



Subcontract

Subcontract No :
Job # :
Vendor # :
Phase Code :

THIS AGREEMENT between FOUSHEE & ASSOCIATES COMPANY, INC. hereinafter called the "Contractor" and Subcontractor Name, hereinafter called the "Subcontractor",

WITNESSETH:

AGREEMENT TO PERFORM WORK IN ACCORDANCE WITH PRIME CONTRACT The Subcontractor agrees to perform all work described below in accordance with the terms, provisions including general and special conditions, drawings, specifications, addenda, amendments, modifications and all other documents forming or by reference made a part of the Prime Contract executed the day of between Contractor and Owner Name hereinafter referred to as "Owner", prepared by Architect for the construction of Job Description, all of which are an integral part of this subcontract. In addition to the description of the Subcontractor's work to be performed, Subcontractor's specific attention is directed to the requirements of the Prime Contract relating to claims, time limitations, disputes resolution procedures and suspension or termination for convenience, all of which are an integral part of this Subcontract. Subcontractor acknowledges he has been given the opportunity to review the entire Prime Contract but has declined the opportunity to review. Subcontractor is bound to the Contractor and the Owner by the terms and provisions of the Prime Contract and Subcontractor agrees to assume toward Contractor all obligations and responsibility which Contractor, by the Prime Contract, assumes toward the Owner.

Subcontractor, insofar as applicable in any way to this subcontract, agrees to be bound to Contractor by the Prime Contract and any interpretations to the meaning thereof issued by Owner or its representatives to the same extent as Contractor is bound to Owner, and Subcontractor agrees to strictly comply therewith. All rights and remedies reserved to Owner under the Prime Contract shall apply to and be possessed by the Contractor, as well as Owner, in all dealings with Subcontractor.

WORK TO BE PERFORMED Subcontractor agrees to furnish all materials, labor, tools and equipment and perform fully and completely at the price set forth herein, all that portion of the work required to be done by Contractor under the Prime Contract described as follows:

Fall protection is required for all activities on site greater than or equal to six feet in height. For activities greater than or equal to ten feet in height, provide site specific safety/fall protection plans to Superintendent **BEFORE** commencing with any work.

Subcontractor shall provide a list of sub-tier Subcontractors and Suppliers and their contact information for any contract or materials valued over \$5,000. See the attached exhibit.

PRICE The Contractor, for the full and faithful performance of this subcontract, agrees to pay to Subcontractor in accordance herewith the sum of _____

Dollars :

TERMS: % Retention per paragraph 20 on reverse side

At any time during Subcontractor's performance, but in all events before final payment, the Subcontractor must furnish a release of all liens in form satisfactory to Contractor. Said lien release, or release of claim, when necessary, shall include a release against Contractor's surety or sureties and against retention being withheld by Owner. Unless specifically reserved, acceptance of final payment by Subcontractor constitutes a release of all claims by Subcontractor.

IN WITNESS WHEREOF the CONTRACTOR and SUBCONTRACTOR have executed this Agreement this **day of**, being duly authorized to do so.

FOUSHEE & ASSOCIATES CO., INC.

By: _____
(, Project Manager)

SUBCONTRACTOR NAME

By: _____ Title: _____
(must be an authorized Corporate Officer / Partner / Owner)

Print Name
Guarantor guarantees each and every obligation of
Subcontractor Name

By: _____
Personal Guarantor

CC01-FO-US-HA-C1580D
Contractor's License No.

Subcontractor's License No.

Federal I.D. No.

Email Address

(PROVISIONS PRINTED ON REVERSE SIDE HEREOF ARE PART OF THIS AGREEMENT AND BINDING UPON THE SUBCONTRACTOR AND CONTRACTOR.)

The Indemnification Addendum, Insurance Addendum and Subcontractor Closeout Materials Requirements and all other exhibits attached hereto are by this reference made a part hereof.

GENERAL CONDITIONS

1. Either the signature on this Subcontractor's performance by Subcontractor constitutes acceptance of this subcontract. Subcontractor's performance shall enable Contractor to fully comply with the Prime Contract's schedule or the Contractor's schedule. Subcontractor shall, upon Contractor's request, furnish performance schedules including update, showing the time frames when Subcontractor will be performing in conjunction with all other work on the project. Contractor shall have the right to determine the sequence or work including making change to Subcontractor's proposed schedule(s).

2. Subcontractor shall promptly make payments to all persons furnishing labor, materials and supplies to the project and shall defend, indemnify and hold Contractor and Owner harmless from any liens or claims arising out of non-payment, including claims against Contractor's sureties and retention being withheld by the Owner. Any claim filed in connection with Subcontractor's work shall be discharged within (10) days of filing or Contractor's demand; or, Subcontractor shall post a bond with an acceptable surety covering said claim. All funds paid to Subcontractor for the account of sub-subcontractors, suppliers, laborers or materialmen are deemed trust funds for their benefit. Failure to promptly pay sums when due entitles Contractor to discharge said lien or claim out of the funds due or to become due to Subcontractor or to make joint checks payable to Subcontractor and any employee or supplier of Subcontractor. The amount of this subcontract shall be reduced accordingly in addition to all other remedies available to Contractor.

3. All drawings, prints, samples, tests and reports, if and as required, shall be promptly supplied by Subcontractor without charge. All such submittals shall be furnished to Contractor prior to performance of any work covered by submittal. Subcontractor shall not be paid for any work covered by that submittal until the submittal has been approved by the owner and/or architect. Approval of the submittal does not relieve the Subcontractor of responsibility for compliance with all requirements of the Prime Contract and this subcontract or be deemed to authorize deviation or changes in the contract documents.

4. Subcontractor is bound by all clauses of the Prime Contract including but not limited to those relating to charges, differing site conditions, variation in quantities, extra work, default termination and all provisions of any disputes clause. Subcontractor shall give Contractor written notice of any claim or request for equitable adjustment in sufficient time to enable Contractor to comply with the notice requirements of the Prime Contract. Subcontractor shall be bound by all notice requirements of this subcontract and the Prime Contract which ever provides for the shortest notice period. In the event the disputes provisions of the Prime Contract provide for arbitration, Subcontractor agrees to be joined as a party in said arbitration.

5. In case of a dispute between Subcontractor and Contractor for or on account of acts and/or omissions of the Owner or the Owner's engineer/architect or agent the Contractor agrees to present to the Owner, in Contractor's name, all of Subcontractor's claims for equitable adjustment or time extension and to vouch, if necessary, any dispute resolution procedure of the Prime Contract. Subcontractor is responsible for providing the materials in accordance with all applicable notice requirements, and at its own cost including attorney fees. The Contractor's decision shall be final as to whether any claims of Subcontractor are on account of acts and/or omissions of the Owner or Owner's engineer/architect or agent.

Subcontractor agrees to stay and suspend any legal action against Contractor, including any action claiming that the dispute does not entail an act or omission of the Owner or Owner's agent until the action against the Owner has been exhausted, including any appeals. Subcontractor shall not be entitled to receive any greater amount from the Contractor than Contractor receives from the Owner for Subcontractor's work less appropriate mark-ups and Subcontractor agrees that it will accept such amount in full satisfaction and discharge of any Subcontractor's claim against Contractor or Owner by reason of said dispute. It is understood that the only fund from which claims for changes or extra work is to be paid is created by Owner's payment to Contractor and that Subcontractor will be paid only if Contractor is paid for Subcontractor's work. In the event the dispute arises during the performance of the work Subcontractor shall nonetheless proceed with the work pending final resolution of the dispute or any dispute arising out of this subcontract.

6. Subcontractor shall perform no work for which it claims extra time or compensation without first receiving written directives from Contractor to proceed. Failure to obtain such written directives shall constitute an absolute waiver of such claim. The Contractor may, at any time by written order of Contractor without notice to Subcontractor's sureties, make changes in, addition to and omissions from the work to be performed under this subcontract and the Subcontractor shall promptly proceed with the performance of this subcontract work as so changed. The subcontract price shall be equitably adjusted upward or downward, per the terms of this Subcontract to reflect said changes.

7. In the event of any controversy between Contractor and Subcontractor as to the value of work added, deducted, or terminated, Contractor may in spite of the books, contracts and records of Subcontractor who shall make them available upon request. Failure to permit such inspection shall constitute a waiver of any right to affirmative recovery.

8. If Subcontractor shall fail to commence the work at the specified time or fails to prosecute the work to insure timely completion or fails in any other way to perform its obligations, Contractor may elect to declare the Subcontractor in default by notice in writing given to Subcontractor. If Subcontractor fails to cure said default within 48 hours, from receipt of notice, Contractor shall have full power, without process of law, to take over and complete said work at Subcontractor's expense, including the use of Subcontractor's equipment and materials. In addition to the remedies specified above, Contractor reserves all other rights provided by law including the language of the Prime Contract against Subcontractor to recover damages from Subcontractor or its surety for the default. No further payments shall be made to Subcontractor until the work is completed and Contractor has determined the extent of all costs incurred for performing Subcontractor's work.

9. In the event the subcontract or any part of it, is based on unit prices, it is understood and agreed that any quantities and amounts referred to in the Prime Contract or Subcontract are approximate only, maybe more or less at the same unit price, and may be subject to change as ordered and directed by the Contractor. Regardless of the variation in the estimated quantity, Subcontractor agrees to accept the unit prices set forth in this Subcontract unless an equitable adjustment is obtained from the Owner.

10. Job damage caused by Subcontractor on work other than its own shall be reported immediately to Contractor and Subcontractor shall be responsible for its repair. Job damage caused by Contractor on work of Subcontractor shall be reported immediately to the Subcontractor and Contractor shall be responsible for its repair.

11. Upon completion of any unit of its work, and upon final completion of all work the roof, Subcontractor shall clean up and remove from the site all refuse and rubbish around or along side the same caused by the Subcontractor, at Subcontractor's expense, and shall promptly remove all excess material, tools, structures, and equipment, which may have been brought on the premises, or erected by the Subcontractor. In the event of the failure of the Subcontractor to do so, the Contractor may, after 24 hours notice to the Subcontractor, clean up the premises at the cost and expense of the Subcontractor.

12. The parties hereto shall be bound by the procedures outlined in "The National Plan for the Settlement of Jurisdictional Disputes" for labor disputes, which arise under this contract. The Contractor shall comply with and be bound by any labor agreements executed by the Contractor or on Contractor's behalf.

13. Subcontractor is responsible for and shall bear the risk of loss for any damage to the Subcontractor's work, including but not limited to materials, supplies and equipment and shall promptly replace all such damaged work, supplies or materials. Subcontractor shall guarantee its work to the same extent that Contractor is obliged to guarantee its work per all provisions of the contract documents, but in no event shall such guarantee be less than one year from the date of substantial completion. Subcontractor shall indemnify the Contractor, and defend and save it harmless from any liability for damage to the work, materials, supplies, equipment or property of Owner, Contractor or person on the project if such damage is directly or indirectly caused, occasioned or contributed to, in whole or in part, by any act or omission of Subcontractor or anyone acting under its direction, control or in its behalf in connection with or incident to the work.

14. Within five (5) days of award of the Subcontract and PRIOR TO COMMENCING WORK, Subcontractor agrees to obtain and continuously carry during the period this agreement remains in force, insurance as Contractor and Owner consider necessary for proper protection of the parties in form approved by the Contractor. See Insurance Addendum, attached.

15. At any time prior to or during the performance of its work, Subcontractor shall, within ten (10) days of demand by Contractor, furnish such financial statements and information requested by Contractor to assure Contractor that Subcontractor, in the sole discretion of Contractor, has the financial resources to complete the performance of its work in accordance with the contract documents. Contractor may terminate this Subcontract if it determines, in its sole discretion, that Subcontractor is or may become unable to perform its work in accordance with this Subcontract. Subcontractor shall also furnish evidence that all licenses and registrations are current. The failure of Subcontractor to furnish said documents shall entitle Contractor to terminate Subcontract. In the event of termination, Contractor and Subcontractor shall owe each other no further obligation.

16. No subletting, assignment or hypothecation of this Subcontract or any portion of the work, or any amount due or payable hereunder, may be made by Subcontractor without prior written consent of Contractor and shall be void, if made without such consent. Any such assignment shall be subordinate to any and all liability and obligation of Subcontractor to Contractor under this Agreement.

17. Should one or more other contracts, now or hereafter exist between the parties here to concerning this or any other construction project then, in addition to all other available remedies, in the event of a failure of performance by Subcontractor of any of said contracts, the Contractor may at its option, terminate any or all of the contracts or may withhold monies due or to become due on any of such contracts and apply the same toward payment of any loss suffered on that or any other such contract.

18. By executing this Subcontract Subcontractor warrants that it has familiarized itself, or has been afforded the opportunity to do so, with all site conditions, the scope of work, and warrants that it is able to perform the work encompassed herein.

19. Before proceeding with the work under this Subcontract, Subcontractor will thoroughly field check all previous and surrounding work done by other trades and determine the correctness of that work. Failure by Subcontractor to detect or report discrepancies constitutes a waiver of any claims by Subcontractor against Contractor for the recovery of costs, expense or damage resulting therefrom.

20. Time is of the essence with respect to all terms and provisions of this Subcontract.

21. Payment: Subcontractor shall receive payments from Contractor only in amounts allowed to Contractor by Owner as on account of Subcontractor's work, and only to the extent of Subcontractor's interest therein, less any deductions or offsets which may be otherwise allowed to be deducted under this agreement or by law. In any event, no payment or retention or other compensation to Subcontractor for work hereunder shall be due to Subcontractor unless or until Contractor has received payment from Owner. Receipt of such payment from Owner shall constitute and is acknowledged by Subcontractor to be a condition precedent to Contractor's obligation to pay Subcontractor.

Prior to any payment, including retention, Contractor has the right to require Subcontractor to furnish Contractor and/or Owner with lien and claim releases, in forms acceptable to Contractor, releasing Owner, Contractor, Contractor's surety, architect or engineer, or others and land, underlying improvements, and all improvements from any and all claims, claim of lien, or claims on bonds or any other security or funds.

Payment Schedule: Subcontractor will submit to Contractor an original "Subcontractor Application for Payment" form as supplied by Contractor at such times as will enable Contractor to apply and obtain payment from Owner. Unless otherwise specified, the complete original and notarized Application for Payment and other required documentation must be received in the Contractor's office by the 25th of the month for payment the following month pursuant to the Subcontract terms. Unless otherwise specified 10% retention will be withheld. Invoices received after the 25th will be processed in the following month: cycle and will be paid on the appropriate date with discounts taken if applicable. The balance due the Subcontractor shall be paid 30 days after the final acceptance by Owner and final payment to Contractor by Owner, provided that Subcontractor as-built, guarantees, warranties and Subcontractor's documentation required by the Prime Contract have been received and accepted by Owner. No progress payment to Subcontractor shall be construed as approval or acceptance of the work done or materials furnished under this Subcontract. All prior progress payments are subject to correction in any subsequent payment. Subcontractor agrees that all payments of labor and materials for the project shall not be diverted elsewhere until all project creditors have been paid.

Release of retention by Contractor shall not be construed as a waiver of any future claims against Subcontractor arising out of Subcontractor's work.

22. At the request of Contractor and prior to making final payment to Subcontractor, Subcontractor will provide proof that all of the Subcontractor's laborers (including union trust funds), materialmen and suppliers have been paid and that all persons or entities entitled to make claim against the property or any improvements there of, or claim a gain in the fund designated for the construction of the project, the Owner, retention or Contractor's surety, have been paid in full.

If for any reason, joint checks become necessary, Contractor will require Subcontractor and payee to be entitled to enter into Contractor's Joint Check Agreement. A \$50.00 charge will be charged to Subcontractor's amount.

23. Subcontractor shall have full and exclusive liability for payment of any and all taxes, and contributions for unemployment insurance, retirement benefits, and life pensions and annuities which may now or hereafter be imposed by the United States, any state, municipality or any labor agreement to which Contractor is a party, whether measured by the wages, salaries or other form of remuneration paid to persons employed by Subcontractor, or on some other basis, in connection with the subcontract work.

24. Materials delivered by or on account of the Subcontractor and intended to be incorporated in the construction hereunder shall remain on the jobsite and shall not be removed without mutual consent; but the Subcontractor may repossess himself of any surplus remaining at the completion of Subcontractor's contract. All scaffolding, apparatus, ways, works, machinery and plant brought upon the premises by the Subcontractor shall remain its property. But in case of inability to use the said scaffolding, apparatus, ways, works, machinery and plant without cost or liability for depreciation or damage by use and without prejudice to Contractor's other rights or remedies for any damage or loss sustained by reason of said inability, it shall be the Subcontractor's responsibility to store and protect his materials and the Subcontractor shall bear the risk of loss and replacement.

25. Subcontractor acknowledges that a written Substance Abuse Policy is in effect for this project and is available for review at Subcontractor's request. Subcontractor agrees to be bound by all of the terms of said Policy. Subcontractor further acknowledges that said policy shall remain in effect until rescinded by written notice from Contractor. Subcontractor and its subcontractors shall maintain a written Accident Prevention Plan.

In demnification Addendum, executed as a separate page is hereby made part of this Subcontract

In case of any litigation concerning this Subcontract, the prevailing party shall be entitled to all costs and attorney's fees.

Safety Addendum, executed as a separate page, is hereby made part of this Subcontract.