



**Clemens
Construction
Company, Inc.**

*The Drexel Building
1435 Walnut Street
Philadelphia, PA 19102*

phone 215.567.5757
fax 215.567.5670

Please complete the following information so that once you have reviewed and completed the attached Master Subcontract Agreement we can add your information to our Subcontractor directory:

Company Name: _____

Address: _____

Phone No.: _____

Fax No.: _____

Primary Contact: _____

E-mail Address: _____

Cell Phone No.: _____

Mail Master Subcontract Agreement To:

**Clemens Construction Co., Inc.
ATTN.: Ms. Antania Dorta
1435 Walnut Street
2nd floor
Philadelphia, PA 19102**



**Clemens
Construction
Company, Inc.**

*The Droxe I Building
1435 Walnut Street
Philadelphia, PA
19102*

*phone 215 567 5757
fax 215 567 5670*

Prospective Subcontractor

Re: Master Subcontract Terms and Conditions

Sir/Madam,

Attached please find the Clemens Construction Company "Master Subcontract Terms and Conditions". Execution of this contract is mandatory for all contractors performing work for Clemens Construction Company.

Once executed, you will be listed as an approved subcontractor and will be issued a "Subcontract Work Order" at the beginning of each project. The "Subcontract Work Order" will contain the price for that specific piece of work, as well as scope and schedule information. All "Subcontract Work Orders" will be governed by the terms and conditions previously agreed upon in the "Master".

Please be aware that you will not be allowed to commence work, and will not be issued any payments until we have received an original copy of your executed "Master".

Receipt of an insurance certificate as specified in Section 18 of the "Master" is also a requirement before work and payments can commence.

Please return the executed contract to me within (7) calendar days. If you should have any questions please do not hesitate to call.

Thank you.
Antania Dorta
Accounting

CLEMENS CONSTRUCTION COMPANY, INC.

MASTER SUBCONTRACT TERMS AND CONDITIONS

Contractor: Clemens Construction Company, Inc.

Subcontractor:

Date:

Intending to be legally bound, Clemens and Subcontractor hereby agree as follows:

1. **Master Terms and Conditions.** These Master Subcontract Terms and Conditions shall be applicable to and govern all labor, materials and work provided by Subcontractor under Work Orders issued by Clemens to Subcontractor and accepted by Subcontractor. Capitalized terms used in these Master Subcontract Terms and Conditions without definition shall have the respective meanings given to them in the applicable Work Order.
2. **Subcontract Documents.** For each Project, the "Subcontract Documents" and "Subcontract" shall consist of: (a) the applicable Work Order, (b) these Master Subcontract Terms and Conditions, (c) the contract (the "Prime Contract") between the Owner and Clemens for the Project, including drawings, specifications, addenda and other documents forming a part thereof, and (d) any other special terms and conditions or other documents referred to in or attached to the applicable Work Order.
3. **Owner; Architect.** As used in these Master Subcontract Terms and Conditions: (a) the term "Owner" shall mean the party or parties with whom Clemens has contracted under the Prime Contract for the Project, and (b) the term "Architect" shall mean the party or parties identified as the Project architect or design professional in the Prime Contract for the Project.
4. **Subcontractor's Responsibilities.** To the extent that provisions of the Prime Contract apply to the Work of Subcontractor, Subcontractor shall assume towards Clemens all obligations and responsibilities which Clemens, under the Prime Contract, assumes toward the Owner. Clemens shall have the benefit of all rights, remedies and redress against Subcontractor which the Owner, under the Prime Contract, has against Clemens. Upon Subcontractor's request, Clemens shall promptly make a copy of the Prime Contract available for review by Subcontractor.
5. **The Work.** Subcontractor shall furnish all labor, materials, supplies, equipment, tools, permits, fees and licenses required for the prompt and efficient performance and completion of the scope of work identified on the Work Order, all necessary attendant and ancillary work and all work usually considered within the scope of its activities (the "Work").

6. **Site Investigation.** Subcontractor acknowledges and agrees that it has taken all steps necessary to ascertain the nature and location of the Work and the Project site, and that it has investigated and satisfied itself as to the general and local conditions that may affect the Work or its cost.
7. **Scheduling.** Time being of the essence hereunder, Subcontractor shall begin, prosecute and complete the Work at the times and in the sequence directed by Clemens and in accordance with any schedules issued by Clemens or the Owner from time to time during the Project. If Subcontractor shall at any time fail to meet, or fall behind, the then current schedule required by Clemens or the Owner, or if in Clemens' sole opinion, Subcontractor is delaying the progress of the Project, then, at Clemens' request, Subcontractor shall, at its own cost, perform such overtime work or otherwise expedite its performance as may be necessary to keep abreast with the general progress of the Project or meet the requirements of the applicable Project schedules, at no cost to Clemens or the Owner.
8. **Payments.** By executing a Work Order, Subcontractor acknowledges and agrees that, prior to executing the Work Order, it has received a copy of the payment provisions contained in the Prime Contract.

On or before the 25th day of each month, Subcontractor shall submit to Clemens a monthly invoice for progress payment in the actual amount of labor performed and/or material and equipment delivered and installed during the month less 10% retainage, which shall be in a form acceptable to Clemens and be supported by such information, certificates and documents as Clemens shall require. Clemens will not be obligated to make payment for stored equipment or materials. Invoices not received by the 25th day of the month may not be processed for payment until the following month.

As conditions precedent to Subcontractor's right to receive each progress payment or final payment is conditioned on: (a) Subcontractor's completion of the Work for which the payment is requested; (b) Subcontractor's submission of an invoice in a form acceptable to Clemens; (c) if required by Clemens, a partial release and waiver of liens, or in the case of final payment a final release and waiver of liens, in a form acceptable to Clemens; (d) Subcontractor shall have strictly complied with every term and condition of the Subcontract; and (e) Subcontractor's submission of such other documentation as Clemens may reasonably require.

Clemens may withhold or deduct from any payment due Subcontractor such amounts as Clemens, in its reasonable discretion, deems appropriate, including, without limitation, on account of: (a) Subcontractor's Work that is deemed defective, deficient, incomplete or otherwise not strictly complying with the Subcontract Documents by the Owner, Architect or Clemens; (b) back charges under Section 21 hereof; (c) actual or potential claims for bodily injury or property damage; and/or (d) any other claim which Clemens may have against Subcontractor relating to the Project or otherwise.

Subject to the terms and conditions of this Section and the terms and conditions of the Subcontract Documents, Clemens shall make payment to Subcontractor on account of Subcontractor's monthly invoices for progress payments, less applicable retainage, within 14 days following Clemens' receipt of payment from the Owner for the Work included in Subcontractor's monthly invoice. Clemens will pay retainage to Subcontractor within 14 days following Clemens' receipt of payment for such retainage from the Owner; provided, however, that if the Owner is not withholding retainage from Clemens, Clemens will pay retainage to Subcontractor within 14 days following the satisfaction of the conditions precedent to Subcontractor's right to final payment set forth in this Section. Clemens' receipt of payment from the Owner for Subcontractor's Work shall be a condition precedent to Clemens' obligation to pay Subcontractor for the Work.

No payment made to Subcontractor shall be evidence of the satisfactory performance of the Subcontract or the Work by Subcontractor, either in whole or in part, and no payment including final payment shall be construed to be an acceptance of defective Work or improper materials, nor shall use or occupancy by the Owner constitute acceptance of the Work or any part thereof. Acceptance by Subcontractor of final payment shall constitute a complete and unconditional release of any claims or demands by Subcontractor against Clemens relative to the Work or the Project, whether known or unknown. If Clemens fails to make payment to Subcontractor in accordance with the Subcontract, interest on such unpaid balances shall accrue at the rate of 6% per year from the date due.

9. **Taxes.** The Subcontract Price includes, and Subcontractor shall pay or cause to be paid, all federal, state and local taxes and all other taxes and fees applicable to the Work or to labor or materials to be furnished under the Subcontract, including, without limitation, permit and inspection fees and sales, use and personal property taxes. Subcontractor shall also pay or cause to be paid for persons employed by Subcontractor in connection with the Work all contributions, payments, taxes and deductions for social security, old age retirement benefits, unemployment insurance and annuities, pension or welfare fund payments required by any labor union or by any governmental body, and all withholding taxes measured by or related to wages, salaries or other compensation paid to such persons.
10. **Changes in the Work.** Clemens, without invalidating the Subcontract, and without notice to any surety, may order extra work or make changes by altering, adding to or deducting from the Work or accelerating the Work ("Change Order Work"). All Change Order Work shall be executed under the terms and conditions of the Subcontract. Subcontractor shall not proceed with any Change Order Work except upon execution by Clemens of a written Change Order.

Any Change Order Work, or any other work which Subcontractor claims is beyond the original scope of the Work of the Subcontract, performed by Subcontractor without a written Change Order shall be considered as having been performed as part of the original scope of the Work of the Subcontract, without additional charge to Clemens or the Owner.

Subject to the foregoing, the Subcontract Price shall be adjusted on account of such Change Order Work as may be agreed upon by Clemens and Subcontractor prior to the commencement of the Change Order Work. If Clemens and Subcontractor are unable to reach agreement on the adjustment to the Subcontract Price, Subcontractor shall continue to perform the Change Order Work without delay, if so directed by Clemens, and the Subcontract Price shall be adjusted by an amount equal to the actual, reasonable cost to the Subcontractor of performing the Change Order Work, as determined upon completion of the Project by the dispute resolution procedure set forth in Section 23 hereof, and pending such determination, Subcontractor shall not include such Change Order Work in its monthly invoices for progress payments.

11. Manner of Performance of the Work.

Clean Up. Subcontractor shall at all times keep the Project site free from accumulation of waste material and rubbish resulting from its operations, and on a daily basis and upon completion of the Work, Subcontractor shall center pile all rubbish and debris resulting from the performance of the Work.

Layout; Field Measurements. Subcontractor shall be responsible for all laying out and location of the Work. Prior to commencing the Work, and as necessary during the performance of the Work, Subcontractor shall verify field measurements and the previous work of other trades to determine the suitability of the same for the acceptance of Subcontractor's Work. Subcontractor's failure to immediately notify Clemens of discrepancies shall constitute a waiver of claims relating to such discrepancies.

Compliance With Laws. Subcontractor shall observe, comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the performance of the Work and shall secure and pay for all permits, governmental fees, licenses and inspections which are legally required at any time during the performance of the Work.

Coordination and Protection of Work. Subcontractor shall cooperate with and coordinate its Work with the work of Clemens and the other subcontractors, vendors and suppliers on the Project. As requested by Clemens, Subcontractor shall participate in the preparation of coordinated drawings, specifically noting and advising Clemens of potential conflicts between Subcontractor's Work and the work of Clemens and the other subcontractors, vendors and suppliers on the Project. Subcontractor shall take all necessary precautions to properly protect the work of others from damage caused by Subcontractor's operations, and shall be solely responsible for the repair of any such damage. Subcontractor shall furnish continuous and effective protection at all times for its Work in place and all materials stored for use under the Subcontract, and Subcontractor shall be solely liable for all loss and/or damage of any kind to such Work or materials at any time prior to final completion and the Owner's final acceptance thereof.

Submittals. Subcontractor shall prepare and submit all submittals, including, without limitation, shop drawings, product data and samples, as required by Clemens, the Architect and/or the Subcontract Documents. Approval of submittals will not relieve Subcontractor of its obligation to perform the Work in strict accordance with the requirements of the Subcontract Documents and the Subcontract.

Safety. Subcontractor shall take all necessary safety precautions with respect to the performance of the Work, shall comply with safety measures initiated by the Owner or Clemens and shall comply with all applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons or property, including, without limitation, O.S.H.A. rules and regulations in effect at the time the Work is performed. Subcontractor shall report any injury to an employee or agent of Subcontractor occurring at the Project site to Clemens immediately and in no event later than the end of the shift during which the injury occurred.

- 12. Correction of Work.** Subcontractor shall within 24 hours following notification, diligently proceed to correct all Work rejected by Clemens, the Owner or the Architect as deficient, defective, improper or otherwise failing to conform to the requirements of the Subcontract and/or the Subcontract Documents, whether observed before or after substantial completion and whether or not fabricated, installed or completed. Subcontractor shall bear all costs of correcting such rejected Work, including costs and expenses paid or payable by Clemens. Subcontractor shall also be responsible for the repair of the work of others damaged by or during the correction of Subcontractor's rejected Work. The correction of all non-conforming or defective work shall be completed by Subcontractor within 10 days following notification.
- 13. Labor.** Subcontractor and its lower-tier sub-subcontractors shall not employ anyone in the Work whose employment may be objected to by Clemens or the Owner, and shall not employ labor, means, materials or equipment which may cause strikes, work stoppages or any disturbances by labor employed by Subcontractor, Clemens, other contractors or subcontractors, or in connection with Subcontractor's Work or the Project or the location thereof. Subcontractor agrees to become signatory to and be bound by any project labor agreement entered into by Clemens for the Project. Subcontractor agrees that all disputes as to jurisdiction of trades shall be adjusted in accordance with any plan for the settlement of jurisdictional disputes which may be in effect either nationally or in the locality in which the Work is being performed.
- 14. Warranty and Guarantee of Work.** Subcontractor warrants that all materials and equipment furnished and/or provided under the Subcontract will be new unless otherwise specified in the Subcontract Documents, and that the Work will be of excellent quality, free from faults and defects and in full conformance with the requirements of the Subcontract Documents. This warranty is not limited by the Subcontractor's obligation to remedy defects set forth below and in Section 12 above and shall survive any termination of the Subcontract. Nothing contained herein shall be deemed to exclude or modify warranties, express or

implied, provided by law, or any extended period of warranty provided by any third party. In addition to, and not in limitation of, the warranty set forth above, Subcontractor shall, at its own expense, promptly remedy any defect in workmanship, equipment or materials provided or furnished under the Subcontract, provided written notice of such defect is received by Subcontractor within one (1) year of Subcontractor's acceptance of final payment hereunder, or for such longer period as may be required by the Subcontract Documents and/or Prime Contract.

15. **Waiver of Liens.** To the fullest extent permitted by law, subcontractor, for itself and its subcontractors, vendors, material suppliers and all other persons acting for, through, or under it, agrees that they shall file or maintain no mechanics' liens or claims against the Project, or any buildings or lots of ground forming any part thereof, for or on account of any work or labor done or materials furnished by them or any of them under the Subcontract or any alteration, supplement or addition thereto or otherwise.
16. **Delays.** If Subcontractor in any way causes delay in the progress of the Work or Clemens' work or the Project so as to cause any damage to Clemens or to cause any damages for which Clemens shall become liable, including, without limitation, liquidated damages for delay or lost profits, Subcontractor shall be liable to Clemens therefor. If Subcontractor is delayed in the prosecution or completion of the Work by the intentional act, neglect or default of the Owner, Clemens or any other party, or by any damage caused by fire or other peril for which Subcontractor is not responsible, or by war or natural disaster, then Subcontractor shall submit a claim therefor in writing to Clemens within 72 hours of the commencement of the cause of such delay. If Subcontractor submits such a claim, and if Clemens receives from the Owner an extension of the time for the completion of the Work on account of such delay, then the time for the completion of the Work shall be so extended. Regardless of the cause, nature or duration of a delay, Subcontractor shall not be entitled to an extension of the time for completion of the Work unless Subcontractor submits a claim for delay and the Owner grants an extension of time, as set forth above. Such an extension of time shall be Subcontractor's sole and exclusive remedy for such delay, and Subcontractor shall not be entitled to monetary compensation or damages of any kind as the result of any delay regardless of the cause, nature or duration thereof.
17. **Indemnification.** To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless the Owner, the Architect and Clemens, the agents and employees of each of them, and each person or entity whom Clemens is required to indemnify under the Prime Contract, from and against the full and entire amount of all claims, damages, losses and expenses, including, without limitation, attorneys' fees, arising out of or resulting from the performance of the Work caused in whole or in part by any act or omission of Subcontractor, its subcontractors, vendors, suppliers, or the agents or employees of any of them, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not, or the extent to which, such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of

contribution or indemnity which would otherwise exist as to any party or person described in this Section. In any and all claims against a party indemnified under this Section by an employee of Subcontractor, its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations of Subcontractor under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

- 18. Insurance; Bonds.** At all times during the performance of the Work, and continuing for a period of two (2) years following the Owner's final acceptance of the Project, Subcontractor shall procure and maintain, at its sole cost and expense, the following insurance: commercial general liability insurance, including, without limitation, bodily injury, property damage, personal and advertising injury, premises operations (with "XCU" exclusions removed), elevators, independent contractors, products, completed operations and contractual liability coverages; commercial automobile liability and property damage insurance, including owned, leased, hired and non-owned vehicles coverages; workers' or workmen's compensation and employer's liability insurance; "all risk" installation floater coverage; and such other coverages, as may be required by the Subcontract Documents, the Prime Contract or applicable laws. The minimum amounts of the insurance coverage to be so procured and maintained by Subcontractor shall be the greatest of the amounts required by law, the amounts required by the Subcontract Documents, the Prime Contract or the following: commercial general liability insurance - \$2,000,000 each occurrence, per project, \$2,000,000 general aggregate; comprehensive automobile liability - \$2,000,000 bodily injury and property damage combined single limit; workmen's compensation - statutory limits; employer's liability - \$500,000 each employee, each accident and general policy limit; and installation floater - full amount of Subcontract Price with no greater than \$2,000 deductible. The policy shall be endorsed to have the General Aggregate applied on a per project basis.

Subcontractor shall cause the following to be named as "additional insureds" on all policies of liability insurance (except workers' or workmen's compensation): Clemens, the Owner, the Architect, such parties as may be required by the Subcontract Documents, the Prime Contract and such parties as Clemens may from time to time require. All coverages shall be written on an occurrence basis. All of Subcontractor's liability coverages shall be deemed primary to any applicable insurance carried by Clemens or the Owner, which insurance shall be deemed secondary or excess to Subcontractor's insurance. Each policy of insurance required hereunder shall include an endorsement stating that the insurer shall provide 30 days prior written notice to Clemens and the Owner before cancellation, non-renewal or material amendment of such insurance. Within 5 days of execution of the Subcontract, or prior to commencing its Work, whichever is earlier, Subcontractor shall provide Clemens with Certificates of Insurance evidencing the insurance coverages required by the Subcontract. Subcontractor shall provide replacement Certificates of Insurance to Clemens prior to the expiration of any policy on its most recently submitted certificate of insurance.

Nothing in the Subcontract shall require Clemens to obtain or participate in any builder's risk

or property insurance program for Subcontractor's benefit. Subcontractor waives all rights against Clemens and its subcontractors, vendors, suppliers, agents and employees, and against the Architect and Owner and their respective consultants, and separate contractors, if any, for damages caused by fire or other perils. Subcontractor shall require of its subcontractors, vendors, suppliers, agents and employees by appropriate agreements, written where legally required for validity, similar waivers from each in favor of all other parties enumerated in this Section.

If requested by Clemens or the Owner at any time during performance of the Work, Subcontractor shall furnish a Performance Bond and a Labor and Material Payment Bond each acceptable to Clemens. If such bonds are not required by the Subcontract Documents or the Prime Contract, Clemens shall reimburse Subcontractor for the reasonable cost of such bonds.

- 19. Equal Employment Opportunity.** In connection with the performance of the Subcontract, Subcontractor agrees to comply with The Civil Rights Acts of 1964 and 1991, The Americans with Disabilities Act of 1990, Executive Order 11246 of September 24, 1965 (including all amendments, updates, and modifications to such Executive Order), relevant orders of the Secretary of Labor (including the regulations set forth in 41 C.F.R. 60 and subparts thereof relating to employment of minorities, females, disabled workers, and disabled and Vietnam era veterans), and applicable state and local requirements, ordinances and laws regarding affirmative action and equal employment opportunities. Subcontractor further agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, handicap or disabled veterans or veterans of the Vietnam era.
- 20. Default.** If Subcontractor at any time should: (a) refuse or neglect to supply sufficient skilled workers or materials of the proper quality and quantity; (b) fail in any respect to prosecute the Work with promptness and diligence; (c) cause by any action or omission the stoppage or delay of or interference with the work of Clemens, or any other contractor or subcontractor on the Project; (d) fail to make prompt payment for all labor, materials, equipment, or supplies furnished by or through Subcontractor; (e) fail to execute the Work in strict conformance with the Subcontract Documents; (f) fail in the strict performance of any of the terms or conditions of the Subcontract Documents; (g) in the sole judgment of Clemens be unable to complete the Work within the time required for completion of the Work or be unable to complete the Work for the remaining balance of the Subcontract Price; (h) fail to comply with or meet the requirements of the then current Project schedule; or (i) become the subject of a case under the United States Bankruptcy Code or become bankrupt or insolvent or go into liquidation either voluntarily or under an order of a court of competent jurisdiction or make a general assignment for the benefit of creditors or otherwise acknowledge insolvency, then Subcontractor shall be in default under the Subcontract, and Clemens shall have the right and remedies set forth in Section 21 hereof and such other rights and remedies available to it at law or in equity.

- 21. Remedies for Default.** Upon Subcontractor's default under the Subcontract, Clemens shall have the right upon 3 days prior notice to Subcontractor, to provide whatever labor, equipment or materials Clemens deems necessary for the completion of Subcontractor's Work, or any part thereof, which Subcontractor has failed to complete or perform, and charge the cost thereof to the Subcontractor, who shall be liable for the payment of same including reasonable overhead, a 15% markup, and attorneys' fees, or to deduct the cost thereof from any monies then due or thereafter to become due to Subcontractor. The notice, once given, shall continue to be in effect until the Work which is the subject of the notice has been fully completed, even though Subcontractor has acted under the notice but has failed to continue to do so on an uninterrupted and timely basis with sufficient labor, materials and equipment until the complete performance of the Work.

Clemens shall also have the right immediately upon the expiration of said notice period, without further notice to Subcontractor, to terminate the Subcontract and/or to take possession (and for this purpose Subcontractor does hereby assign title thereto) of the materials, tools and equipment at the Project site, and cause the entire remaining Work to be finished and the materials therefor to be furnished by another subcontractor, or as it deems fit; and Subcontractor shall not be entitled to any further payment until all the Work specified in the Subcontract shall be finished, at which time, if the unpaid balance of the amount to be paid under the Subcontract shall exceed the expense incurred by the Owner and/or Clemens in finishing the Work, including reasonable overhead, a 15% markup, and attorneys' fees, such excess shall be paid to Subcontractor; if such expense shall exceed such unpaid balance, Subcontractor shall pay the difference to Clemens on demand. Whether or not Subcontractor's right to proceed with the Work is terminated, Subcontractor shall be liable for any costs and damages to Clemens resulting from such default. In addition to the foregoing, Subcontractor shall be liable to Clemens for any liquidated damages that are assessed against and collected from Clemens that are directly or indirectly attributable to Subcontractor's default or failure or neglect to carry out the Work in strict accordance with the Subcontract or failure to perform a provision of the Subcontract. All of the remedies available to Clemens under the Subcontract, or at law or in equity, shall be cumulative and the exercise of one remedy shall not preclude the exercise of the same or any other remedy.

If the Subcontract is wrongfully terminated by Clemens, Subcontractor agrees that such wrongful termination will be deemed to be a termination for convenience under Section 22 hereof, and Subcontractor shall only be entitled to receive those sums which become due Subcontractor upon a termination for convenience under the Subcontract. In no event shall Subcontractor be entitled to recover anticipated profit upon unperformed Work.

- 22. Termination for Convenience.** Clemens may, at its option, terminate the Subcontract at any time and without cause. In the event that Clemens so elects to terminate the Subcontract, Subcontractor shall be entitled to compensation, subject to the requirements set forth in Section 8 hereof, for all Work actually performed in full settlement of all claims Subcontractor may have against Clemens or the Owner, and Subcontractor hereby waives any and all claims for special, indirect, consequential or other damages resulting from such a

termination, including, without limitation, lost profits.

- 23. Dispute Resolution.** All disputes, claims or controversies arising in connection with the Subcontract, the Work or the Project shall be resolved through arbitration, unless the Prime Contract does not permit Clemens to resolve disputes with the Owner through arbitration, in which case Clemens may elect to resolve disputes with the Subcontractor through litigation. In the event of arbitration, the arbitration shall be conducted in accordance with the construction industry rules then in effect of the American Arbitration Association, and judgment upon the award rendered in arbitration may be entered in any court having jurisdiction. In no event shall Subcontractor delay, disrupt or stop the Work as a result of a dispute, claim or controversy relating to the Subcontract, the Work or the Project.

24. Miscellaneous Provisions.

All of the Subcontract Documents shall be considered complimentary. In the event that such an interpretation is not possible, the order of precedence with respect to such provisions shall be as follows: (1) written modifications, including Change Orders, to the Subcontract Documents; (2) the applicable Work Order and any exhibits thereto, unless another Subcontract Document, including the Prime Contract, imposes a higher standard or greater requirement on Subcontractor, in which case such Subcontract Documents, and (3) the other Subcontract Documents, unless (2) applies.

The partial or complete invalidity of any one or more of the provisions of the Subcontract shall not affect the validity or continuing force and effect of any other provisions of the Subcontract. The failure of either party to insist, in any one or more instances, upon the strict performance of any of the terms, conditions or provisions of the Subcontract shall not constitute or be construed as a waiver or relinquishment of term, condition or provision with respect to further or future performance.

Subcontractor shall not sell, let, assign or transfer the Subcontract, or any part of the Work, or any balances or sums of money due and payable hereunder, without the written consent of Clemens.

No action shall be maintained against Clemens upon any claim arising out of or based upon the Subcontract, the Work or the Project, unless commenced within 1 year after the last Work was performed or material was furnished under the Subcontract.

All notices required to be given hereunder shall be in writing and delivered by overnight delivery, hand delivery, telecopier, or by certified mail, return receipt requested, addressed to the recipient at its address appearing on the first page of the Subcontract. All notices shall be effective upon receipt.

The Subcontract shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

Subcontractor shall be an independent contractor in the performance of the Work, and neither Subcontractor nor anyone employed by Subcontractor shall be deemed the agent, representative, employee, servant or partner of Clemens. Nothing in the Subcontract shall be construed to grant or create any third party beneficiary rights at law or in equity.

The Subcontract supersedes absolutely all prior agreements among the parties relative to the subject matter hereof and contains the entire understanding among the parties relative thereto.

If the Project is located in Pennsylvania, Subcontractor acknowledges and agrees that it waives all of its rights under the Pennsylvania Contractor and Subcontractor Payment Act, 73 P.S. ' 501 et seq., including, without limitation, any right to interest, penalties and attorneys' fees provided by the Act.

The Subcontract shall not be amended except by written agreement of Clemens and Subcontractor.

The Subcontract shall be governed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflict of laws provisions thereof.

25. New Jersey Provisions. The following provisions shall apply only to Projects which are located in the State of New Jersey:

The waiver of lien rights set forth in Section 15 of these Master Subcontract Terms and Conditions is not effective, and Subcontractor shall retain its lien rights under the New Jersey Construction Lien Law, 2A44A-1.

Contractor:

Subcontractor:

Clemens Construction Company, Inc.

By: _____

By: _____

Name/Title: _____

Name/Title: _____

Date: _____

Date: _____