

GUTIERREZ CONSTRUCTION CO., INC.

Burlington Office Park
One Wall Street
Burlington, MA 01803
(781)272-7000

SUBCONTRACT AGREEMENT SA

This Agreement, made this _____ day of _____, 2003, by and between

with an address at _____ (the subcontractor") and
GUTIERREZ CONSTRUCTION CO., INC., a Massachusetts corporation (the "Contractor").

WITNESSETH

WHEREAS, the Contractor has entered into the construction of _____
at _____ (the "Project")
in accordance with the provisions of an agreement (the "General Agreement") between the Contractor and

of _____ (the "Owner")

dated _____, 2000 the architect/engineer for the Project being _____

of _____ (the "Architect").

NOW, THEREFORE, the Subcontractor and Contractor, for the consideration hereinafter named, agree as follows:

ARTICLE I. The Subcontractor shall furnish proper supervision, all labor, materials, equipment, tools, services, facilities and all else required to properly perform and complete

(the "Work") in a first-class and workmanlike manner, in accordance with this Agreement and any exhibits attached hereto, and the General Agreement together with all general and special conditions, plans, specifications, bulletins and addendum constituting the said General Agreement, unless modified herein, all of said documents being a part of this Agreement, as fully as if reproduced herein and called the "Contract Documents". The Subcontractor hereby assumes with respect to the Contractor all obligations and responsibilities relating to the work which the Contractor has, as general contractor, assumed with respect to the Owner.

ARTICLE II. The Contractor agrees to pay the Subcontractor as full payment for all work, labor, materials, applicable taxes, and all other matters to be done or furnished by the Subcontractor to properly and diligently complete in all respects the Work the sum of -----

-----dollars

(\$ _____) ("Subcontract Sum") payable as follows: Subcontractor shall submit on forms approved by Contractor on or before the 25th day of each month an application for payment with an estimate of work performed through the end of the month based on the Subcontract Sum less 10% for retention and less all previous payments and less all expenses and disbursements chargeable to the Subcontractor, together with certificate of payment by Subcontractor to his subcontractors and vendors. subject to audit and proper correction by the Contractor, the balance of said estimate shall be due on or about the 25th of the succeeding month provided the Subcontractor is not otherwise in default hereunder. The final payment shall be made within forty-five days after final completion of the Work and acceptance thereof by the Owner or the Architect/Engineer, and Contractor, provided a complete release of liens and indemnity agreement in form approved by Contractor is executed by the Subcontractor in recordable form and delivered to the Contractor, all drawings, plans and specifications have been returned to the Contractor, a set of as-built drawings, guarantees, warranties and operation manuals for the Work have been received by the Contractor and provided the Contractor has received from the Subcontractor satisfactory evidence that the Project is free from all liens or other claims or potential liens or claims chargeable to the Project and/or Subcontractor. Receipt by the Contractor of payment from the Owner for any and all portions of the Work shall be a condition precedent to any payment for same to the Subcontractor hereunder. THE ENDORSEMENT, NEGOTIATION, DEPOSIT OR ACCEPTANCE OF CONTRACTOR'S CHECK (WHETHER SUCH ACTION BE BY PERSONAL OR FACSIMILE SIGNATURE, STAMP NOTATION OR OTHERWISE, AND WHETHER OR NOT BY AN AUTHORIZED OFFICER OR AGENT OF SUBCONTRACTOR) ISSUED IN PAYMENT OF AN AMOUNT DUE UNDER ANY APPLICATION FOR PAYMENT SHALL CONSTITUTE A RELEASE AND DISCHARGE BY SUBCONTRACTOR OF ALL CONTRACTOR'S OBLIGATIONS AND LIABILITIES ARISING BY VIRTUE OF THIS AGREEMENT, AND OF ALL CLAIMS, DEMANDS AND LIENS OF EVERY KIND AND CHARACTER WHATSOEVER (INCLUDING ANY LIEN UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 254) AGAINST CONTRACTOR, OWNER AND PROJECT, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE WORK PERFORMED HEREUNDER THROUGH THE LAST DAY OF THE MONTH FOR WHICH SUCH APPLICATION IS SUBMITTED.

ARTICLE III. The Contractor and Subcontractor agree this Agreement, including the Terms and Conditions on the reverse side and all instruments incorporated hereby by reference, constitutes the entire agreement now existing between them. No modification or amendment to this Agreement shall become part of this Agreement unless it is written and executed by an officer and/or principal of the Contractor and Subcontractor.

IN WITNESS WHEREOF the parties hereunto set their hands and seals as of the date first written above.

(Subcontractor)

GUTIERREZ CONSTRUCTION CO., INC.

A _____
(Corp., Part., Individ.)

By: _____
(Name and Title)

By: _____
(Name and Title)

(Signature)

(Signature)

TERMS AND CONDITIONS

1. The Subcontractor shall commence the Work upon notice from Contractor and perform with due diligence in accordance with job schedules established by Contractor, as may be modified from time to time by Contractor. Time for performance is of the essence of this Agreement. The Subcontractor shall coordinate his work so as not to delay the Project. Subcontractor is required to furnish full reports of the progress of the Work in such detail and at such times as required by Contractor. All subcontracts for the Project have been or will be awarded and labor employed without prejudice to labor organization affiliation. Subcontractor shall employ labor and mechanics, procure materials from such sources, and proceed with the Work in a manner which will result in harmonious relations on the job site, and the labor employed by Subcontractor will at all times work in harmony with labor employed by Contractor or any subcontractor on the Project. Contractor has the right to proceed as set forth in paragraph 9 if a work stoppage occurs due to a labor dispute involving any of Subcontractor's labor or mechanics, including but not limited to jurisdictional disputes. Subcontractor shall have no claim for money damages or additional compensation for delay no matter how caused, but for any increase in the time required for performance not due to the fault of Subcontractor, it shall be entitled only to such extension of time for performance of its Work as shall be allowed to or by the Contractor.
2. No payment under this Agreement shall be proof of performance of this Agreement, in whole or part, nor shall any payment be deemed an acceptance of defective work or improper materials, nor shall entrance or use by Owner constitute acceptance of the Work hereunder, or any part thereof. Subcontractor shall secure and pay for all permits, fees and licenses necessary for the execution of the Work and shall execute and deliver to the Contractor before the start of the Work a subordination of liens to construction loan financing on the Project in form approved by Contractor.
3. Subcontractor shall maintain and pay for all insurance of the type and with the limits indicated on the Certificate of Insurance attached hereto and all such insurance shall be noncancellable except on 30 days written notice to Contractor. Subcontractor shall deliver an executed certificate to Contractor at least three (3) days prior to commencement of the Work. If Subcontractor shall default hereunder, Contractor may elect to take out said prescribed insurance in the name and at the expense of Subcontractor.
4. Subcontractor shall when requested by Contractor, procure and deliver to Contractor performance, payment and lien bonds in an amount equal to 100% of the Subcontract Sum and in form and from corporate sureties satisfactory to Contractor. Premiums for said bonds will be paid by Contractor unless previously included in the Subcontract Sum.
5. Subcontractor shall indemnify and save harmless Contractor and Owner against all loss, cost, claim or expense for any reason arising out of, or in consequence of the performance of the Work as described in Article 1, and shall at Subcontractor's expense defend same in any suit arising out of the Work as described in Article 1, and shall discharge any final judgment.
6. Subcontractor shall pay and assume full and exclusive liability for full compliance with any and all taxes, excises, assessments or other charges levied by any government authority on or because of the Work. Evidence satisfactory to Contractor of compliance will be required before final payment is released.
7. Subcontractor agrees to comply with any and all applicable laws, ordinances, statutes, rules and regulations of any governmental authority having jurisdiction of the Project, including without limitation any provision of law or the General Agreement or of any regulations with respect to wages, hours of labor, material, race, color, religion, sex, age or national origin of workmen, environmental quality or safety. Subcontractor shall furnish a Material Safety Data Sheet (MSDS) to the General Contractor for such product, material or substance brought onto the job site by Subcontractor or its employees, agents or materialmen as and when required by the Massachusetts Right to Know Law or by any other applicable statute or regulatory authority. Subcontractor shall be solely responsible for determining when an MSDS is required in connection with its work. Subcontractor agrees during the performance of this Agreement to comply fully with the Contractor's safety program and with Executive Order 11246 – Equal Employment Opportunity, specifically part III, and all amendments thereto or replacements therefor. The provisions of said Executive Orders as they may apply shall be included in all of the Subcontractor's subcontracts and purchase orders. The Subcontractor shall hold Contractor harmless from any and all claims, damages, or loss resulting from a violation by Subcontractor of any law, ordinance, statute, rule or regulation of any governmental authority.
8. Subcontractor agrees to cause prompt discharge of any claims against Contractor and Owner, or the property involved, by way of lien, or otherwise, which claims are asserted in consequence of rights claimed through Subcontractor and such actions shall be at the sole expense of Subcontractor and any expense of the Owner or Contractor in discharging such claims will be directly reimbursed by Subcontractor or such monies may be retained by Contractor and subtracted from any payments to become due to Subcontractor. If Subcontractor shall fail to make prompt payment for all labor, materials and supplies furnished by it hereunder, Contractor may apply any funds payable to Subcontractor under this Agreement to the payment of such liabilities.
9. Should Subcontractor in the opinion of Contractor at any time refuse or neglect to supply proper supervision, a sufficient number of properly skilled workmen or a sufficient quality and quantity of materials, or fail in any respect to prosecute the Work promptly and diligently, or fail to perform any of the agreements on his part herein contained, Contractor may, after 24 hours written notice to Subcontractor, provide any such labor or materials, and deduct the cost thereof from any money due or thereafter becoming due to Subcontractor; and Contractor may terminate the employment of Subcontractor, take possession of all Subcontractor's materials and equipment on the job site; employ any other person and take such other action necessary to complete the Work, and charge the cost of such completion and any damages and expenses incurred by Contractor by reason of Subcontractor's default against any unpaid balance of the Subcontract Sum, and if such costs, damages and expenses shall exceed such unpaid balance, such excess shall be paid on demand by Subcontractor to Contractor.
10. Subcontractor shall within 24 hours after receiving written notice from Contractor take down, remove, and replace at its expense all rejected work and materials. If Subcontractor fails to comply with any such order after 48 hours written notice, Contractor, at Subcontractor's expense, may correct the rejected work and charge Subcontractor for the cost thereof.
11. When requested by Contractor, Subcontractor shall present to Contractor supportive evidence of the cost of additions, omissions, or other modifications to the Work. Any and all change orders issued pursuant to this Agreement must be in writing and in form approved by Contractor, and no request for payment for extra work will be honored by Contractor unless supported by a change order executed by Contractor.
12. Neither this Agreement nor part thereof, nor any payments becoming due hereunder shall be assigned by Subcontractor without the written consent of Contractor. This Agreement may not be changed or modified except by written agreement between the parties.
13. Should the Subcontractor be adjudged a bankrupt, or make an assignment for the benefit of creditors, or suffer the appointment of a receiver to administer his affairs, or commit any act of bankruptcy, the Contractor shall have the rights provided in paragraph 9 above.
14. Any and all claims or disputes not specifically covered elsewhere in this Agreement arising out of or relating to this Agreement or breach thereof, if not settled by the agreement of the parties hereto, shall be settled only by judicial decision of any court having jurisdiction thereof in litigation between the Contractor and the Subcontractor, and not by arbitration; except that the determination by the Owner, the Architect, or any court, board of arbitration or other tribunal pursuant to the provisions of the General Agreement with respect to any dispute or claim relating to this Agreement or the Work performed or to be performed hereunder shall be binding upon Subcontractor and Subcontractor agrees to accept such determination, provided Subcontractor shall have been given reasonable notice of such dispute, proceeding or litigation and opportunity to make defense or present claims.
15. Subcontractor assumes all obligations of Contractor with respect to any general or special guarantees and warranties in the General Agreement relating to the Work including, but not limited to, factor guarantees on equipment and machinery. In any event, Subcontractor shall replace or repair, promptly upon notice from Contractor, any part of the Work found to be defective or not in accordance with this Agreement or the documents referred to herein within one year after acceptance of the Project by the Owner.
16. Should any provision of this Agreement be invalid as a matter of law, such invalidity shall affect only such provision and shall not invalidate or affect the remaining provisions of this Agreement.
17. Contractor may, upon 48 hours written notice to Subcontractor, terminate this Agreement if cancellation of or modification of the General Agreement eliminates in whole or part the Work hereunder, and Subcontractor shall be paid only for work performed.
18. Subcontractor shall be responsible for proper measuring and fitting of the Work, for proper protection of the Work and clean-up during the progress of and upon completion of the Work. Contractor or Owner may perform, or may employ other subcontractors to perform similar or other work, and Subcontractor and its employees shall not interfere with or molest such other persons or work and shall not cause any interruption in the progress of the Work or the Project.