

## SUBCONTRACT AGREEMENT

This agreement is hereby made this \_\_\_\_\_ day of \_\_\_\_\_ by and between \_\_\_\_\_ (hereinafter "Contractor") and \_\_\_\_\_ as Supplier or Subcontractor (hereinafter "Subcontractor"). By signing and returning the attached acceptance copy of this Agreement, or by partial or complete performance under this Agreement, you, as Subcontractor, agree with us as follows:

1. **Scope of the Work.** The Work shall be referenced as Job No. \_\_\_\_\_ at the location known as \_\_\_\_\_. The plans and specifications that describe the Work are attached hereto as a separate Rider. The Contract Price (includes all taxes and fees) is: \_\_\_\_\_. The Completion Date is: \_\_\_\_\_.
2. **Complete Agreement.** The terms and obligations of this Subcontract Agreement are a complete and exclusive statement of the agreement between the Contractor and Subcontractor and supersedes any other document or understanding pertaining to the Work referenced herein unless expressly consented to in writing by Contractor. Upon acceptance, this Agreement shall constitute a valid and binding contract that shall be governed, construed and subject to the laws of State where the Property is located.
3. **Duties to Owner.** Subcontractor agrees to be bound to Contractor by the terms of any contract for the Project where the Work is located between Contractor and the Owner, and to assume toward the Contractor all the obligations and responsibilities that the Contractor by such contract assumes toward the Owner, provided that where any provision of the contract between the Owner and Contractor is inconsistent with any provisions of this Agreement, this Agreement shall govern.
4. **Labor and Materials.** Subcontractor, an independent contractor, shall provide all labor, materials, equipment, supplies, accessories, transportation, and services necessary for the completion of the Work described by this Agreement. Subcontractor shall assume all risks and liability for damage or loss to all materials, tools or equipment incorporated in the Work, which belong to him or are under his control.
5. **Performance Standards.** Subcontractor warrants that all Work shall meet all requirements of this Agreement, and shall be furnished by experienced personnel in accordance with Subcontractor's best skill and attention and the highest professional standards and without delay to other tradesmen. In addition, all materials, equipment, supplies, and accessories furnished by Subcontractor in connection with this Agreement shall be of good quality and workmanship in strict compliance with the requirements of this Agreement, and free from defects, latent or patent, in workmanship and materials for a period of not less than one (1) year after the completion or acceptance of the Work by the Contractor without extra charge to Contractor.
6. **Coordination among trades.** Subcontractor will cooperate with Contractor and other subcontractors in the scheduling and performance of the Work. It shall commence its Work upon notification from Contractor, and will proceed toward completion in accordance with the schedule established by the Contractor. Should Subcontractor fail to pursue or complete its Work in accordance with the schedule established by the Contractor, it hereby

agrees to indemnify Contractor for any loss or damage caused by such delay and to reimburse Contractor for any and all costs incurred by the Contractor as a result of Subcontractor's failure to perform. Time is of the essence in this agreement.

7. **Defects.** Subcontractor will promptly notify Contractor (before commencing the Work) if there are any defects or deficiencies in the surface that is to receive Subcontractor's Work. Subcontractor agrees, without charge to Contractor, to diligently commence within seventy-two (72) hours of Contractor written request, the repair or replacement of any and all failures of Subcontractor to conform to the requirements of this Agreement. If Subcontractor does not diligently pursue such repair or replacement within the period specified, Contractor shall have the right to remedy such failure, and may demand all costs incurred by Contractor in connection with Subcontractor's failure, including without limitation, all reasonable costs, professional, administrative, managerial, and attorneys' fees. The failure of a party to insist upon the strict performance of the terms and conditions hereof shall not constitute a waiver of that party's right to enforce the same in the event of a continuing or subsequent default on the part of the other party.
8. **Indemnity.** In consideration of the Subcontract Agreement, and to the fullest extent permitted by law, the Subcontractor shall defend and shall indemnify, and hold harmless, at Subcontractor's sole expense, the Contractor, the Owner of the property (if different from the Contractor) and the officers, directors, agents, employees, successors and assigns of each of them from and against all liability or claimed liability for bodily injury or death to any person(s), and for any and all property damage or economic damage, including all attorney fees, disbursements and related costs, arising out of or resulting from the Work covered by this Subcontract Agreement to the extent such Work was performed by or contracted through the Subcontractor or by anyone for whose acts the Subcontractor may be held liable, excluding only liability created by the sole and exclusive negligence of the Indemnified Parties. This indemnity agreement shall survive the completion of the Work specified in the Subcontract Agreement.
9. **Insurance.** The Subcontractor shall procure and shall maintain until final acceptance of the Work, such insurance as will protect the Subcontractor, the Contractor, the Owner, and their officers, directors, agents and employees, for claims arising out of or resulting from Subcontractor's Work under this Subcontract Agreement, whether performed by the Subcontractor, or by anyone directly or indirectly employed by Subcontractor, or by anyone for whose acts Subcontractor may be liable. Such insurance shall be provided by an insurance carrier rated "A-" or better by A.M. Best and lawfully authorized to do business in the jurisdiction where the Work is being performed.
  - 9.1. The Subcontractor's insurance shall include contractual liability coverage and additional insured coverage for the benefit of the Contractor and Owner and anyone else the Contractor is required to name as an additional insured, and shall specifically include coverage for completed operations. The insurance required to be carried by the Subcontractor shall be PRIMARY AND NON-CONTRIBUTORY. With respect to each type of insurance specified hereunder, the Owner's insurance and Contractor's insurance shall be excess to Subcontractor's insurance.
  - 9.2. The Subcontractor warrants that the coverage provided under the commercial general liability policy shall be written on an "occurrence" basis with coverage as broad as the Insurance Service Office Inc.'s form and that no policy provisions shall restrict, reduce,

limit or otherwise impair contractual liability coverage or the Contractor's or Owner's status as additional insured.

- 9.3. Not less than five (5) days prior to commencement of the Work and until final acceptance of the Work, Subcontractor shall provide Contractor with certificate(s) of insurance evidencing the required insurance coverage with the limits stated below or elsewhere in the Subcontract documents. The Subcontractor shall provide Contractor thirty (30) days written notice of a change or cancellation in coverage. In addition, all insurance policies shall state that the insurer will provide Contractor thirty (30) days prior written notice of a change or cancellation in coverage.
- 9.4. Unless otherwise stipulated in the Subcontract Agreement, the Subcontractor shall maintain no less than the limits specified for each of the following insurance coverages:
  - a) Commercial General Liability using an industry standard unmodified coverage form including contractual liability with minimum limits of \$1,000,000 each occurrence, \$1,000,000 aggregate with either per project or per location endorsement for property damage and bodily injury;
  - b) Comprehensive Automobile Liability insurance with minimum limits of \$1,000,000 combined single limit each accident, including bodily injury and property damage liability;
  - c) Workers' Compensation and disability benefit insurance including Occupational Disease in the minimum amounts as required by the jurisdiction where the Work is performed;
- 9.5. The Subcontractor and his insurer shall waive all rights of subrogation against the Contractor, Owner and any other indemnified parties, except as respects Worker's Compensation insurance.
- 9.6. If Subcontractor engages a Sub-Subcontractor, it is the affirmative duty of the Subcontractor to ensure that Sub-Subcontractor complies with the insurance and indemnification requirements of this Subcontractor Agreement.
10. **Compensation.** Contractor shall pay Subcontractor the Contract Price upon substantial completion of the Work, subject to retention in the amount of five percent (5%) which shall be payable upon final completion, provided Subcontractor has provided all maintenance information related to Subcontractor's Work. Final payment will be due when all governmental sign-offs are completed. Notwithstanding the foregoing, Subcontractor agrees that if it fails to satisfy the requirements of this Agreement, including without limitation obtaining the insurance coverage required herein, all Work performed shall be at Subcontractor's own expense and risk, without right of recovery against the Contractor. Such remedies shall be in addition to any other rights or remedies Contractor may have in law or equity.
11. **Taxes.** Subcontractor shall pay all Federal, State and Municipal payroll, excise and sales taxes, and any and all other levies and taxes imposed in respect of any materials and services provided. The Contract Price includes all such taxes and all fees applicable to goods or services furnished by Subcontractor and/or materials used in the production thereof.

12. **Cleanliness.** Subcontractor shall keep the construction site and surrounding premises clean at all times of debris arising out of its operations. Should Subcontractor fail to do so, Contractor shall cause this Work to be done by others and deduct any costs and expenses from Subcontractor's Contract Price.
13. **Compliance With Laws.** Subcontractor agrees to (a) comply with all applicable federal, state, or local laws, ordinances, orders, regulations, and directives in any manner relating to goods and services supplied under this Agreement, including but not limited to Magnuson Moss, Civil Rights, Equal Employment Opportunities, Non-Discrimination in Employment, Wages and Hours, Overtime Pay, Anti-Kickback, Withholding Taxes, Davis-Bacon, Buy American Acts, howsoever said laws, orders, and directives may be labeled or designated from time to time, (b) comply with all requirements regarding the maintenance, preservation, and inspection of records and reports pertaining thereto, and (c) require compliance with all the above by all suppliers and subcontractors with whom Subcontractor may contract for anything relating to any portion of the Work.
14. **Permits.** Subcontractor shall take all field measurements, furnish the required samples and drawings, and give authorities proper and timely notices where required. Subcontractor shall comply with all governmental laws and decrees, and secure and pay for all necessary permits, licenses, inspections, tests and bonds required for the Work.
15. **Termination.** Contractor reserves the right to cancel, without cancellation or any other charge, all or any part of this Agreement, if Subcontractor fails to perform all or any part of this Agreement. Such right of cancellation shall not be deemed a waiver of any other right reserved to Contractor in this Agreement, or by law for any delay or failure to deliver as specified. Further, Contractor reserves the right to terminate this Agreement without cause at any time prior to its completion by notifying Subcontractor in writing of its intent to so terminate. Upon such termination, Contractor shall pay Subcontractor, in full satisfaction and discharge of all obligations owed to Subcontractor for Work performed under this Agreement, all labor and expense incurred by Subcontractor in fulfilling this Agreement to the earlier of the date of receipt of such written notice, or three (3) days after Contractor mails such notice. The parties agree that such amount shall also be deemed to fully compensate Subcontractor for any damages resulting from Contractor's termination of this Agreement, including without limitation anticipated profits on Work not yet performed. However, Contractor shall have no obligation to pay for Work that materially deviates from the terms of this Agreement, in kind or quality.
16. **Safety.** The Subcontractor shall take reasonable precautions to protect the safety of, and to prevent damage, injury or loss to persons and property that might be affected by the Subcontractor's Work. Subcontractor warrants that all labor, materials, and equipment shall be furnished in full compliance with the requirements of the Occupational Safety and Health Act of 1970, and any other applicable laws whatsoever including all standards and regulations thereunder, and Subcontractor agrees to and shall indemnify, defend, and save harmless Contractor from and against all liability arising in connection with Subcontractor's violation of any laws, codes, standards, rules or regulations whatsoever. Subcontractor shall directly receive and be responsible for all citations, assessments, fines, or penalties that may be incurred by reason of such violation.

16.1. **Arbitration.** All claims and disputes between the parties to this Agreement arising out of or relating to this Agreement, the Project, the Work the contract documents, or the breach thereof may, at the Contractor's sole option, and only at the

exercise of that option, be decided by arbitration in accordance with the Construction Industry Arbitration rules of the American Arbitration Association. The parties to the arbitration shall equally split the fees charged by the arbitrator. The decision of the arbitrator(s) shall be binding and final with respect to the parties, and may be entered as a judgment in any State or Federal court of competent jurisdiction. This arbitration agreement shall be deemed to be a self-executing arbitration agreement. Any disputes concerning the interpretation or the enforceability of this arbitration agreement, including without limitation, its revocability or voidability for any cause, the arbitrator shall decide the scope of arbitrable issues, and defense based upon waiver, estoppels or laches.

17. **Assignment.** Subcontractor shall not assign or transfer this Agreement, or any part of this Agreement, or any amount due and payable or to become due and payable hereunder, without the written consent of Contractor, and any such assignment or transfer without such written consent shall be null and void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, administrators, executors and legal representatives, provided that nothing contained in this paragraph shall be construed so as to authorize Subcontractor to make any assignment or transfer prohibited in this Agreement.
18. **Construction of Agreement.** In the event that any part of this Agreement shall be declared void or unenforceable, such imperfection shall not affect the validity or enforceability of the remainder of this Agreement. The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be construed to, define, limit or extend the scope or intent of this Agreement. This agreement shall be construed in accordance with the laws of the State or territory where the Project is located.

Acknowledged by:

Contractor \_\_\_\_\_

Subcontractor \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_