



**\*\* Subcontract Agreement \*\***  
**Garbutt Christman, LLC**

**THIS AGREEMENT**, initiated this day, 11/20/2009, and as executed herein, is by and between: Garbutt Christman, LLC, a Georgia corporation with it's principal place of business located at: 2812-B Hillcreek Drive, Augusta, GA 30909-6484 (hereinafter called the Contractor) and , with its principal place of business located at: , (hereinafter called the Subcontractor).

**WITNESSETH:**

That and this Subcontractor, for the consideration identified herein, do by agree to the following:

**ARTICLE I - PROJECT:**

The Subcontractor agrees to perform and pay for all of the work, as described in Article IV, for the following project: ; located at: , for the Owner: et al as set forth herein.

**ARTICLE II - CONTRACT DOCUMENTS:**

The Contract Documents consist of this Agreement and attached exhibits, the scope of work identified herein, and shall be in accordance with the following bid documents prepared by: , located at: , (herein called the Architect and/or Engineer), including all precontract addenda and subsequent modifications, which documents are hereby a part of this Agreement as if repeated herein and which the Subcontractor acknowledges receipt and understanding of the following:

**DRAWINGS:**

See attached Subcontract Agreement Supplement 'A'.

**SPECIFICATIONS:**

See attached Subcontract Agreement Supplement 'A'.

**ADDENDA:**

See attached Subcontract Agreement Supplement 'A'.

**ARTICLE III:**

In consideration for the performance of the work identified herein, shall pay the Subcontractor, in current funds, the following firm Contract Sum, subject to additions or deletions by Change Order, as provided in the Contract Documents.

**CONTRACT SUM:**

\*\*\* DOLLARS\*\*\*

Work Category -

**Total for Subcontract:**

**ARTICLE IV - SCOPE OF WORK:**

**A. SEE ATTACHED SUBCONTRACT AGREEMENT SUPPLEMENT 'A'.**

**ARTICLE V - GENERAL PROVISIONS OF THIS AGREEMENT:**

**ACCEPTANCE OF THIS ORDER CONSTITUTES AN AGREEMENT OF THE FOLLOWING CONDITIONS:**

**A. ENTIRE AGREEMENT:**

1. This Agreement supersedes and cancels any written or verbal agreements heretofore made, and shall constitute the only agreement between the parties hereto with respect to the work or any portion thereof covered by this Agreement; and further, both parties agree that should any judicial interpretation of this Agreement be required, then in that event, the laws of the State of Georgia shall apply.

2. No terms of this Agreement or the nature and extent of the work under this Agreement shall be waived, modified or enlarged, except in writing signed by the parties hereto.

**B. INCORPORATED TERMS:**

1. All terms, conditions and requirements of the Main Contract between the Owner and the Contractor (herein after called the Main Contract) including but not limited to its contract documents are incorporated herein and made a part of this Agreement. The Subcontractor assumes toward the Contractor all the obligations and responsibilities specifically including any indemnity obligations that the Contractor, by these documents, assumes toward the Owner insofar as the same are applicable to the work covered in this Agreement; and, except as specifically provided herein, said Subcontractor shall not have any rights which the Contractor does not have to the Owner under any of the documents referenced herein.

2. The Subcontractor will perform all work under this Agreement subject to all the terms and conditions expressed or implied in said documents relating to such work, it being the full intention hereof that said Subcontractor will fully, properly and faithfully discharge all obligations of the Contractor relating hereto. The Subcontractor warrants that it has truly acquainted itself with the site and the contract documents relating to the work to be done by the Contractor for the Owner.

**C. APPROVAL:**

1. This Agreement shall be expressly contingent upon the Subcontractor being approved by the Owner or authorized agent thereof, provided, however, the Subcontractor shall have five (5) days after notice in the event the Subcontractor is disapproved, in which to overcome its disqualification: otherwise this Agreement shall be deemed null and void.

**D. AGREEMENT INTERPRETATION:**

1. Insofar as the contract documents of the Main Contract give to the Architect and/or Engineer or Owner various power to determine quantities, quality and other factors relating to the performance of work under said main contract, the determination of such Architect and/or Engineer, known hereafter as Owner's contracting authority, insofar as binding on the Contractor, shall be binding on the Subcontractor.

**E. INSPECTION:**

1. The Owner, Architect and/or Engineer, or the Contractor or their representatives, shall have full and free access at reasonable hours to the shops, factories, or other places of business of the Subcontractor, or his Subcontractors or suppliers, in order that the Contractor may inform itself as to the general condition and progress of the work herein contemplated.

**F. BONDS:**

1. If bonds are required by the Contractor, the Subcontractor shall pay for and deliver a separate Co-obligee Performance Bond and a separate Co-obligee Labor & Material Payment Bond in the forms acceptable to the Contractor and each in the full amount of this Agreement, issued by a surety company with an AM Best rating of A or better, approved to do business in the State of Georgia and acceptable to the Contractor and duly executed by those agents with complete Power of Attorney to the full limits therein.
2. The Contractor shall have the right, without notice to such surety company, to order changes in the performance or time of performance of this Agreement necessary to conform to changes in the Main Contract. The above provision shall not prejudice the right of the Contractor to require of the Subcontractor additional performance and payment bonds equal to any increase in the value of the work.

**G. TAXES AND BENEFITS:**

1. The Subcontractor accepts and assumes exclusive liability for and shall defend and save harmless the Contractor and the Owner against the payment of:
  - a. All contributions, taxes or premiums which may be payable under Federal and State Unemployment Compensation, Federal Social Security Act, hospitalization and medical assistance and all other Governmental Agency Regulations covering employees, by whomsoever employed, engaged in the performance of the work included in this Agreement.
  - b. The contributions and fringe benefits measured by wages of his employees and the employees of his subcontractors required by the Social Security Act, The Federal Income Tax, unemployment tax or any tax under the laws of the State of Georgia requiring the employer to make withholdings from the wages of the employees, and the Subcontractor accepts exclusive liability for all of such withholding. The Subcontractor shall certify before receiving a final payment that all such taxes or sums required to be withheld from the employees are paid.
  - c. All sales or use taxes, payable by the Subcontractor arising out of the furnishing or installing by the Subcontractor of any and all kinds of material, equipment or personal property under this Agreement.
  - d. All union health, vacation, pension, travel pay, and other fringe benefits; dues, apprenticeship or industry advancement funds; which may be measured by wages of his employees or sub-contractors; shall be paid by the Subcontractor.

**H. INSURANCE:**

1. The Subcontractor represents to be protected by occurrence based policies of insurance for general liability, including comprehensive, products and completed operations, hazard, contractual and independent contractors, and where applicable, underground hazard and/or explosion and collapse, as well as automobile liability, workman's compensation and employer's liability and agrees to maintain such protection in full force and effect for the duration of the Subcontractor's work and to furnish certificates and policies if requested, identifying the Owner, Architect and/or Engineer, Garbutt Christman, LLC, Garbutt Construction, The Christman Company and their Directors, Officers and Agents as an additional insured, and including other parties, if so specified. Insurance covering the specified additional insured parties shall be primary insurance and all other insurance carried by the additional insured parties shall be excess insurance.
2. The Subcontractor shall maintain all policies and the full liability limits specified within the Main Contract. If no limits are specified in the Main Contract, the following limits shall apply:
  - a. Worker's Compensation - Statutory Limit  
- \$500,000 Employer's Liability
  - b. Commercial General Liability



- 1) Bodily Injury - \$2,000,000 Each Occurrence  
- \$2,000,000 Project Aggregate
- 2) Property Damage - \$2,000,000 Each Occurrence  
- \$2,000,000 Project Aggregate

Subcontracts over \$3,000,000.

- 1) Bodily Injury - \$5,000,000 Each Occurrence  
- \$5,000,000 Project Aggregate
- 2) Property Damage - \$5,000,000 Each Occurrence  
- \$5,000,000 Project Aggregate

c. Comprehensive Automobile Liability

- 1) Bodily Injury - \$2,000,000 Each Occurrence  
- \$2,000,000 Project Aggregate
- 2) Property Damage - \$2,000,000 Each Occurrence

The above limits may be achieved through any combination of underlying and excess (umbrella) coverage.

Unless the Main Contract provides for insurance by and at the expense of the Owner which will protect the Subcontractor against loss, the Subcontractor shall provide for all of his own insurance of every kind.

3. All insurance certificates and policies shall be submitted prior to the performance of any work on site. All certificates and policies shall contain provisions for a 30 day prior written notice to the Contractor and other certificate holders of any pending change or cancellation. In the event that the Subcontractor becomes uninsured for any liabilities specified; such default shall be regarded as a material breach of contract, subject to the provisions of Article U herein.

4. All insurance coverage procured by the Subcontractor shall be provided by insurance companies which have policy holder ratings not lower than "A" and financial ratings not lower than "XI" in the Best's Insurance Guide, latest edition in effect as of the date of the Agreement.

5. Products and Completed Operations insurance shall be maintained for a minimum period of at least three (3) years after either the actual project Substantial Completion Date or final payment, whichever is earlier.

6. In the event of loss or damage resulting from perils to material, equipment or structures owned by the Subcontractor, the Subcontractor will look solely to its own insurance for reimbursement for any such loss or damage. The Subcontractor, in signing this Agreement, agrees to hold harmless the Contractor and Owner for any loss or damage to such materials, equipment, and structures.

7. The Subcontractor will be held responsible for any damage to existing structures, work, materials, or equipment because of its operations and shall repair or replace any damaged structures, work, materials, or equipment to the satisfaction of, and at no additional cost to the Contractor and/or Owner.

8. The Subcontractor waives all of its rights and shall require its insurance carriers, with respect to all insurance policies, to waive all rights of subrogation against the Owner, Contractor, and Architect and/or Engineer, their parent companies, affiliates, subsidiaries, partners, directors, officers, agents, and employees and against other subcontractors.

9. Subcontractor represents that its sub-contractors of any tier will provide and maintain the same insurance coverages and conditions as specified in the Article H. Subcontractor shall provide copies of Certificate of Insurance to the Contractor if requested by the Contractor.

**I. SAFETY:**

1. Subcontractor acknowledges receipt of the Contractor's Safety Program and Subcontractor agrees to cooperate with the Owner and/or the Contractor's Safety Program, to take all reasonable precautions for the safety of its employees on the projects, to assist in the prevention of accidents or injury to persons on or adjacent to the premises where the work is being performed, and to comply with all federal, state and local safety laws and ordinances applicable to the work. Subcontractor further acknowledges and accepts full responsibility for safety on the site as it relates to Subcontractor's operations and employees. The Subcontractor agrees to submit to the Contractor, a current Safety Program and Experience Modification rates for Subcontractor and any sub-subcontractor working at the project site.

2. All labor, materials and equipment consumed or supplied under this Agreement shall conform to provisions of the Williams-Steiger Occupational Safety and Health Act of 1970, effective April 28, 1971, and the General Safety Rules and Regulations for the Construction Industry as amended to December 31, 1969, and as amended by the State of Georgia. It shall be the responsibility of the Subcontractor to furnish his employees a place of employment free from recognized hazards that are causing, or likely to cause death or serious physical harm. The Subcontractor shall be liable for damages as the result of the failure of his employee to follow the provisions as set forth above.

3. The Contractor shall be immediately notified and receive copies of all OSHA citations and accident reports, and the Subcontractor shall immediately correct or remedy nonconforming practices or installations.

4. The Subcontractor hereby agrees to release, hold harmless and indemnify the Contractor and the Owner from and against such loss, delay, fine, remedial costs, attorney fees, penalties, interest, action or cause of action arising out of any breach, in whole or in part, by the Subcontractor of this Article.

5. The Subcontractor expressly agrees and understands that the Subcontractor shall abide by all requirements dictated by the Georgia Right-To-Know Law in its entirety. Further, the Subcontractor shall furnish the Contractor copies of Material Safety Data Sheets (MSDS) for all materials to be used in the execution of this work.

6. The Subcontractor shall immediately correct any unsafe conditions identified by Contractor. In the event Subcontractor fails to immediately correct such unsafe conditions, Contractor may either (1) have the unsafe conditions corrected by others at Subcontractor's expense, or (2) direct that the work be stopped in the area of the unsafe condition.

7. Subcontractor represents that its sub-subcontractors of any tier will abide by the provisions of this Article I.

**J. EQUAL OPPORTUNITY:**

1. The parties hereto hereby covenant not to discriminate against any employee or applicant for employment with respect to his/her hire, tenure, terms, conditions or privileges of employment because of his/her race, color, age, sex, religion, or national origin.

2. The Subcontractor agrees to comply with the provisions of the Georgia Fair Employment Practices Code.

3. The Subcontractor also agrees to, when dictated by the Main Contract, be awardable by and in compliance with the directives and guidelines of the Contract Compliance Division of the Georgia Civil Rights Commission.

**K. AGREEMENTS AND ASSIGNMENT:**

1. The Subcontractor shall not sublet this Agreement or any portion thereof, without the written consent of the Contractor. Consent

Agreement.

2. The Subcontractor shall make no assignment of any monies due under this Agreement, or which may become due hereunder, without the prior written consent of the Contractor.

**L. COOPERATION WITH OTHERS:**

1. The Subcontractor agrees to cooperate with the Contractor and with all other subcontractors with whose work that of the Subcontractor may come in contact in order to avoid any conflict, and to insure a first-class workmanlike job in every respect.

2. In consideration of the permission by the Contractor to use any tools or equipment of any nature whatsoever, including elevators, hoists, derricks, cranes, side tracks, yards, or any instrument used in or for the erection of this project or otherwise, under the terms of any contract between us, verbal or written, pending the completion of such contract, it is understood and agreed that the Subcontractor assumes complete responsibility and liability for the use or operation of said equipment and to indemnify and hold harmless the Contractor, against any damage, claim, liability, costs or expense whatsoever, accruing or arising in any manner whatsoever because of Subcontractor's use or operation of said equipment or use of same for Subcontractor's benefit, by reason of any accident of any nature to persons or property caused thereby, irrespective of who shall actually operate the said equipment.

3. Further, the Subcontractor agrees to be responsible for any theft, loss or injury to any of his materials, equipment or tools, unless solely caused by the Contractor.

4. Unless otherwise assigned, the Subcontractor shall do all cutting, fitting, and patching of his work that may be required to make its several parts come together properly and to fit it to receive or be received by work of the other trades.

**M. CLEAN UP:**

1. Subcontractor is at all times to keep Owner's premises, adjoining premises, streets, and building clear of rubbish caused by his operation and his workmen, and is to remove all such rubbish at his own expense, as directed by the Contractor. If the Subcontractor shall fail to clean the site to the satisfaction of the Contractor and/or the Owner then the Contractor may do the necessary cleaning and charge the cost thereof to the Subcontractor.

**N. PROTECTION OF FINISHED WORK:**

1. Subcontractor will protect all his materials and work from hazards and be fully responsible for their condition until accepted by the Owner and also shall be responsible for any damage caused by him to the work or property of others including but not limited to the property of the Owner or the Contractor.

2. The Subcontractor shall be responsible for damages, defects, defacements or delay of the whole project caused in whole or in part by its negligence, and shall forthwith, at its own expense, correct same or accept a reduction in price in the amount of the excess cost incurred by the Contractor or demanded by the Owner, as a result of such default.

**O. PAYMENT:**

1. For the work performed by the Subcontractor under this Agreement, the Contractor shall make partial payments to the Subcontractor out of progress payments already received by the Contractor from the Owner the receipt of such progress payments being a strict condition precedent to any payments to the Subcontractor. The Subcontractor will be paid for the work in place and materials properly stored by the Subcontractor, less retainage, as held by the Owner and/or the Contractor. No payment shall be in any respect taken as an admission by the Contractor of the amount of work done, its classification, quality or sufficiency of the sum due the Subcontractor or as an acceptance of release of the Subcontractor's responsibility under the terms of this Agreement. After the first partial payment so made to the Subcontractor, the Contractor shall have the right to withhold any subsequent partial payments unless the Subcontractor furnishes with each request for payment, satisfactory sworn statement and unconditional waiver of lien or bond claim

by the Subcontractor for lower-tier sub-contractors, suppliers, payrolls and all such indebtedness connected with the Subcontractor's work which were reflected in previous payment requests, and for which payment has been made to the Subcontractor by the Contractor. All material for which the Subcontractor is paid shall become the property of the Owner and shall not be removed from the project site.

2. Unless the Main Contract between the Owner and the Contractor provides for a different schedule, the Subcontractor will be required to cut off monthly costs on the 20th of the month and get their percent completed approved by the Contractor. Once approved by the Owner, the Subcontractor must then submit the actual invoice to the Contractor by the 25th of the month, in order to receive timely payment.

3. If any liens, bond claims or notice of intention to file are received by the Owner, Architect, or the Contractor, the full amount thereof shall be withheld pending adjustment. If the Subcontractor defaults in payment of his debts on this project, the Contractor shall have the right to pay such debts and charge them to the Subcontractor. This provision shall not be construed as a waiver of the right of the Subcontractor to file and enforce a lien claim against the Owner or bond claim against the Contractor in the event the Contractor fails to pay the Subcontractor.

4. Payments to the Subcontractor shall be paid in the same manner as the Contractor is to be paid for such work, except that sums earned by the Subcontractor are to be payable within seven (7) days after receipt by the Contractor of payment for such work. If the Contractor is to be paid by monthly estimates, the Subcontractor shall be similarly paid, out of moneys received by the Contractor for work performed by said Subcontractor and within seven (7) days after receipt of such moneys by the Contractor. All payments are to be made to the Subcontractor only out of such equivalent payments received by the Contractor for work done by the Subcontractor. The receipt of such payments by the Contractor shall be a condition precedent to payment to the Subcontractor.

5. Final payment shall be made after completion and the Owner's acceptance of and payment for all work, upon presentation of a final request for payment accompanied by a release or other satisfactory evidence that there are no liens, bond claims, claims or other indebtedness connected with the work of the Subcontractor, and submittal of the Subcontractor's guarantee. Provided however, that if the Owner assesses and retains against the Contractor any liquidated damages, all payments shall be reduced to the extent such assessment is attributable in whole or in part to the Subcontractor's fault and no claim involving such retention may be asserted by the Subcontractor until the assessment is first finally resolved with the Owner. Acceptance of final payment shall be held to be a final waiver of all claims of whatsoever nature against the Owner and the Contractor. All payments, including final payment, shall be out of such equivalent payments received by the Contractor from the Owner. The receipt of such payments by the Contractor shall be a condition precedent to payment to the Subcontractor.

6. Prior to the first application for payment, the Subcontractor shall submit for approval a detailed schedule of values on AIA G703 or equivalent. The schedule of values must be broken down by the various aspects and areas of work and include labor and material breakdowns for each work item, general conditions, mobilization, demobilization, punch list and administrative close-out. Application for payments will not be processed until the schedule of values has been approved by the Contractor.

Form

**P. PAYROLL REPORTS:**

1. When required by the Main Contract or the Contractor, the Subcontractor has the responsibility to submit to the Contractor weekly certified payrolls in compliance with Labor Department Standards. Failure to comply with this requirement will result in the delay of payment of the Subcontractor's invoices.

**Q. CHANGES AND EXTRA WORK:**

1. No extra or additional work shall be done by the Subcontractor except upon the prior written authority of the Contractor and in the event the Subcontractor proceeds without such written authority, the Subcontractor thereby expressly waives any and all claims for additional payment therefor. No oral waiver of the requirements of prior written authority shall be binding.



2. Any increased price payable to the Subcontractor by virtue of such change shall not become due until a change order has been issued by the Contractor and the Contractor receives payment therefor from the Owner.

3. The Contractor may, without invalidating this Agreement, make any changes by altering, adding to, or reducing the extent of the work, including the deletion of any major items of work to be completed under the terms of this Agreement. No change in the extent or scope of such work shall be made except by a Change Order signed by the Contractor. The charge of credit for any such changes shall be determined, at Contractor's option, by any of the following methods: (1) agreed upon lump sum price, (2) unit prices named in this Agreement or subsequently agreed upon in writing, or (3) time and material. Subcontractor shall submit for approval a quotation covering any change made in the work which affects the Contract Sum. Said quotation shall be submitted promptly upon receipt of notification of the change.

**R. PROGRESS:**

1. To insure completion of the work under the Main Contract within the time stipulated therefor by the Main Contract, the parties hereto agree that the work of the Subcontractor must be completed on or prior to the dates mutually set by both parties for the Subcontractor's work on the approved progress schedule and the Subcontractor will maintain the specified rate of progress as it pertains to the Subcontractor's work. The Subcontractor shall be subject to liquidated damages on the basis expressed in the Main Contract if the Subcontractor is the cause of any sole or concurrent delays which would allow the Owner to assess liquidated damages against the Contractor for late completion.

2. Should the Subcontractor in any way cause in full or in part delay in the progress of the work due to his own fault or negligence so as to cause any loss or damage for which the Contractor shall become liable, whether or not liquidated damages are specified, the Subcontractor shall compensate the Contractor therefor. If the Subcontractor delays the progress of the work, the Subcontractor shall, at its own cost and expense, work such overtime or provide additional resources as may be necessary to avoid delay in the completion of the work under this Agreement.

3. If Subcontractor shall (a) fail to correct, replace and/or re-execute faulty or defective work and/or materials, (b) fail to complete or diligently proceed with this Agreement within the time herein provided, or (c) be unable to proceed with the work because of any action by one or more employees of Subcontractor or by a person or labor organization purporting or attempting to represent any employee of the Subcontractor; the Contractor, upon three days' notice to Subcontractor, shall have the right to correct, replace and/or re-execute such faulty, defective or damaged work, or to take over this Agreement with all materials, tools and appliances of the Subcontractor on the premises and complete the remaining work, charging the cost thereof to Subcontractor. Under such circumstances, the Contractor shall also have the right to withhold any and all payments to the Subcontractor until all such cost charges have been paid in full to the Contractor.

4. If delayed, the Subcontractor shall immediately notify the Contractor in writing.

**S. DISPUTES:**

1. Except as otherwise specifically provided in the Main Contract, any dispute concerning a question of fact arising under this Agreement which involves the Subcontractor and the Owner's contracting authority, which is not disposed of by agreement, shall be decided by the Owner's contracting authority, whose decision, when rendered in writing, shall be final and conclusive. Pending such final decision, the Subcontractor shall diligently proceed with the performance of this Agreement as directed by the Owner's contracting authority. Should the Subcontractor disagree with the decision of the Owner's contracting authority in the disputed matter, the Contractor will bring a claim or appeal on behalf of the Subcontractor when timely requested, in writing, to do so by the Subcontractor. Any cost or expense in connection with such claim or appeal shall be at the sole expense of the Subcontractor.

2. On matters of dispute or disagreement between the Subcontractor and the Contractor, the Subcontractor will give the Contractor timely notice so that the Contractor can give such notices, perform such acts and furnish such information as may be required to resolve the dispute or disagreement. Pending the resolution of such dispute or disagreement, the Subcontractor, without any waiver of its other rights and remedies, agrees not to discontinue work and will diligently proceed with the performance of this Agreement. Any

between the parties shall be subject to a settlement in accordance with the laws of the State of Georgia. [Whether the Main Contract specifically provide for, or is silent thereon, arbitration shall only be used to resolve disputes, if mutually accepted by both the Contractor and the Subcontractor].

**T. CLAIMS:**

1. Should the Subcontractor claim any additional losses, costs, damages and expenses, by reason of any act, failure to act, default or interference by the Owner, the Subcontractor will carefully observe all terms and conditions of the Main Contract with reference thereto and will give the Contractor timely notice so that it can give such notices, perform such acts and furnish such information to the Owner as may be required by the Main Contract. The Subcontractor agrees that it will look solely for payment of any sums claimed to be due it, to moneys actually received by the Contractor from the Owner, based on such claims.

2. Subcontractor agrees to make any claim for extra work, extension of time, or for damages for delay or otherwise as authorized herein in the same manner as provided in the Main Contract and in such time as will enable the Contractor to promptly submit such claims to the Owner for payment or recognition, and the Contractor shall not be liable to Subcontractor on any claim not timely or properly presented or unless allowed to it by the Owner. Any claim involving compensation to be paid to Subcontractor must be submitted within one week of the occurrences of events giving rise to said claim.

3. In the event the Subcontractor's performance is delayed or interfered with by acts of the Owner, the Contractor or other subcontractors, he may request an extension of time for performance as hereinafter provided, but shall not be entitled to any increase in the Contract Sum or any additional compensation or consequential damages as a result of such delays or interference except to the extent that the Main Contract entitle the Contractor to compensation from the Owner for such delays and then only that amount which the Contractor shall actually recover from the Owner on behalf of the Subcontractor for such delays.

**U. TERMINATION FOR DEFAULT:**

1. Should the Subcontractor default in the performance of any of the requirements of this Agreement or of the Main Contract, applicable to its work; or fail to provide a sufficient crew of workmen as and when required; or fail to properly prosecute its work; or fail to maintain the progress of its work; or abandon its work; or interfere with the performance of others working on this project; or fail to pay for: labor employed on the Subcontractor's work; or fail to pay its sub-contractors; or fail to pay or to maintain satisfactory credit relationships for the purchase of supplies, materials, rental equipment, and services; or fail to pay contributions to labor welfare funds, state and Federal payroll taxes, and sales or use taxes; then such default, abandonment, interference or failure shall be considered a breach of this Agreement. In such event the Contractor, at its option, may terminate the Subcontractor's right to proceed by giving the Subcontractor seven (7) days' notice in writing commencing upon the deposit of the same in the United States mail; provided, however, that such notice be null and void if such default is cured, within the notice period, to the complete satisfaction of the Contractor.

2. Upon the expiration of the cure notice period, the Contractor shall be at liberty to immediately or subsequently terminate the employment of the Subcontractor on the said work and to enter on the site of the work and take possession, for the purpose of completing the work included in this Agreement, of all material and equipment of the Subcontractor thereon, and to employ any other person or persons to finish the work, and to provide materials therefore. The Subcontractor hereby assigns, transfers and sets over unto the Contractor all of the said materials. In case of such discontinuance of the employment of the Subcontractor, the said Subcontractor shall not be entitled to receive any further payment under this Agreement until the said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under the Agreement shall exceed the expense incurred by the Contractor in finishing the said work, such excess shall be paid by the Contractor to the Subcontractor, but if such expense shall exceed such unpaid balance, then the Subcontractor shall pay the difference to the Contractor. The expense incurred by the Contractor shall include the cost of furnishing labor, materials and/or subcontracting the finishing of the work. The Subcontractor and his sureties shall remain liable to the Contractor for any damages, expenses, legal fees, and liquidated damages suffered by the Contractor resulting from the Subcontractor's default without waiver of or prejudice to any other right, remedy or claim the Contractor may have in the premises.

**V. INDEMNIFICATION & DEFENSE:**

1. The Subcontractor agrees to indemnify, protect, release and hold forever harmless and release the Owner and/or the Contractor and their directors and their officers, employees, agents or related entities, from and against any and all losses, claims, demands, payments, damages, actions, suits, legal or administrative proceedings, and all other liabilities including judgements, interest, attorney's fees, litigation, collection or enforcement of this Agreement, and all other costs and expenses of whatsoever kind, nature or description brought or recovered against the Owner, Architect and/or Engineer, and/or the Contractor all of which shall be referenced to hereafter as "indemnified liabilities"; whether arising before, during or after completion of the Subcontractor's work and in any manner, directly or indirectly caused by, on account of, and/or occasioned or contributed to, whether solely contributed, concurrently contributed or partially attributable to, by reason of any action, omission, fault, or any breach of expressed or implied warranty or negligence, whether active or passive, or any breach of any provisions set forth herein, which, in the course of, or in connection with the Subcontractor's performance of this Agreement, regardless of the person or persons of the Subcontractor or anyone acting under its direction, control, or on its behalf, in connection with or incidental to the work, regardless of whether such occurrence is in the Subcontractor's assigned work area, common work areas, on-site or off-site; including, but not limited to, equipment owned, rented or used by the Subcontractor, or anyone acting on its behalf, including other Subcontractors working concurrently with or in coordination with the Subcontractor.
2. Indemnified liabilities shall include, but are not limited to; the injury or death of any person or persons or damage to any property; including equipment used by the Subcontractor, the property of the Owner, the Contractor, the Subcontractor, other subcontractors, or third-party plaintiffs, and all other persons or organizations, including liabilities related to infringement of patent, trademark, copyright, title, slogan or unfair competition or under implied or expressed contract. In the case of any claims against the Owner, Architect and/or Engineer, or the Contractor by any employee of the Subcontractor, anyone directly or indirectly employed by it or anyone for whose acts it may be liable; the indemnification obligations herein shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under Worker's Compensation Acts, disability benefit acts or other employee benefit acts.
3. The Subcontractor expressly agrees and understands that the Subcontractor shall provide a defense for the Owner, Architect and/or Engineer and the Contractor in any lawsuit or similar proceeding covered by this indemnification. The obligation to provide a defense shall accrue immediately upon receipt of notice of said legal proceedings from any defendant indemnified herein. If the Subcontractor fails to provide timely, competent and successful defense, the Contractor shall be entitled to any and all costs associated with said defense; including but not limited to attorney fees and ancillary costs incurred to enforce this indemnity and defense provision.
4. Furthermore, the Subcontractor will advise his insurer and surety of these indemnification, hold-harmless, release and defense obligations and will obtain contractual coverage endorsement to discharge his obligations as set forth herein.

**W. ENFORCEMENT:**

1. The failure of the Contractor to enforce, at any time, any of the provisions of this Agreement, or to require at any time, performance by the Subcontractor of any of the provisions hereof, shall be in no way construed to be a waiver, nor in any way to affect the validity of this Agreement or any part thereof or the right of the Contractor to thereafter enforce each and every such provision.
2. Should any portion of this Agreement be invalid or unenforceable, the remainder of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

**X. WARRANTY:**

1. The Subcontractor warrants that the work herein contracted will be as specified and will be free from defects in design, workmanship, and materials. If within the warranty period the work fails to meet the provisions of this warranty, the Subcontractor shall promptly correct any defects, including nonconformance with the Contract Documents, by adjustment, repair, or replacement of all defective parts or materials.
2. The Subcontractor shall provide a one (1) year warranty from the actual project "Substantial Completion Date" on all



material, equipment and workmanship unless a longer warranty period is required as specified in the specifications. With respect to any portion of the goods or services which have been repaired or replaced by Subcontractor during the warranty period, the Subcontractor shall provide a one (1) year warranty on the goods or services after the date of repair or replacement.

**ARTICLE VI - MISCELLANEOUS PROVISIONS**

**A. NATURE OF RELATIONSHIP:**

I. For all purposes herein, the Subcontractor shall be deemed to be an independent contractor fully responsible for the means, methods and safety measures and procedures utilized fulfilling the scope of services or terms of this Agreement. Under no circumstances shall the Subcontractor be deemed to be an employee or joint venturer with the Contractor.

**B. SEVERABILITY:**

I. Any provision of this Agreement may be severable from the whole without affecting the enforceability of the remainder if so deemed by a court of competent jurisdiction.

**C. NO WAIVER:**

I. Any failure of either party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the duration of this Agreement shall in no way effect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of such party thereafter to enforce any and each such provision.

**D. SUCCESSORS AND ASSIGNS:**

I. This Agreement shall be binding upon the parties hereto and their successors and assigns.

**E. Exhibits:**

I. The following exhibits attached hereto are included herein by reference.

- a. Exhibit I - Supplement "A"
- b. Exhibit II - Contractor's Safety-Program



Garbutt Christman, LLC Job No.

Work Category

**ACCEPTANCE:**

The said parties, for themselves, their heirs, successors, executors, and administrators and assignees, do hereby agree to the full performance and covenants contained herein.

By signing below these parties affirm that they are each authorized agents of their respective organizations, with full rights and privileges to enter into this Agreement on behalf of those respective organizations.

By: \_\_\_\_\_  
 Signature

\_\_\_\_\_

Print Name

\_\_\_\_\_

Title

\_\_\_\_\_

Date

By: \_\_\_\_\_  
 Signature

\_\_\_\_\_

Print Name

\_\_\_\_\_

Title

\_\_\_\_\_

Date

Witnessed By: \_\_\_\_\_

Print Name

\_\_\_\_\_

Signature

Witnessed By: \_\_\_\_\_

Print Name

\_\_\_\_\_

Signature