

**SUBCONTRACTOR AGREEMENT
GENERAL CONDITIONS**

1-20-2005

- 1. SUBCONTRACTOR RIGHTS AND RESPONSIBILITIES.** The Subcontractor shall be bound to the Contractor by the terms of this Subcontract and, to the extent that provisions of the Contract Documents between the Owner and Contractor apply to the Scope of Work of the Subcontractor, the Subcontractor shall assume toward the Contractor all of the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner and the Architect. The Subcontractor shall enjoy the benefit of all rights, remedies and redress against the Contractor, which the Contractor, by the Contract Documents, has against the Owner. Except as set forth below in "Claims and Disputes," where any provision of the Contract Documents between the Owner and Contractor is inconsistent with any provision of this Subcontract, this Subcontract shall take precedence. The Subcontractor shall not assign this Subcontract without the prior express written consent of the Contractor, nor subcontract the whole or any portion of the Scope of Work without the prior express written consent of the Contractor. Submission of a written list showing the names, addresses and telephone numbers of all suppliers and subcontractors the Subcontractor may use in the performance of its Scope of Work is a condition precedent to payment of any compensation to Subcontractor under this Subcontract. The Subcontractor shall not assign any amounts due or to become due under this Subcontract without written notice to the Contractor. The Subcontractor shall allow its work to be inspected and tested by the Contractor, Owner and Architect and their respective agents and shall repair or replace any portion of its work as made necessary by such testing or inspection.
- 2. EXECUTION AND PROGRESS OF THE WORK.** The Subcontractor hereby represents and warrants to Contractor that Subcontractor has sufficient knowledge, skill and experience to perform the entire Scope of Work in compliance with the Contract Documents and in a good and workmanlike manner free of defect in materials and workmanship. The Subcontractor agrees that the Contractor's equipment will be available for use by the Subcontractor at the times and under the terms elected by the Contractor in its sole discretion. The subcontractor shall coordinate performance of its Scope of Work with the Contractor and with other contractors and subcontractors on the Project. The Contractor reserves the right to change the Project schedule and require the Subcontractor to coordinate its performance and adjust its schedule accordingly. The Subcontractor hereby expressly waives entitlement to claim compensation or damages against Contractor arising out of delays, demobilizations and remobilizations, hindrances or inefficiencies to the performance of the Scope of Work caused directly or indirectly by the Contractor's acts or omissions, other payments and performances of Contractor contained in this Agreement being full and sufficient consideration for such waiver. The Subcontractor hereby acknowledges that it has reviewed the Contract Documents, including the specifications, plans and drawings contained therein, as they relate to Subcontractor's Scope of work, and has found them satisfactory and free of defect and conflict for the performance of its Scope of Work. To the extent that Subcontractor finds any defects, conflicts or any other unsatisfactory or undesirable aspect in the specifications, plans or drawings contained in the Contract Documents, these findings shall be submitted individually in writing to the Contractor prior to Subcontractor's commencement of the Scope of Work. If any defects or conflicts in the specifications, plans or drawings are found by Subcontractor on or after Subcontractor's performance begins, notice of such findings and any related change in costs shall be given to Contractor in accordance with "Changes in the scope of Work," section 10 of the General Conditions. The Subcontractor shall furnish periodic progress reports in the frequency and form specified by the Contractor. Submittal of such progress reports shall be a condition precedent to any and all payments to Subcontractor under this Subcontract. The subcontractor will staff the project with full crews, made up of qualified personnel, everyday that work is scheduled or directed by the Contractor.
- 3. LAWS, PERMITS, FEES AND NOTICES.** The Subcontractor shall give all notices and comply with the most current version of all laws, ordinances, rules, regulations, standards, building codes and orders of any public authority bearing on the performance of the Scope of Work under this Subcontract. The Subcontractor shall obtain and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Subcontractor's Scope of Work, the furnishing of which is required of the Contractor by the Contract Documents. The Subcontractor shall comply with Federal, State and local labor, wage, workplace safety and tax laws and regulations, Davis-Bacon Act, social security and health and welfare acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract. Subcontractor represents and warrants to Contractor that Subcontractor does not discriminate in the hiring, promotion, firing or terms of employment of employees on the basis of race, gender, age, religion, national origin, or other prohibited grounds, possibly such as sexual orientation, as set forth in applicable federal, state and local laws, statutes, ordinances and orders.
- 4. WORK OF OTHERS.** In performing its Scope of Work under this Subcontract, Subcontractor shall take all necessary precautions to properly protect the work of other trades from damage by Subcontractor's own performance. The Subcontractor shall coordinate its work with that of the Contractor and other contractors and subcontractors on the Project and participate in the preparation of coordinated plans, drawings and schedules.
- 5. SAFETY PRECAUTIONS AND PROCEDURES.** The Subcontractor shall take all reasonable safety precautions with respect to its Scope of Work, shall comply with all safety measures initiated by the Contractor as well as all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property. The Subcontractor shall report any injury to any of the Subcontractor's personnel at the Project to the Contractor within five (5) days after their occurrence.
- 6. CLEAN UP.** The Subcontractor shall at all times keep the Project free of accumulations of waste materials or rubbish arising out of its performance of the Scope of Work. As each phase of the Scope of Work in any Project area is completed, all waste shall be removed and the area shall be put in a broom-clean condition.
- 7. WARRANTY.** The Subcontractor warrants to the Owner, the Architect and the Contractor directly that all materials and equipment furnished and installed as part of the Scope of Work shall be new and previously unused, unless specified otherwise, and that all work performed by Subcontractor and its personnel shall be of good and workmanlike quality, free from defects and in full and complete compliance with the requirements of this Subcontract and the Contract Documents. If deemed necessary by the Contractor, all work not complying with the requirements of this Subcontract and the Contract Documents may be directed by Contractor to be removed and replaced, all at Subcontractor's cost. The warranty provided in this paragraph shall be in addition to and not in limitation of any other warranty or remedy required or permitted by law or the Contract Documents.
- 8. APPLICATIONS FOR PARTIAL PROGRESS PAYMENTS; OTHER COMPENSATION.** Partial progress of payments shall be made to Subcontractor based upon applications submitted therefore showing the estimated value, in terms of a schedule of values required by this Subcontract, of work completed during the application period, including changes in the Scope of Work as approved under the procedure stated in these General Conditions. The application shall contain a certified labor record showing the types of labor, hours and respective rates and benefits employed during the application period. The application shall be accompanied by Subcontractors' partial waiver of materials lien corresponding to the work for which payment is sought. The application shall also be accompanied by a Subcontractor's affidavit stating that all persons who have supplied labor, materials or equipment used or consumed in performing Subcontractor's Scope of Work during the period for which Subcontractors seeks payment have been paid in full. The Contractor shall rely upon the Subcontractor's application in seeking progress payments from the Owner or other responsible party. Submittal of Subcontractor's application with supporting documentation described herein and receipt of payment therefore from the Owner or other responsible party are conditions precedent to payment to Subcontractor. Contractor shall be entitled to withhold payment to Subcontractor as retainage to the extent that Owner withholds retainage from Contractor. In no instance shall Subcontractor be entitled to receive from Contractor payment for partial progress applications, work, changes or all other compensation until ten (10) days after Contractor has received payment proceed therefore from the Owner or other responsible party.
- 9. SUBCONTRACTOR'S PAYMENT FOR MATERIALS, LABOR AND EQUIPMENT.** Subcontractor, prior to submitting an application for a progress payment, shall pay all persons for materials, labor or equipment used or consumed in performance of that portion of Subcontractor's Scope of Work to which Subcontractor's payment application relates. Subcontractor hereby expressly represents and warrants to Contractor that Subcontractor has sufficient resources to make payment to its suppliers, subcontractors, and laborers as required by this Agreement. Subcontractor is obligated to promptly obtain a bond from a satisfactory surety to remedy Owner's title to the Project or the real property upon which it is constructed of any materials lien or other similar claim against the property made by any person who has supplied Subcontractor with labor, materials or equipment used or consumed in performance of Subcontractor's Scope of Work. If Subcontractor fails to obtain such a bond within seven (7) calendar days after being required to do so by Contractor, Contractor may terminate Subcontractor's right to continue performance of the Scope of Work as set forth in this Subcontract. Contractor may also obtain an appropriate bond and charge all costs and expenses associated therewith plus 10% for each overhead and profits, against the Subcontract price. Contractor may also directly compensate those persons whom it, in exercise of its sole discretion, determines are suppliers or subcontractors of Subcontractor for the performance of the Scope of Work and whom the Subcontractor, in Contractor's sole determination, has not timely compensated. Contractor may reduce Subcontractor's compensation under this Subcontract by the amount Contractor so compensates Subcontractor's suppliers and subcontractors plus an amount equal to 10% for Contractor's administrative costs and expenses. The remedies set forth in this section are cumulative to those otherwise allowed Contractor under this Subcontract or by law.
- 10. CHANGES IN THE SCOPE OF WORK.** The Contractor reserves the right to direct Subcontractor to make changes in the Scope of Work, whether additions or deletions, without invalidating this Subcontract. Should any changes be directed by Contractor, or should Subcontractor find changes in the work necessary or desirable, the Subcontractor shall, prior to commencing the changed work, submit in triplicate to Contractor a written proposed change order ("PCO") showing a description of the proposed change and a cost determination of labor, materials and equipment with mark up for profit and overhead limited to a total of 10.0% and specifying any performance schedule impact. Contractor's written approval of the PCO by its "approval agent," as defined herein, is a condition precedent to Subcontractor's commencement of work set forth in the PCO or incidental thereto. Where the total cost determined by the PCO is equal to or less than \$500.00, Contractor's agent for approval is Contractor's superintendent responsible for the Subcontractor's trade. Where the total cost established by the PCO exceeds \$500.00, Contractor's agent for approval is Contractor's project manager for the Project. Subcontractor's compensation for changes in its performance of work shall be limited to the amount established by approved PCO's. Contractor shall not be liable to compensation Subcontractor for any change in the work performed without a duly approved PCO. If required by Contractor, Subcontractor shall submit revised performance schedules expressly identifying the effect of any change in the Scope of Work on Subcontractor's performance. Subcontractor shall be paid for changes in the performance of the Scope of Work in accordance with section 8 of these General Conditions.
- 11. CLAIMS AND DISPUTES.** Except to the extent that the contract between the Contractor and the Owner requires that a claim or dispute be decided by other means, any and all claims and disputes between Subcontractor and Contractor arising under this Subcontract shall be decided according to the provisions stated herein.
 - a.** Any claim for additional compensation or damages by Subcontractor arising out of any change to the Scope of Work shall be made by Subcontractor in accordance with General Conditions section 10, "Changes in the Scope of Work." Any claim, action or proceedings by Subcontractor arising out of the acts or omissions of other contractors or subcontractors on the Project shall be made directly by Subcontractor against such other person in Contractor's name after giving advance written notice before commencement of any proceedings. Any claim by Subcontractor arising out of the Project specifications, plans, drawings or acts or omissions of the Owner, Architect or their employees or agents, shall be made directly by Subcontractor against the Owner, Architect or their employees or agents in Contractor's name and in accordance with the claim procedures established between the Contractor and Owner or Architect in the Contract Documents, provided, however, that Subcontractor give Contractor substantial advance written notice of intent to commence an action against said parties. Subcontractor shall hold Contractor harmless and indemnify Contractor for all costs and attorneys' fees Contractor may incur in connection with any claim, action or proceeding between Subcontractor and other contractors and subcontractors on the Project, the Owner, Architect or their employees or agents. Contractor may, to the extent permitted by law, elect to consolidate, join or convert any legal action or arbitration proceeding relating to Subcontractor, with any other legal action or arbitration proceeding involving a common question of fact or law or for which the Subcontractor may be an indispensable party without which any person may not obtain complete relief, all as determined by Contractor in its sole discretion.
 - b.** Notice being essential to allow collection of evidence, for any claim or dispute to be decided in accordance with the provisions of paragraphs b. to e. of this section, the parties hereto shall give written notice of their claim within ten (10) calendar days of either discovery of the cause giving rise to a claim or of the date when the claimant in the exercise of good faith should have reasonably discovered the cause of the claim, whichever occurs first. The notice shall contain a description of the claim or dispute, the compensation or other relief sought and shall name a representative officer or employee of the claimant other than legal counsel ("Authorized Representative") to enter into negotiations with the other party and who shall have full and final authority to enter into a settlement of the dispute at a conference of the Authorized Representatives. Such notice shall be sent via registered or certified mail to the other party at the address stated herein below. Within seven (7) days of receipt of such notice, the opposing party shall name an officer or employee, and not legal counsel, as Authorized Representative. The Authorized Representatives shall meet at the Project site, without legal counsel, no later than ten (10) days after the last Authorized Representative is named to cooperatively review the positions of the parties regarding the claim. The Authorized Representatives shall each make a good faith effort to reach a settlement of the dispute by the conclusion of the meeting. If no settlement is reached, then the claim or dispute may, at the request of either party, proceed to mediation as set forth in paragraph c. of this section.
 - c.** A meeting of the Authorized Representatives is a condition precedent to entering into mediation. A request for mediation may be made no earlier than five (5) calendar days after the meeting of the Authorized Representatives. The request for mediation shall be made in writing and shall set forth a description of the claim or dispute and the compensation or other relief being sought and shall be mailed via certified or registered mail to the opposing party. Within five (5) days after receipt of the request for mediation, the parties shall confer to select a mediator. If the parties cannot agree upon the selection of a mediator within ten (10) days after receipt of the request for mediation, then the claimant shall request the American Arbitration Association to name a mediator which selection shall bind both parties. The claimant shall bear the cost of any fees or expenses associated with the American Arbitration Association. A mediation conference shall take place no more than thirty (30) days after the mediator is named or the earliest date thereafter when the mediator is available to convene with the parties. The parties may agree to additional mediation conferences. The parties specifically agree that they will not be represented by legal counsel in the mediation conference and any other mediation efforts to which the parties agree. The mediator shall establish the procedures for the mediation conference. The parties shall comply with such procedures and participate in good faith in the mediation conference. If the claim or dispute is not resolved through the mediation process as established herein, then the claimant may commence arbitration proceedings as set forth in paragraph d. of this section.
 - d.** All claims or disputes remaining after the conclusion of mediation shall be decided by arbitration as set forth herein. Conclusion of mediation and expiration of a ten (10) day period thereafter are conditions precedent to commencement of arbitration proceedings. A decision by the Architect is not a condition precedent to arbitration. Arbitration shall be commenced by service of a written arbitration demand and shall be conducted according to the Construction Industry Arbitration Rules of the American Arbitration Association as then obtaining or such other rules as may be set forth in the contract between the Owner and Contractor. All arbitration hearings shall be held in Atlanta, Georgia. There shall be one arbitrator who shall, after hearing, issue a written award deciding the claim or dispute that shall be final and binding on the parties.
 - e.** Each party shall be responsible for bearing its own costs and expenses, including attorneys fees incurred in connection with any claim or dispute arising under this Subcontract. Except with the prior express written consent of the Contractor's project manager, subcontractor shall not interrupt or slow performance of the Scope of Work on the basis of any claim or dispute arising under this Subcontract. All statement, documents and other items presented in the context of any meetings or discussions of the Authorized Representatives or mediation shall not be admissible as evidence in any arbitration proceedings or legal action. This section shall survive any termination of this Subcontract with respect to claims or disputes arising during the operation of this Subcontract.
- 12. TERMINATION.** Contractor may elect to terminate either the Subcontractor's right to proceed with the Scope of Work or this Subcontract, by giving forty-eight (48) hours written notice, sent via email, facsimile or certified or registered mail, to Subcontractor at the address set forth in this Subcontract upon the occasion of any default by Subcontractor hereunder. The Subcontractor shall be deemed in default if it fails to perform its Scope of Work in a timely or workmanlike manner and in compliance with the Subcontract and Contract Documents, fails to give notice of its suppliers and subcontractors as required in the Subcontract, fails to timely obtain all insurance policies, bonds, licenses and permits required by this Subcontract, the Contract Documents or applicable law, fails to timely pay fees, taxes, premiums and amounts due for Subcontractor's use of labor, materials or equipment in performance of the Scope of Work, or Subcontractor otherwise fails to comply with the requirements of this Subcontract. If this Subcontract or Subcontractor's right to proceed is terminated by Contractor, Subcontractor shall be entitled to receive the unpaid portion of the Subcontract price including approved PCO's and other changes, less the costs and expenses incurred to complete the Scope of Work plus 10% each for overhead and profit. Such amount, if any, shall become due only after Contractor's receipt of final payment on the Project from the Owner. If the cost of completing the Scope of Work plus overhead and profit of 10% each exceeds the unpaid Subcontract price, then Subcontractor shall pay the difference to Contractor. Subcontractor may deem Contractor in default of this Subcontract if Contractor fails to pay Subcontractor as required by this Subcontract those amounts Contractor has received for work performed by Subcontractor within ten days after Contractor's receipt thereof and after ten (10) calendar days written notice sent via certified or registered mail to Contractor at the address below. Subcontractor's remedy for default shall be limited to an amount equal to that established hereunder for Subcontractor's default.
- 13. INDEMNIFICATION; WORKER'S COMPENSATION INSURANCE.** To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Architect and Contractor and all their agents and employees from and against all claims, awards, damages, losses and expense, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of Subcontractor's obligations under this Subcontract, including, but not limited to, all claims and causes of action asserted by any employee, officer, agent or representative of Subcontractor for physical injuries sustained in connection with the Scope of Work, without regard to availability of workers' compensation insurance coverage or any allegation, claim or cause of action of independent negligence or breach of duty against Contractor. If Contractor provides workers' compensation insurance that applies to employees of Subcontractor, such insurance shall be secondary to any workers' compensation insurance coverage procured by Subcontractor which shall be the primary coverage for payment of workers' compensation claims. Contractor may, at its option, deduct the cost of any workers' compensation insurance which applies to employees, representatives or agents of Subcontractor, from progress payments otherwise payable to Subcontractor, whereby the amount of such deduction shall be assessed according to the proportion of the original amount of this Subcontract to the total amount of subcontracts issued by Contractor for the Project. Subcontractor shall direct its workers' compensation insurer to issue copies to Contractor of all notices of cancellation or termination of coverage. Subcontractor expressly consents to Contractor communicating directly with Subcontractor's insurers concerning all coverage issues.
- 14. GENERAL.** No modification or amendment to this Subcontract shall be valid unless made in writing and signed by both parties hereto. No forbearance or waiver of any breach of any Subcontract requirement shall be construed as a forbearance of waiver of any subsequent breach.