



**SUBCONTRACT AGREEMENT:**

FOR REVIEW ONLY

SUBCONTRACTOR:

WORK CATEGORY:

PROJECT NAME:

LOCATION:

OWNER:

ARCHITECT:

PME ENGINEER:

STRUCTURAL ENGINEER:

LIEN AGENT:

ADDRESS:

CONTACT PHONE:

SUBCONTRACT PRICE:

BILLING DUE DATE:

MAIL/EMAIL MONTHLY BILLING TO:

Thomas Construction Group LLC License #57620  
1022 Ashes Drive Suite 200  
Wilmington, North Carolina 28405  
nbeckley@thomasconstructiongroup.com

RETAINED PERCENTAGE:

PAYMENT & PERFORMANCE BONDS:

Required

Not Required

LIQUIDATED DAMAGES:

Applicable

Not Applicable

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## **ARTICLE 1 - The Work**

1.1 Subcontractor shall furnish all labor, supervision, services, materials, equipment, tools, scaffolds, transportation, storage and all other things necessary to perform the work described in Schedule A attached hereto (the "Work"), being a portion of the work required of Contractor under the Contract between Owner and Contractor (the "Contract"). The Work shall be performed by Subcontractor strictly in accordance with this Subcontract and the Contract Documents, which consist of the Contract and the plans, drawings, specifications, addenda and other documents identified in Schedule B attached hereto, and all modifications issued hereafter thereto (the "Contract Documents"). If the Contract requires the Contractor to incorporate specific provisions or requirements in subcontract agreements, Subcontractor agrees that all of those provisions or requirements are incorporated in the Subcontract. Some of these provisions or requirements, along with other provisions, may be incorporated in a Rider attached hereto. The Rider, if any, and all provisions and requirements contained therein are part of this Subcontract.

1.2 The Contract Documents are available for examination by Subcontractor at the office of the Contractor. The Contract made available to Subcontractor will be an unpriced copy. Subcontractor represents and agrees that it has had access to all Contract Documents and has carefully examined and understands the Contract Documents that Subcontractor deems relevant to the Work; has previously notified Contractor in writing of all ambiguities, inconsistencies and omissions, if any, in the Contract Documents that relate to the Work; has adequately investigated the nature and conditions of the Project site and locality; has familiarized itself with conditions affecting the difficulty of the Work; and has entered into this Subcontract based on its own examination, investigation and evaluation and not in reliance upon any opinions or representations of Contractor.

1.3 In the performance of the Work, Subcontractor agrees that, except as expressly otherwise stated in this Subcontract, it is bound to Contractor by the terms and conditions of the Contract Documents and that Subcontractor is obligated and liable to Contractor to the same extent Contractor is obligated and liable to Owner. Subcontractor hereby assumes toward Contractor all of the duties, obligations and responsibilities that Contractor has by the Contract Documents assumed toward the Owner. Subcontractor agrees to be bound by all interpretations, decisions or other written instructions by Owner, Architect, any court, arbitration panel, administrative tribunal or other body relative to any question, interpretation, ambiguity or discrepancy in the Contract Documents in the same manner as Contractor is bound; and Subcontractor agrees to comply with and to perform the Work as required by such interpretations, decisions or other written instructions. If Subcontractor incurs any additional cost, delay or disruption to the Work as a result of any such interpretation, decision or written instruction or as a result of any inadequacy or unsuitability, including without limitation, ambiguity, inconsistency or omission in the Contract Document, Contractor shall only be obligated to pay additional compensation to Subcontractor or to extend the Subcontractor's time for performance if Contractor receives additional compensation or an extension of time from Owner, and then only to the extent, if any, of Subcontractor's equitable portion of such additional compensation or extension of time as determined by Contractor in its discretion. Contractor shall not be responsible for any price increase or additional costs resulting from Subcontractor's failure to seek price protection from its suppliers of material and labor.

1.4 The Contract Documents and This Subcontract shall be read and interpreted together. If there is a conflict regarding the scope of the Work, the document requiring the more extensive work shall prevail unless the Contractor directs otherwise in writing to Subcontractor. Otherwise, this Subcontract shall govern in the event of any conflict between the Contract Documents and Subcontract pertaining to the relationship between Contractor and Subcontractor.

## **ARTICLE 2 - Price**

Contractor shall pay to Subcontractor for the satisfactory performance and completion of the Work under this Subcontract the sum set forth above as the Price, subject to additions and deductions as herein provided. To the extent that the Work or any changes or modifications thereto are to be performed on a unit price basis, the Price shall be computed in accordance with the unit prices set forth in Schedule C based on actual quantities determined in accordance with Contract Documents and this Subcontract. The Price and all unit prices shown in Schedule C include compensation for all costs, direct and indirect, of Subcontractor's performance of the Work or changes thereto.

## **ARTICLE 3 - Progress Payments**

3.1 Within ten (10) days of execution of the Subcontract, Subcontractor shall submit to Contractor for approval a detailed schedule showing a cost breakdown of the Price according to the various line items, or parts, of the Work for use only as a basis for checking Subcontractor's application for payment. The cost breakdown shall provide a separate itemization of the overhead and profit associated with the Work.

3.2 Monthly Billing. On or before each Monthly Billing Date, Subcontractor shall submit to Contractor a progress payment application on Contractor's form. The application shall include the value of the portions of the Work completed, and if the Contract Documents provide for payments for stored materials, the value of the material suitably stored (to the satisfaction of Contractor and Owner) at the Project site or other approved location ("Stored Materials"). Subcontractor shall submit a partial release of lien and general release on Contractor's form with each payment application.

3.3 Payments. Subject to Article 5, on the twenty-fifth (25th) of the following month or within seven (7) days after receiving a progress payment from Owner, whichever is later, Contractor shall make a progress payment to Subcontractor equal to the approved value of the completed portions of the Work and the Stored Materials which were included in the Contractor's billing to Owner, less (a) all previous payments, (b) retainage (and any other reserve or withholding provided for in this Subcontract) and (c) all charges and backcharges for services, materials, equipment and other items furnished or otherwise chargeable by Contractor to Subcontractor. Any estimate or determination made by Owner (or Architect) of the value of the completed portions of the Work or of any deduction or offset for damages to the Work or for changes chargeable by Owner to Contractor on account of the Work, shall be binding on Subcontractor.

#### **ARTICLE 4 - Final Payment**

4.1 Final billing from Subcontractor, including billing for all Change Orders, shall be submitted to Contractor no later than thirty (30) calendar days after completion of the Work.

4.2 The final payment, consisting of the unpaid balance of the Price, shall be due and payable within seven (7) days after all the following have occurred:

- (a) completion of the Work by Subcontractor;
- (b) acceptance of the Work by Architect and Owner;
- (c) final payment by Owner to Contractor under the Contract on account of the Work;
- (d) Subcontractor's furnishing to Contractor of satisfactory evidence that there are no outstanding claims, obligations, encumbrances or liens for labor, services, materials, equipment, taxes or other items incurred in connection with the Work;
- (e) delivery of all guarantees, warranties, bonds, instruction manuals, as-built drawings and similar items required of Subcontractor or its suppliers or subcontractors; and (f) delivery of a release of lien and general release on Contractor's form executed by Subcontractor.

#### **ARTICLE 5 - Payment Conditions**

5.1 Subcontractor agrees that the payments made by Contractor will be held in trust by Subcontractor to be applied first to the payment of laborers, suppliers, subcontractors and others responsible for the Work and all taxes and insurance applicable thereto; and Subcontractor agrees to so hold and apply the payments from Contractor.

5.2 Contractor shall have the right at all times to contact Subcontractor's subcontractors and suppliers to insure that they are being paid in accordance with the terms of this Subcontract and the terms of their agreements with Subcontractor for labor or materials furnished for use in performing the Work. Subcontractor agrees that Contractor may, at any time, make payments due to Subcontractor by checks jointly payable to Subcontractor and one or more of Subcontractor's subcontractors or suppliers.

5.3 Subcontractor shall, as often as requested by Contractor, furnish all information Contractor requires, including, without limitation, a sworn statement, with respect to the extent and value of current progress, the names and contact information for all of Subcontractor's subcontractors and suppliers, and the nature and extent of all obligations incurred by Subcontractor in connection with the Work and all payments made by Subcontractor on account thereof.

5.4 Withholding. In addition to retainage, Contractor may withhold from any progress or final payment all amounts which are reasonably necessary to protect Contractor against all risks, including, without limitation, attorneys' fees, from the occurrence of any of the following:

- (i) Subcontractor fails to provide evidence satisfactory to Contractor that each of its subcontractors, suppliers and laborers has been paid for all labor, services, materials, and supplies used in the performance of the Work through the end of the pay period covered by the last progress payment;
- (ii) the Owner reduces a payment to Contractor or backcharges Contractor for reasons attributable to the Work;
- (iii) a portion of the Work is unacceptable to Contractor, Owner or Architect;
- (iv) a third party asserts a claim against Contractor arising from the Work or evidence reasonably indicates that such a claim(s) may be filed;
- (v) the Subcontractor fails to carry out the Work in accordance with Subcontract or otherwise violates the provisions of this Subcontract;
- (vi) the Work is not progressing in accordance with or will not be completed within the time allowed by the Schedule;
- (vii) Subcontractor fails to furnish Certificates of Insurance in compliance with Article 12 or bonds in compliance with Article 11;
- (viii) Subcontractor has not executed all contract documents; (ix) certified payrolls, if required, are not current; or
- (x) Subcontractor has incurred or caused Contractor to have incurred any fines for violations of any government ordinances or statutes.

5.5 No payment shall be evidence of the performance or progress of the Work, or constitute or imply acceptance by the Contractor of any portion of the Work. Subcontractor agrees that the acceptance of any payment shall constitute a release of the Contractor from all claims or liability, other than for retainage, for any work, services, materials or equipment performed or furnished or for anything which

occurred or which failed to occur during the payment period to which the payment relates. Acceptance of final payment by Subcontractor shall constitute a general release of Contractor, its surety and Owner.

5.6 Setoff. If Subcontractor is, or hereafter begins, performing any work for Contractor other than the Work under this Subcontract and the unpaid balance otherwise due Subcontractor, for such work becomes insufficient to compensate Contractor for any damages, default, or deficiencies caused by or attributable to the Subcontractor in the performance of the other work, Subcontractor hereby consents and agrees to allow Contractor, in its sole discretion and judgment, to withhold and setoff an amount (with such amount being the sum reasonably appropriate to compensate Contractor for its actual and reasonably anticipated future losses, costs, damages, and expenses incurred as a result of such damages or deficiencies) against any funds otherwise due, or which may become due, to Subcontractor hereunder or under any other agreement with Contractor on any other Project. No refusal or failure of Contractor to exercise its rights hereunder shall constitute the basis of any rights or claim against Contractor.

## **ARTICLE 6 - Time**

6.1 Time is of the essence in the performance of this Subcontract. Subcontractor is aware of the Contract Time (as defined in the Contract Documents) and agrees to take any and all steps necessary to insure that the Work is performed in such time as to permit Contractor to meet his obligations to Owner (in accordance with the schedule for the Project to be prepared by Contractor ("the Schedule")). If Subcontractor fails to maintain the progress required by Contractor and such failure is Subcontractor's fault, in whole or in part, Subcontractor agrees, at its sole cost and expense, to take whatever actions are necessary to resume progress as required by Contractor. Subcontractor shall accelerate or alter the order of the Work, as directed by Contractor. Subcontractor shall not be entitled to additional time or delay costs for acceleration or alterations necessary to remedy the subcontractor's delay. Subcontractor agrees to indemnify, defend, hold harmless and accept tender of defense for delay claims made against Contractor due to the actions of the Subcontractor or its lower-tier subcontractors.

6.2 Subcontractor agrees at its sole cost and expense:

- (a) to submit to Contractor within ten (10) calendar days of the date of the Subcontract, a detailed, proposed schedule for the Work for Contractor's use in preparing the Schedule for the Project;
- (b) to begin the Work upon Contractor's order to do so;
- (c) to cooperate with Contractor and its other subcontractors and the other contractors, if any;
- (d) to perform the Work, thereto, in such sequence as Contractor may direct;
- (e) when requested, to provide all information required by Contractor to prepare schedules, updates or revisions (to the Schedule) and;
- (f) to furnish at all times sufficient and qualified forces and supervision, adequate and conforming materials, equipment, tools and all other things necessary to achieve the progress required by the Contractor. Subcontractor agrees that Contractor has full discretion with regard to preparation of any Schedule and updates or revisions thereto during the course of the Project, and that Subcontractor shall perform the Work in accordance with the requirements of such Schedule and all revisions or updates thereto.

6.3 Subcontractor agrees:

- (a) to order (for manufacture and/or purchase and delivery) all materials and equipment required for the Work as soon as possible to avoid delays caused by unavailability;
- (b) to furnish Contractor within ten (10) calendar days of the date of this Subcontract a list of major materials and equipment required for the Work, showing the name, address and telephone number of the supplier and the dates on which such materials and equipment are expected to be delivered to the Project site;
- (c) to furnish Contractor, upon demand, a copy of each major purchase order and subcontract;
- (d) to cause a qualified home office supervisory representative to attend scheduled progress meetings; and
- (e) to notify Contractor immediately and confirm in writing within forty-eight (48) hours, if Subcontractor finds that any item cannot be delivered as required to maintain any Schedule prepared by the Contractor.

6.4 Liquidated Damages. Subcontractor represents that it has satisfied itself as to any provision in the Contract Documents concerning liquidated damages, and agrees that in the event liquidated damages are imposed by Owner on Contractor as the result, in whole or in part, of the performance or nonperformance of Subcontractor, liquidated damages (or an appropriate share thereof) may be assessed against Subcontractor by Contractor and will constitute one element of the damages that Contractor shall be entitled to recover from Subcontractor by backcharge or otherwise. In addition to liquidated damages, Subcontractor agrees to reimburse Contractor for any loss or damage, including damages that may become due to Owner under the Contract Documents, and for any extra expense incurred by the Contractor that result from Subcontractor's failure to deliver timely any and all materials or failure to perform timely any and all Work.

## **ARTICLE 7 - Extensions of Time**

Subcontractor shall be granted an extension of time for delays in the performance of the Work only to the extent an extension is allowed the Contractor by the Owner for performance of the Work and only to the extent of Subcontractor's pro-rata entitlement to such extension as determined in Contractor's discretion; provided, if Subcontractor is delayed by Contractor or other subcontractors of Contractor, and Subcontractor gives the required notice, Subcontractor shall be entitled to an extension of time equal to the delay. Regardless of the cause of the delay, the Subcontractor agrees it shall not be entitled to compensation or damages for any delay (including, without limitation, impact, inefficiency and disruption) in the performance of the Work except to the extent that Contractor shall receive such compensation or damages, from Owner or other third party. Subcontractor shall not be entitled to an extension of time or to compensation or damages for any delay unless a written request for extension of time or notice of claim is delivered to Contractor within two-thirds of the time period allowed by the Contract Documents or within seven (7) calendar days of the beginning of the event causing the delay, whichever is the shorter period of time.

## **ARTICLE 8 – Changes**

8.1 Without notice to Subcontractor's surety and without invalidating this Subcontract or the surety bonds, Contractor may from time to time, by written directive to Subcontractor, require Subcontractor to make changes in the Work (both additions and deletions), and the changed work shall be part of the Work. Subcontractor shall perform changed work as part of the Work and in accordance with the terms of this Subcontract, when directed to do so in writing by Contractor.

8.2 Subcontractor specifically agrees that it is bound by any and all disclaimers in the Contract Documents that relate to subsurface, latent conditions, differing conditions, unknown conditions or that otherwise deal with changed conditions at the Site ("Differing Conditions"). Should Subcontractor encounter Differing Conditions during the progress of the Work, Contractor's attention shall be called to same in writing before such conditions are disturbed.

8.3 Within two-thirds of the time period required by the Contract Documents or seven (7) calendar days of a change in the Work or discovery of a Differing Condition, whichever is the shorter period of time, Subcontractor shall submit to Contractor a written proposal for the change in the Work or the Differing Condition amply detailed and supported and conforming to the requirements of the Contract Documents and the Subcontract. Subcontractor agrees that it waives all its rights to both price and time adjustments if it fails to submit its written proposal within the required time.

8.4 Subcontractor agrees that adjustments in the Price (including the Subcontractor's costs, if any, caused by changes to the work of others) or the time for the Work for changes directed by Owner or for Differing Conditions shall be limited to Subcontractor's portion of the adjustments actually made by Owner under the Contract Documents (less, in the case of price adjustments, any markup or other similar amount allowed by Owner for Contractor's account).

When changes are the subject of unit prices under Schedule C, the Price adjustment shall be limited to the amount obtained by applying such unit prices to the number of units actually allowed by Owner.

8.5 Subcontractor's price quotations for all changes or Differing Conditions shall be based on actual savings or costs. Actual savings and costs will include the following items:

- (a) cost of materials, including sales tax and cost of delivery;
- (b) cost of labor, including social security, old age and unemployment insurance, and other charges or fringe benefits required by law, agreement or custom; workmen's compensation insurance;
- (c) bond premiums;
- (d) actual rent for or reasonable rental value of Subcontractor owned equipment and machinery;
- (e) all other costs to be incurred in or as a consequence of the change or Differing Conditions plus allowances for all direct and indirect overhead costs (site, branch and home office); and
- (f) profit.

8.6 A Change Order to this Subcontract is a written modification of terms of the Subcontract signed by the parties. No agreement with respect to whether Subcontractor is entitled to price or time adjustments as a result of changed work, including deleted work, or Differing Conditions, shall be enforceable unless reflected in a written Change Order.

8.7 The parties agree to attempt to determine the amount of any Price adjustment and the extent of any time adjustment;

- (a) prior to performance of the changed work for a change that adds any work;
- (b) prior to the deletion for a change that only deletes work; and
- (c) promptly after the discovery of Differing Conditions for Differing Conditions.

Subcontractor, however, will promptly proceed with changes (whether additions or deletions) and with the Work despite Differing Conditions when directed to do so in writing by Contractor even if Subcontractor and Contractor have not agreed upon price and time adjustments related to the changes or as a result of the Differing Conditions and furnish such records to Contractor on a weekly basis. The final adjustment in the Price or time of performance as a result of the changed work or the Differing Conditions will then be

determined after final completion of the Work. Subcontractor's failure to comply with a written directive from Contractor to proceed with a change or to proceed with the Work despite Differing Conditions is a material breach of this Contract.

8.8 Subcontractor shall not proceed with changed work in any event unless it first receives a written directive from Contractor or a Change Order that covers the changed work has been issued and agreed to. Subcontractor shall not be entitled to either a price or time adjustment if it performs changed work before receiving a written directive or a Change Order from Contractor to perform such changed work.

#### **ARTICLE 9 - Disputes Concerning Work Scope**

In the event there is a dispute whether any work is part of the Work, Subcontractor shall proceed with such work as if it were part of the Work on receipt of a written directive to do so from Contractor. Subcontractor shall make the claim, if any, for a Price or time adjustment as if such work were changed work; and if Contractor and Subcontractor cannot reach an agreement with regard to the work in dispute, then the issue shall be resolved as provided in Article 29.

#### **ARTICLE 10 - Pricing and Documentation**

10.1 General. Subcontractor agrees to comply fully with all federal, state and local laws, ordinances and regulations relating to cost and pricing data (including certification thereof), audit of books and records and certification of claims to the full extent such laws, ordinances and regulations are applicable to the Contractor.

10.2 Price and Cost Data. In addition to and without limiting the obligations imposed in Paragraph 10.1 above, Subcontractor agrees and represents that all cost and pricing data and all data related to requested time adjustments submitted by it in connection with any claim, proposal or request for an addition to or decrease in the Price or for an extension of time (including, without limitation, a request or proposal for a Change Order and/or claims made in arbitration and litigation) shall be accurate and complete, shall accurately represent the actual costs Subcontractor has incurred or saved or reasonably expects to incur or save and shall set forth the adjustment in the Price and extension of time that Subcontractor in good faith believes it should receive.

10.3 Audit. In addition to and without limiting the obligation assumed in Paragraph 10.1 above, Subcontractor agrees that Contractor has the right to cause the books and records of Subcontractor to be audited by Contractor or an independent auditor selected by Contractor in order to verify the completeness and accuracy of the cost and pricing data submitted by Subcontractor to Contractor in connection with any claim or proposed or requested adjustment to the Price. Contractor shall bear the cost of such audit unless the audit establishes that Subcontractor's cost and pricing data was not complete and accurate, in which case Subcontractor shall bear the cost. The purpose of Paragraph 10.3 is limited to providing the right of audit when necessary to verify the completeness or accuracy of cost and pricing data submitted by Subcontractor in connection with any claim or requested adjustment to the Price.

10.4 Certification of Claims. In addition to and without limiting the obligation assumed in Paragraph 10.1 above, upon written request of Contractor, Subcontractor agrees to cause a responsible, authorized officer to execute and furnish to Contractor a certificate certifying that any claim submitted by Subcontractor to Contractor is made in good faith, that the supporting data are accurate and complete to the best of Subcontractor's knowledge and belief, and that the price or time adjustments requested accurately reflect the adjustment(s) for which the Subcontractor believes the Contractor and/or Owner is liable.

10.5 Indemnity. Subcontractor agrees to indemnify and hold Contractor harmless from all costs, expenses (including legal and accounting fees and associated costs), fines, forfeitures, claims and other liabilities that Contractor incurs, in whole or in part, as a result of Subcontractor failure to comply fully with any obligation arising under paragraphs 10.1, 10.2, 10.3 or 10.4, above, or with all applicable codes, statutes, ordinances, and regulations.

#### **ARTICLE 11 - Bonds**

11.1 If so indicated on page 1 hereof, Subcontractor shall furnish, within ten (10) calendar days of the date of the Subcontract, at its expense, separate performance and labor and materials payment bonds, each in an amount equal to the Price, on Contractor's standard forms and with a surety or sureties satisfactory to Contractor.

11.2 No payment shall be made to Subcontractor for work performed pursuant to this Subcontract until the required payment and performance bonds have been delivered to Contractor, Provided, in the event the Subcontractor cannot provide the Contractor with the required payment and performance bonds, Contractor may elect, without waiving the right to insist upon such bonds at any time, to permit the Subcontractor to proceed without bonds. If Contractor subsequently elects to insist on bonds, and Subcontractor either refuses to or cannot provide payment and performance bonds, then Contractor shall have the right to terminate Subcontractor's right to proceed under this Subcontract in accordance with Paragraph 27.2 and to pursue any and all other remedies available to Contractor.

11.3 Subcontractor shall furnish an additional and/or substitute performance bond and labor and material payment bond, with a surety or sureties satisfactory to Contractor if:

- (a) Any surety upon any bonds furnished with this Subcontract becomes unacceptable to the Contractor.
- (b) Any surety fails to furnish reports on its financial condition as may be required by the Contractor.
- (c) The Price is increased so that penal sum of any bond becomes inadequate in the sole opinion of the Contractor.

11.4 Contractor has the right, but not an obligation, to require consent of surety for any modification, change or alteration to the Subcontract. Failure of Subcontractor to submit a consent of surety within seven (7) calendar days after Contractor requests the consent will constitute a material breach of Subcontract.

11.5 Contractor has the right, but not an obligation, to make final payment of retainage, by joint check to Subcontractor and Subcontractor's surety.

## **ARTICLE 12 - Insurance**

12.1 Before commencing the Work, Subcontractor shall provide and pay for insurance coverages not less than those specified in Schedule D attached hereto, as well as any additional insurance coverages required by the Contract Documents, from an AM Best "A-" (or better) rated insurance carrier.

12.2 Subcontractor shall furnish a certificate, satisfactory to Contractor, from each insurance company providing coverage to Subcontractor showing the required insurance to be in force and stating that the insurance will not be cancelled, non-renewed or materially changed except after providing at least thirty (30) days actual, written notice to Contractor or longer if required by Contract Documents. Contractor shall have the right but not the obligation to review all of Subcontractor's insurance policies applicable to the Project. Subcontractor shall remain obligated to furnish insurance certificates under this subparagraph notwithstanding Subcontractor's assignment or subcontract of this subcontract in accordance with Article 15, except that the required certificates of insurance shall be those certificates pertaining to the assignee or sub-subcontractor.

12.3 Subcontractor shall immediately advise Contractor, in writing, of the facts and details of every accident and personal injury occurring in connection with the Work and shall make available, if requested by Contractor, a copy of every accident report made to Subcontractor's insurance carrier(s).

12.4 Subcontractor shall cause Contractor and Owner to be named as additional insureds for current and completed operations under the Subcontractor's general liability policy, automobile liability policy and excess liability policy. If required by the Contract Documents, Subcontractor shall cause Architect and their officers, agents and employees to be named as additional insureds under such policies. The additional insured endorsement should be form CG 20 10 11 85 or a substitute form providing equivalent coverage. Additional insured coverage shall apply as primary and noncontributory insurance with respect to any other insurance afforded to Owner and Contractor.

12.5 To the extent that Subcontractor maintains (1) property insurance coverage or (2) other insurance for loss or damage to property, Subcontractor and its insurers hereby waive all rights to make claims against Contractor, Owner and other contractors or subcontractors, and their agents, employees and servants for any loss or damage to property.

12.6 Subcontractor agrees to obtain from each of its insurers a waiver of subrogation in favor of the Owner, Contractor and Architect with respect to losses arising out of or in connection with the Work. Subcontractor shall cause its subcontractors to obtain similar waivers.

## **ARTICLE 13 - Damages**

Contractor shall not be liable or responsible for loss or damage to the equipment, tools, facilities, or other property owned, rented, or used by Subcontractor, or anyone employed by Subcontractor, in the performance of the Work; and Subcontractor shall maintain such insurance and take such protective action as it deems desirable with respect to such property. Except to the extent of any proceeds received by Contractor for the benefit of Subcontractor under a builders' risk or fire insurance policy, Subcontractor agrees that Contractor shall not be responsible for any loss or damage to the Work. Subcontractor shall take all precautions necessary to protect the Work from loss or damage prior to acceptance of the Work by Owner. Subcontractor shall be responsible for the correction or restoration of any loss of and all damage to the Work occurring prior to acceptance of the Work by Owner and for the correction or restoration of any loss of and all damages to the work of Contractor or any other subcontractor, resulting from the operations of Subcontractor, or its subcontractors, agents, or employees.

## **ARTICLE 14 - Indemnity**

14.1 To the fullest extent allowed by law, Subcontractor agrees to defend, indemnify and hold harmless Contractor and Owner, and their officers, directors, agents and employees, and affiliated companies separately and severally, from and against any claim, cost, expense or liability (including attorneys' fees) attributable to bodily injury, personal injury, sickness, disease, or death, or to damage to or destruction of property (including loss of use thereof), caused in whole or in part by, arising out of, resulting from, or occurring in connection with the performance of the Work by Subcontractor, its subcontractors, or their agents or employees. Subcontractor's

obligation hereunder shall not be limited as to an amount or type of damages by the provisions of any worker's compensation act, disability act or other employee benefit act. Subcontractor further agrees that Subcontractor shall reimburse Contractor for Contractor's reasonable attorneys' fees and other litigation expenses incurred in enforcing Subcontractor's obligations hereunder to defend, indemnify and/or hold harmless Contractor. The parties hereto are aware of and acknowledge the application of North Carolina General Statute § 22B-1. All indemnity provisions in this Contract shall be interpreted to comport with the statute and no indemnity obligation herein is intended to extend beyond the limits of permissible indemnities under that statute.

14.2 If Owner or any other person or entity asserts a claim or institutes a suit, action or proceeding against Contractor involving the manner or sufficiency of the performance of the Work, Subcontractor shall, upon written request of Contractor, promptly assume the defense of such claim, suit, action or proceeding at Subcontractor's expense. Subcontractor shall indemnify and save harmless Contractor and its agents and employees, from and against any liability, loss, damages or expense, including attorneys' fees, arising out of or related to such claim, suit, action or proceeding.

#### **ARTICLE 15 - Assignments and Subcontracts**

Subcontractor shall not assign this Subcontract, or any monies due or to become due hereunder, or subcontract any part of the Work without the prior written consent of Contractor. Subcontractor shall not be relieved of any of its duties or obligations under this subcontract by any assignment or subcontract, and Subcontractor shall be and remain fully responsible and liable for the acts and omissions of its assignees and subcontractors, and all persons directly or indirectly employed by them. All approved assignees and subcontractors shall furnish all insurance certificates required by Article 12 and shall provide proper and competent supervision and comply with all terms of this subcontract. Subcontractor shall require each assignee to be bound by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the assignee's Work, which the Contractor, by these Documents, assumes toward the Owner. Each assignee agreement shall preserve and protect the rights of the Owner, Contractor and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor and the assignee so that subcontracting thereof will not prejudice such rights.

#### **ARTICLE 16 – Compliance with Applicable Laws and Regulations**

Subcontractor shall, at its own expense, obtain all necessary licenses and permits pertaining to the Work and comply with all statutes, ordinances, rules, regulations and orders of any governmental or quasi-governmental authority having jurisdiction over the Work or the performance thereof, including, but not limited to, those relating to safety, accidents, wages, discrimination and equal opportunity. Subcontractor shall defend, indemnify and save harmless Contractor and Owner and their agents and employees from any loss, liability, expense (including attorneys' fees), citations, assessments, fines or penalties resulting from violations of such statutes, ordinances, rules, regulations or orders in connection with the performance of the Work.

#### **ARTICLE 17 - Safety**

17.1 Subcontractor accepts complete responsibility for the health and safety of its employees and its subcontractors' employees, the safe performance of the Work, compliance with safety procedures and policies issued by the Contractor and in the Contract Documents, and compliance with all applicable health and safety laws, including the regulations and standards of the Occupational Safety & Health Act of 1970 ("OSHA"), as amended. Subcontractor shall cooperate with Contractor, Owner and all other contractors and subcontractors in their respective safety programs and shall comply with the provisions of Contractor's Accident Prevention Program set forth in Schedule E attached hereto. Subcontractor shall be responsible for all OSHA fines which relate to its performance of the Work. Subcontractor shall also be responsible for reimbursement of fines issued to Thomas Construction Group as a result of noncompliance with the OSHA Act.

17.2 In the event that Subcontractor (or any of its employees or its subcontractors' employees) fails to comply with any health and safety requirements or if Contractor deems any part of the Work unsafe, Contractor may require Subcontractor to stop work and/or remove any noncomplying employees. Subcontractor shall not be entitled to any additional time or money as a result of Contractor stopping the Work when the Work was stopped due to Contractor's concern about safety deficiencies.

17.3 Subcontractor will report the occurrence of serious injury or equipment/property damage to Contractor's Project Manager within 24 hours. In addition, Subcontractor shall submit to the Contractor's Project Manager the following, when applicable, within five (5) working days of the injury or damage:

- (a) a copy of "Employer's First Report of Injury",
- (b) a copy of all property/casualty insurance claim reports; and
- (c) a copy of all OSHA inspection/citation reports.

#### **ARTICLE 18 - Cleaning Up**

18.1 Subcontractor shall, at its sole cost and expense;

- (a) keep all areas in which it is working free from Subcontractor's waste materials, packaging and other debris by collecting and removing such debris on daily basis;
- (b) at the completion of the Work in an area, make that area "broom-clean"; and
- (c) prior to final inspection, clean and prepare the Work for acceptance for Owner.

18.2 If Contractor incurs any expenses performing cleanup work for the Subcontractor, Subcontractor will be backcharged for such expenses, provided Contractor gave Subcontractor written notice of Subcontractor's failure to comply with its obligation to keep its work areas clean and free of waste materials at least twenty-four (24) hours prior to the time when Contractor performed cleanup work for the Subcontractor. If Contractor performs cleanup work involving more than one subcontractor's work, Contractor's decision on the allocation among subcontractors of cleanup costs incurred by Contractor shall be final and binding on Subcontractor.

18.3 The subcontractor will be responsible for keeping their work product clean during construction in addition to final cleaning requirements. Final cleaning will include removal of marks, stains, fingerprints, dirt, paint, etc., regardless of origin.

18.4 Each subcontractor will include in its Contract Price the cost of providing one man hour for every 50 man hours worked under this subcontract as subcontractor's contribution to a composite clean-up crew, to work under Contractor's direction. Workers assigned to the composite clean-up crew shall report to the Superintendent on the day(s) and time(s) directed by the Superintendent. Failure to contribute to the weekly composite clean-up effort will result in a backcharge from Contractor to provide the service for Subcontractor. This does not replace each subcontractor's need to keep its work place cleaned at all times. The intent of the composite clean-up crew is to keep the jobsite free of daily trash caused by construction traffic and personnel.

#### **ARTICLE 19 - Temporary Facilities**

Temporary facilities and services shall be provided by the Contractor as defined in the contract specifications.

#### **ARTICLE 20 - Warranties**

Subcontractor warrants to the Contractor, Owner and Architect that the materials and equipment furnished under this Subcontract will be of good quality and will conform with the requirements of this Subcontract and the Contract Documents. Subcontractor further warrants that the Work of this Subcontract will be of good quality, free from defects and in conformity with the requirements of this Subcontract and the Contract Documents. Subcontractor shall, at its sole cost and expense, remedy and replace any defective non-conforming Work which is discovered by the Contractor, Architect or Owner within two (2) years from the date of final completion of the Project or within such longer period as may be prescribed by law or under the Contract. This warranty shall be in addition to and not in limitation of any other warranty, remedy or claim for relief provided by law or under the Contract.

#### **ARTICLE 21 – Inspection and Removal or Replacement of Defective Work**

Subcontractor shall provide proper facilities and opportunity at all times for the inspection of the Work by Contractor, Owner, Architect and their representatives. Subcontractor shall, within twenty-four (24) hours after receiving written notice from Contractor, at Subcontractor's sole cost and expense, take down and remove from the Project site all portions of the Work which the Contractor, Owner or Architect have condemned as unsound, improper or as failing in any way to conform to the Contract Documents or this Subcontract and shall replace the same with proper and conforming work. Subcontractor shall be responsible for all work damaged or destroyed in connection with the removal or replacement of condemned work. Contractor's failure to discover and notify Subcontractor of defective or nonconforming work at the time the Work or any portion thereof is performed or completed shall not relieve Subcontractor of responsibility for replacement of the defective or nonconforming work and all damages resulting therefrom. If the Owner elects to accept defective or nonconforming work, Contractor may require Subcontractor to accept an adjustment in the Price to the extent Owner requires Contractor to do so, and/or furnish an extended warranty.

#### **ARTICLE 22 - Submittals**

22.1 Subcontractor shall, within ten (10) days of the execution of the Subcontract, prepare or obtain and submit to Contractor all shop and erection drawings, samples, product data, catalogue cuts, laboratory and inspection reports, engineering calculations and submittals ("Submittals") required by the Contract Documents or as may be necessary or appropriate to describe the details of the Work. All Submittals shall be submitted so as to permit the Work to be performed in accordance with the Schedule.

22.2 Neither review of nor approval of Submittals by Contractor, Owner or Architect shall relieve Subcontractor of its obligation to perform the Work in strict accordance with the Contract Documents or its responsibility for the proper matching of the Work to contiguous work. Subcontractor shall identify each and every variance between any Submittal and the requirements of the Contract Documents at the time of transmission either prominently on the Submittal or specifically in a transmittal letter accompanying the Submittal. No modification, revision or other notation on a Submittal that changes or modifies the Contract Documents shall be valid (even if the drawing or Submittal is approved) unless there is a Change Order issued approving the same.

## **ARTICLE 23 - Performance**

23.1 Subcontractor, in performing the Work, acts as an independent contractor and not as an agent or employee of Contractor.

23.2 Subcontractor shall notify and obtain the approval of Contractor:

(a) before the arrival of Subcontractor's forces or delivery of materials and equipment to the Project site, (b) before any substantial change in either the composition or size of its forces, and (c) before leaving the Project site.

23.3 Subcontractor warrants that all design services provided by Subcontractor shall be provided through qualified, licensed design professionals employed by or selected and paid by Subcontractor.

23.4 All design services provided by Subcontractor shall be performed with the skill and care ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

## **ARTICLE 24 - Liens**

Subcontractor agrees to turn the Work over to Contractor free and clear of all liens, claims or encumbrances. Subcontractor shall defend, indemnify and save harmless Contractor, Contractor's sureties and Owner from any lien, encumbrance, claim of lien or suit in connection with a lien or encumbrance filed or maintained by any laborer, material vendor, subcontractor, or other person directly or indirectly acting for through or under Subcontractor, against the Project or any part thereof or any interest therein or against any monies due or to become due from Owner to Contractor or from Contractor to Subcontractor. Without limiting the foregoing, Subcontractor shall cause any such lien, encumbrance or claim of lien to be satisfied, removed or discharged by bond, payment or otherwise within ten (10) days from the date of filing or receipt of notice, whichever is earlier. Failure to do so is a breach of the Subcontract whether the claim of the party filing the lien is valid or not, and Contractor shall be indemnified from all losses and costs, including, without limitation, Owner and Contractor's attorneys' fees, incurred as a result of any such lien.

## **ARTICLE 25 - Patents and Copyrights**

Subcontractor shall defend, indemnify and save harmless Contractor and Owner from and against any claim, cost, expense or liability (including attorneys' fees) arising out of or resulting from infringement or alleged infringement of any patent rights or copyrights in connection with the Work, except to the extent that Owner may have assumed responsibility therefore under the Contract Documents. Subcontractor shall pay all royalties, license fees and similar charges for patented or copyrighted material used in or incorporated in the Work.

## **ARTICLE 26 - Labor**

26.1 Subcontractor agrees that strikes, slowdowns or similar interruptions or disturbances (including cases where the Subcontractor's employees are engaged in a work stoppage solely as a result of a labor dispute involving Contractor or others and not in any manner involving Subcontractor) shall not excuse Subcontractor from the obligation to perform the Work timely and in accordance with the Schedule; and in such event, Contractor shall be entitled to the rights and remedies provided in Paragraph 27.2. Subcontractor shall maintain and exercise control over all employees engaged in the performance of the Work, and shall, to the extent permitted by law, remove or cause to be removed from the Project any employee whose presence is detrimental to the orderly performance of the Work in the opinion of the Contractor.

26.2 Contractor is an equal opportunity employer complying with Title VII of the Civil Rights Act of 1964.

26.3 Subcontractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin.

## **ARTICLE 27 - Termination and Default**

27.1 Termination by Contractor for Contractor's Convenience. Contractor, by written notice, may terminate the Subcontract in whole or in part for Contractor's convenience. In such event, Subcontractor will be compensated for the reasonable cost of all work performed and all materials purchased for the Work prior to the termination including a reasonable profit thereon, plus the reasonable out-of-pocket costs of terminating the Work, but shall receive no compensation, profit or overhead for unperformed work or for materials not yet purchased. Regardless of the foregoing, the total sum Subcontractor shall be entitled to be paid in the event of a termination for convenience, including all prior payments to Subcontractor, shall not exceed the Price. Subcontractor shall not be entitled to any other compensation or payment, in the event of a termination for convenience other than as specifically provided in this Paragraph 27.1.

27.2 Termination by Contractor for Subcontractor's Default. Each of the following events shall constitute a default and breach of Subcontractor's obligations under this Subcontract and shall hereinafter be referred to as an Event of Default:

(a) Subcontractor fails to carry out the Work in accordance with the Contract Documents or this Subcontract,

- (b) Subcontractor fails to prosecute the Work in a diligent and prompt manner,
- (c) Subcontractor voluntarily seeks protection of the Federal Bankruptcy Laws, or Subcontractor is involuntarily placed in bankruptcy,
- (d) Subcontractor has an action brought against it that impairs the ability of Subcontractor to perform its obligations under this Subcontract,
- (e) Subcontractor makes a general assignment for the benefit of creditors, or a receiver is appointed for Subcontractor,
- (f) Subcontractor refuses, fails, or is unable to supply enough properly skilled workmen or materials to perform the Work according to any Schedule,
- (g) Subcontractor fails to make prompt payments for materials or labor supplied to Subcontractor for the Work,
- (h) Subcontractor disregards any law, ordinance, rule, regulation, or order of any public authority related to the Work, or (i) Subcontractor otherwise violates any provision of this Subcontract or the Contract Documents.

Upon the occurrence of any Event of Default, Contractor shall have the right to notify Subcontractor, in writing, of Subcontractor's default in performance, and to require that Subcontractor cure such default within three (3) calendar days after delivery of such notice. If Subcontractor does not cure the default within the time allowed, then Contractor may, at its option, terminate Subcontractor's rights to proceed under this Subcontract by written notice, and such termination shall not release or waive any of Contractor's rights or remedies against Subcontractor and Subcontractor's sureties and shall not prejudice any other rights of Contractor under this Subcontract or the law. After such termination and without further notice, Contractor may enter upon and take possession of all materials, equipment, tools, construction equipment and machinery located on the site, stored off site or located at other facilities of Subcontractor or its subcontractors or vendors and which are allocated to or assigned to the Project or which were purchased for the Project, and Contractor or its designee may complete the Work by whatever method Contractor deems reasonable under the circumstances.

In the event of such termination by Contractor, Subcontractor shall not be entitled to any further payment or compensation except as provided in this Paragraph 27.2. In the event the unpaid balance of the Price, after deduction of all claims that Contractor may have against Subcontractor, exceeds the total cost of finishing the Work (the "Total Completion Cost" which Total Completion Cost shall include but not be limited to Contractor's reasonable overhead and profit, the cost of Architect's additional services, attorneys' fees of fifteen percent (15%) and all other costs and charges related to the termination or the completion of the Work), such excess shall be paid to Subcontractor upon satisfaction of the conditions for final payment set out in Article 4. In the event the Total Completion Cost exceeds the unpaid balance of the Price, Subcontractor and its sureties shall be liable to and shall promptly pay such difference to Contractor.

### **27.3 Termination by Subcontractor**

If Subcontractor is prevented from working for a period of sixty (60) calendar days under order of any court or other public authority having jurisdiction through no act or fault of the Subcontractor or its agents or employees, any other persons performing any of the Subcontractor's work, or as a result of an act of government (such as declaration of national emergency making materials unavailable for Subcontractor's work), the Subcontractor may terminate this Subcontract and recover from the Contractor payment for all of Subcontractor's work completed prior to the termination and in place (less the amount of Contractor's claims against Subcontractor, if any); provided nevertheless, that such payment

- (a) shall include profit and overhead only for the portion of the Work completed and in place;
- (b) shall be payable only to the extent that Contractor has received the same from the Owner; and
- (c) shall be payable only upon satisfaction by Subcontractor of all of the conditions of Articles 4 and 5, to the extent of the Work completed prior to the termination hereunder. In the event of such termination, Subcontractor shall have no right to any compensation or recovery of any kind, including, without limitation, incidental or consequential damages, from Contractor except as specifically provided in this Paragraph 27.3.

### **ARTICLE 28 - Inspection, Tests and Cutting and Fitting**

28.1 Subcontractor agrees to perform all tests and inspections called for in the Contract Documents and to make provisions for inspection and testing by Contractor, Owner or Architect at the Project site or at Subcontractor's facilities to determine whether the Work or materials and equipment or processes used in the Work conform with the Contract Documents. The failure of Contractor, Owner or Architect to inspect, to test or to discover defective workmanship, materials or equipment shall not relieve Subcontractor of its obligation to perform the Work in strict accordance with the Contract Documents and shall not prejudice the rights of Contractor, Owner or Architect to reject or require correction of the same.

28.2 Subcontractor shall do all cutting, fitting or patching necessary for the performance of the Subcontract Work. Subcontractor will repair or pay the cost of repair of any damage, including, without limitation, damage to work performed by others, caused by Subcontractor in the performance of the Work.

## **ARTICLE 29 - Claims and Disputes**

29.1 Any controversy or claim between the Contractor and the Subcontractor arising out of or related to this Subcontract or the Contract Documents, which cannot be resolved by voluntary settlement efforts, including mediation, shall be resolved in the Superior Court of New Hanover County, North Carolina, unless the claim relates to or necessarily involves a claim against the Owner, in which event the controversy or claim shall be resolved under the dispute resolution proceedings set forth in Contract between Owner and Contractor. Subcontractor consents to the jurisdiction of New Hanover County, North Carolina Superior Court as the exclusive forum for resolution of all claims between Contractor and Subcontractor which do not involve Owner.

29.2 The parties hereto intend that all claims of Subcontractor shall be resolved in accordance with the provisions of the Contract Documents and this Subcontract, and that Subcontractor's recoveries on its claims, if any, shall be limited to Subcontractor's equitable portion of the relief Contractor receives from Owner as a result of such claims.

29.3 Contractor agrees to make a good faith effort to request that Owner honor any just claim presented by Subcontractor. Subcontractor shall be responsible for the prosecution and presentation of any claim against or to Owner and shall pay all expenses of said prosecution or presentation, including without limitation, the expenses of arbitration and attorneys' fees. It shall be Subcontractor's obligation to give Contractor adequate notice to insure that Contractor can give all notices required by the Contract Documents with respect to such claim in a timely manner. Subcontractor understands and agrees that Subcontractor waives all right to and has no right to payment for any claim or request for additional compensation of any kind that is submitted more than thirty (30) calendar days after the completion of the Work, except as provided in the Contract Documents.

29.4 Subcontractor hereby agrees that upon Contractor's request, Subcontractor will consent to becoming a party to any arbitration or other legal proceeding involving the Project. Subcontractor acknowledges that this provision is intended to permit Contractor to cause Subcontractor to be a third party defendant to claims by Owner, other subcontractors or third parties against Contractor.

## **ARTICLE 30 - Substance Abuse**

Subcontractor agrees to implement and enforce a substance abuse policy and control program prohibiting its employees and its subcontractor's employees from reporting to work or working under the influence of drugs or alcohol. Subcontractor's policy and control program shall include mandatory drug testing for suspected violations and shall subject the affected employees to disciplinary action, including termination, for violating the substance abuse policy.

## **ARTICLE 31 – Hazardous Materials**

In the event Subcontractor encounters any hazardous materials, including asbestos, while engaged in the Work, Subcontractor shall immediately stop work in the area affected and report the condition to the Contractor in writing. Subcontractor shall not resume work in the affected area until Contractor and Subcontractor reach agreement on the appropriate course of action. If Subcontractor uses any hazardous materials in conjunction with its performance of the Work, Subcontractor shall take all appropriate precautions to guard against contamination or harmful exposure to any persons at the Work Site and shall give written notice to Contractor in advance of the use of the hazardous materials.

## **ARTICLE 32 - Miscellaneous**

32.1 Joint Venture or Partnership. If Subcontractor is a joint venture or partnership, each party to the joint venture or partnership represents and agrees that the person who signs this Subcontract on behalf of Subcontractor is authorized to sign and by signing this Subcontract jointly and severally obligated each of them to all undertakings and obligations set forth in the Subcontract Documents.

32.2 Governing Law. The validity, interpretation and performance of this Subcontract shall be governed by the law of North Carolina, except: (a) if any provision or requirement of this Subcontract or the Contract Documents provides that the law of another state or the law of the federal government is applicable to, controls, governs or determines certain duties, responsibilities, or obligations, including warranty obligations, of a party hereto, or any aspect or portion of this Subcontract, then the other state's law or federal law shall apply to, control, govern or determine those certain duties, responsibilities or obligations of that party or that aspect or portion of this Subcontract; and (b) if the Contract is with the federal government or an agency or branch thereof, then the Subcontractor's rights to recover from the Contractor for changed work, extra work, Differing Conditions, delay or disruption in the performance of the Work are limited to the Contractor's rights to recover from the federal government or agency or branch thereof under the applicable federal law.

32.3 No Third Party Beneficiaries. This Subcontract is intended solely for the direct benefit of the parties hereto. There are no third party beneficiaries of this Subcontract.

32.4 Severability. The provisions of this Subcontract are severable. Should any provision of this Subcontract or any provision of the Contract Documents applicable to Subcontractor be unenforceable, the remaining provisions shall remain valid and binding.

32.5 Non-waiver. The failure by Contractor at any time to enforce or to require strict compliance or performance by Subcontractor or any Subcontractor with any of the provisions of the Subcontract or Contract Documents shall not constitute a present or future waiver of any such provision and shall not affect or impair in any way Contractor's rights at any time to enforce any such provision or to avail itself of such remedies as it may have for any breach thereof.

32.6 Survival of Terms. The terms of this Subcontract and the Contract Documents shall survive and remain in full force and effect after termination of this Subcontract or completion of the Work.

32.7 Only Written Modification. No changes, modifications, amendments of any of the terms and conditions of this Subcontract or the Contract Documents shall be valid unless agreed to by the parties in writing and signed by their authorized representatives.

32.8 Owner Approval. If the Contract affords Owner the right to object to Subcontractor's selection, this Subcontract shall not be effective, until Owner approves Subcontractor.

32.9 Headings. Headings are for convenience of the reader and are not a substantive part of this Subcontract.

32.10 Notice. Any notice required to be given to Subcontractor may be accomplished by mailing or delivering written notice to the address listed for the Subcontractor on page one (1) of this Subcontract or by personal delivery to Subcontractor. Any notice required to be given to Contractor may be accomplished by mailing or delivering written notice to the address listed for the Contractor on page one (1) of this Subcontract.

32.11 Subcontractor warrants that no statement, representation, inducement or promise, oral or in writing, of any kind by Owner, Contractor or Architect, not expressly made a part of the Contract Documents, has induced Subcontractor to enter into, or been relied upon by Subcontractor in entering into, this Subcontract.

32.12 This Subcontract embodies the entire agreement between the Contractor and Subcontractor. All bids, proposals for or acknowledgments of this Subcontract by Subcontractor, whether written or verbal, which contain any term, condition or provision which purports to modify, conflict with, contradict or add to this Subcontract or the Contract Documents, are void and of no force or effect. All negotiations, proposals or agreements prior to the date of this Subcontract are merged herein and superseded hereby, there being no agreements, warranties, understanding or promises other than those written expressly herein.

IN WITNESS WHEREOF, the parties hereto have executed this Subcontract as of the day and year first above written.

**THOMAS CONSTRUCTION GROUP LLC**

(Contractor)

(Subcontractor)

By: CONTRACT MUST BE SIGNED VIA DOCUSIGN

By: CONTRACT MUST BE SIGNED VIA DOCUSIGN

Printed Name & Title: \_\_\_\_\_

Printed Name & Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## SCHEDULE A –DESCRIPTION OF THE WORK

### A. **Summary of the Work** - Below is a summary of contractual requirements applicable to ALL Subcontracts.

1. Thomas Construction Group operates on the premise that Quality is Paramount. The following are Mandatory meetings and procedures requiring active participation from the Subcontractor as a part of the Thomas Construction Group Quality Assurance / Quality Control Program:
  - a. **Project Representative:** Subcontractor shall employ and assign a competent Project Representative who shall be in attendance at the Project site at all times during performance of Work. The Project Representative shall represent the Subcontractor and receive communication from Contractor, which shall be binding. The Project Representative shall have full authority to act on Subcontractor's behalf in all matters necessary for proper coordination, direction, and technical administration of Subcontractor's Work. Subcontractor's Project Representative shall be the Subcontractor Superintendent unless a different Project Representative is proposed and accepted by Contractor.
  - b. **Project Kick-off Meeting:** Subcontractor shall attend a Project Kick-off Meeting to review Project Specific requirements and Thomas Construction Group rules and procedures.
  - c. **Preconstruction Meeting:** Subcontractor shall attend a Scope-Specific Preconstruction Meeting to review Subcontractor scope, contract, specifications, and Construction Documents. Subcontractor Superintendent and Project Manager shall both be in attendance. **NO** Work is permitted to begin prior to completion of the Preconstruction Meeting.
  - d. **1st Day Production Walk:** Upon completion of 1st day production, Subcontractor shall review completed Work with Contractor. Prior to starting any further Work, Subcontractor shall correct all deficiencies and Thomas Construction Group Superintendent shall approve all corrections.
  - e. **Weekly Coordination Meetings:** Subcontractor shall attend Weekly Onsite Coordination Meetings as soon as Subcontractor scope is within (3) weeks of commencement. Thenceforth until the Work is fully complete, through Punch List, participation is mandatory. Attendance by Subcontractor Project Manager shall be required if requested by a Thomas Representative.
  - f. **Mock-up:** Every Thomas Construction Group Project shall have a Mock-up unless stated otherwise. The Mock-up typically consists of concrete, metal/wood framing, sheathing, weather-barrier, window, flashing, roofing, exterior façade (brick, EIFS/stucco, siding), exterior trim, paint, fascia, soffit, gutters, downspouts. Inclusive of this Contract, Subcontractor shall provide material and labor for production associated with its scope. The Mock-up shall be utilized as the Project Quality Control Standard.
  - g. **Punch Procedures:** Thomas Punch Procedures consist of the following:
    - (1) **On-going/Rolling Punch:** Subcontractor shall continually inspect materials, equipment, layout, etc. for compliance with contract requirements, shop drawings, and quality throughout the duration of the project. Subcontractor shall inform Contractor of any deficiency discovered by Subcontractor. Thomas Superintendent shall also inspect and create a list of deficiencies. Subcontractor shall correct all deficiencies immediately upon review and direction of Thomas Construction Group Superintendent.
    - (2) **Pre-Punch:** Contractor shall create a Pre-Punch list (30) days prior to Owner/Architect Punch List. Subcontractor shall provide adequate manpower to complete all Pre-Punch items by due dates specified by Contractor, without jeopardizing deadlines for other ongoing activities. All corrected Pre-Punch items must be reviewed, accepted, and signed-off by Thomas Construction Group Superintendent.
    - (3) **Punch List:** The Punch List shall be prepared by an Owner Designee. All corrected Punch List items must be reviewed, accepted, and signed-off by Thomas Construction Group Superintendent. Subcontractor shall provide adequate manpower to complete all Punch List items by due dates specified by Contractor, without jeopardizing deadlines for other ongoing activities.
    - (4) If Subcontractor fails to provide adequate manpower to correct Punch items during the course of and at the completion of its Work, upon twenty-four (24) hour Notice to Subcontractor, Contractor may provide manpower on behalf of Subcontractor and charge Subcontractor for costs incurred, plus ten percent (10%) overhead and ten percent (10%) profit.
2. Subcontractor acknowledges and has given consideration to ALL Sheets of Contract Documents and ALL sections of the Project Specifications/Manual associated with the Project. No consideration will be given to a Subcontractor's claim stating that

the Work was not depicted on individual Sheets or in specific sections of the Specifications presumed to be specific to a particular scope of Work.

3. Subcontractor acknowledges that the drawings and specifications are not 100% graphically complete. Subcontractor agrees that the Contract Documents and/or other project documents are suitable to complete its Work.
4. It is understood that Subcontractor has provided a Complete System. If there was any ambiguity in the Contract Documents, the Subcontractor has made the more stringent assumption or received the proper clarifications as required to provide a Complete System. A Complete System includes, but not limited to, the following:
  - a. All material, labor, field-engineering, layout, scaffolding, equipment, systems, machinery, tools, apparatus, hoisting, bracing, dewatering, weather protection, cutting & patching, transportation/FOB jobsite, permits, fee, taxes, delegated-design, samples, shop drawings, and submittals necessary to complete the Work.
  - b. All barricades, traffic control, signage, sidewalk protection and other safety measures necessary to ensure public safety during completion of the Work.
  - c. All Work to be in strict accordance with the Contract Documents which are listed in Schedule B.
  - d. Substitution of materials, products, and equipment will be outlined in the Specifications or specifically indicated in this agreement. No other exceptions will be made.
  - e. Subcontractor acknowledges that multiple mobilizations are required unless specified otherwise.
5. Subcontractor shall inspect substrates, dimensions, and elevations to confirm accuracy prior to beginning Work.
6. Subcontractor shall coordinate Work to ensure proper fit, finish, and sequence in accordance with the project schedule.
7. A clean and organized jobsite is a priority to Thomas Construction Group. Subcontractor shall, at all times and at its own expense, deposit their own rubbish, debris, packing cartons, crates, etc., in a location to be determined by Contractor. All debris shall be broken down prior to putting it into dumpsters. Subcontractor shall maintain its work and storage areas in a broom clean condition at all times. If Subcontractor fails to perform necessary or required clean up during the course of and at the completion of its Work, upon twenty-four (24) hour Notice to Subcontractor, Contractor may provide manpower on behalf of Subcontractor and charge Subcontractor for costs incurred, plus ten percent (10%) overhead and ten percent (10%) profit.
  - a. All roadways shall be kept clean as per local authorities. Subcontractor shall clean up any debris that is in the roadway and/or clean trucks leaving the site.
8. Strict compliance with OSHA regulations will be required of each Subcontractor. Safety will be enforced. ALL Subcontractors will be required to identify and maintain a competent person as defined by OSHA on site at all times.
  - a. Thomas Construction Group has implemented a **CRITICAL PROCEDURE PROGRAM** for all digging/excavation activities. Subcontractor shall notify the Contractor prior to starting any excavation work. Subcontractor shall coordinate and follow all procedures outlined in the Critical Procedure Program for Underground Utility Locating / Digging.
  - b. Thomas Construction Group has implemented the new Fall Protection Standard known as Subpart M 1926.500, 1926.501, 1926.502 and 1926.503. ALL Subcontractors performing work on projects are required to meet the new standard without exception.
9. In addition to those requirements outlined in Paragraph 8.5 of this subcontract, Subcontractor agrees that, in the event the Contract Documents are silent on subcontractor mark-up then, Subcontractor shall set mark-up on all changes at ten percent (10%) for all overhead and ten percent (10%) profit for self-performed or subcontracted work.
10. Subcontractor shall provide all weather and/or fall protection for all openings created by Subcontractor.
11. Subcontractor shall notify Contractor a minimum of forty-eight (48) hours in advance of any delivery to the site. Failure to notify Contractor will result in refusal of delivery.

**SCHEDULE A – DESCRIPTION OF THE WORK (CONT'D**

**B. Scope of Work**

**SCHEDULE B – DOCUMENTS INCLUDED IN THE CONTRACT**

**SCHEDULE C – UNIT PRICES AND ALLOWANCES**

**N/A**

## **SCHEDULE D – REQUIRED INSURANCE COVERAGE**

The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability, on an occurrence basis, from an insurance carrier with an AM Best “A” (or better) rating, and acceptable to Contractor. The subcontractor also shall list Thomas Construction Group, LLC as additional insured for current and completed operations.

### **MINIMUM COMMERCIAL GENERAL LIABILITY COVERAGE:**

\$2,000,000 Products/Completed Operations Aggregate/General Aggregate

\$1,000,000 Any One Occurrence (Coverage A)

\$2,000,000 General Aggregate (Coverage B) \$1,000,000 Personal Injury and Advertising

Such policy or policies shall be written without exclusions for underground, collapse, contractual, punitive damages, broad form property damage, or any other non-standard exclusion. Broad form property damage shall include completed operations.

### **MINIMUM AUTOMOBILE LIABILITY COVERAGE:**

\$1,000,000 Each Accident

### **MINIMUM UMBRELLA LIABILITY COVERAGE**

\$1,000,000 Each Occurrence/Aggregate

### **MINIMUM WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY COVERAGE:**

Statutory compliance under North Carolina laws

\$500,000 Each Accident

\$500,000 Each Employee For Injury By Disease

\$500,000 Aggregate For Injury By Disease

### **THOMAS CONSTRUCTION GROUP, LLC MUST BE NAMED AS ADDITIONAL INSURED**

Coverages, on an occurrence basis shall be maintained without interruption from date of commencement of the Subcontractor's Work until date of final payment and termination of any coverage required to be maintained after final payment.

Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Schedule D shall contain a provision that coverages afforded under the policies will not be cancelled, allowed to expire or materially changed until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

## **SCHEDULE E – CONTRACTOR'S ACCIDENT PREVENTION PROGRAM FOR SUBCONTRACTORS**

THIS PROGRAM IS MADE AVAILABLE TO YOU IN ACCORDANCE WITH THE SAFETY CLAUSE OF YOUR SUBCONTRACT. ALL OR PARTS OF THE CONTENTS OF THIS PROGRAM WILL APPLY TO YOUR WORK DEPENDING ON THE NATURE OF YOUR WORK AND THE SEQUENCE OF YOUR WORK.

### **ACCIDENT PREVENTION RESPONSIBILITY**

Full responsibility for enforcement of the Accident Prevention Program belongs to the general contractor's superintendent in charge, who in turn is responsible to the project manager of the general contractor. Subcontractors will be responsible to the general contractor's superintendent for compliance with the program and any specific jobsite safety requirements required by the general contractor's superintendent.

### **ADVANCE ANALYSIS**

Before starting work on any job, the subcontractor shall make a complete analysis of the plans and specifications in order to determine the exposure to accidents, which may develop on the jobsite. With this information, the subcontractor will be able to make plans to control all exposures before contributing to an accident or loss. Subcontractor further agrees to attend Thomas Construction Group's Daily Huddle discussing daily work task, production goals and Daily Safety Hazard Analysis.

### **SAFETY INSTRUCTIONS WITH WORK ASSIGNMENTS**

Any subcontractor's employee of whatever supervisory level upon assigning work to any man or group of men will in each instance give sufficient caution with the assignment to adequately provide safety in the operation. This same principle will apply when changing personnel from one work area to another. Hazardous chemicals will be discussed with guidelines on use and protective equipment required.

### **SAFETY MEETINGS**

- A. All subcontractors shall attend periodic supervisory safety meetings held by the general contractor's superintendent or his designated representative (at least monthly.)
- B. Each subcontractor's foreman shall hold weekly "tool box" safety meetings with their own personnel to encourage employees' interest in safety and to give specific safety instructions relative to existing or expected hazards. Notes and minutes of these meetings shall be recorded, with 'sign-in' sheets and submitted to the general contractor's superintendent and/or main office.

### **FIRST AID**

Adequate first aid supplies shall be maintained by the subcontractor. These should be stored in a special kit or box. Treatments shall be administered by the most qualified person appointed by the subcontractor, preferably someone who has completed a Red Cross first aid training course.

### **ACCIDENT INVESTIGATION AND REPORTING**

All accidents shall be investigated by the subcontractor and reviewed by the general contractor's superintendent. The subcontractor will prepare a written report on all accidents to be turned in to the superintendent within 24 hours. Report forms shall be provided by the subcontractor or the general contractor's superintendent. A copy of this report will be forwarded to the general contractor's main office. In all cases other than first aid, the form provided by the state shall be completed. The copy retained at the jobsite shall note the action taken to prevent a recurrence. The general contractor's superintendent is to be furnished copies.

### **PROTECTIVE EQUIPMENT**

The protective equipment to be furnished by the subcontractor to his employees shall be determined by the advance analysis of the job and by conditions that occur as the work progresses. However, on all jobs the following protective equipment shall be the minimum:

- A. Safety glasses/goggles or face shields shall be issued to employees who are engaged in chipping, grinding, or performing any operations where they are exposed to eye hazards. Eye Protection must bear the "Z87" stamp. B. Welders' hoods and face shields must be worn only by attaching them to hard hats.
- C. Hard hats are to be worn throughout the jobsite, at all times, start to finish of job.
- D. The subcontractor shall require his employees to wear work boots in good condition.

- E. Life preservers shall be provided and shall be worn by all employees wherever working over water.
- F. The subcontractor is responsible for enforcing the use of protective equipment worn by its employees.
- G. Hearing protection shall be worn when work involves or is near abnormal noise levels.

THE FOLLOWING PROGRAM ITEMS ARE NOTED AND LISTED FOR SPECIAL EMPHASIS SINCE THEY USUALLY CREATE THE MOST HAZARDOUS CONDITIONS AND ARE MOST LIKELY TO BE CITED BY OSHA.

#### **HOUSEKEEPING**

- A. Plastic bottles, scraps, paper cups and similar rubbish shall be placed by subcontractor's employees in trash containers for that purpose. glass containers onsite.
- B. Rubbish, debris and waste materials shall be removed from the work area daily by subcontractor's employees. Form and scrap lumber with protruding nails shall be kept clear from all work areas.
- C. Stairways, ladders, ramps, platforms, walkways and work areas shall be kept clear and clean of loose material and trash by subcontractors employees.
- D. All material must be kept back from the outer edge of a building a minimum of 10'-0" at building perimeter and 6'-0" at interior floor openings.

#### **SCAFFOLDS**

- A. All scaffolding shall be erected by a competent person. All scaffolding shall be thoroughly checked by the subcontractor's competent person before and after erection and at least daily while in use. All scaffolding must conform with OSHA standards.
- B. All scaffolding over ten feet in height shall be equipped with guard rails and toeboards. Guard rails must support a 200-pound thrust.
- C. All scaffolding, other than suspended scaffolding, shall be erected on firm level foundations and shall be braced or guyed to the structure.
- D. Planking shall have at least twelve inches of overlap and extend six inches beyond center of support or be cleated at both ends to prevent sliding off supports. Planking shall be 2 x 10 nominal lumber or greater.
- E. Access ladders permanently secured shall be provided on all scaffolding, and employees will be prohibited from climbing on structural members.
- F. All scaffolding shall have proper access.
- G. Do not ride rolling scaffolds, and remove all material from the platform before moving the scaffold.
- H. Workers on a swinging scaffold shall be tied off to the building with a full body harness with an independent life line and guardrails. There shall be a safety life line for each person.

#### **LADDERS**

- A. All ladders shall be inspected and documented at least weekly. Broken and or damaged ladders shall be removed from service immediately and destroyed. All ladders must conform with OSHA standards.
- B. All straight ladders shall be set on firm level foundations at a four (4) to one (1) pitch, have clear access at top and bottom, extend the landing a minimum of 36 inches and be secured against movement while in use. All ladders shall be secured at the top and bottom. Safety feet will be used on all straight ladders.
- C. Portable metal ladders shall not be used for electrical work or where they might contact electrical conductors.
- D. Single portable ladders over 24 feet in length shall not be used.
- E. A double-gang ladder or two single-gang ladders must be available when 25 or more workers must access each elevated working surface above ground level.

#### **FLOOR OPENINGS AND STAIRWAYS**

- A. At all unprotected floor openings and stairways, provisions shall be made by the general contractor for barriers and toe boards. These shall remain in place until the openings have been closed or permanent stairs installed. When subcontractors must remove such barriers in the performance of their work, they are responsible for replacing barriers so as to provide maximum protection at all times.
- B. Never, under any circumstance, cover a floor opening with a piece of plywood, sheetrock, or other unsuitable material. All floor coverings must support a minimum of 500 lbs. or twice their intended load, whichever is greater. All floor openings must be marked with the word "Hole" or "Cover" and fully secured.

#### **FIRE PROTECTION**

- A. Gasoline or other flammable liquids shall be stored in UL approved safety containers and properly labeled.
- B. Approved heating devices shall be properly insulated to prevent setting fire to adjacent structures.
- C. Fire extinguishers shall be selected by the subcontractor on the basis of type of fire anticipated. Extinguishers, fire barrels, sand pails, hose lines, etc. shall be located where they are readily accessible and easily visible.

- D. Do not smoke or use an open flame, exposed heating element or any other sources of ignition in areas or rooms where spray painting is done.
- E. A fire extinguisher shall be adjacent to all stairwells and within reasonable of travel distance at all times.

## **POWER TOOLS**

- A. Provisions shall be made on each jobsite for the grounding of all fixed and portable electrical tools and equipment.
- B. It shall be the responsibility of the subcontractor to ascertain that all power saws and grinders in use are provided with the proper guards.
- C. Power saws shall be operated only by authorized and qualified personnel.
- D. All extension cords shall be of the rounded type utilizing twist lock connections rated for heavy duty use. (min #12)
- E. Faulty electrical cords shall be removed from service and destroyed immediately.

## **POWDER ACTUATED TOOLS**

- A. Low velocity pistol type tools with a pistol grip shall be used in all cases where applicable.
- B. High velocity tools shall be used only for those applications where low velocity tools will not meet job requirements. When a high velocity tool is no longer required, it shall be removed from the jobsite.
- C. Powder actuated tools shall be used, operated, repaired, serviced, and handled only by authorized personnel who have been trained and certified by the manufacturer and workers must carry the certified "card". Tools will be tested daily and all defects corrected before use.
- D. Tools shall not be loaded until immediately before use. Loaded tools shall not be left unattended.

## **TRENCHES**

- A. The subcontractor shall have an "excavation competent person" onsite during excavation operations.
- B. The sides of trenches five feet or more in depth entered by personnel shall be sloped, shielded, or shored in accordance with 29 CFR, subpart P.
- C. Ladders that extend at least three feet above the edge of the trench shall be located as to require no more than 25 feet lateral travel for rapid exit in case of emergency.
- D. All equipment and spoils should be kept a minimum of 2'-0" from the top of slope.

## **FALL PROTECTION**

- A. All subcontractor employees working six feet or more above the walking surface shall be protected by a guard rail system, a safety net system or a personal fall arrest system. All fall protection systems shall meet or exceed the requirements of 29 CER1926 501 through 503.
- B. All subcontractor employees working in the basket of a man lift shall be secured in its basket with a personal fall arrest system.

## **PUBLIC AND PROPERTY PROTECTION**

- A. Only authorized personnel shall be allowed on the jobsite.
- B. Barricades and warning lights shall be provided on all open ditches and excavations where there is a public exposure.
- C. Blasting, pile driving, underpinning and similar operations may present special exposures to adjoining or adjacent structures. When such operations are planned, it is important that the subcontractor's foreman or project manager make a preliminary survey of the property to determine structural defects, which exist. If such defects exist and there is a possibility of aggravating them, precise preconstruction surveys should be made to establish that the conditions were not caused by our operations but existed before the job started. Depending on the seriousness of the possible aggravations, these surveys should be made by an independent, qualified professional engineer and may include photographs, which should be made and dated by an impartial commercial photographer.

## **JOBSITE SAFETY RULES**

1. Access to this site is restricted to employees and those authorized by Thomas Construction Group, LLC.
2. Use and/or possession of intoxicants, alcohol or illegal drugs are strictly prohibited.
3. Hard hats shall be worn by all employees and visitors at all times.
4. Hard soled shoes are required. No tennis shoes.
5. Long pants and shirts with 4" minimum sleeves are required at all times.
6. Eye protection, ear protection and respiratory protection devices will be worn when required.
7. Full body harness, shock-absorbing lanyards, or other fall protection measures will be utilized when working at unprotected heights.
8. No glass containers allowed onsite.
9. No radios, handheld music devices or earphones allowed onsite.

10. Only authorized personnel are permitted to operate equipment and/or vehicles.
11. All machinery must have operable backup alarms at all times.
12. No riders on machinery or equipment. Seat belt use is required at all times. No riding in back of pick-up bed.
13. No one shall enter a trench or excavation unless it is properly sloped, shielded or shored.
14. Only trained, qualified operators will use powder-actuated tools.
15. All ladders will be secured, top and bottom. Always face ladders while going up or down.
16. Safety rails should be maintained at all times in all openings, stairways, and building perimeter.
17. Flammable liquids must be kept in approved containers.
18. Be alert for chemical safety hazards on the jobsite.
19. A complete first aid kit is available in the field office.
20. Report all accidents, unsafe conditions and/or practices to your supervisor or Thomas Construction Group, LLC immediately.

## **SCHEDULE F – CONSTRUCTION SCHEDULE**

The intent of this schedule is to provide a general sequence of the work for coordination purposes. It is our intent to improve all dates on this schedule whenever possible therefore, actual start dates may vary.

Coordination of the work should occur with the Project Superintendent. Schedule "F" is a compliment to Article 6 of this Subcontract Agreement.

Project Schedule entitled with a run date of .

**SCHEDULE G – SALES/USE TAX TERMS**

N/A

**SCHEDULE H – PROJECT STATEMENT**

Name of Project:

Project Location:

Owner:

Contact Phone:

Address:

Registered Agent:

Contact Phone:

Address:

Surety (Name and Principal Place of Business):