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## **SUBCONTRACT AGREEMENT – Attachment A**

The above specified project is to be completed in strict compliance with all specifications and conditions relating to this agreement. In addition, the project is to be performed in compliance with OSHA regulations and local, state and national building codes. Although the contractor has control over the quality of all work relating to this project, the subcontractor is an independent contractor in all respects. The subcontractor is responsible for his employees, his subcontractors, materials, equipment and all applicable taxes, benefits and insurances. The subcontractor is responsible for coordinating his activity with other trades and promptly cleaning up any surplus or refuse which was created by his work.

Section 1. The Subcontractor agrees to furnish all labor, materials and equipment and fully perform and in every respect complete the ("Work") per the following attachments: for the project according to plans and specifications prepared by the Architect or Engineer.

Section 2. The Contractor agrees to pay the Subcontractor, in accordance with the provisions of Section 4 hereof and subject to any adjustments resulting from agreed upon changes, the subcontract amount per the following breakdown:

Section 3. The Subcontractor agrees to begin work as soon as he is notified by the Contractor that the ground is clear or the structure(s) are far enough advanced to allow the beginning of the Work described above, and will perform and completed the work as rapidly as the Contractor reasonable determines that the progress of the structure(s) permit. All Work is to be done in a workmanlike and substantial manner to the satisfaction and approval of the Contractor and the Owner, or their respective representatives.

Section 4. The Contractor agrees to pay the Subcontractor during the course of the Work for periodic estimates of the amount of the Contract Payment earned to the date specified in the Subcontractor's written request as described in Section 16, hereof. (the "Payment Request"), less the above specified retainage upon receipt of payment from the Owner for the Contractors periodic Payment Request in which the Subcontractors then outstanding Payment Request is incorporated. In the event the Subcontractor's portion of the Contractor's Payment Request is reduced for any reason, payment to the Subcontractor will be reduced accordingly. Final payment to Subcontractor, less aggregate retainage, will be made upon receipt of final payment from Owner. The aggregate retainage will be held by the Contractor until 30 days after final completion and acceptance of the Project by the Owner and Contractor and until Contractor's receipt of final payment from the Owner.

Section 5. Upon request of the Contractor, Subcontractor agrees to furnish affidavits stating that all bills for material and labor have been paid in full, such affidavits to be supported by receipted bills, if required by the Contractor. Prior to final payment to the Subcontractor, the Subcontractor shall provide to the Contractor a release of liens and all claims together with any affidavits which the Contractor may require. The Contractor reserves the right to pay any outstanding past due obligations of the Subcontractor arising on this job by checks made payable jointly to the Subcontractor and its vendor or subcontractor. The full amount of any such payments shall apply as a payment on the Contract Payment. No assignment of this Contract may be made without prior written approval of the Contractor.

Section 6. If the Subcontractor, (a) files a petition for protection under any bankruptcy or similar law, or an involuntary petition under any such law is filed against the Subcontractor, (b) makes a general assignment for the benefit of creditors; (c) has a receiver appointed to handle the business affairs of the Subcontractor; (d) fails to perform and complete the Work as required herein as rapidly as the Contractor reasonably determines that the progress of the structure(s) permits; (e) becomes involved in any labor difficulties which, in the opinion of the Contractor, impedes or slows down the Work; (f) becomes insolvent; (g) fails to make prompt payment for material or labor used in the performance of the Work; (h) fails to comply with the instructions of the Architect, the Engineer, the Contractor or with applicable laws or regulations; or (i) is otherwise in breach of Contract; then the Contractor may, without prejudice to any other right or remedy available at equity or law, terminate this Contract upon twenty-four (24) hours written notice. Upon such termination of this Contract, the Contractor may take control of the Work and may take possession of all materials and instruments related to the Work and complete the Work. In the event the Contractor elects to take controls of the Work, the Subcontractor shall not be entitled to receive any further payments hereunder until the Work is completed. If the unpaid balance of the Contract Payment exceeds the expenses of finishing the Work, including, but not limited to compensation for additional managerial and administrative services and all other expenses made necessary by the termination of the Contract, such excess shall be paid to the Subcontractor. If such expense is greater than the unpaid balance of the Contract Payment, the Subcontractor shall pay the difference to the Contractor. For the purpose of this Section, the "expenses" of completing the Work will include, without limitation, compensation for additional managerial and

administrative services, removal or demolition of part of the structure(s), architectural, engineering and legal fees, and all other expenses necessary and appropriate to complete the Work.

Section 7. If, at any time during the performance of the Work, or within the warranty period following completion of the Work, the Architect, Engineer, Contractor or Owner, determines that the Work as performed or completed fails to comply in any material respect with the specifications for the Work as set forth above, then the Contractor can elect to: (a) require the Subcontractor, at its sole cost and expense, correct such noncompliance in the manner specified by the Contractor; or (b) terminate the Contract and either take control of the Work and correct such noncompliance itself, or hire another subcontractor to correct such noncompliance in the manner specified by the Contractor. At the time the Subcontractor is notified of noncompliance under this Section, the Subcontractor shall not be entitled to receive any further payments hereunder until the noncompliance is corrected. If the unpaid balance of the Contract Payment exceeds the expense of correcting the noncompliance, such excess shall be paid to the Subcontractor. If such expense is greater than the unpaid balance of the Contract Payment, the Subcontractor shall pay the difference to the Contractor. For the purpose of this Section, the "expenses" of correcting the noncompliance will include, without limitation, compensation for additional managerial and administrative services, removal or demolition of part of the structure(s), architectural, engineering and legal fees, and all other expenses necessary and appropriate to correct the noncompliance

Section 8. Subcontractor assumes exclusive liability for all contributions, taxes, or payments required to be made because of employees of the Subcontractor by the federal and state Unemployment Compensation Acts, Social Security Acts or any amendments thereto, and by all other or future state or federal laws requiring the payment of similar contributions or taxes, and for all sales tax and use tax.

Section 9. The Subcontractor will maintain insurance in coverages and amounts sufficient to protect the Subcontractor and the Contractor from claims under Workmen's Compensation Acts and any other claims from property damage and claims for bodily injury, including death, which may arise from the performance of the Work under this Contract, whether the Work is performed by the Subcontractor, its subcontractor, or anyone directly or indirectly employed by either of them.

Limits of coverage to be as follows:	Statutory Limits
(a) Workmen's Compensation Employers Liability/Ohio Stop Gap (Including Intentional Tort With substantially certain to occur)	\$500,000 Limit
(b) Comprehensive General Liability Bodily Injury and Property Damage: General Aggregate	\$2,000,000 Limit
Products/Completed Operations Aggregate	\$2,000,000 Limit
Each Occurrence	\$1,000,000 Limit
(c) Comprehensive Automobile Liability Bodily Injury and Property Damage: Combined Single Limit	\$1,000,000 Limit
Including Owner, Hired and Non-Owned Autos	
(d) Umbrella Liability	\$1,000,000 Limit

In accordance with the above, Wat-Kem Mechanical, Inc. and all subsidiaries shall be covered as an additional insured under Subcontractor's general liability policy for liability arising out of Subcontractor's ongoing operations and products/completed operations using a combination of ISO forms CG2010 (10/01) and CG2037 (10/01) or their equivalent. Subcontractor's policy shall include a per project aggregate endorsement. Subcontractor agrees to maintain the above general liability and umbrella insurance for a period of ten years or the expiration of the Statue of Repose applicable to the commercial construction, which is greater.

Subcontractor's policy shall be primary insurance with respect to Wat-Kem Mechanical, Inc. and all subsidiaries, and any other insurance policy that Wat-Kem Mechanical, Inc. may have in effect shall be deemed excess and not contributory.

Certificates of Insurance: The Subcontractor will submit to the Contractor certificates of insurance certifying that the insurance policies carried by him are in force before the Work starts and certifying that Wat-Kem Mechanical, Inc. shall be notified at least thirty (30) days prior to cancellation or nonrenewal (10 days for nonpayment of premium).

**INDEMNITY AGREEMENT.** The Subcontractor covenants to defend, indemnify and save harmless and exonerate the Contractor and the Owner of and from all liability, claims and demands for bodily injury and property damage arising out of the Work undertaken by the Subcontractor, its employees, agents or its subcontractor, and arising out of any other operation no matter by whom performed for and on behalf of the Subcontractor, whether or not due in whole or in part to conditions, acts or omissions done or permitted by the Contractor or Owner. Further, any such liability incurred upon Wat-Kem Mechanical, Inc. will be deducted from payments due Subcontractor. If such liability cannot be readily determined, no further payment will be made until such liability can be determined, regardless of the time involved.

Section 10. In case of conflict between the provisions of the Contract between the Owner and the Contractor and the provisions of this Subcontract, the provisions of this Subcontract shall prevail in any matter between the Contractor and the Subcontractor.

Section 11. The Subcontractor shall not employ any workman whose employment on the building or project is objected to by the Contractor or the Owner, nor shall the Subcontractor subcontract all or any part of the Work without prior written approval of the Contractor.

Section 12. Payment Requests for any item or work in addition to the Work specified above will only be allowed if the Subcontractor has obtained the Contractor's written authorization prior to execution of the additional work. When such authority is given without a proposal, the full claim must be submitted promptly upon completion of the additional work.

Section 13. The Subcontractor will be responsible for keeping the Subcontractor's part of the job clean and in an orderly fashion subject to the approval of the Contractor and Architect. In the event it is necessary for the Contractor to incur any expense performing cleanup work for the Subcontractor, such expense will become subject to deduction from Subcontractor's Contract Payment.

Section 14. All applicable local or state taxes, including, but not limited to, sales taxes, withholding taxes, and the like, arising as a result of this Contract shall be paid by the Subcontractor.

Section 15. The Subcontractor shall abide by the safety requirements of OSHA, the Contractor and local and state laws and regulations (the "Safety Requirements"). Violations of the Safety Requirements will not be tolerated. In the event a violation of a Safety Requirement is observed by the Contractor, written notice of such observed violation will be provided to the Subcontractor responsible. The Contractor reserves the right to impose up to a \$2,000.00 fine, to be deducted from the final Contract amount, for the third and all subsequent notifications of the same violation. Additionally, the Subcontractor shall indemnify and hold the Contractor harmless from and against all fines, penalties, settlements and/or other monetary losses caused by any legal action by any governmental agency or individual if such losses result from the Subcontractor's violation of any safety rule, regulation, or standard. The phrase "other monetary losses" shall include, but not limited to, the following: (a) the Contractor's attorney's fees and other costs of legal representation; (b) the replacement cost of any materials damaged or destroyed; (c) any amounts paid by the Contractor or its insurance carrier to any injured party in settlement of a legal action or in satisfaction of a judgment or award obtained in a legal action; (d) the additional costs and/or losses incurred by the Contractor as a result of any delay in the completion of the Project or any part thereof; and (e) the value of the time spent by the Contractor's employees, including the Contractor's Safety Director, Project Manager, and any other employee, in responding to the Subcontractor's violation of a safety rule, regulation or standard.

The fact that the Contractor provides, or fails to provide written notification of a violation of the Safety Requirements, does not relieve the Subcontractor of its responsibilities or liabilities under this Section.

Section 16. All payment requests are subject to Contractor's approval. Each payment request must be submitted following format of the AIA documents 0702 and 0703. You may use AIA forms 0702 and 0703 at your option.

Section 17. Any claim arising out of or related to this Agreement, except disputes arising under Section 7, above, shall be subject to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association currently in effect. Demand for arbitration by either party shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim has arisen, but in no event shall it be made after the date on which legal action on such claim would be barred by the applicable statute of limitations. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon the award in accordance with applicable law in any court having jurisdiction thereof.

Section 18. Sustainability and the environment: Our subcontractors shall take steps to reduce their own carbon footprint and increase environmental stewardship among employees. When possible, we will electronically transmit documents to reduce the number of paper copies printed and time or money spent transmitting. They shall take steps to reduce operating waste and recycle unused materials whenever possible.

***Payment will be made as follows:***

- ***Monthly progress payments, less 10% Retainage***
- ***Invoices are due in our office by the 18<sup>th</sup> of the month.***