



SUBCONTRACTOR AGREEMENT

Post Office Box 302075 | Austin, Texas 78703

Name of Company: _____ Contract Number: _____
Address _____ Date: _____
Phone _____

THIS SUBCONTRACT, dated, by and between (Lossen Bros. Construction, Inc.) (Austin), Texas (Contractor) and _____ (Subcontractor)

WITNESSETH:

WHEREAS, Contractor has heretofore entered into a contract to perform certain labor and furnish certain materials for the erection, construction and completion of: _____ (Project) as per plans and specifications (Contract), which Contract and all conditions and documents referred to therein and made a part thereof including, but not limited to all plans, specifications and other documents including all general conditions, special conditions, supplemental conditions, addenda and other documents covering the project are herein called "Contract Documents"; and

WHEREAS, the parties hereto desire to contract with reference to a part of said Project;

NOW, THEREFORE, for and in consideration of the mutual and reciprocal obligations herein contained, it is agreed as follows:

1. (a) Subcontractor shall furnish and pay for all necessary labor, materials, equipment, supervision, fees, permits, licenses, insurance and taxes and perform, in and on the Project, in a good and workmanlike manner and in strict compliance with all of the Contract Documents and all amendments and additions thereto and the provisions of this Subcontract, all of the work necessary or incidentally required for the completion of all of the following (herein called "work"):

Time is of the essence on this project. Subcontractor acknowledges the fact and agrees to work within the time allotted for this scope of work by (Lossen Bros. Construction, Inc.). Work will be performed in the areas and at times, including make up of lost days, as directed by the Project Manager. Subcontractor

shall work Saturdays, if required, to make up lost days due to weather, and provide necessary equipment to maintain job progress. This includes removal of all trash and rubbish caused by this work away from the premise at least once per week.

Subcontractor is herewith assigned the full responsibility of complying with the Immigration Reform and Control Act of 1986 and all applicable health and safety standards, both Federal and State, pertaining to its work, personnel and equipment, for payment of any fine due to Subcontractor responsibility whether assessed sub or prime contractor, and replacement of all safety devices, removed or destroyed by Subcontractor personnel. Subcontractor is herewith assigned the full responsibility of providing and maintaining floor and roof protections. Subcontractor agrees to abide by (Lossen Bros. Construction, Inc.) Safety Program and Policy Statement on Sexual Harassment. Subcontractor shall provide to Contractor design calculations, prepared by a competent person, of the adequacy of all OSHA requirements pertinent to the work.

Contractor agrees to pay Subcontractor for its said work the sum of \$0.00, subject to additions and deductions as provided herein and in the Contract Documents, and such sum shall be paid by Contractor to Subcontractor in monthly installments as payments are received from Owner and as the work progresses and a final payment as provided below.

The Work of This Subcontract Shall Include, but Not Limited To, The Following:

Exclusion:

2. The Contract Documents are incorporated herein and made a part hereof by this reference. Subcontractor represents that it has examined and is familiar with the Contract Documents, and all such documents are available for examination in Contractor's office. Subcontractor shall be bound to Contractor by all of the terms and provisions of the Contract Documents and assumes toward Contractor all obligations and responsibilities which Contractor under such documents assumes toward Owner with respect to Subcontractor's work hereunder. Subcontractor agrees not to violate any terms, covenant, or condition of the Contract Documents and will commit no act that would cause Contractor to be in breach of the Contract Documents. This Subcontract and the provisions of the Contract Documents are intended to supplement and compliment each other and shall, where possible, be thus interpreted. If, however, any provision of this Subcontract irreconcilably conflicts with a provision of the Contract Documents, the provision imposing the greater duty or obligation on the Subcontractor shall govern. Although drawn by Contractor, this Subcontract shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably and neither more strongly for nor against either party to it. If, the Owner, for any reason authorized under the Contract Documents, and which reason is not solely based upon the non-performance by the Contractor of Contractor's obligations under the Contract Documents, terminates the contract between Owner and Contractor, Contractor shall have the right to terminate this Subcontract. In the event Contractor terminates this Subcontract as provided above, Subcontractor shall be entitled to recover from Contractor, upon the payment therefore from Owner, any direct cost for labor and material incurred by Subcontractor in the prosecution of the work under this

Subcontract prior to the date of termination of this Subcontract. Subcontractor shall not be entitled to recover any further amounts from Contractor as a result of the termination of this Subcontract including, but not limited to, lost profits.

3. All work by Subcontractor shall be done under the direction of and to the satisfaction of Contractor and Owner. Owner's decisions, when accepted by Contractor, as to the correct construction, meaning and requirements of the specifications and drawings shall be final and binding on Subcontractor. Subcontractor shall comply with any additional specifications, drawings or explanations furnished by Owner or Contractor to detail and/or illustrate the work to be done.
 4. (a) Time is of the essence of this agreement, and Subcontractor shall commence and perform all of its work and all of its obligations hereunder with diligence and dispatch and in such manner and at such times as not to hinder or delay the work of Contractor or any other subcontractor.
(b) Without limiting the foregoing, Subcontractor:
 - (I) Shall promptly submit all shop drawings and samples, data and specifications as to materials to be used as may be required by Contractor, Owner or the Contract Documents so as not to delay any work of Contractor, Owner or any other subcontractor;
 - (II) Shall keep informed as to the progress of the Project and shall have all required workmen and equipment available and all necessary materials fabricated, assembled, delivered and ready for installation so as to commence and prosecute its work as soon as the progress of the Project will permit, and when requested to do so, shall furnish proof satisfactory to Contractor that all preliminary arrangements have been made to assure Subcontractor's compliance herewith;
 - (III) Shall commence its work at the earliest time the progress of the Project will permit and in any event not later than three (3) days after written notice to do so from Contractor; shall prosecute its work, including all changes therein and additions thereto, rapidly, continuously and uninterruptedly, and shall complete all of its work, including all changes therein and additions thereto, so as not to interfere with or delay the completion of the Project by the date set forth in notice to proceed or the Contract Documents or such earlier date as the actual progress of the work of Contractor or other subcontractors on the Project will permit;
 - (IV) Shall cooperate and coordinate its work with Contractor and other subcontractors to avoid any delay of or interference with any work of Contractor or other subcontractors;
 - (V) Shall prosecute its work in such sequence and at such locations as may be directed by Contractor to maintain and expedite the progress of the project as a whole;
 - (VI) In agreeing to complete its work as herein provided, represents that it has taken into consideration and made allowance for all ordinary delays and hindrances incidental to its work, including but not limited to delays of carriers, delays in fabrication or delivery of materials or equipment, unavailability of workmen and changes, additions and deletions to or from its work or the work of others, and that it is cognizant of the fact under the Contract Documents, Contractor is required to complete the Project within a specified time and may be liable for damages for failure to do so; and
 - (VII) Shall be liable to Contractor for all extra costs and expenses or damages of any nature whatsoever which may be incurred by it as the result of any delay or hindrance of the Project or the work of Contractor or any other subcontractor by Subcontractor, and, without limiting the foregoing, if any delay or hindrance of its own work or the work of contractor or any other subcontractor by Subcontractor shall prevent completion of the Project within the time provided in the Contract Documents, the time provided b Contractor's Schedule as same may be amended from time to time, or the time permitted by the actual progress of the Project, whichever is earliest, so as to render Contractor liable for damages to any other party, Subcontractor shall be liable to Contractor for the entire amount of such damages and for all other extra costs and expenses incurred by Contractor as a result of such delay or hindrance.
 - (c) Should the Subcontractor be delayed, obstructed, hindered or interfered with in the commencement, prosecution or completion of the work (hereinafter referred to as "Delay of the Work") by any cause, including but not limited to any act, omission, neglect, negligence or default of Contractor or of anyone employed by Contractor, or by any other contractor or subcontractor on the Project, or by the Owner or their contractor, subcontractors, agents or consultants, or by damage caused by fire or other casualty or by the combined action of workers or by governmental directive or order in no manner chargeable to the Subcontract, or by any extraordinary conditions arising out of war or government regulations, or by any other cause beyond the control of and not due to any fault, neglect, act or omission of the Subcontractor, its officers, agents, employees, subcontractors or suppliers, then the Subcontractor shall be entitled to an extension of time for a period equivalent to the time lost by reason of any and all of the aforesaid causes; provided, however, that the Subcontractor shall not be entitled to any such extension of time unless the Subcontractor (1) notifies Contractor in writing of the cause or causes of such Delay of the Work within forty-eight (48) hours of the commencement thereof and (2) demonstrates that it could not have anticipated or avoided such Delay of the Work and has used all available means to minimize the consequences thereof.
The Subcontractor agrees that it shall not be entitled to nor claim any cost reimbursement, compensation or damages for any Delay to the Work except to the extent that Contractor is entitled to corresponding cost reimbursement, compensation or damages from the Owner under the Contract Documents for such Delay to the Work, and then only to the extent of the amount, if any, which Contractor, on behalf of the Subcontractor, actually receives from the Owner on account of such Delay to the Work.
 - (d) Should the Subcontractor cause damage to the work or property of Contractor or of any separate subcontractor on the Project, or to other work on the site, or delay or interfere with Contractor's or the Owner's work on ongoing operations or facilities or adjacent facilities or said separate subcontractor's work, the Subcontractor shall be liable for the same; and, in the case of another subcontractor, the Subcontractor shall attempt to settle said claim with such other subcontractor prior to such other subcontractor's institution of litigation or other proceedings against the Subcontractor.
If such separate subcontractor or the Owner sues Contractor on account of any damage, delay or interference caused or alleged to have been so caused by the Subcontractor, Contractor shall notify the Subcontractor, who shall defend Contractor in such proceedings at the Subcontractor's expense or Contractor shall have the option, but not the obligation, to provide its own defense and Subcontractor shall pay to Contractor on demand, all attorney's fees, costs and expenses incurred by Contractor in asserting said defense. If any judgment or award is entered against Contractor, the Subcontractor shall satisfy the same and shall reimburse Contractor for all damages, expenses, attorney's fees and other costs, which Contractor incurs as a result thereof.
Should a separate subcontractor cause damage to the Work or to the property of the Subcontractor or cause delay or interference with the Subcontractor or cause delay or interference with the Subcontractor's performance of the Work, the Subcontractor shall present directly to said separate subcontractor any claims it may have as a result of such damage, delay or interference (with an information copy to Contractor) and shall attempt to settle its claim against said separate subcontractor prior to the institution of litigation or other proceedings against said separate subcontractor.
 - (I) In no event shall the Subcontractor seek to recover from Contractor, and the Subcontractor hereby warrants to Contractor that it will not seek to recover from them, or any of them, any costs, expenses (including, but not limited to, attorney's fees) or damages or other losses incurred by the Subcontractor as a result of any damage to the Work or property of the Subcontractor or any Delay to the Work or property of the Subcontractor or any Delay to the Work caused by any separate subcontractor.
 - (II) In order to carry out the intent of this Article 4, Subcontractor agrees that privity of contract exists between Subcontractor and any other subcontractor, as defined herein, for the purpose of disposing of the liabilities or obligations which are imposed upon said parties to each other hereunder; and Subcontractor agrees to accept service of process and to sue and be sued in Subcontractor's own name in any litigation which may arise hereunder between Subcontractor and any separate subcontractor.
5. Subcontractor shall at all times, man the Project with competent and adequate supervision and a sufficient number of skilled and competent workmen and sufficient equipment, materials and supplies to perform its work as herein provided. Subcontractor shall, upon written instructions to do so by Contractor, remove any of its employees from the Project to whose employment thereon Owner or Contractor may object.
6. Subcontractor shall be bound by and shall accept Contractor's allocations of storage and working space on and in the Project.

7. Subcontractor shall, at all times, keep the building and premises free from rubbish and debris caused by its operations and upon completion have its work free and clear from all obstructions and hindrances. Whenever in the opinion of Contractor the building and premises are not free from such rubbish, debris, obstruction and hindrances, Contractor may, after reasonable notice to Subcontractor, remove same and charge the cost thereof to Subcontractor.
8. In performing its work, Subcontractor shall take all necessary precautions to protect the work of others from damage caused by its operations. Subcontractor shall clean, patch, repair or replace, at its own cost, any work soiled or damaged by Subcontractor as may be required by Contractor, and if it fails to do so after reasonable notice from Contractor, Contractor shall have the right to have such work done and charge the cost thereof to Subcontractor. If Subcontractor deems that surfaces of work to which its work is to be applied or affixed is unsatisfactory or unsuitable, written notification of said condition shall be given to Contractor before proceeding or taking remedial action, otherwise Subcontractor shall be fully and solely responsible and liable for any and all expense, loss, or damages resulting from said condition and Contractor shall be relieved of all liability in connection therewith.
9. Subcontractor shall upon notice from Contractor promptly correct or replace all of its work and materials which may be found by Contractor or Owner to be defective, unsound or not in compliance with the Contract Documents and shall correct or replace all other work which may be damaged by Subcontractor in so correcting or replacing its work. Subcontractor shall not remove from the site of the Project any materials delivered to Subcontractor for use or installation hereunder except work or materials so required by Contractor or Owner to be replaced.
10. Subcontractor shall effectually secure and protect its work and shall bear, be liable for and correct any and all damage to or loss of its work or materials incorporated in the Project, which may occur at any time prior to final acceptance of Subcontractor's work. Contractor shall not be liable or responsible for any damage to Subcontractor's work, materials or property unless damage shall be solely and proximately caused by the direct negligence of Contractor, itself.
11. Should Subcontractor, at any time, in the opinion of the Contractor refuse or neglect to supply a sufficiency of properly skilled workmen including without implied limitation failure to apply such workmen due to strikes, picketing, slowdown, or any labor dispute or materials, tools or equipment in proper quality or quantity, or fail in any respect to prosecute the work or any separate portion thereof with dispatch and diligence, or fail in the performance of any of the agreements on its part contained herein, or become insolvent, or should any bankruptcy or receivership petition be filed by or against Subcontractor, Contractor may after three (3) calendar days written notice to Subcontractor of such refusal, neglect or event, provide any such labor, materials, tools or equipment and deduct the cost thereof from any money due or thereafter to become due Subcontractor under this Subcontract, and/or Contractor may also terminate Subcontractor's right to proceed with its work or such part of its work as to which such defaults or event have occurred. Contractor's "cost and damages" shall include, but not be limited to, Contractor's job extended overhead, home office overhead and profit, Contractor's legal fees, any liquidated damages payable by Contractor, and the usual and customary rental charges used by Contractor to complete the work. In the event of such termination, Contractor, for the purpose of completing the work, may enter upon the Subcontractor's premises and take possession of all materials, equipment, tools and appliances thereon belonging to Subcontractor and required to complete its work hereunder, take possession of and use all materials, supplies, equipment and tools of Subcontractor on the site of the Project, and take and require delivery from Subcontractor's fabricators and suppliers, upon payment therefor, all materials ordered by Subcontractor for incorporation in the Project and not previously delivered (all rights of Subcontractor under its agreements with such fabricators and suppliers being assigned to Contractor for such purpose); and Contractor may finish the work by whatever method Contractor may deem expedient, including the hiring of another subcontractor or subcontractors as Contractor may deem advisable without obtaining competitive bids. In any such event, Subcontractor shall not be entitled to receive any further payments until the work is finished, and if the unpaid balance of the amount to be paid under the provisions of this Subcontract shall exceed the expense of finishing the work, plus such other cost and damages as Contractor may incur by reason of the refusal, neglect, default or failure on Subcontractor's part, such excess shall be paid by Subcontractor; however, if such expense, cost and damages, as defined above, shall exceed such unpaid balance, Subcontractor and its sureties, if any, shall be liable for and shall pay Contractor such difference promptly.
12. Subcontractor shall and hereby does warrant and guarantee all of its work to Contractor in the manner, to the extent and for the period or periods of time the Contractor is required to warrant or guarantee such work to Owner by the Contract Documents, and shall furnish when due all written warranties and guarantees and all tests, performance and other reports and data required by the Contract Documents with respect to such work. In addition to and without limitation of any warranty or guarantee provided by law or the Contract Documents, Subcontractor (I) shall and hereby does warrant that all materials and equipment furnished and incorporated by it in the Project shall be new (unless otherwise specified) and in all respects in complete compliance with the Contract Documents and (II) shall and hereby does guarantee all of its work against defects in materials or workmanship for a period of one (1) year from the date of final acceptance of its work. Subcontractor shall promptly after three (3) calendar days written notice thereof make good any breach of any warranty or guarantee of or any defect in its work or materials which may develop within the applicable period of time and repair or replace any other work damaged by Subcontractor in doing so, all to the satisfaction of Contractor and Owner; and if Subcontractor fails to do so, Contractor shall have the right to do so at Subcontractor's expense. Upon signing and accepting this Subcontract, Subcontractor hereby expressly represents and agrees that any and all expressed and implied warranties, including the implied warranties of merchantability and fitness for a particular purpose which pertain to the material incorporated by it in the Project are in full force and effect and that said warranties have not been, nor will the be, disclaimed or limited by Subcontractor.
13. Subcontractor shall promptly pay for all materials, supplies and equipment purchased for incorporation in or use on the Project and shall pay all workmen employed thereon each week. Subcontractor shall comply with and pay any wage scales provided with respect to its work and employees and all taxes and contributions for unemployment compensation or insurance, retirement or pension benefits, disability benefits, withholding taxes, social security taxes and similar matters, by the Contract Documents by United States law or State law, or by this Subcontract. Subcontractor shall upon request of Contractor furnish Contractor weekly with signed receipts from its workmen showing the date of payment, amount paid, number of hours paid for days worked, classification of the labor paid for, and the hourly rate paid, and/or copies of Subcontractor's payroll duly verified by Subcontractor.
14.
 - 14.1 Contractor shall not be liable for any loss or casualty incurred or caused by Subcontractor. Subcontractor shall maintain full and complete insurance on the Work until final acceptance of the Project. Subcontractor assumes all risk of loss for all of its Work regardless whether Subcontractor had previously been paid for the Work, and shall restore or repair any of Subcontractor's Work or material caused or resulting from casualties, harm, or risks not insured under any standard casualty or builder's risk policy which might be provided by Contractor.
 - 14.2 As a further part of Subcontractor's overall obligation to protect others and hold Contractor harmless from all liabilities, Subcontractor shall obtain, before commencement, and maintain until final acceptance of the Project, full insurance coverage as may be specified in this Agreement or any contract or document incorporated herein, and in amounts not less than those so specified. All insurance shall be procured at Subcontractor's expense and shall have Owner and Contractor listed as an additional insured. All insurance shall be maintained in the form, coverages and limits and with a company satisfactory to Contractor and having a Best's rating to A+. All certificates of insurance must be filed with Contractor five (5) days prior to scheduled commencement of the Work. See attached EXHIBIT "C" for a sample of the certificate of insurance requirement. In no case, however, shall Subcontractor procure and maintain less than the following insurance coverages:

Workmen's Compensation including Occupational Disease, and Employer's Liability Insurance with limits of \$1,000,000 will be furnished by the Subcontractor. Subcontractor will promptly submit information to General Contractor prior to start of work on site. Comprehensive General Liability Insurance including coverage for Explosion, Hazardous Material, Collapse or Underground.

Liability Insurance, and Completed Operations Coverage with minimum limits of:
Commercial General Liability

\$1,000,000	Each Occurrence
\$2,000,000	General Aggregate (per project)
\$2,000,000	Products/Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury

Any exceptions to the coverage limits stated herein must be approved in advance in writing by an officer of Contractor. Policy should include contractor as additional insured as primary and non-contributory including ongoing and completed operations, and a waiver of subrogation

(3) Other insurance, as may be required by law, any contract document or contractor at any time, including but not limited to Business Automobile Liability Insurance with a minimum limit of \$1,000,000. Both the Automobile and General Liability policies referenced above shall require that Contractor be named as Additional Insured. All policies referenced above shall furnish with a Waiver of Subrogation and 30 day written Notice of Cancellation in favor of the contractor.

14.3 Subcontractor shall assume absolute responsibility for requiring the same insurance from its subcontractors and suppliers. No policy will permit cancellation without thirty (30) days prior written notice of cancellation to Contractor. Failure of Subcontractor to maintain complete insurance may be deemed a material breach by Contractor allowing Contractor to terminate this Agreement, or to provide insurance at Subcontractor's sole expense; in neither case, however, shall Subcontractor's liability under this Agreement be lessened.

14.4 To the fullest extent permitted by law, Subcontractor is liable for and will defend, indemnify, hold harmless and reimburse Contractor, its surety, Owner, Architect (any other design professionals retained by either Owner or Architect), their representatives and employees, officers, agents, invitees and licensees of the same (collectively "Indemnitees"), against:

(a) all claims arising out of any breach of this Subcontract by the Subcontractor, or a breach of any agreement relating to the Work or any Work done by any of its subcontractors, or any negligent act, gross negligence, error or omission by Subcontractor or any of its subcontractors, or any patent or copyright infringement arising out of the performance of this Subcontract by Subcontractor or any of its subcontractors;

(b) all liabilities, claims, losses, demands, causes of action, including, but not limited to, legal fees, consultant/expert fees and court/arbitration costs, which may be asserted against Contractor by Owner or any third party resulting from, or arising out of, or occurring in connection with the failure of Subcontractor, or any of Subcontractor's suppliers or lower-tier subcontractors, to perform all work required within the scope of this Subcontract in strict accordance with the Contract Documents.

(c) all liabilities, claims and demands for personal or bodily injury (including death) or property damage (real, personal, tangible or intangible) to any of the Work of Subcontractor or any other work or property of any other party, including injury or death to Subcontractor's employees, together with any resulting costs, legal fees and expert/consulting fees, arising out of or caused by any act or omission of the Subcontractor or any of its subcontractors, their agents or employees;

(d) all liens, or claims of rights to enforce liens, against the Project and all claims against Contractor or its surety arising out of any work performed or to be performed or labor, services or materials furnished or to be furnished under this Subcontract by any Subcontractor or any of its subcontractors;

(e) all costs, damages, expenses and liabilities Indemnitees may sustain by reason of the failure of Subcontractor to indemnify any of the Indemnitees as required herein and elsewhere in the Subcontract; and

(f) all other costs, damage, expenses and liabilities (including all resulting costs, legal fees and expert/consultant fees) for which Contractor is liable to Owner under its Agreement, or to any third party who may be affected by construction of the Project on account of or in any way related to Subcontractor's Work.

14.4.1 THE ABOVE REFERENCED DEFENSE AND INDEMNIFICATION OBLIGATION SHALL APPLY EVEN THOUGH THE MATTER IS THE RESULT OF THE CONCURRENT NEGLIGENCE OF ANY OR ALL OF THE INDEMNITEES (INCLUDING OTHER SUBCONTRACTORS OF CONTRACTOR) TO THE EXTENT (A) THE CLAIM INVOLVES BODILY INJURY OR DEATH OF AN EMPLOYEE OF SUBCONTRACTOR, ITS AGENTS OR ANY OF ITS SUBCONTRACTORS OF ANY TIER OR (B) APPLICABLE LAW ALLOWS DEFENSE AND INDEMNITY FOR CONCURRENT NEGLIGENCE OF THE INDEMNITEES FOR OTHER CLAIMS FOR DAMAGES OR INJURY TO PERSONS OR PROPERTY IN ADDITION TO THOSE SET FORTH IN SUBPART (A) ABOVE.

14.4.2 Contractor has a right to withhold from any payments due or to become due Subcontractor an amount which, in Contractor's opinion is reasonable to protect Contractor from any claims or lawsuits subject to this indemnification paragraph. These rights are in addition to Contractor's other legal and equitable rights.

14.4.3 The indemnification obligation under this provision and this Subcontract, or any other indemnification obligation under any other subparagraph of this Subcontract, are not limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Subcontractor, or any of its subcontractors, under applicable Worker's or Workmen's Compensation Acts, Disability Benefit Acts, Employee Benefit Acts nor by any requirement for insurance, or the furnishing of insurance by Subcontractor or any of its subcontractors, under this Subcontract. Subcontractor shall, however, maintain insurance with respect to this indemnification obligation and shall, in addition, name Contractor as an additional insured which coverage for Contractor, as an additional insured, shall not be affected by the enforceability or applicability of the above-referenced indemnity obligation.

14.4.4 Neither final payment by Contractor nor acceptance of the Work performed by Subcontractor shall constitute a waiver of the foregoing indemnities; and, notwithstanding any other provision contained in this Subcontract, the provisions of this article shall survive the termination of the Subcontract for any reason whatsoever.

14.4.5 The above-referenced defense and indemnification obligations shall not require Subcontractor to defend and indemnify Architect or other design professionals (or their representatives, employees, agents, invitees and licensees) against claims arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, unless required by the agreement between Owner and Contractor.

14.4.6 The indemnities agreed to by Subcontractor herein expressly include all costs of litigation, attorney's fees, expert/consultant fees, settlement costs and reasonable expenses in connection with the litigation or arbitration whether or not the claims made for loss, injury, damage or property damage are valid or groundless, and regardless of whether the defense of Contractor is maintained by Contractor or assumed by Subcontractor. Subcontractor's duty to defend Indemnitees is as follows:

(a) Indemnitees shall have the right to select counsel of their own choosing to defend them and such selection shall not lessen or otherwise limit Subcontractor's obligations hereunder. Contractor at its sole discretion and at its sole option may defend any or all of the indemnified claims or tender to Subcontractor the defense of any or all of the indemnified claims. Upon such tender by Contractor to Subcontractor, Subcontractor shall be bound and obligated to assume the defense of Contractor in the indemnified claims, including the settlement negotiations, and shall pay, liquidate, discharge and satisfy any and all settlements, judgments, awards or expenses resulting from or arising out of the indemnified claims without reimbursement from Contractor.

(b) It is understood and agreed by Subcontractor that if Contractor tenders the defense of an indemnified claim to Subcontractor and Subcontractor fails or neglects to assume the defense thereof, Contractor may compromise and settle or defend any such suit or action, and Subcontractor shall be bound and obligated to reimburse Contractor for the amount expended by it in settling or compromising any such claim, or in the amount expended by Contractor in paying any judgment rendered therein, together with all reasonable attorneys' fees and cost of litigation incurred by Contractor by reason of its defense, settlement or compromise of such indemnified claims.

14.4.7 The indemnities agreed to herein are to be construed in compliance with the applicable law, including Chapter 151 of the Texas Insurance Code. If any one or more sections, clauses, sentences or parts of this Subcontract shall for any reason be questioned and adjudged invalid, such judgment shall not affect, impair or invalidate the remaining provisions of Subcontract, but shall be confined in its operations to the specific provisions so held invalid, and inapplicability or invalidity of any such section, clause, provision or part shall not be taken to affect or prejudice in any way the remaining part or parts of this Subcontract.

15. All of said policies of insurance shall also cover and include all contractually assumed liability of Subcontractor under this Subcontract. Subcontractor's liabilities under this Subcontract shall not in any way be limited by or to the limits provided in or the risks covered by said policies of insurance. Contractor shall be named as additional-insured in each of such policies, and each of the insurers under each of such policies shall waive all rights of subrogation, by assignment, loan receipt or otherwise, against Contractor. Each of such policies shall provide that same shall not terminate or be changed or cancelled until thirty (30) days after Contractor has received written notice of such termination, cancellation or change. Subcontractor shall not later than ten (10) days after execution hereof deliver to Contractor certificates of insurance and copies of policies evidencing all of such insurance and shall not, in any event, commence any of its work on the Project until it has purchased all of such insurance and delivered such certificate and copies of policies to Contractor. Acceptance by Contractor of a Certificate of Insurance provided by the Subcontractor shall not relieve the Subcontractor of its obligation to provide the insurance and policies with coverages and limits as required in the Contract Documents and this Subcontract even if said insurance, policies, limits and coverages are not shown in the Certificate of Insurance. Subcontractor acknowledges that Contractor may rely and will rely upon the Subcontractor carrying all insurance and policies with limits and coverages as reflected in the Certificate of Insurance even if said insurance, policies, limits and coverages are not required by the Contract Documents or this Subcontract. The Contractor and the Subcontractor hereby acknowledge and agree that:
- (a) the Subcontractor meets the qualifications of an independent contractor under Article 8308, Section 3.05 of the Texas Workers' Compensation Act (the "Act");
 - (b) the Subcontractor is operating as an independent contractor as that term is defined under Article 8308, Section 3.05 of the Act;
 - (c) the Subcontractor assumes the responsibilities of an employer for the performance of work including, but not limited to, the work required to be performed by Subcontractor under this Subcontract of the Project; and
 - (d) the Subcontractor and the Subcontractor's employees are not employees of the Contractor for the purposes of the Act. Subcontractor shall be responsible for obtaining an Installation Floater and/or Builder's Risk insurance policies. Such policies shall be obtained to cover the Subcontractor's work and the deductible payable under any other Builder's Risk Policy which may be provided by or on behalf of the Contractor from any amount that may be payable to the Subcontractor. The Subcontractor shall provide to the Contractor, upon demand, a Certificate of Insurance, which certifies that the Subcontractor has obtained the Installation Floater and/or Builder's Risk policies. Any insurance policy provided by the Subcontractor shall be primary to any other insurance policy provided for the Project by the Contractor. Nothing in this paragraph shall limit any rights of the Contractor or its insurance carriers to subrogation.
16. Changes in, additions to and deletions from Subcontractor's work hereunder may be made by Contractor without invalidating this Subcontract and shall be performed by Subcontractor when ordered in writing to do so by Contractor; provided that no such changes, additions or deletions shall be made except upon Contractor's written order. Except as may be specifically and expressly agreed in writing to the contrary, Contractor shall not be liable to Subcontractor for any changes in or additions to Subcontractor's work or any extra costs incurred by Subcontractor which may be ordered by or result from any decision of Owner in and amount in excess of that which Subcontractor or Contractor shall recover and collect therefor from Owner. All claims by Subcontractor for changes in or additions to its work or for extra costs, and subject to the other provisions of this Subcontract, all claims for delay, shall be made in accordance with the Contract Documents; provided, however, that Subcontractor shall present its claims to Contractor within such time as will provide Contractor a reasonable time (not less than three (3) working days) to review such claims and present same to Owner within the time limits provided in the Contract Documents. If Subcontractor fails so to present any of its claims to Contractor, same shall be conclusively deemed to have been waived. If the Contractor request that the Subcontractor provide to the Contractor a price for which the Subcontractor will perform work under a change requested by the Owner, the Subcontractor shall deliver the price to the Contractor in writing within fifteen (15) days after the date the Contractor makes the request for a price to the Subcontractor. If within the foregoing described fifteen (15) day period, the Subcontractor fails or refuses to give the Contractor a price for which the Subcontractor will perform work under a change requested by the Owner, the Contractor shall be entitled to insert in its change order with the Owner a price for which the Subcontractor will perform the work covered by the request for the price inserted by the Contractor in the change order.
17. (a) Within ten (10) days from Subcontractor's execution hereof and before any payments are made hereunder, Subcontractor shall submit to Contractor (I) a true and correct list of all subcontractors and suppliers from whom Subcontractor intends to obtain services, labor, materials and/or equipment in connection with the Project and (II) a fair and proper itemized schedule of labor and materials costs and values for all of the items of work included in this Subcontract, which schedule shall be supported by such evidence as to its correctness as Contractor may require and, except as is hereinafter provided, shall when approved by Contractor, be used as a basis for computation of partial payments hereunder. If, however, the Contractor should at any time, determine that the schedule of values contains an error or does not accurately reflect the value of the work, or portions thereof, therein described, Contractor shall have the right to revise the schedule of values to accurately reflect the value of each portion of the work and the revised schedule of values shall be utilized as a basis for

computation of partial payments thereafter.

(b) On or before the 20th day of each month, or otherwise as may be directed by the Contractor, Subcontractor shall present to Contractor an estimate of the work done by it prior to the date of the estimate for payment and subsequent to the estimate for payment last presented by the Subcontractor. Partial payments under such monthly estimate will only be made to Subcontractor each month in the amount equal to ninety percent (90%) of the value, computed on the basis of the price set forth in Paragraph 1(b) above, of that portion of Subcontractor's work then complete, less the aggregate or previous payments. If the estimate is acceptable to the Contractor and is received by the Contractor on or before the 20th day of the month, the amount approved by the Contractor will be included in its next application for payment submitted to the Owner. Regardless of any conflicting or contrary provision in the Contract Documents, it shall be a condition precedent to any partial payment becoming due to Subcontractor that Contractor has received, from the Owner, payment attributable to the Subcontractor's partial performance. Payments due to Subcontractor attributable to Subcontractor's partial performance shall be payable by Contractor to Subcontractor no earlier than the fifth (5th) day after Contractor receives payment from the Owner attributable to Subcontractor's partial performance or the fifteenth (15th) day of the month, whichever day or date occurs later. The risk of the Owner's non-payment is expressly borne by each party hereto to the extent that Owner does not pay for its work or materials. If said condition precedent has not been met, regardless of the reason therefore, such partial payment shall not be due Subcontractor. No progress payments will be disbursed until such time as all of the requirements under this Subcontract have been fulfilled. If the Contractor receives payment from Owner for less than the full value of the work performed or the materials delivered to the Project site, the amount due to Subcontractor shall be reduced accordingly. In no event, however, regardless of the amount received by Contractor from Owner for the work covered by this Subcontract, shall Subcontractor have any claim against Contractor for any amount in excess of the amount covered by the Subcontractor's estimates for payment that have been approved by Contractor and which estimates actually reflect the work then completed. In the further event, however, that the work therefore performed by Subcontractor is faulty or defective, or if Subcontractor has failed to timely perform, Contractor shall be entitled to retain from such payments sufficient funds with which to cure or remedy such faulty or defective work or to compensate Contractor for any losses or damages incurred as a result of delays due to Subcontractor's failure to timely perform, all of which funds shall be held by Contractor until such faulty or defective work is cured and remedied, or Contractor's damages are fully and finally ascertained. If there is a dispute as to the amount claimed by Subcontractor for payment, Subcontractor may be required to substantiate its statement by copies of payrolls, suppliers' invoices and other similar evidence, but in any event, Contractor's determination as to the amount to be paid shall be final and binding upon Subcontractor. No payment will be made to Subcontractor for the preparation of shop drawings or samples until such time as a substantial amount of the work covered by this Subcontract has been performed on the Project. It shall be within the Contractor's sole discretion to determine when the Subcontractor shall be compensated for shop drawings or samples.

(c) If Subcontractor fails to perform under this Contract or fails to provide sufficient men and materials to diligently complete the work covered by this Subcontract and if Contractor is required to either complete the work with Contractor's own forces or to retain the Services of another subcontractor to complete the work of Subcontractor under this agreement, and if the contract amount covered by this Subcontract is not sufficient to cover the costs and expenses incurred by Contractor to complete the work covered by this agreement, Contractor shall be entitled to retain sufficient funds to reimburse Contractor for all costs, expenses, profit and overhead incurred by Contractor in order to complete the work of Subcontractor under this agreement from any funds that Contractor may owe to Subcontractor for work performed on any project other than the project covered by this Subcontract or from funds due Subcontractor under any subcontract between Contractor and Subcontractor on any project other than the project covered by this Subcontract. Contractor shall have the right to retain any funds that may be due and owing to Subcontractor on any other project or under any other subcontract as described above even though Subcontractor has diligently completed the work on the other project and is not in default of the subcontract from which the funds are being retained by Contractor.

(d) Contractor shall have the right to retain any funds that may be due and owing to Subcontractor on the project covered by this Subcontract to cover any excess costs (including profit and overhead) incurred by Contractor on any other project covered by a subcontract or purchase order contract between Subcontractor and Contractor as a result of Subcontractor's failure to properly perform under said other subcontract or purchase order contract. Contractor shall have the right to retain any funds that may be due and owing to Subcontractor on the project covered by this Subcontract to cover the excess costs of Contractor on another project as described above even though Subcontractor has diligently completed the work or is diligently completing the work on the project covered by this Subcontract and is not in default under the terms and provisions of this Subcontract.

(e) Final payment shall be made after completion of the work covered by this Subcontract and final written acceptance thereof by Owner and full payment therefor by Owner; provided that Subcontractor has complied with all the provisions of this Subcontract, and provided, further, that Subcontractor has furnished satisfactory evidence, if requested, that all claims for labor and materials have been paid or that the time for filing liens and claims has expired and that the Subcontractor has furnished satisfactory evidence, if requested, that the Subcontractor has the ability to complete all warranty work during any applicable warranty period. If the Contractor does not receive evidence satisfactory to the Contractor that the Subcontractor shall have the ability and shall have sufficient operations to perform any warranty work required to be performed under any applicable warranty, the Contractor shall be entitled to hold and retain any retainage held by the Contractor until any applicable warranty period has expired and all warranty work required to be performed has been completed. If the Subcontractor fails to perform any warranty work, Contractor shall have the right to utilize the retainage to apply to the cost incurred by Contractor to perform warranty work. The full payment by Owner to Contractor of all funds attributable to work performed under this Subcontract, including all retainage held by the Owner, shall be a condition precedent to the final payment under this Subcontract becoming due to Subcontractor. If said condition precedent has not been met, regardless of the reason therefor, final payment shall not be due to Subcontractor.

(f) Any payment provided to be made to Subcontractor hereunder may, at Contractor's election, be made jointly to Subcontractor and any one or more of its suppliers and/or subcontractors.

(g) No payment, either partial or final, made under this Subcontract shall be construed to be an acceptance of defective work or improper materials or a waiver of any right of Contractor hereunder, and not partial payment shall be evidence of performance, in whole or in part, of this Subcontract or any of Subcontractor's obligations hereunder.

(h) All payments made to Subcontractor hereunder, to the extent of all amounts due or to become due to Subcontractor's employees, suppliers and subcontractors on the Project, shall be received and held by Subcontractor in trust for such employees, suppliers and subcontractors. Subcontractor shall have no right to use or apply for its own benefit or for any other purpose any payments made hereunder except the amount, if any, but which such payments exceed the total of the amounts owed such employees, suppliers and subcontractors on or in connection with the Project. This Paragraph 19(g) is for the protection and benefit of Contractor and may be enforced by it.

18. If bond is required, Subcontractor shall at its cost obtain and furnish to Contractor a bond or bonds in the amount of the total contract price provided in Paragraph 1(b), above, and in a form and with a surety or sureties satisfactory to Contractor, guaranteeing the faithful performance of this Subcontract and all of Subcontractor's obligations hereunder, including the making of all payments provided to be made by Subcontractor hereunder. Contractor shall have the right to withhold any and all payments hereunder until such bond or bonds have been furnished by Subcontractor and accepted in writing by Contractor. The surety or sureties on said bond or bonds shall waive, and the execution of such bond or bonds shall constitute a waiver or notice of amendments to this Subcontract, notice of any changes, additions or deletions in, to or from Subcontractor's work hereunder, and any right to have any amounts payable hereunder to Subcontractor retained by Contractor. The consent of said surety or sureties to such matters, or any of them, including the payment of retainage, shall not be required.

19. (a) Subcontractor shall not, without the prior written consent of Contractor, sublet or subcontract all or any portion of Subcontractor's work hereunder. In the event of any subletting of subcontracting, notwithstanding the consent of Contractor thereto, unless otherwise expressly agreed in writing, Subcontractor

and its surety or sureties, if any, shall continue to be responsible and liable to Contractor for the performance of all Subcontractor's work and obligations under this Subcontract, including but not limited to the making of all payments provided herein to be made by Subcontractor, and each subcontractor of Subcontractor shall be bound by its subcontract to comply with all of the terms and provisions of the Contract Documents and of this Subcontract, all of which shall be incorporated in such subcontract.

(b) No assignment of any funds becoming due or payable to Subcontractor hereunder shall be binding upon Contractor unless Contractor has received written notice of and a true copy of such assignment and unless the assignees have acknowledged in writing that such assignment is subject to the terms and provisions of this subparagraph. Each assignment of funds becoming due or payable hereunder shall be subject to all of the provisions of this Subcontract and the Contract Documents and the rights of Subcontractor's employees, suppliers and subcontractors to be paid first and in full out of any funds paid hereunder. All funds received by any assignee under any such assignment shall be received and held by it in trust for the benefit of Subcontractor's employees, suppliers and subcontractors on the Project to the extent of all amounts due them on or in connection with the Project. All such employees, suppliers and subcontractors shall be paid in full all sums due them on or in connection with the Project before any funds paid hereunder received by such assignee or paid or applied on any other obligation of Subcontractor or for any other purpose. If an assignment is approved hereunder and subsequent to that assignment it is determined that Subcontractor's employees, suppliers or subcontractors on the Project have not been paid any amount that may be due and owing to them, the assignee shall pay to such employees, suppliers or subcontractors the full amount of all sums due and owing to such employees, suppliers and subcontractors in connection with the Project. If the assignee does not pay said amounts, assignee shall be liable to Contractor for any amounts paid by Contractor to such employees, suppliers and subcontractors and assignee, by accepting the assignment, shall be responsible for reimbursing Contractor for all costs, expenses and attorney's fees incurred by Contractor in recovering from the assignee all of the funds paid by Contractor to any employees, suppliers and subcontractors of Subcontractor. This Paragraph 21(b) is for the benefit and protection of Contractor and may be enforced by it.

(c) In the event of any such assignment, Contractor shall have the right to make any payments becoming due hereunder to Subcontractor and such assignee and/or one or more of Subcontractor's subcontractors and/or suppliers jointly.

20. If Contractor shall employ an attorney to enforce any provision of this Subcontract, or to defend any suit instituted by Subcontractor in connection herewith, Subcontractor shall, if Contractor recovers judgement in any amount against Subcontractor for damages sustained by Contractor or successfully defends any cause of action filed by Subcontractor, pay to Contractor the amount of its reasonable attorney's fees and costs and expenses incurred in the enforcement hereof or the defense of any such suit by Subcontractor.

21. Subject to the terms and conditions of Paragraph 19 above, it is expressly understood and provided that, unless the parties expressly agree to the contrary in writing, Contractor shall be liable for payments to Subcontractor herein only to the extent that Contractor has received the funds for such payments from Owner, and that Contractor shall have no liability to Subcontractor for any breach hereof or any damages or loss to Subcontractor resulting from or by reason of any act, omission, neglect, delay, instruction, order or requirement of Owner or any failure or refusal of Owner to provide Contractor with funds to make the payments to Subcontractor provided in this Subcontract, except to the extent and in the amounts Contractor recovers and collects from Owner by reason of any one or more such matters.

22. (a) All amounts payable hereunder or by reason of any breach hereof, to Subcontractor by Contractor, or by Subcontractor to Contractor, shall be payable at Contractor's office in Austin, Texas. Subcontractor agrees to pay Contractor on demand any amounts owed to Contractor, together with interest at the rate of ten percent (10%) per annum from the date of demand.

(b) No waiver by Contractor of any provision hereof shall constitute or be construed as a waiver of any other provision hereof. And no waiver by Contractor of any breach of any provision hereof shall constitute or be construed as a waiver of any continuance of such breach or of any other or subsequent breach of the same or any other provision hereof.

(c) This Subcontract shall be deemed for all purposes to have been executed in the State of Texas and shall be construed and given effect according to the laws of the State of Texas.

23. The Subcontractor agrees that it can be adequately compensated by money damages for any breach of this Subcontract Agreement which may be committed by Contractor and hereby agrees that no default, act or omission of Contractor, except for failure to make progress payments as required by and subject to the conditions of the Subcontract Agreement, shall constitute a material breach of the Subcontract Agreement entitling the Subcontractor to cancel or rescind the provisions of this Agreement or (unless Contractor shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work. The Subcontractor hereby waives any and all rights and remedies to which it might otherwise be or become entitled, save only its right to money damages.

In case of any dispute between the Subcontractor and Contractor, the Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to the Owner by the terms of the Contract Documents and by any and all decisions or determinations made there under by the party or board so authorized in the Contract Documents.

The Subcontractor agrees to exhaust all remedies available under the Subcontract Agreement, though Contractor prior to instituting a separate action to any court, or in the event that a separate action is instituted prior to the exhaustion of the aforesaid remedies, the Subcontractor agrees to stay said action pending the exhaustion of remedies against the Owner.

The Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to the Owner by the final decision of a court or board of competent jurisdiction, whether or not the Subcontractor is a party to such a proceeding. If such dispute is prosecuted or defended by Contractor against the Owner under the terms of the Contract Documents of in a court action, the Subcontractor agrees to furnish all certifications, documents, statements, witnesses and other information required by Contractor for such purpose and to pay or reimburse Contractor for all expenses and costs, if any, incurred in connection therewith. It is expressly understood that as to any and all materials or services furnished or agreed to be furnished by the Subcontractor, and as to any and all damages, if any, incurred by the Subcontractor, in connection with this construction project, Contractor shall be liable to the Subcontractor to the same extent that the Owner is liable and actually pays to Contractor.

If at any time any claim, dispute or controversy should arise between Contractor and Subcontractor with respect to any matter or thing involved in this Subcontract Agreement (or breach thereof) or construction Project, which controversy is not controlled or determined by this Paragraph 25, and then the decision of Contractor shall be followed by the Subcontractor. Any failure to follow Contractor's direction shall be considered a material breach of this Subcontract.

24. This Subcontract and the Contract Documents, insofar as they relate in any way to Subcontractor's work provided herein, constitute the entire agreement between the parties hereto, and it is expressly understood and agreed that there are no agreements or promises by or between said parties, except as aforesaid, and that any additions thereto or changes therein shall be in writing.

WITNESS EXECUTION the day and year first above written, each party acting herein by and through a duly authorized officer or representative of such party.

LOSSEN BROS. CONSTRUCTION, INC.

By: _____

Owner _____

(Date) _____

WITNESS: _____

(Name of Subcontractor)

By: _____

(Title) _____

(Date) _____

WITNESS: _____