

TERMS OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR
SECTION 1 - GENERAL PROVISIONS

Subcontract Documents. The Subcontract Documents consist of this Agreement, all Exhibits attached hereto, the Owner-Contractor Agreement, Conditions of the Contract including all General, Supplementary and other Conditions, the Drawings, Specifications and Addenda as prepared by the Architect; other documents as listed in this Agreement, and any Change Orders or written amendments to this Agreement signed by both the Contractor and the Subcontractor. The Subcontract Documents form the Contract (hereinafter "Subcontract") between the Contractor and Subcontractor and are incorporated herein by reference.

Rights and Obligations. Subcontractor shall be bound to Contractor by the terms of this Subcontract and any of the contract documents between Owner and Contractor ("Contract Documents") that apply to the Subcontract Work. Subcontractor assumes toward Contractor all the obligations and responsibilities which Contractor, by the Contract Documents, assumes toward the Owner.

Acceptance of Conditions. Subcontractor acknowledges and agrees that it has examined sufficiently for its satisfaction the site of the Work and is fully familiar with the aforesaid Contract Documents. Subcontractor represents that it has independently ascertained the Subcontract Work required by this Agreement, familiarized itself with the local conditions under which the Subcontract Work is to be performed, familiarized itself with soil, subsurface or the site conditions which may be involved directly or indirectly in the performance of the Subcontract Work; and has correlated its observation with the requirements of the Contract Documents. Failure by Subcontractor to independently investigate and become fully informed will not relieve Subcontractor from its responsibilities under this Agreement and the Contract Documents. Subcontractor waives any and all claims of liability against the Contractor, whether express or implied in contract, tort or equity, for insufficient, inadequate or incorrect Contract Documents as well as a waiver of all claims, including, but not limited to, any implied warranty of sufficiency of plans and specifications, fitness for a particular purpose, fitness for intended use, fitness of workmanship and sufficiency for the purpose in view.

SECTION 2 - SCOPE OF WORK

Scope of Subcontract Work. The Subcontractor shall furnish all labor, materials, tools, equipment, taxes,(including but not limited to, SC sales and use tax), insurance, dues, contributions, services, and all other incidentals, including but not limited to, competent supervision, submittals, samples, and tools as are necessary for proper performance of the Subcontract Work described in this project documentation, and strictly in accordance with the Subcontract Documents and the provisions of this Subcontract.

SECTION 3 - PAYMENTS

Schedule of Values. Subcontractor must submit a detailed Schedule of Values for all costs associated with and incurred as a result of this Subcontract to Contractor's office prior to your first request for payment. Schedule of Values shall be supported by substantiating data as required by the Contractor. Subcontractor's Schedule of Values is intended to be a guideline for the purpose of evaluating the percentage of the completion of the various portions of the Work. The schedule of values or breakdown shall not be conclusive evidence of the value of completed or uncompleted Work, nor shall the Schedules of Values be presumed to be correct, regardless of Contractor's approval or payment of a progress payment based in whole or in part on such Schedule of Values.

Applications for Payment. Subcontractor must submit applications for payment with billing form required by the Contractor. Subcontractor's applications for payment shall be itemized and supported by substantiating data as required by the Contractor. Subcontractor shall submit with each such payment request a waiver and release of liens, on such forms and in such manner as Contractor may require, corresponding to the work performed and labor, materials, equipment, and services furnished for which Subcontractor requests payment.

Progress Payments. The Contractor will process progress payments on a monthly basis. The Subcontractor shall submit progress payment applications to the Contractor no later than the twentieth (20th) day of each month for the Subcontractor's Work projected through the end of the month. Contractor will not make corrections to Subcontractor pay applications/invoices. Contractor will reject incorrect payment applications/invoices and will require Subcontractor to resubmit corrected invoices.

Contractor will make progress payments to Subcontractor for Work properly performed as determined by payments received by Contractor from the Owner. Progress payments received by Contractor from the Owner for the Subcontractor for satisfactory performance of the Subcontract Work shall be made no later than ten (10) days after receipt by Contractor of payment from the Owner for the Subcontract Work less a retainage (in addition to any retainage withheld by the Owner, which Contractor may withhold from payments due Subcontractor.

Payment Use Restriction. Subcontractor, upon receipt of payment from the Contractor, shall promptly pay for all labor, materials, fees, taxes, services or other obligations incurred in the performance of the Work. No payment received by Subcontractor under this Subcontract shall be used to satisfy or secure any indebtedness other than one owed by Subcontractor to any person or entity furnishing labor, materials or services under this Subcontract. In the event Contractor receives a Notice of Furnishing from any of Subcontractor's sub-subcontractors and/or suppliers, Subcontractor will provide copies of contracts and purchase orders between Subcontractor and the sub-subcontractor(s) and/or supplier(s) when requested by the Contractor. Contractor shall have the right, but not the duty, to contact Subcontractor's sub-subcontractors or suppliers to verify and ensure that same are being paid in a timely manner by Subcontractor. Subcontractor will provide copies affidavits on such forms or in such format as Contractor may require from all persons furnishing labor, materials or services to the effect that they have been paid in full.

In the event Contractor has reason to believe the Subcontractor is not properly paying such obligations, Contractor may give written notice and take steps deemed necessary to assure that progress payments are utilized to pay the Subcontractor's obligations including, but not limited to, the issuance of joint checks.

Progress Payments Withheld. Contractor may withhold any progress payment from the Subcontractor, in whole or in part, as may be reasonably necessary to protect Contractor from loss or damage based upon: (1) the Subcontractor's repeated failure to perform the Work as required by this Subcontract; (2) the Subcontractor's failure to properly pay for labor, materials, equipment or supplies furnished in connection with the Work; (3) rejected, nonconforming or defective Work which has not been corrected in a timely fashion; (4) Contractor's reasonable belief of Subcontractor's delay in performance of its Work; or, (5) third party claims involving the Subcontractor or reasonable evidence demonstrating that third party claims are likely to be filed unless the Subcontractor furnishes Contractor with adequate security in a form suitable to Contractor which is sufficient to discharge such claims as established. Contractor will give written notice to the Subcontractor, at the time of withholding any progress payment, stating reasons for withholding. When the reasons for withholding any progress payment are removed, payment will be made for amounts previously withheld. Nothing contained in this Paragraph shall be construed to limit Contractor's rights at law, or in equity to enforce the terms of the Subcontract Documents.

Final Payment. Final payment shall not become due until all Work has been completed to the full satisfaction of the Owner and Contractor, including, but not limited to, completion of all punch-list items. Before issuance of the final payment, Contractor may require the Subcontractor to submit evidence, satisfactory to the Contractor, that all payrolls, taxes, benefits, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied and that all Subcontractor's suppliers of materials incorporated in the Work, and all of Subcontractor's Sub-subcontractors have been paid in full. Final payment of the balance due on the Subcontract Work shall be made to the Subcontractor (1) upon Contractor's receipt of the Subcontractor's lien waivers, affidavits, certificates, as-built manuals, extra materials, guarantees, warranties, and any other close-out materials, documents, etc., required by Contract Documents and terms of this Agreement; and, (2) within ten (10) days after receipt by Contractor of final payment from the Owner for the Subcontract Work.

Waiver of Claims. Subcontractor's acceptance of Final Payment shall constitute a waiver of all liens and claims by the Subcontractor relating to the Work, but in no way relieves the Subcontractor of liability for the obligations to correct defective or nonconforming Work discovered after Final Payment. It is further mutually agreed between the parties hereto that no payment made under this Subcontract shall be conclusive evidence of the performance of this Subcontract, either in whole or in part, and that no payment shall be construed to be an acceptance of defective work or improper materials.

SECTION 4 - SCHEDULE

Schedule. Subcontractor is to commence Work within seven (7) days after notification by Contractor, and shall complete the Work not later than the Contractor's scheduled completion date of said Work and shall maintain such a rate of progress in the performance of said Work as not to impede Contractor or any other subcontractor in the performance of its work and so as to satisfy Contractor of the rate of progress of such Work. Subcontractor agrees; (a) to provide at the Project site the materials, equipment, labor and supervision necessary to begin the Work upon Contractor's Order to do so; (b) to perform the Work and all parts thereof promptly, diligently and in such order and sequence as Contractor may direct to assure the efficient, expeditious and timely prosecution of the entire work under the Contract; and (c) to furnish sufficient forces, supervision, equipment and materials, at such times and for such periods, as will result in progress according to the approved progress schedule of Contractor or any modification thereof.

Contractor reserves the right to modify any such progress schedule with respect to the required sequence or duration of the Work or any portion thereof, and Contractor makes no representation that Subcontractor will be able to commence, prosecute or complete the Work in accordance with any progress schedule. Subcontractor shall furnish any information requested by Contractor required for scheduling, monitoring or expediting the Work. Subcontractor shall keep itself fully informed of the status of the work under the Contract at all times and any failure to do so shall not form the basis for a claim by Subcontractor against Contractor.

Subcontractor further acknowledges that the Subcontract Price is based on: (1) sufficiently staffing the job to meet the completion dates as outlined by Subcontractor Schedule of Values issued in correlation with this Subcontract (or specific date to deliver by, whichever is specified), (2) using Saturdays or Sundays as workdays if Subcontractor fails to maintain a satisfactory rate of progress until such time as Subcontractor's progress is deemed satisfactory by Contractor, without additional cost to Contractor. Subcontractor shall increase its manpower as necessary to maintain a satisfactory rate of progress and/or completion dates without additional cost. Lack of or inadequate manpower is not an excuse for delay, and is grounds for termination of this Subcontract, pursuant to Section 12 of this Agreement.

Schedule Coordination. Contractor shall cooperate with Subcontractor in scheduling and performing the Work to avoid conflicts or interference in the Work. Subcontractor shall similarly cooperate with Contractor in scheduling and performing the Work to avoid conflict or interference with the work of others.

Failure to Commence or Complete the Work. TIME OF WORK IS OF THE ESSENCE TO THIS SUBCONTRACT. In the event Subcontractor fails to commence Work or complete Work as defined, such failure shall be deemed to be a default of this Agreement and shall be grounds for termination pursuant to Section 12 of this Agreement.

Delays. Should the Subcontractor be delayed by any cause beyond the Subcontractor's control and not due to any fault, act or omission on the Subcontractor's part, then the Subcontractor will submit a written Notice of Delay to Contractor. If the Contractor cannot eliminate such delay, which are due to causes beyond the Subcontractor's

control, within forty-eight (48) hours, time for completion of the Subcontractor's Work shall be extended for a period equivalent to the time lost, as determined by Contractor; provided that if the delay is caused by the Owner or Owner's representatives, the time for the Subcontract Work shall be extended only to the extent such extension is obtained by Contractor from the Owner. Such extension of time shall be the Subcontractor's sole and exclusive remedy for any delay, and the Subcontractor shall have no claim for damages against Contractor for any delay.

Supplementation: If for any reason Subcontractor is unable to meet schedule requirements, Contractor may after twenty-four (24) hours written notice to the Subcontractor, and without prejudice to any other remedy Contractor: (1) instruct Subcontractor to subcontract portions of the Work; (2) use Contractor's own personnel or consultants to do portions of the Work; or, (3) provide any such labor, equipment, and materials deems necessary to perform the Work, and deduct the cost, plus an allowance for administrative burden equal to fifteen percent (15%), from any money then due thereafter to become due the Subcontractor. Contractor will treat such supplementation as a deductive change in the work with appropriate adjustment of Subcontract sum and a deductive change order shall be issued.

SECTION 5 - CHANGES

Changes. Contractor may, at any time, on written order, without invalidating this Subcontract, or any bond(s) given hereunder, make changes or alterations in the Work. Subcontractor agrees to proceed with changes in the Work as directed by Contractor's written order, PROVIDED that, if the changes cause an increase or decrease in the Subcontractor's cost of performance of the Work, or in the time required for performance, Subcontractor shall within three (3) days after Contractor's written order and before commencing the changed work submit to Contractor a detailed estimate of the value of and time involved in any such proposed change, including unit prices if requested and reductions in price for any Work not performed. If after receipt of such estimate Contractor gives the Subcontractor written authority for such changes or alterations in the Work and for the adjustment of the Subcontract Price in accordance with such estimate, Subcontractor shall perform such extra work and the Subcontract Price shall be adjusted by the amount set forth in such estimate, provided that no payment shall be due Subcontractor for such changed or extra work until (1) Contractor has given Subcontractor written authority for such changes or alterations of the Work; and (2) Contractor has received payment from Owner for such change or extra work performed by Subcontractor. If any such changes diminish the quantity of work to be done, such changes shall not form the basis for a claim by Subcontractor for loss of anticipated profits or other consequential damages or losses. The Subcontractor shall disclose only to the Contractor any price or quotation on the cost of contemplated changes or alterations in the work. The Subcontractor shall not during the progress of the work covered by the general contract negotiate directly with the Owner for any additions or alterations on the Project.

IT IS EXPRESSLY AGREED THAT EXCEPT IN AN EMERGENCY ENDANGERING LIFE OR PROPERTY NO CHANGES TO THE WORK SHALL BE MADE EXCEPT UPON WRITTEN ORDER OF CONTRACTOR, AND CONTRACTOR SHALL NOT BE LIABLE TO SUBCONTRACTOR FOR ANY EXTRA LABOR, MATERIALS OR EQUIPMENT FURNISHED WITHOUT SUCH WRITTEN ORDER. NO OFFICER, EMPLOYEE OR AGENT OF CONTRACTOR IS AUTHORIZED TO DIRECT ANY EXTRA OR CHANGED WORK BY ORAL ORDER.

Nothing contained in this Subcontract shall excuse Subcontractor from proceeding promptly with the prosecution of a change in the Work as ordered in writing by Contractor, and failure to do so shall constitute a default of this Subcontract pursuant to Section 12 of this Agreement.

SECTION 6 - INSURANCE AND INDEMNITY

Insurance. Subcontractor will provide and maintain at all time during performance of said Work, insurance as will protect Subcontractor and Contractor from claims under Workmen's Compensation Acts and any claims for property damage, bodily injury, including death, that may arise from the Subcontractor's performance under this Agreement, whether such performance be by the Subcontractor, or its subcontractors, or any person or entity directly or indirectly employed by them. Insurance policies shall contain contractual coverage for the indemnity provisions contained in this Subcontract. All coverage shall be written on an occurrence basis. Types and limits of insurance coverage to be not less than:

Worker's Compensation and Employers Liability Insurance in accordance with the laws of the State in which the Project is located. Employers Liability Insurance limits shall be at least \$500,000 each accident for bodily injury by accident and \$500,000 each employee for injury by disease.

Comprehensive General Liability (CGL) coverage written on ISO Occurrence Form CG 00 01 1093 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, personal and advertising injury, and products/completed operations to be maintained for seven (7) years after final payment. If the CGL coverage contains a general aggregate limit, such general aggregate shall apply separately to each project. CGL coverage shall be written for not less than the following limits:

Each Occurrence	\$1,000,000
Annual Aggregate	\$2,000,000

CGL policies shall name Contractor and Owner as an additional insured, using ISO Additional Insured Endorsement CG 20 10 11 85 or an endorsement providing equivalent coverage to Contractor and Owner as additional insured. This insurance for the additional insured shall be as broad as the coverage provided for the named insured Subcontractor. It shall apply as Primary Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured. All insurance shall expressly provide that all rights of subrogation against Contractor and the Owner are waived.

Comprehensive Automobile Liability for bodily injury and/or property damage. This insurance shall extend to cover owned vehicles; hired vehicles and all other non-ownership automotive liability and shall be written for the following limits:

Liability/Property Damage (Combined Limit)	\$1,000,000 each accident
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Commercial Liability

Umbrella limits must be at least \$1,000,000.

Umbrella coverage shall name Contractor and Owner as an additional insured. This insurance for the additional insured shall be as broad as the coverage provided for the named insured Subcontractor. Umbrella coverage shall apply as Primary Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Auto Liability and Employers Liability coverages maintained by the Subcontractor.

Subcontractor waives all rights against Contractor and Owner Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers' compensation and employer's liability insurance maintained per requirements stated above.

The Subcontractor will submit to Contractor a copy of its certificate of insurance certifying that the insurance policies required by this Agreement are in force before Subcontractor's commencement of the Work. Subcontractor will not be allowed to perform any work on the Project until the Subcontractor provides Contractor with its certificate of insurance. Policies shall contain a provisions that coverage will not be canceled, reduced or not renewed until at least thirty (30) days' prior written notice to Contractor, as evidenced by return receipt of registered or certified mail. If Subcontractor fails at any time to secure and maintain any insurance coverage required by this Agreement, such failure shall be deemed to be a default of this Agreement and shall be grounds for termination of this Subcontract, pursuant to Section 12 of this Agreement.

Indemnity. To the fullest extent permitted by law, Subcontractor agrees to indemnify Contractor against and hold Contractor harmless from any and all claims, demands, liabilities, losses, expenses, suits and actions (including attorneys' fees) for or on account of Subcontractor's performance of the work, any injury to any person, or any death at any time resulting from such injury, or any damage to any property, which may arise (or which may be alleged to have arisen) out of or in connection with the Work, even though such injury, death or damage may be (or may be alleged to be) attributable in part to negligence or other fault on the part of Contractor or its officers, agents or employees. The obligation of Subcontractor to indemnify and hold Contractor harmless shall not be enforceable if, and only if, it be determined by arbitration, judicial or other legally binding, proceeding that the

injury, death or damage complained of was attributable solely to the fault or negligence of Contractor or its officers, agents or employees and not in any manner or in any part attributable to Subcontractor. Subcontractor agrees to reimburse Contractor for all sums, including reasonable attorney's fees, which Contractor may pay or be compelled to pay in settlement of any claim under this Subcontract, including, but not limited to, any claim under the provisions of any workmen's compensation law or any plan for employee benefits which Contractor may adopt. Contractor shall be entitled to withhold from any payment otherwise due pursuant to this Subcontract such amount or amounts as may be reasonably necessary to protect it against liability for any personal injury, death or property damage resulting from the performance of the Work under this Subcontract. Subcontractor's obligation hereunder shall not be limited by the provisions of any worker's compensation or similar act, or by the provisions, scope or limitations of any insurance requirements or coverage.

SECTION 7 - BONDS

Bonds. Option A below is the default requirement on this Subcontract unless initialized Option B by authorized Sherman Construction representative:

Option A: Subcontractor, at its own expense, shall obtain from a commercial surety acceptable to Contractor separate bonds: (1) for the due and complete performance of Subcontractor's obligations hereunder (performance bond); and (2) for the timely payment of all charges for labor, services, and materials furnished for the prosecution of the Work (payment bond). Each such bond shall be for a penal sum equal to one hundred percent (100%) of the Subcontract Price; shall be provided by a surety licensed in the appropriate jurisdiction where the Work is to be performed and listed in the current US Department of Treasury Circular 570 with an underwriting limitation specified therein consistent with the face amount of the bonds; shall be executed on forms provided by and in a manner satisfactory to Contractor; and shall be delivered to Contractor within seven (7) days after the execution hereof; or,

Option B: _____ Subcontractor is not required to furnish such bonds. Subcontractor shall submit to Contractor a current financial statement; and Contractor reserves the right at any time to require Subcontractor to furnish such bonds, but at Contractor's expense. If Subcontractor fails at any time to obtain and furnish a bond, such failure shall be deemed to be a default of this Agreement and shall be grounds for termination of this Subcontract, pursuant to Section 12 of this Agreement.

SECTION 8 - SUBCONTRACTOR RESPONSIBILITIES

Supervision/Project Personnel: Subcontractor will provide a qualified supervisor with minimum 5 years experience in such role, who speaks English and who is authorized to make necessary decisions and actions to dismiss or increase personnel, order material, rent equipment and attend jobsite meetings as a competent representative of Subcontractor's company. Subcontractor shall remove or cause to be removed from the Project any employee, including supervision, whose work is unsatisfactory to Contractor or who in Contractor's opinion is considered incompetent, unfit or unskilled, or who is incompatible with or not in harmony with all other labor being used by Contractor or other Subcontractors on the Project.

Compliance With Laws. The Subcontractor agrees to be bound by and comply with all federal, state and local laws, ordinances and regulations applicable to the Work. The Subcontractor shall be liable to Contractor and to the Owner for all loss, costs and expenses attributable to the Subcontractor's failure to comply with such laws, ordinances and regulations. It is hereby specifically and expressly agreed that with respect to labor requirements and wage scales, the Subcontractor will comply with all statutory and specification requirements, will pay all taxes assessed against his labor, and material, and will also comply with all statutory and specification requirements as to labor reports, payroll taxes, and the like. Subcontractor agrees to conform with all state and federal labor laws and to the labor policy of Contractor. The Subcontractor agrees to pay any fines assessed against Contractor on account of labor law violations by the Subcontractor or its sub-subcontractors. In the event Contractor is held liable to pay any tax, contribution, or fine on behalf of the Subcontractor, the Subcontractor agrees to supply Contractor with all records necessary to compute the same and to fully reimburse Contractor upon demand for the amount thereof (including penalties, interest, and reasonable attorneys fees) paid by Contractor; and Contractor shall have the further right to deduct any amount so paid from any sums due the Subcontractor by Contractor.

Safety. The Subcontractor is required to perform the Work in a safe and reasonable manner. Establishment of a safety program by Contractor does not relieve the Subcontractor of its safety responsibility. The Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those

required or recommended by governmental or quasi-governmental authorities having jurisdiction and by Contractor and Owner, including, but not limited to, requirements imposed by the Contract Documents. **The Subcontractor specifically acknowledges that it is familiar with and agrees to perform the Work in compliance with the Occupational Safety and Health Act, 29 C.F.R. 1926/1910, and its attendant regulations.** The Subcontractor further understands that Contractor has the option of demanding that the Subcontractor comply with all such laws and regulations or be asked to leave the job site until necessary compliance can be achieved; however, Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility therefor. The Subcontractor shall notify Contractor immediately following any accident and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by Contractor. The Subcontractor shall indemnify Contractor against fines and penalties imposed as a result of safety violations to the extent such fines or penalties are caused by the Subcontractor's failure to comply with applicable safety requirements.

Subcontractor shall observe and comply with all laws and regulations relating to the shipment, possession, handling, labeling, packaging, storage, use, exposure, discharge, and disposal of any hazardous substance including any laws and regulations relating to record keeping and publication, posting or communication of hazard information.

Clean-up. All construction debris generated by the Subcontractor will be deposited on site at a location designated by the Contractor. Debris and dirt shall not be allowed to accumulate in the building areas occupied by the Subcontractor and shall be removed immediately by Subcontractor. Subcontractor shall maintain premises, on a daily basis, broom-clean during the construction operation. If Subcontractor fails to clean-up as required, Contractor shall give Subcontractor twenty-four (24) hours' notice. After twenty-four (24) hours, if the deficiency has not been remedied, Contractor shall proceed with the required clean-up and deduct the cost incurred from amounts due at each pay period.

In addition to cleaning requirements stipulated above, the Subcontractor, in preparation for substantial completion or occupancy, shall perform final cleaning operations as directed by Contractor. Final cleaning shall be performed by experienced workmen or professional cleaners and shall include but is not limited to removal of grease, dust, dirt, stains, labels, fingerprints, and other foreign matter from all exposed surfaces; polished surfaces if so designated; clean all glass surfaces; leave project clean and ready for occupancy.

Permits and Licenses. Subcontractor shall, at its own expense obtain all necessary permits and licenses and comply with all statutes, ordinances, rules, regulations and orders, of any governmental or quasi-governmental authority applicable to the Subcontract Work; and be responsible for and correct any violations thereof.

Tests and Inspections. The Subcontractor shall be responsible for and required to meet all inspection requirements imposed by government authorities whether mentioned in the specifications or not, and in the event of rejection by the said authorities shall repair or correct the work to meet the requirements. The Subcontractor shall schedule and give proper notices of all required tests, approvals and inspections of the Subcontract Work at appropriate times so as not to delay the progress of the Project. Any fees or penalties caused by this rejection shall be paid by the Subcontractor.

Labor. Subcontractor agrees that all labor employed by Subcontractor for the Work shall be in harmony with and be compatible with all other labor being used and other Subcontractors on the project. To the fullest extent permitted by applicable law, Subcontractor agrees to comply with and to be bound by any labor agreements executed by Contractor and applicable to the Work under this Subcontract. Should Subcontractor's Work or the work under the Contract be stopped or interfered with by reason of strikes, picketing or other disputes, Subcontractor shall immediately resolve such dispute and terminate all such work stoppage and interference. Any failure by Subcontractor to comply with such labor agreements or to terminate such stoppage or interference shall constitute a default of this Subcontract pursuant to Paragraph 12 of this Agreement.

Submittals. Subcontractor will prepare and submit to Contractor all necessary shop and erection drawings, plans, and diagrams; furnish all necessary samples, catalogue cuts, laboratory and inspection reports and engineering calculations; and perform specified tests and erect required mock-ups, all in sufficient time to permit the orderly and timely prosecution of the Work; and prepare and submit any as-built drawings, operation and maintenance manuals, warranties, and all other documentation required under the Contract Documents. **Subcontractor will prepare a list of all required submittals/shop drawings and submit the list to the Contractor within fifteen (15) days after executing this Agreement.**

Layout. The Contractor shall establish principal axis lines for building and site and benchmarks. The Subcontractor shall lay out and be responsible for the accuracy of the Subcontract Work and for any loss or damage to the Contractor by reason of the Subcontractor's failure to lay out or perform Subcontract Work correctly.

Subcontractor Review of Plans and Specifications. The Subcontractor shall make a careful analysis and comparison of the drawings, specifications and other Contract Documents and information furnished by the Owner relative to the Subcontract Work. Such analysis and comparison shall be solely for the purpose of facilitating the Subcontract Work and not for the discovery of errors, inconsistencies or omissions in the Contract Documents, nor for ascertaining if the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules or regulations. Should the Subcontractor discover any errors, inconsistencies or omissions in the Subcontract Documents, the Subcontractor shall report such discoveries to the Contractor in writing within three (3) days. Upon receipt of such notice, the Contractor shall instruct the Subcontractor as to what measures should be taken, and the Subcontractor shall comply with the Contractor's instructions. If the Subcontractor performs work knowing that such Work is contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations without notice to the Contractor and advance approval by appropriate authorities, the Subcontractor shall assume responsibility for such work and shall bear all associated costs, charges, fees and expenses necessarily incurred to remedy the violation. Nothing in this paragraph shall relieve the Subcontractor of responsibility for its own errors, inconsistencies and omissions.

Patents. Subcontractor agrees to defend, indemnify and save harmless Contractor and Owner from and against loss, liability, damage, cost or expense on account of infringement or alleged infringement of any patent rights by reason of the Work or any materials, equipment, processes or techniques used therein by Subcontractor. Subcontractor shall pay all license fees and royalties pertaining to the Work.

Assignment. Subcontractor shall not assign, transfer, or otherwise dispose of this Subcontract or any part thereof including all or any portion of the Work; nor assign any monies due or to become due hereunder, except with the prior written consent of Contractor. Any assignment of this Subcontract consented to by Contractor shall not operate to relieve Subcontractor of its primary responsibility to Contractor for the due and full performance hereof, and Subcontractor shall be liable to Contractor for all acts and omissions of Subcontractor's subcontractors and assignees.

Defective or Damaged Work. Subcontractor shall, commencing within twenty-four (24) hours after receiving written notice from Contractor, promptly take down and remove all portions of the Work which Contractor or Architect shall condemn as unsound, improper, or in any way failing to conform to the Contract or the Contract Documents and shall make good all Work and the work of others damaged or destroyed thereby, all at Subcontractor's expense. If Subcontractor shall not remove and replace such work within a reasonable time, Contractor may remove and replace the same at the expense of the Subcontractor.

Subcontractor specifically agrees that it is fully responsible for the protection of all Work until full completion and final acceptance by the Owner and that it will make good or replace at no expense to Contractor or Owner any damage to or loss of its Work from any cause whatsoever which occurs prior to said final acceptance.

To the fullest extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless the Contractor, from all claims for bodily injury and property damage that may arise by virtue of the existence, development or growth of mold, mildew, fungi or other similar microbial conditions during the performance of the Work, to the extent that such conditions are attributable to the acts, omissions or breaches of performance by the Subcontractor.

Warranties. Subcontractor warrants and guarantees that the Work shall be free from defects, shall conform to and meet the requirements of the Subcontract Documents and the Contract Documents; and shall furnish any separate warranties for the work, or portions thereof, required under the Subcontract Documents. Subcontractor agrees to make good, to the satisfaction of the Owner, any portion or portions of the Work that prove defective within one year (or such longer period as may be specified in the Subcontract Documents) from the date of acceptance of the Project by Owner. The Subcontractor's warranty excludes remedy for damages or defect caused by abuse, modifications not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract Documents.

SECTION 9 - CLAIMS

Notice. In the event of any dispute or claim by Subcontractor hereunder, notice in writing of such claim shall be given to Contractor no later than seven (7) days following the event, decision or other action out of which the claim arises, or such lesser period as may be required under the Contract Documents. Such notice shall describe such dispute or claim in detail. If Subcontractor fails to provide such notice, the claim or dispute and all monetary and other relief associated therewith shall be deemed as waived and abandoned by Subcontractor.

Claims Relating to Owner. If any such claim or dispute involves any aspect of the Contract Documents or the correlative rights and duties of the Owner as set forth therein, then Subcontractor's rights as to such dispute or claim shall be determined solely by applicable provisions of such Contract Documents, including any disputes resolution provisions thereof. In the event that it is necessary to commence any action or proceeding against the Owner to implement Subcontractor's rights, the Contractor agrees to initiate such proceeding on Subcontractor's behalf upon Subcontractor's written request; provided, however, Subcontractor, and its sureties, shall be bound to Contractor to the same extent that Contractor is bound to Owner by the Contract Documents and by any decisions or determinations made under the Contract Documents by any board, court or arbitration panel; and further provided, Contractor shall not be required to file any claim or take any action against Owner on behalf of Subcontractor unless Subcontractor shall provide adequately for the payment of, and shall pay for, all costs and expenses, including attorneys' fees, that may be incurred by Contractor in proportion to the amount of Subcontractor claim, in the pursuit of such remedies. Contractor shall not be required on behalf of Subcontractor to file any claim or take any action against any person other than Owner, nor to file any claim or take any action against any party whatsoever (including the Owner) that is not asserted in good faith or that would unreasonably extend the date for a substantial final payment under the Contract. It is agreed that the claim of Subcontractor against Contractor for the acts of the Owner is limited to the rights of Contractor against Owner and when such rights have been exhausted, Subcontractor's claim is settled.

Claims Relating to Contractor. If any such claim or dispute for which Subcontractor has given timely notice does not involve the Owner, then such claim or dispute shall be determined as follows: Contractor shall render a written decision thereon within thirty (30) days from receipt of the written notice of such claim or dispute. If Subcontractor does not accept or agree with such decision (or any part thereof) it shall notify Contractor within seven (7) days and the parties shall exert reasonable and good faith efforts to reach a satisfactory resolution. If such efforts are unsuccessful, then the dispute shall be subject to the disputes resolution provisions set forth In Section 13 of this Agreement.

SECTION 10 - TERMINATION, SUSPENSION AND DEFAULT

Suspension of Work. If, as a result of fire, earthquake, act of God, war, strikes, picketing, boycott, lockouts, or any other causes beyond the control of Contractor, Contractor shall consider it inadvisable to proceed with the work hereunder, then, the Subcontractor shall, upon receipt of written notice thereof from Contractor, immediately discontinue any further work hereunder, until such time as Contractor shall deem it advisable to resume such work. The Subcontractor shall resume said work hereunder promptly upon receiving notice from Contractor to do so, and Contractor shall not be liable for any damages on account of any such cessation or suspension of work as a result of these causes.

Termination for Convenience. Contractor shall have the right to terminate this Agreement for its own convenience by giving notice of termination effective upon receipt thereof by Subcontractor. Termination for Default if wrongly made shall be treated as Termination for Convenience. If Contractor terminates this Agreement for convenience, the Subcontractor shall be paid only the actual cost of the work, materials and labor in place, plus the actual cost of any materials properly delivered and stored on or off site at the direction of Contractor (if Contractor elects to retain such stored materials). If Contractor terminates this Agreement for convenience, Subcontractor shall not be entitled to anticipated profits on unperformed portions of the Work or to punitive or consequential damages.

Termination by Owner. Should the Owner terminate its contract with Contractor or any part which includes the Subcontract Work, Contractor will notify the Subcontractor in writing within three (3) days of the termination and the Subcontractor shall immediately stop the Subcontract Work, follow Contractor's instructions, and mitigate all costs. In the event of Owner termination, Contractor's liability to the Subcontractor shall be limited to the extent of Contractor's recovery, if any, on the Subcontractor's behalf under the Subcontract Documents.

Termination for Default. If Subcontractor (i) fails to comply with any of the terms and conditions of this Agreement contract with Contractor, (ii) at any time refuses or neglects to carry out its work in accordance with the Contract Documents, to supply a sufficient number or amount of properly skilled workmen or equipment, or fails in any respect to prosecute the Work with promptness and diligence, or (iii) becomes insolvent or institutes or has instituted against it insolvency proceedings or admits in writing its inability to pay its debts generally, or any proceeding is instituted by or against Subcontractor seeking adjustment, protection or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property, then the same shall amount to a breach hereof and a default hereunder.

Contractor shall have the right to notify Subcontractor of Subcontractor's default. If Contractor determines that Subcontractor has not remedied and cured the default or defaults within three (3) days following the date of the notice from Contractor, then Contractor may, at its option, without releasing or waiving its rights and remedies against Subcontractor and without prejudice to any other right it may be entitled to under this Agreement or by law or in equity, and after giving Subcontractor two (2) days' additional written notice, terminate this Subcontract and take possession of the Work and all materials, tools, equipment and appliances of Subcontractor and finish the Work by whatever means, method or agency which Contractor may, in its sole discretion, choose.

Alternatively, without terminating this Subcontract, Contractor may at its option, without releasing or waiving its rights and remedies against Subcontractor, and without prejudice to any other right to which Contractor may be entitled under this Subcontract, or by law or in equity, take any steps Contractor deems advisable to secure any labor, materials, equipment and services, and shall have a lien on and may take over all of Subcontractor's equipment, tools, appliances and materials and prosecute the Work to completion.

In the event that Contractor deems any of the foregoing remedies necessary, Subcontractor shall not be entitled to receive any further payment until after the Work shall have been completed. Contractor shall be entitled to charge all reasonable costs incurred as a result of Subcontractor's default (including attorney[']s fees) plus an allowance for administrative burden equal to fifteen percent (15%). Moreover, all monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including attorneys' fees and the costs of bonds) incurred by Contractor incident to such completion shall be deducted from the Subcontract Price. If such expenditures, together with such costs, administrative burden, losses, damages and extra expenses, exceed the unpaid balance of the Subcontract Price, then Contractor may offset such obligation or debt against any monies that Contractor owes to the Subcontractor under any other subcontract, purchase order or agreement between Contractor and the Subcontractor. If such expenditures, together with such costs, administrative burden losses, damages and extra expenses, exceed the unpaid balance of the Subcontract Price and offsets, upon Contractor's demand, Subcontractor agrees to promptly pay Contractor, the full amount of such excess including costs of collection, attorneys' fees and interest at the maximum legal rate of interest per annum from the date expended by Contractor until the date paid by Subcontractor.

SECTION 11 - DISPUTES RESOLUTION

Disputes Resolution. All claims, disputes and other matters in question between Contractor and the Subcontractor arising out of or related to this Agreement or the breach thereof, shall be decided by arbitration conducted in accordance with the current editions of the Construction Industry Arbitration Rules of the American Arbitration Association at the sole option of Contractor. Contractor may, at its option, join or consolidate arbitration with the Owner, Architect/Engineer, and other Subcontractors, or any other party having an interest in the proceeding. Notwithstanding any other choice of law provisions, if any, the parties acknowledge that the Project affects interstate commerce and that this agreement to arbitrate shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* A sole arbitrator shall be used and shall be selected by the Subcontractor from a list provided by the Contractor within thirty (30) days after demand for arbitration. The award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof. The prevailing party in any dispute arising out of or relating to this Agreement arbitration shall be entitled to recover from the other party all costs of arbitration or court and reasonable attorney's fees incurred by that party in connection with such arbitration or court proceeding.

SECTION 12 - MISCELLANEOUS PROVISIONS

Governing Law. This Agreement shall be governed by the law in effect at the location of the Project.

Validity and Enforcement. If any provision of this Agreement shall be found to be unenforceable or invalid for any reason, the enforcement of any other provisions shall not be impaired thereby, and such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, shall be deleted from this Agreement.

No Waiver of Performance. The failure of Contractor to insist, in any one or more instances, on the performance of any of the terms, conditions or covenants of this Contract, or to exercise any of its rights, shall not constitute waiver or relinquishment of such term, condition, covenant or right with respect to further performance. Waiver of any of the terms, conditions, covenants or rights shall be made in writing and such written waiver shall not be deemed a waiver of any other of the terms and conditions.

Extent of Agreement. The Subcontract comprises the full and entire agreement between the parties affecting the Subcontract Work. There are no oral representations or agreements to enter into this Subcontract other than those stated herein. No other agreement or understanding of any nature concerning the same has been entered into or will be recognized. No oral modifications of this Subcontract shall have force or effect.

SECTION 13 - SPECIAL PROVISIONS

Other Provisions and Documents. The following Documents are hereby referenced and made a part of this Subcontract Agreement:

- Contractors Attachment A
- Partial Lien Waiver
- Payment Application Form
- Vendor Information (Contact)
- Other Potential Project Specific Inclusions - Certified Payroll
- Other Potential Project Specific Inclusions - Minority
- Other Potential Project Specific Inclusions - LEED

IN WITNESS WHEREOF, the parties have duly executed this Subcontract, in one or more copies or counterpart originals.

CONTRACTOR

SUBCONTRACTOR

Sherman Construction Company, Inc.
P.O. Box 1629, Greenville, SC 29602
Phone: (864) 277-0060

By: Project Manager _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____