

3715 Dacoma Street
Houston, Texas 77092-8905
Phone: (713) 683-8800
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SUBCONTRACT AGREEMENT

THIS SUBCONTRACT AGREEMENT (“Agreement”), dated this ____ day of ____ is between **BROOKSTONE, L. P.**, (“Contractor”), whose address is 3715 Dacoma Street, Houston, Texas 77092-8905 and Enter Company Name, (“Subcontractor”), whose address is Enter Address, Phone Number, Fax Number, Contact Name, Contact Title. Contractor and Subcontractor may be collectively referred to as the “Parties”.

WITNESSETH:

WHEREAS, Contractor has heretofore entered into a Contract dated Enter Date with Enter Owner (“Owner”), Enter Owner Address;

WHEREAS, said Contract is for the construction and completion of the Enter Project Name (“Project”), Enter Project Address in accordance with plans and specifications;

WHEREAS, said plans and specifications were furnished and prepared by Enter Architect (“Architect”), Enter Architect Address and

WHEREAS, Contractor and Subcontractor agree that this Agreement incorporates certain **Exhibits “A”, “B”, “C”, “D”, “E”, “F”, “G”, “H”, “I”, and “J”** attached hereto and set forth as if reiterated verbatim herein, each of which will be more particularly described below, in addition to the Contract, plans, specifications, addenda and other documents which may be specified herein (collectively referred to herein as “Contract Documents”). Exhibit “B” contains indemnity, release, arbitration, damage waivers and other provisions.

WHEREAS, the Parties agree to enter into this Agreement wherein Subcontractor will perform Work as outlined in the Contract Documents, more particularly defined below, and Contractor will compensate Subcontractor with the Subcontract Amount, as specified herein and more particularly described below.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, the Parties agree as follows:

Subcontractor shall furnish and pay for all labor, services, and materials, fees, taxes, permits, inspections, approvals, licenses, equipment, scaffolding, insurance and perform all of the work necessary or incidentally required, for the completion of that part of the work covered by the Contract Documents (“Work”), as set forth herein and more particularly described below.

In consideration for and conditioned upon the timely, complete, prompt and faithful performance of this Work, to the satisfaction of Contractor, Architect and Owner, Contractor shall pay the Subcontractor the Subcontract Amount, subject to adjustments as provided in the Contract Documents.

For the purposes of this Agreement, Work consists of:

Enter Scope of Work

For the purposes of this Agreement, Subcontract Amount is the sum of **(Spell out Contract Price)** **(Numerical Contract Price)**, subject to adjustments as provided in the Contract Documents. The Subcontract Amount shall be paid in monthly installments, subject to other provisions of the Contract Documents, within a reasonable period of time (not to exceed ten days), **after** Contractor has been paid for the same work by Owner, in amount equal to ninety percent (90%) of the value of the work, timely and correctly, completed by Subcontractor during the previous month. The remaining balance of ten percent (10%) of the value of the completed work will remain unpaid until such time as the completed work is accepted by Architect, Owner, and Contractor, and the Contractor is paid in full.

Subcontractor agrees to comply with all the provisions of all the Contract Documents, including, but not limited to, those provisions contained in:

- Exhibit "A", entitled Contract Document List;**
- Exhibit "B", entitled Additional Subcontract Terms and Conditions;**
- Exhibit "C", entitled Insurance Requirements;**
- Exhibit "D", entitled Application for Payment;**
- Exhibit "E", entitled Preliminary Project Schedule;**
- Exhibit "F", entitled Subcontractor Supplier Release and Waiver of Lien;**
- Exhibit "G", entitled Subcontractor Release and Waiver of Lien;**
- Exhibit "H", entitled Subcontractor's Affidavit of All Amounts Owed To Suppliers;**
- Exhibit "I", entitled Confirmation of Funding to Pay for Work;**
- Exhibit "J", entitled Tax Exemption Certificate;**

Notwithstanding those provisions contained in the Exhibits outlined above, certain provisions and responsibilities are being outlined below to draw attention to, but not limit, the agreement of Subcontractor:

1. Subcontractor agrees to perform daily clean up and trash removal from site, and that such performance will be diligently enforced by Contractor.
2. Subcontractor will review Contractor's Safety Handbook maintained in the project office, and agrees to comply with its provisions. Subcontractor shall perform the Work in a safe manner, in strict compliance with all applicable laws, ordinances and regulations, including but not limited to, the Occupational Safety and Health Act and applicable State safety laws. Subcontractor shall be solely responsible for providing a safe place to work for its agents, employees and subcontractors. Subcontractor acknowledges that Contractor may point out safety defects or failure of Subcontractor to comply with applicable safety regulations; however, Subcontractor acknowledges that such information or direction will not constitute interference by Contractor with Subcontractor's means and methods of providing and enforcing safe working practices for Subcontractor's Work. **It is specifically understood and agreed that Contractor shall have no right or duty to control the means, methods or details of Subcontractors performance of the Work, and any provision in this Subcontract which may appear to give Contractor the right or duty to direct Subcontractor as to the means, methods or details of Subcontractor's performance of the Work shall be deemed to mean that Subcontractor shall follow the desires of Contractor in the results of the Work only.** In addition, Subcontractor agrees to comply with all state and federal safety, pollution and other laws and regulations, and agrees to pay any fines, costs, or other damages incurred by Owner or CONTRACTOR which result from Subcontractor's violations of said rules and regulations.

3. Subcontractor shall provide Contractor with a list of material suppliers and subcontractors involved with Subcontractor's scope of work. Upon request, Subcontractor will provide proof of payment on notarized Release and Waiver of Lien forms (**Exhibits "F" and "G" or evidence of amounts outstanding (Exhibit "H")**) for all materials and subcontractors utilized through the invoice/funding date.
4. Subcontractor's monthly application for payment must be received by Contractor by the 25th of the month in order to be included in Contractor's monthly application for payment to Owner. Subcontractor's application for payment shall be submitted in compliance with, and in the form attached to this Agreement, and marked as **Exhibit "D"** and shall include only requests for payment for timely completed Work in strict conformance with the Contract Documents, including fully executed and approved change orders.
5. Subcontractor and its lower tier subcontractors have read and are thoroughly familiar with the insurance requirements set forth in the Contract Documents. Subcontractor and its lower tier subcontractors agree to obtain and maintain insurance coverage in accordance with the Insurance Requirements attached hereto and marked as Exhibit "C", or greater coverage (both in coverage and policy limits) if required of the Subcontractor and its lower tier subcontractors by the Contract Documents.
6. Subcontractor agrees to provide adequate on-site supervisory personnel, and such personnel shall be required to communicate with Contractor and other Subcontractors in order to effectively carry out Subcontractor's work.
7. Subcontractor agrees that time is of the essence of this Subcontract. Subcontractor shall begin the Work covered by this Agreement as soon as the construction upon which said Work is to be done is ready for said Work and shall carry on said Work promptly, efficiently and at a speed that will not cause delay in the progress of Contractor's or other subcontractor's work. Subcontractor shall prosecute certain portions of the Work in preference to others, if so order by Contractor. If Contractor has a progress schedule on the Project, Subcontractor agrees to begin, perform and complete the Work in accordance with such progress schedule, and Contractor reserves the right to amend or change such schedule from time to time. Contractor shall have no liability for any damages, including, but not limited to, overhead, extra costs, or increases in prices arising out of changes in the schedule. **If Subcontractor fails to timely perform its Work in accordance with the current progress schedule of Contractor, Subcontractor shall be liable to Contractor for all damages occasioned by such failure as hereafter described in Exhibit "B"**.
8. Subcontractor agrees to perform his Work and remain in conformance with the Hazard Communication Standard (HAZCOM) and agrees to cooperate with the Contractor and other subcontractors to ensure that the project is in, and remains in, full compliance with the law. Included in that law is a requirement for a written HAZCOM program and appropriate MSDS', both of which, are to be maintained on the project site by Subcontractor. Employee training of the HAZCOM standard is essential, and Subcontractor agrees to provide such training to its employees and to its lower tier subcontractors' employees.
9. Subcontractor agrees to inspect and accept field conditions and substrate materials prior to installing work under this Agreement. Subcontractor shall perform usual and customary preparatory work required to install Work under this Agreement. The Subcontractor shall report any unsatisfactory conditions in writing to the Contractor's project manager and will not proceed with the Work until unsatisfactory conditions have been corrected in a manner

acceptable to the Subcontractor and Contractor. If Subcontractor proceeds with the work it will be presumed that conditions are acceptable to the Subcontractor.

The Parties agree that any itemized conditions or requirements in this Agreement are set forth merely for the convenience of the Parties and for the ease of reading of the Agreement, and are not meant to limit in any manner or fashion the terms of this Agreement or the Contract Documents.

IN WITNESS WHEREOF, Contractor and Subcontractor have caused this Agreement to be executed on the date of their respective acknowledgments set forth below, to be effective, however, as of the date first written above.

Contractor:

Subcontractor:

BROOKSTONE, L. P.

By: Brookstone Management, LLC

Enter Company Name

By: _____
Andrew W. Richardson
Vice President

By: _____
Name: _____
Title: _____