
State of Missouri Subcontract

AGREEMENT

Made on this date of **Tuesday, December 30, 2008**

BETWEEN the Contractor:

Emery Sapp & Sons, Inc.

2602 N. Stadium Blvd
Columbia, MO 65205
Telephone #:(573) 445-8331
Fax #: (573) 445-0266

Hereinafter called "**Contractor**" and the Subcontractor:

Sample Vendor/Subcontractor

1 Someplace
Anywhere MO 69999
Telephone #: (999)999-9999
Fax #:

Hereinafter called "**Subcontractor**".

Whereas Contractor has a contract with the **Owner of Work** hereinafter called "**Owner**" for the construction in accordance with the plans and specifications thereof various items of work awarded to the Company known as:

Owner's Job No: **Emery Sample Job**
Emery Job No: **00-0-00**

Which Contract is hereinafter referred to as the Prime Contract and which provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein has been made available to the Subcontractor.

The Contractor and Subcontractor agree as set forth below:

ARTICLE 1 **THE SUBCONTRACT DOCUMENTS**

The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other documents enumerated therein, including, but not limited to, the Missouri Standard Specifications for Highway Construction, the Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications,

addenda issued prior to execution of the Agreement between the Owner and Contractor and Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of the Agreement, and other Contract Documents, if any, listed in the Owner-Contractor Agreement; (3) any other documents listed in this Agreement; and (4) modifications to this Subcontract issued after execution of this Agreement. All of these documents hereby become a part of this Subcontract and are hereinafter referred to as the Contract Documents, and shall be made available to the Subcontractor upon his request prior to and at anytime subsequent to signing this Subcontract. The Contract Documents represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

The Subcontractor agrees to furnish all material and equipment and perform all work in strict accordance with the Contract Documents.

ARTICLE 2
THE WORK

- A. Subcontractor shall furnish all the labor, materials, supplies, equipment, facilities and everything else necessary to perform and shall perform all the work for the construction and completion of the following part(s) of the work of the Prime Contract set forth below:

<u>Description</u>	<u>Units</u>	<u>Unit Cost</u>	<u>Amount</u>
1000.02 Sample Work-Subcontract Item	1.00 EA	500.00	500.00
			<u><u>\$500.00</u></u>

- B. Subcontractor shall also perform all work incidental thereto which is necessary or required in order that all such work covered by the Subcontract will be complete, in strict accordance and full compliance with the Contract Documents and as required by Contractor. Subcontractor represents that it has the machinery, equipment, personnel and experience to perform the work within the time allotted and sequence required by Contractor.
- C. Subcontractor represents that it has examined the Prime Contract and desires to perform the subcontract work, as defined above, in accordance with the Prime Contract and as herein provided.

ARTICLE 3
SCHEDULE OF WORK

- A. Subcontractor shall begin work as soon as instructed to do so by Contractor and shall carry the same forward promptly, efficiently, and at a speed as determined by Contractor and that will not damage, delay or interfere with Contractor or others. Subcontractor shall cooperate fully with all others working on the Project. Subcontractor agrees that Contractor may require Subcontractor to prosecute some parts of the work in preference to others as Contractor may specify from time to time and such shall not afford Subcontractor any basis for any claim for damages, delay, interference, extra work, or otherwise against Contractor or Owner.
- B. Prior to commencement of work hereunder and thereafter as requested, Subcontractor shall submit promptly to Contractor, any and all data and information required under the Prime Contract or requested by Contractor relating to the sequence, order, data, and nature of work to be performed hereunder. Such submission shall be organized in such form or manner as Contractor shall require, whether in a so called "critical path" or "network analysis system" or otherwise and shall reflect completion of the work required hereunder. Subcontractor understands and agrees Contractor will rely on such data and Subcontractor will perform its work timely in accordance therewith. In the event Subcontractor does not carry out such work at such rates of progress as required, Contractor may require Subcontractor at no additional compensation therefore to increase the number of qualified supervisory personnel and workers and the amount of equipment employed in the performance of Subcontractor's work to such extent as Contractor may deem necessary or desirable, or Contractor may exercise any other right or remedy it may have.

ARTICLE 4
PAYMENT

- A. Contractor agrees to pay Subcontractor for said work and everything required of Subcontractor in and by this Subcontract the sum of Dollars **\$500.00**

subject to additions and deductions for changes as may be agreed upon in advance in and subject to the other terms of the Subcontract. It is agreed that (i) no payments are

to be made to Subcontractor unless its rate of progress, work done, and materials and services furnished are satisfactory to Owner and Contractor and (ii) payment shall be made only for actual work performed to the satisfaction of Owner and Contractor and only to the extent that payments for such work have actually been received by Contractor from Owner. It is a precedent of payment that payment shall only be due Subcontractor ten (10) days after Contractor receives payment from the Owner, less retainage at a percentage equal to that withheld from Contractor which Contractor may withhold from payments otherwise due Subcontractor. In the event any items performed by Subcontractor are to be paid for at unit prices, the quantities shown are estimates only and the amounts to be paid Subcontractor shall be determined by the actual quantities of work performed or material furnished or both, and as determined by Owner, or its authorized representatives and paid for by Owner.

- B. The Subcontractor agrees that monies received for the performance of this Subcontract shall be used first for payment of labor, material, equipment, supplies and services entering into or related to this work, and said monies shall not be diverted to satisfy obligations of the Subcontractor on other contracts until all obligations under or in connection with this Subcontract are satisfied in full. Contractor may withhold any payment until Subcontractor has furnished Contractor with evidence satisfactory to it that Subcontractor has paid in full for all labor, materials, equipment and supplies used in the work and has performed all other obligations incumbent on Subcontractor.
- C. Subcontractor shall submit to Contractor applications for progress payments in a form and within time periods acceptable to Contractor.
- D. It is a condition precedent of payment that final payment hereunder shall only be made within ten (10) days after all of the following items have occurred: (i) completion of said Project; (ii) written acceptance thereof by the Owner and Engineer; (iii) the Owner has made full and final payment therefore to Contractor; and (iv) a full release, in a form acceptable to Contractor of all claims against Owner, Contractor and the Project has been received by Contractor.
- E. Under no circumstances shall prior passage of title to Owner or Contractor, prior acknowledgement of good condition by the Owner, Engineer or Contractor, prior payment by the Owner or Contractor, acceptance of such release or acceptance, use or installation of any work performed or articles delivered hereunder be deemed to (i) constitute acceptance or approval of work done or materials furnished hereunder, (ii) affect the responsibility of the Subcontractor to perform as required, (iii) affect the right of Contractor or Owner to reject any such work or articles determined upon inspection not to be in the condition required, or (iv) constitute acceptance of defective work or improper materials or act as a waiver of Contractor's rights and Subcontractor's obligations hereunder. Without limitation on the foregoing, any acceptance of the work and materials furnished by Subcontractor hereunder shall not relieve or discharge Subcontractor from any of its obligations and warranties hereunder.

- F. If any payment from the Owner to Contractor is delayed due to Subcontractor's failure to settle all claims against it for work under this Subcontract, or Subcontractor's failure to perform fully and completely or comply with any condition or requirement incumbent on it hereunder or for any other reason attributable to Subcontractor, the Subcontractor will be assessed interest, at the then prevailing 90 day treasury bill rate, plus four percent (4%) on the total amount due Contractor from the Owner. Notwithstanding anything herein to the contrary, Contractor has the absolute right to withhold and set off from funds otherwise due Subcontractor on this Project any amounts due Contractor from Subcontract on any other Project, and if Contractor exercises such right of set off, the Subcontractor hereby waives any lien claims and bond rights on this Project as to such amounts so set off.

ARTICLE 5 **RATE OF PROGRESS OF WORK**

Time is of the essence, and all of the work of the Subcontractor shall be fully and properly completed within the time required by the Prime Contract or such shorter period of time as Contractor shall schedule or deem necessary so as to permit Contractor to complete and fulfill timely all of its obligations under the Prime Contract. Subcontractor shall at all times supply sufficient and adequate tools, equipment, properly qualified supervisory personnel and workers, and materials and supplies of proper quality to prosecute said work efficiently and promptly and in accordance with the schedule and sequence given it from time to time. Subcontractor accepts sole and exclusive responsibility for the work covered hereby, shall provide continuous supervision for such work during the progress thereof at the jobsite, and no advise, recommendations or assistance that the Owner or Contractor may give to Subcontractor shall operate to relieve Subcontractor from complete responsibility for such work

ARTICLE 6 **CHANGES AND EXTRA WORK**

- A. Contractor may, at any time, without notice to Subcontractor's surety and without invalidating this Subcontract or any surety bond, make any changes or alterations in the work covered by this Subcontract or order extra or additional work which it may deem expedient. Subcontractor and its surety agree to increase the penal sum of any surety bond for work under this Subcontract in an amount equal to any increase in price hereunder. No alteration or change or extra or additional work shall be performed by Subcontractor except upon the written order of Contractor. If no additional time or money is requested by Subcontractor within five (5) calendar days following notice of any such proposed change or extra work or additional work, then no additional money or time shall be due Subcontractor.

With respect to such changes, or alterations, or additional or extra work, Contractor shall not be liable to the Subcontractor for a sum greater than Contractor obtains from the Owner for such changes, alterations or extra or additional work, less reasonable overhead and profit to Contractor, and also less any costs and expenses incurred by Contractor. Any payments to Subcontractor for such work shall be conditioned upon a prior recovery therefore by Contractor from Owner. In the event of a deduction as a result of such change in the work, the deduction taken by the Owner shall be controlling and binding upon the Subcontractor.

- B. If there is a dispute as to such changes, deductions, alterations or extra or additional work, then Subcontractor shall proceed with such work as directed by Contractor. Contract unit prices are to be used where applicable.
- C. If Subcontractor deems that work conditions are unsatisfactory or unsuitable or differ from any representation hereof or from good construction practice, written notification of the condition shall be given to Contractor within five (5) days of when first detected and before Subcontractor proceeds with further work in connection therewith or takes any remedial action with respect to such condition. If Subcontractor fails to give such written notice and fails to receive a response allowing Subcontractor consideration in connection therewith, no consideration or compensation will be given or allowed to Subcontractor with respect thereto.

ARTICLE 7 **DELAYS**

- A. Contractor shall not be liable to the Subcontractor for delay to Subcontractor's work for any reason. If Subcontractor claims it has been delayed by Owner or others, the only obligation Contractor has to Subcontractor is to pass on to Owner or such others any claim Subcontractor contends it has and to pay Subcontractor any amounts which Owner or such others pay to Contractor as a result of such claims for delays caused by Owner or others. No claim for an extension of time or damages shall be allowed to Subcontractor for any cause or under any circumstances unless the Subcontractor files a written claim with Contractor therefore within forty-eight (48) hours from the time of the beginning of the occurrence causing the delay.
- B. Should Subcontractor be delayed in the performance of its work, Subcontractor shall be entitled to an extension of time for performing and completing the work covered by this Subcontract but only to the extent actually allowed to Contractor by Owner or its representatives under the terms of the Prime Contract. Subcontractor shall protect, indemnify, defend and save harmless Contractor from all loss, cost, damage, liability and expense which Contractor may sustain or incur by reason of any delays caused or contributed to by Subcontractor, its agents, employees, suppliers or subcontractors. Payment of such amounts by Subcontractor for any such delays shall not relieve or release Subcontractor from any obligation hereunder, and shall not affect any other cause of action which Contractor otherwise would have against Subcontractor for the same or any other breach. Any damages to Contractor for any such delays may be deducted from Contractor at its option from the agreed price for Subcontractor's work, as damages and not as a penalty, and without limited any rights of Contractor including the option of Contractor to declare the Subcontract in default.

ARTICLE 8 **DECISIONS**

The obligation of Subcontractor to perform all work and furnish all material covered by the Subcontract under the direction and to the satisfaction of Contractor and Owner is absolute and without

exception. The decision of Contractor as to the performance of such work and as to the true construction and meaning of the drawings and specifications shall be final. Subcontractor shall conform to, and abide by, any additional detail that illustrates the work to be done at no additional cost unless such cost is agreed to in writing in advance.

ARTICLE 9
RELATIONSHIP

Subcontractor agrees to be bound to Contractor by all terms of the Prime Contract applicable to this Subcontract and Subcontractor shall relieve Contractor of all responsibility toward the Owner under the Prime Contract for the performance of everything subcontracted to Subcontractor and Subcontractor shall fully assume and perform all such responsibilities of Contractor in connection therewith. Subcontractor will perform this Subcontract so as not to violate any terms, covenants or conditions of the Prime Contract and other Contract Documents and where any provision of the Prime Contract and other Contract Documents between Owner and Contractor is inconsistent with any provision of this Subcontract, this Subcontract shall govern.

ARTICLE 10
INSURANCE

- A. The Subcontractor shall maintain such insurance as will insure the performance by the Subcontractor of its obligations to protect, defend, indemnify and hold harmless Contractor and Owner respectively, as provided herein, and will protect them from claims under Worker's Compensation Act and from claims for bodily injury including death and property damage which may arise from and during operations under this Subcontract, whether such operations be by Subcontractor or by anyone directly or indirectly employed by it. The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability. The below limits constitute the minimum acceptable insurance limits and should not be construed in any way to limit the Subcontractor's liability to the contractor. The Subcontractor will be required to carry the appropriate limits of insurance and meet all the requirements as spelled out in the Prime Contract or the limits shown below, whichever are greater.

1. General Liability (CGL)-Occurrence Form

a) General Aggregate	\$2,000,000
b) Products-Completed Operations Aggregate	\$1,000,000
c) Personal Injury	\$1,000,000
d) Each Occurrence	\$1,000,000
e) Fire Damage	\$ 50,000
f) Medical Payments	\$ 5,000

- 1) General Aggregate shall apply separately to each project.
- 2) Owner, Emery Sapp & Sons, Inc., and all other parties required by the Contractor, shall be included as insured on the CGL, using ISO Additional Insured Endorsement CG 2010 11 85 or an endorsement providing equivalent coverage to

- 2) coverage to the additional insured's. It shall apply as Primary Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insureds.
- 3) Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each insured for at least 3 years after completion of the work.

1. Business Automobile Liability

- a) Combined Single Limit \$1,000,000
 - 1) Business Auto Coverage must include coverage for liability arising out of all owned, leased, hired, and non-owned automobiles.
 - 2) Owner, Emery Sapp & Sons, Inc., and all other parties required of the Contractor, shall be included as additional insured on the auto policy.

2. Workers' Compensation

- a) Each Accident \$1,000,000
 - b) Disease-Policy (Limit) \$1,000,000
 - c) Disease-Each Employee \$1,000,000
- 1) Where applicable, U.S. Longshore and Harborworkers Compensation Act Endorsement shall be attached to the policy.
 - 2) Where applicable, Maritime Coverage Endorsement shall be attached to the policy.

4. Commercial Umbrella Liability

- a) Per Occurrence Limit \$1,000,000
 - 1) Umbrella coverage must include as additional insureds all entities that are additional insured's on the CGL.
 - 2) Umbrella coverage for such additional insureds shall apply as Primary Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Auto Liability, and employers Liability coverage maintained by the Subcontractor.

B. CERTIFICATES OF INSURANCE

Prior to the commencement of the Work, Subcontractor shall provide for the Owner and Contractor to review and approval, certificates of insurance and policy endorsements reflecting full compliance with the requirements set forth in Paragraphs A1, A2, A3 and A4 of the Article. Such certificates and policy endorsements shall be kept current and in compliance throughout the period when Work is being performed and until its final acceptance by Owner (and for three (3) years thereafter for products and completed operations liability), and shall provide for thirty (30) days advance written notice to

1. Owner and Contractor in the event of cancellation or material change adversely affecting the interests of Owner and Contractor.
2. In jurisdictions requiring mandatory participation in a monopolistic state workers' compensation fund, the insurance certificate requirements for the coverage required under Paragraph A3 (Workers' Compensation) of this Article will be satisfied by a letter from the appropriate state agency confirming participation in accordance with statutory requirements.

B. SUB-SUBCONTRACTORS INSURANCE

If Subcontractor shall subcontract any of its work to a third party, Subcontractor shall see to it that such third party maintains such insurance and shall furnish evidence thereof to Contractor. Subcontractor will cause all such policies of insurance to name Contractor and Owner as additional insureds and provide indemnification for Contractor and Owner against liability upon the risks insured thereby to the amount of the coverage specified herein for Subcontractor.

C. BUILDERS' RISK

Contractor may (but is not obligated to) carry Builders' Risk Insurance on the Project. Should Contractor carry this insurance, then Contractor at its sole option may include Subcontractor for the principle sums of this Subcontract in Contractor's Builders' Risk Policy, and if it does so include the Subcontractor, then Subcontractor will pay Contractor Subcontractors' fair share of the premium thereof as determined by Contractor. Contractor shall not be deemed to have elected or agreed to include Subcontractor in any such policy until and unless Subcontractor has been named on the policy and furnished an endorsement or certificate to that effect and Subcontractor has paid Contractor therefore. Subcontractor shall assume the responsibility to determine whether this insurance is in force.

D. WAIVER OF SUBROGATION

Where allowed by law, Subcontractor waives all rights against the Owner, Emery Sapp & Sons, Inc., the architect, their agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by commercial general liability, business auto liability, commercial umbrella liability, or workers' compensation and employers liability insurance maintained per the requirements stated above.

E. SUBCONTRACTOR'S ACTS OR OMISSIONS

In addition to its obligations under this provision of the Subcontract regarding Insurance, Subcontractor agrees to pay and to protect, defend, save harmless and indemnify Contractor against any liability for damages sustained by another subcontractor, material man or other party supplying labor, materials, or services in the performance of the work covered by the

Prime Contract resulting from Subcontractor's acts or omissions (whether or not negligent), failure to perform, delays in performance, interference or default in the performance of the work to be done under this Subcontract. Subcontractor shall protect, defend, indemnify and save Contractor harmless from any liability, including costs and expenses, for, or on account of, any patented or unpatented invention, article or appliance manufactured or used in the performance of this Subcontract, including their use by Owner and further agrees to pay all loss and expense incurred by Contractor by reason of any such claims or suites, including attorneys' fees.

ARTICLE 11 **BONDS**

If requested by Contractor, Subcontractor at least fifteen (15) days before commencing work on the Project shall furnish and pay for both a performance bond and a payment bond with Contractor as the obligee in a sum not less than the amount payable to Subcontractor under this Subcontract with surety thereon satisfactory to Contractor guaranteeing respectively the faithful performance of this Subcontract and each and all of its stipulations and agreements and the payment of all person furnishing labor, services, equipment or materials used or purchased for use in the work covered by this Subcontract. Should any contract modifications result in an increase in the amount of this Subcontract, Subcontractor and Surety shall increase the amounts of such bonds accordingly, and it will be the responsibility of the Subcontractor to include in its proposal the cost of additional bond premiums to cover the additional amount. Notwithstanding anything herein to the contrary, in addition to the other rights under the Subcontract, if the Subcontractor fails to furnish said bonds before commencing work hereunder, or to increase the amounts of such bonds as required, Contractor, then or at any time thereafter, may declare Subcontractor to be in default hereunder and to have breached this Subcontract. Subcontractor shall be liable to Contractor for any and all damages as a result of such default and breach and on the occurrence of such default or breach Subcontractor shall not be entitled to any payment for, or in respect of, any work done at the site of said Project or elsewhere, nor to reimbursement or compensation for orders placed or anything else done in preparation for, or performance of, the work described herein, and no payment made or forbearance granted by Contractor shall operate as a waiver of the rights herein granted to Contractor.

ARTICLE 12 **INDEMNITY**

Subcontractor agrees to protect, indemnify, defend, and hold harmless Contractor and Owner from and against (i) all claims, causes of action, liabilities, obligations, demands, costs and expenses arising out of injury to (including death of) any and all persons or damage to property alleged to have been caused by any act or omission of Subcontractor, its agents, employees or invitees, or growing out of, or incidental, directly or indirectly, to the performance of the Subcontract regardless of how such injury, death or damage be caused, and (ii) all damage judgments and expenses caused by any act or omission (whether or not negligent) of Subcontractor or anyone who performs work in the prosecution of the Subcontract. Subcontractor expressly assumes with respect to the work to be done hereunder all liability imposed on Contractor by the provisions of the Prime Contract and, upon request by Contractor, subcontractor shall defend any and all suits brought against Contractor or Owner on account of any such

liability or claims of liability and shall pay any settlements made or judgments rendered with respect thereto, and shall reimburse and indemnify Contractor for all expenditures or expenses, including court costs and attorneys' fees incurred by Contractor by reason of any such accident, liability or claims of liability. If there are such injuries to person or damage to property unsettled upon completion of this Subcontract, final settlement of sums otherwise due between Contractor and Subcontractor may be deferred at the option of Contractor until such claims are adjusted or Subcontractor furnishes indemnity acceptable to Contractor. Subcontractor agrees that the damage provisions of, and any damages assessed in relation to, the Prime Contract, both actual and liquidated, shall be enforceable and collectible by Contractor against Subcontractor. In addition, Contractor can offset from sums otherwise due Subcontractor an amount equal to said damages including any damages sustained by Contractor as a result of the failure of Subcontractor to perform its work properly, timely or in accordance with its obligations and requirements herein.

ARTICLE 13 **LABOR AND EMPLOYMENT MATTERS**

- A. Subcontractor shall comply with, observe and conform to the wage scales and labor policies of Contractor, specifically including the terms and provisions of any such agreements providing for hiring and union-security and for the making of such payments into or under health and welfare or other fringe benefit funds or plans, to the extent that the terms and provisions of such agreements can legally be applied to the work to be done hereunder. Neither Subcontractor nor any of its subcontractors or suppliers shall employ any workers whose employment on the work covered by this Contract is objected to by Contractor or Owner or which violates any such labor agreements. Subcontractor agrees that if any portion of such work is further subcontracted, such further subcontractor shall be contractually obligated to be bound by, and observe the terms and provisions of, such collective bargaining agreements to the same extent as is herein required of Subcontractor, and that an express provision imposing such obligation upon the further subcontractor shall be included in any such further subcontract.
- B. In the event of a strike or stoppage of work resulting from a dispute involving or affecting the labor employed by Subcontractor or its subcontractors, Contractor may at its option terminate or suspend the right of Subcontractor to proceed on this Subcontract or terminate this Subcontract and Contractor shall be obligated only to compensate Subcontractor in accordance with termination provision contained herein.

ARTICLE 14 **TAXES**

Taxes are included in the price to be paid Subcontractor under this Subcontract, and Subcontractor assumes and accepts exclusive liability for, and agrees to pay (i) all taxes and contributions required to be withheld from or in respect of wages and salaries, under any law now existing or hereafter imposed, including interest, and penalties, (ii) all taxes, contributions, including interest and penalties under any federal, state municipal, or other governmental or private old age benefit, welfare benefit, social security, pension, annuity, or unemployment compensation or insurance law, plan or program now

existing or hereafter imposed, (iii) all taxes measured by receipts in connection with the work under this Subcontract and all sales, use, income, occupation, or excise taxes, including interest and penalties, hereunder and all permits, fees and licenses relative to the work covered by this Subcontract. If Contractor pays any such taxes, contributions, interest or penalties, Subcontractor on demand shall reimburse Contractor, therefore or Contractor may deduct the same from sums otherwise due Subcontractor.

ARTICLE 15 **LOSSES**

Subcontractor agrees at its own expense to carefully protect, watch over, and care for all of its work, complete or otherwise, and all of its materials, supplies, tools, and equipment. Subcontractor agrees, at its own expense, to make good any loss or damage to any and all such work, materials, supplies, tools and equipment from any cause whatsoever up to the final acceptance of the entire Project by Owner.

In the event of a loss by fire or other casualty, Subcontractor shall, as soon as possible thereafter, proceed to replace, restore or repair the portions of its work so damaged, as directed by Contractor. If Subcontractor is included under Contractor's Builders' Risk Policy as to such loss, then Subcontractor shall forthwith submit to Contractor its estimate of the cost of work, in such form as may be required to submit a proper proof of claim to the insurance carrier and Subcontractor shall be conclusively bound by any settlement, arbitration, appraisal or legal action in the determination of their part of the total claim. Subcontractor shall be paid by Contractor the cost of replacing and restoring completed work damaged by fire or other casualty as shall be covered by insurance carried by Contractor for Subcontractor, based on the aforesaid subcontract price, to the extent of the amount of money actually received by Contractor which is attributable to Subcontractor's loss, less its proportionate share of Contractor's expense in connection with the recovery of such proceeds including professional experts and counsel fees and other costs and expenses.

ARTICLE 16 **TERMINATION**

In the event the Prime Contract is terminated, Contractor shall, at its sole option and discretion, reserve the right to terminate this Subcontract as of the date of the termination of the Prime Contract. In the event the Subcontract is terminated, Subcontractor shall only be entitled to either: (i) whatever Owner has paid Contractor for the work performed by Subcontractor up to the time of termination, or (ii) the actual, direct costs of all labor and material expended on the job prior to the effective date of the termination plus a sum equal to six percent (6%) of all such labor and material to cover overhead and profit, whichever is less.

In no event on such termination shall Subcontractor be entitled (a) to receive a sum in excess of what the Owner pays to Contractor for such work of Subcontractor; (b) to anticipatory profit or damages for any termination; or (c) to assert a claim in quantum meruit or any other measure of damages other than that stated herein.

ARTICLE 17
DEFAULT

If (i) Subcontractor shall fail to furnish materials of the quality or do work in the manner required by the Prime Contract, or, (ii) Subcontractor shall fail to provide supervisory personnel or workers in numbers and experience or equipment in kind and capacity suitable to the Owner, Architect, or Contractor, or (iii) Subcontractor shall fail to diligently prosecute the work required to be done under this Subcontract in any particular order or to keep pace with the progress schedule formulated from time to time by Contractor or shall abandon said work or any part thereof, or, (iv) a petition in bankruptcy or for an arrangement of creditors shall be filed by or against Subcontractor or Subcontractor shall become insolvent or make an assignment for the benefit of creditors or commit any act of bankruptcy, or (v) Subcontractor shall fail to promptly pay for all labor and material used in connection with this Subcontract, or fails to provide evidence of such payment, or (vi) the principal owner of Subcontractor shall die or otherwise become physically or mental disabled, or (vii) Subcontractor shall fail in any manner to perform the whole or any part of any term, provision, covenant or agreement contained or assumed herein, then and upon the occurrence of any such event (and Contractor's finding and judgment with respect thereto shall be final and bind the Subcontractor absolutely), CONTRACTOR SHALL HAVE THE RIGHT TO: (a) withhold any further payment hereunder from Subcontractor until all work to be performed by Subcontractor shall be wholly finished, and (b) provide or have others provide such materials, supplies, equipment and labor in addition to any supplied by Subcontractor as may be necessary to complete Subcontractor's work and pay for the same and deduct the amount thereof from any money which is then or would be thereafter otherwise be due Subcontractor, and (c) pay for all of the same and deduct the amount so paid from any money which is then or otherwise thereafter be due Subcontractor, and (d) bar premises and take possession for use and consumption in completing the work of all the materials, supplies, tools, equipment, appliances and facilities of the Subcontractor thereon or thereat and complete the work, or have the same completed by others, or any combination of such methods. IN any event, Subcontractor shall not be entitled to receive any further payment hereunder, and Contractor shall have no liability to Subcontractor therefore, until final payment for the entire Project has been received by contractor from Owner, and Subcontractor shall only be entitled to, and Contractor shall only be liable for, the amount, if any, by which the unpaid portion of this Subcontract shall exceed the cost, expense and damage incurred by contractor (including attorneys fees) because of Subcontractor's default and delays in completing the work covered hereby and performing the other obligations of Subcontractor hereunder. If such damages and amounts expended or incurred by Contractor exceed the balance of the Subcontract price, Subcontractor or its sureties or both shall pay Contractor such excess promptly after Contractor's demand therefore, and upon their failure to do so, in addition to Contractor's rights on or under any bonds of the Subcontractor, contractor shall have the right, pursuant to the lien provided for herein, to sell all materials, tools, appliances, equipment and facilities of Subcontractor not previously used or consumed in the performance of said work and to apply the proceeds of such sale (s) to the obligation of Subcontractor and its sureties who nevertheless shall remain liable for any deficiency. Contractor shall not be required to exercise any such lien rights as a condition to receiving full payment from Subcontractor and its sureties.

In the event of the exercise of any default rights by Contractor as set for above, all costs incurred and all monies expended therefore, including (but not limited to) the cost of materials, labor, subcontractors, transportation, equipment, expense, rentals thereon, supplies, services, insurance, taxes,

appliances, tools, utilities, power, supervision, administration, job overhead, travel, legal and accounting fees and expenses, Contractor's general overhead as allocated to the work and other costs and expenses incurred or sustained by Contractor, plus ten percent (10%) of the actual cost of the work performed as set forth as well as the amount of all claims against Subcontractor paid by Contractor for which it deems itself liable or responsible to the Owner, shall be deducted from the Subcontract price and sums otherwise due Subcontractor. Contractor shall be entitled to interest on the deficiency at the then prevailing 90 day treasure bill rate, plus four percent (4%).

ARTICLE 18 **RESPONSIBILITY**

Subcontractor assumes exclusive responsibility for protection of its personnel, materials, equipment facilities and work. If Contractor shall maintain first aid service at the site of said Project, Subcontractor shall bear its fair share of the cost thereof. Subcontractor shall provide sufficient, safe, and proper facilities for inspection by contractor and the Engineer of the work and materials of the Subcontractor, whether in the field, at shops, or at any place where such materials may be in preparation, manufacture, storage or installation. Subcontractor agrees to abide by all safety rules, practices and programs as established by Contractor, the Occupational Safety and Health Act of 1970, as amended, and all other applicable safety rules and regulations whether state, federal or local (collectively referred to as the "Act") and shall be exclusively liable for the safety of its employees and or any violations of the Act either on the work of Subcontractor or its portion of any jobsite or affecting the agents, employees, subcontractors or representatives of Subcontractor. Subcontractor acknowledges and agrees that its work area on the Project and all places where its materials, supplies, equipment and facilities are at any time or shall be used at any time are and shall be under its exclusive control and Subcontractor is and shall be solely responsible for the detection and abatement of any conditions that are not in compliance with the Act, and Contractor is not and shall not be responsible therefore.

ARTICLE 19 **COMPLIANCE**

- A. Subcontractor shall promptly and timely submit to Contractor all costs and pricing data and all audit data required by the Prime Contract or Contractor and shall also submit to Contractor, in such detail as Contractor shall require, certified cost and pricing data as requested by Contractor. Subcontractor shall expressly require compliance herewith by all its subcontractors and suppliers. Subcontractor shall comply with, and abide by all federal, state, county and municipal laws, ordinances, regulations and all orders and directives applicable to the work, and the maintenance preservation and inspection of records and reports pertaining thereto. Subcontractor agrees to protect, defend, indemnify and hold harmless Contractor with respect to all such laws, orders and directions.

- B. This Subcontract and all disputes between the parties shall be governed by the laws of the state of Missouri and the jurisdiction and venue for any action between the parties shall be solely and exclusively in the Circuit Court of Boone County, Missouri.

ARTICLE 20
ATTORNEYS' FEES

Should Contractor employ an attorney to enforce any provision of this Subcontract or to collect damages for default or breach of the Subcontract or to recover on any bond, Subcontractor and its sureties agree to pay Contractor such attorneys' fees and costs of collection as Contractor may expend with respect thereto, and Subcontractor and its sureties waive all rights of exemption. All attorneys' fees and costs of collection shall be in addition to the penal amount of the bond (s).

ARTICLE 21
SAMPLES, SHOP DRAWINGS

- A. Subcontractor shall promptly submit all samples, shop drawings, test data and other data as required by the Owner, Engineer, Contractor, the Prime Contract or other Contract Documents, but any handling, transmittal, approval or anything else done by contractor with respect to these shall not relieve Subcontractor from responsibility for errors in the samples, shop drawings or other data or delays in connection therewith and shall not relieve Subcontractor of its obligations to perform its work in accordance with the Subcontract and of its responsibilities for any deviations from the requirements of this Subcontract. Any of Subcontractor's work shown on the drawings and not mentioned in the specifications or described in any documents forming part of the Prime Contract other than the drawings, shall be performed by Subcontractor as part of this Subcontract, and said drawings and specifications and other contract documents shall be construed as supplementing one another. The dimensions given on the plans and in the specifications are approximate only, and the Subcontractor shall take such measurements at the Project as will insure the proper matching and fitting of the work and shall do all cutting and patching necessary to make its work match that of other trades and shall make good its work after them.
- B. Before and while proceeding with the work under this Subcontract, Subcontractor will accurately check everything previously or contemporaneously done by other trades in any way relating to Subcontractor's work and determine the correctness of same. Any failure on Subcontractor's part to report such discrepancies to Contractor in writing within five (5) days of detecting the same or when Subcontractor should have detected the same and prior to disturbing them will relieve Contractor of any and all claims by Subcontractor to be compensated for any costs, expense or damage resulting therefrom.

ARTICLE 22
GUARANTEES

Subcontractor shall perform Contractor's guarantee to Owner under the Prime Contract for all work under this Subcontract. Subcontractor unconditionally warrants and guarantees all labor, material and services employed and furnished by or to it in performing the work and agrees at Subcontractor's expense to promptly amend and make good upon demand, any and all defects to the entire approval and acceptance of Contractor, Owner and Engineer. Subcontractor shall replace and repair all other parts of the Project and the contents thereof which may have been damaged or removed as the result of

Subcontractor performing its obligations under this paragraph and to effect such replacement all at Subcontractor's own costs and expense and to the satisfaction of Contractor. Should the Subcontractor refuse or neglect to proceed to promptly correct rejected or defective materials or workmanship, contractor shall have the right and power to have the defects remedied or changes made at the expense of Subcontractor, and deduct such amounts from sums other wise due Subcontractor. Subcontractor agrees to pay Contractor on demand any and all loss and expenses paid or incurred by Contractor in remedying such defects or making such changes, plus Contractor's markup to cover supervision, insurance, further overhead and profit together with interest on said total sum at the then prevailing 90-day Treasury bill rate, plus four percent (4%). The obligations set forth in this paragraph are continuing and shall survive completing of the construction project, acceptance of work, and making final payment to Subcontractor. The Subcontractor shall furnish all guarantees, bonds, operating instructions and manuals as required by the specifications and Contractor.

ARTICLE 23 **FACILITIES, CLEANUP**

Subcontractor shall provide at its own expense whatever services, storage sheds, workshops and offices are necessary for the performance of this Subcontract. If the Subcontractor has occasion to utilize any of the equipment or facilities of Contractor, if available, it shall pay a fair proportion of the cost thereof. Subcontractor shall clean up and remove from the site as directed by Contractor all rubbish and debris resulting from its work. If Subcontractor refuses or fails to perform this cleaning as directed by Contractor, Contractor shall have the right and power to proceed with said cleaning, and Subcontractor shall on demand repay to Contractor the cost thereof, plus overhead and profit, or Contractor may deduct such sums from sums otherwise due Subcontractor.

ARTICLE 24 **ASSIGNMENT**

Subcontractor shall not assign or subcontract this Subcontract, or any part hereof, or any interest therein, or assign any monies due or to become due to the Subcontractor under this Subcontract without first obtaining the written consent of Contractor. No such assignment shall (a) be binding on Contractor unless and until accepted in writing by contractor or (b) relieve Subcontractor of any of its obligations, responsibilities or liabilities under the Subcontract.

ARTICLE 25 **PRECONDITION**

This subcontract shall become binding on Contractor only after Subcontractor has furnished Contractor with the required bonds, Certificates of Insurance and any other documents or items specified in the Subcontract, Prime Contract and other Contract Documents, and the Subcontractor has been approved by the Owner and any other party required to do so by the Prime Contract and other Contract Documents, and if any of them shall fail or refuse to approve the Subcontractor or if the Subcontractor shall fail to produce any item hereinabove specified to be provided, then and in that even this Subcontract shall be null, void and of no force or effect and Contractor shall own nothing to Subcontractor.

IN WITNESS WHEREOF, the parties have executed this agreement in multiple copies on the day and year first above written.

EMERY SAPP & SONS, INC.

Sample Vendor/Subcontractor

By: _____
Vice President,

By: _____
President,

ATTEST:

ATTEST:

Secretary,

Secretary,

