



SUBCONTRACT

No. _____

THIS AGREEMENT made this _____ day of _____, _____ by and between

(“Subcontractor”)

and

A. J. MARTINI, INC.

(“Contractor”)

WHEREAS, the Contractor has undertaken the construction of

in accordance with the provisions of a general contract between the Contractor and

(“the Owner”)

NOW, THEREFORE, in consideration of the agreements herein contained, the parties hereto mutually agree as follows:

Section 1. The Subcontractor agrees to furnish all labor, materials, equipment and all else required to perform and complete the following work required by the general contract:

Specification Section _____ and in accordance with the attached List of Contract Documents, Exhibit C, and Insurance Requirements, Exhibit E.

ADD if applicable: This project is a Mass Sales Tax exempt project. Contractor’s Exempt Purchase Certificate, Exhibit G, is attached.

Initials

Initials

All the materials and equipment to be furnished and labor, work, and other services to be performed and completed by the Subcontractor pursuant to this subcontract are herein collectively referred to as the "Work". The Work shall include securing all field measurements and furnishing all labor, materials, skill, equipment, tools, construction equipment, construction machinery, transportation, and other facilities, services, instrumentalities, and things necessary or incidentally required for the proper execution and completion of the Work in a good and workmanlike manner. Except as expressly modified in this subcontract, all of the Work is to be furnished and performed in accordance with, and the Subcontractor bound to the Contractor by, all terms and provisions of the "Contract Documents" which include but are not limited to the general contract, general conditions, special conditions and supplementary conditions, and all riders, exhibits and addenda thereto, and the plans, drawings, and specifications (technical and non-technical provisions) prepared by _____

_____ ("the Architect"), dated _____, and all addenda and modifications thereto, all of these documents being made a part of this subcontract as fully as if reproduced herein. Subcontractor agrees to assume to the Contractor, with respect to that portion of the Work described above, all obligations and responsibilities, which the Contractor has, as general contractor, assumed to the Owner. The specific reference to or physical incorporation herein of any provision included within the Contract Documents is for emphasis or clarification only, and is not intended to be in limitation of the foregoing. It is the intent of this agreement that, unless expressly modified in the subcontract, Subcontractor be bound to Contractor by all the terms and provisions of the Contract Documents whether substantive, procedural, administrative, technical or nontechnical in nature, as the Contractor is bound to the Owner. The Contract Documents are available at the Contractor's office for review and copying.

The Subcontractor will furnish material of the best quality called for in the plans and specifications, approved by all governmental authorities having jurisdiction and will use first-class workmanship.

Subcontractor agrees that the Architect shall have the right to interpret the Contract Documents and to determine compliance therewith.

This subcontract is made subject to any provision contained in the Contract Documents requiring consent of the Owner or his representative for the subletting of any work of the general contract.

Section 2. The Contractor agrees to pay the Subcontractor as full payment for all Work, labor, materials, and all other matters to be done, performed, furnished, or provided by the Subcontractor the total price and sum of _____ Dollars (\$ _____) payable in monthly payments, as follows: Ninety percent (90%) of all labor and material which has been placed in proper position during the previous month, and for which payment has been made to the Contractor less any amount specified in any Court proceeding barring such payment and also less any amount claimed due from the Subcontractor by the Contractor, to be paid promptly upon receipt of such payment. Final payment shall be made to the Subcontractor promptly upon receipt by the Contractor of final payment from the Owner.

Initials

Initials

The Subcontractor acknowledges that receipt of progress and final payments by the Contractor from the Owner shall be in each instance a condition precedent to the Subcontractor's right to receive such payment from the Contractor.

The Subcontractor's applications for partial payments, hereinafter called "Requisitions", and its application for final payment, hereinafter called "Final Requisition, are to be submitted to the Contractor or its designee in the manner and form acceptable to the Contractor. Each Requisition must be supported by such data substantiating the Subcontractor's right to payment as the Contractor may require, including an affidavit certifying that all sub-subcontractors and materialmen of the Subcontractor have been paid to the date covered by the most recent partial payment. All Requisitions shall be in the form attached hereto as Exhibit A and shall be delivered to the Contractor's main office no later than the _____ day of the month in which the work is performed.

Partial payments shall constitute advances against the Subcontract price until final payment is made and accepted. No partial or final payment made, nor approval of the Work or any portion thereof, given for purposes of making a payment, shall constitute an acceptance of any Work, which is not in accordance with the Contract Documents or this Subcontract.

The Subcontractor warrants and guarantees that title to all work, materials, and equipment covered by a Requisition will be in the Contractor on or before the receipt of such payment by the Subcontractor, free and clear of all liens, claims, security interests, or encumbrances, hereinafter referred to as "liens"; and that no work, materials, or equipment covered by a Requisition will have been acquired by the Subcontractor or by any other person performing the Work at the Site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or lien thereon is retained by the seller or otherwise imposed by the Subcontractor or such other person.

The Subcontractor shall only be entitled to payment in the amount approved by the Contractor, the Architect, and Owner with respect to said Requisitions, each of which must be signed by the Subcontractor before payment is made. The value of any materials, equipment, and Work included in a Requisition for partial payment which is found unacceptable by the Contractor, the Architect or Owner may be deducted from that or any subsequent Requisition.

The Subcontractor agrees to pay all sales and use taxes due with respect to its work hereunder and to post such bonds as may be required by the Commonwealth of Massachusetts to assure payment of same in the event that the Subcontractor's principal place of business is not in Massachusetts.

Section 3. The Subcontractor agrees to proceed with the Work promptly and diligently under the direction of the Contractor in compliance with the job schedules of the Contractor. It is specifically understood and agreed that time is of the essence of this agreement. At the Contractor's election, the Subcontractor shall accelerate the construction schedule. In such event, the Subcontractor shall be reimbursed for all overtime costs incurred, which shall have been verified by time slips approved by the Contractor. No supervision, overhead, or profit shall be charged in addition to these overtime costs. No reimbursement for premium time will be made for Subcontractors overtime work made necessary by the Subcontractor not keeping up with the schedules of the Contractor. Contractor supervision costs for such overtime work will be the responsibility of the subcontractor.

Initial

Initial

Section 4. The Subcontractor agrees to perform all Work on this project with labor that will work harmoniously with other elements of labor involved in the Work.

Section 5. The Subcontractor agrees to furnish in a timely manner all shop drawings, samples, certificates and the like as required which will meet the approval of the Architect, the Contractor, and Owner and shall give the Contractor notice of, and opportunity to be present at, all inspections and testing with reference to the Work of this subcontract.

Section 6. The Subcontractor agrees that it shall have no claim for money damages for delay no matter how caused, but for any delay or increase in the time required for performance of this subcontract not due to its fault shall be entitled only to such extension of time for the performance of its Work as shall be allowed to the Contractor by the Owner, or as shall be allowed by the Contractor. All claims for such extension of time shall be made in the manner and within the time required by the general contract for like claims by the Contractor upon the Owner.

Section 7. It is understood and agreed that this agreement, including the Terms and Conditions on the succeeding pages and all instruments incorporated herein by reference constitute the entire agreement now existing between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date first above written.

A. J. MARTINI, INC.

By _____

By _____

TERMS AND CONDITIONS

1. The Subcontractor agrees that it shall do, perform, obtain, furnish and provide, at its own expense, all work, labor, materials, permits, tools, and equipment in a workmanlike manner and to the full satisfaction of the Contractor and the Owner, and in proper cooperation with the Contractor and other subcontractors so as not to delay or otherwise interfere with or obstruct their work; that it shall provide sufficient, safe and proper facilities at all times for the inspection of the Work; that it shall, within twenty-four (24) hours or such reasonable time as the Contractor allows, after receiving written notice from the Contractor, at its own expense, proceed to remove from the grounds or building all materials condemned by the Owner or Contractor, whether worked or unworked, and to take down and/or rebuild all portions of the Work which the Owner or Contractor shall, by like written notice, condemn as unsound or improper, or as in any way failing to conform to the plan, drawings and specifications. Work done or materials furnished by the Subcontractor and not approved by the Owner and/or Contractor shall not be accepted.

2. The Subcontractor shall, at its own cost and expense, apply for and obtain all necessary permits, and the Subcontractor further agrees that all Work performed, and all materials furnished by it under this contract shall comply strictly with the laws and by-laws in force in the locality in which the Work is done, and that it will comply promptly with all laws, by-laws, regulations, rules and orders of the local, state, and/or federal government and of any and all of its departments and bureaus, and that it will so perform the Work and furnish the materials in accordance with such laws and by-laws. The Subcontractor will be responsible for any violation of any such laws, by-laws, rules and orders and will indemnify the Contractor to the fullest extent permitted by law for any loss or damage resulting to it by reason of any such violation. This indemnity is in addition to and not in lieu of any other indemnities contained in the Contract Documents.

Subcontractor shall notify Contractor of the delivery of all permits, licenses or certificates required by it to be obtained and agrees, upon demand, to deliver copies of the same to the Contractor.

If the Subcontractor observes that the drawings and specifications are at variance with any applicable codes, laws, by-laws, rules or regulations, or protective covenants, Subcontractor shall immediately notify the Contractor in writing and any necessary changes shall be made as provided in the general conditions for changes in the drawings and specifications. If the Subcontractor performs any work knowing it to be contrary to such codes, laws, by-laws, rules, regulations or protective covenants, Subcontractor shall bear all costs and expenses arising therefrom to effect correction and elimination.

3. The Subcontractor agrees that it will dismiss any worker from the Work whose employment thereon shall be objected to by the Contractor.

4. The Subcontractor shall purchase and maintain, and shall require all of its subcontractors and suppliers to purchase and maintain, insurance of the types of coverage and limits of liability as set forth in Exhibit E, including Completed Operations coverage for the number of years specified. Coverages shall be with companies satisfactory to the Contractor, shall name the Contractor as an additional insured, and shall be maintained without interruption from the date of the commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment. Certificates of Insurance in form satisfactory to the Contractor reflecting the

Initial

Initial

Subcontractor's coverage and that of all of its sub-subcontractors and suppliers shall be filed with the Contractor prior to commencement of the Subcontractor's work. These Certificates and the insurance policies required by this paragraph shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the forgoing insurance coverages are required to remain in force after final payment and are available, an additional Certificate evidencing continuation of such coverage shall be submitted with the Final Requisition. If any information concerning reduction or change of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

If required by the Contractor, the Subcontractor shall purchase, maintain, and deliver to the Contractor prior to the commencement of the Subcontractor's work performance, payment, and mechanics lien bonds running to the Contractor in the sum of _____

(\$ _____) Dollars with corporate sureties satisfactory to the Contractor, conditioned on the faithful performance of this Subcontract in all its particulars and in such form and substance as is satisfactory to the Contractor. Appropriate adjustment will be made to the contract amount.

5. To the fullest extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article.

In claims against any person or entity indemnified under this Article by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

6. The Subcontractor shall make no claim for additional compensation for any work done by it or by reason of any act or omission of the Contractor during the performance of this subcontract unless such work is done in pursuance of a written order from the Contractor and such claim is made in the manner provided in the general contract for like claims by the Contractor upon the Owner; provided, however, that notice of all such claims shall be given to the Contractor in writing before the next ensuing payment under this subcontract after commencement of such additional work and in no event later than seven (7) days after the occurrence giving rise to the claim or the claim shall be considered abandoned by the Subcontractor. The Subcontractor understands that no officer, employee or other representative of the Contractor has authority to waive compliance with this provision, except as authorized by a vote of the directors of the Contractor.

No claim for extra work shall contain any charge for supervision, tools, overhead, or profit other than a charge of _____ (_____ %) percent for overhead and profit.

Initial

Initial

7. It is further agreed that no payment under this subcontract shall be proof of performance of this subcontract, either in whole or in part, nor shall any payment be construed as an acceptance of defective work or materials. The Subcontractor does hereby guarantee its work and materials and agrees to make good, without cost to the Owner or to the Contractor, any and all defects due to imperfect workmanship or materials, and pay for any damage resulting therefrom, which appear or are discovered either before or after acceptance of the Work and for which the Contractor is obligated to make good under or pursuant to the Contract Documents. Upon notice in writing from the Contractor of the existence and nature of such defects or damage, the Subcontractor shall proceed forthwith but in no event later than five (5) calendar days after notice, to cure, repair, restore or otherwise correct the Work, eliminating such defects and the damage, if any, resulting therefrom. The foregoing guaranty shall not supersede the terms of any other guaranty of the Subcontractor but is in addition thereto.

8. Should any provision of this subcontract 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 subcontract.

9. Should the Subcontractor at any time refuse or neglect to supply a sufficient number of properly skilled workers or materials of the proper quality and quantity, or fail in any respect to prosecute the Work promptly and diligently, or fail to perform any of the agreements on its part herein contained, the Contractor shall be at liberty, after twenty-four (24) hours written notice to the Subcontractor, to provide any such labor or materials, and deduct the cost thereof from the money due or thereafter becoming due to the Subcontractor; and the Contractor shall also be at liberty to terminate the employment of the Subcontractor for the Work, and to enter upon the Project and take possession of all materials and equipment whatsoever thereon, and to employ any other person or persons to finish the Work, and to provide materials therefor. In the event of a termination under this provision of the subcontract, the Subcontractor shall not be entitled to receive any further payments under this subcontract until the Work shall be wholly completed, at which time, if the unpaid balance of the contract price due the Subcontractor shall exceed the expenses of finishing the Work, including, without limitation, compensation for additional managerial, legal, and administrative services, such excess shall be paid to the Subcontractor. If such expenses shall exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

10. In the event that any labor dispute or difficulty is created by or results from the operations of the Subcontractor in connection with the Work, thereby causing or resulting in any delay, interference with, or stoppage of any portion of the Work of the general contract, or any other subcontractor, and such delay or interruption continues for two (2) days, the Contractor may, at its option, terminate and cancel this subcontract under the provisions of Paragraph 9 above and shall have all of the rights and remedies provided in Paragraph 9 above.

The Subcontractor agrees not to participate in or accede to any cessation of Work, which may occur as a result of any labor dispute.

11. The Subcontractor agrees that any matters contained in the specifications which may have been omitted from the plans, or vice versa, shall be construed as contained in both, and that the Subcontractor will inform the Contractor in writing of any inconsistency in the conditions and that any change or changes therein that the Contractor shall thereupon make shall be binding upon the Subcontractor and any matters contained in the portion of the specifications to which this subcontract pertains which are omitted in the specific conditions shall be construed as binding in this agreement. No extra work or change in the Work under its subcontract will be recognized or paid for unless agreed to by the Contractor, before the Work is done or the change made, in writing, specifying in detail the extra work or change desired, the price to be paid therefor, or the amount to be deducted should said change decrease the amount to be paid hereunder.

Initial

Initial

12. It is also agreed that any damage, loss, cost or expense, including counsel fees, suffered or incurred by the Contractor by reason or in consequence of the Subcontractor' failure to perform this subcontract fully shall be chargeable to and paid by the Subcontractor.

13. It is also agreed that any sum or sums chargeable to the Subcontractor under any provisions of this subcontract may at the election of the Contractor be deducted from any payment or payments otherwise due or becoming due to the Subcontractor hereunder, or under any other contract between the Subcontractor and Contractor, and/or the Contractor may sue the Subcontractor and recover damages therefor.

14. This subcontract and any payment due hereunder and any part or the whole of the Work to be done hereunder, shall not be assigned or sublet without the written consent of the Contractor, and that any attempt to do so by the Subcontractor shall be held to amount to a repudiation and a refusal of performance of this subcontract by the Subcontractor and grounds for termination under Paragraph 9 above.

15. The Subcontractor agrees to cause prompt discharge of any claims against the Contractor, the Contractor's surety, the Owner, or the property involved by way of lien, or otherwise, which claims are asserted in consequence of rights claimed through the Subcontractor.

16. If the Subcontractor should be adjudged a bankrupt, or make a general assignment for the benefit of creditors, or if a receiver should be appointed to administer its affairs, or if it should commit any act of bankruptcy, the Contractor shall have the rights provided in Paragraph 9 above.

17. The Subcontractor agrees to follow and abide by all safety programs set up by the Contractor including without limitation, the Contractor's Safety Plan dated May 1, 2001, a copy of which is available at the Contractor's office for review and copying. A copy of the Subcontractor's Safety Program must be submitted for approval to A.J. Martini, Inc. This project shall be operated as a "hard hat job". The Subcontractor will furnish hart hats to all of its personnel who are employed at the jobsite and will see to it that they are worn. The Subcontractor agrees that it will dismiss any workman from the Work who shall refuse to wear a hard hat. The Subcontractor agrees to insert the provisions of this clause in all subcontracts and purchase orders. The Subcontractor agrees that it will see to it that all of its subcontractors and vendors comply with the requirements of this clause. The Subcontractor agrees to comply with all applicable state and federal law including without limitation, the Occupational Safety and Health Act of 1970 and the so-called "Right to Know" law, as amended from time to time. The Contractor further assumes no liability for the Subcontractor's noncompliance with any provisions of this paragraph, including but not limited to OSHA penalties or other monetary fines related to the Subcontractor's health and safety violations, down time resulting from the Contractor's written notification to remedy unsafe practices, removal of the Subcontractors, its employees or subcontractors, or termination of this Agreement for failure to comply with any of the terms herein. Before using on site any material listed on the Massachusetts Substance List, the Subcontractor shall furnish the Contractor with a copy of the required Material Safety Data sheet for that substance. Failure to do so will result in A.J. Martini, Inc. providing same and a \$100. back-charge per Item #27 below.

18. Nothing contained in this subcontract shall create any contractual relation between the Subcontractor and the Owner nor shall it create any obligation on the part of the Owner to pay or see to the payment of any sums to any Subcontractor.

Initial

Initial

19. With each requisition, the Subcontractor shall submit certificates indicating all bills from its suppliers and subcontractors for work and materials performed during the previous month on which payments have been made by the Contractor have been paid as a condition for payment of the current requisition by the Contractor.

20. Subcontractor shall have no claim for additional compensation for any act, omission, or direction of the Owner whatsoever except to the extent that the Contractor shall, pursuant to the provisions of the general contract, have such a claim against the Owner. The Subcontractor agrees to become a party to and to be bound by any proceeding involving the Contractor, the Architect, or the Owner to the extent that such proceedings involve any of the rights or obligations of the Subcontractor under the subcontract. In the event of any dispute, controversy or claim between the Contractor and the Subcontractor, the Subcontractor agrees to proceed with the Work or extra work without delay and without regard to such dispute, controversy, claim or the tendency of any proceeding in relation to the same. The failure of the Subcontractor to comply with the provisions of this paragraph shall constitute a material breach of this agreement with all the remedies of the Contractor provided for in Paragraph 9 above.

21. The Subcontractor shall, prior to and as a condition of receiving final payment hereunder, execute and deliver to the Contractor a final release, in form attached hereto as Exhibit B, of all claims of the Subcontractor against the Contractor, except for such as are specifically listed in the release as exceptions thereto and which have been previously asserted pursuant to Paragraph 5 above.

22. The Subcontractor agrees, at its own expense, to provide all sheds, scaffolding, and hoisting for its own use and to clean up and remove from the premises all dirt and debris caused by the Work hereunder from time to time as directed by the Contractor. A. J. Martini, Inc. is not responsible for clean-up labor, materials, equipment or dumpsters for this Subcontract.

23. Within fifteen (15) days from the date of this Subcontract, the Subcontractor shall submit a complete, detailed listing (or drawings) of all locations for sleeves, cut-outs, or embedded items related to the concrete structure or other structure for coordination with other trades and structural and architectural requirements. Any failure by the Subcontractor to submit such data for prior approval will render the Subcontractor solely responsible for any expense incurred to cut, core, patch or relocate.

24. All deliveries of materials to the job site are to be scheduled with the Contractor forty-eight (48) hour in advance. The Subcontractor shall coordinate unloading and storage of all materials on the job site with the Contractor's superintendent.

25. Upon Contractor's request, Subcontractor will attend regularly scheduled job site project meetings. The Subcontractor's representative at such meetings shall have the authority to render decisions on behalf of the Subcontractor and bind the Subcontractor by such decisions.

26. A. J. Martini, Inc.'s on-site superintendents have the responsibility and authority to approve subcontractor's monthly requisitions with regard to percentage of completion of base contract and change order work.

Initial

Initial

27. In addition to other recourses of action including worker or firm dismissal, A. J. Martini, Inc. will assess fines to the Subcontractor for violations to safety regulations referred to in Terms and Condition, #17.

For the first violation on the job, a written warning will be issued. For the second violation, whether or not it is related to the first violation, a \$1000.00 backcharge will be made to the contract amount. For third and subsequent violations, the amount of the fine will be increased by \$100.00 for each violation.

28. The Subcontractor will be responsible for any and all costs incurred by A. J. Martini, Inc. for supervision and related costs to facilitate the completion of rework and punch list work.

29. Date of Agreement: The Subcontractor confirms that the Work performed by the Subcontractor on the Project, prior to the date on which this Agreement is fully executed, is subject to the terms and conditions of this Contract and that all representations made by the Subcontractor herein are retroactive to the date on which Contractor commenced Work on the Project.

30. The Subcontractor may be responsible for Contractor supervision costs for work the Subcontractor elects to perform on off-hours and weekends.

Initial

Initial