

CAMPANELLI ASSOCIATES CONSTRUCTION CORP

ONE CAMPANELLI DRIVE
BRAINTREE, MA 02184
(781) 849-1440

MASSACHUSETTS SUBCONTRACT

For

“SPECIFIC WORK”

On

**“Name
Address
(the "Project")”**

For **“Name (the "Owner")”**

This Agreement is made the **Xth** Day of **XXXX, 201X** by and between

“SUBCONTRACTOR”

“ADDRESS”

“ADDRESS”

hereinafter called the SUBCONTRACTOR and Campanelli Associates Construction Corp., having a usual place of business in Braintree, Massachusetts, hereinafter called the CONTRACTOR.

Witnesseth that the SUBCONTRACTOR and the CONTRACTOR, for the consideration hereinafter named, agree as follows:

ARTICLE I. WORK TO BE DONE: The SUBCONTRACTOR agrees to provide all of the supervision, materials, labor, temporary power (until a permanent source of power is available), tools, equipment, temporary lighting, and other facilities for the safe execution, installation and completion of the Subcontractor's Scope of Work according to the General Conditions, Drawings and Specifications prepared by **xxxxxxxxxxxxxxxx** hereinafter called the ARCHITECT. If a document is attached to this subcontract and is made a part of this subcontract by reference in this subcontract, then, in the event of a conflict between this subcontract and the attachment, this subcontract shall take precedence. The SUBCONTRACTOR agrees to assume toward the CONTRACTOR all of those obligations and responsibilities pertaining to the Scope of Work hereinafter described that the CONTRACTOR, by those documents, assumes toward the Owner under the contract between the Owner and the CONTRACTOR (the "General Contract") and in accordance with all of the laws and ordinances applicable thereto. The CONTRACTOR shall have with respect to the SUBCONTRACTOR all rights and remedies that the Owner has with respect to the CONTRACTOR under the General Contract. A copy of the General Contract and associated Contract Documents will be made available to the SUBCONTRACTOR on request.

SCOPE OF WORK: [supply "**SCOPE OF WORK**" from PM]

all in accordance with plans Per Attached Plan List by XXX dated XXX

and specifications Divisions 0, 1 and ... (per PM) dated XXX

ARTICLE II. TOTAL AMOUNT OF THIS CONTRACT:

1. The CONTRACTOR agrees to pay to the SUBCONTRACTOR, in accordance with the terms of this Agreement, the sum of _____ **Dollars (\$XXX.00) (the "Subcontract Price")** for the scope described herein.

2. **PAYMENTS:** The SUBCONTRACTOR must submit its requisition for Work completed within any month to the CONTRACTOR in duplicate on the last day of the month unless otherwise required by law or requested earlier by the CONTRACTOR (the "Due Date"), along with the Releases of Liens required by Article XIII. Any requisition submitted prior to the Due Date shall be premature, and shall be deemed submitted on the Due Date or subject to rejection. A requisition shall not be deemed submitted unless and until actually received (a) by the person to whom the CONTRACTOR directs in writing that such documents be submitted, or (b) if the CONTRACTOR has not directed submission to a specific person, by the CONTRACTOR. The CONTRACTOR shall approve or reject a written requisition by the SUBCONTRACTOR for a periodic progress payment, in whole or in part, within twenty-two (22) days of its submission. The CONTRACTOR's submission of a requisition to the Owner that includes amounts in a SUBCONTRACTOR's requisition shall not constitute or be evidence of approval by the CONTRACTOR of the SUBCONTRACTOR's requisition except to the extent the CONTRACTOR expressly notifies the SUBCONTRACTOR in writing that the SUBCONTRACTOR's requisition is approved. It shall be grounds for rejection of a requisition submitted by the SUBCONTRACTOR if the Owner rejects a requisition that the CONTRACTOR submits to the Owner seeking payment for Work of the SUBCONTRACTOR to the extent such rejection is due to any non-performance or deficient performance of the Work or any breach by the SUBCONTRACTOR of any obligation of the Agreement. Ninety percent (90%) of the amount approved by the Owner on each requisition for the SUBCONTRACTOR's line item(s), less any back charges and other adjustments between the SUBCONTRACTOR and CONTRACTOR, will be paid to the SUBCONTRACTOR, unless previously rejected, by the later of the 23rd day of the month after the Due Date for its submission or two business days after the CONTRACTOR's receipt of such payment from the Owner, such receipt being an express and strict condition precedent to the CONTRACTOR's obligation to make payment to SUBCONTRACTOR. The balance shall be paid **43** days after acceptance by the Owner of all work covered by this SUBCONTRACT, which acceptance is an express and strict condition precedent to the CONTRACTOR's obligation to make final payment to the SUBCONTRACTOR.

3. Each provision of this Agreement that makes payment to the SUBCONTRACTOR conditioned upon receipt by the CONTRACTOR of payment from the Owner shall be enforceable: (a) to the extent of amounts not received from the Owner because the SUBCONTRACTOR failed to perform under the Agreement and failed to cure the non-performance within three (3) days after receipt of written notice; or (b) to the extent of amounts not received from the Owner because the Owner is insolvent or becomes insolvent within 90 days after the date of submission of the requisition for which payment is sought; provided, however, that the CONTRACTOR (i) filed a notice of contract under Chapter 254 of the Massachusetts General Laws and, if the General Contract is not with the actual project owner and the CONTRACTOR has no direct contractual relationship with the contractor having such a direct contractual relationship, also sent a notice of identification within the time required under said Chapter 254, prior to the CONTRACTOR's submission of its first application for payment after commencement of performance at the project site and did not dissolve the lien created by the filing of such notice of contract; and (ii) within the time periods allowed by said Chapter 254 files a statement of amount due and commenced or commences a civil action to enforce the lien; and (iii) pursues all reasonable legal remedies to obtain payment from the Owner unless and until there is a reasonable likelihood the action shall not result in obtaining payment; or (c) to the extent applicable law otherwise permits the CONTRACTOR to enforce such a provision.

4. Interest on late payments for properly submitted and approved requisitions shall accrue after a thirty (30) day grace period at the lesser of the rate set forth in the General Contract for interest on late payments due to the CONTRACTOR from the Owner or at the prime rate then published by the Wall Street Journal.

ARTICLE III. SCHEDULE OF PROGRESS: Time is of the essence of this Agreement and the SUBCONTRACTOR agrees to deliver all of the material and perform all of the work under this Agreement in strict compliance with the provisions stipulated in ARTICLE I. of this Agreement. The SUBCONTRACTOR shall, if requested by the CONTRACTOR, furnish it with duplicate copies of any or all orders for material purchased from others.

SUBCONTRACTOR will prosecute the said work with diligence, without delay, and within the time necessary to satisfy the progress requirements of the CONTRACTOR'S Job Superintendent and of the Project schedule, as the same may be modified from time to time by the CONTRACTOR. SUBCONTRACTOR acknowledges that, subject to factors that are out of the SUBCONTRACTOR'S control, the time that it takes to perform the scope of work described herein **shall not exceed XXXXX working days, whether or not consecutive.** A working day shall be defined as any calendar day (excluding Sundays and ten (10) federally recognized holidays) on which jobsite conditions are such that work can occur. Subcontractor agrees that every effort will be made to complete the scope sooner than this maximum time period.

ARTICLE IV. LABOR:

1. It is understood that contracts will be awarded by CONTRACTOR and labor will be employed on the Project without discrimination as to whether employees, agents, suppliers and/or subcontractors of the CONTRACTOR or any other subcontractor, including those that may be employed by the owner of the Project, are members or non-members of any labor or collective bargaining organization, and the SUBCONTRACTOR accepts this contract with this understanding. Should a Reserve Gate System be established at the jobsite, the SUBCONTRACTOR, all its sub-subcontractors and, their employees, visitors and suppliers shall abide by the requirements of that Gate System.

2. The SUBCONTRACTOR shall take all steps necessary to ensure that there will be no manifestations on the Project of any dispute between any labor organization and the SUBCONTRACTOR. The SUBCONTRACTOR agrees to employ people, agents, suppliers and subcontractors who will perform the work under this SUBCONTRACT, whether or not other employees or mechanics on the Project are members or non-members of any labor or collective bargaining organization.

3. The SUBCONTRACTOR agrees not to participate in or permit any cessation of work which may occur as a result of any labor dispute, regardless of whether said labor dispute involves the SUBCONTRACTOR or another contractor, subcontractor or supplier on the Project. Should there be a work stoppage caused by a strike, picketing, boycott or by a voluntary or involuntary cessation of work by employees of the SUBCONTRACTOR, its agents, suppliers and/or subcontractors which, in the sole judgment of the CONTRACTOR will cause or is likely to cause unreasonable delay in the progress of construction, then upon twenty-four (24) hours written notice, delivered either in hand, by telegram or registered mail, the CONTRACTOR shall have the right to declare the SUBCONTRACTOR in default of this SUBCONTRACT, and upon such notice, CONTRACTOR shall have the right to exercise its remedies under Paragraph XIX.

4. The SUBCONTRACTOR agrees that any and all labor that the SUBCONTRACTOR provides, shall comply with all local, state and federal labor laws and regulations, and all provisions of the General Contract. The SUBCONTRACTOR further agrees to require any sub-subcontractor, or any lower tier subcontractor, to comply with the same labor laws, regulations and provisions.

5. In the event of any inconsistency between the provisions of this Labor clause and any other SUBCONTRACTOR CONTRACT documents, the provisions of the Labor clause shall prevail. Any provisions of the SUBCONTRACT or CONTRACT documents with respect to arbitration or determination of disputes by the ARCHITECT, Arbitrators or others, shall not apply to this Labor clause.

ARTICLE V. PROGRESS AND DELAY: If the SUBCONTRACTOR shall be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it should refuse or should fail (excepting in cases for which extension of time is provided) to supply enough properly skilled workmen or proper materials, or if it should fail to make prompt payment for materials or labor, or should it disregard laws, ordinances or the instructions of the CONTRACTOR or otherwise violates of any provision of this Agreement, then the CONTRACTOR may, without prejudice to any other right or remedy, (a) terminate the employment of the SUBCONTRACTOR in accordance with the termination provisions of this Agreement or, (b) without terminating this Agreement, be at liberty to provide materials, labor, equipment, etc. as it may deem proper and deduct the cost thereof from any amount then due or thereafter may become due the SUBCONTRACTOR under this Agreement.

ARTICLE VI: REQUIRED BONDS, WARRANTIES OR GUARANTEES: The SUBCONTRACTOR guarantees its work, or the work performed by another on behalf of the subcontractor, for a period of **XXX (XXX) years** from the date of acceptance of the building by the Owner, or, in the case of latent defects, for a period of 5 (five) years from the date of acceptance of the building by the owner, and agrees to correct, repair and otherwise make good upon demand, at its own expense, for any defects that shall appear within either of these periods, and will indemnify and save the CONTRACTOR harmless for any money expended by it in regard to the said defects.

ARTICLE VII. INSURANCE AND INDEMNITY: The SUBCONTRACTOR, shall carry and shall require any additional subcontractor hired by or through the SUBCONTRACTOR to carry, such insurance and in such amounts as are shown below and shall furnish this office with Certificates of such insurance, **prior to starting the work.** If the CONTRACTOR shall suffer any damage by reason of injury to persons or property occasioned by the SUBCONTRACTOR or its employees, agents, and any additional subcontractors hired by or through the SUBCONTRACTOR, the SUBCONTRACTOR shall pay the same and save the CONTRACTOR harmless therefrom.

The SUBCONTRACTOR'S insurance shall be primary and noncontributory to the CONTRACTOR'S insurance. Policies and riders to policies shall be furnished to the CONTRACTOR upon request. All policies shall contain a specific waiver of subrogation in favor of all additional insureds and a severability of interests endorsement. No SUBCONTRACTOR policy shall contain a cross suit exclusion as respects the CONTRACTOR. Until completion and final acceptance of work, the SUBCONTRACTOR shall maintain, at its own expense, and ensure that any lower tier subcontractor it may hire pursuant to the provisions of Article XII of this subcontract shall also independently maintain, the following insurance:

1. Commercial General Liability insurance written on an occurrence form, including completed operations coverage, personal injury liability coverage, broad form property damage liability coverage and contractual liability coverage insuring the agreements contained herein, and including coverage for all theft and/or damages occurring above and below ground. **(list required additionally insured entities)** shall be included as an Additional Insured thereunder. The minimum limit of liability carried on such insurance shall be the following which are combined single limits for bodily injury and property damage: \$1 million each occurrence, \$2 million general aggregate, \$1 million products/completed operations.
2. Automobile Liability insurance for owned, non-owned and hired vehicles, including ISO forms MM9955 or CA9948. The minimum limit of liability carried on such insurance shall be \$1,000,000, each accident, combined single limit for bodily injury and property damage. **(list required additionally insured entities)** shall be included as an Additional Insured thereunder.
3. Workers' Compensation and Employers' Liability insurance shall be provided to meet statutory limits by State and Federal laws.
4. Certificate holder for all of said insurance shall be Campanelli Associates Construction Corp.
5. Certificate for all of said insurance required to be maintained hereunder shall be delivered to Campanelli Associates Construction Corp. **prior to the commencement of work** to be performed, and all policies and certificates thereof shall provide that the same may not be canceled without at least thirty (30) days written notice to Campanelli Associates Construction Corp.. The SUBCONTRACTOR shall also deliver to Campanelli Associates Construction Corp. a certificate evidencing the renewal of any such insurance at least twenty (20) days prior to the expiration of any policy.
6. To the maximum extent permitted by law, SUBCONTRACTOR hereby agrees to protect, defend, indemnify and hold owner, CONTRACTOR and its employees, agents, officers and servants free and harmless from any and all losses, claims, liens, demands and causes of action of every kind and character, including but not limited to the amounts of judgments, penalties, interest, court costs, legal fees and all other expenses incurred by CONTRACTOR arising in favor of any party, including claims, liens, debts, personal injuries, including employees of SUBCONTRACTOR, death or damages to property (including property of CONTRACTOR) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, caused in whole or in part by, or in connection with or arising directly or indirectly out of any intentional act, or any error, omission or negligent act of SUBCONTRACTOR, its employees, agents or any subcontractor hired by or through SUBCONTRACTOR. SUBCONTRACTOR also agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands or suits at the sole expense of SUBCONTRACTOR. SUBCONTRACTOR also agrees to bear all other costs and expenses related thereto.

ARTICLE VIII. ALTERATIONS, CHANGES AND ADDITIONS:

1. No alteration, change in the work, or additions to the work shall be made by the SUBCONTRACTOR, except upon written instructions from the CONTRACTOR. When such alterations, changes or additions are ordered, the SUBCONTRACTOR shall, if requested by the CONTRACTOR, immediately furnish the CONTRACTOR in writing an estimate of the expense to be added or omitted thereby. If the work is to be done on a cost plus percentage basis, all invoices for alterations, changes or additions must be accompanied by a time statement which has been approved daily by the Job Superintendent, in addition to an itemized listing of all material used and their unit prices. SUBCONTRACTOR'S combined mark up for overhead and profit on change orders shall not exceed 5% unless otherwise agreed to in writing.

2. The CONTRACTOR shall approve or reject a written request by the SUBCONTRACTOR seeking an increase in the Subcontract Price, in whole or in part, within thirty-seven (37) days after the later of commencement of the performance of the work on which the request is based or submission of the written request. A written request for an increase in the Subcontract Price shall not be deemed submitted unless and until actually received (x) by the person to whom the CONTRACTOR directs in writing that such requests be submitted, or (y) if the CONTRACTOR has not directed that such requests be submitted to a specific person, by the CONTRACTOR. Any request by the CONTRACTOR for an increase in the price of the General Contract that includes amounts in a SUBCONTRACTOR's request for increase in the Subcontract Price shall not constitute or be evidence of approval by the CONTRACTOR of the SUBCONTRACTOR's request unless the CONTRACTOR expressly notifies the Subcontractor in writing that the Subcontractor's request is approved. A SUBCONTRACTOR's request for increase in the Subcontract Price shall be subject to rejection, in whole or

in part, at any time until payment of the approved amount is due, regardless of whether such approval is express, implied or "deemed to be approved" pursuant to the Mass. G.L. ch. 149 § 29E.

In addition to any other grounds that may be applicable under the Agreement or applicable law, it shall be grounds for rejection of a request by the SUBCONTRACTOR seeking an increase in the Subcontract Price:

a. to the extent the Owner rejects a request by the CONTRACTOR seeking an increase in the price of the General Contract on account of the same conditions or basis as the SUBCONTRACTOR's request; (b) to the extent a request is not the subject of a fully executed change order; (c) if the request is not accompanied by a copy of a written direction by the CONTRACTOR to make changes in the work to which the request relates; (d) if the request is not submitted within the time or in the form or manner required under the Agreement; (e) if the request does not expressly state that it is a claim for a specified and exact dollar adjustment to the Subcontract Price; (f) if the request does not otherwise comply with the requirements of the Agreement; (g) if the SUBCONTRACTOR does not either (i) submit with the request a copy of a written direction by the CONTRACTOR to commence the work that is the subject of the request, or (ii) state in the written request that it has not commenced the work on which the request is based at the time the request is submitted; (h) if the SUBCONTRACTOR commences the work that is the subject of the request without having first received a written direction by the CONTRACTOR to commence such work; or (i) if the SUBCONTRACTOR fails to notify the CONTRACTOR in writing of the date on which it commences such work within two (2) business days of such date of commencement.

ARTICLE IX. SUBCONTRACT PRICE BREAKDOWN:

1. **SCHEDULE OF VALUES:** If payments are to be made on the percentage of Work done, the SUBCONTRACTOR shall, within seven (7) days after signing of the Agreement, submit to the CONTRACTOR a schedule of values of the various parts of the Work aggregating the total Subcontract Sum, made out in such detail as the SUBCONTRACTOR and CONTRACTOR may agree upon or as required by the Owner, and supported by such evidence as to its correctness as the CONTRACTOR may direct. This schedule of values, when approved by the CONTRACTOR, shall be used only as a basis for Applications for Payment, and not as a definition of the scope of the Work, and, if the schedule of values is found by the CONTRACTOR to be in error or inaccurate, it shall be modified by the SUBCONTRACTOR as directed by the CONTRACTOR. In applying for payment, the SUBCONTRACTOR shall submit a statement based upon this schedule of values.

2. **UNIT PRICES:** If payment of any portion of the Subcontract Price is to be made on a unit price basis, if not previously submitted, the SUBCONTRACTOR shall submit to the CONTRACTOR, within seven (7) days after signing of the Agreement, all unit prices and quantities aggregating to those portions of the Subcontract Price to be paid on that basis.

ARTICLE X. INTERPRETATION: The CONTRACTOR shall furnish copies of drawings and specifications and necessary detail drawings and explanations and the same shall be binding. The work shall be done under the direction of the CONTRACTOR and the interpretation of the drawings and specifications by the ARCHITECT shall be final. In all cases shop drawings are required of the SUBCONTRACTOR; the CONTRACTOR will not be responsible for any work done or material delivered by the SUBCONTRACTOR prior to the proper approval of the shop drawings by the ARCHITECT.

ARTICLE XI. INSPECTION: The SUBCONTRACTOR shall provide facilities for inspection by accredited persons, and shall forthwith, in a manner satisfactory to the CONTRACTOR, make good any defects or omissions discovered, before final acceptance of its work.

ARTICLE XII. SUBLETTING:

1. The SUBCONTRACTOR must notify and obtain approval from the CONTRACTOR prior to subletting any portion of the SUBCONTRACTOR'S work. Said notification shall include the name, address, and phone number of the lower tier subcontractor as well as the scope and dollar value of the work sublet.

2. Any lower tier subcontractor hired by the SUBCONTRACTOR shall be required to comply with all of the terms and conditions of this subcontract. The SUBCONTRACTOR shall be held fully responsible for the performance and actions of any lower tier subcontractor.

3. The SUBCONTRACTOR must ensure that the lower tier subcontractor has provided the CONTRACTOR with insurance certificates, pursuant to Article VII of this subcontract, prior to the lower tier subcontractor's commencement of work.

4. The SUBCONTRACTOR must ensure that the lower tier subcontractor has provided the CONTRACTOR with a signed form acknowledging receipt of and agreeing to the terms of the CONTRACTOR'S safety manual, pursuant to Article XVIII of this subcontract, prior to the lower tier subcontractor's commencement of work.

5. The SUBCONTRACTOR shall obtain and furnish to the CONTRACTOR complete Releases of Liens for all such work sublet to a lower-tier contractor, pursuant to Article XIII of this subcontract.

ARTICLE XIII. LIENS:

1. No monthly payment shall become due until the SUBCONTRACTOR shall deliver to the CONTRACTOR a complete Release of Liens for all work arising out of this Agreement, for which the CONTRACTOR has previously paid the SUBCONTRACTOR, if any. At the CONTRACTOR's option and direction, the SUBCONTRACTOR shall be obligated to obtain and record and/or file, within fifteen (15) days after demand by the CONTRACTOR, a bond discharging any lien claim asserted by any material supplier, employee or lower tier subcontractor claiming through or under the SUBCONTRACTOR in accordance with applicable law.

2. Neither the final payment, nor any part of the retained percentage, shall become due until the SUBCONTRACTOR shall deliver to the CONTRACTOR a complete release of all liens arising out of this agreement and an affidavit that, so far as it has knowledge or information, the releases include all of the labor and material for which a lien could be filed. The Release of Liens document shall be in a form acceptable to the General Contractor.

3. Pursuant to Article XII, in the event that the SUBCONTRACTOR should sublet any portion of the work under this Agreement, the SUBCONTRACTOR shall obtain, in addition, a complete Release of Liens for all such work from said lower-tier subcontractor in accordance with the terms and conditions of this subcontract.

ARTICLE XIV. ASSIGNMENT: The SUBCONTRACTOR covenants and agrees that it will in no circumstance by assignment, subcontract or in any other way assign all or any portion of its right to receive money under this Subcontract, nor will it delegate all or any portion of its duties or performance obligations under this contract without first obtaining in either or both of the above situations, the express written consent of the CONTRACTOR. Likewise, the CONTRACTOR may assign this contract upon the express written consent of the SUBCONTRACTOR.

ARTICLE XV. COVENANT: This agreement shall bind the parties, their respective heirs, successors, executors and assigns.

ARTICLE XVI. LIMITATION OF RECOURSE: To the maximum extent permitted by law, the SUBCONTRACTOR waives any claim it may have against any person, corporation, partnership or other legal entity other than the CONTRACTOR for any amounts earned under this SUBCONTRACT, for labor, materials or equipment furnished for the Project or for damages for breach of this SUBCONTRACT.

ARTICLE XVII. TAXES: The SUBCONTRACTOR shall be responsible to pay for all taxes levied, including but not limited to Federal and State Unemployment Taxes and Sales Tax required by the state in which the work is being performed. SUBCONTRACTOR agrees that any and all such taxes are included in the "Total Amount of This Contract" stated in Article II above. For work being performed in the state of Massachusetts, the SUBCONTRACTOR agrees that all "nonresident contractors", as defined by The Commonwealth of Massachusetts, will comply with the provisions set forth in Massachusetts General Law Chapter 64H section 30A(a). Said "nonresident contractors" further agree to provide CONTRACTOR documentation as outlined in section 30A(a) sufficient to substantiate their compliance with the provisions of that section.

"Nonresident contractors" unable or unwilling to comply with the provisions of section 30A will be subject to the provisions of section 30A(b) with respect to contract funds withheld by Contractor to secure payment of tax to the commissioner. Pursuant to the definition provided under MGL 64H Section 30A(c) the term "contractor" shall mean any person engaged in the construction, reconstruction, alteration, remodeling or repair of real property.

ARTICLE XVIII. SAFETY: The SUBCONTRACTOR hereby agrees to comply with all Federal, State and Local safety codes, guidelines, rules and regulations. The SUBCONTRACTOR also hereby agrees to comply with the Campanelli Associates Construction Corporation Safety Program Manual, which further outlines the expectations of the SUBCONTRACTOR on the jobsite and the consequences of not complying with these guidelines. If the SUBCONTRACTOR does not have a copy of the Campanelli Associates Construction Corporation Safety Program Manual, then the SUBCONTRACTOR should obtain one, prior to signing this subcontract, by contacting the Campanelli main office at One Campanelli Drive, Braintree, Massachusetts 02185; the phone number is 781-849-1440. The SUBCONTRACTOR must provide the CONTRACTOR with a signed form acknowledging receipt of and agreeing to the terms of the CONTRACTOR'S safety manual prior to the SUBCONTRACTOR'S commencement of work. The SUBCONTRACTOR hereby agrees to ensure compliance with this Article XVIII by any lower tier subcontractor it may hire. It shall be the responsibility of the SUBCONTRACTOR to make safe any hazardous condition that is created by the construction or installation of work or scope covered in this subcontract. Subcontractor acknowledges and agrees that Contractor may not be present at all times on site while subcontractor is performing the work, and that Subcontractor takes full responsibility for the safety and oversight of its employees and lower tier subcontractors at all times. Subcontractor further agrees that a "Competent Person", as defined by the Federal Occupational Safety and Health Standards for the Construction Industry, will be on site at all times while performing the work.

ARTICLE XIX. REMEDIES, TERMINATION AND SUSPENSION:

1. The failure of Owner or CONTRACTOR to require performance of any of the terms, covenants or conditions of this SUBCONTRACT or the Contract Documents shall not be deemed a waiver of any rights or remedies that Owner or CONTRACTOR may have, shall not be deemed to constitute an amendment to this Subcontract, and shall not be deemed a waiver of any subsequent breach or default by SUBCONTRACTOR of any of the terms, covenants or conditions of this Subcontract.

2. **Termination of General Contract.** In the event of termination of the General Contract by the Owner, or at the election of the CONTRACTOR, upon written notice to the SUBCONTRACTOR, the CONTRACTOR may assign this Subcontract to the Owner or the Owner's designee, with the Owner's agreement, subject to the provisions of the General Contract and to the prior rights of the surety, if any, obligated under bonds relating to the General Contract. In such event, the Owner or Owner's designee shall assume the CONTRACTOR's rights and obligations under the Contract Documents, the SUBCONTRACTOR shall thereafter be bound to the Owner as set forth in such written notice to the SUBCONTRACTOR and in accordance with the terms and conditions of this Subcontract and the SUBCONTRACTOR shall have no further recourse against the CONTRACTOR.

3. **Termination for Cause.** If the SUBCONTRACTOR at any time or for any reason refuses, neglects or fails to prosecute and perform fully and timely any of its obligations in accordance with this SUBCONTRACT, and fails, within 3 days after receipt of written notice, to begin and continue diligently and promptly to correct such refusal, neglect or failure, the CONTRACTOR may, without prejudice to any other remedy, terminate this SUBCONTRACT and finish the SUBCONTRACTOR's Work by any method the CONTRACTOR elects. In doing so the CONTRACTOR may take control of all or part of the SUBCONTRACTOR's Work, provide any labor and/or materials, and/or take possession of all materials, equipment, tools and other items on the Project premises (all of which the SUBCONTRACTOR hereby transfers, assigns and sets over to the CONTRACTOR for the purpose of completing the Work) and may deduct the cost thereof from any money due or thereafter becoming due to the SUBCONTRACTOR. In such event, neither the SUBCONTRACTOR nor any of its sureties or assignees shall be entitled to any further payments under or concerning this SUBCONTRACT unless and until (a) all Work is complete, (b) the CONTRACTOR can render a full accounting and can determine any and all sums to be due either the CONTRACTOR or the SUBCONTRACTOR as a result of such accounting and arising from such termination, and (c) the costs, liabilities and expenses incurred by or on behalf of the CONTRACTOR in exercising its rights under this subparagraph are less than the amounts earned by but unpaid to the SUBCONTRACTOR. If the amount otherwise to be paid under this SUBCONTRACT is less than the costs, liabilities and expenses incurred by or on behalf of the CONTRACTOR in exercising its rights hereunder, then the SUBCONTRACTOR and its sureties, if any, shall pay the difference to the CONTRACTOR. Such costs, liabilities and expenses include (a) the costs and expenses of completing the Work to the satisfaction of the Owner and/or the Architect, (b) any and all losses, damages, liabilities, costs and expenses, including legal fees and disbursements, incurred in connection with the CONTRACTOR exercising its rights hereunder, defending claims arising from the SUBCONTRACTOR's defaults, and seeking recovery of its costs and expenses from the SUBCONTRACTOR and/or its sureties, and (c) disbursements made or incurred by reason of the SUBCONTRACTOR's defaults. If the CONTRACTOR terminates this SUBCONTRACT under this subparagraph and it is later finally determined that such termination was improper, such termination shall be deemed a termination for convenience and the SUBCONTRACTOR shall be limited, as its exclusive remedy, to the amounts recoverable in the case of a termination for convenience.

4. **Termination for Convenience.** The CONTRACTOR may at any time terminate the Subcontract for the convenience of the CONTRACTOR for any reason without any default under the Contract Documents. In the event of such a termination for convenience and notwithstanding any other provision of this SUBCONTRACT to the contrary, provided the SUBCONTRACTOR is not in default, the SUBCONTRACTOR shall receive, as its entire and sole compensation, its actual, necessary and reasonable costs of performing the Work to date of termination, as determined by audit of the SUBCONTRACTOR's records, plus a reasonable pro-rata mark-up for overhead and profit, but in no event shall such amount paid and payable hereby exceed the total Subcontract Price prorated to the percent of completion. The SUBCONTRACTOR shall make its books and records available at reasonable times and places for the CONTRACTOR's audit in the event this paragraph is invoked.

5. **Cessation of Work Upon Termination.** Upon receipt of written notice of termination under any provision above, the SUBCONTRACTOR shall cease operations as directed by the CONTRACTOR in the notice and take actions necessary, or that the CONTRACTOR may direct, for the protection and preservation of the Work.

6. **Suspension of Work.** The CONTRACTOR may, with or without cause, order the SUBCONTRACTOR in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the CONTRACTOR may determine.

ARTICLE XX. DISPUTE RESOLUTION:

1. **Mediation.** In the event of a dispute that the parties cannot resolve through direct negotiation, the parties shall try to resolve the dispute through mediation through the Construction Industry Mediation Rules of the American Arbitration Association or before any other mediator upon whom the parties may agree. All mediation sessions shall be held in Boston, Massachusetts. The costs of the mediator and administration of the mediation shall be shared equally by the parties.

2. **Binding Dispute Resolution.** If the dispute is not resolved through mediation, then, in consideration of \$100 paid to the SUBCONTRACTOR, the receipt of which is acknowledged as part of the Subcontract Price, at the sole option of the CONTRACTOR, any controversy, dispute or claim between the CONTRACTOR and the SUBCONTRACTOR related in any way to this Agreement or the Project may be determined by a separate action in court or by a separate arbitration in accordance with, as elected by the CONTRACTOR, the Construction Industry Arbitration Rules of the American Arbitration Association or the applicable arbitration rules of JAMS then pertaining, whichever the CONTRACTOR may elect in its sole discretion. Any award rendered by the arbitrator or arbitrators shall be final and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction. The costs of any binding dispute resolution shall be borne by the non-prevailing party, as determined by the adjudicator of the dispute. Unless the parties agree otherwise, to the extent permitted by law, the venue of any binding dispute resolution procedure shall be in Boston, Massachusetts.

ARTICLE XXI. MISCELLANEOUS:

1. **Use of Electronic Files.** The CONTRACTOR may provide any part or all of the Contract Documents either on paper or as electronic files, including drawings, specification sections, and other documents, in electronic format to assist the SUBCONTRACTOR in preparing shop drawings and other submittals required for the Work and for preparing as-built or record drawings. Regardless of the medium and format, the most current version of any Contract Document shall govern. The furnishing of electronic files does not relieve the SUBCONTRACTOR of its obligation to fully comply with the Contract Documents, including and without limitation, the need to check, confirm and coordinate all dimensions and details, take field measurements, verify field conditions and coordinate the SUBCONTRACTOR's Work with that of other trades. By providing electronic files, the CONTRACTOR does not convey any license or right, including copyright, in the original documents, or any right to prepare derivative works.

2. **Consequential Damages.** If a mutual waiver of consequential damages is included in the General Contract, then the CONTRACTOR and SUBCONTRACTOR waive claims against each other for consequential damages arising out of or relating to this SUBCONTRACT, including without limitation, any consequential damages due to either party's termination, but only to the extent waived in the General Contract.

3. **Order of Precedence.** In the event of a conflict between the terms of this SUBCONTRACT and the terms of the General Contract or any other Contract Document, the terms of this SUBCONTRACT shall prevail.

4. **Applicable Law.** This SUBCONTRACT shall be governed by and construed in accordance with the laws of the state governing the General Contract and the Conflict of Laws provisions of or applicable to the General Contract shall control in all instances. If any provisions of this Agreement are or shall be deemed invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the Agreement shall be construed as if not containing the particular invalid or unenforceable provision(s).

In Witness Whereof the parties to these presents have by their duly authorized representatives hereunto set their hands and seals, the day and year written above.

WITNESS:

“SUBCONTRACTOR”

By: _____

Name:

Its:

WITNESS:

CAMPANELLI ASSOCIATES CONSTRUCTION CORP.

By: _____
Name: Jeffrey DeMarco
Its: President

DRAFT