



SUBCONTRACT

SUBCONTRACT NUMBER:

SUBCONTRACT DATE:

CONTRACTOR: **Dunn Building Company, LLC** ("Contractor")
P. O. Box 11546
Birmingham, AL 35202
Telephone: **205.510.0300**

SUBCONTRACTOR: ("Subcontractor")

Telephone:
Attention:
Alabama State License Number:

SUBCONTRACT WORK: **See Exhibit A to this Subcontract** ("Subcontract Work")

PROJECT / PROJECT #: ("Project")

PROJECT ADDRESS:

PRIME CONTRACT DATE:

OWNER: ("Owner")

ARCHITECT – ENGINEER: ("Architect")

SUBCONTRACT PRICE: **Dollars (\$)** ("Price")

RETAINAGE: **Ten percent (10%) and after 50% completion is attained,
no additional retainage shall be withheld** ("Retainage")

PAYMENT AND PERFORMANCE BOND: **Not Required** **Required and Included in Price**

CONTRACTOR'S AUTHORIZED REPRESENTATIVE:

On the day and year first above written, for the consideration hereinafter named and in exchange for the mutual covenants herein made, Contractor and Subcontractor hereby agree as follows:

TERMS AND CONDITIONS

SECTION 1 – GENERAL:

Subcontractor shall be bound to Contractor by all terms and conditions of this Subcontract and by all terms and conditions of the Prime Contract between Owner and Contractor, which is incorporated by reference into this Subcontract and is an integral part hereof. This Subcontract includes, but is not limited to, the Prime Contract; all general, supplementary, special, and technical provisions, terms and conditions; all drawings, specifications, details, and standards; manufacturers' recommendations and literature; applicable regulations, codes, and governmental requirements; all addenda, modifications, and revisions to any of the foregoing; and all other documents or requirements incorporated or referenced by the foregoing. Subcontractor shall assume toward Contractor all the obligations and responsibilities which Contractor, by the Prime Contract, assumes toward Owner, except that this Subcontract shall supersede and govern over any inconsistent or contrary provisions of the Prime Contract. If there is conflict, inconsistency, or ambiguity within the Prime Contract itself as regards the Subcontract Work, Subcontractor shall furnish and install work of the higher quality, greater quantity, and more expense, unless otherwise directed in writing by an authorized representative of Contractor.

SECTION 2 – SUBCONTRACT WORK:

The "Subcontract Work" shall mean the full extent of Subcontractor's performance requirements, agreements, duties, responsibilities, and obligations under this Subcontract. Subcontractor shall perform the Subcontract Work in strict accordance with this Subcontract.

Subcontractor shall not deviate from the plans and specifications without the prior written consent of the authorized representative of Contractor. Subcontractor shall call specific attention of Contractor, Architect, and Owner to any and all intended deviations, including proposed "equal" substitutions, no later than the time of delivery of shop drawings, samples, or similar submittals, and in any case, a reasonable time before installation. Approval of shop drawings, samples, or similar submittals shall not constitute approval of deviations from the plans and specifications, unless Subcontractor receives express and specific written approval of any such deviation from an authorized representative of Owner and Contractor. Anything pertaining to the Subcontract Work that is mentioned in the specifications but not shown in the drawings, or shown in the drawings but not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. All Subcontract Work shall be done under Contractor's direction and shall be subject Contractor's, Owner's, and Architect's approval.

SECTION 3 – PRICE:

In exchange for full performance of the Subcontract Work in strict accordance with the Subcontract, Contractor agrees to pay Subcontractor the agreed upon Subcontract Price. Progress payments shall be made in accordance with the terms and conditions of this Subcontract. The Subcontract Price is subject to any increase or decrease that may be agreed upon in a change order.

SECTION 4 – TIME:

Time is of the essence in the performance of this Subcontract. Subcontractor is aware of the Contract Time (as defined in the Prime Contract) and agrees to take any and all steps necessary to insure that the Subcontract Work is performed in such time as to permit Contractor to meet its obligations to Owner in accordance with the schedule for the Project to be prepared by Contractor ("the Schedule"). If Subcontractor fails to maintain the progress required by the Schedule and such failure is Subcontractor's fault, in whole or in part, Subcontractor agrees, at its sole cost and expense, to take whatever actions are necessary to get the Subcontract Work back on schedule.

Subcontractor agrees at its sole cost and expense to: (1) submit to Contractor within fourteen (14) calendar days of the date of the Subcontract, a detailed, proposed schedule for the Subcontract Work for Contractor's use in preparing the Schedule for the Project; (2) begin the Subcontract Work upon Contractor's order to do so; (3) cooperate with Contractor and its other subcontractors and the other contractors, if any; (4) perform the Subcontract Work in such sequence as Contractor may direct; (5) when required, provide all information required to prepare updates or revisions to the Schedule; (6) furnish at all times sufficient and qualified forces and supervision, adequate and conforming materials, equipment, tools, and all other things necessary to achieve the progress required by the Schedule. Subcontractor agrees that Contractor has full discretion with regard to preparation of the Schedule and updates or revisions thereto during the course of the Project, and that Subcontractor shall perform the Subcontract Work in accordance with the requirements of the Schedule and all revisions or updates thereto.

Subcontractor agrees to: (1) order (for manufacture and/or purchase and delivery) all materials and equipment required for the Subcontract Work as soon as possible to avoid delays caused by unavailability; (2) furnish Contractor within fourteen (14) calendar days of the date of this Subcontract a list of major materials and equipment required for the Subcontract Work, showing the name, address, and telephone number of the supplier and dates on which such materials and equipment are required to the Project site; (3) furnish Contractor, upon demand, a copy of each major purchase order and subcontract (at Subcontractor's option, price information may be deleted); (4) cause a qualified supervisory representative to attend scheduled progress meetings; and (5) notify Contractor immediately and confirm in writing within forty-eight (48) hours, if Subcontractor finds that any item cannot be delivered as required to maintain the Schedule.

Subcontractor represents that it has satisfied itself as to any provision in the Contract Documents concerning liquidated damages, and agrees that in the event liquidated damages are imposed by Owner on Contractor as the result, in whole or in part, of the performance or non-performance of Subcontractor, such liquidated damages (or an appropriate share thereof) will constitute one element of the

damages that Contractor shall be entitled to recover from Subcontractor by backcharge or otherwise. In addition, Subcontractor agrees to reimburse Contractor for any loss or damage, including damages that may become due to Owner under the Contract Documents, and for any extra expense incurred by Contractor that result from Subcontractor's failure to deliver timely any and all materials or perform timely any and all Subcontract Work.

If in Contractor's sole discretion, Subcontractor falls behind the Schedule for the Subcontract Work or if Subcontractor is otherwise not maintaining a satisfactory rate of progress so as to complete the Project in the most expeditious and economical manner, Contractor may direct Subcontractor to take such action as Contractor in good faith deems necessary or appropriate to improve Subcontractor's rate of progress. In addition, Contractor shall have the right, but not the obligation and without prejudice to any other right or remedy, upon notice to Subcontractor, to provide any additional labor, materials, equipment, supervision, or other item and to take such additional action as Contractor in good faith believes to be necessary or appropriate under the circumstances, and any such action undertaken by Contractor shall be at Subcontractor's cost, which Contractor shall be entitled to deduct from any payment, whether then due or thereafter to become due, to Subcontractor. If Owner delays, disrupts or interferes with the Subcontract Work, Subcontractor as its sole and exclusive remedy may, upon written request properly and timely made to Contractor, obtain reasonable time extensions and a reasonable increase in the Subcontract Price but only to the extent of any extensions of time and additional amounts that Contractor, given proper notice, shall be entitled to from owner. Regardless of the cause or source of delay, disruption or interference with Subcontract Work, and even if caused in whole or in part by Contractor, Subcontractor shall not be entitled to any compensation or damages for delay, disruption, or interference (including, without limitation, impact, inefficiency, and extended overhead claims) except to the extent Contractor receives, on Subcontractor's behalf, such compensation or damages from Owner or other third party.

As a condition precedent to any relief, Subcontractor must give Contractor timely written notice of delay, disruption, and/or damage to the Subcontract Work.

SECTION 5 – QUALIFICATIONS, LAYOUT, AND PROTECTION OF SUBCONTRACT WORK:

Subcontractor hereby represents that it is fully qualified, experienced, and licensed, if required, to perform the Subcontract Work and Subcontractor assumes all risks with respect to the requirements of the Subcontract and to general and local conditions involved in performing the Subcontract Work, including but not limited to natural and manmade characteristics of the site, site accessibility, labor rates and availability, weather conditions, and any other matter that could affect the time for performance or cost of the Subcontract Work.

Before proceeding with any Work, Subcontractor shall lay out and field measure the Subcontract Work and shall verify all previous and surrounding work done by others to ensure that all Subcontract Work fits and functions properly. Subcontractor shall detect and, prior to commencement of Work, report in writing to Contractor any defect, interference, or nonconformity in the work of others or in the plans or specifications; otherwise Subcontractor shall be solely responsible and bear all costs of any cutting, patching, rerouting, and replacement of the Subcontract Work, or for taking other action which Contractor directs to overcome or to correct same.

Subcontractor shall protect the Subcontract Work, including all stored materials, from loss, deterioration or damage by weather and all other causes, including without limitation, damage from the operations of other subcontractors.

SECTION 6 – GUARANTEE:

Subcontractor shall guarantee and warrant the Subcontract Work to comply strictly with this Subcontract and with all parts of the Prime Contract applicable thereto. Subcontractor further warrants and guarantees that the Subcontract Work and all materials and equipment furnished in connection therewith are new, of good materials and workmanship, free from defects, fit, safe, merchantable, sufficient for the purposes intended, and Subcontractor further guarantees and warrants that Subcontractor has good title to all such work, materials, and equipment and shall deliver and install same free from any lien, security interest, or encumbrance. Subcontractor's guarantees and warranties shall extend for the same period as Contractor's warranty under the Prime Contract or for one year after final payment to Subcontractor, whichever is longer. The warranties and guarantees set forth herein are in addition to any other warranties or guarantees provided by law or by separate agreement.

Contractor may demand and Subcontractor shall give assurance, by bond or other means acceptable to Contractor that Subcontractor will satisfy all guarantees and warranties.

SECTION 7 – BONDING:

If Contractor requires prior to or during performance of this Subcontract, Subcontractor shall furnish to Contractor, as obligee, performance and payment bonds with a responsible surety and in a form and with terms acceptable to Contractor each having a penal sum equal to the Subcontract Price covering Subcontractor's faithful performance of this Subcontract and prompt payment for all equipment, machinery, supplies, materials, services, and labor furnished and supplied with respect to the Subcontract Work. Subcontractor's failure to deliver satisfactory bonds within ten (10) days after demand shall be a material breach of this Subcontract.

The surety for Subcontractor's performance bond shall be equally obligated for every obligation of Subcontractor under this Subcontract, including but not limited to warranty or other performance extending beyond substantial completion of either the Subcontract Work or of the Project as a whole but shall continue thereafter for so long as Subcontractor is obligated under this Subcontract in any respect.

The penal limit of any surety bond shall increase in accordance with any change orders which increase the Subcontract Price.

SECTION 8 – PAYMENT:

At least five (5) working days in advance of the time Contractor must submit an application for payment to Owner, Subcontractor shall deliver to Contractor an application for payment and release form, with such content and detail as Contractor may require. Subcontractor's application must include an itemized statement of the Subcontract Work done during the previous thirty (30) days. Progress payments to Subcontractor shall be made only out of progress payments actually received by Contractor from Owner for Subcontract Work satisfactorily performed by Subcontractor in strict compliance with this Subcontract and approved by Owner. Final payment to Subcontractor shall be made only out of funds actually received by Contractor from Owner in final payment of the Prime Contract and only to the extent said final payment reflects Subcontract Work which has been satisfactorily performed by Subcontractor in strict accordance with this Subcontract and which has been approved and paid by Owner. Payment by Owner to Contractor of progress payments and of final payment is a condition precedent to Subcontractor's right to payment from Contractor of progress payments and of final payment. Subcontractor acknowledges it is relying on the credit of Owner not Contractor.

Subject to the terms and conditions of this Subcontract, Contractor agrees to send payment for Subcontractor's application for payment within five (5) working days after Contractor receives payment from Owner for Contractor's application in which Subcontractor's application is incorporated. Should Subcontractor's portion of Contractor's application for payment be reduced or denied for any reason, payment to Subcontractor will be reduced or denied accordingly.

Contractor may, at its option, withhold up to ten percent (10%) retainage from any payments otherwise due Subcontractor and subject to the retainage stated on Page 1 of this Subcontract, such retainage will be held hereunder until final payment, provided work is approved and payments have been made in accordance with Section 9. Final payment and release of retainage shall be made at the completion of the Subcontract Work but only: (1) upon written acceptance thereof by Contractor, Architect, and Owner; (2) after Subcontractor has provided all documentation specified by the Prime Contract or by this Subcontract or as otherwise reasonably required by Contractor; and (3) as a condition precedent, Owner has made final payment and has released retainage to Contractor.

Subcontractor's acceptance of final payment constitutes a general release of Contractor and Contractor's surety from all claims and liability of whatever nature. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and Subcontractor shall remain responsible and liable for performance in strict compliance with this Subcontract.

SECTION 9 – RELEASE OF LIENS:

Before submitting any application for payment, Subcontractor shall have paid for all materials, labor, equipment, and other bills and obligations that relate to this Subcontract, through the period covered by previous payments received from Contractor. Subcontractor shall furnish, at Contractor's request, affidavits, releases, and other such evidence as Contractor may require to verify compliance with this Subcontract. Subcontractor shall keep the Project premises free of liens pertaining to the Subcontract Work. As a condition precedent to final payment, Subcontractor shall furnish Contractor an affidavit of payment of all bills and obligations, a release of liens or other encumbrances respecting the Project, and a general release of claims, together with such affidavits and other documents as Contractor may require.

SECTION 10 - OBLIGATIONS:

Subcontractor hereby agrees that Contractor has the right to pay any of Subcontractor's bills or past due obligations arising on this Project, including backcharges owed to Contractor. Any such payments made by the Contractor, whether by joint check, direct payment, offset or otherwise, shall apply as a payment of earned proceeds (exclusive of retainage) on this Subcontract. If Contractor is exposed to liability, in whole or in part, by any alleged act, omission, breach, or failure of Subcontractor, Contractor shall be entitled to withhold Subcontract funds equal to the extent of Contractor's exposure to liability attributable to Subcontractor. If Contractor's exposure to liability exceeds available Subcontract funds, Contractor shall be entitled to withhold or offset against any amounts owed by Contractor to Subcontractor, whether on other projects or otherwise, equal to the full extent of Contractor's exposure to liability attributable to Subcontractor on this Project.

SECTION 11 – TERMINATION:

Subcontractor agrees that if, in Contractor's sole discretion, Subcontractor refuses or for any reason fails diligently to prosecute the Subcontract Work to completion in an efficient, timely, workmanlike, skillful, cooperative, safe, or careful manner; or if Subcontractor fails to provide an adequate amount and quality of experienced personnel and proper equipment to complete the Subcontract Work without delay or interference to the work of Contractor or of other subcontractors; or if Subcontractor fails to perform any term or condition of this Subcontract; or if Subcontractor fails generally to pay its bills and discharge its obligations with respect to this Subcontract and the Project as they become due, then Contractor may, without prejudice to any other right or remedy, terminate all or part of this Subcontract. If this Subcontract is terminated, in whole or in part, Contractor shall be entitled to exercise its discretion as to the means and methods for prosecution and completion of the Subcontract Work as Contractor in good faith deems to be appropriate and in the best interests of the Project. Contractor has the right, but not the obligation, to assume control of the Subcontract Work, take possession of all materials and property necessary to continue performance of the Subcontract Work (including but not limited to materials, tools, equipment, scaffolding, and supplies, whether located on the Project site, in storage off site, in transit to the site, or in the process of being specially manufactured for the Subcontract Work), and relet the remaining Subcontract Work to others or perform all or any part of the Subcontract Work with Contractor's own forces. Subcontractor hereby grants to Contractor upon the date of termination a lien and security interest in all of Subcontractor's materials, supplies, equipment, and contract rights to secure the performance and completion of the Subcontract Work.

Contractor shall be entitled to use all funds otherwise owing to Subcontractor, whether on this Project or otherwise, toward prosecution and completion of the Subcontract Work. Upon termination by Contractor, Subcontractor shall not be entitled to receive any further payments until the Subcontract Work has been fully completed and finally accepted by Architect and Owner, and until final payment for same has been received by Contractor. Subcontractor shall be liable for all expense of completing the Subcontract Work, including all performance costs of whatever nature plus reasonable allowances for overhead and profit and including all other damages, losses, expenses, and costs, including attorneys' fees and expenses incurred by Contractor as a result of termination of this Subcontract and performance of Subcontract Work by anyone other than Subcontractor.

Notwithstanding anything to the contrary in this Subcontract, and in addition to Contractor's rights to terminate this Subcontract for breach or default, Contractor may terminate this Subcontract when Contractor determines, in Contractor's sole discretion and regardless of fault, that such termination is in Contractor's interests. Upon such no-fault termination, Subcontractor shall be entitled, as its sole and exclusive remedy, to the reasonable, actual direct cost of all Subcontract Work satisfactorily performed and materials purchased prior to notice of termination, plus a single markup of ten percent (10%) for both overhead (including jobsite and home office) and profit on completed Subcontract Work, plus the reasonable out-of-pocket costs of terminating the Subcontract Work, but Subcontractor shall not receive any compensation, overhead, or profit on Subcontract Work not performed or for materials not purchased. Notwithstanding the foregoing, the total sum to which Subcontractor may be entitled in the event of a no-fault termination, including all prior payments made to or on behalf of Subcontractor, shall not exceed the Subcontract Price. Subcontractor shall not be entitled to any other compensation or payment of any nature, in the event of a no-fault termination, other than as specifically provided in this paragraph.

If the Subcontract is terminated for default and it is determined for any reason that Subcontractor was not in default under this Subcontract at the time of termination, or that Subcontractor was not properly terminated for default, such termination shall be deemed a no-fault termination and Subcontractor shall be entitled, as its sole and exclusive remedy, only to the amount due under the Subcontract as if the termination were for no fault as provided in the preceding paragraph.

Regardless of whether the termination is for default or no fault, Subcontractor shall not be entitled to special, consequential, punitive or exemplary damages nor to anticipated profit on account of Contractor's termination or alleged breach of this Subcontract.

SECTION 12 – INDEPENDENT CONTRACTOR:

Subcontractor is in all respects an independent contractor. Subcontractor shall have no authority to bind Contractor by any statement, representation, or promise of any kind without first obtaining Contractor's specific written consent. Subcontractor shall not interfere with Contractor's relationship with Owner, and Subcontractor shall not deal directly with either Owner or Architect without Contractor's prior authorization in each instance. Subcontractor agrees not to enter into any other contract relating to this Project without Contractor's prior written consent.

Subcontractor has exclusive liability for all contributions, taxes, deposits, and payments required of employers by federal, state, or local governments, with respect to wages, salaries, remuneration, or benefits paid or owed by Subcontractor to any of Subcontractor's employees or others who perform work or render services for Subcontractor. Subcontractor has exclusive liability for all income, sales, use, or other taxes applicable to materials, equipment, labor, or performance of work pursuant to this Subcontract. Subcontractor shall comply with all laws, ordinances, building codes, safety requirements, and regulations of whatever nature that apply to this Subcontract, and Subcontractor shall secure and pay for all permits, licenses, fees, certifications, and other requirements pertaining to this Subcontract. Subcontractor agrees to follow all Contractor's rules, policies, and procedures pertaining to health, safety, prevention and testing of substance abuse, and general conduct in the work place.

SECTION 13 – INSURANCE:

Subcontractor shall obtain, before commencement of Work, and maintain until final acceptance of the Prime Contract, full insurance coverage for commercial general liability, automobile liability, excess liability, workers' compensation, and employers' liability as required by Contractor. Subcontractor shall determine and obtain the types and extent of such additional insurance as may be necessary to give adequate and complete protection to Subcontractor, Contractor, and Owner from claims for property damage and from claims for personal injury, including death, which may arise from or be connected with this Subcontract, whether such claims relate to acts of omissions of Subcontractor, of any of its subcontractors or suppliers, or anyone directly or indirectly employed by any of them. Subcontractor shall name Contractor as an additional insured on all insurance policies and coverages except for Workers Compensation and Employers' Liability, and Subcontractor's insurance shall be primary as to any other valid insurance available to Contractor and shall contain a standard cross-liability endorsement, severability of interests clause, and a waiver of all rights of subrogation by Subcontractor's insurer against Contractor. Additional Insured coverage under general liability shall include ongoing and products/completed operations coverage on a primary and non-contributory basis for the benefit of Contractor and Owner. The insurance protection and coverage provided hereunder by Subcontractor for Contractor's benefit shall not be restricted solely to Subcontractor's indemnity obligations but are intended to extend to all claims, liability, or loss of whatever nature arising from or relating to Subcontractor, to the Subcontract Work, or to this Subcontract, regardless of the alleged liability or fault of any party indemnified under this Subcontract. Subcontractor's liability insurance policies shall each contain contractual liability coverage (including but not limited to products liability and completed operations) so as to protect fully Subcontractor, Contractor, and Owner.

If Contractor or Owner carries builder's risk or other insurance which may apply to the Subcontract Work or which may otherwise inure to the benefit of Subcontractor, Subcontractor shall be responsible for all deductibles and for any inadequacy or absence of coverage,

and Subcontractor shall have no claim or other recourse against Contractor or against Owner for any costs or loss attributable to such deductibles or to coverage limitations, exclusions, or unavailability.

Before beginning any Subcontract Work, Subcontractor shall deliver to the authorized representative of Contractor its Certificate(s) of Insurance certifying the types and the amounts of coverage, certifying that said insurance was in force before Subcontractor started work, certifying that said insurance applies to the Subcontract Work and to all activities and liability of Subcontractor pursuant to this Subcontract, and certifying that Contractor is a named additional insured on Subcontractor's policies of insurance by endorsement in a form acceptable to Contractor. No policy of insurance may be cancelled or reduced during the period of construction, and Subcontractor shall obtain an endorsement to its policies and insurance certificates providing substantially as follows:

Insurer may not cancel this policy or reduce coverage for a period of thirty (30) days after Contractor has acknowledged receipt of written notice of Insurer's intention to cancel or reduce the coverage.

The insurance and indemnity obligations of this Subcontract are non-delegable. Subcontractor shall not sublet nor subcontract any part of this Subcontract without retaining absolute responsibility for requiring similar insurance from its subcontractors and suppliers. Subcontractor's failure to maintain complete insurance shall be a material breach authorizing Contractor, at Contractor's sole election, either to terminate this Subcontract or to provide full insurance coverage at Subcontractor's sole expense; however, in neither case shall Subcontractor's liability be lessened.

SECTION 14 – INDEMNIFICATION:

In exchange for ten dollars (\$10.00) and other good and valuable consideration, receipt and sufficiency of which is acknowledged by execution of this Subcontract, Subcontractor covenants to defend, indemnify, save harmless, protect, and exonerate both Contractor and Owner, separately and severally, together with its or their agents, shareholders, officers, directors, employees, representatives, insurers, and sureties, from any and all liability, claims, losses, suits, actions, demands, arbitrations, administrative proceedings, awards, judgments, expenses, attorneys' fees and expenses, and costs pertaining to economic loss or damages, labor disputes, safety requirements, performance or nonperformance of obligations, certifications, property rights of third parties, personal injury, sickness, disease, death, or damage to or destruction of property (including loss of use thereof) which are caused in whole or in part, which arise from or occur in connection with work undertaken or to be performed by Subcontractor, its subcontractors or suppliers, or the agents or employees of any of them or which arise from or occur in connection with any other act or omission relating to Subcontractor, its subcontractors or suppliers, or the agents or employees of any of them, or to this Subcontract or to the Subcontract Work. The foregoing covenants and indemnity obligations shall apply to the fullest extent permitted by law, regardless of whether the basis for liability is caused in part by the active or passive negligence or other fault of a party indemnified hereunder, provided, however, Subcontractor's indemnity obligations and liability shall not apply if injury, sickness, disease, death, damage, or destruction is caused by the sole negligence of a party indemnified hereunder. Subcontractor's obligation and liability shall not be limited as to amount or type of damages by the provisions of any workers' compensation act, disability act or other employer liability or employee benefit act.

SECTION 15 – SUB-SUBCONTRACTS AND ASSIGNMENTS:

Subcontractor shall not subcontract nor assign any part of this Subcontract without first obtaining Contractor's written consent and approval.

Assignments of Subcontract proceeds are permissible but only if written notice of same is received and acknowledged in writing by a corporate officer of Contractor at least thirty (30) days before the assigned proceeds are due and payable to Subcontractor. Subcontractor and Subcontractor's assignee shall ensure that the assignment of Subcontract proceeds does not adversely affect the performance of this Subcontract, including the full and timely payment of all bills and obligations owed by Subcontractor. To the extent Subcontract proceeds paid to Subcontractor's assignee exceed funds made available by the assignee that are actually used to pay for Subcontract Work and materials, Subcontractor and Subcontractor's assignee hereby agree to indemnify, defend, save harmless, and exonerate Contractor from any loss, liability, or expense (including attorneys' fees and expenses) which Contractor incurs or which is claimed against either Contractor or Contractor's surety as a result of Subcontractor's failure to perform the Subcontract Work in strict accordance with the Subcontract or as a result of Subcontractor's failure to pay its bills and discharge its obligations relating to this Subcontract. Any assignments of Subcontract proceeds and any payments demanded or made pursuant to assignments shall be subject to and conditioned upon Subcontractor's compliance with all terms and conditions of this Subcontract, and any such assignments are expressly restricted to the amount actually collected by Contractor from Owner for work performed by Subcontractor and accepted by Owner, less retainage, backcharges, or other offsets which are chargeable by Contractor against Subcontractor, whether on this Project or otherwise. Acknowledgment, acceptance, or approval of an assignment by Contractor does not constitute any representation or agreement by Contractor that Subcontractor is owed the amount assigned or any specific amount whatsoever.

SECTION 16 - SUPERVISION:

Subcontractor shall have a competent and experienced superintendent at the Project at all times while the Subcontract Work is or should be in progress and as otherwise necessary to ensure full performance of all obligations under this Subcontract. Subcontractor's superintendent shall have the authority to act for and on behalf of and to bind Subcontractor, and, in particular, Subcontractor's superintendent shall have the authority and responsibility to execute promptly and completely all directions from Contractor relating to the Subcontract Work. Subcontractor shall replace said superintendent or any other employee, without additional charge, if so demanded by Contractor. Subcontractor shall do, without additional charge, whatever is necessary in the performance of this Subcontract or as Contractor otherwise directs to assure harmonious labor relations at the Project and to prevent strikes, disputes, and violation of labor and employment laws and regulations.

SECTION 17 – CLEAN-UP:

Subcontractor shall keep the Project in a clean and neat condition. Subcontractor shall clean up and remove its own trash, dirt, and debris on a daily basis. At least once each week, Subcontractor shall provide its pro rata share of personnel and contribute its pro rata share of cost for a composite cleaning crew to accomplish a general and thorough cleaning of the Project premises and the removal of accumulated trash, dirt, and debris.

SECTION 18 – CHANGES AND CLAIMS:

Contractor may issue written change orders to this Subcontract, without written notice to Subcontractor's sureties. Subcontractor shall be obligated to perform such written change orders, and the Subcontract Price shall be adjusted as specified by each change order. Oral changes to the Subcontract Work are not valid and will not be recognized. Subcontractor shall have no claim or entitlement to payment for any change in the Subcontract Work unless, prior to performance, Subcontractor receives either a written directive as provided below or a written change order for such work at an agreed price from an authorized representative of Contractor.

If Subcontractor requests a written change order as provided herein but there is a dispute as to whether the work at issue is a change in the Subcontract Work or there is a dispute as to the value of such change or there is any other matter in controversy, Contractor shall be entitled to issue a directive to Subcontractor to perform and Subcontractor shall be obligated to proceed with and complete performance of such alleged change, without either party admitting to liability for the change or waiving its respective rights under the Subcontract. Subcontractor agrees that any application for cost reimbursement, claim for additional compensation, or additive or deductive adjustment in time or amount shall be based upon Subcontractor's actual direct costs and actual time incurred or saved with respect to the work or other subject matter of such application, claims, or adjustment. Subcontractor shall maintain and shall submit to Contractor current, accurate, and complete data which fully substantiate any actual direct costs and any actual time claimed by Subcontractor. Subcontractor shall give Contractor, including Contractor's designated representatives, access at all reasonable times and the right to examine, reproduce, and audit Subcontractor's books, records, documents, information and data which are related to Subcontractor's costs or time of performance or which are necessary, in Contractor's judgment, to evaluate any application for reimbursement, claim for additional compensation, or adjustment in Subcontract Time or amount requested or made by Subcontractor or asserted by Contractor with respect to the Subcontract Work. Contractor shall bear the cost of such examination or audit unless Subcontractor's data is not complete, current, and accurate in which case Subcontractor shall bear such cost.

With respect to changes in the Subcontract Work ordered by Owner or for which Owner is responsible, Subcontractor shall be entitled to an increase in the Subcontract Price and/or an extension in the Subcontract Time but only to the extent of any amount and time extensions that Contractor, on Subcontractor's behalf, actually receives from Owner for such changes. With respect to changes in the Subcontract Work for which Owner is not in any way responsible but which are directed in writing by Contractor, Subcontractor shall be entitled to an increase in the Subcontract Price based upon Subcontractor's actual direct cost of performing the changed work plus a single allowance of ten (10) percent on actual direct costs for all markup including both overhead (job site and home office) and profit.

Subcontractor shall give written notice to Contractor of any claims for extra costs, of whatever nature, at least five (5) working days prior to the time the Prime Contract requires Contractor to give notice of same to Owner or, if the Prime Contract has no notice requirement applicable to Subcontractor's claim, then Subcontractor shall give written notice of claim to Contractor within five (5) working days after the commencement of the event on which Subcontractor's claim is based. Subcontractor's failure to provide written notice to Contractor as set forth above shall constitute a waiver, bar, and release of any such claim.

SECTION 19 – DISPUTE RESOLUTION:

Notwithstanding anything to the contrary in this Subcontract, all claims, disputes, and other matters in controversy or in question between Contractor and Subcontractor arising out of or relating to this Subcontract shall be decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, except as specifically excluded below:

(a) At Contractor's sole election, this agreement to arbitrate shall not apply to any claim, dispute, or matter in controversy or in question which involves Owner, Architect, or other third parties. In such event, if Contractor so elects, Subcontractor shall prosecute or resolve its claims, disputes, or matters in controversy or question in the same forum and in the same proceeding which has jurisdiction of the claims, disputes, or matters of controversy or question involving Owner, Architect, or other third parties.

(b) At Contractor's sole election, this agreement to arbitrate shall not apply and cannot be enforced as to any claim, dispute, or other matter in controversy or in question between Contractor and Subcontractor which Contractor chooses to have decided by a court of competent jurisdiction. Unless Contractor elects to proceed in another forum, Subcontractor consents to jurisdiction and venue in the Circuit Court of Jefferson County, Alabama or the U. S. District Court for the Northern District of Alabama.

If a claim, dispute, or other matter in controversy or question between Contractor and Subcontractor is to be decided by arbitration, Subcontractor agrees to join and consolidate its claims and defenses in any arbitration involving Contractor and any other party with respect to the subject Project. Such joinder and consolidation shall occur only if and to the extent requested in writing by Contractor; otherwise, such joinder and consolidation shall not be permitted. The locale for any arbitration involving Subcontractor and Contractor shall be Birmingham, Alabama, unless Contractor agrees to designate another locale to facilitate joinder of parties, consolidation of claims, or other interests of Contractor. Any locale designated by Contractor shall be binding. Contractor and Subcontractor intend and agree that the foregoing arbitration provisions are not separate from the remainder of the Subcontract and these arbitration provisions are supported by the consideration and mutuality of the Subcontract as a whole.

Should Contractor through arbitration, litigation, or other means seek enforcement of any of the provisions hereof or seek to protect its interests in any matter arising under this Subcontract, or seek to collect damages for the breach of this Subcontract, or seek to prosecute or defend any suit resulting from this Subcontract, or seek to recover on the performance or payment bond given by Subcontractor under this Subcontract, Subcontractor and its surety, jointly and severally, agree to pay Contractor all costs, expenses, and attorneys' fees and expenses incurred in the investigation, preparation, and trial or hearing of such matters and otherwise reasonably related thereto.

If Contractor and Subcontractor arbitrate or litigate a monetary claim, not otherwise prohibited by this Subcontract, the party found liable in such proceedings will pay the other party's reasonable attorneys' fees and expenses (but no contingent fees). If less than the full amount of such monetary claim is awarded, the claimant shall recover reasonable attorneys' fees and expenses (excluding contingent fees) equal to the proportion of the amount awarded to the amount claimed, and the claimant shall pay the other parties reasonable attorneys' fees (excluding contingent fees) equal to the proportion of the amount denied to the amount claimed.

No claim or dispute shall interfere with the progress of the Work, and Subcontractor shall proceed diligently with performance of this Subcontract, notwithstanding the existence of any claim, dispute, or other matter in controversy or question relating to this Subcontract or the Subcontract Work.

SECTION 20 – OTHER:

All proposals, negotiations, and representations with respect to this Subcontract, whether oral or written, are hereby superseded and merged into this Subcontract. This Subcontract cannot be changed, modified, altered, suspended, or terminated, except in writing signed by an authorized representative of Contractor. No delay, waiver, forbearance, or failure by Contractor to exercise rights or remedies under this Subcontract or to insist upon strict compliance by Subcontractor shall relieve Subcontractor from strict compliance with all terms and conditions of this Subcontract nor shall waive, restrict, or adversely affect any of Contractor's rights and remedies as to any subsequent or continuing failure of Subcontractor to comply strictly with all terms and conditions of this Subcontract. The invalidity or unenforceability of any term or condition of this Subcontract shall not invalidate, render unenforceable, or adversely affect the remaining terms and conditions. The laws of the State in which the Project is located shall govern this Subcontract. Subcontractor shall be liable for all damages, costs, and expenses, including attorneys' fees and expenses incurred by Contractor in enforcing the terms and conditions of this Subcontract. This Subcontract shall be binding upon the successors in interest of the parties hereto, but otherwise nothing in this Subcontract is intended nor shall be construed to give rights or to confer benefits to third parties.

These Terms and Conditions are an integral part of the Subcontract between Contractor and Subcontractor. Subcontractor shall not start any part of the Subcontract Work until Subcontractor has delivered to Contractor's authorized representative two (2) executed counterparts of this Subcontract, together with all other required documentation (specifically including, but not limited to, insurance certificates). However, Subcontractor's commencement of performance of any Subcontract responsibilities (including, but not limited to, preparation of submittals), whether at the Project site or elsewhere, shall constitute Subcontractor's agreement to all Terms and Conditions of this Subcontract without modification or limitation, and Subcontractor's acceptance of all conditions at the Project site.

As used in this Subcontract, the "Subcontract Work" shall mean the full extent of Subcontractor's performance requirements, agreements, duties, responsibilities, and obligations under this Subcontract. The Subcontract Work as generally described above shall be performed wherever required, whether on or off the Project site. References to specifications or drawings included in the preceding statement of Subcontract Work are applicable but not necessarily all inclusive. The Subcontract Work includes everything specifically set forth in this Subcontract and covered by parts of the Prime Contract applicable thereto, and the Subcontract Work further includes everything reasonably necessary or customary for the proper execution, functioning, connection, and completion of all Work referred to by this Subcontract. The Subcontract Price includes performance of all Subcontract Work for the Project in strict accordance with both these Terms and Conditions and with any other documents referenced therein, all of which are incorporated herein by reference and are made an integral part of this Subcontract.

Only Contractor's authorized representative may grant approvals, authorize written changes, receive notices, or make binding commitments on behalf of Contractor. No change in Contractor's authorized representative will be effective unless and until made in writing and signed by a corporate officer of Contractor.

Contractor is a federal contractor. Vendor therefore acknowledges and affirms it will be responsible for compliance with the provisions required of a federal contractor/subcontractor. Such provisions may include but not be limited to: Executive Order 11246 (*See Exhibit F-EEOC Policy*), Section 503 of the Rehabilitation Act of 1973, as amended, Vietnam Era Veteran's Readjustment Act of 1974, as amended, Employer Information Report, Written Affirmative Action Programs for Service and Supply Contractors or 16 Affirmative Action Steps for Construction Contractors, Jobs for Veterans Act, and Executive Order 13496.

The Parties hereto have executed this Subcontract as of the day and year first above written.

DUNN BUILDING COMPANY, LLC

(Contractor)

By _____

Name _____

Title _____

SUBCONTRACTOR

(Subcontractor)

By _____

Name _____

Title _____

Exhibits to this Subcontract are as follows:

- Addendum A – Design-Build Addendum (attach to DB Subcontract only)**
- Exhibit A – Subcontract Work**
- Exhibit B – Schedule of Contract Drawings and Specifications**
- Exhibit C.1 – Insurance Requirements**
- Exhibit C.2 – Sample Insurance Certificate**
- Exhibit D – Application for Payment**
- Exhibit E – Affidavit of Final Payment, Waiver...**
- Exhibit F – EEOC Policy**
- Exhibit G – Instructions for Tax Exemption (attach only if it applies to project or sub)**
- Exhibit H – Payment & Performance Bond (attach only if applicable to sub)**
- Exhibit I – Any other project specific exhibit**

EXHIBIT A

SUBCONTRACT WORK

Subcontractor shall furnish all labor, materials, tools, equipment, facilities, supervision, management, financing, services, shop drawings and other submittals, testing, transportation, hoisting, freight, clean-up and removal of trash, scheduling information, quality control, insurance, and every other thing of whatever nature necessary to perform fully in a first-class workmanlike manner and in every respect complete the Subcontract Work generally described as follows:

Plumbing Systems, in strict accordance with contract drawings identified in Exhibit B, specifications including but not limited to sections _____ and _____, Addendum _____ No. __ dated _____, Owner's design criteria dated _____, and Contractor's design criteria dated _____, including but not limited to the following:

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Mark sections "N/A" above if documents do not exist, taking special note for design criteria on design-build subcontracts.

Delete the following if this is not a Fire Protection subcontract:

Subcontractor's Fire Protection/Sprinkler Drawings shall be prepared under the supervision of and stamped by a Professional Engineer licensed in the State of Alabama.

Field observations shall be performed by same licensed Engineer.

Subcontract Work shall be completed in strict accordance with the Owner's Architect/Engineer stamped fire protection criteria drawings (aka contract drawings).

The following cost breakdown is to be incorporated into Exhibit D-Application for Payment Continuation Sheet:

Item	Phase	Description	Quantity	UM	Unit Cost	Amount

Special Terms:

Exclusions:

Supplemental Information: