

# SUBCONTRACT AGREEMENT

THIS SUBCONTRACT AGREEMENT, effective this \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_\_.

Between the: **CONTRACTOR** Republic Construction Corp.  
Attention: Steven Neubarth  
55 SE 2<sup>nd</sup> Ave  
Delray Beach, FL. 33444  
Tel. (561) 900-2487 Fax. (561) 634-2806

**SUBCONTRACTOR**

**PROJECT:**

**LOCATED AT:**

**OWNER:**

**ARCHITECT/ENGINEER:**

Subcontract Price: \$\*\*\*\*\*

**Cost Codes.** The Subcontract sum includes the following Cost Packages and Cost Codes:

Cost Code	Description	Cost

Permit Number: \_\_\_\_\_

For the consideration expressed herein, Contractor and Subcontractor agree as set forth below:

1. **Prime Contract.** Contractor and Owner have entered into a contract for the Project (the "Prime Contract") that provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. The Subcontractor agrees to assume toward the Contractor all obligations that the Contractor assumes toward the Owner under the Prime Contract.
- 2.
3. **Execution of Agreement.** This Agreement must be signed and returned within ten (10) days of the above Subcontract date. A signed acknowledgment copy will be forwarded to the Subcontractor within ten (10) days thereafter. This agreement is subject to cancellation if not signed and returned within ten (10) days of the above Subcontract date.
4. **Contract Price.** Subcontractor shall perform the Work referenced in **Schedule "A"** for the sum of **\$\*\*\*\*\*.00**, representing a fixed fee, subject to adjustments by written Change Order. Payment shall be made as provided in this Agreement. It is expressly agreed that time is of the essence of this agreement and that payment of the consideration herein expressed is executory and conditioned upon completion of this agreement and all work described herein. Notwithstanding anything to the contrary in the Contract documents, Subcontractor will not be entitled to an extension of contract time and/or an increase in contract

price in the event its performance is made impracticable by events beyond its control including, without limitation, war, or threat of terrorism, forces of nature, material shortages, or material price escalations due to shortages or unavailability. Moreover, Contractor and Subcontractor acknowledge that weather events including, without limitation, named storms or hurricanes or market/industry conditions may impact the availability of material components that have been specified for inclusion in the project. As such, it may be likely that materials will be subject to substantial price increases and/or limited availability or delays in availability. In the event such price increases, limited availability or delays in availability occur, Subcontractor shall not be entitled to an increase in contract time, contract price or both, unless and until the Owner both approves and funds payment for such increases by written Change Order and delivery of Payment. If applicable **Unit prices for materials** that have been included in this contract (prior to price increases, if any) are listed in **Schedule "A."**

5. **Subcontractor Obligations.**

a. **Scope of Work.** Subcontractor agrees to provide everything required to complete and will complete the items in connection with the construction of the project as referenced in attached **Schedule "A" ("Scope of Work")**. The plans, drawings, specifications, and Owner-contract documents for this project are incorporated into and made a part of this subcontract; however, this Subcontract governs all obligations regarding the timing, conditions, and manner of payment, and the Owner-contract document provisions regarding payment obligations or conditions are superseded by this Agreement. Subcontractor has familiarized itself with those plans, drawings, specifications, and Owner-contract documents. Subcontractor has had full access to Architect and all Engineers to determine the full scope of the job. Furthermore, Contractor has encouraged Subcontractor to verify all drawings and specifications for complete accuracy and code compliance with all governmental agencies having jurisdiction over Subcontractor's work. Contractor and Subcontractor intend the Subcontract Price to be all inclusive of the Work required to complete the Project. Therefore, no change orders for omissions of items which are reasonably inferable from drawings, specifications, and Scope will be allowed and Subcontractor agrees not to charge Contractor any additional cost on account of incidental discrepancies that might appear in the plans. Subcontractor represents and affirms that it is fully licensed in accordance with all local, state, and federal requirements to do the Work set forth in the Agreement as amended. Subcontractor acknowledges that if there are any conflicts between terms/conditions in Subcontractor's Proposal/Exhibit "A" and this Agreement, **this Agreement will be superior and controlling.**

b. **Labor and Materials.** Subcontractor will furnish and pay for all licenses, permits, labor, materials, scaffolding (if required), equipment, machinery, tools, apparatus, transportation, all required shop drawings and samples and employ a sufficient number of properly skilled workmen to efficiently and promptly execute all work required hereunder.

c. **Shop Drawings.** Subcontractor shall submit shop drawings, product data, brochures, samples and/or construction manuals together with any other documents required by all contract documents to Contractor in as many duplicate copies as Contractor may require and no later than ten (10) days after request from Contractor. It shall be the responsibility of the Subcontractor to coordinate the preparation of Shop Drawings of items which will be furnished by more than one manufacturer but are designed to interface when installed, and to properly schedule the submission of Shop Drawings for approval to allow adequate time for checking of drawings and for manufacture and shipment of items to job site in sufficient time to prevent delay in the construction schedule. Resubmittals necessitated by required corrections due to Subcontractor errors or omissions shall not be cause for extension of Contract Time. At no time shall Shop Drawings which have not been approved by the Architect be allowed on the site.

d. **Supervision.** Subcontractor shall maintain a competent, experienced English-speaking superintendent or foreman on the project at all times, with authority to carry out directives of the Contractor relating to the Subcontractor's work and responsibility.

e. **Scheduling.** Subcontractor agrees to commence the work when directed by Contractor, and to diligently and continuously prosecute work according to the Contractor's schedule as amended; and to

coordinate the work with other work on the project by other trades, so that Contractor or Owner shall not be delayed by any act or omissions of Subcontractor in the completion of the project.

f. Cleaning Up. With its own forces, Subcontractor shall completely clean all work and remove all debris from the jobsite at the end of each day. If after 24 hours of notice from Contractor, Subcontractor has not diligently commenced clean-up and/or protection of the work as outlined in this Paragraph, Contractor shall have the right to proceed with clean-up and/or protection of the work at Subcontractor's expense.

g. Protection of Property. Subcontractor shall at all times protect the work of other trades during the course of its work. All risk of loss and damage of stored material is on the Subcontractor, whether paid for or not, until it is installed in the work and accepted. Subcontractor agrees to assume all obligations, risks and responsibilities for its scope of work which Contractor has assumed toward the Owner in the Owner-Contractor Agreement, which agreement is made a part hereof. Subcontractor shall comply with applicable local, State and Federal (OSHA, EPA, EEOC) wages, safety, and environmental laws and regulations. It shall be the responsibility of the Subcontractor to provide at the Subcontractor's expense, the power, fuel and equipment necessary to maintain climatic conditions including humidity when specified or necessary for Subcontractor's Work in progress.

h. Site Conditions. Subcontractor hereby acknowledges that he has received, read and is thoroughly familiar with the plans and specifications and that the methods, sequences and procedures described therein for the work are agreed upon and correct. Subcontractor has familiarized itself with the construction site (surface and sub-surface) and existing conditions, including those relating to parking, and is fully aware of all these conditions.

i. Insurance. **The Subcontractor and any sub-subcontractors** shall secure and maintain at its own cost its own valid Worker's Compensation Insurance, including a 'minimum premium' workers' compensation policy where any Employee Leasing Firms or laborers are employed or used by Subcontractor; Commercial General Liability (CGL) insurance with products-completed operations hazard coverage; and all insurance required by the specifications or addenda to this Agreement, in companies lawfully authorized to do business in Florida. All premiums for insurance shall be paid for no later than the date of commencement of any Work or fifteen (15) days after the effective date of this Agreement, whichever date is earlier, and copies of all actual insurance policies shall be filed with the Contractor no later than thirty (30) days the effective date of this Agreement. Should Subcontractor fail or neglect to provide the required insurance, Contractor shall have the right, but not the duty, to provide insurance and deduct from any money due to Subcontractor all premiums paid by Contractor for the above insurance or terminate the Contract without recourse by Subcontractor against Contractor. Subcontractor shall not be entitled to receive any payments until Contractor has been furnished with valid Certificates of Worker's Compensation and CGL insurance. Further it is agreed that the Subcontractor's insurance shall be primary with respect to any claim, demand or suit and that the insurance of the Contractor and Owner will be excess over and above Subcontractor's Insurance naming Contractor and Owner as additionally insured. All liability policies shall provide that the Owner and Contractor are additionally insured as to the operations of the Subcontractor under the Agreement and shall provide the Severability of Insured's Provision. Designation of the Owner and Contractor as an "Additionally Insured" shall be done by the issuance of a rider or endorsement by the Insurer, on ISO form D CG 2010 (11/85 ed.), or its equivalent, as opposed to only the issuance of a Certificate of Insurance from the Subcontractor's insurance agent. The insurance policies shall state that Contractor shall receive 30 days written notice prior to cancellation. The Subcontractor shall purchase and maintain insurance of the following types of coverage and minimum limits of liability:

Type of insurance	Limits of liability (\$)
CGL Bodily Injury & Property Damage	\$1,000,000.00 per occurrence
CGL General Aggregate	\$1,000,000.00 per project
CGL Products & Completed Operations	\$1,000,000.00 annual aggregate
Automobile Liability	\$500,000.00 Combined single limit
Employers Liability	\$500,000.00 Combined single limit
Worker's Compensation	\$500,000.00 minimum or statutory limits

The Subcontractor, and/or sub-subcontractors and/or suppliers who supply materials for the work, shall be solely responsible for, and pay for the protection of and insuring the materials at all times, including while stored off premises and while the materials are in transit to the job site, until incorporated into the Work and transferred to and accepted by the Owner. If materials and equipment are to be paid for prior to incorporation into the Work and transfer to the Owner, the Subcontractor shall purchase and maintain insurance coverages on the property, in a format protecting the property, regardless of its location, for the "All Risk or Risks of Physical Loss" type perils, which are to include Weather damage, Theft, Vandalism, and Malicious Mischief.

**Additional Insurance Conditions:**

- a. Such other insurance as the subcontractor(s) may carry with respect to their operations and/or property is at their own expense and risk.
- b. All insurance companies providing coverages must be acceptable to the Contractor.
- c. Such insurance shall be primary and non-contributory with any other insurance and shall be in a form and from insurance companies acceptable to Contractor.
- d. The required insurance limits may be provided through a combination of primary and umbrella/excess policies.
- e. Commercial General Liability, Umbrella/Excess, and Auto Liability policies required in this section shall name Contractor, Owner, Architect, and other parties, as required under the terms of the contract between Contractor and Subcontractor, as Additional Insured including products and completed operations utilizing ISO form CG2010 11/85 or its equivalent. Coverages provided to the Additional Insureds shall be provided on a primary and non-contributory basis with respect to any other insurance available to the Additional Insureds.
- f. All policies required and/or any coverages purchased by Subcontractor for its own protection shall contain a Waiver of Subrogation in favor of the additional insureds. Subcontractor expressly agrees to the Waiver of Subrogation of any losses paid by Subcontractor's insurance (unless prohibited by law).
- g. The policies required above shall contain no exclusion for work expressly within Subcontractor's scope (e.g. EIFS, asbestos, etc.) unless Subcontractor has a separate policy providing such coverage.
- h. Subcontractor acknowledges that any coverage maintained by the Contractor is excess over any coverage provided to them as additional insured under the Subcontractor's policy.
- i. Contractual Liability – The insurance required herein shall include Contractual Liability Insurance Coverage, applicable to the Subcontractor's obligations under the indemnification portion of this Agreement.
- j. Subcontractors shall not be entitled to receiving payments until the Contractor has been furnished with their requirements.
- k. The liability policies will provide defense and indemnity to the additional insureds for any and all claims arising out of the Subcontractor's work. The insurer's defense and

indemnity obligations shall not be limited to claims in connection with the Contractor's supervision of the Subcontractor's Work.

### **Certificates and thirty-day notice**

a. Certificates of Insurance and copies of the actual policies/endorsements acceptable to the Contractor and/or the Owner shall be delivered to the Contractor prior to commencement of the Work. These certificates of Insurance and documents shall contain a provision that coverage afforded under the applicable policies shall not be cancelled, altered, or amended, or non-renewed, unless a thirty (30) days prior written notice has been given the Contractor. This thirty (30) day notice requirement must also appear, by Endorsement, on all Subcontractors' policies. The Subcontractor, if requested, shall provide to Contractor copies of its complete insurance policies, certified if requested, which evidence coverages required by this Agreement. Insurance coverages must be provided in a format acceptable to Contractor by insurance companies licensed to do business in the State and acceptable to the Contractor and/or the Owner.

j. Taxes. Subcontractor will pay all Social Security and other Federal, State and local taxes or charges imposed upon it as an employer in connection with the performance of this Contract, and will furnish evidence, when requested by Contractor, showing that all such payments required to be made have been paid.

k. Warranty. Subcontractor warrants its Scope of Work to Contractor on the same terms, and for the same period, as Contractor warrants the work to Owner under the Contract Documents; and with respect to Subcontractor's work, Subcontractor shall perform all warranty obligations and responsibilities assumed by Contractor under the Contract Documents. Subcontractor shall ensure that all manufacturers' warranties remain intact and available for any equipment or materials furnished through Subcontractor.

l. Punchlist At the conclusion of construction a "Punch List" which requires correction or completion may be given to Subcontractor. Subcontractor agrees to complete such "Punch List" within seven (7) days of receipt. Subcontractor's failure to correct the items within that seven (7) day period shall give the Contractor the right, but not the obligation, to complete or correct the items without further notice to Subcontractor, and to charge the cost thereof to Subcontractor.

m. Indemnity. To the fullest extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless the Contractor, Owner, and officers, directors, or employees of Contractor or Owner from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees to the extent caused by the alleged negligence, contract non-performance, acts or omissions of the Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable.

n. Manufacturer's Documents. The Subcontractor shall be responsible for collecting and delivering the following materials from its Sub-Subcontractors or Suppliers, and will deliver seven copies of the finished document to the Contractor, for Architect to verify completeness: (a) Complete equipment diagrams, operating instructions, maintenance manuals, parts lists, wiring diagrams, pneumatic and/or electrical control diagrams, test and balance reports, inspection reports, guarantees and warranties, as applicable, for each and every piece of fixed equipment furnished under this Subcontract; and (b) Specific information regarding manufacturer's name and address, nearest distributor and service representative's names, addresses, phone numbers, make and model numbers, operating design and characteristics, etc.

**o. Sub-subcontractors of Subcontractors. The Subcontractor shall provide a list of subcontractors and suppliers to be used on the project for approval by Contractor prior to commencing work onsite.**

6. Changes in Work. Any and all alterations or changes in the work described herein shall be subject to the terms of this Agreement regardless of whether executed by Subcontractor, and shall be made by Subcontractor only after having first received written authorization therefore from Contractor.

Contractor shall not be liable to Subcontractor for any extra work or materials furnished without first obtaining written authorization from Contractor. To determine the amounts for changes, the value of the work or materials added or omitted shall be computed and determined by Subcontractor, subject to the written approval and acceptance by Contractor, and the amount shall be added or deducted from the Subcontract Price. In the event that Contractor and Subcontractor cannot reach an agreement as to the value of the additional work, Contractor may direct Subcontractor to perform such work, compensating Subcontractor for all its direct labor, materials, equipment and its sub-subcontractors' **cost plus 10 % Overhead and 10% Profit** as full compensation, unless otherwise stipulated in Owner Contractor Agreement. The Subcontractor expressly acknowledges that commencing work without a written change order executed by Owner or Owner's representative and Contractor in advance of commencement of work waives any claim by Subcontractor to additional sums or time.

7. **Payment**

a. **Pay If Paid.** It shall be an express condition precedent to any liability of the Contractor to the Subcontractor or any liability of the Contractor's surety to the Subcontractor for any partial, final or retainage payment to the Subcontractor, that the Contractor has received payment from the Owner for the Subcontractor's work. If the Owner has not paid the Contractor for any reason whatsoever, including the Owner's financial inability or other reason not related to this Subcontractor, the Subcontractor agrees that the Contractor shall not be liable for payment, nor be indebted to the Subcontractor. The Subcontractor assumes the credit risk of the Owner and agrees that he has relief on the Owner's credit and not that of the Contractor. Subcontractor further agrees that the liability of Contractor's surety under any payment bond for payment to Subcontractor is subject to the same conditions precedent as are applicable to Contractor's liability for payment to Subcontractor. Subcontractor acknowledges that its acceptance of these terms is a material inducement to Contractor executing this Agreement.

b. **Progress Payments.** Progress payment invoices are due in Contractor's office by the **25<sup>th</sup> day of each month.** The Contractor shall pay Subcontractor for work performed within **20 days** of the date payment is received from the Owner (except as to Final Payment) and pursuant to payment requests accompanied by valid lien and bond waivers covering the amounts of monies reflected in such requests. Payment shall not be made under any circumstances until original lien or bond waivers are supplied. Subcontractor agrees to provide Contractor with a list of suppliers, laborers, and materialmen and shall complete the application for payment and any other documents reasonably required by Contractor prior to requesting any such payment. The Contractor also reserves the right at its discretion to issue a joint check to the Subcontractor and any supplier or debtor of Subcontractor or to make direct payments to any supplier or debtor of Subcontractor, provided that upon issuance of the check, Subcontractor and its supplier or debtor shall issue a release of lien and bond rights.

c. **Proper Payments.** Subcontractor shall insure that all sub-subcontractors, employees and suppliers, at all times, are paid all amounts due in connection with the performance of the Subcontract. Subcontractor shall not use any payment received by Subcontractor from Contractor for any purpose other than to satisfy indebtedness incurred in the performance of this Subcontract. **Ten percent (10%) retainage will be withheld** on all payments until final completion by Subcontractor and acceptance by Owner. Subcontractor will keep the project referred to in this subcontract free from all liens pursuant to applicable Florida law by reason of the work hereunder. This provision is not to be construed as a waiver of Subcontractor's lien rights. If Subcontractor fails to remove any lien by bonding it or otherwise, Contractor may retain sufficient funds, out of any money due or thereafter to become due to Subcontractor, to pay the same and all costs incurred by reason thereof, and may pay the lien or liens and costs out of any funds at any time in the hands of the Contractor owing to Subcontractor. In the event Subcontractor's subtrades serve a "Notice to Owner", Subcontractor will provide a Partial Release of Lien and Sworn Statement of Account each month at the time a request for payment is made from the subtrade. All releases and sworn statements of account will be in a form acceptable to Contractor.

d. **Withheld Payment.** Payments otherwise due may be withheld by Contractor on account of

defective work not remedied, claims filed against Subcontractor, failure of Subcontractor to make payments properly to its subcontractors and/or suppliers for material or labor, failure to pay taxes or a reasonable doubt that the Contract can be completed for the balance then unpaid. If the causes are not remedied within 24 hours of written notice from Contractor to Subcontractor, Contractor may rectify the same at Subcontractor's expense. Payments otherwise due may also be withheld by Contractor due to expired insurance certificates or lack of confirmed licensure. In the event of a dispute as to amounts claimed by Subcontractor, or extensions of time, the authorized representatives and agents of the Contractor, Architect, Owner, and such other persons the Owner may designate shall have access to and be permitted to inspect all Work, sub-subcontracts, materials, payrolls, records of personnel, invoices of materials and other relevant data and records wherever they are in preparation and progress. The Subcontractor shall provide proper facilities for such access and inspection and, when required, exact duplicate copies of the aforementioned data shall be furnished.

e. No Waiver. Payments to Subcontractor shall not be deemed an approval of Subcontractor's work or materials or waiver of Contractor's claims, and Subcontractor's work shall be guaranteed for a minimum period of one year after acceptance by Contractor or as otherwise specified by statute.

f. Application for Final Payment. Subcontractor's request for final payment in connection with the work shall include an affidavit noting the following: (i) The undersigned certifies that an authorized representative has seen and supervised the progress of the work under this Contract between Contractor and Subcontractor, that all work conforms with applicable code requirements, and has been properly installed in accordance with what is considered good practice for the trade; (ii) That all inspections as required by local authorities have been made and all work under this Contract between Contractor and Subcontractor has been approved; (iii) That all work as installed is in substantial conformance with the plans and details for this work excepting only as follows: (note exceptions); and (iv) The undersigned certified that each and every one of Subcontractor's subcontractors, materialmen, and workmen has been paid in full and entirely, and that no monies are owed to any entity for the work hereunder, or listing those remaining unpaid.

g. Final Payment. Final payment shall be made to Subcontractor no later than sixty (60) days after actual receipt of final payment by Contractor from the Owner for the work described in this subcontract agreement and completion and reasonable acceptance of the Subcontractor's work. A condition precedent to final payment shall be the furnishing of a final and complete release of lien and/or release of bond rights that the Subcontractor or any of its laborers, materialmen or suppliers may have by reason of any work performed by Subcontractor hereunder. If at any time there shall be evidence of any liens or claims for which Contractor or its surety or the Owner may become due, then an amount sufficient to indemnify that party for all monies that it may be compelled to pay in discharging such claim or lien will be withheld from the Subcontractor.

## 8. Claims and Disputes.

a. Subcontractor Delay. If, in the opinion of the Contractor, the Subcontractor falls behind in the progress of the work to be performed hereunder, the Contractor may direct the Subcontractor to take such steps as the Contractor deems necessary to improve the rate of progress, including requiring Subcontractor to increase the number of shifts, overtime operations, days of work, amount of workmen and/or amount of equipment, and to submit for approval a schedule demonstrating the manner in which the required rate of progress may be regained, all without any additional costs whatsoever to Contractor. Failure of Subcontractor to immediately comply with Contractor's scheduling requests provided herein shall be considered to be an event of material default hereunder for which Contractor may assert any and all remedies as provided herein. Should Subcontractor in any way cause delay to the Contractor, any other subcontractor on the project or to any portion of the work described in the prime contract, Subcontractor shall be liable to Contractor for any and all damages, sustained by Contractor as a result thereof, including, but not limited to, all consequential damages and costs of continued supervision, job overhead, insurance, project facilities and other ongoing, fixed costs. In addition, in the event Owner shall assess any delay damages against Contractor, either pursuant to a valid liquidated damage provision in the prime contract or otherwise, Contractor shall have the right and option to deduct any and all such assessments that are directly

attributable to delays caused by Subcontractor from any amounts that may be owing to Subcontractor under this agreement. Permitting Subcontractor to continue after the time to complete the work has expired shall not be construed as a waiver of damages for noncompliance with time requirements provided herein.

b. Limitations on Damages. Contractor shall not be liable to the Subcontractor for delay to Subcontractor's work by act, neglect or default of the Owner or the Architect or the Engineer, or other Subcontractors, or by reason of fire or other casualty, or on account of riots, or strikes, or other combined action of the workmen or others, or on account of any acts of God, or any other cause, beyond Contractor's control, or on account of any circumstances caused or contributed to by the Subcontractor. In any event, Contractor's liability for delays shall expressly exclude consequential or incidental damages sustained by Subcontractor or any other party.

c. Time Extensions. Should Subcontractor be delayed in the prosecution of the work by the act, neglect or default of the Contractor, Owner, or Architect, or by any damage caused by the elements, act of God, and/or any casualty for which the Subcontractor is not responsible, then the time fixed for the completion of the work pursuant to the terms of this agreement shall be extended for a period equivalent to the time lost by reason of the cause aforesaid. No time extension shall become operative unless a claim therefore is presented in writing to Contractor within seventy-two (72) hours of the beginning of delay, and such claim is approved in writing by Contractor.

d. Cooperation. In case of any dispute between Contractor and Subcontractor, due to any action by Owner or its agents or involving the Contract Documents, Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to Owner, by the terms of the Contract Documents, and by any and all preliminary and final decisions or determinations made thereunder by the party, board or court so authorized in the Contract Documents, or by law, whether or not Subcontractor is a party to such proceedings.

e. Disputes. Venue is restricted to Palm Beach County, Florida. The laws of the State of Florida apply. Prior to litigation, the parties may attempt to resolve any pending disputes by mediation in accordance with the provisions of Chapter 44 of the Florida Statutes, provided that such mediation must be commenced within 60 days of the written demand for mediation. This mediation condition precedent shall self-terminate 61 days after written demand if the parties are unable to agree on or perform the conditions set forth above. Furthermore, the prevailing party, in the event of a dispute shall be entitled to recover its reasonable attorneys' fees, pre- and post- judgment interest and costs incurred, through appeal. The parties mutually, knowingly, and voluntarily acknowledge the waiver of a jury trial, and agree that any litigation will be decided by a Court of competent jurisdiction without a jury. In the event the Owner-Contractor Agreement provides for mediation or arbitration as a precondition to arbitration or litigation, then in such event, all such provisions of that Agreement shall control and be binding upon the Subcontractor, unless waived in writing by joint agreement of the Contractor and Subcontractor. In the event of a dispute, Subcontractor consents to be a party to any arbitration proceedings between the Owner and the Contractor.

## 9. Termination

a. Termination for Default. Should the Subcontractor fail to do or perform work required hereunder or in any other manner breach or fail to perform any of its obligations and undertakings herein, thereby in the opinion of the Contractor causing or threatening to cause delay in general progress of the building, structure or project, Contractor shall have the right to any or all of the following actions: (i) Supplement the performance, or (ii) Take charge of and complete the performance of this Subcontract, or (iii) Declare this Subcontract to be breached with by twenty-four (24) hours' notice to Subcontractor, and renegotiate the completion of the work required to be done under this Subcontract with others as be necessary in the opinion of the Contractor. All losses, damages, and expenses, including attorneys' fees incurred in taking over and completing such work shall be borne by and charged against Subcontractor, including Contractors General Conditions at 35% plus Contractors Overhead at 10% and Contractors Profit at 10%.

b. Termination for Convenience. The Contractor reserves the right to terminate this agreement and all rights and obligations hereunder, with or without cause and at Contractor's sole discretion+, at any



time up to seven (7) days prior to the scheduled actual commencement of the work by Subcontractor, in which event Contractor shall reimburse Subcontractor for any reasonable out-of-pocket costs incurred by Subcontractor for the actual preparation of performance of work and services performed through the date of such termination, subject to set off for damages, delays, and costs to Contractor and other monetary loss to Contractor caused by said termination. In no event shall Contractor be obligated to compensate Subcontractor for lost profits, or any resulting or consequential damages in the event of termination for convenience.

10. **Assignment, Severability, Integration.** Neither any payments to be paid to Subcontractor, nor any other right or interest of Subcontractor hereunder shall be assigned or transferred without Subcontractor first having received the expressed, written consent of Contractor. In the event Contractor shall agree to any such transfer or assignment, Contractor specifically reserves the right renegotiate or to add any additional provisions as may be necessary under the circumstances and under no circumstances shall any such transfer or assignment relieve Subcontractor of any of its obligations under this agreement. In case a provision of the Contract Documents is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected. This Subcontract contains the entire agreement between the parties hereto with respect to the matters covered herein. No other agreement, representations, warranties, or other matters, oral or written, shall be deemed to bind the parties hereto.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have hereunto executed this Subcontract, on the day and year above written.

**CONTRACTOR:**

\*\*\*\*\*

**SUBCONTRACTOR:**

\*\*\*\*\*

By: \_\_\_\_\_

Print Name: \*\*\*\*\*

By: \_\_\_\_\_

Print Name:

**SCHEDULE "B"**  
**Drawings/Plans List**