

HORIZON MECHANICAL CONTRACTORS, INC.
10871 S.W. 188th Street; Suite 1
Miami, Florida 33157

AGREEMENT made this _____ day of _____ in the year _____
BETWEEN the Contractor: **Horizon Mechanical Contractors, Inc.** (hereinafter "Horizon") and
the Subcontractor: _____ (hereinafter
"Subcontractor").

PROJECT: _____

OWNER: _____

GENERAL CONTRACTOR: _____

The General Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the General Contract, consisting of the Agreement between Owner and General Contractor (from which compensation amounts may be deleted) and the other contract documents enumerated therein, have been made available to the Subcontractor.

The Horizon and the Subcontractor agree as follows.

SUBCONTRACT

This Subcontract consists of this Agreement (hereinafter Subcontract), Horizon's contract with the General Contractor which includes the agreement between the Owner and General Contractor (hereinafter General Contract) as well as the other Contract Documents enumerated therein. This Subcontract represents the entire agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The specific term or conditions in this Subcontract govern and conflict with the other contract documents that are incorporated into this subcontract agreement.

MUTUAL RIGHTS AND RESPONSIBILITIES

Horizon and Subcontractor shall be mutually bound by the terms of this Subcontract. Horizon shall assume towards the Subcontractor all obligations and responsibilities that the General Contractor assumes toward Horizon and the Subcontractor shall assume towards Horizon all obligations and responsibilities which Horizon assumes towards the General Contractor. Horizon shall have the benefit of all rights, remedies and redress against the Subcontractor that the General Contractor has against Horizon, and the Subcontractor shall have the benefit of all rights, remedies and redress against Horizon that Horizon has against the General Contractor, insofar as applicable to this Subcontract.

SERVICES PROVIDED BY HORIZON

Horizon shall cooperate with the Subcontractor in scheduling and performing Horizon's work to avoid conflicts or interference in the Subcontractor's work and shall expedite written responses to submittals made by the Subcontractor. As soon as possible after execution of this Subcontract Horizon shall provide the Subcontractor copies of Horizon's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's work properly. Horizon shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details. Horizon shall promptly make available to the Subcontractor information, including information received from the Owner and General Contractor, that affects this Subcontract and that becomes available to Horizon after the signing of this Subcontract.

Horizon shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

If Horizon asserts or defends a claim against the Owner or General Contractor that relates to the work of the Subcontractor, Horizon shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the work of the Subcontractor

CLAIMS BY HORIZON

Liquidated damages for delay of work as provided for in this Subcontract shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

Horizon's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

1. Seven days' written notice prior to Horizon's providing services or materials, except in an emergency; and
2. written compilations to the Subcontractor of services and materials provided by Horizon and charges for such services and materials no later than the fifteenth day of the month following Horizon's providing such services or materials.

HORIZON'S REMEDIES

If the Subcontractor defaults or neglects to carry out the work in accordance with this Subcontract and fails within five working days after receipt of written notice from Horizon to commence and continue correction of such default or neglect with diligence and promptness, Horizon may, by appropriate modification, and without prejudice to any other remedy Horizon may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor. This Subcontract may be terminated if Subcontractor is determined to be insolvent or if Subcontractor is generally not paying his bills and/or accounts payable.

SUBCONTRACTOR EXECUTION AND PROGRESS OF WORK

For all work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that Horizon and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that Horizon and Subcontractor have by virtue of the provisions of this Subcontract.

The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness (no later than 30 days of the date of this Subcontract Agreement) and in such sequence as to cause no delay in the work or in the activities of Horizon or other subcontractors.

The Subcontractor shall designate authorized representatives who will take direction from the authorized representatives of Horizon only. Horizon is not be responsible for payment to the Subcontractor for unauthorized work by Subcontractor employees.

The Subcontractor shall pay for all material, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from Horizon and shall furnish satisfactory evidence, when requested by Horizon to verify compliance with the above requirements.

The Subcontractor shall take necessary precautions to properly protect the work of other subcontractors from damage caused by operations under this Subcontract.

The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules, and regulations and lawful orders of public authorities bearing on performance of the work of this Subcontract. The Subcontractor shall secure and pay for permits (unless it is agreed in writing that Horizon will obtain the necessary permits), fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Subcontractors Work, the furnishing of which is required by Horizon. Subcontractor shall be responsible for it's qualified representative(s) to be present for all required inspections of work performed under this Subcontract.

The Subcontractor shall comply with, and assume all, Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract. It is further understood and agreed that Subcontractor shall hold Horizon harmless from and against any claim, or cause of action that may arise out of Subcontractor's failure to pay such taxes or out of Subcontractor's negligence in the performance of this agreement.

The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by Horizon and with applicable laws, statutes, ordinances, codes, rules, and regulations and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the General Contract. The

Subcontractor shall report to Horizon within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

The Subcontractor shall indemnify Horizon for the cost and expense Horizon incurs 1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor except to the extent that the cost and expense are due to Horizon's fault or negligence.

WARRANTY

The Subcontractor warrants to the Owner, General Contractor and Horizon that material and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants all work for a period of at least one year will conform to the requirements of the Subcontract Documents and will be free from defects. Work, materials or equipment not conforming to these requirements may be considered defective.

INDEMNIFICATION

To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, General Contractor and Horizon from and against claims, demands, liabilities, suits, judgments and decrees, taxes, debts, fines, penalties, loss of use, damages, losses, costs and expenses, including but not limited to attorney's fees, court costs, and all other expenses incurred by Horizon in the investigation, defense, settlement or payment of any such claims, demands or liabilities arising out of, or resulting from, the Subcontractor's or any of the Subcontractor's contractors, subcontractors, sub-subcontractors, material men, agents or employees' performance of the Subcontractor's work under this Subcontract however such injury or death or damage to property may be caused, and whether or not caused or claimed to have been caused by active or inactive negligence or other breach of duty or fault by Horizon, its employees or agents, **EXCEPT** for the sole negligence, gross negligence, willful, wanton or intentional misconduct of Horizon, its employees or agents. Subcontractor also agrees that the first \$250.00 received under this Subcontract shall be in payment for the foregoing indemnity and any other indemnity provisions in this Subcontract.

REMEDIES FOR NONPAYMENT

If Horizon does not pay the Subcontractor through no fault of the Subcontractor within ten days of Horizon receiving payment from the General Contractor, as provided in this Subcontract, the Subcontractor may upon seven additional days' written notice to Horizon stop the work under this Subcontract until payment of the amount owing has been received.

CHANGES IN THE WORK

The Owner may make changes in the work by issuing modifications to the General Contract. Horizon shall promptly notify the Subcontractor of modifications issued and the parties will adjust the time and subcontract sum accordingly. The Subcontractor, prior to the commencement of such changed or revised work, shall submit promptly to Horizon written copies of a **Change Order** for adjustment to the Subcontract Sum and Subcontract Time consistent with requirements of this Subcontract Agreement. The Subcontractor shall make all claims in writing promptly to Horizon for additional cost, extensions of time and damages for

delays or other causes in accordance with this Subcontract Agreement. The Subcontractor will comply with all time requirements of the General Contract unless otherwise authorized in writing from Horizon, but in no event less than two days. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which Horizon is bound.

MEDIATION

Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution. The parties shall endeavor to resolve their claims by mediation in Miami-Dade County, Florida. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement in any court having jurisdiction thereof.

TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the General Contract as Horizon may terminate with respect to the Owner and the General Contractor, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor or their agents or employees or other persons performing portions of the work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from Horizon payment for satisfactory work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages to the extent that Horizon has recourse against the General Contractor.

TERMINATION BY HORIZON

If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontractor Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, Horizon may, by written notice to the Subcontractor and without prejudice to any other remedy Horizon may have, terminate the Subcontract and finish the Subcontractor's work by whatever method Horizon may deem expedient.

ASSIGNMENT OF THE SUBCONTRACT

The Subcontractor shall not assign the work of this Subcontract or subcontract the whole of this Subcontract, or subcontract portions of this Subcontract without Horizon's written consent. If Horizon gives written consent, the Subcontractor agrees to bind every subcontractor approved by Horizon to all of the terms and conditions of this Subcontract. Subcontractor agrees that he is fully responsible to Horizon for the acts and omissions of any subcontractors and of persons either directly or indirectly employed by any subcontractor.

THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others:

Any changes to the scope of work must have the prior written approval of the authorized representative of Horizon without exception. The Subcontractor is not entitled to any payment for work performed without Horizon’s prior written approval. The scope of work includes as-built drawings and other closeout documents in a form acceptable to Horizon and the General Contractor that apply to all of Subcontractor’s work prior to the final payment.

DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The Subcontractor’s date of commencement is the date from which the Subcontract time of is measured; it shall be the date of this Subcontract Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the General Contractor. Date of commencement: _____

If applicable check box: Commencement date will be fixed in the notice to proceed.

(Insert date of commencement, if it differs from the date of this Agreement or, if applicable, State that the date will be fixed in a notice to proceed.)

The Work of this Subcontract shall be substantially completed not later than _____ *(insert date)* subject to adjustments of this Subcontract time as provided in the Subcontract Documents.

If applicable check box: The following liquidated damage provisions apply to this Subcontract: *Insert Liquidated Damages provisions:*

SUBCONTRACT SUM

Horizon shall pay the Subcontractor in current funds for the performance of the Subcontract the Subcontract Sum of _____ Dollars (\$ _____), subject to additions and deductions as provided in the Subcontract Documents.

The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the General Contractor:
(Insert the numbers or other identification of accepted alternates.)

PROGRESS PAYMENTS

Based upon applications for payment submitted to Horizon by the Subcontractor, corresponding to applications for payment submitted by Horizon to the Owner/General Contractor, Horizon shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Horizon is entitled to retain 10% from any payment (including the final payment) to the Subcontractor unless a full release of retainage is allowed by the General Contract for the Subcontractor's work satisfactorily completed as determined by Horizon. The period covered by each application for payment shall be made one calendar month ending on the last day of the month, or as follows:

Provided an application for payment is received by Horizon no later than the _____ day of a month, Horizon shall include the Subcontractor's Work covered by that application in the next application for payment which Horizon is entitled to submit to the Owner/General Contractor. Horizon shall pay the Subcontractor each progress payment no later than ten working days after Horizon receives payment from the Owner/General Contractor.

The Subcontractor shall submit to Horizon a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as Horizon may require. This schedule, unless objected to by Horizon, shall be used as a basis for reviewing the Subcontractor's applications for payment.

SUBSTANTIAL COMPLETION

When the Subcontractor's work or a designated portion thereof is substantially complete and in accordance with the requirements of the Subcontract, Horizon shall, upon application by the Subcontractor, make prompt application for payment for such work. Within 30 days Horizon shall, if payment is received by Horizon from the Owner/General Contractor, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor.

FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Subcontractor's Sum, shall be made by Horizon to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, including all "as-built" drawings or other required closeout documents, **and** the Owner/General Contractor has issued payment to Horizon for the Subcontractor's completed work. Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to Horizon that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

INSURANCE AND BONDS

The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability insurance (all of which will as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

- 1) Standard Statutory Worker's Compensation and Employers Liability Insurance with limits of liability for said Employer's Liability Insurance of \$1,000,000.00. Subcontractor's Insurer shall waive its right of subrogation against Horizon.
- 2) Public Liability Insurance written on a standard liability policy form including (1) comprehensive general liability insurance coverage part, covering premises-operations, independent subcontractors and produced/completed operations hazards, and (2) contractual liability insurance coverage part, specifically insuring the liability assumed by Subcontractors under this Contract. Such personal injury insurance shall include coverage for (or be endorsed to delete exclusion for) hazards of explosion, pollution, collapse, and underground hazards coverage. Minimum limits of liability shall be \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.
- 3) Automobile liability insurance, written on the comprehensive automobile liability policy form, insuring against all owned, non-owned and hired automobiles, with minimum limits of liability of \$500,000.00 combined single limit.

Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of work or for such other period for maintenance of completed operations coverage as specified in the General Contract.

Certificates of insurance acceptable to Horizon shall be filed with Horizon prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least 30 days' prior written notice has been

given to the Horizon. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment.

IN THE EVENT THAT SUBCONTRACTOR SHALL FAIL TO FURNISH SAID INSURANCE CERTIFICATES WITHIN TEN (10) DAYS FROM THE DATE HEREOF OR IN ANY EVENT PRIOR TO THE COMMENCEMENT OF THE WORK, HORIZON WILL OBTAIN SUCH INSURANCE ON BEHALF OF THE SUBCONTRACTOR AND WILL DEDUCT AT THE RATE OF 30% FROM ANY MONEY DUE OR TO BECOME DUE TO THE SUBCONTRACTOR. SAID DEDUCTIONS MAY BE INCREASED OR REDUCED BASED ON RATES TO BE DETERMINED BY INSURANCE COMPANY.

The Subcontractor shall cause the all the above commercial liability coverages required by the Subcontract Documents to include: (1) Horizon, the Owner and the General Contractor as additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) Horizon as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

MISCELLANEOUS PROVISIONS

Payments due and unpaid under this Subcontract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing as provided by Florida Statute Section 55.03.

The parties agree that this Subcontract shall be governed by the laws of the State of Florida.

The following special provisions apply to this Subcontract and take precedence over any other provision of this agreement:

SIGNATURE

This Subcontract Agreement entered into as of the date and year first written above.

HORIZON *(Signature)*

SUBCONTRACTOR *(Signature)*

(Printed name and title)
President/Vice-President

(Printed name and title)