

CZOT-MGS LLC

SUBCONTRACT AGREEMENT

JOB # DAL010
SUBCONTRACT: 001
COST CODE: 00000

THE STATE OF TEXAS

COUNTY OF DENTON

THIS AGREEMENT made this 20th day of April, Two Thousand Twelve, by and between **CZOT-MGS, LLC**, 1420 Springhill Road, Aubrey, TX 76227 Phone: (940)365-1366 Fax: (940) 365-0166, hereinafter called "Company" and, **Contractor Name and Address**, Phone: (972) 424-4070, Fax: (972) 424-4171, Attn: **Contact**, hereinafter called "Subcontractor".

That Company and Subcontractor for the consideration hereinafter named, agree as follows:

ARTICLE 1 - CONTRACT DOCUMENTS

The Contract Documents for this Subcontract consist of this agreement, the Contract between the Company and the Owner, including all addenda and modifications issued subsequent thereto, **per plans & specifications per attached Exhibit:**

Exhibit 'A1' – Drawing Log
Exhibit 'A2' – Project Manual

for the project called "George W. Truett Elementary School – Classroom Addition located at 1811 Gross Road, Dallas, TX 75228"; plans and specifications prepared by Boynton Williams & Associates, 3010 LBJ Freeway #110, Dallas, TX 75234, Phone (972) 661-5461, Fax (972) 661-5449. The visual inspection of the project was an additional factor of this scope of work. All of the above documents which form the agreement between the Owner and Company are a part of this agreement and shall be available for inspection by the Subcontractor, compliance with all terms and conditions of which pertaining to the work called for under this subcontract, Subcontractor covenants to perform in accordance with the tenor of said documents. In the event of a conflict between the aforementioned documents and this agreement, this agreement shall take precedence.

ARTICLE 2 - THE WORK

The General Contractor shall furnish for the considerations herein mentioned, all supervision, coordination and management of the job. The Subcontractor shall furnish for the considerations herein mentioned, all labor, material, equipment, supervision of their work (to include an English speaking representative at all times while on site), insurance, all permits and fees necessarily required to complete the following work in accordance with the terms and conditions of this Contract and the contract referred to in Article 1 of this Contract: Scope of work to be as follows: **Scope per plans and specifications including but not limited to the following: per attached Exhibit 'B' – Scope of Work.**

ARTICLE 3 - TIME

Time is of the essence, the Subcontractor agrees not to exceed schedule milestones set during pre construction meeting. You must contact Greg Dalhaug at (940) 367-0863 for scheduling your work.

ARTICLE 4 - CONTRACT SUM

Company shall pay Subcontractor for the full, faithful and **prompt performance of this subcontract, subject to additions and deductions by Change Order as hereinafter provided the contract sum of DOLLARS (\$\$\$.\$\$)**

Subcontractor shall invoice Company by or before the 20th day of the month after commencement of the work hereunder for payment for materials incorporated in the work and work performed and in place during the preceding month or part thereof. Company shall have the right, but not the obligation, to verify that the materials as invoiced have been incorporated in the work and that the work as invoiced has been performed and is in place. Company shall pay to the Subcontractor the amount invoiced less FIVE percent (5%) retainage by or before the **20th of the following month or within three (3) days of Company's receipt of funding from Owner** *provided the work is complete as stated in the invoice. The remaining FIVE percent (5%) shall be paid by the Company within thirty-one days after full and final completion, acceptance of the project by Owner or Owner's representative, and payment to the Company. ***NOTE ARTICLE 8 for additional payment requirements.**

The Company may require as a condition for partial payment that the Subcontractor submit lien waivers through the date and for the amount covered by the invoice and will require as a condition of final payment proof of and/or lien waivers from the Subcontractor, his materialmen, laborers and sub-contractors.

ARTICLE 5 - INSURANCE

INSURANCE: Subcontractor, shall, at its own cost and expense, secure in the limits as **specified below**, and keep in force the following insurance. The insurance required shall be written for not less than the following or greater if required by law:

GENERAL LIABILITY

\$1,000,000	Each Occurrence Bodily Injury and Property Damage
\$2,000,000	General Aggregate that applies on a per project basis
\$2,000,000	Products/Completed Operations Aggregate
\$1,000,000	Per Person or Organization (Personal and Advertising Injury)

Endorsed to provide you and the owner with:

- 1) 30 days written notice of cancellation, material change, or reduction in limits.
- 2) Waiver of Subrogation.
- 3) Additional Insured status should be maintained for a minimum of 1 year after completion.
- 4) Other insurance Clause – Primary and Non-Contributory Language.
- 5) Products and Completed Operations coverage should be maintained for a minimum of 2 years after completion of the project.
- 6) Aggregate per Project endorsement.
- 7) Independent Contractors Protective.

AUTOMOBILE LIABILITY

Combined Single Limit	\$1,000,000
-----------------------	-------------

Endorsed to provide you and the owner with:

- 1) 30 days notice of cancellation, material change, or reduction in limits.
- 2) Waiver of subrogation.
- 3) Additional insured.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY

Standard Workers' Compensation policy with Employers Liability coverage

Statutory	Workers' Compensation
\$1,000,000	Each Accident
\$1,000,000	Disease Policy Limit
\$1,000,000	Disease Each Employee

Endorsed to provide you and the owner:

- 1) 30 days notice of cancellation, material change, or reduction in limits.
- 2) A waiver of subrogation.

UMBRELLA EXCESS LIABILITY

\$5,000,000 Umbrella Excess Liability

Subcontractor will maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described above on a primary and non-contributory basis, which is at least as broad as each and every area of the underlying policies. The amount of insurance required for underlying and excess insurance may be satisfied by purchasing coverage for the limits specified. Umbrella coverage will be on a primary and non-contributory basis.

The Subcontractor shall cause his agent to furnish the Company certificates evidencing such insurance within ten (10) days of date of this Agreement but in all cases prior to commencement. The certificates shall state that the coverages herein shall not be canceled until thirty (30) days has lapsed from date of notification to the Company by certified mail of cancellation of the above coverages. Construction Zone International LP, Construction Zone International GP LLC, Construction Zone of Southeast Texas LLC, Construction Zone of Texas LLC, Construction Zone - Louisiana LLC, Construction Zone of DFW LLC, CZOT-MGS LLC and Morning Glory Services LLC as additional insured's status on a primary and non-contributory basis as per forms CG2010 0704 and CG2037 0704 with Waiver of Subrogation in favor of all aforementioned applies. No payment will be processed until CZOT-MGS LLC receives the original insurance certificate from the insurance company. Faxed copies may only be used to show coverage, Construction Zone must have original certificate before work begins.

ARTICLE 6 - OTHER PROVISIONS

BONDS: If requested by the Company, the Subcontractor shall furnish at its own cost a bond covering the faithful performance of the work and/or labor herein subcontracted and for the payment of all obligations arising hereunder and to be performed by Subcontractor in such form and amount and with such sureties as the Company may approve.

CHANGE ORDER: No alterations, additions or deletions shall be made in the materials to be furnished or the work to be performed under this Contract or the contract documents set out in Article 1 hereof, except pursuant to a written change order signed by both Company and Subcontractor. The value of the materials and/or alterations, additions or deletions by written change order as aforesaid shall be determined by both the Company and Subcontractor and shall be added to or deducted from the contract sum, as the case may be. No extra charge will be processed unless accompanied by a signed change order. Payment for all change orders must be a separate line item on monthly billing for each change order. Change order procedure to be as follows: Upon first notice by Subcontractor of need for change in the work, Subcontractor is to notify CZOT-MGS, LLC Project Manager named at the end of this Subcontract Agreement and no others. If requested at that time, Subcontractor is to fax a quote to the Project Manager of CZOT-MGS, LLC describing the change and the cost for the change. The Subcontractor is not to make the change in the work until receiving a fax memo from the Project Manager of CZOT-MGS, LLC or a fax copy of the Subcontractor's quote signed by the Project Manager of CZOT-MGS, LLC of change order signed by the Project Manager of CZOT-MGS, LLC. If a memo or quote is used for temporary written approval, a change order will be issued as soon as possible. Subcontractor is to attach a copy of the change order to the invoice for the change order and is not to submit the invoice without the change order attached

to it. It is not the jobsite Superintendents' responsibility to authorize approval of changes in the work or additional work, nor is he authorized to approve any changes in the work or additional work.

DAMAGE TO OTHER WORK: In carrying out his work, the Subcontractor shall take necessary precautions to protect the finished work of other trades from damage caused by his operations and Subcontractor shall repair and/or replace to the Company's satisfaction and on the Company's demand all damage caused by his operation at no expense to the Company.

CLEAN UP: Subcontractor shall at all times keep the premises free from accumulations of waste material, debris or rubbish caused by his employees or work, and at the completion of each work week, he shall remove all the waste material, debris and rubbish from and about the project and all his tools, equipment, waste and surplus materials and shall leave his work "broom clean" or its equivalent. In case of dispute, the Company may remove the rubbish and charge the cost to the Subcontractor. Subcontractor will be charged on a pro-rata basis if he uses trash dumpster provided by the Company.

SAFETY: The Subcontractor shall be responsible for initiating, maintaining and supervision all safety precautions and programs in connection with the performance of the Contract and shall conform to all provisions of the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, Inc. latest edition and the Subcontractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration ("OSHA") 29 USC Section 651 et seq., and all amendments thereto. However, the Subcontractor's duties herein shall not relieve any Sub-subcontractor and any other person or entity, including any person or entity required to comply with all applicable federal, state and local laws, rules, regulations and ordinances, from the obligation to provide for the safety of their employees, persons and property and their requirements to maintain a work environment free of recognized hazards.

Subcontractor's employees, agents Sub-subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not perform any service for Contractor while under the influence of any amount of alcohol or any controlled substance, or use possess, distribute or sell alcoholic beverages while on Owner's premises. No person shall use, possess, distribute or sell illicit or unprescribed controlled drugs or drug paraphernalia; misuse legitimate prescription drugs; or act in contravention of warnings on medications while performing the Work or on Owner's premises.

Subcontractor has implemented its own or will adopt the DISD Safety Manual to assure a drug-free and alcohol-free workplace while on Owner's premises or performing the Work. Contractor will remove any of its employees, agents, subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, from performing the Work or any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such person, and at any time an incident occurs where drug or alcohol use could have been a contributing factor, Contractor has the right to require Subcontractor to remove any person from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, the person so removed may only be considered for return to work after the Subcontractor certifies as a result of a for-cause test, conducted immediately following removal that said person was in compliance with this Contract. Subcontractor will not us any person to perform the Work who fails or refuses to take, or tests positive on any alcohol or drug test.

Subcontractor will comply will all applicable federal, state and local drug and alcohol-related laws and regulations (e.g., Department of Transportation regulations, Drug-Free Workplace Act). Owner has also banned the presence of all weapons on the Project site, whether or not the owner thereof has a permit for a concealed weapon, and Subcontractor agrees that Subcontractor's representatives, employees, agents and sub-subcontractors abide by same.

Subcontractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. Employees on the Work, school personnel, students, and other persons on Owner's premises, and other persons who may be affected thereby, including the installation of fencing or other forms of safety barricades between the Work site and the occupied portion of a connecting or adjacent educational facility;
2. The Work and materials and equipment to be incorporated therein, whether in storage or off-the-site under care, custody or control of the Subcontractor or Sub-subcontractors; and
3. Other property at the site or adjacent thereto, such as other building, fencing, trees, shrubs, lawns, walks, athletic fields, facilities and tracks, pavements, roadway, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Subcontractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage injury or loss.

The Subcontractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards, for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Subcontractor shall also be responsible, at the Subcontractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Subcontractor. Subcontractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Subcontractor employees.

When use or storage of hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Subcontractor shall exercise utmost care and carry on such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Contractor. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance by authorities having jurisdiction and in writing by Contractor, Owner and Architect. When use or storage of hazardous materials or equipment or unusual construction methods are necessary, the Subcontractor shall give the Contractor reasonable advance notice of the presence or use of such materials, equipment or methods.

The Subcontractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in previous Clauses caused in whole or in part by the Subcontractor, Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Subcontractor is responsible under previous Clauses, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Subcontractor.

The Subcontractor shall designate a responsible member of the Subcontractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Subcontractor's superintendent unless otherwise designated by the Subcontractor in writing to the Contractor.

Additionally, Subcontractor shall submit a Safety Plan for the Contractor's approval prior to commencing the Work which meets or exceeds the minimum requirements set forth in the provisions of the DISD Safety Plan. The Subcontractor's Safety plan shall become a part of this Contract. If the Subcontractor's Safety Plan does not meet the standard of DISD Safety Plan then the DISD Safety Plan shall become a part of this contract.

Unless otherwise specified in the contract Documents, Subcontractor shall be responsible for initiating, maintaining, supervising, and enforcing all safety precautions and programs in connection with the Work. It shall be the duty and responsibility of the Subcontractor and all of its subcontractors to be familiar and comply with all requirements of Public Law 91-596, 29 U.S.C. §§ 651 et.Seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments, thereto, and to enforce and comply with all of the provisions of the Act. Subcontractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and shall erect and maintain all necessary safeguards for such safety and protection.

However, the Subcontractor's duties shall not relieve any sub-subcontractor(s) or any other person or entity (e.g. a supplier) including any person or entity with liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards.

The Subcontractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

When all or a portion of the Work is suspended for any reason, the Subcontractor shall do all things necessary to protect the Owner's premises and all person from damage and injury.

The Subcontractor shall promptly report in writing to the Contractor all accidents arising out of or in connection with the Work which cause death, personal injury or property damage, giving full details and statement of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused , the accident shall be reported immediately by telephone or messenger to the Contractor.

The Subcontractor shall be responsible for the protection and security of the Work until it receives written notification that the Substantial Completion of the Work has been accepted by the Owner.

WORKER IDENTITY BADGES: Subcontractor must provide all construction workers with DISD Bond Program identification badges, with photograph, that shall be work visibly at all times while workers are present on the construction site. All personnel must attend a 2-hour safety orientation during badging process and submit to background check to be paid for by the Subcontractor. The requirements are explained in the DISD Safety Program. Each person, including Foremen and above, that will be working on site must have the OSHA 10-Hour Training or such training will be furnished by the DISD Safety Coordinator/Manager or Designee at no cost to the Subcontractor. OSHA 10 hour Training Card will be required before starting Work.

ASSIGNMENT: Subcontractor shall not assign this Subcontract or any amounts due or to become due thereunder to any third party, nor subcontract the whole or any portion of this Subcontract.

WARRANTY: Subcontractor warrants that all materials and equipment furnished and incorporated by him in the job shall be new unless otherwise specified, and that all work under this Contract shall be of good, free from faults and defects and in conformance with the contract documents for at least one year from the date of final payment or acceptance by Owner, whichever is the later. All materials furnished and work performed by Subcontractor must meet with the complete satisfaction of Company. All work not conforming to these standards may be considered defective. The warranty provided in this paragraph shall be in addition to and not in limitation of any other warranty or remedy required or provided by law or by the contract documents.

COOPERATION: Subcontractor shall cooperate with the Company and other subcontracts whose work might interfere with the Subcontractor's work, and shall participate in the preparation of coordinated drawings in areas of congestion as required by the contract documents, specifically noting and advising the Company of any such interference.

PROGRESS: Subcontractor shall furnish sufficient labor, tools and equipment to perform his obligations hereunder and allow the job to progress in an orderly manner, without delay or inconvenience to their crafts or subcontractors. Should Subcontractor fail to keep with the progress of the work as specified in the contract documents, he shall work overtime without additional compensation, if requested to do so by the Company. If Subcontractor shall delay the material progress of the work so as to cause any damage for which Company shall become liable, Subcontractor shall make good to Company any such damages over and above any damage for general delay herein otherwise provided.

LABOR CONDITIONS: Subcontractor shall fully inform himself concerning local considerations relating to labor regulations and conditions and shall employ such workmen and methods as will not cause interruption in or interference with his own work or that of other trades or crafts.

PERMITS AND LICENSES: Subcontractor shall, at his own cost and expense, apply for and obtain all necessary permits and/or licenses and conform strictly to the laws and ordinances in force in the locality where the job is located. If any work performed hereunder is contrary to such laws and ordinances, the Subcontractor shall assume full responsibility therefor and shall bear the costs attributable thereto.

SITE EXAMINATION: Subcontractor acknowledges and represents that he has fully informed himself as to the existing conditions and limitations at the job site and the burden of this knowledge shall be on the Subcontractor.

ACCEPTANCE OF SURFACES: If any part of the Subcontractor's work depends for proper executions or results upon the work of Company or any contract of Subcontractor, the Subcontractor shall inspect and promptly report to the

Company any defects in such other work that render it unsuitable for such proper execution and results. Subcontractor's failure to inspect and report shall constitute an acceptance of the other work as fit and proper for Subcontractor's work.

TAXES AND LAW: Subcontractor shall comply with Federal, State, and local tax laws, social security acts, unemployment compensation acts and workmen's compensation acts insofar as applicable to the performance of this subcontract.

ARBITRATION: All claims, disputes and other matters in question arising out of, or relating to, this subcontract, or the breach thereof, shall be decided at the option of Company by arbitration in the same manner and under the same procedure as provided in the contract documents with respect to disputes between the Owner and the Company.

ARTICLE 7 - TERMINATION

If Subcontractor is adjudged a bankrupt, or if he makes general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently refuses or fails to supply sufficient properly skilled workmen or proper material to perform his obligations hereunder, or if he fails to make prompt payment to his employees, subcontractors or suppliers, or persistently disregards instructions of the Company or laws and ordinances of any public authority having jurisdiction, or in any other manner fails to observe or perform the provisions of the Subcontract, then the Company may, without prejudice to any right or remedy and after giving the Subcontractor and his surety, if any, upon twenty-four (24) hours written notice, terminate the Subcontractor’s right to proceed with the work. In such event, Company may, but shall not be required to do, take over and prosecute the work to completion, by contract or otherwise, and Subcontractor shall be liable to the Company for any cost incurred by the Company in completing such obligations of Subcontractor, such cost to be deducted first from any sums owed to Subcontractor. In any such case, company may take possession of and utilize in completing the work such materials, equipment, tools and machinery on the site of the work and necessary therefor.

ARTICLE 8 - GOVERNING LAW

This subcontract shall be governed by the laws of the State first written above.

ARTICLE 9 - ADDITIONAL TERMS AND CONDITIONS

Please provide us with names, addresses, phone numbers and contacts for each of your suppliers and vendors used for this project. **This information is required by the Company to insure all payments are made to the suppliers. The Company reserves the right to write joint checks to all suppliers on the job as referenced in Article 1.** (If you need additional space, please use the back of this page or attach another sheet of paper.) **If the section below is not filled out completely payment WILL NOT be made to subcontractor.**

VENDOR	ADDRESS	PHONE #	CONTACT

A completed W-9 must be provided to Construction Zone before any payments will be issued.

ARTICLE 10- INDEMNIFICATION

Subcontractor and all of their subcontractors of any tier, agree to save, indemnify, defend, and hold harmless Owner, Architect, Engineer, and Company, their parent, affiliate, and subsidiary, or successor companies, and their respective officers, directors, employees, representatives, agents, from and against all claims, damages, demands, causes of action, suits, judgments, penalties, costs, and losses, including without limitation attorney’s fees and legal expenses,

arising out of this contract. Indemnification is not limited to the insurance outlined above, nor is it limited by any negligence of any of the parties indemnified.

ARTICLE 11- COMPLETE AGREEMENT

This subcontract contains the entire Agreement between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties, or other matters, oral or written, shall be deemed to bind the parties hereto.

ARTICLE 12- ACKNOWLEDGEMENT OF SUBCONTRACT GENERAL PROVISIONS

By its execution hereof, Subcontractor acknowledges that it has read and agreed to all of the terms, conditions and provisions set forth herein and that these subcontract general conditions will be incorporated by reference in all subcontracts entered into between CZOT-MGS, LLC and the undersigned unless otherwise provided in such subcontract agreement. The execution of these CZOT-MGS, LLC Subcontract General Provisions shall not confer any rights to Subcontractor with regard to any specific Work unless and until a Subcontract is executed between the parties incorporating this document by reference. Notwithstanding the foregoing provision, these Subcontract General Provisions shall control all obligations and activities of Subcontractor on any jobsite or Work undertaken by or on behalf of Contractor.

The obligations of CZOT-MGS, LLC and the subcontractor are expressly contingent upon final signed contract between the owner and CZOT-MGS, LLC and receipt of Notice to Proceed from the Owner to CZOT-MGS, LLC.

SUBCONTRACTOR:
Contractor

By: _____

Printed Name: _____

Title: _____

Date: _____

GENERAL CONTRACTOR:
CZOT-MGS, LLC

By: _____

Sandra Bernard, President

Date: _____