

SUBCONTRACTOR AGREEMENT

THIS SUBCONTRACTOR AGREEMENT (this "Agreement") is dated _____ 20____, ("Effective Date"), and is by and between _____ ("Contractor"), and _____ ("Subcontractor").

RECITAL

WHEREAS, Contractor is party to that certain agreement (the "Prime Agreement") entitled _____, dated _____, between Contractor and _____ ("Owner").

WHEREAS, Subcontractor is a specialist or has particular expertise in the field or area of Services as contemplated herein.

WHEREAS, upon the terms and conditions set forth herein, Contractor desires to engage Subcontractor as provided herein, and Subcontractor desires and agrees to accept such engagement.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows.

1. Description of Services; Scope. Upon the terms and conditions set forth herein, Contractor hereby engages Subcontractor to perform the following services and/or works (the "Services"), and Subcontractor agrees to perform and render same:

If applicable, the scope of Services hereunder expressly excludes the following:

This Agreement is subject and subordinate in all respects to the Prime Agreement.

Upon mutual agreement, the Contractor and Subcontractor may from time to time execute change orders, reflecting any changes to the scope of Services and/or compensation hereunder.

2. Commencement and Completion. Unless otherwise agreed in writing by the parties, Subcontractor shall commence its Services hereunder on or before _____



(“Commencement Date”) and shall have substantially completed its Services by _____ (“Completion Date”). Upon substantial completion of the Services, Contractor and Subcontractor shall together review the Services performed and shall create a list of any remaining items that require correction or completion, as the case may be (the “Punch List”). Punch List shall thereafter promptly be completed and fulfilled by Subcontractor. Upon completion of the Services, including completion of all Punch List items to the reasonable satisfaction of Contractor, Contractor shall issue a Certificate of Acceptance to Subcontractor, evidencing Contractor’s satisfaction and acceptance with respect to the Services.

3. Subcontractor Responsibilities. In connection with this Agreement and Subcontractor’s Services hereunder, Subcontractor shall be responsible for providing the following:

Check boxes, as applicable:

- Subcontractor’s own tools, machinery, and equipment.
- Subcontractor’s own labor, including agents, employees, and subs, subject to the terms hereof.
- Subcontractor’s own materials, products, and goods.
- Other. Describe: _____

4. Term.

Check box, as applicable:

- This Agreement shall be on a month-to-month basis, terminable by either party on _____ days advance notice to the other party.
- This Agreement shall automatically end on the following date _____.
- This Agreement shall automatically end when the Services are completed.
- Other. Describe: _____

5. Compensation. Subject to any offset rights as provided herein, Contractor agrees to pay Subcontractor the following compensation (“Compensation”) for the Services:

Check box, as applicable:



- Hourly rate of \$_____ per hour
- Fixed fee of \$_____
- Time and Materials, not to exceed \$_____
- Success or Completion Fee. Describe: _____
- Other. Describe: _____

Check box, as applicable:

- A retainer payment of \$_____ shall be paid to Subcontractor before commencement of the Services.
- No retainer payment shall be required.

6. Payment Terms. Compensation shall be payable as follows:

Check box, as applicable:

- Incremental payments when invoiced to Contractor. Payable within ____ days of receipt of invoice.
- Daily
- Weekly
- Bi-Weekly
- Payment in full upon completion of the Services
- Other. Describe milestones: _____



___% of the contract price, or \$_____ shall be withheld from the final payment and shall only be paid upon Subcontractor's completion of all Punch List items to the reasonable satisfaction of Contractor.

7. Liquidated Damages.

Check box, as applicable

Liquidated Damages shall apply. Subject to extension for a force majeure event, in the event that the Services are not substantially complete by the Completion Date set forth in Section 2 above, Subcontractor shall be assessed liquidated damages of \$_____ per day, for each day of delay. Such amount may be withheld and offset from any payment otherwise due to Subcontractor hereunder. The parties acknowledge and agree that such liquidated damages amount is not intended as a penalty but rather serves to compensate Contractor for damages that would otherwise be difficult or impossible to ascertain.

Liquidated damages shall not apply.

For purposes of this Agreement, a "force majeure event" includes, without limitation, a severe climate event, strike or labor stoppage, or unavailability of raw materials which precludes the Services from proceeding, in any case unanticipated as of the date hereof and not caused by Contractor. Financial inability shall not constitute a force majeure event.

8. Professional Licenses. Subcontractor represents and warrants to Contractor that Subcontractor possesses all valid and current licenses, permits, and approvals to perform the Services contemplated herein if any are required. Subcontractor shall comply with the policies, rules, and standards of the Contractor, as may be amended from time to time, and shall perform the Services in a professional manner, faithfully, diligently, in good faith and commercial reasonableness, and in furtherance of the best interests of the Contractor. In addition, Subcontractor shall comply with the terms of the Prime Agreement to the extent applicable to it or to the Services. In the performance of the Services, Subcontractor shall comply with all applicable laws, rules, and regulations. Contractor shall communicate to Subcontractor any special requirements as may be applicable to the project as contemplated herein.

9. Confidentiality and Nondisclosure. In the performance of the Services, Subcontractor may become privy to, or otherwise observe or learn about confidential or proprietary information related to the Owner, the Contractor or other parties, and their respective businesses and plans (hereinafter collectively, the "Confidential Information"). Subcontractor acknowledges and agrees that the Confidential Information constitutes valuable assets of the Owner, Contractor or others, as the case may be, and that except for disclosures required by applicable law, and information which is a matter of public record, Subcontractor shall maintain as confidential, and shall not, during the Term of this Agreement or any time after the termination of this Agreement, disclose any Confidential Information to any person or use any Confidential Information for the



benefit of Subcontractor or any other person, except with the prior written consent of the Contractor. Prior to any disclosure of Confidential Information, Subcontractor shall notify the Contractor of the intended disclosure and shall cooperate with the Contractor in seeking and obtaining a protective order other means of protection relating to such prospective disclosure.

10. Taxes. Subcontractor shall be solely responsible for and shall timely pay when due all withholding taxes, Social Security, state unemployment, and other similar taxes and impositions of any kind or nature relating to Subcontractor and Subcontractor's business, employees, agents, and permitted subcontractors. Subcontractor shall timely pay when due all applicable sales and use taxes on the labor provided and materials furnished or otherwise required by law in connection with the Services hereunder. Subcontractor acknowledges and understands that Contractor shall not do tax withholdings on Subcontractor's behalf.

11. Satisfaction by Contractor. Unless otherwise expressly provided herein, no Compensation shall be paid to Subcontractor until due hereunder and the Services have been inspected, reviewed, and approved by the Contractor in the Contractor's sole discretion, acting reasonably. If the Contractor determines in its reasonable judgment that Subcontractor's Services are deficient, defective, or incomplete in any fashion (any of the foregoing, a "Deficiency"), the Contractor shall have the right, in addition to all other rights that may be available to the Contractor whether at law or in equity, to elect, at its sole discretion to: (a) notify Subcontractor of the Deficiency, in which event Subcontractor shall promptly correct such Deficiency; or (b) retain a third party or undertake to perform the cure of the Deficiency itself, in which event the Compensation associated with such deficient Services shall be deemed not earned by the Subcontractor and shall be retained by the Contractor and not paid to the Subcontractor.

12. Time is of the Essence. Subcontractor acknowledges that time is of the essence in the performance of all Services hereunder. Subcontractor shall promptly commence performance of the Services on the schedule agreed upon between Subcontractor and Contractor and shall diligently perform and complete same in accordance with the requirements hereof. If Subcontractor is delayed, or anticipates being delayed, in the commencement or completion of the Services, Subcontractor shall promptly notify the Contractor of same.

13. Independent Contractor Relationship. Subcontractor acknowledges that Subcontractor is an independent contractor and is not an agent, partner, joint venturer, or employee of Contractor. Subcontractor shall have no authority to bind or otherwise obligate the Contractor in any manner, nor shall Subcontractor represent to any third party that it has a right to do so. Subcontractor further agrees that in the event the Contractor suffers any loss or damage due to violation of this provision, Subcontractor shall indemnify and hold harmless the Contractor from any such loss or damage. Upon request by the Contractor, the Subcontractor shall provide all applicable and valid documentation required by the Contractor including but, not limited to, a Form W-9, this Agreement duly executed by the Subcontractor, and a current Certificate of Insurance evidencing Subcontractor's maintenance of the required coverages herein, if any.

13. Insurance.



Proof of Insurance Required. Throughout the term of this Agreement, Subcontractor shall maintain customary business owner's insurance at levels and with insurers reasonably satisfactory to the Contractor, including coverage for professional liability/errors and omissions, general liability, business interruption, vehicle coverage, worker's compensation, and crime, as applicable. If requested, the professional liability/errors and omissions policy and the general liability policy shall name the Contractor as an additional insured. Subcontractor shall provide the Contractor with appropriate certificates of insurance, evidencing Subcontractor's insurance coverage hereunder.

Specific insurance requirements:

General Liability, \$_____ per occurrence; and \$_____ in the aggregate.

Automobile, \$_____ per occurrence; and \$_____ in the aggregate.

Worker's compensation, as required by law.

Other. Describe: _____

Proof of Insurance Not Required.

14. Return of Documents. Subcontractor acknowledges and agrees that all originals and copies (including electronic copies), and any summaries or notes thereof, of records, reports, documents, lists, plans, memoranda, notes, and other documentation related to the business of the Contractor or its Contractors, or containing any Confidential Information, are and shall be the sole and exclusive property of the Contractor. To the extent Subcontractor comes into possession of any such items, Subcontractor shall promptly return same to the Contractor upon demand, and in any event shall return same upon the termination of this Agreement.

15. Assignment; Delegation of Duties.

Subcontractor shall not assign its rights under this Agreement or delegate any of its duties hereunder, unless approved by Contractor.

Subcontractor shall have the right to assign its rights under this Agreement or delegate any of its duties hereunder, without the need for Contractor approval.



16. Indemnity. Subcontractor shall indemnify, defend and hold Contractor harmless from any breach by Subcontractor of this Agreement, and for any loss, claim, demand, or liability caused by or resulting from the Services hereunder, unless to the extent attributable to the fault, negligence, or willful misconduct of Contractor.

17. Inspection of Premises. If applicable, Subcontractor hereby represents and warrants to Contractor that Subcontractor has inspected the premises where the Services will be rendered and agrees that the contract price referenced herein is reflective of such property conditions, including, without limitation, any subsurface conditions and any improvements at the premises. Subcontractor shall not be entitled to additional compensation hereunder as a result of the condition of the premises.

19. Lien Waivers. Subcontractor shall promptly provide conditional lien waivers to Contractor (and/or Owner) upon request, in connection with each payment of compensation hereunder and upon the conclusion of the Project.

20. Additional Terms and Conditions. The parties hereby agree to the following additional terms and conditions: _____

21. Miscellaneous.

a. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.

b. In the event of a default under this Agreement, the defaulting party shall reimburse the non-defaulting party for all costs and expenses reasonably incurred by the non-defaulting party in connection with the default, including without limitation, reasonable attorney's fees and costs. Any dispute hereunder shall be resolved through binding arbitration, pursuant to the commercial arbitration rules of the American Arbitration Association. The prevailing party in any such action or proceeding shall be entitled to recovery of all costs and fees incurred in connection with such action or proceeding.

c. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

d. This Agreement shall be governed by and shall be construed in accordance with the laws of the State of _____.



e. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter hereof and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all parties.

f. Any notice or other communication hereunder shall be sent by SMS text, email, or US mail to the intended recipient thereof, to the addresses and/or other contact information set forth below, and shall be deemed delivered and received upon written confirmation of receipt (in the case of email), or three business days after posting to US mail (in the case of mail).

Contractor Contact Information: _____

Subcontractor Contact Information: _____

IN WITNESS WHEREOF, the parties execute this Agreement and agree to be bound by the terms hereof.

Contractor Signature: _____

Name: _____

Date: _____

Subcontractor Signature: _____

Name: _____

Date: _____

