

SUBCONTRACT AGREEMENT

WHERE THE WORD "CONTRACTOR" IS USED IN SPECIFICATIONS, PLANS, OR ADDENDA RELATED TO WORK THAT IS THE SUBJECT OF THIS SUBCONTRACT, IT SHALL BE SYNONYMOUS WITH THIS "SUBCONTRACTOR." THIS SUBCONTRACT IS SUBJECT TO THE OWNER'S PRIOR APPROVAL OF THE SUBCONTRACTOR. BY SIGNING THIS CONTRACT, THE SUBCONTRACTOR CONFIRMS IT HAS RECEIVED ALL PLANS, SPECIFICATIONS AND OTHER CONTRACT DOCUMENTS, OR HAD THE OPPORTUNITY TO REVIEW ALL SUCH DOCUMENTS IT REQUESTED. ADDITIONALLY, ON PROJECTS WHERE PREVAILING WAGE RATES APPLY, THE SUBCONTRACTOR CONFIRMS BY SIGNING THIS CONTRACT THAT IT HAS READ THE PREVAILING WAGE RATES AND HAS CARRIED THEM IN THE CONTRACT PRICE.

THIS CONTRACT is made between the Subcontractor and the Contractor identified below:

Date of Contract: **01/01/20xx**

Contractor: **Hawthorne Commercial Construction, LLC
35 Devonshire Crossing
Chelmsford, MA 01824
Tel: (978) 710-6295
Fax: (978) 710-6413**

Subcontractor: **ABC Plumbing & Heating
100 Main Street
Anytown, USA**

Contract No.: **XXXXX**
Hawthorne Project No.: **XXXX**

Location of Project: **Anytown, USA**

Owner/Authority ("Owner") (the Owner as used herein shall also include any Owner's representative): **XYZ Realty Group**

Architect: **ABC Design Associates**

The use of the word "Contract" herein shall mean this Contract, unless otherwise specified.

Article 1. The Contract Documents

1. The "Contract Documents" include this Standard Form Subcontract, including Scope of Work, Standard Form, and the following Exhibits attached hereto:
 - a. Federal Acquisition Regulation Agreement (*if applicable*)
 - b. Request for Information Form
 - c. Change Order Form
 - d. Certificate of Insurance Form
 - e. Subcontract Scope of Work Sheet

2. In addition to this document and other documents expressly incorporated herein, the following documents are incorporated herein ("the Contract Documents"):
 - .a all General Contract documents, including all contract documents enumerated, attached, or otherwise incorporated therein;

- .b written changes issued subsequent to the execution of the General Contract documents between the Owner and Contractor, whether before or after execution of this Contract; and
 - .c changes in the Work issued after execution of this Contract.
3. These documents form the complete Contract and are as fully a part of the Contract as if attached to this document or repeated herein. Hereinafter the term Contract shall include all Contract Documents unless otherwise specified. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. The parties warrant and agree that they are not relying upon any prior representations in entering into this Contract, and that they rely only on the terms set forth herein.
 4. Every effort shall be made to read the provisions as supplementing one another. Where the terms of other Contract Documents conflict with those set forth herein, however, Subcontractor shall notify the Contractor of the conflict and in such instances, the provision imposing the greater, more stringent obligation, standard or duty on Subcontractor (unless prohibited by law) shall govern. To the extent there is any disagreement over which provision imposes the greater, more stringent obligation, standard or duty, Hawthorne shall be entitled to determine which obligation the Subcontractor must meet. This shall not constitute grounds for a Change Order under any circumstances unless Contractor receives a related Change Order from the Owner. Any payment related to this work from Contractor to Subcontractor is directly contingent upon Contractor being paid the additional amount by Owner and Contractor's receipt of same shall be a condition precedent to any payment being due to Subcontractor.
 5. The Contract may be amended or modified only by a written change order. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.
 6. The Subcontractor shall be furnished copies of the other Contract Documents by Contractor via email or compact disc, or Contractor shall provide Subcontractor with electronic down-load directions to obtain such documents. Contractor may charge the Subcontractor for the reasonable cost of any reproduction and any additional costs Contractor incurs to obtain these documents.

Article 2. The Work

1. Subcontractor is bound to the Contractor by the terms of the Contract, including all incorporated Contract Documents, and assumes toward the Contractor, to the fullest extent permitted by law, all of the obligations and responsibilities that the Contractor, by the Contract Documents, assumes toward the Owner unless otherwise specified herein. It shall be Subcontractor's responsibility to obtain and familiarize itself with these documents and all work shall be completed in accordance therewith.
2. In addition to any of Subcontractor's other Contract obligations, the Subcontractor and the Contractor agree that the materials the Subcontractor shall furnish and the work the Subcontractor shall perform include furnishing all labor, materials, and appurtenances necessary to complete the work identified in **SECTION ____** of the General Contract and as set forth as follows ("the Work"):

(Insert Scope of Work)

3. The Subcontractor agrees to furnish all labor, tools, and supervision needed to perform all work and to satisfy all obligations imposed on Subcontractor by this Contract, including all obligations

incorporated herein from the General Contract. Subcontractor shall furnish and install all work in strict accordance with the manufacturer's recommendations. Any conflict between manufacturer's recommendations and the plans and specifications shall be brought to the attention of the Contractor immediately. Failure to do so before commencement of the work shall constitute a waiver of any and all claims for additional compensation for the same.

4. The Subcontractor shall supervise and direct the Work, and shall cooperate with the Contractor in scheduling and performing the Work to avoid conflict, delay in or interference with the Contractor's Work, that of other Subcontractors, and the Owner's own forces. The Subcontractor shall participate in the preparation of coordination drawings if required by the Contractor (at no additional cost) and shall in any event always note and apprise the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, or the Owner's own forces.
5. The Subcontractor agrees to use only competent labor to perform the Work and to protect any work already in place, or materials or equipment on site, from damage by this Subcontractor's operation. Subcontractor shall maintain labor relations policies in conformity with the directions of the Contract and shall comply with those labor agreements applicable to the work performed under this Contract, to the extent required by the Owner, including prevailing wage rates, Davis Bacon wages or any other state or local wage standards as are applicable under the Contract, including any laws governing this project.
6. The Subcontractor agrees to obtain and pay for all permits, fees, and taxes (including sales tax) necessitated by Subcontractor's operations concerning this Contract, and all fines caused by its employees, subcontractors, sub-subcontractors, or materialmen. Subcontractor warrants and represents that all costs for permits, fees, and taxes are already included in its Contract price.
7. The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.
8. The Subcontractor shall furnish to the Contractor periodic progress reports and schedules concerning the Work as Contractor requests, including information on the status of materials and equipment, which may be in the course of preparation, manufacture or transit.
9. Subcontractor shall make the work accessible at all reasonable times for inspection by the Contractor. Subcontractor shall, at the first opportunity, inspect all material and equipment delivered to the job site by others to be used or incorporated in the Subcontractor's work and give prompt notice of any defect therein. Subcontractor assumes full responsibility to protect the work done hereunder until final acceptance by the Architect, Owner, and Contractor.
10. The Subcontractor agrees that the Contractor, the Architect (or Engineer), and the Owner will each have the authority to reject the Work and any portion thereof that does not conform to the Work specifications or other Contract requirements. The Subcontractor agrees that all material and labor furnished must meet with the complete satisfaction of the Owner, Architect (or Engineer) and Contractor.
11. The Subcontractor shall at all times keep the premises free from accumulation of waste materials and rubbish caused by Subcontractor's operation and, upon completion of its work, Subcontractor shall remove all of its waste materials and rubbish from the job site. If the Subcontractor does not comply with these requirements, the Contractor may do this work and backcharge the Subcontractor the cost thereof.
12. The Subcontractor shall not assign or subcontract any of its Contract duties without Contractor's express written permission. Any breach of this provision shall constitute a default and immediate grounds for termination. To the extent the Contractor permits the Subcontractor to subcontract

work, the Subcontractor shall not be relieved of any of its Contract requirements. Further, in the event Contractor permits subcontracting, Subcontractor must require each such sub-subcontractor, by subcontract with that entity, to comply with all of Subcontractor's requirement set forth herein, including without limitation, adding Contractor, Owner and any other entity or individual that the Contract Documents require the Contractor to add as additional insureds on all of its insurance policies.

Article 3. Time

1. The Subcontractor acknowledges that time is of the essence, and guarantees that it can supply sufficient labor, materials, and equipment to maintain and complete its work in accordance with the progress of the work the Contractor requires. The Subcontractor's date of commencement shall be the date of this Contract as identified on page one, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.
2. The Subcontractor agrees that it has taken all steps necessary to ascertain the amount of labor, tools and supervision necessary to complete the work as the Contractor's schedule and the Contract require and that the Contract price includes all such costs. All work must be completed by ~~xxxxx,xxxx,xxxxxx~~, or the date specified within the schedule, if any, that is incorporated in the Contract Documents.
3. Should the Subcontractor fail to keep up with the progress the Contractor's schedule requires, the Subcontractor shall provide overtime work at the Contractor's sole discretion, without any additional compensation and without recourse against the Contractor.
4. Should the Subcontractor fail to provide sufficient manpower and materials as required, or at any time engage in a strike or other work stoppage, or cease to work due to picketing or other such activity, Contractor may, at its option, without prejudice to any other remedies it may have, after forty eight (48) hours written notice to the Subcontractor, provide any such labor and materials and deduct the cost thereof from any monies then due or thereafter to become due the Subcontractor. This right does not affect or otherwise limit Contractor's termination rights as set forth in this Contract.
5. The Subcontractor shall indemnify the Contractor for all legal fees, costs, damages, awards and judgments the Contractor incurs or is ordered to pay, and for all settlements it pays, as the result, arising out of, or caused by the Subcontractor's failure to maintain the Contractor's and/or Owner's schedule.

Article 4. Safety

1. The Subcontractor shall be responsible to the Contractor for compliance with all Project safety rules and regulations including OSHA and all other federal and state safety rules and regulations. The Subcontractor shall to the fullest extent permitted by law, indemnify, defend and hold the Contractor harmless for any and all attorney's fees, costs, expenses or other damages the Contractor incurs, including fines, penalties, and the cost of corrective measures, that arise out of, are caused by, or relate to acts or omissions by the Subcontractor, its agents, employees, assigns, or subcontractors (or any of their lower tier subcontractors and the agents, servants and employees of all of them), or materialmen, in failing to comply with such safety rules and regulations.
2. The Subcontractor shall report to the Contractor all injuries to employees or agents of the Subcontractor and all property damage that occurs at the site, within three calendar days of the occurrence.
3. If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, its subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site

to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

4. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon Contractor's direction.

Article 5. Payment

1. The Contractor agrees to pay the Subcontractor **(insert word amount) \$(insert numerical amount)** ("Contract Sum") for the performance of the Work, subject to additions and deductions for changes as provided herein. All payments to the Subcontractor are directly contingent upon the receipt by the Contractor of payment from the Owner and shall only be due to Subcontractor after Contractor receives such payment from Owner, and only in accordance with all other provisions herein.
2. At Contractor's direction or if otherwise required pursuant to the Contract, the Subcontractor shall submit to the Contractor a schedule of values allocated to the various parts of the Work of this Subcontract, aggregating the Subcontract Sum, made in such detail and supported by such evidence as the Contractor and Subcontractor may agree upon or as the Owner requires.
3. If Subcontractor is bonded, it is the Subcontractor's responsibility to obtain surety approval of any schedule of values and all requisitions before submitting that information to the Contractor and the Subcontractor must keep those documents on file for surety and Contractor review. Both Subcontractor and surety agree to be bound by the Owner's and/or Architect/Engineer's decisions on the payment amount due Subcontractor including any deduction therefrom Contractor is entitled to make pursuant to the Contract.
4. Application for payment for all work stored and completed through that date must be received in the Contractor's offices seven (7) calendar days before Contractor is required or has agreed to submit its payment application to the Owner or Architect. Contractor shall make progress and final payments within fifteen (15) business days after receipt of payment from the Owner.
5. Unless the Contract Documents provide for less frequent payments, the sum payable to the Subcontractor shall be made according to the following schedule: Contractor shall pay the subcontract sum in monthly progress payments based on the percentage of completed work, minus a ten percent (10%) reduction to be held as retainage (or higher retainage amount if the Contract Documents specify a higher retainage being held by Owner from Contractor). The amount of work approved and corresponding amount due shall be governed by the Owner or Architect or engineer, whichever is reviewing the work for purposes of issuing payment as set forth in the General Contract and that decision shall be final and binding on Subcontractor.
6. Payment otherwise due, whether Progress Payments or Final payment, may be withheld by Contractor on account of, but not limited to, defective work not remedied, claims filed or asserted, evidence indicating a reasonable likelihood of claims being asserted, failure of Subcontractor to make payments properly to its sub-subcontractors or for material or labor, or applicable taxes, fees and fringe benefits, or reasonable doubt that the Work can be completed for the balance then unpaid, damage to Contractor on this or any other project, damage to other subcontractors, Owner or the public, reasonable belief that Subcontractor will be unable to maintain the Project schedule, evidence of financial difficulty or inability to fully perform this Subcontract, set-offs or back-charges for which, in Contractor's reasonable opinion, Subcontractor is or will be liable as a result of its performance of the Work, or for any other breach of this Subcontract. Contractor may offset

against any sums due Subcontractor hereunder, the amount of any obligations of Subcontractor to Contractor, whether or not arising out of this Subcontract. In any of the foregoing events, Contractor may, but shall not be obligated to, make payments directly to sub-subcontractors.

7. The Subcontractor agrees that it will receive any funds paid or advanced under the Contract as a trust fund, to be applied first to the payment of the amount owing to any person who has performed and/or furnished work and/or materials for the Subcontractor, before using any amount for any other purpose. By applying for payment, the Subcontractor shall warrant as a corporation and shall be deemed to have warranted on behalf of its officers individually and anyone else signing the Subcontractor's payment request, that it has obtained all release of lien forms required and that it has fully paid all subcontractors, suppliers, and materialmen all amounts due to date for their work and materials and will pay all amounts to become due. Upon Contractor's request, the Subcontractor shall obtain and provide executed release forms, including executed release of lien forms, from all of its subcontractors, suppliers and materialmen confirming each has been paid in full, before being entitled to receive funds for the work completed. Those forms shall be immediately provided to the Contractor upon the Contractor's request. Before final payment, the Subcontractor shall also furnish the Contractor receipts, invoices and/or affidavits stating that all labor and bills of any nature for this project have been paid in full, that no materials have been purchased under conditional sales contracts, and that no liens for labor, material, equipment rental, or anything else have been claimed or filed.
8. To the fullest extent permitted by law, Subcontractor agrees not to record any lien or other encumbrance on the Project property. Further, should any of Subcontractor's subcontractors, their sub-subcontractors, or materialmen, record a mechanic's lien, attachment or otherwise encumber the property, the Subcontractor shall immediately record a lien bond and take all other steps necessary to secure a release of that lien or other encumbrance, all at its own cost. It shall not be a defense to this requirement that Subcontractor claims non-payment by the Contractor or Owner and Subcontractor shall be liable for damages and for all fees (including without limitation attorney's fees) and costs Contractor incurs to release, discharge or satisfy any such lien or other encumbrance.
9. Final payment, including release of retainage, shall not become due until the work is fully completed and accepted by the Owner and Architect, and only after payment is made to the Contractor for that work. As with all other payments, final payment to the Subcontractor is to be directly contingent upon the receipt by the Contractor of payment from the Owner.
10. If a bond has been provided, a signed consent of surety shall be required before final payment. Should Contractor release payment to Subcontractor without the surety's consent, however, it shall not be liable to surety. It shall be Subcontractor's sole duty to review this provision with the surety before signing the Contract and the Subcontractor shall be liable to indemnify, defend, and hold Contractor harmless from any and all claims surety makes against Contractor arising out of payments Contractor makes to Subcontractor.

Article 6. Warranty

1. The Subcontractor hereby agrees that it does warranty and guarantee its work and material for a period required by the Contract Documents, running from the date of the Project's substantial completion. To the extent not specified in the Contract Documents, the Subcontractor guarantees and warranties its work for a period of one (1) year from the date the Project is finally complete and accepted by Owner. The Subcontractor shall leave its work in perfect order at completion, and neither final payment nor the exhaustion of the warranty period shall relieve the Subcontractor of responsibility for negligence or faulty materials or otherwise deficient workmanship. Upon notice, Subcontractor shall remedy any defects and pay all expenses for any damage to or for work, resulting therefrom.

2. The Subcontractor warrants to the Owner, Architect and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Subcontractor's warranty excludes damage or defect caused by abuse, modifications not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract Documents.

Article 7. Changes In The Work and Claims

1. The Owner and Contractor may make changes in the Work. Upon receipt of such a change issued subsequent to the execution of the Contract, the Contractor shall promptly notify the Subcontractor. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work, which would be inconsistent with the changes ordered.
2. Changes in the Work shall be issued to the Subcontractor in writing. The Subcontractor agrees that no extra work or changes under this Contract will be recognized or paid, and Subcontractor waives and releases all claims for payment due unless the change order work is agreed to in writing before that work is undertaken. In such instances, where a written change order is provided, the Contract Sum will be adjusted accordingly and the Contract Time will be adjusted if the change affects the critical path of the Work.
3. All Subcontractor claims, regardless of whether or not arising from an Owner, Architect, or Contractor directed change, including without limitation, those seeking changes in Contract Sum or Time, must be made within seven (7) calendar days after occurrence of the event giving rise to such claim. Further, to the extent a Time extension is requested due to a Change in Work, the Subcontractor must provide written notice of this claim before beginning that Change in Work.
4. All claims must be made by written notice to the Contractor setting forth the change sought and an itemization of the additional payment and/or time requested.
5. Changes in the Work resulting in change orders shall entitle the Subcontractor to a total overhead (office and general conditions) and profit markup consistent with that provided for in the Contract Documents including applicable law incorporated therein. If not specified in the Contract Documents, the total markup shall be a maximum ten (10) % except that in no event, shall any mark-up be greater than the percentage the Owner will pay to Contractor and any and all such payments from Contractor to Subcontractor are directly contingent upon the receipt by the Contractor of payment from the Owner and shall only be due to Subcontractor after Contractor receives such payment from Owner, and only in accordance with all other provisions herein.
6. In the event of an agreement on changes to the Contract Sum and Time, the Contractor and Subcontractor shall execute a Change Order in a form the Contractor will provide. In the event the parties agree on either the Changed Sum or Time, but not both, they shall state their agreement in a Change Order and on that Change Order Subcontractor shall also state its position with regard to the item not agreed to (e.g. the additional sum or time claimed due). The Subcontractor's failure to do so shall constitute an irrevocable, conclusive waiver of the claims for the additional Time or Sum claimed due. In the event the parties do not agree on the proposed Changed Time, Sum, or both, the Subcontractor shall maintain time and material slips that it will provide to Contractor for daily verification of their accuracy. The failure to do so shall constitute an irrevocable conclusive waiver of the Subcontractor's claim. Contractor's verification shall not constitute an acceptance of the claim.

7. Contractor's liability for payment of any claims and any change order work is subject to the same pay when paid limitation set forth in the 'Payments' section of this Subcontract; that is, payment for claims and change order work is contingent upon payment by the Owner first being made to the Contractor and shall only be due after such payment is made to Contractor by Owner. Subcontractor shall never recover payment for claims, including change orders, where Contractor itself does not first receive any such amount from Owner. Further, payment on such change order work is subject to all other terms within the 'Payments' section of this Contract. Subcontractor's requests for extensions of Time are also directly contingent upon the Owner granting such additional time to Contractor.
8. Pending final resolution of a claim, the Subcontractor shall proceed diligently with performance of the Contract including all changes the Owner (including Architect) and/or Contractor order. In the event the claim is not resolved to Subcontractor's satisfaction, it must still timely and properly complete Contract work, including any work related to the claims at issue.
9. In the event that Contractor, in its sole discretion, should seek compensation from the Owner as a result of any delay or other damages, Subcontractor shall be entitled to an equitable portion of any amount recovered by Contractor provided that Subcontractor agrees to an equitable sharing of Contractor's legal fees and costs in advance of Contractor proceeding with such a claim. This provision shall not be construed to require the Contractor to pursue any delay claim against the Owner or any other party.
10. Should the Owner issue a credit (deduct) for any of Subcontractor's work, that credit shall be effective and binding on Subcontractor to the fullest extent binding on Contractor and the Contractor shall adjust future payments to account for this credit.
11. The failure to comply with all of the provisions in this Article shall result in the Subcontractor's irrevocable, conclusive waiver of that claim. This requirement cannot and shall never be deemed altered, amended, or otherwise affected by custom and practice on the Project. Absent the Contractor's express written modification of this provision, it shall in all instances remain enforceable even if, for instance, Contractor previously accepts other untimely Subcontractor claims during the course of the Project. Contractor shall always maintain discretion to enforce this provision. Subcontractor agrees to review and explain this provision to all of its employees responsible for submitting claims

Article 8. Subcontract Employment and Payroll Records

1. The Subcontractor shall fully comply with all statutes, regulations and other legal requirements concerning proper classification of employees and subcontractors. The Subcontractor shall, to the fullest extent permitted by law, indemnify, defend, and hold Contractor harmless from all claims and for all damages, fines, or other liability the Contractor incurs, arising out of the Subcontractor's failure or alleged failure to comply with such legal requirements. The Subcontractor also agrees, to the fullest extent permitted by law, to indemnify, defend, and hold Contractor harmless from all claims of Subcontractor's employees against Contractor concerning employment related issues including, without limitation, claims related to wage and hour laws, discrimination, and any other claim concerning, arising out of, or related to the Subcontractor's employment of any claimant.
2. The Subcontractor shall abide by all relevant local, state, and federal laws and regulations concerning the Work including but not limited to, those laws and regulations relating to unemployment compensation, taxes, and worker's compensation and shall maintain:
 - a. I-9 forms demonstrating that employees are eligible to work lawfully in the United States; and

- b. proof Worker's Compensation insurance coverage for all individuals working on the job site for the duration of Subcontractor's work on the Project.
- 3. The Subcontractor shall comply with all local, state, and federal laws concerning payment and shall:
 - a. maintain a weekly record of the hours worked per day by their employees who work on the Project;
 - b. make payments to unemployment insurance based upon the earnings of all employees as legally required;
 - c. pay Project employees by check;
 - d. deduct from employee paychecks those withholdings required by state and federal law; and
 - e. pay overtime as required by applicable state and federal law.
- 4. The Subcontractor shall provide verification of compliance with the foregoing obligations by submitting to Contractor and the Owner, when it requests, certified payroll records providing the name, address, dates, and hours worked by all individuals performing any jobsite work for the Subcontractor on the Project, as well as proof of the Subcontractor's compliance with all requirements set out above. The Contractor shall have the right upon oral or written request, to review all of Subcontractor's payroll records, other records regarding time worked, tax records, insurance information and subcontracts, to assure compliance with applicable statutes.
- 5. The Subcontractor shall require all of its subcontractors to comply with these terms and shall be liable for any such subcontractor's failure to do so.
- 6. Failure to immediately provide proof of compliance with these requirements upon the Contractor's request or to otherwise comply with any of these provisions shall constitute an event of default subjecting Subcontractor to immediate termination without further notice. Subcontractor shall also be subject to any and all other rights and remedies available to the Contractor pursuant to this Contract in the event of default.

Article 9. Insurance and Bonds

- 1. The Subcontractor agrees to maintain its own insurance coverage in the same limits as the General Contract requires of the Contractor but in no event, regardless of the General Contract requirements, shall insurance limits be less than what the applicable law requires or the following, whichever is greater:

Commercial General Liability:	\$1,000,000 per Occurrence \$ 2,000,000 in the Aggregate
Automobile Liability:	\$1,000,000 Combined Single Limit
Umbrella/Excess:	\$5,000,000 per Occurrence
Workers' Compensation and Employers Liability:	\$1,000,000 Each Accident \$1,000,000 Disease Each Employee \$1,000,000 Disease – Policy Limit

The Aggregate limit shall apply separately to each project. The coverage shall include, without limitation, explosion, collapse, underground and contractual liability coverage. Coverage must apply in the state where the project is located and that state must be listed in the policy declarations page.

2. Using the forms listed below, and to the fullest extent permitted by law, the Subcontractor must add the Contractor, Owner, and Architect and any other entity or individual the Contractor is required to have added as additional insureds, to all of its liability policies applicable to this project, including without limitation, general liability, automobile liability, and those policies providing excess/umbrella insurance. Further, the Subcontractor is required to provide a policy providing that, in the event the Contractor, Owner or Architect or other required additional insured has other insurance, the Subcontractor's policies, including excess policies, are primary and noncontributory to any other insurance of the additional insureds. The Subcontractor shall provide the additional insureds with products and completed operations coverage for 6 years.

Acceptable General Liability Additional Insured Forms

CG 20 10 (11 85)	Options	Preferred Endorsement
CG 20 10 (03 97)	AND	CG 20 37 (10 01) OR
CG 20 10 (10 93)	AND	CG 20 37 (10 01) OR
CG 20 10 (10 01)	AND	CG 20 37 (10 01) OR
CG 20 33 (07 98)	AND	CG 20 37 (10 01) OR
CG 20 33 (03 97)	AND	CG 20 37 (10 01) OR
CG 20 33 (10 01)	AND	CG 20 37 (10 01) OR

3. Before beginning work, the Certificates of Insurance and at Contractor's sole discretion, copies of the additional insurance endorsements, shall be filed with Contractor. The Certificate provided shall be consistent with the certificate of insurance form attached hereto at **Exhibit D**, and incorporated herein. Subcontractor also shall furnish Certificates of Insurance for all approved lower tier subcontractors before beginning any work.
4. If requested by Contractor or required in the Contract Documents, Subcontractor shall furnish Payment and Performance Bonds from a company satisfactory to Contractor, with a home office in the United States and licensed to do business in the state where work is being undertaken, in the penal sum the Contractor requires or as set forth in the Contract Documents, whichever is greater. The request for such a bond post execution of this Contract will require a change order to the Subcontractor for the bond cost.
5. To the fullest extent permitted by law, Subcontractor waives all rights against Owner, Contractor and anyone Contractor is required to defend, indemnify, or hold harmless, their officers, agents, servants, employees and attorneys, for damages caused by fire or other perils to the extent covered by property insurance required to be provided or maintained by this Contract, or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

Additionally, to the fullest extent permitted by law, unless enforcement would void the insurance coverage provided while working on the Project, or void completed operations coverage, the Subcontractor waives all rights of subrogation and recovery against Contractor to the extent of any loss or damage which is covered by any other insurance required to be maintained by it under this

Contract, or any future insurance Subcontractor obtains, except such rights as it may have in the proceeds of such insurance. This waiver includes without limitation, losses or damages to recovery by subrogation because of, without limitation, deductible clauses, inadequacy of limits of any insurance policy, or limitations or exclusions of coverage, third party claims, or any other reason of any name or nature against the Owner, the Contractor and anyone else Contractor is required to defend, indemnify or hold harmless, and any of their officers, agents, employees, consultants, attorneys, and any other subcontractor performing work or rendering services on behalf of the Owner in connection with the planning, development and construction of the Project. The Subcontractor shall require similar written express waivers from each of its subcontractors. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged. To the extent Subcontractor's insurer, or that of any of its subcontractors, make claims or file suit against Contractor despite this provision, the Subcontractor shall, to the fullest extent permitted by law, defend, indemnify and hold Contractor harmless in the same manner as set forth in the Indemnification provision, Article 10 herein.

6. The Subcontractor shall require similar waivers in favor of the parties enumerated herein from its subcontractors, agents and employees.
7. The Subcontractor's failure to comply with any of these provisions shall be grounds for immediate termination of Subcontractor without further notice.

Article 10. Indemnification

1. To the fullest extent permitted by law, the Subcontractor shall fully and completely indemnify, hold harmless, and defend with counsel reasonably acceptable to them, the Owner, Architect, Engineer and Contractor, and anyone else Contractor is obligated to indemnify, and each of their agents, servants and employees, from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of, caused by, or resulting from the performance of the Work associated with this Contract or other conduct of Subcontractor, provided that any such claim, damage, loss or expense: (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom; and (2) is caused in whole or in part by any act or omission of the Subcontractor, or any of its subcontractors, suppliers, officers, agents, employees, servants, or any other persons directly or indirectly employed by the Subcontractor or anyone for whose acts any of them may be liable, regardless of whether it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation which would otherwise exist as to any party or person described in this paragraph.

To the fullest extent permitted by law, the Subcontractor shall reimburse the Contractor, the Owner, the Architect, and any other party the Contractor is contractually required to indemnify, for any costs or expenses, including but not limited to attorney's fees, expended in seeking the Subcontractor's compliance with the above stated duties to defend, indemnify and hold harmless.

2. In claims against any person or entity indemnified hereunder, the indemnification obligation shall not be limited by the amount or type of insurance provided.

Article 11. Suspension For Convenience

1. The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Contractor may determine. In the event of such a suspension, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum except that no adjustment shall be made to the extent that:

- .1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible;
- .2 an equitable adjustment is made or denied under another provision of this Subcontract; or
- .3 Contractor does not receive an adjustment from the Owner (all adjustments to Subcontractor are directly contingent upon Contractor first receiving such adjustment from Owner).

Article 12. Termination By Contractor

1. Immediate termination for cause is permitted where provided for in the preceding paragraphs. Additionally, when the Contractor finds the Subcontractor in default for reasons other than those already referenced herein, the Contractor may, without prejudice to any other rights and remedies, terminate the Contract after providing the Subcontractor written notice of its default and the opportunity to cure its default within five (5) calendar days from delivery of that written notice.
2. The Subcontractor shall be in default for any of the following events:
 - .1 if it should be adjudged bankrupt, if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency; or
 - .2 if it should be in default of its Contract responsibilities including but not limited to, refusing or failing to supply enough properly skilled workmen or proper materials, delaying or otherwise failing to timely complete the work, failing to properly perform the work, failing to make prompt payment to its employees or subcontractors and suppliers, disregarding the Contractor's instructions, or otherwise failing to observe, satisfy, or perform the provisions of the Contract.
3. In the event of termination for cause, the Contractor may take over and prosecute the work to completion, either itself, by assignment, or by subcontractors, and the Subcontractor shall be liable to the Contractor for any excess cost the Contractor incurs above the Contract balance otherwise due Subcontractor had it completed its Contract work. In any such case, the Contractor shall have the right to take possession of and utilize in completing the work, Subcontractor's equipment, materials, tools, appliances, and plans as may be on the project work site or stored at an agreed to off site location as of the time of termination. If the Subcontractor has other contracts with the Contractor, the subcontractor agrees that the contractor has the right to withhold any amount of funds necessary to settle any excess cost to this contract. The foregoing provisions are in addition to, and not in limitation of, the Contractor's rights under any other Contract provision and applicable law.
4. Both the Owner and Contractor may terminate the Contract for convenience. In such instances, the Contractor shall deliver written notice to the Subcontractor and the Subcontract shall be terminated as of the date notice is provided to the Subcontractor.
5. Upon receipt of written notice of termination, the Subcontractor shall:
 - .1 cease operations as directed by the Contractor in the notice;
 - .2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and
 - .3 terminate all existing sub-subcontracts and purchase orders and enter into no further sub-subcontracts and purchase orders.

6. Where Subcontractor has been terminated for convenience, it shall recover only the actual cost of work completed to the date of termination plus five percent (5%) of the actual cost of the work for overhead and profit. Subcontractor shall not be entitled to any claim or lien against Contractor or Owner for any additional compensation or damages in the event of such termination. No related payment shall be due Subcontractor until after Owner first pays Contractor.

Article 13. Termination By Subcontractor

1. The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the General Contract.

Article 14. Disputes

1. To the extent permitted by law, in consideration of \$100.00, which is calculated and included in Subcontractor's contract price, and other good and valuable consideration including the terms of this Subcontract, Subcontractor agrees that: the Contractor shall have the sole right to select arbitration of any controversy or claim arising out of or related to the Subcontract or the breach thereof. If the Contractor elects arbitration, it shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA"). Although the AAA rules will govern arbitration, the Contractor may at its discretion file arbitration with either JAMS or AAA. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Alternately, the Contractor shall have the right at its sole option, to apply the claims resolution process specified in the Contract Documents. This Article shall be specifically enforceable by any court of competent jurisdiction. Any party obtaining final judgment shall be entitled to recover its related attorney's fees and costs.
2. The Contract shall be construed in accordance with the laws of the Commonwealth of Massachusetts, excluding any choice of law doctrine that would result in application of foreign law; Massachusetts substantive law shall be applied to interpret this Contract in all instances unless otherwise expressly specified herein. All civil actions that arise between the parties concerning the project that is the subject of this Contract shall be filed in Middlesex County Superior Court or Lowell District Court, or the United States District Court for the District of Massachusetts if that court otherwise has jurisdiction to hear the matter, unless Contractor elects arbitration, in which case any such action shall be stayed until arbitration is completed.

Article 15. Notice

1. Any notice required in the Contract shall be deemed to have been given as follows:

Notice to the Contractor shall be delivered by certified mail, return receipt requested and United States mail, at the following address:

Hawthorne Commercial Construction, LLC
35 Devonshire Crossing
Chelmsford, MA 01824

Notice to the Subcontractor shall be delivered by certified mail, return receipt requested and United States mail, at the following address:

ABC Plumbing & Heating
100 Main Street
Anytown, USA

Article 16. Regulations

1. The Subcontractor shall at all times comply with all statutes, regulations and ordinances, federal and state, related in any way to Subcontractor's performance of its Contract obligations, including without limitation, any expressly incorporated into the Contract. Subcontractor represents that it has had the opportunity to seek advice of counsel to ensure compliance with all applicable regulations, ordinances, and statutes. Subcontractor has thoroughly reviewed all related regulations, statutes and ordinances whether enumerated in the Contract or not, and represents and expressly agrees that it understands that by this Contract, it is now bound to comply with all such requirements and that it will fully comply with them. Subcontractor expressly represents that the Contract price includes all costs the Subcontractor will incur to comply with these requirements. No related Change Orders will be granted to cover costs to comply with these requirements.
2. A list of regulations which are expressly incorporated herein in addition to any in the Contract Documents, and with which Subcontractor must comply, include the following:
 1. Davis-Bacon Act (52.222-6);
 2. Contract Work Hours and Safety Standards Act-Overtime Compensation (only of the clause is included in the Contract Documents) (52.222-4);
 3. Apprentices and Trainees (52.222-9);
 4. payrolls and Basic Records (52.222-8);
 5. Compliance with Copeland Act Requirements (52.222-10);
 6. Withholding of Funds (52.222-7);
 7. Subcontracts (Labor Standards) (52.222-11);
 8. Contract termination-Debarment (52.222-12);
 9. Disputes Concerning Labor Standards (52.222-14);
 10. Compliance with Davis-Bacon and Related Act Regulations (52.222-13); and
 11. Certificate of Eligibility (52.222-15).

See Exhibit A, incorporated herein, for the text of these regulations. **Exhibit A** lists additional regulations the Subcontractor agrees to review and to comply with if applicable. Neither the list above nor Exhibit A is intended as a representation that these are the only applicable regulations. Subcontractor is liable for all breaches thereof, whether or not listed on Exhibit A or above.

3. **IMMIGRATION:** Subcontractor by signing below represents and warrants that it is, and will remain, in compliance with any and all provisions of the Immigration Reform and Control Act of 1986 (IRCA), as amended, the Immigration and Nationality Act, as amended, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all other applicable immigration laws, rules, and regulations (Immigration Laws) including all form I-9 verification, E-Verify, and record keeping requirements. Subcontractor shall indemnify and hold **Contractor** and its surety harmless from any claims, liabilities including damages resulting from work stoppages or delays occasioned by or arising from any subcontractor noncompliance with IRCA or any such immigration laws, ordinances, rules, regulations, orders or decisions, as relates to the work of this Subcontract. The Subcontractor agrees to submit a certification, acceptable to contractor that its employees have presented the correct documents to legally work in the United States. Subcontractor also agrees to insert the substance of this clause, including this paragraph, in all Subcontracts or Purchaser Orders hereunder.
4. **E-VERIFY:** If the General Contract includes the clause at FAR 52.222-54, Employment Eligibility Verification, Subcontractor/Vendor hereby certifies that it has previously enrolled in the U.S. Citizenship and Immigration Services E-Verify Program ("E-Verify") or will enroll in E-Verify within 30 calendar days of the award of this Subcontract/purchase order. In accordance with FAR 52.222-54, which is incorporated in this Agreement by reference, Subcontractor/vendor hereby agrees that (1) it will begin to use E-Verify within 90 calendar days of enrollment to verify the employment eligibility of all new hires, who are working in the "United States" as defined in FAR 52.222-54, within 3 business days after the date of hire; (2) it will use E-Verify to verify the

employment eligibility of all employees assigned to this Subcontract/purchase order within 90 calendar days of enrollment in E-Verify or within 30 calendar days of assignment to this Subcontract/purchase order, whichever date is later; and (3) will include this clause including the requirement for further flow down in all lower tier subcontracts/purchase orders. To assure compliance, upon request, Subcontractor/vendor shall furnish satisfactory evidence of its enrollment in and use of the E-Verify program and inclusion of this requirement in lower tier subcontracts and purchase orders. This clause shall not be applicable if the subcontract/purchase order for construction or services at any tier is for 43,000.00 or less or is for commercial off-the-shelf items (“COTS items”) as defined at FAR 52.222-54(a) or modified COTS items that would be COTS items but for minor modifications as described at FAR 2.101(b) (2), “Commercial item,” part (3).

5. **BUSINESS ETHICS & COMPLIANCE:** The Subcontractor, by signing this Agreement, hereby certifies that it has reviewed the requirements of FAR 52.203-13 and 52.203-14, that it (1) already has or will adopt a written code of business ethics and conduct within 30 days of the award of this Subcontract, (2) will otherwise comply with the applicable requirements of the above referenced FAR provisions, which are incorporated by reference in this Subcontract, and (3) will include the substance of those FAR provisions in lower tier subcontracts or purchase orders in excess of \$5,000,000.00 and which anticipate a performance period in excess of 120 days. Upon **Contractor’s** request for verification, the Subcontractor shall furnish to it a copy of its written code business ethics and conduct and satisfactory evidence of an on-going business ethics awareness and compliance program as required by FAR 52.203-13. This clause is not applicable if the subcontract or purchase order is for \$5,000,000.00 or less unless a different dollar limit is required by the terms of the prime Contract.
6. **PROPOSALS AND REPRESENTATIONS:** If the General Contract is subject to the Truth in Negotiations Act (Title 10 of the United States Code, Section 2306a; Title 41 of the United States Code, Section 253), Contract Disputes Act of 1978 (Title 41 of the United States Code, Section 601, et seq.) the False Claims Act (Title 31 of the United States Code, Section 231, et seq.), the Forfeiture Statute (Title 28 of the United States Code, Section 2514), Title 18 of the United States Code, Section 287, Title 18 of the United States Code, Section 1001, Title 10 of the United States Code, Section 2306(1), and Title 41 of the United States Code, Section 254, or any other federal laws or any state law which impose requirements of good faith, accuracy, completeness and fair dealing in connection with the presentation of cost proposals or claims against, or the provisions of statements to, any party, the Subcontractor shall be bound to these requirements to the same extent as the **Contractor**. Subcontractor and its surety, if any, hereby undertake to defend at its own cost with legal counsel mutually acceptable to the Subcontractor and the **Contractor**, indemnify and hold harmless **Contractor** and their respective officers, directors, employees, sureties and agents, from any and all loss, cost, penalty, damage, claim, demand, expense and assessment whatsoever, including reasonable attorney’s fees, arising from, relating to or in any manner connected with any allegation or claim of, or finding of, a violation of one or more applicable federal or state laws, provided that the alleged violation relates to, is directed at or is attributable to the Subcontractor, its representatives, agents, or employees, specifically, or relates to, is directed at or is attributable to those claims and supporting data submitted by Subcontractor in connection with the presentation of any claim by the Subcontractor for additional compensation, or adjustment of the contract terms, payment request, or any other act or statement by the Subcontractor, its representatives, agents, or employees.
7. **SUBCONTRACTING PLAN:** If included in the Prime Contract, Subcontractor’s attention is directed to the Contract Clauses entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (FAR 52.219-8) and Small Business and Small Disadvantaged Business Subcontracting Plan-Alternate I (FAR 52.219-9). Where applicable, Subcontractor shall adopt and comply with a Subcontracting Plan similar to the **Contractor’s** approved Subcontracting Plan, a copy of which will be made available upon request.

Subcontractor shall provide all periodic reports and other documentation as necessary to show compliance.

8. **PROMPT PAYMENT TO LOWER TIER FIRMS:** Subcontractor shall comply with the provisions of FAR 52.232.27 and include the clauses required by that clause in each subcontract, purchase order, or purchase agreement this Subcontractor issues in reference to this Project including the requirement for a further flow-down of those requirements to lower tier firms.
9. **CERTIFICATION AND DISCLOSURE REGARDING PAYMENT TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS:** The Subcontractor, by signing this Agreement, hereby certifies that to the best of his or her knowledge it complies with the requirements set forth in FAR 52.203-11 – Certification and Disclosure regarding payment to Influence Certain Federal Transactions (Sept 2007), that to the best of its knowledge and belief no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress on its behalf in connection with the awarding of this contract, and that the Subcontractor will include language of this certification in all subcontracts, purchase orders, purchase agreements, etc., awards in excess of \$100,000 and require that all recipients of such a subcontract, purchase order, purchase agreement, etc., to certify and disclose accordingly and to obtain the equivalent certification from lower tier subcontractors or suppliers with contracts or purchase orders in excess of \$100,000.
10. **ENVIRONMENTAL COMPLIANCE:**

CLEAN AIR AND WATER: The Subcontractor, by signing this Agreement, hereby certifies that (a) Any facility to be used in the performance of this proposed contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities; (b) The Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the EPA, indicating that any facility that the Offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and (c) The Subcontractor will include a certification substantially the same as this certification, including this paragraph(c), in every nonexempt Subcontract.

ENVIRONMENTAL LAW COMPLIANCE: Subcontractor agrees to comply with all environmental laws, ordinances, rules, regulations, orders and decisions issued by any federal, state or local body or agency relating to Subcontractor providing product(s) and/or service(s) pursuant to this Subcontract. Subcontractor also agrees to comply with all **Owner's** rules, regulations, orders, decisions, security requirements, etc. Subcontractor shall indemnify and hold **Contractor** harmless from any claims or liabilities arising from any noncompliance with any such laws, ordinances, rules, regulations, orders or decisions, as relates to the work of this Subcontract.

11. **CERTIFICATIONS AND CLAIMS OR PROPOSALS:**
CONTRACT DISPUTES ACT AND TRUTH IN NEGOTIATIONS ACT CERTIFICATIONS:
With respect to any Subcontractor claims, Subcontractor agrees to provide at the time of the submission of the claim to **Contractor**, a certification signed by a senior company official in charge of the work involved, that the claim is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment Subcontractor believes it is entitled to. Subcontractor agrees **Contractor** may rely exclusively on this certification in providing any certification **Contractor** may be required to submit to the **Owner** insofar as the claim includes a claim for or on behalf of Subcontractor. Subcontractor further agrees to recertify its claim in the above form at any time requested by **Contractor**.
12. To the fullest extent permitted by law, Subcontractor shall indemnify, defend, and hold Contractor harmless from and against all claims, damages, losses and expenses, including but not limited to attorney's fees arising from, related to, or in any way caused by the failure or alleged failure of

Subcontractor, its subcontractors, materialmen, or any of their respective agents, servants, employees, or contractors, to comply with these requirements. Any such failure shall also constitute grounds for immediate termination of Subcontractor for cause.

Article 17. Miscellaneous Provisions

1. **NO WAIVER OF PERFORMANCE:** The failure of Contractor to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Contract, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of that term, covenant, condition or right with respect to further performance.
2. **TITLES:** The titles given to the Articles and paragraphs of this Contract are for ease of reference only and shall not be relied upon or cited for any other purpose.
3. Requests for information (“RFI”) from Subcontractor must be submitted in the form attached as **Exhibit B**. Change Orders will be provided only via a fully executed form, provided at **Exhibit C**.
4. Each signatory is fully authorized to enter into this Contract on behalf of his/her respective party and has full authority to bind that party to the terms of this Contract.
5. Each party has had the opportunity to have this Contract reviewed by counsel of its choice. Further, the parties have negotiated this Contract and agree that to the extent there is any ambiguity in the Contract, that ambiguity shall not be construed against either party as the drafter of this Contract and each party waives any right to assert such a position.
6. This document and any incorporated documents, exhibits, addenda, specifications, and/or drawings, form the full and complete Contract between the parties and replace and supersede all prior discussions, proposals, and negotiations between the parties. Further, the parties agree and expressly represent that they are relying on no representations to enter into this Contract other than the terms set forth herein. This Contract shall not be amended except by written agreement signed by both parties.
7. The invalidity of one or more phrases, sentences, clauses, or articles, shall not affect the remaining portions of the Contract and if any part of the Contract should be declared invalid or otherwise unenforceable by final order, decree or judgment of a court of competent jurisdiction, this Contract shall be construed as if such invalid phrases, sentences, clauses, or articles had not been inserted.
8. The Subcontractor waives all Claims against Contractor for consequential damages arising out of or relating to this Contract. This waiver includes damages incurred for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. Nothing contained herein shall be deemed to preclude an award of liquidated damages.
9. Subcontractor shall immediately execute and hand deliver a completed Form SF 1413 to Contractor.
10. Subcontractor shall have six months from when it last performed any material work on the Project to file suit (or arbitration if Contractor requires), after which it shall be deemed to have waived any and all claims. As a condition precedent to the filing of any such action, Subcontractor must also have complied with all of the claims processes set forth in the Contract.

HAWTHORNE IS AN EQUAL OPPORTUNITY EMPLOYER.

All regulations of 41 CFR 60, its *Equal Opportunity Clause*, apply to this subcontract. If this contract exceeds \$2,500, all regulations of 41 CFR 60-741.4, *Affirmative Action for Handicapped Workers*, apply. If this contract exceeds \$10,000, all regulations of 41 CFR 60-250.4, *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era*, apply. These regulations are incorporated by reference, as are all other applicable regulations, ordinances and statutes.

“The Equal Employment Opportunity Clause required under Executive Order 11246, the affirmative action commitment for disabled veterans and veterans of the Vietnam era, set forth in 41 CFR 60-250.4, the affirmative action clause for handicapped workers, set forth in 41 CFR 60-741.4, and the related regulations of the Secretary of Labor, 41 CFR Chapter 60, are incorporated by reference in this contract. By accepting this contract, vendor certifies that it complies with the authorities cited above and that it does not maintain segregated facilities or permit its employees to perform services at locations where segregated facilities are maintained, as required by 41 CFR 60-1.8.”

IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first above written.

Subcontractor

Hawthorne Commercial Construction, LLC.

(Signature) duly authorized hereunto

(Signature) duly authorized hereunto

Print Name

Print Name

Witness

Witness

Date

Date

Federal ID#: _____

Or Social Security #: _____

If incorporated, State of _____