



CONSTRUCTORS

912 8th AVENUE SOUTH - NASHVILLE, TENNESSEE 37203 - TEL 615-259-1516 - FAX 615-259-9111 - www.BACAR.com

October 07, 2008

Attention:

Re:

SubContract No:

Attention Project Manager:

Enclosed is the original and one copy of your subcontract agreement for above referenced project. Upon receipt of this package please do the following within seven business days:

1. **Sign both copies.**
2. **Return both executed copies to BACAR Constructors, Inc. A fully executed copy will be returned to you.**
3. **Submit insurance certificate as specified in the contract.**
4. **Submit all MSDS information applicable to this project.**
5. **Submit a schedule of values.**
6. **Submit a list of all suppliers furnishing materials on this project with a contact name and phone number prior to issuance of your first pay request.**
7. **Fill out the enclosed tax identification form.**
8. **Your application for payment must be submitted on the attached BACAR Constructors, Inc. form directly to the Accounts Payable Department. Submitting this form to the Project Manager or Superintendent will only delay payment.**
9. **Submit all submittals required by the contract documents, including product information, shop drawings, and samples to our office within ten business days from receipt of this agreement.**
10. **NO PAYMENT WILL BE MADE UNTIL ALL THE ABOVE REFERENCED ITEMS ARE COMPLETED.**

We appreciate your cooperation in performing the above tasks in a timely manner. If there are any questions, please feel free to contact me.

BACAR Constructors, Inc.

Project Manager

Enclosures



SUB-CONTRACT AGREEMENT

912 8th Avenue South
Nashville, Tennessee 37203
(615) 259-1516 / fax 615-259-9111

Acct No.

THIS AGREEMENT, made by and between BACAR Constructors, INC., Davidson County, Tennessee, hereinafter referred to as "CONTRACTOR," and

Attention;
Phone:
Fax:

doing business as , of , , hereinafter referred to as "SUBCONTRACTOR," on

WITNESSETH:

That for the considerations, covenants and agreements hereinafter set forth in this agreement, the parties herein above named agree as follows:

1. Contractor has heretofore entered into a written contract (hereinafter referred to as "General Contract" or "Prime Contract") with , (hereinafter called "Owner"), whereby Contractor has obligated itself to furnish labor and materials to do certain work under a Project No. - - , , between said Contractor and Owner, which Prime Contract entered into on the ,. Said Prime Contract, together with all maps, drawings, General Conditions, any Supplemental Conditions, all plans and specifications, together with all amendments and addenda thereto, and any and all other documents referred to in said Prime Contract (collectively referred to as the "Contract Documents"), are by reference thereto made a part of this Subcontract Agreement as fully as though copies herein, to specifically include Article 5.3 of the General Conditions of the Contract for Construction AIA 201 (_____ Ed.).

2. Subcontractor hereby agrees to furnish all labor and materials and to perform all work in accordance with the Contract Documents and all undertakings between Contractor and Owner and Contractor agrees to pay Subcontractor for the performance of this Subcontract Agreement, as follows:

Item	Code	Description	Amount
<hr/>			

TOTAL SUBCONTRACT AMOUNT IS

3. Subcontractor agrees that it is bound and obligated to Contractor by the terms of the Contract Documents, and that Subcontractor assumes toward Contractor all obligations, liabilities and responsibilities that Contractor by those documents assumes toward the Owner.

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- (a) Contractor shall have the same rights and privileges as against Subcontractor as Owner has against Contractor.
 - (b) Subcontractor acknowledges that it has read this Subcontract Agreement and all Contract Documents and is familiar therewith and agrees to comply with and perform all provisions thereof applicable to Subcontractor, and that these provisions are incorporated herein by this reference as if set out in full.
 - (c) The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary and what is required by any shall be as binding as if required by all. Work not covered in the Contract Documents would not be required, unless it is consistent therewith and is reasonably inferable from the Contract Documents as being necessary to produce the intended results.
 - (d) All Work shall be performed pursuant to and in strict conformance with the General Contract, as administered and directed by Designer/Architect, whose decisions as to the true construction and meaning of the drawings and specifications shall be final. Subcontractor shall conform to and abide by any additional specifications, drawings, or explanations by Designer/Architect to illustrate the Work to be done. In the absence of a Designer/Architect, then the Owner or its designated representative will assume this position unless otherwise agreed.
 - (e) If there are any conflicts between the provisions of this Subcontract Agreement and the Contract Documents, this Subcontract Agreement will control.
4. (a) Subcontractor agrees to complete the several portions and all work required herein by the _____ time or _____ times as follows: Start work within **AS SCHEDULED** days after receiving written notice from Contractor. Subcontractor must place sufficient equipment and workmen on the job so that this _____ work will progress to the satisfaction of both the Contractor and all other Subcontractors so that all work on the project can be completed within the allowable contract working days.
- (b) If Subcontractor should, in the opinion of the Contractor, fail to comply with the provisions herein, for any reason whatsoever, Contractor may give written notice to Subcontractor and Subcontractor shall have three (3) working days within which to comply. If Subcontractor fails to comply within three (3) working days, for any reason whatsoever, Contractor shall have the right to (1) take over and use said materials on said job, and/or (2) employ necessary additional labor and equipment and furnish additional materials to insure compliance with the above and charge all of the expenses thereof against Subcontractor plus 5% for Contractor's overhead. Contractor may deduct said cost and expenses from funds due or to become due to Subcontractor under this Subcontract Agreement. If such funds are insufficient to pay or reimburse Contractor, Subcontractor shall be liable for such deficiency. The failure of Contractor to give notice to proceed as herein set out on one occasion shall not limit Contractor's rights in any further or other non-compliance, Contractor's right being a continuing one. This paragraph shall not be construed as a limitation and does not waive or restrict other rights Contractor has or may have in or growing out of the Contract Documents.
 - (c) Should Subcontractor be delayed in his Work by Contractor, Contractor shall owe Subcontractor only an extension of time for completion equal to the delay caused, and then only if a written claim for delay is made to the Contractor within 48 hours from the time of the beginning of the delay. Any damages for delay, including any liquidated damages charged to Contractor by Owner, which in Contractor's sole opinion were caused by Subcontractor, shall be deducted by Contractor from any sums due Subcontractor as liquidated damages and not as a penalty, subject, however, to the option of the Contractor to terminate said Subcontract for default as herein elsewhere provided.

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- (d) Contractor may at any time terminate Subcontract for either Contractor's or Owner's convenience and without cause. Upon receipt of written notice from Contractor of such termination for convenience, Subcontractor shall: (1) cease operation as directed by the Contractor in the notice, (2) take actions necessary, or that the Contractor may direct, for protection and preservation for the Work; and (3) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In case of such termination for convenience, Subcontractor shall be entitled to receive payment for work executed and costs incurred by reason of such termination. However, subcontractor shall not receive payment for overhead or profit on the work not executed or performed.
5. Subcontractor shall furnish all materials and perform all items of work covered by this Subcontract Agreement, and it shall not subcontract, sublet or assign any of the work covered by this Subcontract Agreement without first obtaining the express written permission of Contractor. Subcontractor will staff the project (with sufficient supervisory personnel and workmen) without interruption and to the full satisfaction of Owner, Architect and Contractor. Job delays caused by work stoppages of any nature shall be Subcontractor's sole responsibility and the Contractor may seek action under article 4, paragraph (a) and (b) contained herein to assure job progress. Subcontractor shall not assign any amounts due under this Subcontract Agreement without prior written approval of Contractor. If Subcontractor be a partnership, the death of any partner, or if Subcontractor be an individual, his death, shall be effective to terminate this Subcontract Agreement.
 6. Subcontractor shall make all claims promptly to Contractor for additional work and extensions of time, or otherwise, in accordance with the Contract Documents.
 7. In carrying out its work Subcontractor shall take necessary precautions to properly protect the finished work of other trades from damage caused by its operations.
 8. Subcontractor shall at all times keep the building and premises clean of debris arising out of the operations of this Subcontract Agreement. Unless otherwise provided, Subcontractor shall not be held responsible for unclean conditions caused by Contractor or other subcontractors.
 9. Subcontractor warrants that all materials and equipment furnished and incorporated by it in the project shall be new unless otherwise specified, and that all work under this Subcontract Agreement shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these standards may be considered defective. The warranty provided in this Paragraph shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.
 10. Subcontractor agrees that Contractor's equipment will be available to Subcontractor only at Contractor's discretion and on mutually satisfactory terms.
 11. Subcontractor shall furnish periodic progress reports on the work as mutually agreed, including information on the status of the materials and equipment under this Subcontract Agreement which may be in the course of preparation of manufacture.
 12. Subcontractor shall make any and all changes in the work from the Drawings and Specifications of the Contract Documents without invalidating this Subcontract Agreement when specifically ordered to do so in writing by Contractor. Subcontractor, prior to the commencement of such changed or revised work, shall submit promptly to Contractor written copies of the cost or credit proposal for such revised work in a manner consistent with the Contract Documents. All change orders (or extra work) must be specifically approved in writing by Contractor prior to the commencement of said work or Contractor shall have no



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responsibility of payment therefore.

- 13. Subcontractor shall cooperate with Contractor and other subcontractors whose work might interfere with Subcontractor's work, and shall participate in the preparation of coordinated drawings in areas of congestion as required by the Contract Documents, specifically noting and advising Contractor of any such interference.
- 14. Subcontractor shall cooperate with Contractor in scheduling and performing its work to avoid conflict or interference with the work of others.
- 15. Subcontractor shall promptly submit shop drawings and samples as required in order to perform its work efficiently, expeditiously and in a manner that will not cause delay in the progress of the work of the Contractor or other subcontractors.
- 16. Subcontractor agrees that all work shall be done subject to the final approval of the Architect. The Architect's decisions in matters related to artistic effect shall be final if consistent with the intent of the Contract Documents.
- 17. Subcontractor will require all his employees performing work at the project site to execute a statement similar to the following, prior to commencing work. Failure to execute such a form will result in the immediate removal of the employee from the project site.

WARNING!

All applicants for employment by BACAR Constructors, Inc. or

are hereby advised that any employee who commits any acts of vandalism, theft, or malicious mischief at a project site will be liable for his acts to the authorities, both civil and criminal, to the full extent of the Law of

VIOLATORS WILL BE PROSECUTED!

The facts set forth in my application for employment are true and complete. I understand that if employed, false statements on this application shall be considered sufficient cause for dismissal. I declare that I have read all stipulations regarding behavior during employment.

Signature of Applicant

Subcontractor shall be absolutely liable to Contractor for all costs incurred in repairs to or replace of any trade items damaged, lost, stolen, or destroyed by its employees while employed at this project site, including any times during which its employees are engaged in a riot, demonstration, civil commotion or strike.

- 18. Subcontractor shall be responsible for and save Contractor harmless from all expense incurred as a result of liens or claims of lien placed on the project, specifically including reasonable attorney's fees and court costs, whether caused by Subcontractor, any subcontractor or supplier thereof. In the event of lien, Subcontractor upon receipt of written notice shall have ten (10) days to

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have said lien removed or Contractor shall have all rights set forth herein, as well as all other rights which Contractor might have in law and/or equity.

19. Subcontractor shall indemnify and hold harmless Contractor and all of its agents and employees from and against all claims, damages, losses and expenses including attorney's fees and cost of litigation arising out of or resulting from the performance of Subcontractor's work under this Subcontract Agreement, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of Subcontractor or anyone directly or indirectly employed by it or anyone for whose acts it may be liable, regardless of whether it is caused in part by a party indemnified hereunder.
20. Subcontractor shall make no claims for extras or extensions of time or for damages which the Contractor is not permitted to make to the Owner and none shall be allowed the Subcontractor unless the same shall be allowed Contractor by Owner.
21.
 - (a) Subcontractor shall, on or before the **20TH** day of each month, file his estimate or pay application for materials and labor furnished for the preceding month, and upon said estimate or pay application being certified or accepted as correct by Owner, Contractor shall pay the amount covered by said estimate to Subcontractor within five (5) days after the receipt of money covered by said estimate paid by Contractor by Owner. It is expressly understood between Contractor and Subcontractor that Contractor's receipt of payment from the Owner is a condition precedent to any obligation of payment by Contractor to Subcontractor, and Contractor shall have no obligation to make payments to Subcontractor until payment is received from Owner. Subcontractor acknowledges that it has no right to pursue recovery for said sums unless and until Contractor receives payment from Owner for Subcontractor's portion of the work.
 - (b) Retainage in the amount of ten (10%) percent of each estimate shall be retained by Contractor and the same shall not be due and payable to Subcontractor until Subcontractor's full compliance with this contract and until five days following the receipt of the retainage by Contractor from Owner. Subcontractor will furnish a Release or lien, or other proof of payment satisfactory to Contractor, from all its subcontractors and/or material suppliers before any progress payment or final payment can be made.
 - (c) Contractor, at its sole election, may require the Subcontractor to furnish with its submissions for progress payments partial lien waivers from Subcontractor and its material suppliers as a condition for such payment. Contractor, at its sole election, may issue to Subcontractor and any material supplier or subcontractor of Subcontractor a joint check or may, at its discretion, pay directly claims for labor, materials and supplies used in the Work. In the event of such payment, Contractor shall charge to Subcontractor the amounts paid.
22. Subcontractor shall, before commencing operations, furnish to Contractor a payment and performance bond in favor of Contractor and Owner in an amount not less than \$ N/A, to be executed by corporate surety, acceptable to Contractor and Owner. Subcontractor shall also furnish Contractor two certificates from insurance companies or their duly authorized agents, certifying that Subcontractor is insured as follows:
 - (a) Workers Compensation Insurance that complies with the Workers Compensation Laws for the state of
 - (b) Automobile Insurance covering owned, non-owned and hired automobiles with combined single limits of at least \$1,000,000 per accident.
 - (c) Comprehensive General Liability Insurance covering premises operations and products / completed operations with limits of at least: \$1,000,000 per occurrence, \$1,000,000 Personal and Advertising Injury, \$2,000,000

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Products / Completed Operations Aggregate and \$2,000,000 General Aggregate. The policy shall contain no exclusions for Explosion, Collapse and Underground property Damage hazards. Contractor shall be named as an Additional Insured for work performed by Subcontractor under this Comprehensive General Liability policy.

(d) Installation Floater Insurance covering the full value of materials to be installed by Subcontractor.

The insurance policies listed above shall not be cancelled, non renewed or lapsed without first provided 60 days notice to Contractor.

23. Subcontractor warrants that it is in full compliance with all licensing requirements under applicable Federal, State and Local Law. Subcontractor acknowledges and understands that a failure to comply with said licensing requirements may, under applicable law, result in a waiver of or inability to collect any or all subcontract proceeds, despite the value of the work performed by Subcontractor. Subcontractor is required to abide by all Local, State and Federal Health and Safety Laws and Regulations and must cooperate 100% with Contractor and Project Superintendent. This also applies to all subcontractors of Subcontractor, all material suppliers and all common carrier making delivery to the job site. Subcontractor shall report within three days to Contractor any injury to any of Subcontractor's employees at the site.
24. (a) Subcontractor agrees to comply with all federal and state environmental regulations in its use, storage, or handling of any and all waste products, pollutants, refuse, and hazardous or toxic materials. Subcontractor agrees to dispose of, in a _____ manner that complies with all federal and state environmental requirements, any and all waste products, pollutants, _____ refuse, and hazardous or toxic materials that it uses, stores, handles, encounters or discovers in the course of performing the _____ Work. Subcontractor agrees to notify Contractor immediately of any violations of federal and state environmental requirements, as well as any release of a reportable quantity of the aforementioned materials.
- (b) Subcontractor, its successors and assigns, shall forever indemnify, defend, and hold harmless Contractor, its employees, _____ and agents, from any and all harm, damages, orders, claims, losses, liabilities, and demands arising from administrative or judicial proceedings in law or in equity, resulting or arising from
- (1) any hazardous material or activity by Subcontractor, its successors or assigns, occurring at the site of the Work or involving the performance of this Subcontract Agreement;
 - (2) the operation and enforcement of all applicable environmental laws;
 - (3) the violation of any applicable environmental laws by Subcontractor or its subcontractors.
- (c) Subcontractor hereby forever releases and covenants not to sue on any claim or cause of action it may now or hereafter have against Contractor, or its employees and agents, arising from and hazardous material or activity at the site of the Work. This indemnification provision shall survive the termination of this Subcontract agreement.
- (d) Subcontractor agrees and guarantees that it will not employ or install any materials which contain asbestos, except as permitted by applicable law. Subcontractor agrees to inform Contractor immediately upon the discovery of any _____ asbestos at the site of the Work. Subcontractor further agrees to remove by means that is in accordance with applicable law any materials which contain asbestos that were used or installed by Subcontractor in violation of this provision, and replace and repair any and all of the Work effected. All removal and repair is solely at Subcontractor's expense, and _____ Subcontractor agrees to indemnify, defend, and hold harmless Contractor and its employees and agents from any and all damages and claims resulting or arising from Subcontractor's use or installation of asbestos.

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25. Any and all claims and disputes relating to this Subcontract Agreement or the Contract Documents may, at the sole and exclusive discretion of Contractor, be subject to mediation to be held in Nashville, Tennessee. Any controversy or claim of which Contractor decides to submit to mediation shall be settled by mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, and judgment upon the award rendered by the Mediator(s) may be entered in any Court having jurisdiction thereof.
26. In the event it shall be necessary for Contractor to retain legal counsel to enforce any of its rights against Subcontractor hereunder, then Subcontractor shall be responsible for payment of all reasonable attorney's fees, and other costs and expenses of suits, if necessary.
27. In the event that any petition under the federal bankruptcy laws may be filed as to Subcontractor, either voluntary or involuntary, or any proceeding in the nature of a general creditors bill be filed as to Subcontractor, or any other act of insolvency be committed by Subcontractor, then Contractor may, at its option, consider this Subcontract Agreement breached by Subcontractor, immediately terminate same and exercise its remedies herein and all other remedies for breach which it may have in law or equity.
28. If any provision, term or condition of this Subcontract Agreement shall be determined to be void or otherwise unenforceable for any reason, that provision shall be severed from the remainder of Subcontract Agreement, and the remainder shall continue in full force and effect.
29. This Subcontract Agreement and its validity, interpretation and performance shall be governed by and under the laws of the State of Tennessee.
30. This Subcontract Agreement contains the entire understanding of the parties who hereby acknowledge that _____ there have been, and are, no representations, warranties, covenants or undertakings, other than those _____ expressly set forth herein. Subcontractor hereby warrants that it has read this agreement and understands the terms and provisions hereof.
31. Neither this Subcontract Agreement nor any provision hereof shall be amended or modified except by an agreement in writing duly signed by the parties sought to be charged. Any waiver by either party of any provision of this Subcontract Agreement shall not be controlling, nor shall it prevent or stop such party from thereafter enforcing such provisions. The failure of either party to insist in either one or more instances upon the strict performance of any of the terms or provisions of this Subcontract Agreement by the other party shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect.
32. Subcontractor will pay safety violation fines levied against contractor for _____ which subcontractor is responsible.



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IN WITNESS WHEREOF, the parties have hereunto signed their names:

SUBCONTRACTOR

CONTRACTOR:

By: _____

By: _____

BACAR Constructors, Inc.

Title: _____

Title: _____

Project Manager

WITNESS:

WITNESS:

By: _____

By: _____

Date: _____

Date: _____

City, State

City, State