

SUBCONTRACT

3415 Independence Drive • Birmingham, AL 35209 • (205) 803-5226 • FAX (205) 803-5230

SUBCONTRACTOR:

Contact:
Telephone:
Fax:
Fed ID#:
State License #:

DATE:

SHIP:

TERMS:

CBC PROJECT NO.:

CBC SUBCONTRACT NO.:

SHIP TO:

CAPSTONE BUILDING CORP.

COST CODE NO. :

DRAFT COPY

This Subcontract is made and entered into as of the date above by and between Capstone Building Corp. (the "Contractor") and the Subcontractor (as referenced above). For consideration hereinafter set forth, the Contractor and Subcontractor agree and bind themselves as follows:

SECTION 1. SCOPE OF WORK AND CONTRACT VALUE:

(a) In consideration for the Subcontract Price, the Subcontractor agrees and assumes the sole responsibility to furnish all labor, supervision, equipment, appliances, layout and engineering, and materials (including without limitation all scaffolding and hoisting facilities, unless specified excluded herein) and other things necessary to fully perform and in every aspect complete the following work (hereinafter, "the Work") in strict accordance with the drawings and specifications of _____ dated _____ and shall cooperate with Contractor so Contractor may fulfill obligations to the owner of the Project ("Owner").

SCOPE OF WORK

SPECIFICATION SECTION

SPECIFICALLY INCLUDES:

SPECIFICALLY EXCLUDES:

Said Work shall be for and performed at the _____ located in _____(the "Project"). The Work shall be accomplished in accordance with the terms and conditions of the contract documents (the "Contract") between the Contractor and the Owner as defined in the Contract and including all general and special terms and conditions as well as all addenda, modifications, revisions, drawings, specifications, details, and other documents listed or referred to in the Contract, including without limitation all specifications affecting the Work, delivery, storage, and scheduling requirements, sales and use tax payment or abatement requirements and damages for the delay, negligence, or non-performance. **Prior to commencement of the Work required hereunder, Subcontractor specifically acknowledges and agrees that it shall attend in person a pre-construction meeting with Contractor to discuss, among other items, the Project and the Subcontractor's Work at such time and date as scheduled by Contractor. Subcontractor further agrees to attend all progress meetings scheduled by Contractor including, without limitation, those meetings addressed in Section 4(b) of this Subcontract. Subcontractor shall be represented at all meetings by someone duly authorized to make decisions on Subcontractor's behalf.**

The Subcontractor hereby acknowledges that it has reviewed a copy of the Contract and that Subcontractor has satisfied itself as to the contents of the Contract. Said Contract is hereby incorporated by reference, and the Subcontractor agrees to be bound to the Contractor by the terms thereof insofar as they relate in any way to the Work undertaken by Subcontractor, and agrees to assume toward Contractor all the obligations and responsibilities which the Contractor, by the terms of the Contract assumes toward the Owner and Architect/Engineer. In the event of any inconsistency between the Contract and this Subcontract, this Subcontract shall govern.

(b) Subcontract Price (and breakdown if applicable):

Subtotal	
Sales Tax	
Total This Contract	

(c) Schedule of Values: Subcontractor shall divide the Subcontract Price into major Work segments, including a list of all material vouchers, sub-subcontracts, labor value, general conditions, and submit said Schedule of Values to the Contractor for approval. Thereafter, the approved Schedule of Values shall be updated on a monthly basis and submitted with Subcontractor's Application for Payment in accordance with the terms of this Subcontract.

(d) Date Payment Requests Due From Subcontractor ("Payment Request Due Date"):

(e) Project Scheduled Completion Date:

(f) Subcontractor's Commencement Date:

(g) Subcontractor's Completion Date:

(h) Maximum Required Staffing Level:

(i) Number of Reproducible Shop Drawings Required:

(j) Number of Copies of Shop Drawings and/or Product Submittal Data Required:

(k) Date Shop Drawings and/or Product Submittal Data Required:

(l) Self-Performed C.O. Overhead and Profit Allowance (%):

(m) Sub-subcontractor C.O. Overhead and Profit Allowance (%):

(n) Subcontractor agrees that the Contractor may apply a discount to invoices for early payment. The terms will be noted by the Subcontractor on the Subcontractor Application for Payment. Contractor reserves the right to accept or decline discount for early payment.

SECTION 2. GENERAL TERMS AND CONDITIONS:

(a) The Subcontractor shall be responsible for delivery, unloading, storage, moving and protection of all materials and/or equipment supplied or used in connection with the Work under this Subcontract. All deliveries, storage facilities, office trailers, and job-site parking must be coordinated and approved by the Contractor. All materials and/or equipment supplied for the Project other than under this Subcontract, but which are to be installed by Subcontractor under this Subcontract, shall be received, unloaded, distributed, stockpiled and inspected by Subcontractor upon delivery, and the Subcontractor shall notify the Contractor in writing of any and all deficiencies in such materials and/or equipment within twenty-four (24) hours of delivery; failure of Subcontractor to provide such notification to Contractor shall be considered acceptance by Subcontractor of such materials and/or equipment and Subcontractor shall be responsible for all costs associated with replacement materials and/or equipment and/or repairs arising out of or related to any such materials and/or equipment. No storage space will be available inside a building. Protection of stored materials is the responsibility of Subcontractor.

(b) By 8:30 AM each work day, Subcontractor shall submit to the Contractor a **Daily Diary Report** for incorporation into the Contractor's Daily Report describing the work accomplished the previous day as required by the Contractor.

(c) The Subcontractor shall take necessary precautions and be responsible for any **damage to the work, property, materials, or equipment** of the Owner, the Contractor, or others, caused by the Subcontractor's operations. Should the Subcontractor cause damage to the work, property, materials or equipment of the Owner, the Contractor or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor. If the Subcontractor fails or refuses to repair or replace any work, property, materials, or equipment damaged by the Subcontractor, the

Contractor is authorized to make such repair or replacement and charge the Subcontractor or withhold any amounts due or to become due to the Subcontractor.

(d) The Subcontractor shall at all times keep the work areas and the adjoining premises, driveways, and streets clean of dirt, dust, debris and rubbish caused by Subcontractor's operations and will be responsible for keeping its part of the job clean and in an orderly fashion subject to the approval of the Contractor, the Architect, and the Owner. The Subcontractor is responsible for **daily cleanup** and disposal of its debris off the jobsite. Should it become necessary for the Contractor to perform cleanup work for the Subcontractor, such expense will be deducted from the Subcontract Price.

(e) SAFETY - Safety on the Project is of primary importance. Subcontractor shall comply with all local, state, and federal safety regulations, ordinances, statutes, and laws. Failure to comply with all requirements shall be considered a breach of this Subcontract. Subcontractor assumes exclusive liability and covenants and agrees to defend, indemnify and hold harmless the Owner and Contractor as to any penalties or fines assessed against the Owner or Contractor for violations of the Occupational Safety and Health Act of 1970, and for violations of any applicable statute, law or ordinance which are determined by a governmental agency to have been committed by the Subcontractor or its employees, or anyone that the Subcontractor is responsible for and the Subcontractor agrees to pay such penalties or fines, plus related attorney's fees or other costs promptly on behalf of the Contractor or the Owner. The Contractor's Job Safety Plan shall be the minimum standards for safety on this project. The Subcontractor shall, before beginning work, submit to the Contractor a Safety Plan that addresses any and all conditions that are not sufficiently addressed in the Contractor's Job Safety Plan. In **all** cases, Subcontractor shall submit their **Fall Protection Plan** prior to beginning work. Subcontractor accepts complete and total responsibility for the safe conduct and performance of the Work, and the health and safety of its employees, the employees of any of its subcontractors, and any other persons who may be in or around the Work.

(f) Subcontractor agrees, upon request from Contractor but at no additional expense to Contractor, to obtain communication **radios** (e.g. Nextel or Southern Link) tuned to the frequency requested by Contractor to enable communication between Contractor and Subcontractor on the Project site.

(g) Upon notice from Contractor, Subcontractor shall immediately pay any **fine, penalty or assessment** assessed against Subcontractor, Owner or Contractor related to the materials, Work or labor supplied by Subcontractor pursuant to this Subcontract.

(h) Subcontractor warrants to the Contractor and the Owner that materials and equipment furnished and the Work performed under this Subcontract will be of good quality and new unless otherwise permitted by this Subcontract, that the Work will be of good quality, fit, safe, sufficient for the purposes intended, free from faults and defects, and that the Work will conform with the plans and specifications. Additionally, the Subcontractor agrees to execute the Work in a manner that is free from conditions that could cause or would be susceptible to mold, fungus, microbial matter, dry rot, or water intrusion and will work to keep conditions dry so as to prevent an environment where mold fungus or microbial matter could grow and to use supplies and products that are free from and do not contain mold, fungus or microbial matter and to keep products and supplies dry while being stored. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. In the event any Work, materials, or equipment is deemed defective by the Contractor or Owner, upon request from the Contractor or Owner, Subcontractor shall, at the discretion of the Contractor, either immediately repair or replace the defective materials, equipment, or Work to Contractor's and Owner's satisfaction, or pay for correction of the defective Work. The Subcontractor further agrees to warrant its Work as called for in the Contract. The warranties and guarantees set forth herein are in addition to any other warranties or guarantees provided by law or by separate agreement.

(i) The Subcontractor agrees not to **sublet or reassign** any portion of this Agreement without prior written consent of the Contractor.

SECTION 3. PAYMENT TERMS AND TERMINATION:

(a) The Contractor agrees that it will pay to the Subcontractor, in accordance with the terms of this Agreement and subject to additions and deductions as provided herein or in any Change Order issued pursuant to this Subcontract, the Subcontract Price. The Subcontract Price is firm and not subject to escalation (unless, and only to the extent, Owner pays Contractor for escalation costs associated with Subcontractor's Work). Subcontractor shall pay all sales, consumer, use and similar taxes required by law and shall secure all permits, approvals, fees, licenses, assessments, inspections, testing, and bonds necessary for the performance of the Work as a part of and not in addition to the Subcontract Price. Subcontractor shall also provide to Contractor and agrees to furnish, if and when requested, a list of all its subcontractors, suppliers, laborers, materialmen and vendors related to the Project.

(b) Subject to satisfaction of the conditions to payment in this Subcontract, all of which are conditions precedent to payment and must be satisfied, the Contractor agrees to pay the Subcontractor in accordance with periodic pay requests submitted by Subcontractor and approved by Contractor, which periodic pay requests must be in the form attached hereto as Exhibit "A" (and shall include a lien waiver from Subcontractor and its subcontractors, laborers or

materialmen.) Notwithstanding anything to the contrary that may be contained within the Subcontract, or any of the contract documents, Subcontractor specifically agrees that no payment, partial or final, shall be due or owed to the Subcontractor from Contractor or Contractor's surety unless and until, as a condition precedent, Contractor receives payment for Subcontractor's work from the Owner. Periodic pay requests submitted by Subcontractor shall be for a calendar month and shall indicate the percentage completion of Subcontractor's Work and each portion thereof in accordance with the Schedule of Values Subcontractor is required to furnish under this Subcontract. There shall be withheld from each payment made by Contractor to Subcontractor a **retainage** of _____ percent (____%) of the approved amount of such periodic pay request, said retainage to be paid to Subcontractor with its final payment. Any payment due from the Contractor to the Subcontractor may, at Contractor's option, be applied by Contractor to payment of indebtedness which may be owed by Subcontractor, its subsidiaries or affiliates, to the Owner, Contractor, a sub-subcontractor, laborer or material man.

(c) All **Subcontractor's pay requests** must be to Contractor's main office at Capstone Building Corp., 3415 Independence Drive, Birmingham, Alabama 35209, no later than the date set forth in 1(d) above in order to be included in the current month's billing. Pay requests received by the date set forth in 1(d) above will be paid within thirty (30) days subject to the other provisions of this Subcontract. Without exception, pay requests received after the date set forth in 1(d) above will be processed for payment on the following month's billing. The approved Schedule of Values (as defined in 1(c) above) shall be updated on a monthly basis and submitted with Subcontractor's Application for Payment in accordance with the terms of this Subcontract.

(d) (1) Subcontractor agrees to furnish, if and when requested by the Contractor and with each Application for Payment, affidavits in form and substance reasonably acceptable to the Contractor that all bills for materials and labor have been paid, such affidavit(s) to be supported by receipted bills, if required by the Contractor. As a condition precedent to any payment, Subcontractor must furnish, for itself and from each of its subcontractors, suppliers, and materialmen, releases and waivers (satisfactory to Contractor) of all types of liens, and of all claims, whether statutory or otherwise, against any bond on which Contractor is bound. Additionally, prior to final payment to the Subcontractor, the Subcontractor must furnish, for itself and from each of its subcontractors, suppliers, and materialmen, a complete and unconditional **release of liens** and all claims which is to be furnished to the Contractor together with any affidavits which may be required (all of which are to be satisfactory to the Contractor). The Contractor reserves the right to pay any outstanding past due obligations of the Subcontractor arising on the Project and to deduct the amount of said payments from any amounts due the Subcontractor hereunder.

(2) Subcontractor covenants and agrees to defend, indemnify, exonerate, and hold harmless the Owner, Contractor, and Contractor's surety with respect to (1) every claim or action for breach of contract or otherwise filed or presented by the Owner or other person, firm or entity arising out of, or related to any work or operation performed by, for, or on behalf of, the Subcontractor, (2) every lien notice, lien affidavit and lien suit filed or presented by any material man, laborer or subcontractor of Subcontractor, in connection with the Subcontract Work, (3) every other claim or action of any kind whatsoever, filed or presented by any material man, laborer or subcontractor of Subcontractor, in connection with the Subcontract Work, and (4) every garnishment, attachment or other levy made by a creditor of Subcontractor against the assets or funds of Subcontractor in the hands or custody of the Owner or the Contractor. It is agreed that the Subcontract Price shall be offset or reduced by the amount necessary and proper to defend, indemnify, exonerate and hold harmless the Contractor and the Owner with respect to any of the foregoing described claims, notices, affidavits, actions, garnishments, attachments and levies. This indemnity shall include all payments made by the Contractor and all reasonable expenses, attorney's fees, and other costs incurred by Contractor in connection therewith. Subcontractor agrees to give Contractor notice and furnish it copies of any claim, action or lien within three (3) days of receipt of same by Subcontractor.

(3) The Subcontractor warrants that title to all Work, material and equipment covered by any application for payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Subcontractor, whichever occurs first, free and clear of all liens, claims, security interest or other encumbrances.

(e) If the Subcontractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if the Subcontractor should fail to carry forward and complete its Work as provided in this Subcontract as rapidly as the Contractor may judge that the progress of the structure or structures will permit, or if Subcontractor becomes insolvent or fails to make prompt payment for material or labor used on the Project, or should it fail to comply with instructions of the Architect/Engineer or with applicable provisions of law, or if Subcontractor is otherwise in breach of the Subcontract, then the Contractor may, without prejudice to any other right or remedy, **terminate** the whole or any portion of this Subcontract after giving Subcontractor seven (7) days written notice of Contractor's intention to do so and may thereupon take control of the Work covered by this Subcontract and may take possession of all materials, equipments, and instruments thereon and complete the Work as the Contractor may think best, in which case the Subcontractor shall not be entitled to receive any further payments until the Work is completed. Upon such termination, Subcontractor shall (1) cause such steps to be taken as necessary to protect the Work in place,

material and equipment; (2) assign such of its purchase orders to the Contractor as Contractor may direct; (3) notify all sub subcontractors of the order to stop operations and cancel or assign such sub subcontracts to the Contractor as directed by the Contractor; (4) cooperate in every way to minimize the cost to the Contractor in stopping and securing the Work or transferring said Work and documentation to another Subcontractor if so directed by the Contractor; (5) transfer title to all work, services, uncompleted work, supplies, or any other material produced or services performed or acquired for the Work terminated as Contractor may direct; (6) transfer any plans, drawing, information and the like (completed or not) as Contractor may direct; and (7) complete performance of any Work not terminated. All costs incurred by Contractor in performing Subcontract Work, including reasonable overhead, profit and attorneys' fees, costs and expenses, shall be deducted from any monies due or to become due Subcontractor. Subcontractor shall be liable for payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount. If the unpaid balance of the Subcontract price under this Subcontract shall exceed the expense of finishing the Work, including compensation for additional managerial and administrative services and all other expenses, including attorney's fees, made necessary by the termination of this Subcontract, the excess shall be paid to the Subcontractor. This Subcontract shall also be subject to termination under the conditions provided for in the Contract between the Owner and the Contractor. The rights and remedies granted to Contractor under this section and pursuant to other provisions of this Subcontract shall be cumulative, and are not intended to be in lieu of any legal right or remedy which Contractor may have against Subcontractor for breach of this Subcontract or default hereunder. The exercise by Contractor of any of its remedies shall not release Subcontractor from its obligations under this Subcontract.

(f) Should the Contract or any part of the Contract which includes the Subcontractor's work be terminated or suspended, the Contractor shall so notify the Subcontractor in writing and upon receipt of said notice the Subcontractor shall immediately stop the Subcontractor's work. In the event of such suspension or termination, the Contractor's liability to the Subcontractor is limited to the extent, as a condition precedent, of the amount of Owner's payment to Contractor for Subcontractor's Work. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's sole expense, in the prosecution of any Subcontractor claim arising out of any suspension or termination of the Contract and to permit the Subcontractor to prosecute said claim, in the name of the Contractor, for the use and benefit of the Subcontractor.

(g) Subcontractor assumes exclusive liability for all contributions, taxes, or payments required to be made because of employees of the Subcontractor by any federal and state unemployment compensation acts, social security acts or any amendments thereto, and by all other or future Acts, State or Federal, requiring the payment of similar contributions or taxes, and for all sales tax and use tax.

(h) Any assignment of proceeds under this Subcontract will be subject to the following trust: All monies received by the Subcontractor as payment under this Subcontract will be held in trust for the purpose of paying the cost incurred in the performance of this Subcontract. All payments received will be applied first to payment of sub sub-contractors, suppliers, laborers and materialmen before using any part thereof for any other purpose.

(i) Contractor shall have the same access to Subcontractor's accounting records as does the Owner under any provision of the Contract.

SECTION 4. SCHEDULING AND TIME:

(a) The Subcontractor agrees to begin the Work as soon as it is notified by the Contractor to proceed with the Work, and Subcontractor agrees to carry forward and complete the Work as rapidly as the Contractor may judge that the progress of the Project will permit. Subcontractor shall be granted an extension of time for delays in the performance of the Work only to the extent an extension is allowed the Contractor by the Owner for performance of the Work; provided, if Subcontractor is delayed by Contractor or other subcontractors of Contractor and Subcontractor gives both the notice as required below and acceptable documentation of the claimed delay, then Subcontractor shall be entitled to an extension of time equal to the delay. Regardless of the cause therefor, the Subcontractor agrees it shall not be entitled to compensation or damages of any kind caused by or arising directly or indirectly out of or in connection with any delay, disruption, impact, inefficiency or other interference (collectively referred to herein as "delay") in the performance of the Work except to the extent that Contractor shall receive such compensation or damages, from Owner or other third party; the Contractor will forward such claims, that are made by Subcontractor in a timely manner, to the Owner and Architect/Engineer; to the extent the Owner or Architect/Engineer reject such claim(s), the Contractor will cooperate with Subcontractor, at Subcontractor's sole expense as to all costs, expenses and attorneys' fees, in further pursuit of such claim(s) if requested in writing on a timely basis by Subcontractor and Subcontractor has made arrangements satisfactory to Contractor for the payment of all costs, expenses and attorneys' fees. Subcontractor shall not be entitled to an extension of time or to compensation or damages for any delay unless a written notice of that delay is delivered to Contractor within one-half of the time period allowed by the Contract or within seven (7) calendar days of the beginning of the event causing the delay, whichever is the shorter period of time. In no event shall Contractor be liable to Subcontractor for, and Subcontractor releases Contractor from, any punitive, exemplary, consequential or indirect

damages arising out of or related to this Subcontract, including without limitation, damages for principal office expenses and for losses of financing, business, use, reputation or profit, whether arising in contract, tort or otherwise.

(b) The Subcontractor agrees to attend and participate in planning and scheduling activities, including without limitation (i) one day of data gathering, (ii) one day of "plan-a-log" for overall project schedule preparation at the beginning of the Project and one-half day every other week for near term update and commitment. The Subcontractor agrees to be prepared before said meetings in order to make said meetings productive. In the event Subcontractor is duly notified in writing to attend a meeting and misses such a meeting without written permission from Contractor, \$1,000.00 damages shall be deducted from the amount due from Contractor to Subcontractor, said amount to be withheld from any subsequent payment from Contractor to Subcontractor.

(c) Time is of the essence. The Project construction will be expedited and completed not later than the Project Scheduled Completion Date. Subcontractor's Work is scheduled to begin not later than Subcontractor's Commencement Date and to be completed not later than Subcontractor's Completion Date (as indicated in Section 1 of this Agreement). The Project Schedule, including the Near Term Schedule, shall be determined in accordance with this Subcontract and Subcontractor agrees to complete its Work in accordance with any reasonable changes in the schedule. In the event that Subcontractor fails to complete all or any part of the Work within the allotted time, Subcontractor shall be liable for any damages, including liquidated damages, suffered by Contractor under the Contract, directly or indirectly due to such failure.

(d) All required shop drawings, erection drawings, samples, test reports, and/or certificates, submittals and all other data as required will be submitted for approval as soon as possible and in ample time to secure approval and meet the scheduled delivery, installation and completion dates for the Work. Subcontractor must inform Contractor, in writing, of any deviations in the shop drawings, submittals, and the samples from the requirements of the Contract; provided, no such notice of a deviation shall relieve Subcontractor of its obligation to perform the Work in accordance with the requirements of the Contract unless specifically approved in writing by the Contractor, Owner and Architect/Engineer or any of their agents, consultants or other representatives. Contractor and Owner or Architect must approve all of Subcontractor's shop drawings and submittals prior to Subcontractor commencing its Work. Thereafter, Contractor, Owner, or Architect may reject any Work not in conformance with such shop drawings and submittals and Subcontractor shall take such action as is reasonably required by the Contractor, Owner, or Architect to make the Work conform to the plans and specifications. All required shop drawings, laboratory reports, brochures, color selections, guarantees, affidavits, test reports, certificates and other required submittal data shall be submitted to Contractor for approval in the number of reproducible copies and original copies reflected in Section 1.

SECTION 5. STAFFING, MANPOWER, AND LABOR:

(a) Subcontractor will obtain Contractor's approval of Subcontractor's project management personnel prior to assigning them to the project. Subcontractor shall not remove any of its project management personnel from the Project without first obtaining Contractor's prior written consent.

(b) The Subcontractor agrees to staff the project with up to the Maximum Required Staffing Level (at the direction of the Contractor) with the expertise, experience and skill necessary to complete the Work in accordance with the terms of this Subcontract.

(c) The Subcontractor shall not employ any workman whose employment on the building or Project is objected to by the Contractor.

(d) Subcontractor shall procure its material from such sources and employ such labor subject to such terms and conditions as will result in harmonious labor relations on the site and prevent strikes or other labor disputes by other trades. In the event of a strike or other labor dispute affecting the labor employed by the Subcontractor, upon three (3) days written notice from the Contractor, Subcontractor shall resolve the same at its own cost and expense. In the event Subcontractor fails to do so, then the Contractor may, at its option, terminate this Subcontract, or any part hereof, in accordance with Section 3(f).

(e) If applicable, Subcontractor agrees to comply with all Federal and State EEO and affirmative action obligations including, but not limited to, 41 CFR § 60-1 and 60-2 and Executive Order 11246. If the Office of Federal Contract Compliance Programs (OFCCP) determines that Subcontractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this Subcontract may be canceled, terminated, or suspended in whole or in part and Subcontractor may be declared ineligible for further government contracts, under the procedure authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against Subcontractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or otherwise provided by law.

(f) Subcontractor represents that in performing the Work of this Subcontract, it is an independent contractor and is working on Subcontractor's own behalf, under Subcontractor's own control, and is not an agent or employee of the Contractor.

(g) Immigration Laws: Subcontractor agrees that it will comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, which makes it unlawful for an employer to hire or continue to employ an alien *knowing* the alien is or has become unauthorized with respect to such employment or to fail to comply with the I-9 requirements. Subcontractor incorporates any duties that Contractor has to Owner regarding the employment of any illegal or undocumented aliens. Subcontractor will not knowingly employ or knowingly allow any of its Sub-subcontractors to employ, any illegal or undocumented aliens to perform any Work in connections with the Project. Subcontractor will retain and make available for inspection, at the jobsite, upon reasonable notice a completed I-9 Employment Eligibility Verification Form for each person that Subcontractor directly employs on the jobsite. If Subcontractor receives *actual knowledge* of the unauthorized status of one of its jobsite employees, Subcontractor will remove that employee from the jobsite and shall require each Sub-subcontractor to act in a similar fashion with respect to such Sub-subcontractor's employees. Subcontractor agrees to have a provision in its subcontracts stating that each Sub-subcontractor will have the duties and responsibilities with regard to its employees that the Subcontractor has agreed to in this paragraph.

SECTION 6. CHANGES TO THE WORK:

(a) Claims for extra work and changes in the work will only be allowed when written authorization has been given prior to execution of the work; Subcontractor waives all claims for any extra work or changes not so authorized. When such authority for extra work or changes in the Work is given without an agreed upon price, the fully documented claim must be submitted promptly upon completion of the extra work. Contractor may order changes in the Work without notice to Subcontractor's sureties consisting of additions, deletions, or modifications, such changes to be authorized by written order of the Contractor only; when so made, the Subcontract Price shall be adjusted accordingly. Where work is required to be done and the parties cannot agree as to whether such work is extra work or cannot agree as to the valuation of the addition, deletion or modification as herein provided, the performance of same shall not be delayed, but Subcontractor shall nevertheless proceed with the work upon the written order of Contractor, it being understood that the progress of the work shall not be delayed by any controversy between the parties. If the Contractor orders a change in the Work or requests the Subcontractor to review a proposal for a change in the Work, the Subcontractor agrees to review the change, or proposal for change, and within two-thirds (2/3) of the time required by the Contract or seven (7) calendar days, whichever is the shorter period of time, Subcontractor shall submit to Contractor a written proposal for the Work amply detailed and supported and conforming to the requirements of the Contract and this Subcontract. Subcontractor agrees that it waives all its rights to both price and time adjustments if it fails to submit its written proposal within the required time. Percentage overhead and profit on Change Orders shall not exceed the Self-Performed C.O. Overhead Allowance when self-performed and the Sub-subcontractor C.O. Overhead Allowance when performed by sub-subcontractors.

(b) Commencement of the Work by the Subcontractor constitutes acceptance by Subcontractor of the substrate.

SECTION 7. INSURANCE, BONDS, INDEMNITY, WAIVER OF CLAIMS AND OTHER TERMS:

(a) The Subcontractor shall, upon ten (10) days written request from Contractor obtain a **payment and performance bond** in the amount of this Subcontract in favor of Owner and Contractor from a surety acceptable to Owner and Contractor and in form and substance acceptable to Owner and Contractor.

(b) Prior to starting its Work and until final completion and acceptance, the Subcontractor shall keep and maintain at its own cost and expense **insurance** in the type and amounts specified herein the Subcontract and shall submit to the Contractor a Certificate of Insurance naming Contractor and Owner (and, if required by the Contract, the Architect/Engineer and their agents, consultants, or other representatives, and others as the case may be) as additional insureds on liability policies and as loss payees on property and casualty policies. Said certificate shall be in a form acceptable to the Contractor, evidencing the fact that the Subcontractor has obtained insurance from a licensed insurance company in the types and amount as set forth herein.

(c) Every policy of **insurance** required under this Subcontract shall provide that written notice be given to the Contractor thirty days prior to the cancellation or material alteration of said insurance policy. The Subcontractor's Certificate of Insurance shall reflect the fact that the Subcontractor's insurance policies contain such a cancellation notice to the Contractor.

(d) The Subcontractor shall defend, **indemnify and hold harmless** the Contractor, Contractor's other subcontractors, Architect/Engineer and the Owner, and all their agents and employees from any and all liability, claims, damages, lawsuits, demands, losses and expenses, including but not limited to reasonable attorney's fees and costs, arising out of or resulting from the performance of the Subcontractor's work under this Subcontract to the extent they are alleged to be caused in whole or in part by any act or omission of the Subcontractor or anyone directly or indirectly employed by Subcontractor or for anyone whose acts Subcontractor may be liable, regardless of whether it is caused in part by a party indemnified under this Subcontract. The Subcontractor's liability insurance policies shall each contain contractual insurance coverage which protects the Subcontractor, the Contractor, the Owner, and the Architect/Engineer

(and their respective agents, employees, consultants or other representatives) as to the covenants contained in this section. Any provision in this section that is or has been judicially determined to be invalid or void under the laws of the state in which this contract is to be performed shall be deemed modified to the extent necessary, or deleted if absolutely necessary so as to render the subsection valid, and so that the indemnity provision shall apply to the maximum extent permitted under said state's laws and carry out the intentions of the parties, as expressed herein, to the maximum possible extent.

(e) (1) The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, its consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance provided under the Contractor's contract with the Owner or other property insurance applicable to the Work, except such rights as they may have proceeds of such insurance held by the Owner as fiduciary. The Subcontractor shall require of Subcontractor's sub-subcontractors, agents and employees, by appropriate written agreements, similar waivers in favor of other parties enumerated herein. The insurance policies required hereby shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

(2) TYPES AND AMOUNTS OF INSURANCE REQUIRED HEREUNDER:

(a) General Liability	
1. Per Project Aggregate	<u>\$2,000,000</u>
2. Per Occurrence	<u>\$1,000,000</u>
(b) Automobile Liability	
1. Combined Single Limit	<u>\$1,000,000</u>
2. Property Damage	<u>\$1,000,000</u>
(c) Excess Liability	
1. Umbrella Form	<u>\$1,000,000</u>
(d) Worker's Compensation and Employers Liability	
1. Each accident	<u>\$500,000</u>
2. Disease - Policy Limit	<u>\$500,000</u>
3. Disease – Each Employee	<u>\$500,000</u>

(3) The Subcontractor's commercial general liability and automobile liability insurance shall be written to provide the following coverages: (1) the general liability coverage shall include the following coverages: premises/operations including blasting, collapse and underground, products liability, completed operations, independent contractors, broad-form property damage, personal injury, and contractual liability insurance coverage, the latter being as contemplated in Section 7(d) of this Subcontract, and (2) the automobile liability coverage shall include the following coverages: all owned autos, hired autos, and non-owned autos. Limits of liability under commercial general liability and automobile liability insurance coverage shall be written on a per project basis and on an occurrence basis for both bodily injury liability and property damage liability. If the Work of the Subcontractor involves anything that is subject to Pollution Exclusion(s) in any of the above policies, the Subcontractor shall purchase insurance that will insure the pollution risks and exposures in an amount and with an insurance company(ies) acceptable to Contractor. If the work of the Subcontractor involves furnishing and/or installation of any Exterior Insulation Finish System (also known as EIFS or synthetic stucco) the Subcontractor shall purchase insurance that will insure such risk and exposures in an amount and with an insurance company(ies) acceptable to Contractor. Such policies shall not exclude coverage for condominiums or other multi-family dwellings or apartments. The Contractor and the Owner (and if required by the Contract, the Architect/Engineer and their agents, consultants or other representatives, and others as the case may be) shall be named as additional insureds on the Subcontractor's policies as to all coverages (except the Workmen's Compensation coverage), including, without limitation, completed operations for this Project using ISO form CG 20 10 11 85 or its equivalent, and the Subcontractor's policies shall be endorsed (a copy of this endorsement to be provided to Contractor upon request) to specify that Contractor and Owner (and if required by the Contract, the Architect/Engineer and their agents, consultants or other representatives, and others as the case may be) have been named as additional insureds. Subcontractor's policies shall contain, by endorsement or otherwise, a severability of interest clause as to each insured. Additional insured coverage as required by this paragraph shall be primary without contribution from any other insurance or self-insurance program available to any additional insured. Subcontractor waives all rights against the Owner, Contractor and Architect/Engineer and their agents, consultants or other representatives for any loss or damage covered by any insurance acquired or maintained by Subcontractor for its benefit, including all rights that might otherwise accrue to any subrogee. All Subcontractors' insurance policies shall be written with insurance companies that are acceptable to

Contractor. Completed operations insurance Such policies of insurance and coverages shall be maintained by Subcontractor for at least two (2) years one year after completion of the Subcontractor's Work pursuant to this Subcontract and acceptance thereof by Owner or for such longer period of time as the applicable statute of limitations for injuries to persons or property arising out of Subcontractors Work. Umbrella coverage can be used to satisfy the limits of basic general liability and automobile liability limits. Subcontractor's obligation to provide the required insurance and endorsements will not be waived by Subcontractor's failure to provide the certificate of insurance or endorsements, Contractor's acceptance of a certificate of insurance or endorsement showing coverage varying from the required coverage, or Contractor's direction to Subcontractor to begin the Work.

Failure of the Contractor to obtain such evidence of the insurance requirements herein shall not be construed as a waiver of the Subcontractor's obligation under the Subcontract.

(f) The Contractor will not carry insurance coverage for the theft of any materials, tools or equipment on the job site nor will it carry any type insurance covering casualties to any materials, tools or equipment of the Subcontractor. The Subcontractor therefore assumes the risk of theft of its materials, tools, and equipment stored, installed or used on the job site and the risk of all other casualties to its tools, materials and equipment. The Subcontractor also assumes the risk of damage to its completed or partially completed Work to the extent same is not covered by any applicable Builder's Risk policy and to the extent of any applicable deductible.

(g) Subcontractor shall not begin work until such time as certificates of insurance have been furnished to Contractor, this Subcontract has been executed by both Contractor and the Subcontractor, and other, if any, pre-work requirements have been fulfilled by Subcontractor.

(h) Subcontractor shall require its subcontractors to maintain insurance coverages as specified above, including but not limited to requiring that such insurance policies be endorsed to specify that Subcontractor, Contractor and Owner are named as additional insureds on such policies for this Project.

(i) Should Contractor employ an attorney to enforce any provision of this Subcontract, or to collect damages for breach of this Subcontract, Subcontractor agrees to pay Contractor such reasonable attorney's fees and all other costs and expenses as Contractor may incur or expend in connection therewith. In addition, Subcontractor and its surety shall be responsible and liable to Contractor for and indemnify Contractor against all damages, costs, judgment, fines, citations, assessment of expenses, including attorney's fees, suffered or incurred by the Contractor as a result of the Subcontractor's failure to strictly comply with any term, condition, or requirement of this Subcontract and related to the Contractor's termination of the Subcontract because of the Subcontractor.

(j) Subcontractor shall be responsible to Contractor for acts and omissions of the Subcontractor's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of Subcontractor or any of its subcontractors.

(k) Subcontractor shall not commence or maintain any action or proceeding against Contractor for any damages caused by or arising, directly or indirectly, out of or in connection with any act, omission, default, breach or interference by the Owner, the Architect/Engineer or any of their agents, consultants or other representatives, or for extra work ordered by Owner or by the Architect/Engineer or any of their agents, consultants or other representatives, except, as a condition precedent, to the extent of any amount obtained from the Owner on account thereof by Contractor; the Contractor will forward such claims that are made by Subcontractor in a timely manner (in writing and within one-half of the time period allowed by the Contract or within seven (7) calendar days of the event that is the basis for the claim, whichever is the shorter period of time), to the Owner and Architect/Engineer or any of their agents, consultants or other representatives; to the extent the Owner or Architect/Engineer or any of their agents, consultants or other representatives reject such claim(s), the Contractor will cooperate with Subcontractor, at Subcontractor's sole expense as to all costs, expenses and attorneys' fees, in further pursuit of such claim(s) if requested in writing on a timely basis by Subcontractor and Subcontractor has made arrangements satisfactory to Contractor for the payment of all costs, expenses and attorneys' fees.

(l) ARBITRATION: In the event of a dispute(s), claim(s) or other matter(s) in question of any kind whatsoever between the parties (i) arising out of or related or collateral to the provisions and/or subject matter of this Subcontract or the breach thereof, or independent from the Subcontract or (ii) relating to any transaction or occurrence of any kind between the parties to this Subcontract or their officers, directors, agents and/or employees, it is agreed that the parties to this Subcontract will attempt to resolve such dispute(s), claim(s) or other matter(s) in question amicably by informal discussions and negotiations within a seven (7)-day period. Notwithstanding any conflicting or contrary provisions contained within the Contract nor any provision in this Subcontract that incorporates herein the terms and conditions of the Contract by reference, all dispute(s), claim(s) and other matter(s) in question which cannot be settled by negotiation among the parties within such time shall at the election of the Contractor (but not otherwise), be submitted by the parties to arbitration under the Construction Industry Arbitration Rules of the American Arbitration Association except as such rules may be modified or restricted by any provision of this Subcontract. The parties intend that the scope of this arbitration clause shall be construed as broadly as possible so as to include, but not be limited to, the enforceability of this arbitration provision, the arbitrability of a particular claim or dispute, as well as any claims of misrepresentation, concealment of material facts, or fraud among the parties whether occurring before or after the execution of this agreement.

Notice of demand by Contractor for arbitration shall be filed in writing with the other party or parties to this Subcontract and with the American Arbitration Association and shall be made within a reasonable time after the dispute, claim or other matter in question has arisen but in no event shall be made after the date when institution of legal or equitable proceedings based on such dispute, claim or other matter in question would be barred by the applicable statute of limitations. The applicable laws under which such arbitration shall be held shall be the laws of the state of Alabama (unless the law of a different state governs the Contract, in which case the law that governs the Contract shall also govern under this Subcontract) except to the extent the Federal Arbitration Act is applicable, and such arbitration shall be held in Birmingham, Alabama, or another location if mutually agreeable to the parties. This provision to arbitrate shall be specifically enforceable in any court of competent jurisdiction. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The Subcontractor agrees that any arbitration instituted under this paragraph shall, at Contractor's election, be consolidated with any other arbitration proceeding involving a common question of fact or law between the Contractor, the Owner, the Architect/Engineer or any of their agents, consultants or other representatives, and/or any other subcontractor(s) of any tier performing work in connection with the Project. The Subcontractor shall carry on the Work pending final resolution of any dispute, claim or other matter in question, unless the Contractor has exercised a remedy pursuant to this Subcontract which has terminated Subcontractor's presence on the Project. The exercise by Contractor of its remedies, pursuant to Section 3(f) of this Subcontract or otherwise, shall not be conditioned upon prior resolution of the dispute, claim or other matter in question upon which the Contractor bases its decision to exercise any such remedy or remedies.

It is hereby agreed that during any arbitration proceedings, discovery shall be available and shall be conducted as directed by the arbitrator(s).

(m) WAIVER OF JURY TRIAL: EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION, NOT RESOLVED BY ARBITRATION OR MEDIATION, (A) ARISING OUT OF OR IN ANY WAY RELATING TO THIS SUBCONTRACT OR EXECUTED OR DELIVERED IN CONNECTION WITH THIS SUBCONTRACT OR (B) IN ANY WAY CONNECTED WITH OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS SUBCONTRACT, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. ALL PARTIES AGREE THAT ANY ONE OF THEM MAY FILE A COPY OF THIS SUBCONTRACT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED SUBCONTRACT BETWEEN THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

(n) This Subcontract shall in all respects be governed by, and construed in accordance with the laws of the State of Alabama.

(o) This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement. Any amendments to this Agreement must be in writing and signed by the party against whom enforcement of that amendment is sought.

(p) In the event that any provision of this Subcontract shall be held to violate the laws of any state, the parties agree that the offending provision shall be severable from the remaining provisions of this Subcontract, and the remainder of this Subcontract shall be given effect as the agreement of the parties.

SECTION 8. MISCELLANEOUS PROVISIONS:

(a) The failure of Contractor to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Subcontract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

(b) Any notice required to be given by either party to this Subcontract to the other shall be in writing and may be given by personal delivery, Federal Express, United Parcel Service (UPS), Airborne, facsimile, or telegram to the other party or by mailing by registered or certified mail (postage prepaid) to the other party at the address stated in this Subcontract. Any such notice shall be considered given and effective immediately upon personal delivery, delivery of Federal Express, United Parcel Service (UPS), Airborne, delivery (whether oral or written) of the telegram, receipt of the facsimile, or depositing said notice in the mail, as the case may be.

(c) Until final completion of the Project, the Subcontractor agrees not to perform any work directly for the owner or any tenants thereof, or deal directly with the Owner's representatives in connection with the Project, unless otherwise directed in writing by the Contractor. All work for this Project performed by the Subcontractor shall be processed exclusively by the Contractor.

(d) The headings or captions in this Subcontract are made for convenience and general reference only and shall not be construed to describe, define or limit the scope or intent of the provisions of this Subcontract.

(e) If Contractor has more than one subcontract with Subcontractor and Subcontractor defaults in any manner under any one or more of these subcontracts, then at Contractor's option, such may be also treated as a default under this Subcontract. In that event, Contractor, at its option, may take any action or exercise any remedy available to it under this Subcontract or alternatively, Contractor may terminate this Subcontract.

(f) No provision of this Subcontract shall be construed more harshly or unfavorably against any party hereto regardless of which party drafted the provision or for whose benefit the provision was included.

(g) The rights of the Contractor shall survive final payment to the Subcontractor for the Work.

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

SUBCONTRACT NUMBER: _____

SUBCONTRACTOR

CAPSTONE BUILDING CORP.

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____