

## **CONTRACTOR\SUBCONTRACTOR AGREEMENT**

THIS AGREEMENT, made and entered as of the Contract Date (as defined in Schedule 1) by and between Subcontractor (as defined in Schedule 1) and Contractor (as defined in Schedule 1).

WITNESSETH, That the Subcontractor and the Contractor, in consideration of the mutual promises contained herein and intending to be legally bound hereby agree as follows:

- A. Attached hereto as Schedule 1 is a listing of economic terms and definitions applicable to the provisions of this Agreement. Whenever such terms are used in this Agreement, they shall have the same defined meanings set forth on Schedule 1.
- B. Attached hereto as Schedule 2 is the description of the Subcontract Work. Whenever such term is used in this contract, it shall have the same defined meanings set forth on Schedule 2.

### **I. THE SUBCONTRACT WORK**

1.01 The Subcontractor shall furnish all labor, material and related insurance and equipment for, and perform all services necessary to complete, the Subcontract Work in connection with the construction or renovation of the Project. The Subcontractor agrees to perform and complete the Subcontract Work in strict accordance with this Agreement. Any work not specifically referred to in this Agreement which may be reasonably inferred therefrom shall also be performed and completed when and as required by the Subcontractor. The "Subcontract Work" shall mean, in addition to that defined on Schedule 2, the work described herein, and the additional work otherwise required to be performed by Subcontractor pursuant to the terms of this Subcontract.

1.02 The Subcontractor shall comply with any additional drawings, explanations and modifications furnished by the Owner, Contractor or Architect relating to the Subcontract Work.

1.03 The Owner, Contractor or Architect may at any time, without notice to the Subcontractor's surety, issue written orders requiring alternations or additions to the Subcontract Work. The Subcontractor shall not alter or perform additions to the Subcontract Work except upon receipt of such written orders.

1.04 It is intended that Subcontractor shall furnish and provide all labor, materials, hauling, freight, tools, scaffolding, shop drawings and equipment necessary to perform the Subcontract Work in accordance with this Subcontract, including everything necessary and requisite to finish properly the entire Subcontract Work, notwithstanding that every item may not be specifically mentioned in this Subcontract.

1.05 The Subcontractor shall perform all Subcontract Work in a good and workmanlike manner, and all Subcontract Work is subject to approval by the Owner, Contractor or Architect.

1.06 The Subcontractor shall comply with all federal, state, and local governmental rules, regulations, ordinances and codes as well as those requirements imposed by the utility companies servicing the Project, and it is intended that the Subcontractor will do any and all work necessary to conform the Subcontract Work with all such rules, regulations, ordinances and codes at no extra expense to the Owner or the Contractor, notwithstanding that every such item may not be specifically mentioned in this Agreement.

### **II. TIME OF PERFORMANCE**

2.01 The Subcontractor shall begin, prosecute and complete the Subcontract Work by the Subcontract Work Start Date (as defined in Schedule 1) to enable Subcontractor to complete the Project by the Project Completion Date (as defined in Schedule 1). The time requirements specified in this Subcontract are of the essence. The Subcontractor shall complete the Subcontract Work by the Subcontract Work Completion Date (as defined in Schedule 1).

2.02 If the Subcontractor shall be delayed in beginning, prosecuting, or completing the Subcontract Work by the act, omission, neglect or default of the Contractor, or by any damage caused by fire or other casualty

for which the Subcontractor is not responsible, or by general strikes or lockouts, then the time for completion of the Subcontract Work shall be extended for such period of time as the time lost by reason of any of the aforesaid causes. Such an extension shall be the Subcontractor's sole and exclusive remedy for such delay and the Contractor shall not be responsible for any increased costs, charges, expenses or damages of any kind resulting from such delay.

2.03 No extension of the time for performance of the Subcontract Work will be granted pursuant to Section 2.02, above, unless a claim therefor is presented by the Subcontractor to the Contractor in writing within forty-eight (48) hours of the occurrence of the cause thereof.

2.04 The Subcontractor shall prepare and submit to the Contractor for approval, a progress chart (herein called the "Progress Schedule") showing the order in which the Subcontractor proposes to execute the Subcontract Work and respective dates on which the essential parts of the Subcontract Work will be begun and completed, which dates shall be within the time limits designated by the Contractor, and shall be subject to the approval of the Contractor.

2.05 If the Subcontractor shall at any time not be performing the Subcontract Work in accordance with the Progress Schedule or if in the opinion of the Contractor the Subcontractor is delaying the progress of the work necessary to complete the Project, then and in either such event, if requested by the Contractor, the Subcontractor shall cause to be performed such overtime work as may be necessary to keep abreast with the general progress of the work at the Project and to satisfy the requirements of the Progress Schedule, and in either such event the cost and expenses of such overtime shall be born entirely by the Subcontractor.

### III. PAYMENT

3.01 The Contractor shall pay the Subcontractor for the performance of the Subcontract Work the Subcontract Price (as defined in Schedule 1), subject to such additions and deductions for alterations or additions to the Subcontract Work as may be ordered by the Contractor. All risks of increase in the price of labor and material have been contemplated and assumed by the Subcontractor and have been taken into full consideration by the Subcontractor in arriving at the Subcontract Price.

3.02 Should it appear at any time that the Subcontractor, or anyone performing any part of the Subcontract Work, has not paid any amount due for labor, materials, equipment or services supplied in connection with the performance of the Subcontract Work, the Contractor shall have the right, but not the obligation, to pay such amount to the parties to whom it is due and to deduct such amount from the Subcontract Price. If all payments then due hereunder to Subcontractor are less than the amount paid by the Contractor to any third party, the Subcontractor shall refund such amounts to the Contractor upon demand.

3.07 Payments made hereunder shall not be evidence of the performance of the obligations of the Subcontractor under this Subcontract, either wholly or in part, and no payment shall be construed to be an acceptance of the Subcontract Work, or any part thereof. The acceptance by the Subcontractor of the final payment hereunder shall be deemed to be a complete and unconditional release of any and all existing or future claims or demands by the Subcontractor against the Contractor, known or unknown, hereunder or in connection herewith, whatever they may be or howsoever they may arise, as well as for every act and neglect of the Contractor and any person or firm for whom the Contractor shall or may be deemed responsible.

3.08 The Subcontract Price includes all Federal, State, Municipal and Local Taxes including but not limited to Sales and/or Use Taxes applicable to the performance of the Subcontract Work, all of which shall be paid by the Subcontractor.

### IV. INSURANCE

4.01 The Subcontractor, before beginning the Subcontract Work, shall procure from such insurance companies as may be designated by the Contractor policies with such limits of liability as the Contractor shall deem necessary to protect the Contractor and the owner of the Project from claims, including Workmen's Compensation, Public Liability, Property Damage, and such other insurance or coverage, as required by the Owner, Contractor or Architect or the contract for construction of the Project between Contractor and the owner of the Project, including without limitation claims for damages for personal injury, including death, which may arise from operations under this Subcontract carried on either by the Subcontractor or by any of its subcontractors. The Subcontractor shall maintain such policies in full force and effect until such time as all the Subcontract Work shall have been entirely completed and accepted Certificates evidencing that such required insurance in effect shall be furnished by the Subcontractor to the Contractor promptly after such insurance has been procured.

4.02 In case of the failure of the Subcontractor to maintain such insurance and policies in full force and effect as aforesaid, the Subcontractor hereby authorizes and empowers the Contractor, without any notice of its intention so to do, to provide such required policies of insurance and other coverage, on behalf and for the account of the Subcontractor and to pay any and all premiums due thereon. Subcontractor shall reimburse Contractor, on demand, for all such premiums paid by Contractor, and Contractor may deduct the aggregate amount of such premiums so paid by the Contractor from any moneys, which may be due or thereafter become due to the Subcontractor under this Subcontract.

4.03 The foregoing insurance and coverage provisions shall also be applicable where the performance of any of the Subcontract Work involving the use of labor at or on the site of the Project, shall have been sublet by the Subcontractor. The Subcontractor shall make no agreement therefor, or with respect thereto, which does not effectively bind the other party thereto to like compliance with the requirements hereof.

4.04 The Subcontractor shall exclude all Subcontract Work, which may be performed on or at the site of the Project, from the coverage of any other insurance, excluding the insurance required under 4.01, in force on behalf of the Subcontractor and shall duly notify such insurers, if any, of the stipulation made in this Subcontract.

4.05 The Subcontractor, by compliance with the foregoing requirements as to the insurance, shall not be relieved from any liability whatsoever imposed by the provisions of this Subcontract or otherwise.

4.06 Without in any manner limiting the general provisions set forth above in this Article IV, Subcontractor agrees that all of the insurance policies which it is required to maintain will also name as insured parties those parties listed and defined on Schedule 1 as Insured Parties.

## V. INDEMNIFICATIONS

5.01 The Subcontractor hereby exculpates and agrees to indemnify and hold harmless the Insured Parties of the Project, and their officers, directors, shareholders, partners, members, agents, representatives, employees, successors and assigns from and against any and all claims, loss, damage, costs, suits, actions, causes of action, expense and liability of any kind which it or any of them may incur, suffer, sustain or be required to pay by reason of the injury or death of any person or the damage to any property whatsoever, caused or alleged to have been caused by any act or omission of the Subcontractor or any of its suppliers or subcontractors, or the employees, agents or representatives of the Subcontractor or any of its suppliers or subcontractors, arising out of or in any manner connected with the performance of the Subcontract Work, whether or not caused in whole or in part by any act, omission or negligence of the parties benefited by this paragraph or their respective officers, agents, partners, members, affiliates, managers, officers, directors, representatives or employees.

5.02 The Subcontractor agrees to indemnify, defend and hold harmless the Insured Parties, and their respective officers, directors, shareholders, partners, members, agents, representatives, employees, successors and assigns from and against any and all actions, suits, proceedings, claims or demands arising out of or alleged to have arisen out of the performance of or the operations under this Subcontract. In the event any action, suit or proceeding is instituted against any of the parties specified in the preceding sentence upon any liability or defect arising out of or alleged to have arisen out of the performance of or the operations under this Subcontract, or in the event any claim, counter-claim, set-off, recoupment, or other defense is made or asserted against any of the parties specified in the preceding sentence upon any liability or defect arising out of or alleged to have arisen out of the performance of or the operations under this Subcontract, the Subcontractor, at its own cost and expense, shall defend against such action, suit, proceeding, claim, counter-claim, set-off, recoupment or other defense and take all such steps as the indemnified party may deem necessary to prevent the obtaining of a judgment against, or the successful maintenance of, such claim, counter-claim, set-off, recoupment or other defense against the indemnified party. Notwithstanding the foregoing, the indemnified party shall be permitted to be represented by its own counsel should the indemnified party so desire.

5.03 The Subcontractor warrants that the delivery, erection and use of material supplied or erected under this Subcontract, either alone or in combination with other materials, do not and will not infringe upon any patents, United States or foreign. The Subcontract shall indemnify and save harmless the Insured Parties against all damages which they, or any of them, may sustain by reason of claims for infringement of patents or trademarks arising out of the Subcontract Work, or by reason of the use of any patented appliances, products or processes in connection with the Subcontract Work. The Subcontractor shall, at the sole expense of the Subcontractor, defend any action brought against the Insured Parties or any of them, founded upon a claim or infringement of patent rights, and shall reimburse the Insured Parties and the owners of the Project, or any of them, for all expenses, including reasonable counsel fees, incurred by the Insured Parties, or any of them, in defending any action brought

for such alleged infringement. The Insured Parties shall each be permitted to be represented by their own counsel in any such suit or action should they, or any of them, so desire.

5.04 In the event any action, suit, proceeding, claim or demand is made against the Insured Parties which the Subcontractor has herein agreed to indemnify, then the Contractor may withhold from any payment due or hereafter to become due to the Subcontractor hereunder an amount sufficient in its sole judgment to protect and indemnify all such indemnified parties (including, without limitation, the Insured Parties) from such action, suit, proceeding, claim or demand, together with legal fees and disbursements.

5.05 Subcontractor represents that it is an independent contractor and neither Subcontractor nor any employees of Subcontractor are employees of any the Insured Parties. Subcontractor shall, at all times, have complete charge and control of its employees engaged in the performance of the Subcontract Work. Subcontractor agrees to accept full and exclusive liability for the payment of any and all contributions or taxes for unemployment insurance or old age benefits or annuities now and hereafter imposed by any governmental authority which may be or become payable by reason of the Subcontract Work, and Subcontractor agrees to indemnify, defend and save harmless Insured Parties against any such liability.

## VI. ADDITIONAL OBLIGATIONS OF THE SUBCONTRACTOR

6.01 The Subcontractor shall:

(a) provide and supply, in the performance of the Subcontract Work, a sufficiency of properly skilled and other workmen and equipment and an adequacy of materials of the proper quality as required by the Owner, Contractor or Architect;

(b) abide by the safety rules and regulations established by the Contractor and/or promulgated by any Federal, State, or Local government body or agency with appropriate jurisdiction;

(c) provide sufficient, safe and proper facilities at all times for the inspection of the Subcontract Work by the Contractor and any architect or their authorized representatives;

(d) employ on the Project and Project Location only workmen of such labor affiliations as are satisfactory to the Contractor and approved in writing by the Contractor;

(e) pay promptly any and all sum or sums of money due for labor, materials or equipment supplied in connection with the performance of the Subcontract Work. This paragraph is not intended to create any right in any third party. Additionally, the Subcontractor agrees to pay the prevailing wage for the area and further agrees to partake in any affirmative action programs which are in effect in the general area or specifically on the Project. Further, the Subcontractor agrees to execute such documentation as may be required by the Contractor, the Owner or any governmental authority confirming his compliance with the provisions of this Section;

(f) clean up and remove from the Project site all rubbish and debris resulting from the performance of Subcontract Work;

(g) comply with, and perform all of the obligations of the Owner, Contractor or Architect which any of such parties deem applicable or related in any manner to the Subcontract Work;

(h) be responsible for all materials delivered to the site by the Subcontractor, the Contractor, the owner or any other party, which materials are to be installed as part of its contract; and

(i) be responsible for all perils (insurable or non-insurable) until the Project is accepted and completed by the owner and architect.

6.02 In the event that any materials used by the Subcontractor, whether worked or unworked, or any Subcontract Work performed by the Subcontractor is rejected by the Contractor, the owner of the Project, or the Architect, as defective or as in anyway failing to conform to the plans and specifications of the Subcontract Work, whether such defective work or materials are discovered before completion of the Subcontract Work or within a period of one (1) year from date of completion of the Subcontract Work (or such longer period as may be generally accepted within the industry), Subcontractor shall:

(a) within twenty-four (24) hours after receiving written notice from the Contractor to that effect, proceed to remove from the Project site all such defective materials and to take down all portions of such defective Subcontract Work;

(b) make good all work in other trades damaged or destroyed thereby; and

(c) promptly correct to the satisfaction of the Contractor any such defective work or replace any such defective materials at his own cost and at the reasonable convenience of the owner.

In the event that all or any portion of the Subcontract Work so rejected shall be of such a nature, or the time available for completion of the whole Project shall be so limited, that in the judgment of the Contractor or the Architect it will not be expedient to order the same replaced or corrected, the Contractor at his option, may deduct from the payments due or to become due to the Subcontractor an amount that shall represent the difference between the fair and reasonable value of the Subcontract Work so rejected and its value had it been executed in conformity to the plans and specifications of the Subcontract Work.

6.03 The Subcontractor shall, upon request by the Contractor, execute a separate guaranty, in such form as the Contractor shall require, under which the Subcontractor shall guarantee prompt and complete correction of all defective work and replacement of all defective materials and shall guarantee the reimbursement of the Contractor for any and all costs and expenses incurred by the Contractor (including labor, materials, and all expenses reasonably flowing from any delay caused by the defective work or materials) as the result of the Subcontractor's failure promptly to cure any such defects which were or could have been caused by the Subcontractor's failure to properly perform the Subcontractor's Work.

6.04 The Subcontractor shall not sell, let, assign or transfer this Subcontract, or any part of the Subcontract Work, or any balances or sums of money due or to become due and payable hereunder, without the written consent of the Contractor first had and obtained.

6.05 The Subcontractor shall reimburse the Contractor for any loss incurred or damage suffered by the Contractor as a result of the Subcontractor's delays in beginning, prosecuting or completing the Subcontract Work except for delays resulting from causes for which the Subcontractor is entitled to extensions of time pursuant to Section 2.02 above.

6.06 Subcontractor warrants that all materials and equipment furnished and incorporated by it as part of the Subcontract Work shall be new unless otherwise specified and that all Subcontract Work shall be of good quality, free from faults and defects and in conformance with the provisions of this Subcontract. All Subcontract Work not conforming to these standards may be considered defective. The warranty provided in this Section 6.06 shall be in addition to and not in limitation of any other warranty or remedy required by law.

6.07 Subcontractor shall furnish periodic progress reports on the Subcontract Work, including information on the status of materials and equipment under the Subcontract which may be in the course of preparation or manufacture.

6.08 Subcontractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Subcontract Work. The Subcontractor shall secure and pay for all permits, fees and licenses necessary for the execution of the Subcontract Work.

6.09 Subcontractor agrees that performance of the Subcontract Work shall be subject to the final approval of the Architect (as defined in Schedule 1). The Architect's decisions in matters relating to artistic effect shall be final if consistent with the intent of this Subcontract. Notwithstanding and in no way limiting any provision to the contrary set forth in this Subcontract, no payment on account of the Subcontract Price shall be due and payable unless and until the Requisition for such payment has been approved by the Architect.

## VII. MECHANICS' LIENS AND CLAIMS

7.01 As a condition precedent to the making of any payment to the Subcontractor on account of the Subcontract Price, the Subcontract shall serve all notices that may be required by law. Without limiting the foregoing, Subcontractor shall, at the same time, send a copy of such notice to the Insured Parties via postage prepaid, certified mail, return receipt requested.

7.02 As a condition precedent to the making of the first disbursement or payment to the Subcontractor on account of the Subcontract Price, the Subcontractor shall furnish to the Contractor a fully executed Affidavit, in such form as the Owner or Contractor shall require, listing the names and addresses of all suppliers, materialmen, laborers and mechanics who have supplied materials or performed work in connection with the Subcontract Work to the date of the Affidavit and all necessary bonds and insurance certificates.

7.03 As a condition precedent to making any disbursement or payment to the Subcontractor on account of the Subcontract Price, the Subcontractor shall furnish to the Owner and Contractor a fully executed and recordable partial release of lien, in such form as the Owner shall require, from the Subcontractor, its subcontractors, each supplier, materialman, laborer and mechanic who has supplied materials or performed work in connection with the Subcontract Work. Pursuant to said release, each said Subcontractor, its subcontractors, supplier, materialman, laborer and mechanic shall waive and relinquish all right to file a mechanic's lien, claim or notice of intent to file any lien or claim arising out of or relating to any work or materials furnished on the Project

prior to the date of the last preceding payment to the Subcontractor.

7.04 As a condition precedent to the making of final payment hereunder, the Subcontractor shall furnish to the Owner and Contractor full and complete recordable releases and discharges, in forms satisfactory to the Owner, of all liens, claims, and demands arising out of or relating to the Subcontract Work and any and all materials furnished, work done and equipment used in connection therewith from the Subcontractor, its suppliers, materialmen, laborers and mechanics. In addition, the Subcontractor shall furnish to the Owner a final affidavit, in such form as the Owner shall require, stating that all suppliers, materialmen, laborers, and mechanics have been paid in full, or listing the names and addresses of all unpaid accounts and the amounts remaining due. If the Subcontractor's final affidavit shows unpaid accounts, and the Subcontractor is unable to furnish the Owner and Contractor with final releases from all suppliers, materialmen, laborers and mechanics, the Contractor shall have the right to withhold 150% of the amount remaining due on all such unpaid accounts until such time as the Subcontractor delivers to the Owner and Contractor all said final releases.

7.05 Subcontractor, for itself and anyone else acting or claiming through or under it, does hereby waive and relinquish all right to file a mechanic's lien, claim or notice of intention to file any lien or claim, and does hereby covenant, promise and agree that no mechanic's lien or claim or other lien or claim of any kind whatsoever shall be filed or be maintained against the Project or the estate or title of the owners in the Project by or in the name of Subcontractor, or any subcontractor, materialmen or laborers for work done or materials furnished under this Subcontract or by any other party acting through or under them or any of them for and about the Project or any part thereof, or on credit thereof, and that all subcontractors, materialmen, and laborers on the Subcontract Work shall look to and hold Subcontractor personally liable for all subcontracts, materials furnished and work and labor done, so that there shall not be any legal or lawful claim of any kind whatsoever against any of the Insured Parties for any work done or labor or materials furnished under this Subcontract, or any contract for any extra work or work supplemental thereto, or otherwise. Subcontractor represents and warrants to Owner and Contractor that there has not been any extra or supplemental work performed by Subcontractor (or any party or parties claiming under or on behalf of Subcontractor) pursuant to which the Subcontractor (or any party or parties claiming under or on behalf of Subcontractor) may or will have a legal or lawful claim of any kind whatsoever against any of the Insured Parties.

7.06 Subcontractor agrees, upon the request of Owner or the Contractor, to execute and deliver to Contractor any and all separate waivers of mechanic's liens in form designated by Contractor sufficient to file of record the waiver by Subcontractor (or any party or parties claiming under or on behalf of Subcontractor) of its right to file any lien as stated above in Section 7.05.

7.07 Subcontractor agrees to the prompt payment for all material furnished, labor supplied or performed, rental for equipment employed and services rendered by public utilities in or in connection with the Subcontract Work, whether or not the said material, labor, equipment or services enter into and become component parts of the improvements contemplated.

7.08 In the event Subcontractor or any party claiming under or on behalf of it shall file a mechanic's lien, claim or any other document which creates any lien upon the Project or the Project Location or on the interests of the Owner of the Project or the Project Location, the Owner or the Contractor shall, in addition to all other remedies provided by law, equity or provided by this Agreement, have the right, at their sole option to pay any and all sums necessary or required to cause such lien or other encumbrance to be satisfied of record and to deduct the amount so paid from the Subcontract Price, and the Subcontractor shall, upon demand, reimburse the Owner or Contractor (as applicable) for any and all sums expended by the Owner or Contractor (as applicable) pursuant to its rights in this Section. Subcontractor agrees to reimburse Owner and Contractor for any and all costs, losses or damages resulting from a breach of the provisions of this Article VII or the exercise by Owner or Contractor of any of its rights under this Article VII, which sums may be set off against any sums due to the Subcontractor. At the option of the Contractor, this Subcontract may be terminated for breach of the provisions of this Article VII. Subcontractor agrees that provisions substantially similar in form and substance to the provisions of Article VII will be included in every contract with subcontractors, service providers, materialmen and suppliers with which Subcontractor does business in connection with the Subcontract Work.

## VIII. DEFAULT

8.01 In the event the Subcontractor shall be adjudged a bankrupt, the Subcontractor shall make a general assignment for the benefit of creditors, a Receiver shall be appointed on account of the insolvency of the Subcontractor, the Subcontractor shall at any time refuse or neglect to supply a sufficiency of properly skilled and

other workmen and equipment or an adequacy of materials of the proper quality, as required by the Owner, Contractor or Architect, the Subcontractor shall fail to make prompt payment for materials, labor or equipment furnished and supplied in and about the performance of the Subcontract Work, or fail to submit to the Owner and Contractor satisfactory evidence of the payment by the Subcontractor of all indebtedness incurred for material, labor and equipment included in any previous monthly Requisition, or if by reason of a dispute between Subcontractor and any Labor Union, the Project shall be subject to picketing by the Union or the Subcontractor shall fail to perform any of the other agreements herein contained, the Owner or Contractor shall be at liberty, without prejudice to any right or remedy, on twenty-four (24) hours prior written or oral notice to the Subcontractor, either to provide any such labor, materials or equipment and deduct the cost thereof, plus fifteen percent (15%) of such cost for profit and ten percent (10%) of such cost for overhead expenses, from any payments then or thereafter due the Subcontractor, or to terminate the employment of the Subcontractor for the Subcontract Work and to enter upon the Project and take possession, for the purpose of completing the Subcontract Work, of all materials, tools, and appliances thereon and to employ any other person or persons (including Contractor's employees) to finish the Subcontract Work, and to provide the materials therefor; and in case of such discontinuance of the employment of the Subcontractor, the Subcontractor shall not be entitled to receive any further payment under this Subcontract until the Project shall be wholly finished and accepted, at which time, if the unpaid balance of the amount to be paid under this Subcontract shall exceed the cost incurred by the Owner or Contractor in finishing the Subcontract Work plus fifteen percent (15%) of such cost for profit and ten percent (10%) of such cost for overhead expenses, such excess shall be paid by the Contractor to the Subcontractor, but if such cost plus overhead and profit shall exceed such unpaid balance, the Subcontractor shall pay the difference to the Owner or Contractor (as applicable).

#### IX. MISCELLANEOUS

9.01 In the event that any of the Insured Parties becomes involved in any administrative proceeding, litigation, arbitration, or any other proceeding for the resolution of a dispute concerning or relating in whole or in part to the Subcontract Work being done at the Project or on the Project Location as its relates to the Subcontract Work or the Subcontractor's performance of the Subcontract Work, all or any one of such Insured Parties shall give the Subcontractor notice thereof. Thereupon, each such Insured Party shall have the opportunity to be represented by its own counsel at the expense of the Subcontractor in the said proceeding. Whether or not the Subcontractor supplies it own counsel, it shall be bound by the outcome of the said proceeding and any judgment, verdict, award or decision shall be binding upon the Subcontractor.

9.02 Disputes which may arise hereunder between any of the Insured Parties and the Subcontractor shall not interfere with the diligent performance by the Subcontractor of the Subcontract Work.

9.03 Except as otherwise limited in Section 6.04, above, the Contractor and the Subcontractor, and their heirs, executors, administrators, successors and assigns shall be bound and the Insured parties shall be benefited by the covenants herein contained.

9.04 This Subcontract is not intended to create any third-party beneficiary rights in any party nor to create a contractual relationship between the parties hereto and any third parties; and the rights and privileges of this Subcontract shall inure only to the benefit of the parties hereto and, subject to the restrictions on assignment by Subcontractor stated above, their respective successors and assigns.

9.05 Subcontractor agrees to reimburse the Contractor, the Owner or the Architect (and any of the Insured Parties) for any and all legal or other costs and expenses which are incurred because of a dispute between the Subcontractor or any party claiming under or in behalf of the Subcontractor, and any of the Insured Parties.

9.06 This Agreement shall constitute the entire agreement between the parties and all prior negotiations are merged into this Agreement. Any amendment change or addition to this Agreement shall be made only in writing and signed by both parties.

9.07 The due date for receipt of payments to Subcontractor is ten days after the receipt and approval by Owner and Architect of a requisition for payment from the Subcontractor.

9.08 If any provision of this Agreement shall be held invalid, its invalidity shall not affect any other provisions of this contract that can be given effect without the invalid provision, and for this purpose the provisions of this contract are hereby declared to be severable.

IN WITNESS WHEREOF, I have set my hand and seal unto this instrument this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_

SUBCONTRACTOR

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

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

Federal ID#: \_\_\_\_\_

CONTRACTOR

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

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

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

## Schedule 1 – Term Sheet

1. “SUBCONTRACTOR” shall mean [INSERT]
2. “CONTRACTOR” shall mean [INSERT]
3. “OWNER”: [INSERT]
4. “SUBCONTRACT DATE” shall mean [INSERT].
5. “PROJECT” shall mean Subcontract Work to be performed by the Subcontractor at the Project Location.
6. “PROJECT LOCATION”: shall mean [INSERT].
7. “SUBCONTRACT WORK” shall mean as described on Schedule 2.
8. “SUBCONTRACT WORK START DATE” shall mean on or before [INSERT].
9. “SUBCONTRACT WORK COMPLETION DATE” shall mean on or before [INSERT].
10. “SUBCONTRACT PRICE” shall mean [INSERT].
11. “PROJECT COMPLETION DATE” shall mean on or before [INSERT].
12. “ARCHITECT” shall mean: [INSERT]
13. “DRAW SCHEDULE” shall mean [INSERT].
14. “INSURED PARTIES” shall mean: (a) [INSERT]; (b) and such other parties designated by the Owner.  
**Note: [Please reference the Additional Insured spreadsheet to add appropriate parties per location. Spreadsheet can be found here: I:\Legal\LEGAL\FORM LIBRARY\Third-Party Vendor Forms\Contractor-Subcontractor Forms\Additional Insured Parties].**
15. “NOTICES TO SUBCONTRACTOR” [insert name, address and phone number for subcontractor]
- 16.
17. “NOTICES TO INSURED PARTIES” C/O Commerce Group, 1280 W. Newport Center Dr., Deerfield Beach, FL 33483 Phone: 954 -360-7713; Fax: 954-360-0807. Email: [insert] (and such other parties and addresses as provided to Subcontractor from time to time).

**{Change highlighted info above- review all on Schedules}**

## **Schedule 2 – Subcontract Work**

1. “Subcontract Work” shall mean the work described herein, and the additional work otherwise required to be performed by Subcontractor pursuant to the terms of this contract, including but not limited to the following items:

Above scope of work shown in further detail on the attached Exhibit “A”.