



SERVICES SUBCONTRACT AGREEMENT

This Services Subcontract Agreement (“Agreement”) is entered into this **DAY** day of **MONTH** in the year **YEAR** by and between **CONTRACTOR, ADDRESS** referred to in this Agreement as the Contractor, and the

SERVICES SUBCONTRACTOR	
PROJECT	
NUMBER	
OWNER	
ARCHITECT/ENGINEER	

NOTICE TO THE PARTIES SHALL BE GIVEN AT THESE ADDRESSES

ARTICLE 1. SERVICES

The Services Subcontractor shall perform the services for the Project set forth in Exhibit A ("Services") in accordance with applicable laws, regulations and professional standards. The standard of care for all Services performed or furnished by Services Subcontractor under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Services Subcontractor acknowledges and agrees that, in addition to Contractor and Owner, third parties may rely upon the Services performed by Services Subcontractor, including but not limited to Contractor's other subcontractors, and Services Subcontractor shall be liable for any damages incurred by other subcontractors to the extent caused by the failure of Services Subcontractor to furnish its services in accordance with this Agreement.

ARTICLE 2. TEAM RELATIONSHIP

The Contractor and the Services Subcontractor agree to proceed with the performance of the Services required for the Project on a basis of mutual trust, good faith, and fair dealing, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient and economical manner. This Article shall not be construed to create a fiduciary relationship between the Contractor and the Services Subcontractor.

ARTICLE 3. EXTENT OF AGREEMENT

This Agreement includes the exhibits attached hereto, all documents identified on Exhibit D, the agreement between Owner and Contractor, including all exhibits, addenda, plans, drawings, specifications, special or supplementary conditions and other documents incorporated therein ("Prime Contract"), together with all changes, additions and modifications to this Agreement or the Prime Contract. This Agreement represents the entire and integrated agreement between the Contractor and the Services Subcontractor and supersedes all prior negotiations, representations and agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Contractor and Services Subcontractor and not for the benefit of any third party except to the extent expressly provided in this Agreement. Subject to the terms of this Agreement, the Services Subcontractor assumes toward the Contractor all the same duties, obligations, and liabilities that the Contractor assumes toward the Owner and Architect/Engineer under the Prime Contract. Notwithstanding anything in this Agreement to the contrary, in no event shall Services Subcontractor's proposal or bid be a part of this Agreement. If any provision of this Agreement irreconcilably conflicts with a provision of any other document incorporated herein, the provision granting greater rights or remedies to the Contractor or imposing the greater duty, standard or responsibility or obligation on the Services Subcontractor shall govern. Upon request, the Contractor shall make available to the Services Subcontractor a copy of the Prime Contract, although Contractor may redact financial information.

ARTICLE 4. COMPENSATION

As full compensation for the Services provided under this Agreement, Contractor shall compensate the Services Subcontractor on the following basis: XXXXXXXXXXX

ARTICLE 5. INSURANCE

Before commencing the performance of its Services, and as a condition of payment, the Services Subcontractor shall purchase and maintain insurance that will protect it from the claims arising out of its operations under this Agreement, whether the operations are by the Services Subcontractor, or any of its sub-consultants or sub-subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The Services Subcontractor shall maintain at least the limits of liability from a company satisfactory to the Contractor as set forth in Exhibit B.

ARTICLE 6. INDEMNITY

The following obligations apply to the fullest extent permitted by law. The Services Subcontractor agrees to purchase and maintain professional liability and contractual liability insurance covering its obligations in this article. These obligations shall not be interpreted to reduce or negate any other rights or obligations of indemnity otherwise existing with regard as to any party or person described in this Article.

6.1 Services Subcontractor shall defend, indemnify and hold harmless the Contractor to the same extent Contractor is obligated to defend, indemnify and hold harmless the Owner.

6.2 Services Subcontractor shall indemnify and hold Contractor, its agents, consultants, members and employees harmless from and against damages arising out of third-party claims to the extent caused by the negligence of, or breach of the standard of care by, the Services Subcontractor or anyone for whom the Services Subcontractor is responsible.

6.3 Services Subcontractor shall defend, indemnify and hold harmless the Contractor, the Contractor's other subcontractors, the Architect/Engineer, the Owner and their agents, consultants, members and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, costs and expenses for bodily injury and property damage that may arise from the performance of the Services to the extent of the negligent acts or omissions by, or the fault of, the Services Subcontractor, its sub-subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts or omissions any of them may be liable.

ARTICLE 7. DESIGN DELEGATION

If the Agreement requires this Services Subcontractor to provide design services, the Services Subcontractor shall provide the design services necessary to satisfactorily complete the Services. Design services provided by the Services Subcontractor shall be procured from licensed, design professionals (the "Designer") retained by the Services Subcontractor as permitted by the Law of the place where the Project is located. The Designer's signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by the Designer. Shop drawings and other submittals related to the Services designed or certified by the Designer, if prepared by others, shall bear the Services Subcontractor's and the Designer's written approvals when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed by the Designer. The Services Subcontractor shall be responsible for coordinating its design with the Project design and with the work of Contractor's other subcontractors. The standard of care for all design services performed or furnished by the Services Subcontractor under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. The Services Subcontractor shall not be required to provide design services in violation of any applicable law.

7.1 **Designer** If the Designer is an independent professional, the design services shall be procured pursuant to a separate agreement between the Services Subcontractor and the Designer. The Services Subcontractor-Designer agreement shall not provide for any limitation of liability that is greater or broader than the limitation of liability between Contractor and Owner in the Prime Contract, if any, or exclusion from participation in the multiparty proceedings as set forth herein. If applicable, the Designer(s) is (are)

The Services Subcontractor shall notify the Contractor in writing if it intends to change the Designer. The Services Subcontractor warrants the design furnished by the Designer will be in conformance with the information given and the design concept expressed in this Agreement.

7.2 **Design Documents** The Services Subcontractor shall provide all design documents, drawings, specifications, estimates, and schedules as required and further detailed in Exhibit A to this Agreement and other documents incorporated herein.

7.3 **Ownership of Design Documents** All documents prepared for or furnished to Contractor by Services Subcontractor as part of its design services (including but not limited to drawings, specifications and design submittals) are instruments of service. With respect to such instruments of service, Services Subcontractor shall provide Owner and Contractor the same ownership rights or licenses as Contractor is required to provide Owner in the Prime Contract. If the Prime Contract is silent with respect to ownership of such instruments of service, Services Subcontractor grants Contractor an irrevocable, transferable, perpetual license to use the drawings, specifications, design submittals and other documents prepared by Services Subcontractor or its Designer for the Project. This license is for the benefit of the Contractor, Owner and their assigns, and permits Contractor and Owner to retain other design professionals who may use the drawings, specifications and other documents. Services Subcontractor shall not be liable for injury from Contractor's reuse of the drawings, specifications, design submittals and other documents prepared by Services Subcontractor or its Designer pursuant to this Article for the Project on a separate project in which the Services Subcontractor is also not involved.

ARTICLE 8. REPRESENTATIVES

Contractor's Representative is XXXXX. Services Subcontractor's Representative is XXXX. Each Representative shall have authority to bind its respective party to all decisions and actions required under this Agreement.

ARTICLE 9. TIME

Time is of the essence with respect to Services Subcontractor's performance of the Services. The Services Subcontractor shall provide all Services in conformance with the most recent Project Schedule.

ARTICLE 10. DELAYS

In the event Services Subcontractor delays timely performance of the Services or the completion of the Project, Services Subcontractor shall be liable to the Contractor for liquidated damages, not as a penalty, to the same extent the Contractor shall be liable to the Owner, and the Contractor shall have no obligation to prove actual damages. Liquidated damages, when assessed, shall not exceed the Services Subcontractor's proportionate share of the responsibility for such liquidated damages. In addition to liability for its proportionate share of liquidated damages, Services Subcontractor shall also be liable to Contractor for, and shall indemnify and hold Contractor harmless from and against, all other damages caused by Services Subcontractor's delay, including but not limited to other delay damages for which Contractor may be liable to Owner, delay damages and attorneys' fees incurred by Contractor and delay damages incurred by Contractor's other subcontractors or suppliers. This Article shall survive any abandonment by Services Subcontractor or termination of this Agreement. The Contractor may offset any such damages against the remaining balance due to the Services Subcontractor, if any. The foregoing remedies are in addition to any other remedies set forth in this Agreement. In addition, the Services Subcontractor shall provide Services at its own cost, including overtime costs required to make up lost time in the schedule delays plus expenses as are necessary to make up for time lost by the Contractor because of such delay.

ARTICLE 11. COORDINATION

The Services Subcontractor shall cooperate and coordinate with the Contractor and Contractor's other subcontractors whose work may be affected by the Services.

ARTICLE 12. PAYMENTS

Payment in the amount set forth in Article 4 shall be made to Services Subcontractor for the proper and timely performance of its Services. The Services Subcontractor shall submit to Contractor monthly applications for payment for Services with sufficient supporting detail. Contractor shall pay approved amounts to Services Subcontractor within thirty (30) days of receipt of application of payment. Services Subcontractor agrees to promptly pay all sub-subcontractors or sub-consultants, workers, vendors and suppliers of Services Subcontractor. Payment received by Services Subcontractor shall be used to satisfy the indebtedness owed by Services Subcontractor to its sub-subcontractors, sub-consultants, suppliers, laborers or materialmen furnishing labor or materials for use in performing the Services on this Project before it is used in any other manner. As a prerequisite for each payment, Services Subcontractor shall provide, in a form satisfactory to the Owner and the Contractor, partial lien and claim waivers and affidavits from Services Subcontractor, its Designer, sub-subcontractors, sub-consultants and suppliers for the completed Services. Such waivers and affidavits may be made conditional upon payment. At any time, Contractor may demand additional written evidence of Services Subcontractor's capability to perform and of such payments to such persons by Services Subcontractor. Contractor shall have the right to withhold from any payment due or to become due an amount sufficient to protect Contractor from loss that may result from damages caused by Services Subcontractor or by Services Subcontractor's breach of this Agreement. Payment of the amount withheld shall be made when the grounds for withholding have been removed.

12.1 Payment Management System. Provided Exhibit P is attached to and incorporated in this Agreement, Services Subcontractor acknowledges and agrees that Contractor will utilize an electronic payment management system (the "System") to manage the payment application and payment processes during the Project, as further described in Exhibit P to this Agreement. All payment applications and all supporting documents required by this Agreement as a condition of payment to Services Subcontractor shall be in electronic format and shall be submitted to Contractor using the System.

ARTICLE 13. SAFETY

The Services Subcontractor shall have a written Health, Safety and Environmental Loss Prevention Plan that conforms with all applicable laws ("Safety Plan"). Such Safety Plan shall be comprehensive, apply to all of its Services, and shall require the implementation of safety measures according to the best current industry practices pertaining to the Services and the Project. Services Subcontractor shall comply with its Safety Plan, and while at the Project site, the Services Subcontractor's employees, sub-consultants and sub-subcontractors shall also comply with any Project or site-specific safety plan. Services Subcontractor shall also comply with Contractor's Safety Manual as referenced in Exhibit C. Establishment of a safety program by the Contractor shall not relieve the Services Subcontractor of its safety responsibilities. The Services Subcontractor shall be solely responsible for its own safety, its workers' safety and the safe performance of the Services. If discrepancies occur between the Safety Plan and Contractor's Safety Manual, the most stringent approach will be adopted. The Services Subcontractor shall comply with the reasonable recommendations of insurance companies who have an interest in the Project. The Services Subcontractor shall actively participate in any site wide safety programs and training as required by the Contractor at no additional cost. Services Subcontractor shall indemnify Contractor from and against fines or penalties imposed as a result of safety violations, but only to the extent that such fines or penalties are caused by its failure to comply with applicable safety requirements.

ARTICLE 14. IMMIGRATION COMPLIANCE

Services Subcontractor represents and warrants to the Contractor that the Services Subcontractor is in compliance with all immigration and work authorization laws, as applicable, including, but not limited to laws prohibiting hiring and continued employment of unauthorized aliens, requiring verification and record keeping with respect to identity and eligibility for employment and prohibiting discrimination on the basis of national origin, United States citizenship, or intending citizen status. The Services Subcontractor agrees to indemnify the Contractor and to hold the Contractor harmless from all liability, including liability for interest and penalties, the Contractor incurs with results from or is attributable to the Services Subcontractor's failure to comply with any provisions of any applicable laws, including reimbursing the Contractor any monies expended by the Contractor in participating in or responding to any investigation/suit/civil or criminal immigration matter involving the Services Subcontractor. As it relates to immigration compliance, the Services Subcontractor shall be responsible for completing any and all required documentation in accordance with requirements put forth by the Owner, Contractor or applicable law.

ARTICLE 15. WAIVER OF CONSEQUENTIAL DAMAGES

Contractor and Services Subcontractor waive claims against each other for consequential damages arising out of or relating to this Agreement, including damages for principal office expenses and the compensation of personnel stationed there; for loss of financing, business and reputation; and for loss of profit. This mutual waiver applies to consequential damages due to termination by the Contractor or the Owner in accordance with this Agreement or the Prime Contract. Notwithstanding the foregoing, the following damages shall not be deemed "consequential damages" for the purposes of this waiver, and Contractor does not waive its right to recover such damages from Services Subcontractor: (1) liquidated damages and other damages for which Services Subcontractor is liable pursuant to Article 10, and (2) any damages for which Contractor is liable to the Owner. Similarly, the Services Subcontractor shall obtain from its sub-consultants and sub-subcontractors mutual waivers of consequential damages that correspond to the Services Subcontractor's waiver of consequential damages herein.

ARTICLE 16. INITIAL DISPUTE RESOLUTION

If a dispute arises out of or relates to this Agreement or its breach, the parties shall first endeavor to settle the dispute first through direct discussions between corporate officers of the Contractor and the Services Subcontractor with full authority to resolve the dispute. Such direct discussions are a condition precedent to any further dispute resolution proceedings between the parties.

ARTICLE 17. SERVICES CONTINUATION AND PAYMENT

Unless otherwise agreed in writing, the Services Subcontractor shall continue the Services during any dispute resolution proceedings. As the Services Subcontractor continues to perform, the Contractor shall continue to make undisputed payments in accordance with this Agreement.

ARTICLE 18. MULTIPARTY PROCEEDING

To the extent permitted, all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. To the extent disputes between the Contractor and the Services Subcontractor involve in whole or in part disputes between the Contractor and the Owner, disputes between the Services Subcontractor and the Contractor shall be decided by the same tribunal and in the same forum as disputes between the Contractor and the Owner.

ARTICLE 19. DISPUTES BETWEEN CONTRACTOR AND SERVICES SUBCONTRACTOR

In the event the provisions for resolution of disputes between the Contractor and the Owner contained in the Prime Contract do not permit consolidation or joinder with disputes of third parties, such as the Services Subcontractor, resolution of disputes between the Services Subcontractor and the Contractor involving in whole or in part disputes between the Contractor and the Owner shall be stayed pending conclusion of any dispute resolution proceeding between the Contractor and the Owner. At the conclusion of those proceedings, disputes between the Services Subcontractor and the Contractor, to the extent not resolved in the proceedings between Owner and Contractor, shall be submitted to mediation at the location of the Project. Any disputes not resolved by mediation shall be decided by binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then in effect. Venue for the arbitration shall be in the city identified as Contractor's home office on page 1 of this Agreement, unless otherwise mutually agreed by the parties. Services Subcontractor and Contractor agree that the Federal Arbitration Act shall be applicable to the arbitration contemplated by this Article. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable Law in any court having jurisdiction thereof.

ARTICLE 20. COST OF DISPUTE RESOLUTION

The prevailing party in any dispute arising out of or relating to this Agreement or its breach shall be entitled to recover from the other party those reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such dispute resolution process after direct discussions and mediation.

ARTICLE 21. TERMINATION FOR CAUSE

Contractor may terminate this Agreement upon seven (7) days' written notice if the Services Subcontractor materially breaches this Agreement. Services Subcontractor shall not be entitled to any further payments under this Agreement and no sum shall be deemed due or to become due to Services Subcontractor until the Services have been completed and accepted. In the event the unpaid amount of this Agreement exceeds the Contractor's cost of completion and any and all incidental costs, including administrative, legal and other professional fees, the difference shall be paid to Services Subcontractor, but if such expenses exceed the unpaid amount, Services Subcontractor shall pay the difference to the Contractor promptly.

ARTICLE 22. TERMINATION FOR CONVENIENCE

Upon seven (7) days' written notice, the Contractor may, without cause, terminate this Agreement with the Services Subcontractor. In the event of termination for the Contractor's convenience, the Contractor shall reimburse Services Subcontractor for reasonable costs, overhead and profit it has incurred as of the date of the termination, less prior payments made, but in no event shall such amount exceed the proportionate share of the approved schedule of values for Services completed, and in no event shall Services Subcontractor be entitled to profits or overhead on Services not performed, materials not furnished, or any consequential losses. If it is determined or agreed that the Contractor wrongfully exercised its right to terminate for cause, the termination shall be converted to a termination for convenience, and Services Subcontractor's sole relief shall be the recovery as set forth herein.

ARTICLE 23. JOINT DRAFTING

The parties expressly agree this Agreement was subject to negotiation and Services Subcontractor had the opportunity to obtain the assistance of counsel in reviewing its terms prior to execution and this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

ARTICLE 24. SURVIVAL

Provisions in this Agreement pertaining to Services Subcontractor's representations and warranties, Services Subcontractor's insurance and bond obligations, Services Subcontractor's indemnity obligations, intellectual property, dispute resolution, confidentiality, and all other provisions intended by their nature to survive termination of this Agreement, shall survive termination of this Agreement.

ARTICLE 25. GOVERNING LAW

The Agreement shall be governed by the law in effect at the location of the Project.

ARTICLE 26. EXHIBITS

The following Exhibits are attached to and are a part of this Agreement.

Exhibit A:	The Services Subcontractor's Scope of Services, including alternative or unit prices
Exhibit B:	Insurance Requirements
Exhibit C:	Contractor's Policies and Procedures Acknowledgement
Exhibit D:	Specifications, Drawings and Addenda
Exhibit I:	Tax Exemption
Exhibit P:	Payment Management System
Exhibit X:	Special Provisions

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION THAT MAY BE ENFORCED BY THE PARTIES.

CONTRACTOR

By: _____
Name: _____
Title: _____
Date: _____

SERVICES SUBCONTRACTOR

By: _____
Name: _____
Title: _____
Date: _____