



672 Suffolk Street, Suite 200, Lowell, MA 01854-3608

SUBCONTRACT

Agreement Between Contractor and Subcontractor

AGREEMENT No. XXXXX

made as of the XX day of XX, XXXX

BETWEEN the Contractor: Aberthaw Construction Company, Inc.
672 Suffolk Street
Suite 200
Lowell, MA 01854-3608

and the Subcontractor: Subcontractor Name
Address

The Project: Project Name
Address

The Owner: Project Owner
Address

The Architect: Architect Name
Address

The Contractor and Subcontractor agree as set forth below.

ARTICLE 1
THE CONTRACT DOCUMENTS

- 1.1** The Contract Documents for this Subcontract consist of this agreement and any Exhibits attached hereto, the Agreement between the Owner and Contractor dated as of XX, XX, XXXX, the Conditions of the Contract between the Owner and Contractor (General, Supplementary and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of the Agreement between the Owner and Contractor and agreed upon by the parties to this Subcontract. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein.
- 1.2** Copies of the above documents, which are applicable to the Work under this Subcontract, shall be furnished to the Subcontractor upon his request.

ARTICLE 2
THE WORK

- 2.1** The Subcontractor shall perform all the **Trade** Work required by the Contract Documents, including but not necessarily limited to the following:

It is understood that drawings and specifications are construction documents which indicate the general scope of the project, and as such, the drawings and specifications do not necessarily indicate or describe all work required for the full performance and completion of work. The lump sum Subcontract is awarded on the basis of such documents with the understanding that the Subcontractor shall provide all supervision, labor, materials, tools and equipment, and any other item necessary to complete the scope of work described for the project in accordance with but not limited to the provisions contained herein.

In the Project Manual, Specifications and the various notes indicated on the drawings the term "Contractor" by definition means the "Subcontractor" to which this Subcontract Agreement has been issued.

The scope includes furnishing all required submittals, shop drawings, record drawings, coordination drawings, manufacturer's literature, and test reports as required by the Contract Specifications necessary for approval and coordination of the work.

Provide all required labor, materials, tools and equipment to perform the TRADE work in accordance with, and as required by the contract documents listed in Article 15 of this subcontract agreement.

It is understood that drawings and specifications on the drawings are construction documents which indicate the general scope of the project, and as such, the drawings and specifications do not necessarily indicate or describe all work required for the full performance and completion of work. The lump sum Subcontract is awarded on the basis of such documents with the understanding that the Subcontractor shall provide all supervision, labor, materials, tools and equipment, and any other item necessary to complete the scope of work described for the project in accordance with but not limited to the provisions contained herein. All hoisting, staging and rigging for work furnished and installed by this subcontractor shall be responsibility of this subcontractor.

The scope of this work includes but is not necessarily limited to the following, furnish and installed per plans and specifications unless otherwise noted:

BASE BID SCOPE OF WORK:

Description of all items of work to be provided by the Subcontractor.

LABOR RATES:

The following listed labor rates will be used in any change requests or Change proposals. These rates shall not include subcontractor's markup for management overhead and fee. Fee to be applied at the bottom of all change requests at the rate specified in Article 11.10.1 of this agreement.

Apprentice or helper	\$XX	/Hour
Journeyman	\$XX	/Hour
Foreman	\$XX	/Hour

EXCLUSIONS:

Work to be performed by persons or companies other than this subcontractor.

ARTICLE 3
TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 3.1** The Work to be performed under this Subcontract shall be in the most expeditious manner to conform with the General Contractor's Progress Schedule wherein the entire project is scheduled to be completed by XX, XX, XXXX, subject to authorized adjustments.
- 3.2** Time is of the essence of this Subcontract.
- 3.3** No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Paragraph 11.10.

ARTICLE 4
THE CONTRACT SUM

- 4.1** The Contractor shall pay the Subcontractor in current funds for the performance of the Work, subject to additions and deductions authorized pursuant to Paragraph 11.9, the Contract Sum of XXXXXX Dollars (\$XXXXXX).

The Contract Sum is determined as follows:

(Aberthaw Cost Phase Breakdown. To be used for Aberthaw Cost Accounting Purpose Only.)

<u>CSI Code</u>	<u>Description</u>	<u>Amount</u>
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ARTICLE 5 **PROGRESS PAYMENTS**

- 5.1** The Contractor shall pay the Subcontractor monthly progress payments in accordance with Paragraph 12.4 of this Subcontract.
- 5.2** Applications for monthly progress payments shall be in writing and in accordance with Paragraph 11.8, shall state the estimated percentage of the Work in this Subcontract that has been satisfactorily completed and shall be submitted to the Contractor on or before the 25th day of each month. Applications for Payment must be submitted on Aberthaw Construction Company, Inc.'s application form (document ACC 702) and signed by an officer of the subcontractor.
- 5.3** The Subcontractor must submit his requisition for work completed within any month to the Contractor before the 25th day of the same month. 90% of the value of this requisition as approved by the Owner will be paid to the Subcontractor contingent upon Aberthaw Construction Company, Inc. receiving said payment from the Owner, Said receipt by the Contractor being an express and strict condition precedent to Contractor's obligation to make progress payment to the Subcontractor.
- 5.4** Progress payments or final payment due and unpaid under this Subcontract shall bear interest from the date payment is due at the rate entered below or, in the absence thereof, at the legal rate prevailing at the place of the Project.

ARTICLE 6 **FINAL PAYMENT**

- 6.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be due when the Work described in the Subcontract is fully completed and performed in accordance with the Contract Documents and is satisfactory to the Architect, and shall be payable as follows, in accordance with Article 5 and with Paragraph 12.4 of this Subcontract:
- 6.2** Final Payment shall be due 45 days after final completion of the entire project conditional upon the work being duly completed and accepted, the Subcontractor has submitted a release of liens in a form acceptable to the Contractor, and payment is received from the Owner, Said receipt of final payment by the Contractor being an express and strict condition precedent to Contractor's obligation to make final payment to Subcontractor.
- 6.3** Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied.

ARTICLE 7 **PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND**

- 7.1** Performance Bond and Labor and Material Payment Bonds are not required. Bonds, if required, shall be issued from a surety company satisfactory to Aberthaw Construction Company, Inc.

ARTICLE 8 **TEMPORARY FACILITIES AND SERVICES**

- 8.1** The Subcontractor is to furnish and pay for all temporary facilities necessary to complete his work. He shall place all his debris and rubbish as required in a proper dumpster and shall maintain the areas of his work broom clean. If this work is not performed as required by Aberthaw Construction Company, Inc.'s superintendent, Aberthaw Construction Company,

Inc., upon verbal notification shall perform this work and back-charge the Subcontractor. Hazardous materials, refuse, or containers for same generated as a result of the work of the Subcontractor are not to be disposed of in Aberthaw Construction Company, Inc.'s dumpster but are to be removed from the site and legally disposed of by this Subcontractor at his expense.

- 8.2** Aberthaw Construction Company will provide a designated, staging area for segregating and storing Hazardous Materials, which are to be disposed of by the generating subcontractor pursuant to all state and federal regulations. Proper handling, storage and labeling is required at all times. If any material is placed in a container not labeled by the manufacturer of the product, the subcontractor is responsible for all HazCom labeling and SDS for the product, and any other requirement to ensure compliance with current OSHA Hazard Communication Standards in order for it to be allowed on this site, and into the Hazardous Materials Staging area.

ARTICLE 9 **INSURANCE**

- 9.1** Prior to starting work, all Subcontractors shall purchase and maintain the following insurance from insurance companies authorized to write business in the state where the job is located. Insurance must be underwritten by companies with a Best's Rating of no less than A-VIII.
- 9.1.1** Worker's Compensation & Employer's Liability
- a) Employer's Liability Insurance limits of at least \$500,000 each accident for bodily injury by accident and \$500,000 each employee for injury by disease.
 - b) Where applicable, U.S. Longshore and Harborworkers Compensation Act Endorsement shall be attached to the policy.
 - c) Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.
- 9.1.2** Commercial General Liability (CGL) with limits of Insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.
- a) If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.
 - b) CGL coverage shall be written on ISO Occurrence form CG 00 01 (10 93) or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.
 - c) General Contractor, Owner and all other parties required of the General Contractor, shall be included as insureds on the CGL, using ISO Additional Insured Endorsement CG 20 10 (11 85) or CG 2010 (10 93) and CG 20 37 (10 01) or CG2033 (10 01) and CG 2037 (10 01) or an endorsement providing equivalent coverage to the additional insureds. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured subcontractor. It shall apply as Primary and non-contributory Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.
 - d) Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after the completion of the Work.
- 9.1.3** Automobile Liability
- a) Business Auto Liability with limits of at least \$1,000,000 each accident.
 - b) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
 - c) General Contractor, Owner and all other parties required of the General Contractor, shall be included as additional insureds on the auto policy.
- 9.1.4** Commercial Umbrella
- a) Umbrella Limits must be at least \$5,000,000
 - b) Umbrella coverage must include as additional insureds all entities that are additional insureds on the CGL.
- 9.1.5** Subcontractor's Tools and Equipment
Subcontractors are responsible for their own tools and equipment.
- 9.2** Waiver of Subrogation

- 9.2.1** The Contractor and Subcontractor waive all rights against each other and against the Owner, the Architect, separate contractors and all other subcontractors for damages caused by fire or other perils to the extent covered by property insurance provided under the General Conditions, except such rights as they may have to the proceeds of such insurance.
- 9.2.2** To the fullest extent permitted by law, subcontractor waives all rights against Contractor, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance maintained per requirements stated above.
- 9.3** General Requirements
- 9.3.1** Prior to commencing work, and upon each policy renewal, Subcontractor shall furnish Aberthaw Construction with a Certificate of Insurance, executed by a duly authorized representative of each insurer, indicating compliance with the insurance requirements set forth in this contract. A copy of the Additional Insured endorsement showing evidence of coverage must be attached to the Certificate of Insurance.
- 9.3.2** All Certificates of Insurance shall provide for 30 days written notice to Aberthaw Construction prior to the cancellation or material change of any insurance referred to therein.
- 9.3.3** Failure of Aberthaw Construction to demand such Certificate of Insurance or other evidence of full compliance with these insurance requirements, or failure of Aberthaw Construction to identify a deficiency in such evidence, shall not be construed as a waiver of Subcontractor's obligation to purchase and maintain such insurance.
- 9.3.4** Aberthaw Construction shall have the right, but not the obligation, to prohibit Subcontractor or any Sub-Subcontractor from entering the project site until a Certificate of Insurance indicating full compliance with these requirements is received and approved by Aberthaw Construction.
- 9.3.5** Failure to purchase and maintain the insurance required in this contract shall constitute an event of default and shall allow Aberthaw Construction to terminate this Contract at Aberthaw's option.
- 9.3.6** Subcontractor will require that each Sub-Subcontractor employed by Subcontractor shall also purchase and maintain insurance of the type and amount specified in this Contract.
- 9.3.7** Subcontractor shall provide certified copies of all insurance policies required in this Contract within 10 days of Aberthaw Construction's written request for said copies.

ARTICLE 10 **WORKING CONDITIONS**

- 10.1** The Subcontractor hereby agrees to be bound to Aberthaw Construction Company, Inc. by the terms of this agreement, the Owner-Contractor Agreement, the plans, specification, general and special conditions and addenda; and to assume toward Aberthaw Construction Company, Inc. all the obligations and responsibilities which Aberthaw Construction Company, Inc. has assumed by those documents to the Owner; and the Subcontractor further certifies and covenants that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the project.
- 10.2** It is understood that contracts and / or subcontracts will be awarded and labor will be employed on the project herein described without discrimination as to whether employees of Aberthaw Construction Company, Inc., any contractor, Subcontractor or those employed by the owner of the project are members or non-members of any labor organization, and the Subcontractor accepts this subcontract agreement with that understanding.

Should there be a work stoppage caused by a strike, picketing, boycott or by any voluntary or involuntary cessation of work by employees of the Subcontractor, which in judgment of Aberthaw Construction Company, Inc., will cause, or is likely to cause, unreasonable delay in the progress of construction, then upon seventy-two (72) hours written notice, Aberthaw Construction Company, Inc., shall have the right to declare the Subcontractor in default of this understanding and this subcontract agreement, and take such steps as outlined in Article 14 of this agreement to finish the uncompleted portion of the work.

- 10.3** In order to increase efficiency in the management of the project, to maintain and preserve the integrity of the various Subcontractor's work, material, supplies and equipment, Subcontractor acknowledges and agrees that all labor, material, equipment and supplies furnished or to be furnished by Subcontractor will enter and exit the project through Gate * only. Subcontractor is responsible for ensuring that all his workforce, suppliers, material men, etc. are so notified and observe at all times the gate restriction. The Subcontractor also agrees to perform their work according to local, state and federal safety standards and regulations and agrees to be responsible for and pay all costs, fines, and penalties incurred as a result of their non-compliance. *To be directed by Aberthaw Construction Company, Inc.

ARTICLE 11 **SUBCONTRACTOR**

11.1 RIGHTS AND RESPONSIBILITIES

- 11.1.1** The Subcontractor shall be bound to the Contractor by the terms of this Agreement and, to the extent that provisions of the Contract Documents between the Owner and Contractor apply to the Work of the Subcontractor as defined in this Agreement, the Subcontractor shall assume toward the Contractor all the obligations and responsibilities which the Contractor, by those Documents, assumes toward the Owner and the Architect, and shall have the benefit of all rights, remedies and redress against the Contractor which the Contractor, by those Documents, has against the Owner, insofar as applicable to this Subcontract, provided that where any provision of the Contract Documents between the Owner and Contractor is inconsistent with any provision of this Agreement, this Agreement shall govern.
- 11.1.2** The Subcontractor shall not assign this subcontract without the written consent of the Contractor, nor subcontract the whole of this Subcontract without written consent of the Contractor, nor further subcontract portions of this Subcontract without written notification to the Contractor when such notification is requested by the Contractor. The Subcontractor shall not assign any amounts due or to become due under this Subcontract without written notice to the Contractor.

11.2 EXECUTION AND PROGRESS OF THE WORK

- 11.2.1** The Subcontractor agrees that the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.
- 11.2.2** The Subcontractor shall cooperate with the Contractor in scheduling and performing his Work to avoid conflict or interference with the work of others. Proper manpower must be provided to meet schedule requirements.
- 11.2.3** The Subcontractor shall promptly submit shop drawings and samples required in order to perform his Work efficiently, expeditiously and in a manner that will not cause delay in the progress of the Work of the Contractor or other Subcontractors.
- 11.2.4** The Subcontractor shall furnish periodic progress reports on the Work as mutually agreed, including information on the status of materials and equipment under this Subcontract which may be in the course of preparation or manufacture.
- 11.2.5** The Subcontractor agrees that all Work shall be done subject to the final approval of the Architect. The Architect's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents.
- 11.2.6** The Subcontractor shall pay for all materials, equipment and labor used in, or in connection with, the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

11.3 LAWS, PERMITS, FEES AND NOTICES

- 11.3.1** The 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 Work under this Subcontract. The Subcontractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Contract Documents.
- 11.3.2** The Subcontractor shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts and workers' or workmen's compensation acts insofar as applicable to the performance of this Subcontract.

11.3.3 All Commonwealth of Massachusetts sales taxes are to be paid by the Subcontractor.

11.3.4 Subcontractor shall be in full compliance with Federal and State employment eligibility requirements at all times, for all employees.

11.4 WORK OF OTHERS

11.4.1 In carrying out his Work, the Subcontractor shall take necessary precautions to protect properly the finished work of other trades from damage caused by his operations.

11.4.2 The Subcontractor shall cooperate with the Contractor and other Subcontractors whose work might interfere with the Subcontractor's Work, and shall participate in the preparation of coordinated drawings in areas of congestion as required by the Contract Documents, specifically noting and advising the Contractor of any such interference.

11.5 SAFETY PRECAUTIONS AND PROCEDURES

11.5.1 The Subcontractor shall take all reasonable and safety precautions with respect to his Work, shall comply with all safety measures initiated by the Contractor and with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property in accordance with the requirements of the Contract Documents. The Subcontractor shall report in writing immediately to the Contractor any injury to any of the Subcontractor's employees at the site.

11.5.2 All material deliveries shall bear the appropriate container labeling and MSDS(s) in full compliance and according to OSHA regulations.

11.5.3 This project is a "HARD HAT" project. This Subcontractor, its employees and sub-Subcontractors are to have approved hard hats and other required Personal Protective Equipment on at all times while on the jobsite. Proper safety procedures are to be employed at all times without exception. First violation of safety procedures will result in a written notice from Aberthaw Construction Company, Inc. Upon written notification of a second violation, Aberthaw Construction Company, Inc., will issue a Deduct change order to your contract the amount of One Hundred Dollars (\$100.00). Any additional written notifications of safety violations after a second notice will result in a deduct change order of Two Hundred Dollars (\$200.00) for each occurrence. The total amount of all money collected by Aberthaw Construction Company, Inc., will be contributed to the charitable organization of our choice.

11.5.4 This subcontractor shall submit a project specific safety plan. A Competent Person(s) as defined by OSHA for fall protection, hazardous materials management, and lock out tag out as required by work of your trade shall be appointed prior the commencement of work. This safety plan will be kept in the jobsite office and returned if requested, upon completion of the project. Subcontractor's site specific safety plan must be comprehensive for all areas of work of their trade, and include situations and sections on hazards that may be encountered on a commercial construction site, including hazard communication and hazardous materials management.

11.5.5 This subcontractor shall provide safe disposal of all non-hazardous materials, including removal of all left over materials and construction debris to containers provided by Aberthaw Construction Company. Aberthaw's Superintendent will maintain signage indicating if C+D is to be segregated on site, or by the hauler at an offsite location. Adhere to the site specific waste management plan.

Hazardous Materials are to be packaged, labeled, handled and managed at all times by the subcontractor, in strict accordance with the most current OSHA Hazardous Communication Standards, and any and all other local, state and federal requirements for same, including when said materials are temporarily stored in the designated Hazardous Waste Staging area provided by Aberthaw.

11.5.6 Subcontractor shall be responsible for the protection of life and property of all areas affected by this work including temporary barricades, traffic control, spotters, etc. and as required by Aberthaw Construction Company and parties having jurisdiction.

11.5.7 All equipment operators must have a current and proper licensure including all OSHA, local and state licenses as required. All required licenses must be “on persons” at all times they are on site. Copies of licenses shall be provided to the contractors on site superintendent upon request.

11.6 CLEANING UP

11.6.1 The Subcontractor shall at all times keep the premises free from accumulation of waste materials or rubbish arising out of the operations of this Subcontract. Unless otherwise provided, the Subcontractor shall not be held responsible for unclean conditions caused by other Contracts or Subcontractors.

11.6.2 The Subcontractor shall consolidate all rubbish created by himself and his Subcontractors and deposit same in a dumpster provided by the contractor. If Subcontractor chooses not to complete this portion of his work, Aberthaw Construction Company, Inc., will provide labor and back-charge the Subcontractor accordingly.

11.7 WARRANTY

11.7.1 The Subcontractor warrants to the Owner, the Architect and the Contractor that all materials and equipment furnished shall be new unless otherwise specified, and that all Work under this Subcontract shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this Paragraph 11.7 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

11.8 APPLICATIONS FOR PAYMENTS

11.8.1 The Subcontractor shall submit to the Contractor applications for payment at such times as stipulated in Article 5 to enable the Contractor to apply for payment.

11.8.2 If payments are made on the valuation of Work done, the Subcontractor shall, before the first application, submit to the Contractor a schedule of values of the various parts of the Work aggregating the total sum of this Subcontract, made out in such detail as the Subcontractor and Contractor may agree upon or as required by the Owner, and supported by such evidence as to its correctness as the Contractor may direct. This schedule, when approved by the Contractor, shall be used only as a basis for Applications for Payment, unless it is found to be in error. In applying for payment, the Subcontractor shall submit a statement based upon this schedule.

11.8.3 If payments are made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site or at some other location agreed upon in writing, including full value insurance coverage and ownership transfer agreement, such payments shall be in accordance with the Terms and Conditions of the Contract Documents.

11.9 CHANGES IN THE WORK

11.9.1 CHANGE PROCEDURE. The Subcontractor hereby agrees to make any and all changes in the Work, whether such changes increase or diminish the Work, when ordered to do so in writing by Aberthaw Construction Company, Inc. The Subcontractor shall promptly, and in any event within three (3) working days after receipt of a particular change order request, notify Aberthaw Construction Company, Inc., in writing if the Subcontractor claims that such change order increases or decreases the Agreement amount or time for performance of the Work. In either event, the change in the Agreement amount and/or time of performance shall be agreed upon in writing before the work commences and no payment shall be made to the Subcontractor for extra work unless such work is properly authorized in writing. If no additional time or money is requested, it shall be construed that there is no additional time or money to be allowed.

11.9.2 AUTHORITY OF CONTRACTOR’S EMPLOYEES. Aberthaw Construction Company, Inc.’s, Officers and assigned Project Manager have sole authority to make, permit or authorize any alteration, change or departure in or from the terms and provisions of this Agreement or to waive any right of Aberthaw Construction Company, Inc., hereunder. The functions and powers of all other employees are strictly limited to the execution of the Work.

11.9.3 It is understood that incidental and/ or minor modifications in the work may be required due to actual job conditions, field coordination with various parties, etc. In that event, no requests for extras/changes to the contract amount will be granted for such modifications which are hereby inferred under the normal scope of work, unless a major change occurs and is

recognized as such by Aberthaw Construction Company and the owner. Any conflicts or discrepancies found during the project shall be presented to Aberthaw Construction Company personnel prior to any corrective action or work beginning.

11.10 CLAIMS OF THE SUBCONTRACTOR

11.10.1 The Subcontractor further agrees to furnish Aberthaw Construction Company, Inc., with a written quotation for changes in the Work within ten (10) working days after receipt by the Subcontractor of a particular change order request. Said quotation shall show quantities of work unit cost applicable for labor, material, equipment and/or other costs. In computing the cost or credit for changes, the estimates shall include a markup of 15% to cover the Subcontractor's insurances, bonds, overhead and profit, including supervision. Should Aberthaw Construction Company, Inc., elect to have any extra work performed on a time and material basis, and so notifies the Subcontractor in writing, the Subcontractor will perform the work at his actual net cost plus 15% for insurances, bonds, overhead and profit, including supervision, with or without a maximum guaranteed total cost established at Aberthaw Construction Company, Inc.'s, option.

In the case of omitted work, Aberthaw Construction Company, Inc., shall have the right to withhold from payment due or to become due to the Subcontractor, an amount which in his opinion is equal to the value of such work until such time as the value thereof is agreed to.

Any applicable unit prices herein specified shall govern without limitation.

If the parties are unable to arrive at any agreement as to the change in the Agreement amount and /or performance time, the Subcontractor shall nevertheless proceed with the change if so ordered in writing by Aberthaw Construction Company, Inc., and failure to agree shall be litigated in the manner hereinafter provided.

The Subcontractor agrees that, if and when requested so to do by Aberthaw Construction Company, Inc., it shall furnish such information, evidence and substantiation as Aberthaw Construction Company, Inc., may require with respect to the nature and extent of all obligations incurred by the Subcontractor for or in connection with the Work, all payments made by the Subcontractor thereon, and the amounts remaining unpaid, to whom and the reasons therefore.

11.11 INDEMNIFICATION

11.11.1 To the fullest extent permitted by law, the Subcontractor hereby acknowledges and agrees that it shall indemnify, hold harmless and defend the General Contractor, the Owner, Architect and Engineers and any of their officers, directors, employees, agents, affiliates, subsidiaries and partners from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or the injury to or destruction of tangible property (other than to the Work itself) including loss of use resulting therefrom, and (2) is caused in whole or in part by any acts or omissions of the Subcontractor, its employees, agents or sub-subcontractors or anyone directly or indirectly employed by any of them, or anyone whose acts any of them may be liable.

11.11.2 The Subcontractor hereby acknowledges its obligation under the foregoing paragraph to indemnify the General Contractor against judgments suffered because of the Subcontractor's work and to assume the cost of defending the General Contractor against claims as described in the foregoing paragraph.

11.11.3 The obligations of the Subcontractor under this Paragraph 11.11 shall not extend to the liability of the Architect, his agent or employees arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

11.12 SUBCONTRACTOR'S REMEDIES

11.12.1 If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in Paragraph 12.4, the Subcontractor may without prejudice to any other remedy he may have, upon seven additional days' written notice to the Contractor, stop his Work until payment of the amount owing has been received. The Contract Sum shall, by appropriate adjustment, be increased by the amount of the Subcontractor's reasonable costs of shutdown, delay and start-up.

ARTICLE 12 **CONTRACTOR**

12.1 RIGHTS AND RESPONSIBILITIES

- 12.1.1** The Contractor shall be bound to the Subcontractor by the terms of this Agreement, and to the extent that provisions of the Contract Documents between the Owner and the Contractor apply to the Work of the Subcontractor as defined in this Agreement, the Contractor shall assume toward the Subcontractor all the obligations and responsibilities that the Owner, by those Documents, assumes toward the Contractor, and shall have the benefit of all rights, remedies and redress against the Subcontractor which the Owner, by those Documents, has against the Contractor. Where any provision of the Contract Documents between the Owner and the Contractor is inconsistent with any provisions of this Agreement, this Agreement shall govern.

12.2 SERVICES PROVIDED BY THE CONTRACTOR

- 12.2.1** The Contractor shall operate with the Subcontractor in scheduling and performing his Work to avoid conflicts or interference in the Subcontractor's Work, and shall expedite written responses to submittals made by the Subcontractor in accordance with Paragraphs 11.2, 11.9, and 11.10. As soon as practicable after execution of this Agreement, the Contractor shall provide the Subcontractor a copy of the estimated progress schedule of the Contractor's entire Work which the Contractor has prepared and submitted for the Owner's and the Architect's information, together with such additional scheduling details as will enable the Subcontractor to plan and perform his Work properly. The Subcontractor shall be notified promptly of any subsequent changes in the progress schedule and the additional scheduling details.

12.3 COMMUNICATIONS

- 12.3.1** The Contractor shall promptly notify the Subcontractor of all modifications to the Contract between the Owner and the Contractor, which affect this Subcontract and which were issued or entered into subsequent to the execution of this Subcontract.
- 12.3.2** The Contractor shall not give instructions or orders directly to employees or workmen of the Subcontractor except to persons designated as authorized representatives of the Subcontractor.
- 12.3.3** There will be weekly project coordination meetings held at the jobsite. It is the responsibility of this Subcontractor to have a proper representative in attendance at the pre-scheduled time at all meetings.
- 12.3.4** Other meetings may be called as necessary to ensure maintenance of the project schedule and required delivery dates.
- 12.3.5** Subcontractors Forman or Project Manager will provide a weekly look ahead schedule coordinated with the General Project Schedule and phasing schedule to help ensure timely coordination, communication of issues and on time delivery of each phase of work. Active participation of each subcontractor is essential to an efficient, productive and successful work site.

12.4 PAYMENTS TO THE SUBCONTRACTOR

- 12.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall pay the Subcontractor each progress payment and the final payment under this Subcontract within seven working days after he receives payment from the Owner. The amount of each progress payment to the Subcontractor shall be the amount the Subcontractor is entitled, reflecting the percentage of completion allowed to the Contractor for the Work of this Subcontractor applied to the Contract Sum of this Subcontract.
- 12.4.2** The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion or the amount certified on account of Work done by the Subcontractor.

12.5 CLAIMS BY THE CONTRACTOR

- 12.5.1** The contractor shall make no demand for liquidated damages for delay in any sum in excess of such amount as may be specifically named in this Subcontract, and liquidated damages shall be assessed against this Subcontractor only for his negligent acts, and his failure to act in accordance with the terms of this Agreement, and in no case for delays or causes arising outside the scope of this Subcontract, or for which other Subcontractors are responsible.
- 12.5.2** Except as may be indicated in this Agreement, the Contractor agrees that no claim for payment for services rendered or materials and equipment furnished by the Contractor to the Subcontractor shall be valid without prior notice to the Subcontractor and unless written notice thereof is given by the Contractor to the Subcontractor not later than the tenth day of the calendar month following that in which the claim originated.

12.6 CONTRACTOR' REMEDIES

- 12.6.1** If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within three working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may and without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payments then or thereafter due the Subcontractor, provided, however, that if such action is based upon faulty workmanship or materials and equipment, the Architect shall first have determined that the workmanship or materials and equipment are not accordance with the Contract Documents.

ARTICLE 13 **DISPUTES**

- 13.1** All claims disputes and other matters in question arising out of, or relating to, this Subcontract, or the breach thereof, shall be decided in the same manner and under the same procedure as provided in the Contract Documents with respect to disputes between the Owner and the Contractor.

ARTICLE 14 **TERMINATION**

14.1 TERMINATION BY THE CONTRACTOR

- 14.1.1** If the Subcontractor persistently or repeatedly fails or neglects to carry out the Work in accordance with the Contract Documents or otherwise to perform in accordance with this Agreement and fails within seventy-two (72) hours after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may without prejudice to any other remedy he may have, terminate the Subcontract and finish the Work by whatever method he may deem expedient. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Work, such excess shall be paid to the Subcontractor, but if such expense exceeds such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

ARTICLE 15 **MISCELLANEOUS PROVISIONS**

- 15.1** Terms used in this Agreement, which are defined in the Conditions of the Contract, shall have the meanings designated in those Conditions.
- 15.2** First report of workers injury and liability claim incident report shall be submitted in writing to Aberthaw Construction Company, Inc. by this Subcontractor within 48 hours of the occurrence.
- 15.3** As a condition to its right to receive any progress or final payment the Subcontractor shall furnish releases of liens, whenever required by the Contractor, in a form satisfactory to the Contractor, showing that all workmen, laborers, mechanics, sub-Subcontractors, suppliers and materialmen whose labor or materials are covered by the request payment, or any prior payment, have been paid in full on account of such labor or materials supplied to or incorporated in the project. In the event that the Contractor shall receive notice of non-payment from any laborer, mechanic, sub-Subcontractor, supplier or materialmen to the Subcontractor, the Contractor may withhold payment of any amount otherwise due the Subcontractor to assure payment to the Subcontractor's unpaid obligations.

15.4 The Contract Documents, which constitute the entire Agreement between the Owner and the Contractor, as listed in Article 1, and the documents, which are applicable to this Subcontract, except for Addenda and Modifications issued after execution of this Subcontract, are enumerated as follows:

<u>Drawing</u>	<u>Description</u>	<u>Date</u>	<u>Revision</u>
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15.5 The Contract Attachments, if any, are as follows:

<u>Document</u>	<u>Title</u>	<u>Original Date</u>	<u>Revision Date</u>
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This Agreement entered into as of the day and year first written above.

THE SUBCONTRACTOR IS:

- _____ A Corporation, organized under the laws of the state of _____.
- _____ A Partnership, consisting of _____ partners.
- _____ An Individual.

CONTRACTOR:

Aberthaw Construction Company, Inc.

SUBCONTRACTOR:

Subcontractor Name

(Signature)

James W. Alley / President

WITNESS: _____

(Signature)

(Print Name/Title)

(Federal Identification Number)

(Sales Tax Registration Number) (State)

WITNESS: _____