

CONTRACT NO.:

**SHAWMUT DESIGN AND CONSTRUCTION
UNIVERSAL SUBCONTRACT**

This UNIVERSAL SUBCONTRACT, entered into as of _____, is by and between Shawmut Woodworking & Supply, Inc. d/b/a Shawmut Design and Construction (Contractor) and

(Subcontractor)

and represents the entire and integrated agreement between the parties and supersedes all prior representations, negotiations, and Universal Subcontract agreements.

Contractor and Subcontractor agree as follows:

Contractor requires Subcontractor and Subcontractor desires, to furnish labor, materials, equipment and/or services (Subcontract Work) for one or more of Contractor’s construction projects. The Universal Subcontract provides the general terms and conditions which shall govern all Subcontract Work furnished by Subcontractor to Contractor pursuant to written agreements (Job Orders) for each specific project (Project). The terms and conditions of this Universal Subcontract shall also apply to any Subcontract Work furnished by subcontractor before execution of this Universal Subcontract or the Job Order.

Each Job Order shall be signed and dated by authorized representatives of Contractor and Subcontractor and shall contain the following particular information, terms and conditions: (1) Project name; (2) Owner; (3) Architect; (4) applicable Contract Documents; (5) Description of the Subcontract Work; (6) Subcontract Sum; (7) Commencement Date; (8) Completion Date; and (9) any other necessary provisions. Each properly executed Job Order, this Universal Subcontract and all documents incorporated by reference shall constitute a subcontract for the Subcontract Work on the Project.

The general **TERMS AND CONDITIONS** (Universal Subcontract 11/09) are attached as pages 2 through 8.

CONTRACTOR:

SUBCONTRACTOR:

SHAWMUT WOODWORKING & SUPPLY, INC.
d/b/a SHAWMUT DESIGN AND CONSTRUCTION

BY: _____

BY: _____

PRINT NAME: _____

PRINT NAME: _____

TITLE: _____

Officer of the Company

TITLE: _____

Officer of the Company

DATE: _____

DATE: _____

TERMS AND CONDITIONS

1. GENERAL CONTRACT

Contractor has entered, or contemplates entering, into a General Contract with Owner for construction of the Project in accordance with the Contract Documents. The Contract Documents are available at Contractor's offices and the Project site. 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 Subcontract Work and the conditions and difficulties under which it is to be performed. Subcontractor acknowledges that it enters into this Subcontract on the basis of its own examination, investigation and evaluation and not in reliance upon any opinions or representations of Contractor.

Subcontractor agrees to be bound to Contractor by the provisions of the Contract Documents and to assume to Contractor all the obligations and responsibilities that Contractor assumes to Owner. Contractor agrees to be bound to Subcontractor by the provisions of the Contract Documents and to assume to Subcontractor all the obligations and responsibilities that Owner assumes to Contractor, except to the extent that such provisions are, by their own terms or by law, not applicable to the Subcontract Work. Where a provision of the Contract Documents is inconsistent with this Subcontract, the provision imposing the greater duty or obligation on Subcontractor shall prevail.

2. SUBCONTRACT WORK

Subcontractor agrees to furnish and pay for all labor, materials, equipment, services and everything necessary for completion of the Subcontract Work in accordance with the Contract Documents and the best standards of the construction industry in the city where the Project is located. The Subcontract Work includes items omitted from the Contract Documents if they are required by applicable laws, ordinances, codes, rules and regulations, if they are inferable from the intent of the Contract Documents or if they are necessary to produce the intended results.

The Subcontract Work also includes any engineering, design services, or professional certifications specifically required by the Contract Documents or otherwise required for Subcontractor's proper performance of the Subcontract Work. Subcontractor shall furnish all engineering, design services or professional certifications by qualified persons properly licensed where required by applicable law or the Contract Documents. Contractor shall be entitled to rely on the adequacy, accuracy and completeness of any designs, calculations and certifications furnished by or through Subcontractor. Contractor, or its designees, shall be the owner of all property rights relating to such engineering, design services and professional certifications.

Subcontractor represents that the Contract Documents are sufficient to enable Subcontractor to complete the Subcontract Work for the Subcontract Sum on or before the Completion Date. Subcontractor shall not deviate from the Contract Documents or make substitutions without specific written approval by Contractor.

3. SUBCONTRACT SUM

Contractor shall pay Subcontractor the Subcontract Sum in current funds for the full and satisfactory performance of the Subcontract Work, subject to additions and deductions as provided in this Agreement. The Subcontract Sum includes full compensation for all costs and expenses Subcontractor incurs in connection with the Subcontract Work. The Subcontract Sum will not be increased for any reason except as expressly permitted by this Subcontract.

4. SCHEDULE

Time is of the essence of this Subcontract. Subcontractor shall commence the Subcontract Work on the Commencement Date and shall diligently and continuously prosecute and complete the Subcontract Work on or before the Completion Date. Subcontractor shall coordinate the Subcontract Work with the other work being performed on the Project, and perform in accordance with the Project schedule as it may be amended, and any other scheduling requirements listed in this Agreement or reasonably required by Project conditions or by Contractor in its sole discretion. Subcontractor shall not delay the commencement, progress or completion of the whole or any part of the Subcontract Work or other work on the Project.

Subcontractor shall furnish to Contractor a schedule showing the time periods within which Subcontractor proposes to furnish items, areas or other appropriate portions of the Subcontract Work and shall adjust the schedule to meet Contractor's requirements.

Subcontractor shall give Contractor written notice promptly after the occurrence of any cause, event or condition which could delay or hinder performance of the Subcontract Work in accordance with the schedule. If Subcontractor is delayed or hindered, unavoidably and through no fault of its own, in its performance of items on the critical path of the Subcontract Work because of a breach by Contractor, or for any reason that entitles Contractor to an extension of the Contract Time, the Completion Date may be extended. No extension of the Completion Date shall exceed the delay actually caused by Contractor's breach, or the extension to the Contract Time actually received by Contractor. An extension of the Completion Date shall be Subcontractor's sole remedy, and in no event shall Subcontractor be entitled to any damages or additional compensation for any delays or hindrances in its

performance of the Subcontract Work.

Contractor may require Subcontractor to accelerate its performance to overcome delays for which Subcontractor is not responsible or to complete the whole or any part of the Subcontract Work earlier than scheduled. Subcontractor shall provide additional or overtime labor as requested by Contractor, and Contractor shall reimburse Subcontractor the additional direct costs Subcontractor actually incurs as a result of such acceleration.

5. PERFORMANCE

A) Subcontractor shall carefully study and compare all drawings, specifications and other instructions and promptly report in writing to Contractor any error or omission (including variance from any legal requirements); and shall proceed with the Subcontract Work in accordance with instructions from Contractor concerning such error, omission, or variance.

B) Prior to commencement of the Subcontract Work, Subcontractor shall submit to Contractor a sworn statement on Contractor's designated form identifying the name of each sub-subcontractor or supplier, the labor and/or material each is to furnish, and the amount each is to be paid. Subcontractor shall require each sub-subcontractor and supplier to be bound by all Contract Documents to the same extent and with the same effect as if the subcontractor or supplier were the Subcontractor. Subcontractor shall be responsible for all acts, omissions, work, material and equipment of its sub-subcontractors and suppliers and anyone directly or indirectly employed by any of them.

C) Subcontractor shall provide on the site a competent and fully authorized full time superintendent or foreman and sufficient properly skilled workmen to complete the Subcontract Work in accordance with this Subcontract.

D) If Subcontractor fails or neglects to maintain adequate progress, Subcontractor shall reschedule other work and, at no cost to Contractor, provide additional or overtime labor reasonably required in the opinion of Contractor to meet Contractor's schedule requirements. Subcontractor shall be responsible for all liabilities, damages, losses and costs Contractor incurs as a result of delays caused by Subcontractor.

E) Subcontractor shall submit all shop drawings and samples promptly after Contractor's request, so as not to delay the commencement, progress, or completion of the whole or any part of the Subcontract Work or other work on the Project. Subcontractor shall maintain current as-built drawings during the course of the Subcontract Work and shall submit a final set of as-built drawings and any manuals and warranties promptly following Substantial Completion of the Subcontract Work. Subcontractor shall not communicate directly with Owner or

the Architect/Engineer. All such communications shall be through Contractor.

By submitting shop drawings and samples, Subcontractor represents it has determined and coordinated all available field and shop measurements, field construction criteria, catalog numbers and similar data, and that it checked and coordinated each shop drawing and sample with the requirements of the Subcontract Work and the Contract Documents.

Approval of shop drawings shall not relieve Subcontractor of its obligation to perform the Subcontract Work in strict accordance with the drawings, specifications, and other Contract Documents, nor of its responsibility for the proper matching and fitting of the Subcontract Work with contiguous work.

F) Subcontractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Subcontract Work. Subcontractor shall pay all sales, use, consumer, gross receipts or other similar taxes applicable to the Subcontract Work. Subcontractor shall furnish Contractor promptly upon request a certificate from the appropriate state and local taxing authorities evidencing payment of all applicable taxes.

G) Subcontractor shall comply with all federal, state, municipal and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements applicable to the Subcontract Work and Subcontractor's performance. Subcontractor shall defend, indemnify and hold harmless Contractor and Owner from any and all claims, damages, losses or fines resulting directly or indirectly from any violation.

H) Subcontractor shall, at Contractor's request, furnish 100% performance, payment and lien bonds from a surety registered to do business where the Project is located and satisfactory to Contractor. Subcontractor's bonds shall be written on forms designated by Contractor. Contractor shall reimburse Subcontractor the reasonable premium for such bonds if requested after execution of this Subcontract.

I) Subcontractor is responsible for its own tools, materials and equipment, shall confine these items to its own areas of work, and shall return all items to a designated storage area at the end of each day. Subcontractor shall dispose of all debris that results from its Subcontract Work during and at the end of each day. In the event Subcontractor fails to properly store its tools and equipment or remove all debris, Contractor may do so upon notice and charge the cost to Subcontractor.

Subcontractor shall bear the risk of loss or damage from any cause whatsoever to machinery, tools, equipment, building supplies or materials, temporary structures and any equipment of like nature used or to be used by Subcontractor, its agents,

suppliers and/or Sub-subcontractors, or its or their employees in the performance of the Subcontract.

J) Subcontractor warrants to Owner and Contractor that all materials and equipment furnished shall be new unless otherwise specified, and that all work shall be of best quality, free from faults and defects and in strict conformance with the Contract Documents. Subcontractor warrants the Subcontract Work to Contractor and Owner on the same terms and for the same period as Contractor warrants the Subcontract Work to Owner under the Contract Documents, and shall perform all warranty obligations required of Contractor under the Contract Documents with respect to the Subcontract Work. Subcontractor shall correct any Subcontract Work found to be defective or non-conforming within one year after Substantial completion of the Project or any longer period required by the Contract Documents. Subcontractor shall commence and diligently continue to correct such Subcontract Work within 48 hours after receipt of notice. Subcontractor's specific obligation to correct the Subcontract Work shall not relieve Subcontractor of its obligations to comply with this Subcontract nor diminish the time within which Contractor may commence proceedings to establish Subcontractor's liability for any failure or defect.

K) Subcontractor shall keep the project free of liens and claims and shall defend, indemnify and hold Contractor harmless from all expenses incurred as a result of liens or claims filed by Subcontractor or those contracting with or under Subcontractor. If a lien or claim is filed or threatened by Subcontractor or those contracting with or under Subcontractor, except a lien or claim filed to recover amounts Contractor wrongfully failed to pay Subcontractor, Subcontractor shall cause it to be released or discharged by payment or bond within 24 hours after notice of the lien or claim. If Subcontractor fails to do so, in addition to any other available remedies, Contractor may pay all sums necessary to obtain release or discharge. Subcontractor shall be responsible for any liabilities, claims, damages, losses and costs, including attorney's fees, Contractor incurs as a result of any such failure.

L) Contractor shall furnish Subcontractor with sanitary facilities, temporary lighting and power, except as otherwise provided in this Subcontract, Subcontractor shall furnish all hoisting, scaffolding, bracing, shoring, and any other temporary facilities or equipment required for performance of the Subcontract Work. Subcontractor shall furnish and maintain temporary protection sufficient to fully protect the Subcontract Work from weather and damage by others until final acceptance of the Subcontract Work.

M) Subcontractor shall inspect all surfaces or work to receive its Subcontract Work and shall promptly give Contractor written notice of any defects. Subcontractor shall be

responsible for all costs to repair, replace or correct any work resulting from a defect which it observed or should have observed but for which it failed to give such notice. Notwithstanding the dimensions on the Plans, Specifications and other Contract Documents, Subcontractor shall take such measures as will ensure the proper matching and fitting of the Subcontract Work covered by this Subcontract with contiguous work.

N) Subcontractor shall not employ any labor which will interfere with labor harmony at the job site or with the introduction of materials or the work of other Subcontractors. Any work stoppage caused by a strike, picketing, inability to obtain supplies, materials or equipment, boycott or any voluntary or involuntary cessation of work, by or caused by the presence of employees of Subcontractor, its agents, suppliers and/or sub-subcontractors, which in the sole judgment of Contractor will cause or is likely to cause delay in the progress of the work shall constitute a default by Subcontractor. Subcontractor shall be responsible for any liabilities, claims, damages, losses and costs Contractor incurs as a result of any such default.

O) If Subcontractor neglects to carry out the Subcontract Work in accordance with this Subcontract; causes interference or delay to other subcontractors, Contractor or the Project; fails to make payments when due to sub-subcontractors or suppliers; becomes insolvent; fails to correct defective or non-conforming Subcontract Work; or breaches any other term or condition of this Subcontract, Subcontractor shall be in default. If Subcontractor fails, within 48 hours after receipt of written notice from Contractor to commence and continue correction of such default, Contractor may, without additional notice and without prejudice to any other remedy it may have, make good such deficiencies and deduct the costs from amounts due or that may become due to Subcontractor. Subcontractor shall pay to Contractor promptly any costs that exceed amounts due or that became due to Subcontractor, as well as any other liabilities, claims, damages, losses and costs Contractor incurs as a result of any such default.

P) To the full extent permitted by applicable law, Subcontractor agrees to defend, indemnify and hold harmless Owner, the Architect/Engineer, Contractor and anyone else required by the Contract Documents, from and against any and all claims, damages or loss (including attorney's fees) arising out of or resulting from any work of and caused in whole or in part by any act or omission of Subcontractor or those employed by it, or working under those employed by it at any level, regardless of whether or not caused in part by a party indemnified hereunder.

6. SAFETY

Subcontractor shall take all reasonable safety precautions with respect to performance of this Subcontract. Subcontractor shall comply with safety measures required by the Contract Documents, or initiated by Contractor including but not limited to Contractor's Safety Plan (which is available at Contractor's office, the Project site, or Contractor's Website), and with applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons or property.

Subcontractor's employees and agents shall wear hard hats and safety glasses at all times while on the site, and safety vests, gloves and noise protection when appropriate.

Subcontractor shall also implement and enforce its own safety program, which shall include proper training for the safe performance of all aspects of the Subcontract Work, issuance of all applicable safety equipment, and written instructions and guidelines documenting the program. Subcontractor shall designate a qualified person in its employ, stationed full time at the site during the progress of the Subcontract Work, who shall be authorized to take prompt action in matters relating to safety on behalf of the Subcontractor. Such person shall be knowledgeable in matters relating to safety through training and experience, shall attend all safety meetings or safety inspections held at the Project site, and take appropriate action to correct unsafe work practices which come to his attention.

Subcontractor shall ensure that all construction tools, equipment, temporary facilities and other items used in accomplishing the Subcontract Work, whether purchased, rented or otherwise provided by Subcontractor or provided by others, are in a safe, sound and good condition. They must be capable of performing the functions for which they are intended and maintained in conformance with applicable laws and regulations.

Subcontractor acknowledges and understands it is Contractor's policy to maintain a drug and alcohol free workplace. Subcontractor shall ensure that no employees working for or under it are in possession of or under the influence of any unauthorized drugs, alcohol or any other intoxicant while present at or near the Project site. Subcontractor shall comply with any required testing.

Notwithstanding any other provision to the contrary, if Subcontractor fails to comply with the provisions of this or any other article affecting the safety of persons or property, Contractor may immediately and without notice to Subcontractor, remedy Subcontractor's failure. Subcontractor shall be responsible for any liabilities, damages, losses and costs contractor incurs as a result of any such failure. Contractor may also fine Subcontractor amounts reasonably necessary to assure Subcontractor's compliance.

7. PAYMENT

Contractor shall pay Subcontractor the Subcontract Sum in monthly progress payments based on the percentage of completion of the Subcontract Work less 10% retainage or such lesser percentage specified by law or the Contract Documents provided Subcontractor is in complete compliance with all provisions of this Subcontract. Subcontractor shall hold all payments received as trust funds for the benefit of anyone furnishing labor, material, services, tools and equipment to Subcontractor for the Project. Subcontractor shall make all payments for any labor, material, services, tools and equipment promptly when due. Contractor may make any payments due Subcontractor payable jointly or directly to anyone to whom payment is due from Subcontractor.

Applications for payment shall be on a form acceptable to Contractor, based on a schedule of values for the various portions of the Subcontract Work approved by Contractor prior to submission of the first application, and accompanied by such documentation, affidavits, waivers of liens and releases as Contractor may require. Subcontractor shall submit each application for payment no later than the 20th day of the month unless Contractor or the Contract Documents specify otherwise. Late or incomplete applications will not be processed until the following month.

Contractor shall make progress, and final, payment within 15 days after receipt of payment for Subcontractor's Subcontract Work from Owner, or such shorter time as required by applicable law. To the full extent permitted by applicable law, Contractor's receipt of payment from Owner shall be, in each instance, a condition precedent to Subcontractor's right to receive payment from Contractor.

Contractor may decline to make a payment because of evidence of:

- a) defective Subcontract Work or material;
- b) claims filed or evidence indicating probability of filing or making of claims;
- c) failure of Subcontractor to make payments to sub-subcontractors or suppliers;
- d) reasonable doubt that the Subcontract Work can be completed for the unpaid balance of the Subcontract Sum;
- e) damage to other subcontractors or the Project;
- f) unsatisfactory prosecution of the Subcontract Work;
- g) erroneous estimates by Subcontractor of the value of the Subcontract Work performed;
- h) unauthorized deviations from the Contract Documents;
- i) any other failure of Subcontractor to perform pursuant to this Subcontract;
- j) any breach or default by Subcontractor or its affiliates, parent company and/or subsidiaries under any other agreement.

Contractor shall make payment of amounts withheld only after Subcontractor remedies the grounds for declining approval.

In addition to the requirements of any other provisions of this Subcontract, final payment shall not become due until the Subcontract Work is fully completed and accepted by Contractor, Owner and the Architect/Engineer, and Subcontractor has provided all project documentation including as-built drawings, manuals, warranties, waivers of liens, releases and evidence satisfactory to Contractor that all Subcontractor's bills and indebtedness for the Project have been fully satisfied.

No payment, including final, made under or in connection with this Subcontract shall be evidence of the performance of such Subcontract Work or of this Subcontract, in whole or in part, and no such payment shall be construed to be an acceptance of defective, faulty or improper work or materials nor shall it release Subcontractor from any of its obligations.

8. CHANGES

Subcontractor may be required by Contractor, without invalidating this Subcontract, to make changes in the Subcontract Work within the general scope of the Subcontract. The Subcontract Sum and schedule shall be adjusted accordingly by written change order. Subcontractor shall give Contractor written notice of any claim for adjustment, including a complete detailed breakdown of the amount prior to performing the Subcontract Work as changed or the claim shall be deemed waived. Upon Contractor's issuance of written direction to proceed, Subcontractor shall promptly perform the Subcontract Work as changed.

If Contractor and Subcontractor do not agree on the amount of the adjustment, if any, Subcontractor shall have labor and material slips signed daily by Contractor's authorized site representative, and the adjustment shall be determined on the basis of Subcontractor's reasonable costs directly incurred or saved as follows:

- a) actual costs of labor in accordance with prevailing rates, including all applicable fringe benefits;
- b) actual costs of materials, equipment rentals and transportation;
- c) reasonable premiums for insurance;
- d) state and federal insurance and taxes;
- e) actual cost of Sub-subcontracts; and
- f) in the case of an increase in the Subcontract Sum, the agreed allowance for overhead and profit, which shall in no event exceed 15%.

Subcontractor acknowledges that Contractor's signing of labor and material slips shall be for verification of quantities only and shall not be construed as approval of Subcontractor's claim.

9. INSURANCE

Subcontractor shall obtain and maintain insurance from a responsible insurer with an A.M. Best rating of "A" or better and satisfactory to Contractor. Subcontractor's insurance shall apply to any Subcontract Work furnished by or through Subcontractor for Contractor at any Project. All insurance carried by Subcontractor must provide at least the coverages and minimum limits required by the Contract Documents, but no less than the following:

A) Statutory Worker's Compensation coverage in the state where the Project is located plus Employer's Liability coverage subject to the following minimum limits:

- (i) Bodily Injury by Accident - \$500,000 each accident
- (ii) Bodily Injury by Disease - \$500,000 Policy Limit
- (iii) Bodily Injury by Disease - \$500,000 each Employee

B) Commercial General Liability Occurrence Coverage (ISO Form CG 00 01 10 01 or equivalent) Broad Form Property Damage; Explosion, Collapse and Undermining and Damage to Underground Property (X.C.U.); Premises-Operations, Independent Contractors (Sub-Let Work); contractual liability applicable to Subcontractor's indemnity obligations; and Completed Operations for a period of not less than one year following completion of Contractor's operations, subject to the following minimum limits:

- (i) \$1,000,000 each occurrence
- (ii) \$2,000,000 products and completed operations aggregate
- (iii) \$2,000,000 general aggregate per project

C) Commercial Automobile Liability (ISO Form CA 0001 or equivalent) covering all vehicles used in the course of the Subcontract Work, including owned, non-owned and hired vehicles, subject to the following minimum limits:

- (i) Bodily Injury including accidental death - \$1,000,000 each person
- (ii) Bodily injury including accidental death - \$1,000,000 each occurrence
- (iv) Property Damage - \$1,000,000 each occurrence; or
- (iv) Subject to the following combined single limit: \$1,000,000 per occurrence for bodily injury and/or property damage combined.

D) Excess/Umbrella Liability Coverage, in excess of the Employer's Liability, General Liability and Auto Liability coverages shown above and subject to the following minimum limits:

- (i) \$5,000,000 per occurrence and
- (ii) \$5,000,000 in the aggregate.

E) Additional Insured Coverage (ISO form CG 20 10 (11/85 edition) or an endorsement providing equivalent coverage) naming Contractor, Owner, and any other parties required by the Contract Documents as additional insureds on a primary and non-contributory basis to any other insurance carried by the additional insureds, under Subcontractor's General Liability (including completed operations), Auto Liability and Excess/Umbrella Liability coverages.

F) All Risk Insurance covering all tools and equipment, whether owned or rented; and all materials, whether stored or in transit, until incorporated into the Project.

Prior to starting Subcontract Work, Subcontractor shall furnish to Contractor a current Certificate of Insurance, showing coverage and limits meeting or exceeding the minimum requirements, and all required additional insureds. The Certificate of Insurance shall specify that no part of such insurance shall be modified, canceled or allowed to expire until at least 30 days after written notice is given to Contractor. Subcontractor shall provide copies of actual policies if requested by Contractor.

All policies shall provide a waiver of subrogation in favor of Contractor and Owner. Contractor and Subcontractor also waive and release all rights against each other for damages caused by fire or other perils to the extent covered by property insurance upon the Project or any materials, tools or equipment, except such rights as each may have to the proceeds of such insurance. Subcontractor shall be responsible for payment of any deductible arising out of the Subcontract Work and not paid by Owner. In the event of a loss Subcontractor shall be bound by any adjustment which shall be made between Contractor, Owner, and the insurance company or companies. Loss, if any, shall be made payable to Contractor and/or Owner, as their interests may appear, for the account of whom it may concern.

If Subcontractor fails to obtain, maintain or provide evidence of the required insurance, Contractor may, but shall not be obligated to, obtain such coverage on Subcontractor's behalf. Subcontractor shall be responsible for any liabilities, claims, damages, losses and costs Contractor incurs as a result of any such failure.

10. EQUAL EMPLOYMENT OPPORTUNITY

Subcontractor understands and acknowledges that Contractor is an equal employment opportunity employer and, in furtherance of Contractor's policy, Subcontractor agrees that with respect to the Subcontract Work:

A) Subcontractor shall comply, at its own expense, with all applicable laws, ordinances, rules, regulations and orders of any public authority relating to the terms and conditions of employment of any employee who is employed in connection

with the Subcontract Work, including without limitation the applicable provisions of the Fair Labor Standards Act, the Fair Employment Practices Law and the Equal Pay Act.

B) Subcontractor shall not discriminate against any employee or applicant for employment because of race, creed, color, age, sex, national origin, or any other reason declared unlawful, and Subcontractor shall take affirmative action and cause all of its respective sub-subcontractors to take affirmative action to afford equal employment opportunities without such discrimination. Such action shall be taken with reference, but not limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation and selection for training including apprenticeship or on-the-job training.

C) Subcontractor shall comply, at its own expense, with all plans, guidelines, and policy determinations relating to the employment of minority groups, established by Contractor, any public authority, or any other appropriate organization jointly designated by Owner and Contractor.

11. CLAIMS AND DISPUTES

A) Unless provided otherwise in this Agreement, Subcontractor shall give Contractor written notice of any claim within 3 days of the beginning of the event giving rise to the claim or the claim shall be deemed waived.

B) Subcontractor shall submit any claim for adjustments in the Subcontract Sum or schedule for changes directed or required by Owner or additional costs that result from deficiencies or discrepancies in the Contract Documents or acts or omissions of Owner or the Architect/Engineer in writing in such shorter time as the Contract Documents may require to permit Contractor to comply with the applicable provisions of the Contract Documents with respect to submission of claims by Contractor to Owner. Contractor shall process such claims as provided in the Contract Documents. Subcontract adjustments shall be made if, and only to the extent that Contractor obtains adjustments from, or grants adjustments to, Owner.

C) Subcontractor shall commence and continue performance of the Subcontract Work, and Contractor shall continue to make undisputed payments in accordance with the Subcontract, pending resolution of any claim or dispute which may arise between Contractor and Subcontractor.

D) Contractor, may, in its sole discretion, join or consolidate the resolution of any claims or disputes between Contractor and Subcontractor with the resolution of any claims or disputes between Contractor and the Owner or other Subcontractors. Subcontractor agrees to be bound to Contractor by the results of any proceedings in the same manner that Contractor is bound to Owner by such results.

E) Any disputes not resolved by negotiation, shall be subject to mediation pursuant to the American Arbitration Association's Construction Industry Mediation Rules as a condition precedent to the filing of any litigation. Mediation shall be held in the Commonwealth of Massachusetts, City of Boston. Any disputes not resolved by mediation shall be resolved by litigation in a court of competent jurisdiction where the Project is located unless Contractor elects, in its sole discretion that the dispute be resolved by arbitration pursuant to the American Arbitration Association's Construction Industry Arbitration Rules. The prevailing party in any litigation or arbitration shall be entitled to an award of reasonable attorney's and costs. In no event shall Contractor ever be liable to Subcontractor for consequential damages, however caused.

12. TERMINATION

A) If Subcontractor is in default, and fails within 48 hours after receipt of written notice to commence and diligently continue to correct its default, Contractor may, without prejudice to any other remedy, terminate Subcontractor's performance or this Subcontract upon notice to Subcontractor. Upon termination, Contractor may take possession of Subcontractor's materials, tools and equipment used or to be used in performance of the Subcontract Work, and complete the Subcontract Work in whatever manner Contractor deems appropriate. Subcontractor shall not be entitled to any further payment, and shall be liable to Contractor for the cost of completing the Subcontract Work and for all liabilities, claims, damages, losses, and costs Contractor incurs as a result of such termination.

B) Contractor shall have the right to terminate this Subcontract for convenience by giving Subcontractor written notice of termination, which shall be effective upon receipt by Subcontractor. Subcontractor shall be entitled to recover a portion of the Subcontract Sum based on the reasonable value of the Subcontract Work properly performed prior to termination plus reasonable direct close-out costs, but only to the extent of Contractor's recovery for such Subcontract Work and costs from Owner. Subcontractor shall not be entitled to payment for any Subcontract Work not completed, including lost profit or unabsorbed overhead. If Contractor is determined to have terminated Subcontractor's performance or this Subcontract for default wrongfully, it shall be deemed a termination for convenience.

C) If Contractor fails to pay Subcontractor for more than 30 days after the date payment should be made, and fails within 7 days after receipt of written notice to cure, Subcontractor may, 48 hours after Contractor's receipt of written notice that the Subcontract will be terminated, without prejudice to any other remedy it may have, terminate the Subcontract and recover from Contractor payment for all Subcontract Work properly performed prior to termination and for any proven loss

including reasonable overhead and profit.

D) Except as otherwise expressly provided, all rights obligations, representations and warranties shall survive termination of the Subcontract.

13. ASSIGNMENT

Subcontractor may not assign this Subcontract in whole or in part, or sublet any of the Subcontract Work without Contractor's prior written consent. Contractor may assign this Subcontract to Owner or another contractor at any time, provided, any assignment of this Subcontract by Contractor shall be with regard to the specified Project only and shall not be construed as an assignment of any other Subcontract or the Universal Subcontract. Subcontractor may not assign any payments due or to become due under this Subcontract without Contractor's prior written consent. If Subcontractor defaults and Contractor's damages exceed the balance of the Subcontract Sum, Subcontractor hereby assigns to Contractor any amounts due or to become due Subcontractor from Contractor under any other Subcontract to the extent of such excess damages.

14. CONFIDENTIALITY

Subcontractor shall keep all information relating to the Project and the Subcontract Work, and all information furnished by Owner, Architect or Contractor, as confidential and proprietary. Subcontractor shall take all reasonable measures, including any required by the Contract Documents, to protect such information, and shall not permit its release to anyone except as necessary for performance of the Subcontract Work. Subcontractor shall require any recipient of such information to protect it in the same manner.

15. APPLICABLE LAW AND CONSTRUCTION

This Subcontract shall be governed by the laws of the Commonwealth of Massachusetts except for matters the Contract Documents expressly require shall be governed by the laws of another location. No waiver of any provision of this Subcontract shall be construed as a subsequent waiver of the same, or waiver of any other, provision. No invalidity of any provision of this Subcontract shall invalidate the other provisions, which shall remain in full force and effect.

In the event any provision of this Subcontract including but not limited to Article 5(P), imposes on Subcontractor a greater obligation than permitted by applicable law, such provision shall be deemed to be re-written to provide for the maximum permitted obligation. It is the parties express intention that no provision shall be declared void or unenforceable.