities and obligations to indemnify and defend. The loss of insurance is a breach of this contract.

**B. MATERIAL SUPPLY BONDS**

If Contractor and Owner agree to pay for material stored off site, material supply bonds furnished by Subcontractor and at Subcontractor's expense may reasonably be required, at Contractor's sole discretion. If required, material supply bond(s) must be submitted to Contractor prior to payment for stored materials, along with identification of the stored material and certificates of insurance indicating adequate coverage for loss of damage to the materials. However, restrictions or exclusions in the insurance coverage shall not relieve the Subcontractor from responsibility for delivering the materials free of damage or loss from any cause. If the requirement to obtain a material supply bond is waived, the other provisions of this section remain in force.

**C. INSURER AND SURETY REQUIREMENTS**

The insurers for Insurance in Part A and Sureties for Bonds in Part B shall be rated A- or above by A.M. Best's rating service.

**E. WAIVER OF SUBROGATION**

Subcontractor waives all of its rights of subrogation, and shall require its insurance carriers to do the same, with respect to all insurance policies, against Owner, Contractor, and Architect or Engineer, their parent companies, affiliates, subsidiaries, partners, directors, officers, agents, and employees and against other Subcontractors. If Contractor's agreement with Owner provides for a mutual waiver of subrogation that includes Contractor and Subcontractors, that language is superceded by this paragraph. Waiver of subrogation between Contractor and

**ARTICLE 23 - RIGHT TO KNOW LAW**

Subcontractor is required to implement provisions of the right-to-know law, legally in effect, before using on the project site any material listed in the right-to-know substance list. Subcontractor will furnish Contractor a copy of the safety data sheet for that substance and have a copy of it available for employees and properly label all containers with hazardous chemicals that are brought on the project site or are used in the performance of the Subcontract, as well as otherwise comply with all lawful requirements.

**ARTICLE 24 - CLAIMS AND DISPUTE RESOLUTION - NO DELAY IN PERFORMANCE**

- A. **Claims for extra sums.** Subcontractor agrees and understands that as a condition precedent to any claim for any increase in the Article 2 contract sum, Subcontractor must give Contractor notice in writing of such claims, including a complete breakdown of costs incurred and anticipated, within fourteen (14) days after Contractor or Subcontractor first incurs any cost or expense giving rise to such claim. Such breakdown of additional costs shall include labor hours, labor rates including burdened amounts, materials breakdown, supplier and sub-subcontractor quotes, and documentation supporting any other costs claimed. The notice of claims for extra sums must clearly state in capital letters in the first paragraph: "NOTICE OF CLAIM FOR EXTRA SUM". The notice must be sent by mail or electronic mail. Subcontractor understands and agrees that its failure to provide such written notice within the fourteen (14) days prescribed herein shall void any such claim.
- B. **Exclusive Dispute Resolution.** Subcontractor and Contractor agree that the claims and dispute resolution process in this Paragraph shall be the exclusive remedy available to Subcontractor, who by entering into this Subcontract knowingly and voluntarily, agrees for itself, its employees, agents, subsidiaries, successors and assigns, not to commence any claim, suit, administrative proceeding, or other legal or judicial process against Contractor. Subcontractor will not stop or delay performance of its work because of the existence of a dispute or the absence of its final resolution, but rather, will proceed to complete its work in accordance with the schedule of performance. The exclusive procedure for resolving disputes of timely perfected claims and any other dispute is as follows:

- (1) **First Step: Written Notice.** Within fourteen (14) days of the written denial of a timely perfected claim for extra sums, or within fourteen (14) days of the first occurrence of any claim or expense giving rise to any other dispute, Subcontractor will provide to Contractor a written notice of dispute detailing: (a) the factual basis for the dispute; (b) the specific provision(s) of the Subcontract and contract documents asserted; and (c) the complete relief requested from Contractor.
- (2) **Second Step: Project Team Meeting.** Within fourteen (14) days after Contractor receives the written First Step notice, Contractor shall schedule a meeting and provide Subcontractor with written notice of the meeting to be held at the project site or other designated location. The meeting shall be attended by the respective project managers or other designated representatives of Contractor and Subcontractor with full authority to negotiate the dispute to resolution. The resolution of the dispute shall be reduced to writing and signed by both parties, unless the dispute is not resolved at the Project Team meeting. In the event Contractor, at its option, does not schedule the meeting within fourteen (14) days, Subcontractor's dispute shall be deemed denied and Subcontractor may proceed to arbitration under the Fourth Step and must proceed to arbitration within the next fourteen (14) days, which means twenty-eight (28) days after the Project Team meeting or Subcontractor will be deemed to have agreed to Contractor's position. If Contractor schedules the meeting and Subcontractor does not attend, the claim shall be deemed withdrawn and waived.
- (3) **Third Step: CEO Meeting.** In the event that the Project Team meeting takes place but the dispute is not resolved by the Project Team meeting, Contractor shall schedule a meeting of the Chief Executive Officers of Contractor and Subcontractor at the offices of Contractor or other agreed location, within fourteen (14) days after the last scheduled Project Team meeting to resolve the dispute. Any such resolution reached by the Chief Executive Officers shall be reduced to writing and signed by both Contractor and Subcontractor, unless no agreement shall be reached. In the event Contractor, at its option, does not schedule the CEO meeting, Subcontractor's dispute shall be deemed denied and Subcontractor may proceed to arbitration under the Fourth Step and must proceed to arbitration within twenty-eight (28) days after the Project Team meeting, or Subcontractor will be deemed to have agreed to Contractor's position. If Contractor schedules the meeting and Subcontractor does not attend, the claim shall be deemed withdrawn and waived.
- (4) **Fourth Step: Arbitration.** In the event that Contractor does not schedule the Project Team meeting (Second Step) or CEO meeting (Third Step), or Contractor and Subcontractor cannot reach agreement on the dispute at the Project Team meeting or the CEO meeting, then Subcontractor will be deemed to have agreed to Contractor's position unless Subcontractor files for arbitration under the construction arbitration rules of the American Arbitration Association within twenty-eight (28) days after the last Project Team meeting or CEO meeting. The location of the arbitration shall be the county where the project is located. This step only applies in jurisdictions where the use of arbitration to resolve construction disputes is legal.
- (5) **Except if** Contractor does not schedule the Project Team meeting or CEO meeting, and arbitration is therefore immediately available to Subcontractor, each of the steps of the dispute resolution procedure set forth herein is a condition precedent to Subcontractor invoking the next step. However, Contractor may invoke arbitration at any time for any dispute, whether initiated by Subcontractor or not. And, except where Contractor exercises its option to invoke "forum coordination" set forth in the following paragraph the following shall apply: (a) the exclusive dispute resolution method shall be by arbitration; (b) the agreement to arbitrate shall be specifically enforceable in court, as may be provided by state statute and/or the Federal Arbitration Act; and (c) any arbitration award entered may be enforced by a circuit court of competent jurisdiction and a judgment entered accordingly.
- (6) **Arbitration Exception - Forum Coordination.** In the event that a dispute between Owner and Contractor involves Subcontractor's work, Contractor may at its sole option elect at any time to not arbitrate a dispute with Subcontractor. In that event, Subcontractor agrees to dispute resolution in the same forum and/or in the same proceeding in which the dispute between Owner and Contractor is pending.

#### **ARTICLE 25 - DAILY REPORTS**

Unless waived in writing by Contractor, Subcontractor shall maintain and submit a daily report to the Contractor, which shall, at a minimum, include; a description of the Subcontractor's Work activities for the day, a work force count by trade for Subcontractor and its Sub-subcontractors; a listing of any major deliveries; and, a description of any delay event or other matter that has or may adversely impact Subcontractor's ability to perform the Work in accordance with the Subcontract and its actual or anticipated impact on the Work. Subcontractor's right to submit a claim for any delay event or other matter that adversely impacts the Work is expressly conditioned on Subcontractor's submission of its daily report describing the matter, and Subcontractor waives any claim in connection with a matter that is not adequately described in Subcontractor's daily reports.

#### **ARTICLE 26 - SPECIAL CONDITIONS CONCERNING WAIVER, INTEGRATION AND VALIDITY**

The failure of Contractor to enforce at any time any of the provisions of the Subcontract, or to require at any time performance by Subcontractor of any of its provisions, shall not be construed to be a waiver of, nor in any way to affect the validity of this Subcontract or any part of it or the right of Contractor to thereafter enforce each and every provision. This Subcontract and all documents incorporated by reference in this Subcontract constitutes the entire understanding of the parties and supersedes any prior proposal or agreement, and shall not be modified, amended or revoked except in writing executed by both Contractor and Subcontractor. If any portion of this Subcontract is deemed to be invalid or unenforceable, the remainder of this Subcontract shall be valid and enforceable to the fullest extent permitted by law.

**ARTICLE 27 - GOVERNING LAW AND FORUM**

Any disputes between Contractor and Subcontractor, including the exclusive claims and dispute resolution process in Article 24, shall be governed by the laws of the state where the project is located and any suit to specifically enforce the exclusive dispute resolution process or to enter judgment on an arbitration award shall be brought by Contractor or Subcontractor in a court of competent jurisdiction in the state where the project is located. Should Contractor initiate claims against Subcontractor, or Subcontractor initiate claims against Contractor, in court, arbitration, or otherwise for breach of contract and/or in tort, Subcontractor shall be liable to Contractor for all attorney fees and costs incurred by Contractor in pursuing such claims and/or defending against such claims by Subcontractor provided that Contractor prevails on Contractor's claims or Subcontractor's claims.



# SUBCONTRACT AGREEMENT

Fax:

In witness of our agreement it is signed and effective as the date first above written.

CONTRACTOR:

SUBCONTRACTOR'S ACCEPTANCE:

\_\_\_\_\_

\_\_\_\_\_

BY:

BY:

TITLE: **Project Manager**

TITLE:

DATE

DATE

SIGNED: \_\_\_\_\_

SIGNED: \_\_\_\_\_

VENDOR FED. I.D.#: \_\_\_\_\_

- INDICATE: [ ] SOLE PROPRIETORSHIP  
[ ] PARTNERSHIP  
[ ] CORPORATION