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# MCGLOSKEY

## MECHANICAL CONTRACTORS, INC.

445 LOWER LANDING ROAD ♣ BLACKWOOD, NEW JERSEY 08012  
WASHINGTON, DC ♣ BOSTON, MA ♣ DALLAS, TX ♣ NEW YORK, NY ♣ ORLANDO, FL  
Licensed in NJ ♣ NY ♣ PA ♣ DE ♣ MD ♣ DC ♣ VA ♣ MA ♣ RI ♣ CT ♣ OH ♣ FL ♣ MI ♣ TX  
[www.mccloskeymechanical.com](http://www.mccloskeymechanical.com)

### SUBCONTRACT AGREEMENT

**Date:** 05/02/2022 **Contract No:** B22051-005

**Project:** Shake Shack Prud Ctr-MA  
800 Boylston St  
Boston, MA 02199

**Contractor:** Construction Management & Bld  
85 Sam Fonzio Dr  
Beverly, MA 01915

**Sub-Subcontractor:** **NATIONAL TAB**  
1329 E Kemper Rd  
Cincinnati, OH 45246

**Contact:** Sandy Sharman  
**Phone:** (855) 682-6822  
**Fax:**

**Contract Amount:** \$3,320.00

**\*PLEASE SEND ALL BILLING/INVOICES TO:** [ap@mccloskeymechanical.com](mailto:ap@mccloskeymechanical.com)

Subcontractor and Sub-Subcontractor, in consideration of the mutual agreements contained herein and intending to be legally bound hereby, agree as follows: **Contract Documents:** The Contract Documents consist of the General Contract between Contractor and Owner, the Subcontract between Contractor and Subcontractor, including but not limited to the plans, specifications, schedule, conditions and addenda to those contracts. Sub-Subcontractor and its suppliers are bound to the Contractor on the same terms as Subcontractor is bound to the Contractor by the Contract Documents. In the event of conflicting contract terms, this Agreement is controlling.

- Scope of Work:** Sub-Subcontractor will furnish all labor, equipment, tools, transportation and supervision necessary to fully complete, in a workmanlike manner, in accordance with the project plans and specification as prepared by the engineer and architect of record for the following work:  
**T&B as Specified**

This scope excludes material, pumping concrete, and form work. Sub-Subcontractor agrees to commence its Work upon notification by Contractor, and to perform and complete such Work in accordance with the Contract Documents and in accordance with Subcontractor's latest schedule as revised from time to time, to the satisfaction of Subcontractor, General Contractor, Owner, and any specified representative of Owner.

Sub-subcontractor shall provide all shop drawings, submittals, testing, guarantees, warranties, as-built drawings, attic stock/additional material, manuals, training, demonstration and start-up services.

- Subcontract Price and Payment Terms:** Subcontractor agrees to pay Subcontractor for the complete and timely completion of Subcontractor's Work the sum of \$ \$3,320.00 Payment will be made based on monthly requisitions

submitted by Sub-Subcontractor within the time frame and on forms approved by Subcontractor. Sub-Subcontractor agrees to furnish, if and when required by Subcontractor, payroll affidavits, receipts, vouchers, releases, lien waivers, affidavits, warranties and guaranties in a form satisfactory to Subcontractor, prior to receipt of any payment. Subcontractor may, in its sole discretion, make any payment or portion thereof by joint check payable to Sub-Subcontractor and any of its subcontractors, suppliers and/or material men, but this provision is not intended to and shall not create any rights against Subcontractor by any third party. Sub-subcontractor's right to receive any progress or final payment is expressly contingent and conditioned upon Subcontractor receiving payment from the General Contractor for its work.

3. **Changes of Work:** Subcontractor, without nullifying this Agreement, may direct Sub-Subcontractor in writing to make changes to Sub-Subcontractor's Work. Adjustment, if any, in the contract price or contract schedule resulting from such changes shall be set forth in a Change Order pursuant to the Contract Documents. No changes shall be made in this Sub-Subcontract or the Work except upon such written Change Order signed by Subcontractor's authorized representative which contains a description of the change and the amount of any addition or credit. **Sub-Subcontractor must receive approval for Change Order Work from Subcontractor prior to submitting payment request.**
4. **Claims:** If any dispute arises between Subcontractor and Sub-Subcontractor regarding performance of the Work, or any alleged change in the Work, Sub-Subcontractor shall timely perform the disputed Work, and shall give written notice of a claim for additional compensation for the Work within ten (10) days after commencement of the disputed Work. Sub-Subcontractor's failure to give written notice within the ten (10) day period constitutes an agreement by Sub-Subcontractor that it will receive no extra compensation for the disputed Work.
5. **Contractor's Right to Repair/Right to Terminate:** Should Sub-Subcontractor breach this Agreement, and fail to rectify any breach of this Agreement or other contractual deficiencies, including failure to pay its sub-subcontractors, suppliers, or creditors, within three (3) working days from receipt of Subcontractor's written notice of such breach,, then Subcontractor, without prejudice to any rights or remedies it may have, shall have the right to take whatever steps it deems necessary to correct said deficiencies and charge the cost thereof to Sub-Subcontractor, who shall be liable for the full cost of Subcontractor's corrective action, including reasonable overhead, profit, and attorneys' fees. In addition, Subcontractor may terminate this Sub-Subcontract and charge any and all costs to complete the Work, plus reasonable attorney's fees incurred to represent Subcontractor in connection with such breach of this Agreement, against Sub-Subcontractor. In the event of such termination, Sub-Subcontractor shall not be entitled to any claim or lien against Subcontractor, Contractor or Owner for any further compensation or damages.
6. **Insurance:** Before commencing work on the project, Sub-Subcontractor shall, at its expense, procure and maintain in force for the duration of the Work the following insurance, with carriers and coverage in amounts specified on **Exhibit "B"** to this Agreement: Workers' Compensation and Employers' Liability Insurance in statutory form; Comprehensive General Liability or Commercial General Liability Insurance covering all operations; and Automobile Liability in comprehensive form with coverage for owned, hired, and non-owned automobiles, plus any other coverages required in the Contract Documents. Sub-Subcontractor shall name Subcontractor, Contractor and Owner as additional insureds under its general liability coverage and will supply to Contractor duly issued certificates of insurance reflecting such additional insured coverage.
7. To the extent allowed by law, Sub-subcontractor agrees to waive any right to file a mechanic's lien, construction lien claim, stop notice, or notice of unpaid balance against any ownership or leasehold interest related to the Project. Sub-subcontractor agrees to reimburse subcontractor for any and all costs incurred, including attorney's fees, caused by the filing or assertion of such waived claims.
8. **Warranty:** Sub-Subcontractor warrants to Subcontractor, Contractor, Owner and Architect that all work supplied by Subcontractor shall be new, free from faults and defects, and of merchantable quality, and that all Work performed by Subcontractor will be performed in a workmanlike manner. Sub-Subcontractor warrants its Work against all deficiencies and defects in material and/or workmanship, and agrees to satisfy same without costs to Subcontractor, Contractor or Owner for a period of one (1) year from the date of Substantial Completion of the project, or per the Contract Documents, whichever is longer.
9. **Indemnification:** To the fullest extent permitted by law, Sub-Subcontractor shall indemnify and hold harmless Subcontractor, Contractor, Owner and their agents and employees from claims, damages (including attorney's fees and litigation expenses), demands, causes of actions and liabilities of every kind and nature whatsoever, arising out of or in connection with Sub-Subcontractor's operations performed under this Agreement. This indemnity shall be effective regardless of any active and/or passive negligent act or omission of the Subcontractor, Contractor or Owner, or their agents or employees. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement. All Work covered by this Agreement done at the site or in preparing or delivering materials or equipment to the site shall be at the sole risk of Sub-Subcontractor until the completed Work is accepted by Subcontractor.

10. **Entire Agreement:** This Agreement represents the entire agreement between Subcontractor and Sub-Subcontractor and supersedes any prior written or oral representations. This Sub-Subcontract cannot be modified by oral agreements, and may be modified only by a writing signed by both parties.
11. **Choice of Law and Venue:** This Agreement shall be construed and governed by the laws of New Jersey. At Subcontractor's election, and in its sole discretion, any claim between the Subcontractor and Sub-Subcontractor arising from or related to this Sub-Subcontract shall be submitted to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association. The venue for any arbitration hearings shall, at Subcontractor's election, be in Camden County, New Jersey, or the County in which the Project is located. Any award rendered by an arbitrator or arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

12. **Insurance Provisions**

**SUBCONTRACTOR'S INSURANCE**

Before commencing the Subcontract work, and as a condition precedent to any payment, the Subcontractors shall purchase and maintain insurance in conformance with the provisions contained in this Exhibit. This insurance will provide a defense and indemnify the Contractor, but only with respect to liability for bodily injury, property damage and personal and advertising injury caused in whole or in part by the Subcontractor's acts or omissions or the acts or omissions of those acting on the Subcontractor's behalf

Proof of this insurance shall be provided to the Contractor before the work commences, as set forth below. To the extent that the Subcontractor subcontracts with any other entity or individual to perform all or part of the Subcontractor's work, the Subcontractor shall require the other Sub-Subcontractors to furnish evidence of equivalent insurance coverage, in all respects, terms and conditions as set forth herein, prior to the commencement of work by the Sub-Subcontractor. In no event shall the failure to provide this proof, prior to the commencement of the work, be deemed a waiver by the Contractor of Subcontractor's or the Sub-Subcontractor's insurance obligations set forth herein.

In the event that the insurance company(ies) issuing the policy(ies) required by this exhibit deny coverage to the Contractor, the Subcontractor or the Sub-Subcontractor will, upon demand by the Contractor, defend and indemnify the Contractor at the Subcontractor's or Sub-Subcontractor's Expense.

**MINIMUM LIMITS OF LIABILITY**

The Subcontractor must maintain the required insurance with a carrier rated A-or better by A. M. Best. The Subcontractor shall maintain at least the limits of liability as set forth below:

Commercial General Liability Insurance

\$1,000,000 Each Occurrence Limit (Bodily Injury and Property Damage) \$2,000,000

General Aggregate per project

\$2,000,000 Products & Completed Operations Aggregate

\$1,000,000 Personal and Advertising Injury Limit

Business or Commercial Automobile Liability Insurance

\$1,000,000 combined single limit per accident

Workers' Compensation and Employers' Liability Insurance

\$100,000 Each Accident

\$100,000 Each Employee for Injury by Disease

\$500,000 Aggregate for Injury by Disease

Excess or Umbrella Liability (to overlay Employer's Liability, Automobile Liability and Commercial Liability coverages)

\$1,000,000 occurrence/aggregate

**Additional Insured Status and Certificate of Insurance**

The Contractor and Owner, along with their respective officers, agents and employees, shall be named as additional insured for Ongoing Operations and Products/Completed Operations on the Subcontractor's and any Sub-Subcontractor's Commercial General Liability Policy, which must be primary and noncontributory with respect to the additional insureds. This insurance shall remain in effect as set forth below in the "Continuation of Coverage" provision.

It is expressly understood by the parties to this Contract that it is the intent of the parties that any insurance obtained by the Contractor is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the Subcontractor, the Sub-Subcontractor or any of their respective consultants, officers, agents, subcontractors, employees or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law.

To the fullest extent permitted by applicable state law, a Waiver of Subrogation clause shall be added to the General Liability, Automobile and Workers Compensation policies in favor of Contractor and Owner, and this clause shall apply to the contractor's and Owner's officers, agents and employees, with respect to all projects during the policy term.

Prior to commencement of work, Subcontractor shall submit a Certificate of Insurance in favor of Contractor and an Additional Insured Endorsement (in a form acceptable to the Contractor) as required hereunder. The Certificate shall provide for thirty (30) days' notice to Contractor for cancellation or any change in coverage. Copies of insurance policies shall promptly be made available to the Contractor upon request.

#### NO LIMITATION ON LIABILITY

With regard to any and all claims against the additional insured by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### CANCELLATION, RENEWAL AND MODIFICATION

The Subcontractor shall maintain in effect all insurance coverages required under this Agreement at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor until final completion and acceptance of the entirety of the Subcontract Work; or longer if so provided in the Agreement such as with respect to completed operations coverage. Certificates of insurance showing required coverage to be in force must be delivered to the Contractor prior to commencement of the Subcontract Work. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, this shall be considered a material breach of the contract, entitling the Contractor, at its sole discretion to purchase such equivalent coverage as desired for the Contractor's benefit and charge the expense to the Subcontractor, or, in the alternative, exercise all remedies otherwise provided in the contract, or as permitted by law or equity.

#### CONTINUATION OF COVERAGE

The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least three (3) years after either ninety (90) days following Substantial completion of the Work or final payment to the Contractor, whichever is later. The Subcontractor shall furnish the Contractor evidence of such insurance at final payment and in each successive year during which the insurance coverage must remain in effect.

#### ACKNOWLEDGMENT OF REFERRAL OF THIS PROVISION TO THE SUBCONTRACTOR'S INSURANCE AGENT OR BROKER

The Subcontractor represents that is has provided a copy of the "Insurance Provisions" to his insurance agent and/or broker, and that the Subcontractor has instructed the agent/broker to provide insurance in full compliance with the terms and conditions herein.

The Contractor and Subcontractor hereby acknowledge that this Exhibit is considered a material term of the Subcontract.

**McCLOSKEY MECHANICAL  
CONTRACTORS, INC.**

SUB-SUBCONTRACTOR

BY: \_\_\_\_\_


BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

 Comfort. Under control.		1329 E KEMPER RD. SUITE 4210	
		CINCINNATI, OH 45246	
		513-860-2050	
		will@nationaltab.com	
Client:		Project:	Shake Shack #1431
Email:		QUOTE #:	2022-2-23-8J9
ATTN:		BID DATE:	2/23/2022
Address:		Jobsite location:	800 Boylston ST #13, Boston MA

Thank you for allowing National TAB this opportunity to bid on the testing and balancing of this project. The following is our understanding of the scope of work and the associated cost.

Equipment:	Qty.:	Equipment:	Qty.:
RTUs		Kitchen Hood	
OA only on Office FCU		Exhaust Fans	
OAF		Air Devices	
MUA		Circuit Setters	

**SCOPE OF WORK:**

1. Single Trip only. If there is commissinoing agent and a seperate trip is required for a walk thru, add \$1850 (one day only)
2. TAB of listed equipment

This proposal includes a written report to be submitted upon completion of all work by National TAB.

**TOTAL PRICE = \$ 3,320.00**

Any parts if required will be additional. However, no parts will be provided without initial approval unless National TAB, LLC has agreed with the client for a set fee to perform specific task. Lift rental to be additional if required if not provided by owner or GC. Work to be performed 1<sup>st</sup> shift only.

**Not included in price:** Sound and Vibration testing, Indoor Air Quality testing, and Pre-testing is not included unless price is specified separately above.

**WE HEREBY PROPOSE** to furnish labor complete in accordance with NATIONAL TAB specifications, for the sum of: Three Thousand Three Hundred Twenty US Dollars and Zero Cents and any selected options stated above. Payment to be Terms as specified by our acct department. New accounts are required to fill out a credit application.

<p><b>Acceptance of proposal</b> - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made in accordance to terms agreed upon.</p> <p>Client Signature _____</p> <p>Client Date of Acceptance _____</p>	<p><b>Authorized Signature for NT:</b></p> <p style="text-align: center;"><u>Will Turnbough</u></p> <p>Date: <u>02/23/22</u></p>
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