

Job No. _____

Subcontract No. _____

Cost Code _____

**SUBCONTRACT AGREEMENT
CINCINNATI CONSTRUCTION MANAGEMENT, INC.**

THIS SUBCONTRACT, made this _____ day of _____, _____, by and between CINCINNATI CONSTRUCTION MANAGEMENT, INC. (herein-after called "CCM"), and _____ (hereinafter called "Subcontractor"), to perform part of the construction work on the following Project:

PROJECT: _____

OWNER: _____

1. The Work. CCM employs Subcontractor as an independent contractor to construct a part of the Project for which CCM has contracted with Owner. Subcontractor's portion of the Project, hereinafter referred to as the "Work," is set out below. Subcontractor shall provide all material, labor, taxes, insurance, tools, equipment, supplies and supervision necessary to perform and shall perform the Work in a good and workmanlike manner and in accordance with the Contract Documents as follows:

2. Contract Documents. The Plans, Drawings, Specifications and the General Conditions, Special Conditions, Supplementary Conditions and other provisions, together with any and all Addenda thereto (hereinafter called the "Contract Documents") forming or by reference made a part of the contract between _____ (hereinafter called "Owner") and CCM is hereby made a part of this Subcontract by reference. Subcontractor represents and agrees that it has carefully examined and understands this Subcontract and the Contract Documents, has investigated the nature, locality and site of the Work and the conditions and difficulties under which it is to be performed, and that it enters into this Subcontract on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of CCM or Owner, or any of their respective officers, agents or employees. With respect to the Work to be performed and furnished by Subcontractor hereunder, Subcontractor agrees to be bound to Owner and to CCM by each and all of the terms and provisions of the Contract Documents, and to assume toward Owner and CCM all of the duties, obligations and responsibilities that CCM by those Contract Documents assumes toward Owner, and Subcontractor agrees further that Owner and CCM shall have the same rights and remedies as against Subcontractor as Owner under the terms and provisions of the Contract Documents has against CCM with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full. The terms and provisions of this Subcontract shall be in addition to and not in substitution for any of the terms and provisions of the Contract Documents, and in the event of ambiguity or contradiction between the Contract Documents and this Subcontract, the terms of this Subcontract shall take precedence. The contract documents include but are not limited to the following:

3. Acceptance of Subcontract. CCM shall not be bound by this Subcontract until this Subcontract has been executed and delivered by the parties hereto. Subcontractor shall be bound by this Subcontract (a) when it has executed and returned to CCM a copy of this Subcontract or (b) when it commences to perform the Work. By its acceptance of this Subcontract, Subcontractor expressly agrees to the terms and conditions stated herein, and any additional or inconsistent terms or conditions proposed by Subcontractor are hereby rejected except to the extent agreed to by CCM in writing.

4. Contract Sum. CCM shall pay to Subcontractor for the satisfactory performance of the Work under this Subcontract the sum of _____ Dollars (\$_____), (hereinafter called the "Contract Sum"), subject to the terms and conditions hereof. The Contract Sum includes all applicable taxes and may be changed only by a Change Order.

5. Changes in the Work. CCM may, from time to time, direct changes in the Work by issuing duly executed written Change Orders, the provisions and terms of which shall then become, by reference, a part of this Subcontract. The Contract Sum shall be adjusted in accordance therewith. Subcontractor shall adhere strictly to the Contract Documents unless a change therefrom is authorized in writing. Subcontractor shall not make any changes without the prior written notice of CCM, and CCM shall not pay any extra charges asserted by Subcontractor which have not been claimed in writing submitted to CCM by Subcontractor within fifteen (15) days after the work is performed and which have not been agreed upon in writing by CCM. In no event shall CCM be obligated to make payment for any such extra charges unless and until CCM receives payment for such work Owner.

6. Submittal Drawings. Subcontractor shall furnish Three (3), sets of submittals to CCM within Seven (7), days of the date of execution of this Subcontract. Submittals shall include such information as required by the Contract Documents or by CCM. Approval of such submittals by CCM or by Owner or Owner's representative shall not relieve Subcontractor of its obligation to perform the Work in strict accordance with this Subcontract. Any Work performed by Subcontractor prior to all necessary approvals will be at the risk of Subcontractor. Subcontractor will be solely responsible for making or verifying all field measurements necessary to performance of the Work, the structural soundness of the Work, and compatibility of the Work with the work of CCM and of other subcontractors.

7. Method of Payment of Contract Sum. Payments to Subcontractor shall be made in the following manner:

(a) Subcontractor shall, before its first application for payment, submit to CCM a schedule of the values of the various parts of the Work aggregating the total sum of this Subcontract, made out in such detail as Subcontractor and CCM may agree upon, or as required by Owner, and supported by such evidence as to its correctness as CCM may direct. This schedule, when approved by CCM, shall be used as a basis for applications or requests for payment, unless it is found to be in error.

(b) Subcontractor shall, on or before 25th, submit to CCM, in the form required by CCM, a written request for payment, in triplicate. Such request shall show the proportionate value of the Work performed to date and shall be subject to verification by CCM.

(c) CCM may deduct from the amount otherwise properly due Subcontractor pursuant to such written request a retainage of Ten percent (10%), of the amount requested. Such retainage may be withheld from any payment, and any failure to withhold will not constitute a waiver of CCM's right to withhold from subsequent payments on account of that or any prior payment. CCM may reduce the amount of any payment by an amount equal to charges for material, labor or services supplied to Subcontractor by CCM, and any other sums chargeable to Subcontractor under this Subcontract. The balance of the amount of said request for payment shall be due and payable to Subcontractor, subject to the terms and conditions hereof and subject to verifications and approval by CCM and any appropriate architect, engineer or construction manager, within Five (5), days after receipt by CCM from Owner of payments covering all work for which Subcontractor has requested payment.

(d) After CCM has made the first monthly payment, and at the time of the filing by Subcontractor or each successive request for payment, Subcontractor shall submit to CCM affidavits or other satisfactory evidence of payment from Subcontractor's principal suppliers of material, equipment and/or services covering such material, equipment and/or services for which CCM has previously been paid. In addition, Subcontractor shall execute and submit to CCM an affidavit that all suppliers of material, equipment and/or services have been paid by Subcontractor or specifically indicating each such supplier of material, equipment and/or services which has not been paid. CCM may, at its option, make any partial payments required hereunder jointly to Subcontractor and to any unpaid supplier of material, equipment and/or services.

(e) Prior to final payment, Subcontractor shall execute and/or secure and deliver to CCM good and sufficient releases and waivers of lien and rights of lien in connection with the Work, real estate or property involved in this Subcontract, and the final payment shall be due and payable upon the expiration of thirty (30) days following (i) the completion of the Work and the acceptance thereof by CCM and the Owner and any architect, engineer or construction manager authorized to certify completion or approve payment under the Contract Documents and (ii) the payment to CCM for the Work involved.

(f) All payments under this Subcontract are subject to approval of the Owner and any Project architects, engineers or construction managers authorized to approve payments under the Contract Documents; and payments will be made only after CCM has been paid for the work covered by each request. If Owner, for any reason, retains any portion of the general contract price, CCM shall have the right to withhold from Subcontractor an amount equal to that portion of the retention applicable to this Subcontract. Payment to CCM of the amount retained by Owner shall be a condition precedent to the right of Subcontractor to receive payment of that portion of such amount applicable to this Subcontract. If such amount is not paid by Owner, there will be no obligation by CCM to pay Subcontractor.

(g) No payment made under this Subcontract shall be evidence of the performance of this Subcontract, either wholly or in part, and no payment including final payment shall be construed as acceptance of defective or improper work or materials.

8. Liens. As one of the inducements for CCM making this Subcontract with Subcontractor, Subcontractor agrees that no mechanic's, materialman's or other liens or orders for the payment of money or other claims shall be filed or asserted by anyone furnishing labor or materials to or through Subcontractor against the land or improvements thereon or the Work, or any part thereof, or against the fee owner's interest therein or against CCM or Owner. If at any time any such lien or claim is filed or exists, Subcontractor agrees to cause the same to be released and cancelled of record by bond or otherwise as allowed by law, at Subcontractor's sole cost and expense, within three (3) days after the filing or assertion thereof. If at any time such claim is filed or exists for which CCM or Owner may become liable, and which has not been discharged as above provided, CCM shall have the right to retain out of any payment due or hereafter to become due an amount sufficient to indemnify CCM and Owner for any and all loss or damage which they may suffer as a result of such lien, including attorney's fees. In any event Subcontractor agrees, at its cost and expense, to defend any suit against CCM or Owner to enforce any lien or other claim and to further indemnify and save harmless CCM and Owner against any and all liability arising or expenses incurred, including without limitation attorney's fees, as a result of such claim or lien or the enforcement thereof.

9. Insurance. Subcontractor shall procure and maintain during the life of this Subcontract the Insurance specified below subject to the minimum limits shown below or the limits specified in the Contract Documents, whichever are greater:

(a) Statutory workman's compensation and occupational disease insurance including Employers' Liability \$1,000,000 limit.

(b) Contractors' liability insurance, including but not limited to premises-operations, independent contractors, products and completed operations, contractual liability including broad form property damage and xcu coverage, with a combined single limit of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate.

(c) Automobile liability on owned, non-owned and hired vehicles with combined bodily injury and property damage coverage of not less than \$1,000,000 each occurrence.

(d) Excess umbrella liability with combined bodily injury and property damage limits of not less than \$2,000,000 each occurrence.

Subcontractor shall deposit with CCM certificates of insurance evidencing the aforementioned coverages. These certificates shall contain an agreement by the applicable insurance company(ies) to provide CCM with thirty (30) days' prior written notice by certified mail before effecting any change in or cancellation of the policy or policies reflecting the above coverage. These certificates shall also name CCM as an additional insured and state specifically that this coverage is primary and non-contributory.

10. Indemnification. Subcontractor shall indemnify, defend and save harmless CCM from and against any and all claims, debts, demands, damages (including direct, liquidated, consequential, incidental or other damages), judgments, awards, losses, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature at any time arising out of any failure of Subcontractor to perform and of the terms and conditions of this Subcontract or which are in any manner directly or indirectly caused or occasioned by or contributed to, or claimed to be caused or occasioned by or contributed to, by any act, omission, fault or negligence, whether active or passive, of Subcontractor, or anyone acting under its direction or control or on its behalf in connection with or incident to the Work, even though the same may have resulted from the joint, concurring or contributory act, omission or negligence, whether active or passive, of CCM, Owner or any other person, unless the same be caused by the sole negligence or willful misconduct of CCM. Without limiting the generality of the foregoing, the same shall include injury or death to any person or persons, including agents and employees of Owner, CCM and Subcontractor, and damage to any property, regardless of location, including

property of Owner, CCM and Subcontractor, and shall extend to any similar obligations of CCM undertaken by it under the General Contract with respect to the Work hereunder. Subcontractor will, on request and at its expense, defend any action, suit or proceedings arising hereunder and shall reimburse and pay CCM for any loss, cost, damage or expense (including attorneys' fees) suffered by it hereunder.

11. Completion Schedule and Cooperation.

(a) Subcontractor shall complete the several portions and the whole of the Work included under this Subcontract in accordance with the duly prepared and approved construction schedule and shall order its materials, submit shop drawings and perform any other required acts in sufficient time to maintain said schedule and insure timely completion of its work.

(b) It is agreed that should Subcontractor fail or refuse to diligently pursue the Work or to provide sufficient skilled workmen and/or the proper quantity and quality or materials to maintain the schedule of the Work, Subcontractor shall pay all costs incurred by CCM or Owner by reason of such failure or refusal.

(c) If in the opinion of CCM from time to time Subcontractor is failing to comply with the construction schedule, Subcontractor shall, at its own expense upon notice by CCM, cause such overtime work to be performed as may be necessary to comply with the schedule. Subcontractor shall pay all extra costs resulting from its lack of diligence or failure to provide labor or materials required to meet the schedule. If Subcontractor is behind the schedule for completing the Work, CCM may, at its sole discretion, reserve payments otherwise due Subcontractor until the work is performed on schedule.

(d) Subcontractor shall cooperate with and coordinate its operations with CCM, Owner and all other trades having work in the same area of the Project. Before commencing work, Subcontractor shall immediately report to CCM in writing any defective work by others which would prevent proper completion of its own work.

12. Events of Default. The following are events of default under this Subcontract:

(a) A refusal or neglect of Subcontractors to supply sufficient amounts of labor, equipment or materials of proper quality and quantity, or the failure of Subcontractor to maintain the schedule of the performance of the Work, or the stoppage or delay of or the interference in the work of CCM or other subcontractors by reason of the performance of Subcontractor.

(b) The failure of Subcontractor to perform or comply with any clause or covenant contained in this Subcontract.

(c) The existence of evidence satisfactory to CCM that Subcontractor is financially incompetent or otherwise unable or unwilling to satisfactorily perform the Work under this Subcontract.

(d) The filing by or against Subcontractor of a petition in bankruptcy or a petition for an arrangement or reorganization under the Bankruptcy Act.

(e) The insolvency of Subcontractor, including inability to meet current obligations.

(f) Dissolution or termination of the existence of Subcontractor.

(g) The calling of a meeting of creditors by Subcontractor; the appointment of a committee of creditors or liquidating agents or the offering of a composition or extension to creditors by Subcontractor.

(h) The appointment of a receiver for Subcontractor.

(i) The inability of Subcontractor to perform the Work or maintain labor peace on the jobsite for any reason, including but not limited to any labor dispute or strike or other difficulty involving the employees of Subcontractor or any lower-tier subcontractor, materialmen or suppliers or any union.

13. CCM's Remedy on Default. Upon any default by Subcontractor, as described above, CCM may after three (3) days' written notice to Subcontractor, at any time and from time to time without liability therefore and without prejudice to any other right or remedy available to CCM:

(a) Provide itself or through others all or any portion of any labor, materials, equipment and other things, including any overtime work, and do any other thing which Subcontractor is failing to provide or do in accordance with its obligations hereunder, and all costs and expenses incurred by CCM in so doing shall be an indebtedness owing from Subcontractor to CCM and payable on demand;

(b) Terminate the services of Subcontractor hereunder and take possession of the premises or site of the Work and all materials, tools, appliances and other property (including such as may belong to Subcontractor) thereon and take over and finish the Work by whatever method CCM may deem expedient for the account and at the expense of Subcontractor, and Subcontractor agrees in such event to pay CCM on demand any and all costs and expenses, including compensation for additional managerial and administrative services incurred by CCM in so doing;

(c) Whether or not CCM exercises its rights under (a) or (b) above, withhold any further payments of any kind whatsoever becoming otherwise due Subcontractor under this Subcontract until any failure or performance or default under the provisions of the Contract Documents has been wholly remedied (or, if CCM shall exercise its rights of termination under (b) above, until the Work has been wholly completed), at which time there shall be due to Subcontractor only the balance of any sum withheld which remains after deducting all sums payable, and a reasonable reserve for any sums which may become payable to CCM by Subcontractor on account of such violation, failure of performance or default, or otherwise under any of the terms of this Subcontract. If such expenses of CCM shall exceed such unpaid balance due Subcontractor, Subcontractor shall pay the difference to CCM; if Subcontractor refuses to pay said difference, in case suit is instituted to collect this amount or any part thereof, Subcontractor shall pay all the reasonable costs and expenses to CCM of such suit, including but not limited to attorneys' fees. The taking over of the Work by CCM, as provided in this paragraph, shall not relieve Subcontractor or Subcontractor's sureties of liability for damages resulting from delay, whether such damages be liquidated or unliquidated.

14. Permit and Responsibility. Subcontractor shall, without expense to CCM, obtain all required licenses, permits and inspections. In the event of a jurisdictional dispute between unions growing out of the assignment of the Work

covered by this Subcontract, Subcontractor agrees to abide by the procedural rules and decisions of the National Joint Board for the Settlement of Jurisdictional Disputes.

15. Correction of Work Guarantee. If any part of the Work is determined by Owner or CCM to be improper or defective at any time prior to expiration of the guarantee period set forth in the Contract Documents between Owner and CCM, or within one (1) year after final acceptance by Owner, whichever is the later, Subcontractor shall immediately, upon written notification by CCM, remove, dispose of and replace or otherwise correct all defective materials and workmanship, at the expense of Subcontractor. If Subcontractor fails to correct defective material or workmanship promptly and completely, CCM, at its option and in addition to any other remedies it may have, may correct the same with its own forces or employing others, and Subcontractor shall pay CCM all costs, expenses and incidental and consequential damages connected therewith.

16. Cleanup. At the end of each working day, Subcontractor shall remove all waste and rubbish caused by its operations, and at the completion of the Work, shall also remove its tools and equipment and all leftover materials. If Subcontractor fails to fulfill these obligations, CCM may at its option dispose of such waste materials and debris and may deduct from amounts due Subcontractor or otherwise collect from Subcontractor all direct and overhead expenses incurred by CCM incidental thereto.

17. Compliance With Laws. Subcontractor agrees that it and its lower-tier subcontractors, supplies and materialmen will comply with all applicable federal, state and local laws, regulations, ordinances and rules, including without limitation those relating to federal, state and local safety laws and building codes, and to wages, hours and other working conditions, in any way relating to the Work and to Subcontractor or its lower-tier subcontractors, suppliers and materialmen. In particular, Subcontractor will comply with the Federal Occupational Safety and Health Act (and any similar state or local law which may be applicable) and the standards and regulations issued thereunder, shall keep all records required thereby and shall post and retain all information in accordance therewith. Subcontractor shall indemnify and save harmless CCM from any claim or damage resulting to CCM from Subcontractor's failure to comply with said Act or any other law, rule, regulation or ordinance, including but not limited to the reasonable attorneys' fees of CCM incurred in connection with such claim or damage.

18. Utilities. Subcontractor shall consult with all utilities to determine and locate underground facilities at the Project, and shall take all appropriate steps to prevent damage to such facilities. If Subcontractor causes damage to any such facilities Subcontractor shall promptly repair the damage at its sole costs and expense.

19. Relationship of Parties. It is expressly understood and agreed that an independent contractor relationship is hereby established between CCM and Subcontractor. Subcontractor shall be responsible for supervising, superintending and directing the performance of the Work under this Subcontract. Subcontractor has no authority to act as an agent for CCM, and will not hold itself out as Subcontractor's agent for any purpose. Subcontractor shall not incur any obligation to third parties respecting the Work except in its own name and for its own account.

20. Safety.
(a) The Subcontractor agrees to pursue its work in a safe manner at all time, taking all necessary precautions to avoid injury and damage to all employees at the project site, the public and the project site. The Subcontractor shall comply with all laws, ordinances, codes, rules, regulations and standards relative to safety and the prevention of accidents. The Subcontractor shall designate a responsible and competent representative on the jobsite to be its safety supervisor, and that person shall be responsible for promoting safety and accident prevention, interest and compliance among its employees and coordinating such activities with the Owner, the Contractor and subcontractors of any tier, if any.

(b) Particular attention is called to the requirements concerning the wearing of hardhats by all personnel when on the jobsite; maintaining good housekeeping conditions in all of its work areas, including the providing of suitable metal containers for trash and debris when required by the Subcontractor's Work, and arranging for the emptying of such containers; hazardous communication requirements; fall protection/prevention; substance abuse control program; the proper construction of all scaffolds; scaffold working platforms and job built ladders; barricading of all excavations and/or floor openings resulting from Subcontractor's Work; and taking due care to prevent fires from burning, welding or any other of its

operations, including the providing of adequate fire fighting equipment in its work area.

(c) The Subcontractor shall be responsible for its subcontractors of any tier and material suppliers accepting and complying with the provisions of Section 17. Subcontractor shall remove or cause to be removed from the Project any employee whom CCM considers unsatisfactory.

21. Delays. Subcontractor shall indemnify and hold CCM harmless from and against any expenses, claims, suits, judgments and other damages, including but not limited to attorneys' fees, incurred by CCM in whole or in part as a result of delays or failures by Subcontractor to perform the Work hereunder within the time or times required. Such damages shall include but not be limited to all additional direct and indirect expenses incurred by CCM and any liquidated damages assessed against CCM by Owner.

In no event shall Subcontractor be entitled to an increase in the Contract Sum for the Work, the damages or for any other amounts by reason of delays in prosecution or completion of the Work, whether caused by CCM, Owner or its representative or otherwise, and Subcontractor hereby expressly waives all claims for any such delays. Subcontractor shall be entitled only to an extension of time to complete the Work on the same terms and conditions allowable to and only to the extent actually allowed to CCM by Owner or its representative under the terms of the General Contract.

22. Attorneys' Fees. In the event of litigation or the assertion of any claim against or by Subcontractor in connection with this Subcontract or in any way related to the Work hereunder, or in the event of a dispute under this Subcontract, Subcontractor agrees to reimburse CCM for all reasonable attorneys' fees and all costs which it incurs in connection therewith.

23. Patent Infringements. Subcontractor shall indemnify and hold CCM harmless against any losses or expenses incident to any claim, suit or action, or any alleged violation or infringement of patent rights which may be made against CCM by reason of the use in performing the Work or furnishing the materials hereunder, of anything which is now or may hereafter be covered by patent, copyright or trademark.

24. Termination of Contract. In the event the General Contract is terminated prior to its completion, Subcontractor shall be entitled only to payment for the Work actually completed by it unless CCM itself receives additional compensation or damages on account of such termination; in the event, Subcontractor shall be entitled to such proportion of the additional compensation or damages actually received as is equitable under all the circumstances. CCM in any event shall not be required to make any claim against Owner for such additional compensation or damages in the event of termination before completion, and failure of CCM to prosecute any such claim against Owner shall not entitle Subcontractor to any claim for additional compensation or damages against CCM.

25. Anti-Discrimination. Subcontractor agrees that it and its lower-tier subcontractors, materialmen and suppliers shall not discriminate against employees or applicants because of race, color, religion, sex or national origin and that they will comply with all applicable federal, state and local laws and regulations relating to discrimination.

26. Assignment. Subcontractor agrees not to assign or sublet any portion of the Work under this Subcontract or to hypothecate, pledge or assign any payments thereunder without the written consent of CCM.

27. Set Off. CCM may set off against any payment due under this Subcontract any debt or liability of Subcontractor to CCM.

28. Non-Waiver. Waiver by CCM of any breach of any provision of this Subcontract or Subcontractor, or of any requirement imposed hereunder on Subcontractor, shall not constitute a waiver or estoppel by CCM of any other or future breach by or requirements of Subcontractor hereunder.

29. Bonds. CCM or the owner may require that Subcontractor provide payment and performance bonds prior to commencement of Work by Subcontractor. Unless otherwise agreed in writing, the expense of premiums for such bonds shall be borne by the requesting party.

30. Modification of Agreement. This Subcontract contains the entire agreement between the parties, and it may not be amended or modified except in writing signed by the parties or except as otherwise specifically provided herein.

31. Severability. If any provision of this Subcontract is invalid or unenforceable, the remainder of this Subcontract will not be affected and may be enforced.

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

By _____

Title _____

CINCINNATI CONSTRUCTION MANAGEMENT, INC.

By _____

Title _____