

AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

This **Agreement Between Contractor and Subcontractor** ("Subcontract") is made on this ____ day of month/year. ("Effective Date") between the following parties:

Contractor:

Drash Contracting Company, LLC
1045 Central Parkway North, Suite 101
San Antonio, Texas 78232
Attn.: Jill M. Drash
Telephone: 210-340-5004
Facsimile: 210-340-5009
Email: jdrash@drashcontracting.com
DCC Project No.: job #
DCC Project Name: job name

and **Subcontractor:**

Company Name
Address
San Antonio, Texas
Attn.: Owner/PM
Telephone: 210-
Facsimile: 210-
Email:

By execution of this Subcontract, which includes Exhibits A, B, C, and D, and which are made a part hereof, Contractor, serving as General Contractor of Record for the Project described below, will engage Subcontractor for the purpose of performing subcontracting services on the Project referred to as JOB NAME, located at ADDRESS

Subcontractor, by execution of this Subcontract, will provide the subcontracting services ("Sub-work") specified in Exhibit B or in the Subcontract Documents defined in Exhibit A and Exhibit D, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others. The term "Sub-Work" is construed to mean the construction and services required by the Subcontract Documents, and it includes labor, materials, equipment, and services provided by the Subcontractor to fulfill the Subcontractor's obligations. Specific working conditions at the Project are described in Exhibit C. Documents relating to the Sub-Work, as applicable, are listed in Exhibit D.

In consideration of, and subject to the conditions of this Subcontract, Subcontractor agrees to provide its Sub-work on the Project for a lump sum ("Subcontract Sum") of \$0,000.00 (AMOUNT WRITTEN OUT), which can only be modified by written consent by Contractor as specified in Exhibit A. Contractor will apply a reduction of 10 percent, hereinafter referred to as "Retainage", to all payments made to Subcontractor. Retainage will be paid to Subcontractor, subject to Exhibit A, upon completion of all Subcontractors Sub-work.

Subcontractor will begin its Sub-work on the Project within 2 days after being notified orally or in writing by Contractor to proceed, hereinafter referred to as the "Date of Commencement". The Subcontractor's Sub-work shall be completed no later than DATE OF SUBSTANTIAL COMPLETION, ("Subcontract Completion Date"). Time is of the essence of this Subcontract. No extension of time will be valid without the Contractor's written consent. Should the Subcontractor exceed its Subcontract Completion Date without written consent of the Contractor, or due to fault of the subcontractor, the Contractor will charge the Subcontractor a

daily rate of \$200.00, hereinafter referred to as "Liquidated Damages", relating to failure to complete its Sub-work on time.

The Subcontractor will meet or exceed the insurance coverage and requirements defined in Exhibit A. If Subcontractor does not meet the insurance conditions, Contractor will deduct from Subcontract Sum an amount of \$20.00 per every \$1,000.00 of Subcontract Sum. This Subcontract will not require bonds of any type.

Subcontractor is made aware that Contractor has entered into an agreement with the following Owner to provide general contracting services for the Project. A copy of this agreement, excluding compensation amounts, is available to the Subcontractor upon request. Also, the Owner has retained the services of an architect, engineer, or consultant, hereinafter referred to as "Prime Project Professional" for the Project. The Owner and Prime Project Professional are:

Owner:

OWNER'S NAME
c/o
ADDRESS
CITY, STATE, ZIP
Attention: CONTACT
Telephone:
Facsimile:
Email:

Prime Project Professional:

ARCHITECT
ADDRESS
CITY, STATE, ZIP
Attn.: CONTACT
Telephone:
Facsimile:
Email:

In consideration of the mutual covenants set forth herein, Contractor and Subcontractor have signed this Subcontract, which will become binding as of the Effective Date, and shall be interpreted and construed according to the laws of the State of Texas and performable in San Antonio, Bexar County, Texas.

For the Contractor:

Jill M. Drash
President

For the Subcontractor:

(Signature)

(Printed or Typed Name)

(Title of Person Signing)

Attachments to this Subcontract, which are made part hereof, are as follows:

- Exhibit A: Terms and Conditions
- Exhibit B: Subcontractor's Sub-work
- Exhibit C: Specific Working Conditions and Rules at Project
- Exhibit D: List of Documents Relating to Subcontractor's Sub-work

EXHIBIT A

TERMS AND CONDITIONS

1. **Subcontract Documents.** The Subcontract Documents consist of this Subcontract with Agreement Between Contractor and Owner (“Agreement”), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Agreement, other documents listed in the Agreement and Subcontract, and Modifications issued after execution of the Agreement and Subcontract. A Modification is (a) written amendment to the Agreement or Subcontract, (b) a Change Order, (c) a Construction Change Directive, or (d) written order for a minor change in the Work issued by the Prime Design Professional. The intent of the Subcontract Documents is to include all items necessary for the proper execution and completion of the Sub-work by the Subcontractor. The Subcontract Documents represent the entire and integrated contractual arrangement between the parties hereto and supersedes prior negotiations, representation or agreements, either written or oral. Enumeration of the Subcontract Documents is provided in Exhibit D. There are no Subcontract Documents other than those listed in this Subcontract.
2. **Subcontract Sum.** The Subcontract Sum under this Subcontract shall include all taxes, duties, fees, and permits that are applicable and required with respect to the Subcontractor’s Sub-work on the Project. The Subcontract Sum under this Subcontract shall include all charges for freight, packing, loading, and unloading of materials and supplies that are applicable and required with respect to the Subcontractor’s Sub-work on the Project. Subcontractor shall submit progress invoices no later than the 25th day of each month and will submit a final invoice when its Sub-work is completed. Contractor’s invoice will reflect a percentage of completion of the Sub-work. The Contractor shall pay the Subcontractor each progress payment within 10 working days after the Contractor receives payment from the Owner or Prime Project Professional. Retainage will be paid when Substantial Completion is determined between Owner and Contractor. Subcontractor shall pay all undisputed invoices within 30 days of receipt.
3. **Modification.** Contractor may, by written change order, make changes in the Subcontractor’s Sub-work on the Project. Conversely, Subcontractor may, upon written request and by written change order from Contractor, make changes in its Sub-work on the Project. If such change affects the Subcontract Sum, whether as an increase or decrease, it shall be equitably adjusted. Changes which affect the time performance shall modify the Substantial Completion Date, as applicable. Contractor is not liable or responsible for verbal change orders or modifications given by its employees.
4. **Warranties and Guarantees.** Subcontractor warrants that the goods and services provided in its Sub-work on the Project shall be free from defects in design, material, workmanship, and title, shall conform in all respects to the terms of this Subcontract, shall be fit and suitable and perform satisfactorily for the purposes and the conditions made known by the Subcontract Documents or reasonably to be inferred and shall be at least equal to nationally recognized standards or codes of the best quality, if no quality is specified. This provision is in addition to any warranty or service guarantee offered by

Subcontractor or implied or provided by law. If within one year from the Substantial Completion Date it should appear that the goods or any part thereof do not conform to these warranties, Contractor will notify Subcontractor of the problem within 30 days of discovery. Upon notification, Subcontractor shall promptly correct such non-conformity at its expense. If Subcontractor fails to correct (or begin correcting) the problem within 30 days of notification, Contractor will remediate the problem and will back charge Subcontractor at its full cost plus Contractor's overhead and profit. Goods used to correct non-conformity shall be similarly warranted for one year. Subcontractor's liability hereunder shall extend to all damages proximately caused by the breach of any of these warranties or guarantees.

5. **Insurance** Upon execution of this Agreement, and prior to the Subcontractor's commencing any work or services with regard to the Project, the Subcontractor shall carry commercial general liability insurance on ISO form CG 00 01 10 01 (or a substitute form providing the equivalent coverage) and the subcontractor shall provide the contractor with a Certificate of Insurance and Additional Insured Endorsement on ISO form CG 20 10 11 85 (or a substitute form providing the equivalent coverage) or on the combination of ISO forms CG 20 10 10 01 and CG 20 37 10 01 (or a substitute form providing the equivalent coverage) naming the Contractor, the Owner and the Owner's Agent as Additional Insureds thereunder. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded to Contractor, Owner and Owner's Agent.

The coverage available to the Contractor, Owner, and Owner's Agent as Additional Insureds, shall not be less than \$1 million dollars Each Occurrence, \$2 million General Aggregate (subject to a per project general aggregate provision applicable to the project), 2 million Products/Completed Operations Aggregate and \$1 million Personal and Advertising Injury limits. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modifications of the Commercial General Liability form arising from pollution, explosion, collapse, underground property damage or work performed by subcontractors. All coverage shall be placed with an insurance company duly admitted in the State of Texas and shall be reasonably acceptable to Contractor. All Subcontractor insurance carriers must maintain an AM Best rating of "A-" or better. Coverage shall be afforded to the Additional Insureds whether or not a claim is in litigation.

The insurance coverage required under paragraph 5, shall be of a sufficient type, scope and duration to ensure coverage for the Contractor or Owner or Owner's Agent for liability related to any manifestation date within the applicable statutes of limitation and/or repose which pertain to any work performed by or on behalf of the Contractor or Owner or Owner's Agent in relation to the Project. *Subcontractor agrees to maintain the above insurance for the benefit of Contractor and Owner and Owner's Agent for a period of ten years, or the expiration of the Statute of Limitations pursuant to the Code of Civil Procedure, whichever is later.

Each Certificate of Insurance shall provide that the insurer must give the Contractor at least 30 days' prior written notice of cancellation and termination of the Contractor's coverage thereunder. Not less than two weeks prior to the expiration, cancellation or termination of any such policy, the Subcontractor shall supply the Contractor with a new and replacement Certificate of Insurance and Additional Insured endorsement as proof of renewal of said original policy. Said new and replacement endorsements shall be similarly endorsed in favor of Contractor and Owner and Owner's Agent as set forth above.

Additionally and prior to commencement of the Work, the Subcontractor shall provide the Contractor with a Certificate of Insurance showing liability insurance coverage for the Subcontractor and any employees, agents, or Sub-Subcontractors of the Subcontractor for any Workers' Compensation, Employer's Liability and Automobile Liability. In the event any of these policies are terminated, Certificates of Insurance showing replacement coverage shall be provided to Contractor. Coverages shall be no less than the following:

Workers' Compensation and Employers' Liability Insurance: As required by law and affording thirty (30) days written notice to Contractor prior to cancellation or non-renewal, providing coverage of not less than \$1,000,000 for bodily injury caused by accident and \$1,000,000 for bodily injury by disease.

Business Auto Liability Insurance: Written in the amount of not less than \$1,000,000 each accident.

Waiver of Subrogation: Subcontractor shall obtain from each of its insurers a waive of subrogation on Commercial General Liability in favor of Contractor and Owner and Owner's Agent with respect to Losses arising out of or in connection with the Work.

6. **Contractor's Right of Termination.** Contractor has the authority and right to suspend Subcontractor's Sub-work on the Project at any time and without notice or obligation to the Subcontractor. Contractor will pay Subcontractor for its Sub-work completed at the time of the suspension.
7. **Subcontractor's Representations.** In order to induce Contractor to enter into this Agreement, Subcontractor makes the following representations:
 - a. Subcontractor has familiarized itself with the nature and extent of the Subcontract Documents, Sub-work, site, locality, local conditions, and applicable laws and regulations that in any manner may affect cost, progress, performance or furnishing of the Sub-work on this Project. Subcontractor shall comply with and give proper notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the performance of the Sub-work.
 - b. Subcontractor shall supervise and direct its Sub-work using its best skill and attention. The Subcontractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for

coordinating all portions of the Sub-work under this Subcontract, unless the Subcontract Documents give other specific instruction concerning these matters.

- c. Subcontractor shall provide and pay for labor, materials, equipment, tools, construction equipment, construction machinery, transportation, facilities, and other services necessary for the proper execution and completion of the Sub-work unless otherwise stated in the Subcontract Documents. Subcontractor shall enforce strict discipline and good order among its employees, sub-tier entities, and other individuals performing Sub-work on the Project.
 - d. Subcontractor has correlated the results of available and applicable observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Subcontract Documents.
 - e. Subcontractor has given Contractor written notice of all conflicts, errors or discrepancies that it has discovered in the Sub-work, Subcontract, or Subcontract Documents, and the written resolution thereof by Contractor is acceptable to Subcontractor.
8. **Indemnity.** SUBCONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CONTRACTOR, OWNER, THEIR AGENTS, AND EMPLOYEES, FROM AND AGAINST LEGAL LIABILITY FOR ALL CLAIMS, LOSSES, DAMAGES, AND EXPENSES TO THE EXTENT SUCH CLAIMS, LOSSES, DAMAGES, OR EXPENSES ARE CAUSED BY THEIR NEGLIGENT ACTS, ERRORS, OR OMISSION. IN THE EVENT SUCH CLAIMS, LOSSES, DAMAGES, OR EXPENSES ARE CAUSED BY THE JOINT OR CONCURRENT NEGLIGENCE OF SUBCONTRACTOR AND CONTRACTOR, THEY SHALL BE BORNE BY EACH PARTY IN PROPORTION TO ITS OWN NEGLIGENCE UNDER COMPARATIVE FAULT PRINCIPLES. CAUSES OF ACTION ARISING OUT OF CONTRACTOR'S SERVICES OR THIS AGREEMENT, REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY.
9. **Dispute Resolution.** Any and all disputes or claims arising out of or relating to this Subcontract, or the breach thereof, shall be resolved by mediation in accordance with legally accepted mediation rules of the State of Texas currently in effect or by arbitration in accordance with legally accepted arbitration rules of the State of Texas currently in effect under the American Arbitration Association. Subcontractor and Contractor agree, however, to first try to resolve the dispute through mediation.
10. **Warranty.** The Subcontractor warrants to the Contractor that the materials and equipment furnished for the Project will be of good quality and new unless otherwise required or permitted by the Subcontract Documents, that the Sub-work will be free from defects not inherent in the quality required or permitted, and that the Sub-work will conform to the requirements of the Subcontract Documents. The Subcontractor's warranty excludes remedy for damage(s) or defect(s) caused by abuse, modifications not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Owner and Contractor will also be

provided manufacturers warranty as applicable on all materials and equipment provided for the Project by Subcontractor.

11. **Consequential Damages.** Neither Subcontractor or Contractor shall be liable to the other for loss of profits or revenue; loss of use of opportunity; loss of goodwill; cost of substitute facilities, goods, or services; cost of capital; or for any special, indirect, punitive, consequential, or exemplary damages.
12. **Site Access and Safety.** Contractor shall secure all necessary site related approval, permits, licenses, and consents necessary to commence services on the Project. Contractor will be responsible for initiating, maintaining, and supervising safety precautions and programs in connection with the Project. Contractor will take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to employees, workers, and visitors at the Project. However, Subcontractor shall take all reasonable safety precautions with respect to performance of its Sub-work on the Project and performance of this Subcontract. Furthermore, Subcontractor shall comply with safety measures initiated by the Contractor, shall be responsible for supervision and site safety measures for its own employees and sub-tier agents, and shall comply with applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of individuals and property while performing its Sub-work. The Subcontractor shall report any injury to an employee or agent of the Subcontractor, which occurred at the Project, within 24 hours of the incident to the Contractor. Contractor shall not be liable for damage or loss attributable to health and safety issues that result due to no fault of the Contractor's obligations under this Subcontract and Subcontract Documents.
13. **Other Provisions.** Other provisions of this Subcontract include:
 - a. Except for permits and fees that are the responsibility of the Contractor under this Subcontract and the Subcontract Documents, the Subcontractor shall secure and pay for necessary fees, permits, approvals, deliveries, and other charges applicable to completion of its Sub-work on the Project.
 - b. No assignment by a party hereto of any rights under or interests in the Subcontract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment not assignment will release or discharge the assignor from any duty or responsibility under the Subcontract Documents.
 - c. Subcontractor and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Subcontract Documents and this Subcontract. This

Subcontract shall not be construed to create a contractual relationship of any kind between any other party other than between Subcontractor and Contractor.

- d. Subcontractor shall correct Sub-work rejected by Owner or Contractor for failing to conform to the requirements of the Subcontract Documents for a period of one (1) year from the Substantial Completion Date.
- e. Subcontractor shall not be responsible for compliance with provisions of the Texas Accessibility Standards (TAS) statute other than those provisions depicted in the Subcontractor's Sub-work for this Project.

EXHIBIT B

SUBCONTRACTOR'S SUB-WORK

The Subcontractor shall execute its portion of the Sub-work on this Project as described below and within the conditions of this Subcontract, including all labor, materials, equipment, services and other items required to complete such portion of the Sub-work on the Project, except to the extent specifically indicated in the Subcontract Documents or this Subcontract to be the responsibility of others. The Subcontractor's Sub-work, including any of its sub-tier entities, is as follows:

Inclusions

EXHIBIT C

SPECIFIC WORKING CONDITIONS AND RULES AT PROJECT SITE

Safety within the Project Site, consideration for others while performing Project Work and Subcontract Sub-work, and proper behavior while at the Project is an obligation of the Contractor to the Owner. Thus, the Subcontractor, including its Sub-tier entities, will abide by the following Project Site Rules:

- Smoking is not allowed inside the building while it is being erected or after it is complete.
- Drugs, alcohol, or weapons are not permitted at the Project Site. Any individual determined to be under the influence of drugs or alcohol, or having weapons, will be immediately removed from the Project Site and may be turned in to law enforcement officials.
- Hard hats and appropriate clothing must be worn by all individuals while at the Project Site. If an individual's work requires personal protective equipment, such as clothing, eye protection, hearing protection, head protection other than standard hard hat, back braces, harnesses, gloves, special footwear, etc., it must be used at all times while performing such work activities.
- All accidents and injuries of any type must be reported immediately to the Project Superintendent or Project Manager.
- Safety rules and precautions must be abided by all individuals working or visiting the Project Site. Subcontractor and its Sub-tier entities are responsible for the safety of its own personnel while at the Project Site and while performing its appropriate Sub-work. Subcontractor and its Sub-tier entities shall make its personnel aware of his/her appropriate safety precautions, including safety rules for the Project Site, and shall provide its personnel with the appropriate personal protection gear.
- All individuals must keep his/her work area(s) reasonably free of trash and debris while working. The individuals' work area(s) must be kept reasonably cleaned and tidied up at the end of each day, and Subcontractor and its Sub-tier entities will stop work at least one hour before ending its work day on Friday to clean up its portion of the work area(s). All visitors of the Subcontractor and its Sub-tier entities must keep the Project Site from trash and debris.
- While at the Project Site, all individuals will deal with each other in a courteous and respectful manner, including physical encounters, foul language, and verbal abuse. Failure to comply with this request shall be cause for immediate removal from the Project Site.
- The Project Site is only accessible to individuals working for companies that have valid contracts with the Contractor or the Owner to provide labor and material for the Project.

All other individuals must obtain permission from the Contractor or Owner before accessing the Project Site.

Should Subcontractor and its Sub-tier entities fail to abide by the above conditions and rules, Contractor will provide Subcontractor written notice within 72 hours to correct issue. If Subcontractor does not remedy the issue within 72 hours of written notice, Contractor has the right to remedy the situation, including back charge to the Subcontractor at its cost plus 20 percent if appropriate, and has the right to terminate this Subcontract with Subcontractor.

EXHIBIT D

LIST OF DOCUMENTS RELATING TO SUBCONTRACTOR'S SUB-WORK

The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated as follows:

- Subcontract - Agreement Between Contractor and Subcontractor;
- Agreement - Agreement Between Contractor and Owner;
- Contract Documents enumerated in the Agreement, which includes the General Conditions, the Special Conditions, and the Supplementary Conditions;
- Addenda, both pre-bid and post-bid, listed as follows:

<u>Addendum</u> <u>No.</u>	<u>Date</u> <u>Issued</u>	<u>Description</u>
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NA

- The Project Manual, which includes but not limited to specifications of the 16 construction division trades; - NO PROJECT MANUAL – ALL SPECIFICATIONS ARE ON THE PLANS
- The following drawings:

Drawings as stated below:

<u>Sheet</u> <u>Number</u>	<u>Sheet Title</u>	<u>Prepared By</u>	<u>Date of Sheet</u>
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