SOUTH FULTON LIBRARY

4055 Flat Shoals Road
Union City, GA 30291

Bid Package 8.04
Overhead Coiling Grilles

Bids due
Tuesday, May 26, 2015 @ 2:00 PM

Prebid Conference
Tuesday, May 19, 2015 @ 2:00 PM
Evergreen Construction
3200 Cobb Galleria Pkwy, Suite 240
Atlanta, GA 30339

atlanta-fulton public library system

FULTON COUNTY

EVERGREEN CONSTRUCTION

SOUTH FULTON BRANCH LIBRARY
4055 Flat Shoals Road
Union City, GA 30291

BID PACKAGE
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INSTRUCTIONS TO BIDDERS

SOUTH FULTON BRANCH LIBRARY
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Pre-Qualification If a Subcontractor's bid will exceed $100,000, the Subcontractor must pre-qualify through Evergreen Construction prior to bidding by Submitting Evergreen's Subcontractor Qualification Statement. A copy of the qualification statement is included within each bid package. A copy may also be obtained by visiting Evergreen's website: http://www.evergreencorp.com/forms/new_subcontractor_form.pdf

Bonding All Subcontractors whose scope of work exceeds $100,000 will be required to furnish 100% Payment & Performance Bonds. Payment & Performance Bonds shall be provided on the AGC Subcontract Performance Bond and AGC Subcontract Payment Bond form. The cost for the required Payment & Performance bonds shall be included in all bids whose scope of work exceeds $100,000.

Bidding Procedures All bids shall be hand delivered, mailed, faxed, or emailed (e-mail is preferred) . The date and time for receipt of bids is set forth in the Invitation to Bid. Bids received after this date and time will not be accepted.

To: Fulton County Department of Purchasing & Contract Compliance
130 Peachtree St, SW, Suite 1168
Atlanta, GA 30303-3459
Email: mark.hawks@fultoncountyga.gov
Fax: 404-335-5040

Prebid Communication All communication shall be direction in writing to Evergreen Construction. All communication shall be directed to Wil Smolenski via email at wsmolenski@evergreencorp.com or via fax at 678-244-6565.

Bid Packages At least two separate bid openings will occur, as certain bid packages will be released separately, as the construction documents are completed. Bid updates will be posted to Evergreen's website at http://www.evergreencorp.com/subcontractors.php and to Fulton County's website at http://fultoncountyga.gov/county/bidss/.

Evergreen Construction and Fulton County reserves the right to reject any and all bids, accept bids in any order or combination, make any modifications to the work after bidding, and waive any information or irregularities in bids if it is deemed appropriate by Evergreen Construction and Fulton County.

SCOPE OF WORK: OVERHEAD COILING GRILLES **BID PACKAGE: 08.04**

1. All work will be done on the premises of the South Fulton Branch Library Renovation and Addition. Subcontractors are advised that there is to be absolutely no contact, be it verbal, physical, written or otherwise, with the guests, students, staff, parents or others who frequent the library, except as specifically directed by the Evergreen Construction Project Superintendent.

2. Each Subcontractor agrees to abide by the requirements of the Drug Free Workplace Act.

3. All work has been broken into Work Categories for the purpose of receiving and comparing bids received from each Subcontractor interested in performing the work. Work described in each Scope of Work must be included in the Bid amount.

4. Subcontract form shall be Evergreen's Construction Management contract as included in this bid package. A copy of which can also be obtained online at:

   http://www.evergreencorp.com/forms/construction_management_subcontract_form.pdf

   or by requesting a copy from Hunter Letts at hletts@evergreencorp.com. No modifications to this Contract form will be made.

5. Furnish all labor, materials, tools, taxes, equipment, insurance and services necessary to install and complete the work as authorized by the Construction Manager, all complete and in accordance with the Contract Documents, without exception, unless otherwise herein provided, subject to the approval of the Architect, Owner and Construction Manager.

6. All work shall be performed in accordance with both State and Local code requirements to the best of current practices and to a quality of work acceptable to the Owner, Architect and Construction Manager. In the event that any discrepancies and/or errors are found in the drawings or specifications, this Subcontractor shall be required to notify the Construction Manager before proceeding with the work, and shall be deemed to have estimated the highest quality way of doing the work.

7. Each Subcontractor is to have a qualified supervisor on site at all times while their work is being performed.

8. Each Subcontractor shall provide all shop drawings, submittals, and samples as required by the Contract Documents.

9. Each Subcontractor is to secure all inspections and certificates as required for his work by governing authorities.

10. Each Subcontractor shall pay all local, state and federal taxes.

11. Each Subcontractor to secure and pay for applicable permits and fees.

12. Continuous clean up is required. Each Subcontractor is responsible for trash pick-up, recycling, and disposal of all debris associated with his work to the Construction Manager's provided dumpsters. During the course of Construction a composite cleanup crew may be

requested by the Construction Manager to perform project cleanup. Participation will be required based on the number of employees each Subcontractor has on the project. If a Subcontractor fails to participate in this composite crew, without prior approval of the Project Superintendent, Construction Manager will provide adequate manpower for this effort and deduct the cost from Subcontractor's contract amount.

13. Removal and disposal of subcontractor's pallets (Note: Pallets are not to be deposited in Construction Manager's dumpsters).

14. Temporary lighting will be provided under the Electrical Scope of Work.

15. Temporary power will be provided by the Owner.

16. Temporary water will be provided by the Owner.

17. Temporary toilets will be provided by the Construction Manager.

18. Telephone service will not be provided at the project site during construction.

19. All cutting and patching associated with the each Subcontractor's work is required to be included in each Subcontractor's scope of work.

20. The Owner will employ and pay for an Independent Testing Agency to perform all tests in accordance with the Contract Documents. However, any re-testing resulting from failed tests will be each Subcontractor's responsibility and any and all costs associated with this re-testing will be paid for by each Subcontractor.

21. Each Subcontractor is to include all hoisting of all materials, equipment and personnel required for their work (lifts, scaffolding, cranes, etc.).

22. Subcontractors are to include temporary bracing, shoring, or underpinning or protection required for installation of their work.

23. Subcontractors are to include re-handling of on-site materials, which interfere with the work of other Subcontractors.

24. Subcontractors are to include temporary storage of materials and equipment. Construction Manager will designate space for each Subcontractor, if available.

25. Parking is not available on-site. Subcontractors shall be responsible for finding off-site parking and finding other means of transportation to the site for journeymen, mechanics, workers, etc. Any costs for offsite parking shall be the responsibility of each Subcontractor.

26. Each Subcontractor shall be responsible for excavation, backfill, compaction, and restoration of grades associated with their scope of work. Coordination with all other trades is required. Any subcontractor who performs excavation shall perform all utility locates and "potholing".

27. Each Subcontractor shall coordinate its work with the other Mechanical, Electrical, and Plumbing Subcontractors working on the Project to ensure complete and operational systems.

Initials ___/___

28. Each Subcontractor shall take all reasonable precautions to protect stored materials and their work from loss or damage prior to acceptance by Owner.

29. Protection of in-place work adjacent to Construction Manager's activities.

30. Subcontractor shall provide its Safety Program to Construction Manager in accordance with Article 15 & Exhibit C of this Subcontract.

31. It is agreed and understood that this Subcontractor's onsite Foreman/Supervisor shall participate in a project specific safety course scheduled by Contractor. The cost of attendance (approximately $300 per attendee) will be the responsibility of this Subcontractor. Further, it is agreed that this Subcontractor's Foreman will attend Contractor's Weekly Safety meetings.

32. Subcontractor shall submit a delivery schedule for all items to ensure they have proper scheduling and receiving. As ship dates approach, contact Evergreen's Superintendent at the jobsite to confirm ship dates, times, etc. A minimum of a 48 hour notice is required for all deliveries. It is the Subcontractor's responsibility to ensure the shipping company has the proper directions to the jobsite.

33. All keys for the Project associated with Subcontractor's Work shall be tagged and mounted in the Key Cabinet. Key Cabinet shall be maintained by the Construction Manager in the Construction Manager's on-site office. Contractor will not accept these keys presented in-bulk, untagged, and unorganized. It shall be the Subcontractor's responsibility to coordinate delivery of these keys to the Construction Manager for inclusion into the Key Cabinet.

34. Subcontractor shall be responsible for providing all submittals, including but not limited to, shop drawings, product data, color charts, samples, etc.

35. It is agreed and understood that this project will be a LEED certified project and that all requirements specified for this scope of work shall be met and required paperwork, submittals and materials will be provided as needed to help achieve the specified LEED certification.

36. It is agreed and understood that the current project schedule is March 2015 – March 2016 and that Subcontractor will take all necessary actions to ensure that their work is completed within this time frame in accordance with the Construction Manager's schedule to ensure that the entire project is completed on or before the noted time frames.

37. The Owner intends to implement an Owner Controlled Insurance Program (OCIP) for the Construction Phase. Coverages will include General Liability and Excess Liability in Exhibit F – OCIP. The Owner will be responsible for premiums under the OCIP. Coverages required of the Subcontractors (enrolled and/or excluded under the OCIP) are outlined in the DRAFT Wrap-Up Manual contained in Exhibit F. In recognition of the Owner's decision to implement an OCIP, the Contract Sum will initially be reduced an amount equal to one percent (1%) of the Base Bid. This reduction represents the estimate for the elimination of both Subcontractors' General Liability and Excess Liability Insurance costs for this. Prior to the finalization of the Subcontract Agreement, these costs will be removed from the Base Bid` resulting in a Contract Amount that is net of insurance costs. Any change orders will also include a deduction of 1% for these estimated insurance costs. Following Subcontractor closeouts, actual earned insurance costs will be tabulated. A final

adjustment will be made against the Contract Amount, reflecting the actual earned insurance costs for the CM and all Subcontractors. This adjustment shall be completed prior to release of the final payment.

Specific Specifications

n/a

Summary of Work

1. Shop drawings, schedules, samples, product data, certificates, and coordination drawings as required by the Contract Documents are included.
2. Submittals as specified. All submittals shall be received within two weeks from the issuance of the Subcontract agreement.
3. Supplier shall be present whenever any material is delivered to the project site so that all material can be checked in by the Subcontractor and Evergreen Construction.
4. Hoisting
5. Daily cleanup
6. Offsite disposal of pallets
7. Layout
8. Multiple Mobilizations
9. Freight and all sales tax are included.
10. Field measurements as required are included in this Subcontract.
11. Furnish and install all Overhead Coiling Grilles in accordance with the Contract Documents including, but not limited to:
    a. A powdercoat finish is included, if specified
    b. All accessories including keyswitches, smoke seals, relays, interlocks, etc. as specified.
    c. Supports, track, brackets, hood enclosure, etc. are included.
    d. Power and final connections are by others.
    e. Startup, testing, and training are included as specified.
12. Keyswitches and rough-in electrical boxes to be sent to site early in order to incorporate into construction.

EVERGREEN CONSTRUCTION

SUBCONTRACTOR QUALIFICATION STATEMENT

COMPANY INFORMATION:

Formal Company Name: _____

Mailing Address: _____
Physical Address (if different): _____
Is this location your home office? _____ A branch office? _____
If a branch, what city is your home office in? _____

Submitted By: _____ Nature of Business: _____

Union _____ Open Shop _____

Number of years in business under this name: _____
If a branch office, how many years has branch been in operation? _____
Previous company name(s): _____
Number of years in business under previous company name(s): _____
Disposition of that company (sold, ceased doing business, bankrupt, or other): _____
If other, please describe: _____
Is your company a: Corporation ____ Partnership ____ Joint Venture ____ Sole Proprietorship ___ Other ____
If a Corporation, list date of incorporation: _____
List Names of officers, their years of construction experience, and their years of experience with your company:_____
_____
_____
If a Partnership, list date of organization: _____
Type of partnership: _____
Names of General Partners: _____
_____
_____
If a Sole Proprietorship, list date of organization: _____
Name of Owner: _____
Is this business a subsidiary of another business? _____
If so, attach a second qualification form on the parent company.
Is this parent company a subsidiary of another business? _____
Attach a brief description of your company's organization and/or an organization chart.

PROJECT ORGANIZATION AND INFORMATION:

1. State the project name for which your company is under consideration: _____
2. Is your company licensed in the county and state of the project under consideration for your category of work? _____
3. State certification license number or registration number: _____
4. State the name of the project Superintendent you would assign to the project: _____
   If available, attach a resume. If not available, answer the following:
   How long has the Superintendent been with the company ? _____
   How long has the Superintendent been a Superintendent of the company? _____
   Attach a list of the last four projects your project Superintendent has worked on and position on that project. (Give the project name, size, type of building, contract amount, type of work performed, name of General Contractor, name of General Contractor's Project Manager, General Contractor's phone number, name of Owner, name of Owner's representative, and Owner representative's phone number).
5. State the name of the Project Manager you would assign to the project: _____
   If available, attach a resume. If not available, answer the following:
   How long has the Project Manager been with the company ? _____
   How long has the Project Manager been a Project Manager of the company ? _____
   Attach a list of the last four projects your Project Manager has worked on and position on that project. (Give the project name, size, type of building, contract amount, type of work performed, name of

General Contractor, name of General Contractor's Project Manager, General Contractor's phone number, name of Owner, name of Owner's representative, and Owner representative's phone number).

6. List the categories of work your company would self perform: _____
_____
7. List the categories of work your company will subcontract: _____
_____
8. Attach a list of subcontractors you anticipate using, the category of work they will perform, whether or not your company has used them before, on what project they were used, name of General Contractor for that project, General Contractor's Project Manager, General Contractor's phone number, and rate the subcontractors' performance - excellent, good, fair or poor. Provide any additional comments you wish to provide.
9. Does your company pay tradesmen by the hour or by the piece? _____

EXPERIENCE:

Attach a list of all projects your company has completed in the last three years and all projects currently underway. Include the project name, project size, type of work performed, General Contractor's name, Project Manager's name and phone number, Owner's name, Owner's representative's name and phone number, completion or proposed completion date, and contract amount. Highlight any and all projects that are similar to the project for which your company is under consideration.

SAFETY:

1. Does your company have a policy against drugs, alcohol and firearms?_____Do you drug test?_____
2. What is your OSHA incidence rate for the past three (3) years?_____
3. What is your workman's compensation experience modification rate for the past three years? _____
_____
4. What were your total OSHA fines for the last three years? _____
_____
5. Attach a list of prior three (3) years citations and associated fines. _____
_____
6. Does your company have a written safety program? _____
7. Does your company have a written Hazardous Communication program? _____

FINANCIAL:

1. Average annual volume over the last five (5) years: _____
2. What percentage of your work is Design Build?_____ Conventional Designed and Bid? _____
3. What percentage (%) of your work is negotiated?_____Bid?_____
4. Largest project completed to date: _____
5. Is your company now, or has it within the last ten (10) years, been in bankruptcy? _____
6. Have any of your officers or principles been an officer or principle of another company within the last ten (10) years that failed to complete a contract?_____
7. Are there any suits, arbitrations or judgments pending against your company?:
If so, attach a detailed explanation.
8. Has your company, within the past three (3) years been sued by, or had a lien claim by any supplier, subcontractor, General Contractor, or Owner? _____ If so, attach a detailed explanation.
9. Can your company provide a bond for the project presently under consideration? _____ What is the cost of that bond? _____ Is that cost included in your Bid amount? _____
10. List the name, address, phone number and contact person for your Bonding Company: _____
_____
_____
11. List the name, address, phone number and contact person of your Bonding Agent:
_____
_____
_____
12. Attach your company's most recent audited financial statement and your company's most recent interim unaudited financial statement.

REFERENCES:

Attach a list of at least five (5) General Contractor references and one (1) bank reference. Include the project name, contact name and phone number of the contact person for each.

Construction Manager Job No.	
Subcontract Number	
Date	

Subcontract

CONSTRUCTION MANAGER:	**The Evergreen Corporation dba Evergreen Construction** 3200 Cobb Galleria Parkway, Suite 240 Atlanta, Georgia 30339 678-244-6500 678-244-6565 Fax	Attention:
SUBCONTRACTOR:		Attention:
WORK:		
PROJECT:		
OWNER:		
PRIME CONTRACT:	Dated:	
SUBCONTRACT PRICE:		Dollars
MONTHLY BILLING:	**Original** Payment Application to be received by Construction Manager by the **22nd** of the month	
RETAINED PERCENTAGE:	Ten Percent	(10%)
CHANGE ORDER OVERHEAD AND PROFIT:	Ten Percent Total Overhead & Profit	(10%)
PAYMENT AND PERFORMANCE BONDS:		Required☐ Not Required☐

(The above terms are incorporated by reference and are more fully explained below.)

Construction Manager and Subcontractor, with offices at the addresses shown above, agree for themselves, their successors and assigns as follows:

Initials ____ / ____

1. **WORK.** Subcontractor shall perform and furnish all labor, supervision, services, materials, equipment, tools, scaffolds, hoisting, transportation, layout, storage and all other things necessary to prosecute and complete the work identified and described in, or which can be reasonably inferred from Exhibit A attached hereto (the "Work"), being a portion of the work required of Construction Manager under the Contract between Owner and Construction Manager. The Work shall be performed by Subcontractor in a good and workmanlike manner and strictly in accordance with the Contract Documents, consisting of the Contract and the plans, specifications (including, but not limited to, general, special and supplemental conditions), addenda and other documents identified in Exhibit B attached hereto, and all subsequently and duly issued modifications thereto.

The Contract Documents are available for examination by Subcontractor at all reasonable times at the office of Construction Manager. Subcontractor represents that it has carefully inspected the Project site and examined the drawings and specifications and other Subcontract Documents and is familiar with and has satisfied itself as to the nature, location and amount of Subcontractor's Work, Subcontractor's access thereto and ability to perform Work, local code requirements applicable to Work and requirements of permits and inspections, safety and barricade requirements, the terms and conditions of applicable Project labor and collective bargaining agreements, the terms of this Agreement and all incorporated documents as well as the quality, quantity and availability of labor, materials, equipment and facilities and other items required for the performance of Subcontractor's Work and the limiting physical and other conditions which may be encountered in the performance of Subcontractor's Work and assumes all risks therefrom.

Subcontractor has determined, by its own investigation and research, all the conditions affecting Subcontractor's Work to be done and materials to be furnished and does not rely upon any representation by Owner, Construction Manager or Engineer in connection therewith. In performing Subcontractor's Work, Subcontractor accepts the condition of the Project site as-is and assumes the risks with regard to existing conditions at the Project site.

Subcontractor shall be bound to Construction Manager by the terms and conditions of the Contract Documents, as the same shall be applicable to the Work and this Subcontract, and hereby assumes toward Construction Manager all of the duties, obligations and responsibilities that Construction Manager has by the Contract Documents assumed toward Owner.

2. **PRICE**. Construction Manager shall pay to Subcontractor, for the satisfactory performance and completion of the Work and performance of all the duties, obligations and responsibilities of Subcontractor under this Subcontract, the sum set forth above as the Price, subject only to additions and deductions as expressly provided in this Subcontract. To the extent that the Work is to be performed on a unit price basis, the Price shall be computed in accordance with the unit prices set forth herein, based on actual quantities determined in accordance with the Contract Documents and this Subcontract. The Price and all unit prices shall be deemed to include all costs of Subcontractor's performance of the Work as set forth in the Contract Documents, including, but not limited to, the costs of labor, supervision, services, materials, equipment, tools, scaffolds, hoisting, transportation, storage, insurance and taxes, and all overhead and profit.

3. **PROGRESS PAYMENTS**. Within ten (10) days after the date of transmission of this Subcontract to Subcontractor, Subcontractor shall submit to Construction Manager for Construction Manager's approval a detailed Schedule of Values, utilizing AIA G703 continuation sheet form, showing a proper cost breakdown (with a proper share of associated overhead and profit) of the Price according to the various line items, or parts, of the Work, for use only as a basis for verifying Subcontractor's application for Payment or supporting Construction Manager's applications for payments under the Contract. This Schedule of Values must be broken down into labor and materials for all activities.

On or before each Monthly Billing Date, Subcontractor shall submit to Construction Manager, in such form and supported by such data as Construction Manager may require, a progress payment application (Evergreen Construction "Subcontractor's Application for Payment," Form No. SAFP) showing the value of the Work installed ("Completed Work"), plus the value of the material and equipment for incorporation in the Work suitably stored (to the satisfaction of Construction Manager and Architect) at the Project site if, and only if, the Contract Documents provide for payments to Construction Manager on that basis, as of such date. Request for stored materials must be accompanied by, (1) copies of actual manufacturer's and/or supplier's invoices showing quantities, description and actual cost of materials to Subcontractor, (2) insurance certificates for materials stored including until such times as materials arrive at the project site (including delivery), (3) bill of sale for stored materials and affidavit stating location and (4) condition of material being stored. The current Schedule of Values, utilizing the AIA G703

continuation sheet form, and project specific interim lien waivers for the current amount requested must be submitted with each application for payment.

As a condition precedent to each progress payment, Subcontractor shall provide, in a form satisfactory to Owner and Construction Manager, partial waivers of lien or claim and affidavits of payment from Subcontractor and, if required by Construction Manager, from Subcontractor's lower tier subcontractors and suppliers. Subcontractor shall, as often as required by Construction Manager, provide an affidavit identifying all parties who have furnished or will furnish labor, materials and services to Subcontractor in the performance of Subcontractor's Work, including their addresses, telephone and facsimile numbers, and the amount due or to become due to each.

Subcontractor's failure to timely submit claims, requests for additional compensation, requests for payment for extra or additional work and requests for time extensions during each period of performance, following Subcontractor's completion of Subcontractor's Work or the portion thereof performed during the period of performance, shall constitute a waiver and release by Subcontractor of any and all claims for payment(s) associated with such performance hereunder, and shall waive, release and forever discharge Construction Manager from and against any liability or obligation to make any payment(s) therefor.

Within seven (7) days after receiving a progress payment from Owner under the Contract, Construction Manager shall make a progress payment to Subcontractor equal to the value of the Completed Work and Stored Work as of the corresponding Monthly Billing Date, to the extent approved by Construction Manager and allowed and paid by Owner on account of the Work, and after deducting (a) all previous payments, (b) current retainage (meaning a reserve equal to the Retained Percentage times the allowed value of Completed Work and Stored Work, plus any additional reserve provided for herein) (c) all charges or backcharges for services, materials, equipment, or other items furnished or otherwise chargeable to Subcontractor. Subcontractor acknowledges and recognizes that Subcontractor's Work is a portion of the Work and payment for Subcontractor's Work by Construction Manager is conditioned upon payment for Subcontractor's Work by Owner. Subcontractor warrants and represents that it relies for payment of Subcontractor's Work on the credit and ability to pay of Owner, and not of Construction Manager, and that Subcontractor undertakes the risk that it shall not be paid for Subcontractor's Work performed under this Agreement in the event Construction Manager is not paid by Owner for such work. Except for confidential information, Subcontractor may review any information provided by Owner to Construction Manager relative to Owner's financial ability to pay for the Work. Notwithstanding any contrary provision of the Subcontract Documents, Subcontractor expressly acknowledges and agrees that receipt by Construction Manager of payment from Owner for Subcontractor's Work shall be a condition precedent to any payment obligation of Construction Manager (or its surety) to Subcontractor under this Agreement, unless Owner has withheld monies which would otherwise be due to Subcontractor from Construction Manager for reasons which are not the fault of Subcontractor and wholly the fault of Construction Manager or others for whom Construction Manager is responsible. Furthermore, Subcontractor agrees that it will not, under any circumstances, claim against Construction Manager or its surety for payment of amounts not due to Subcontractor under this Agreement.

Construction Manager reserves the right to make joint check payments to the Subcontractor and any or all of the Subcontractor's subcontractors or suppliers or to directly pay any and all of the Subcontractor's subcontractors or suppliers and to deduct all amounts so paid from the amounts otherwise due Subcontractor.

Construction Manager reserves the right to advance the date of any payment (including final payment) due or to become due under this Subcontract if, in its sole judgment, it becomes desirable to do so.

Subcontractor shall not be entitled to any payment until this Subcontract has been properly executed and all documents and information to be furnished by Subcontractor have been supplied to Construction Manager.

4. **FINAL PAYMENT**. A final payment, consisting of the unpaid balance of the Price, shall be made within twenty-five (25) days after the last of the following to occur: (a) satisfactory completion of the Work by Subcontractor, (b) unqualified acceptance thereof by the Architect and Owner, (c) full final payment by Owner to Construction Manager under the Contract on account of the Work, (d) furnishing of evidence satisfactory to Construction Manager that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes, or other items performed, furnished or incurred in connection with the Work, (e) delivery of all guaranties, warranties, bonds, instruction manuals, performance charts, diagrams, as-built drawings and similar items required of Subcontractor or its suppliers or subcontractors, (f) delivery of lien releases from Subcontractor and all of its subcontractors and suppliers and those in privity with such subcontractors and suppliers, and (g) delivery of a general release, in a form satisfactory to Construction Manager, executed by Subcontractor

running to and in favor of Construction Manager and Owner, and such other parties as Construction Manager may require.

5. **PAYMENT CONDITIONS**. Subcontractor will receive the payments made by Construction Manager and Subcontractor will hold such payments as a trust fund to be applied first to the payment of laborers, suppliers, subcontractors and others responsible for the Work for which such payments are made, including sufficient funds to ensure that all taxes and insurance applicable thereto are also paid. Subcontractor shall first apply all progress payments as trustee to satisfy all obligations Subcontractor has incurred due to the Work.

Subcontractor shall, as often as requested by Construction Manager, furnish such information, evidence and substantiation as Construction Manager may require with respect to the extent and value of current progress and the nature and extent of all obligations incurred by Subcontractor in connection with the Work and all payments made by Subcontractor on account thereof. Subcontractor shall also furnish, as required by Construction Manager in its sole discretion, such partial or final lien waivers or releases as Construction Manager deems necessary to ensure that Subcontractor has paid all persons furnishing any labor, material, or services in furtherance of any Work furnished hereunder. If required by Construction Manager, the furnishing of such lien waivers and releases shall be a condition precedent to any payment hereunder. Nothing herein shall constitute any requirement that Construction Manager exercise it discretionary option to require such releases and waivers. Moreover, no prior failure of Construction Manager to require such releases and waivers shall limit Construction Manager's right to require them subsequently.

Construction Manager reserves the right to withhold, as an additional reserve and without limiting its other rights and remedies, an amount sufficient: (a) to defend, satisfy and discharge any asserted claim that Subcontractor (or anyone providing any of the Work hereunder) has failed to make payment for labor, services, materials, equipment, taxes, or other items or obligations furnished or incurred in connection with the Work or has caused damage to the Work or to any other work on the Project; (b) to complete the Work if it appears that funds remaining in the Subcontract, including retainage and exclusive of backcharges are insufficient to complete the work; (c) to reimburse Construction Manager for any backcharges incurred as a result of or any act or omission by Subcontractor hereunder; (d) to protect Construction Manager from the possible consequences of any other breach or default by Subcontractor hereunder; or (e) to secure Construction Manager with respect to any breach or default by Subcontractor or its affiliates, parent company and subsidiaries under any other agreement.

Payment hereunder shall not be evidence of the proper performance or progress of the Work and no payment shall be construed to be acceptance of defective, faulty or improper work or materials.

6. **TIME**. Time is of the essence in the performance of Subcontractor's Work. Subcontractor agrees to perform Subcontractor's Work so that the Work and every portion thereof may be completed in accordance with the Subcontract Documents. Subcontractor shall begin Subcontractor's Work as soon as instructed by Construction Manager. Subcontractor shall prosecute Subcontractor's Work expeditiously and at such times and in such order as Construction Manager shall direct to keep it sufficiently in advance of the other parts of the Work and so as to avoid any delay or disruption to the overall process or completion of the Work.

Construction Manager may prepare a construction schedule for the Work or any portion thereof. Such schedule (the "Schedule of Work") shall be generally consistent with the schedule requirements, time limitations, and other milestones for performance of the Work, which are specified in the Subcontract Documents. Subcontractor shall promptly provide all scheduling information required by Construction Manager for Subcontractor's Work. The Schedule of Work, which may be supplemented by near term and detailed subschedules, may be updated, supplemented, or revised at appropriate intervals by Construction Manager as required by the progress of Subcontractor's Work and/or any changes or modifications in the requirements of the Subcontract Documents. Subcontractor shall cooperate and participate with Construction Manager in preparing, updating, supplementing and revising the Schedule of Work. Such Schedule of Work shall be available for review by Subcontractor. Subcontractor shall monitor progress of the Work and shall conform Subcontractor's Work, including scheduling of activities and their duration, sequences of operation and performance, and delivery of equipment and materials, to the requirements of the Subcontract Documents and the Schedule of Work. Should Construction Manager not prepare a Schedule of Work, or should such Schedule of Work not indicate time of performance of all or part of Subcontractor's Work, then to that extent Subcontractor shall schedule and perform Subcontractor's Work consistent with the directions of Construction Manager as modified from time to time..

The initial Schedule of Work sets forth the required durations of activities. In the event job progress begins to improve on those activity completion dates for any reason such as better weather, material deliveries, performance by subcontractors, and/or fewer design problems, both the intermediate and final completion dates may be adjusted by the amount of time gained, as reflected in the Near Term Schedules. Unless Subcontractor provides reasonable written objection, its completion time will be established by these Schedules and Subcontractor will meet such Schedules even though such scheduled time for performance may be shorter than the original referenced completion dates. These Schedules, as modified during the job and as defined by Construction Manager, provide the only dates for intermediate and final completion dates irrespective of anything to the contrary. The revising of the Near Term Schedule by Construction Manager to reflect the failure of Subcontractor to meet the previous schedule does not constitute an agreement by Construction Manager that Subcontractor is entitled to an extension of time, nor is Subcontractor relieved of liability for such failure.

Subcontractor shall prosecute Subcontractor's Work in a prompt, efficient and workmanlike manner so as to promote the general progress of the entire Project and shall not, by delay or otherwise, interfere with or hinder the operations of Owner or the work of Construction Manager or its subcontractors. Anytime Subcontractor is behind the Schedule of Work as a result of acts or omissions by Subcontractor or as a result of delays for which Subcontractor is not entitled to a time extension (including, without limitation, delays for which Subcontractor has failed to notify Construction Manager in accordance with this Agreement), Subcontractor shall, at its own expense, provide Construction Manager with a recovery schedule on request from Construction Manager and supply additional labor, supervision and equipment, perform overtime work, and do everything necessary to bring Subcontractor's Work back on schedule pursuant to such recovery schedule. The time of performance of Subcontractor's Work is of the essence and Subcontractor agrees to reimburse Construction Manager for any and all liquidated and/or actual damages that may be assessed by Owner against Construction Manager which are attributable to or caused by Subcontractor's failure to perform Subcontractor's Work required by this Agreement within the time fixed or in the manner provided for herein. Subcontractor also agrees to pay to Construction Manager any increased costs or other damages Construction Manager may sustain by reason of delay by Subcontractor, whether or not liquidated or actual damages are assessed by Owner. The payment of such damages shall not release Subcontractor from its obligation to fully perform this Agreement.

Construction Manager shall have the right to decide all matters relative to the timely and orderly conduct of the Work. Construction Manager shall have the right to decide the time and order of sequencing of the various portions of Subcontractor's Work. If requested by Construction Manager, Subcontractor shall furnish additional workers, additional shifts of labor, work overtime, pay premium costs for materials and for expediting delivery, and make other accommodations to meet the requirements of Subcontractor's Work. If Subcontractor is in default of any provision of this Agreement, or has caused or contributed to a delay to the Project, and Construction Manager determines that such activities are required to maintain satisfactory job progress, such additional labor, overtime, premium cost, expediting costs and other associated costs shall be at no cost to Construction Manager. Subcontractor also agrees that Construction Manager shall have the right, upon 48 hours written notice, to supplement Subcontractor's forces and resources, take over the work or any portion thereof and/or furnish such materials and/or employ such workers as may be necessary to remedy the situation, at the expense of Subcontractor. Should Subcontractor claim that Construction Manager's request constitutes an unreasonable directive and entitles Subcontractor to an adjustment to the Subcontract Price, Subcontractor shall, nevertheless, proceed as requested by Construction Manager and shall promptly give written notice of claim as provided in paragraph 28 hereof.

7. **EXTENSIONS OF TIME**. Should Subcontractor, without any fault or neglect on its own part, be delayed in the completion of the Work by the fault or neglect of Construction Manager, Subcontractor, as its sole remedy, shall be entitled to a reasonable extension of time only. Subcontractor's sole and exclusive remedy for any and all impacts, cumulative impacts, delay, disruption, hindrance, interference, inefficiencies, losses of productivity, damages or any other adverse effects to the performance of Subcontractor's Work shall be by adjustment to the Schedule of Work, as provided above, except to the extent that Construction Manager receives payment for same from Owner under the terms of the Contract Documents. Should Subcontractor without any fault or neglect on its own part, be delayed in the completion of the Work by an act of God or such other cause beyond the control of Construction Manager and Subcontractor which entitles Construction Manager to an extension of time under the Contract Documents and should Construction Manager actually receive an extension of time from Owner, Subcontractor shall be entitled to a reasonable extension of time to be determined in accordance with this Subcontract and the Contract Documents. In no event shall Subcontractor be entitled to compensation or damages for any delay in the commencement, prosecution, or completion of The Work or for any schedule adjustments resulting therefrom except to the extent that Construction Manager shall receive such compensation or damages from Owner or other third party.

Notwithstanding anything to the contrary in the Contract Documents or this Subcontract, Subcontractor shall not be entitled to an extension of time unless a written notice of delay shall have been delivered to Construction Manager within seventy-two (72) hours after commencement of the claimed delay.

8. **CHANGES IN THE WORK**. No alterations shall be made in the work as shown or described in the Contract Documents, as modified by applicable codes, ordinances, requirements, laws, rules and regulations as set forth in this Subcontract hereof, except on the written authorization of Construction Manager, and when so made, the value of the work or materials added or omitted and any extension or deduction from the time of completion necessitated thereby shall be computed and proposed by Subcontractor, subject to the written approval and acceptance by Construction Manager, and the amount after determination by the Construction Manager shall be added to (if Subcontractor has not previously agreed to perform the additional work under the terms of this Subcontract) or deducted from the Subcontract Sum and time of completion. Any such change in the Subcontract Sum may be determined by the Construction Manager at its sole option in one of the following manners:

A. By mutual agreement of a lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Construction Manager.
B. By unit price stated in this Subcontract or as subsequently agreed upon.
C. On the basis of the reasonable cost to Subcontractor of such work. Subcontractor shall keep and present in such form as Construction Manager may request an itemized accounting, together with supporting information, of the costs of such work. Daily work tickets must be signed by the Construction Manager's Project Superintendent each day. Signature is for verification of time or that work was performed. Signature does not constitute acceptance of work, approval of cost, or conformance with the contract documents.
D. As may be required in the Owner Contract.

Construction Manager may direct Subcontractor to proceed with changes in the work prior to issuance of a formal change order. Subcontractor will, upon written direction from the Construction Manager, perform the changes in the Work. If a dispute should arise regarding the Cost of the Change in the work Subcontractor agrees to continue to perform the Work despite the existence of disputes.

In no event shall Subcontractor's overhead and profit exceed ten percent (10%) of the cost of such work (Cost of the Work x 10 % = overhead and profit). Subject to the other conditions of this Subcontract, Subcontractor shall have no claim for the cost of additional work or for an extension of time (including, without limitation, claims for impact damages or for costs due to delay) unless such work and the cost and expenses thereof or time is stated on the face of a written change order and approved and accepted by Construction Manager on such written Subcontract Change Order. Any attempted reservation by subcontractor of the right to claim subsequently any amount or extension of time which amount or extension of time is not quantified and stated on the face of a written change order approved and accepted by Construction Manager shall be null and void. All change orders issued under this Subcontract shall be subject to all of the terms of this Subcontract and the Owner Contract.

It is the responsibility of the Subcontractor to review revised Contract Documents and respond in writing within five (5) calendar days, unless an earlier time period is required by Contract Documents, after receipt of said documents concerning changes in the scope of work, if any, as well as the corresponding pricing. Failure to respond to revised documents issued to the Subcontractor, in accordance with the conditions set forth herein, will constitute a waiver of any right of Subcontractor to request an adjustment to either the Subcontract Sum or Project timetable.

9. **NOTICES.** All written notices provided for in this Subcontract or in the Contract Documents shall be deemed given if delivered personally to a responsible representative of the party, sent by telegram, facsimile, electronic mail or by regular mail to the party at its address specified herein. Either party may from time to time, by notice to the other as herein provided, designate a different address to which notices to it should be sent.

10. **BONDS**. If so indicated on page 1 hereof, Subcontractor shall furnish, within ten (10) days of date of transmission of this Subcontract to Subcontractor, which is included in the Price, a performance bond and a payment bond, each in an amount equal to the Price, on AGC Form 606 & 607 and with surety or sureties with an AM Best Rating of A- or better. Subcontractor agrees to notify its surety or sureties of increases in the Price and to take such action as is required to have the penal amount of the bonds furnished pursuant to this paragraph increased correspondingly.

11. **INSURANCE**. Before commencing the Work and until completion and final acceptance thereof by Owner, Subcontractor, its subcontractors, and leased personnel providers shall obtain and maintain, at its expense, at least the following insurance coverages in addition to any coverage required by the contract documents, all from companies, and in form and substance acceptable to Construction Manager.

INSURANCE REQUIREMENTS:

(a) **Worker's Compensation** insurance must be provided in accordance with the statutory laws of the state in which work is performed with Employer's Liability limits of not less than $1,000,000 for bodily injury per accident, $1,000,000 each employee and limits for bodily injury by disease of $1,000,000 per employee.

(b) **Commercial General Liability** (CGL) Insurance must be provided with limits of not less than $1,000,000 **combined bodily injury and property damage** (BIPD) for any one occurrence and $2,000,000 **general aggregate**. CGL insurance must provide coverage for the following risks:

- **Broad Form Property Damage**
- **XCU Hazards** (explosion, collapse and underground damage)
- **Independent Contractors**
- **Contractual Liability** (for indemnity agreement in Subcontract)
- **Completed Operations** (this coverage must be maintained for 24 months following completion of the Work)

(c) **Comprehensive Automobile Liability** must be provided with limits of not less than $1,000,000 combined **bodily injury and property damage** for any one occurrence with coverage for the following risks:

- All owned vehicles - Non-ownership liability -Hired vehicles

(d) **Umbrella/Excess Limit Insurance** not less than $2,000,000; must be provided for subcontracts over $50,000

ADDITIONAL INSURED ENDORSEMENT: Subcontractor's liability insurance policy shall be endorsed as shown below to afford coverage on behalf of Construction Manager and Owner for the indemnity obligations contained in paragraph 12 of this Subcontract:

"Both The Evergreen Corporation (Construction Manager) and the Owner of the Project on which the named insured is performing work shall be covered as additional insureds for all above liability coverages. A thirty (30) day prior written notice of cancellation will be provided to Construction Manager."

BUILDER'S RISK INSURANCE: Builder's Risk Insurance for the Project is being provided as indicated below:

☐ Coverage is being furnished by the Owner as indicated in the Contract Documents subject to the provisions stated therein.

☒ All Risks Coverage subject to policy exclusions is being furnished by the Construction Manager with losses subject to deductibles.

As a condition to any payment for the Work, Subcontractor, its subcontractors, and leased personnel providers shall furnish a certificate, satisfactory to Construction Manager, from each insurance company showing the required insurance to be in force and stating that the insurance will not be canceled or changed except upon at least thirty (30) days written notice thereof to Construction Manager or as otherwise required by the Contract Documents.

To the extent that Construction Manager and Subcontractor maintain insurance coverage for loss or damage to property, each hereby waives subrogation of claims against the other, the Owner, and their agents, employees and servants.

Builder's Risk Insurance covering the Project is being provided as indicated above. Subcontractor hereby acknowledges its obligation for any loss to its Work, including stored materials, paid for or not, whether or not such loss is reimbursable by Builder's Risk Insurance, including Subcontractor's proportionate share of any deductible

under the policy. However, nothing contained in this paragraph is intended to prevent or deny Subcontractor from asserting claims for unreimbursed losses against any person or party responsible therefor, except as otherwise provided hereinabove. Subcontractor is completely responsible for all of their own tools and equipment that will not become a permanent part of the Subcontract.

12. **INDEMNITY**. To the fullest extent permitted by law, Subcontractor agrees to defend, indemnify and save harmless Construction Manager and Owner, as well as any other parties which Construction Manager is required under the Contract Documents to defend, indemnify and hold harmless, and their agents, servants and employees, from and against any claim, cost expense, or liability (including attorneys' fees, expert witness fees), attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of property (including loss of use thereof), caused by, arising out of, resulting from, or occurring in connection with the performance of the Work by Subcontractor, its subcontractors and suppliers, or their agents, servants, or employees, whether or not caused in part by the active or passive negligence or other fault of a party indemnified hereunder; provided, however, Subcontractor's duty hereunder shall not arise if such injury, sickness, disease, death, damage, or destruction is caused by the sole negligence of a party indemnified hereunder. Subcontractor's obligation hereunder shall not be limited by the provisions of any workers' compensation or similar act. Subcontractor hereby agrees that One Hundred Dollars and No/Cents ($100.00) of the Price constitutes the separate consideration for Subcontractor's indemnity hereunder. Such amount shall be deemed paid out of the first application for payment paid hereunder.

Should Owner or any other person or entity assert a claim or institute a suit, action, or proceeding against Construction Manager involving the manner or sufficiency of the performance of the Work, Subcontractor shall, upon request of Construction Manager, promptly assume the defense of such claim, suit, action or proceeding at Subcontractor's expense, and Subcontractor shall indemnify and save harmless Construction Manager as well as anyone to be defended, indemnified and held harmless by Construction Manager and its or their agents, servants and employees, from and against any liability, loss, damage, or expense arising out of or related to such claim, suit action, or proceeding.

13. **ASSIGNMENT**. Subcontractor shall not assign this Subcontract, or any monies due or to become due hereunder, or subcontract any substantial part of the Work without the prior written consent of Construction Manager. No assignment by Subcontractor or any right hereunder shall be effective and any such attempt shall be null and void. No third party shall have any right to enforce any right of Subcontractor under this Subcontract. If Construction Manager gives written consent to an assignment of this Subcontract, in whole or in part, Subcontractor shall not be relieved of its duties and obligations hereunder and shall be and remain fully responsible and liable for the acts and omissions of its assignees. Nothing herein shall prevent Subcontractor from engaging subcontractors to perform a portion of the Work hereunder. However, Subcontractor shall be and remain as fully responsible for all persons directly or indirectly employed by such subcontractors, as Subcontractor is for its own acts and omissions and those of its agents, servants and employees. Additionally, nothing herein shall prevent any guarantor or surety of Subcontractor from enforcing any right hereunder after acknowledgment of its obligation as guarantor or surety. Any attempted enforcement of such rights in the absence of an express acknowledgment shall constitute an admission by any guarantor or surety of its obligations under its agreement of guarantee or suretyship.

14. **COMPLIANCE**. Subcontractor shall, at its own expense, obtain all necessary licenses and permits pertaining to the Work and comply with all statutes, ordinances, rules, regulations and orders of any governmental or quasi-governmental authority having jurisdiction over the Work or the performance thereof, including, but not limited to, those relating to safety, wages, discrimination and equal employment opportunity. Subcontractor shall promptly correct any violations of such statutes, ordinances, rules, regulations and orders committed by Subcontractor, its agents, servants and employees; and Subcontractor shall receive and respond to, and shall defend, indemnify and save harmless Construction Manager and Owner, as well as anyone to whom Construction Manager is obligated, and their agents, servants and employees from and against any loss, liability, or expense arising from any such violations and any citations, assessments, fines, or penalties resulting therefrom.

15. **SAFETY**. Project Safety: Subcontractor shall maintain its own safety program which shall in all cases meet all applicable federal, state and/or local safety related laws and regulations as well as Exhibit C – Construction Manager's Standard Accident Prevention Program for Subcontractors. Construction Manager may issue directives to Subcontractor with respect to a safety compliance issue and may require Subcontractor to respond promptly to each directive. Subcontractor's failure to correct the issue, in a prompt manner, authorizes Construction Manager, at its sole option, to take whatever steps it deems to be necessary to address said issue in order to provide a safe work site for all concerned parties. Any costs, including reasonable attorneys' fees and costs, incurred by Construction Manager because of any such issue shall be the responsibility of Subcontractor. Notwithstanding any

safety measures established by Subcontractor, it shall without limitation, comply with all safety obligation imposed by the General Conditions, the Underground Gas Pipe Law, The High Voltage Act, The Occupational Safety and Health Act of 1970 and The Construction Safety Act of 1969 A and the regulations issued pursuant to those Acts.

Hazard Communication: Subcontractor shall be responsible for implementing and maintaining a Hazard Communication Program as required by law. This includes, but is not limited to, providing Material Safety Data Sheets (MSDS's) to the Construction Manager on any hazardous chemicals or materials on the Project Site. Subcontractor shall submit this program for review within ten (10) days of the execution of this Subcontract or ten (10) days before mobilizing on the Project, whichever occurs first. This Subcontractor is responsible for any chemicals, which will be used by the Subcontractor, that enter the project site.

Substance Abuse Program: Subcontractor shall be responsible for implementing and maintaining an effective Substance Abuse Program. Should Subcontractor not have a written Substance Abuse Program, it agrees to abide by the minimum standards stated in the Alcohol and Drug Testing Program Compliance Policy, attached hereto as Exhibit D. Any costs, including reasonable attorneys' fees and costs, incurred in the adoption, implementation or administration of the Subcontractor's Substance Abuse Program shall be the responsibility of the Subcontractor.

16. **ENVIRONMENTAL**. Throughout performance of Subcontractor's Work, Subcontractor shall conduct all operations in such a way as to minimize impact upon the natural environment and prevent any spread of contaminated or hazardous material. Subcontractor shall:

(a) Provide dust control of its operations within all Project areas under its control and shall coordinate and cooperate with others for dust control in common areas;

(b) Provide working machinery and equipment with efficient noise suppression devices and all other noise and vibration abatement measures necessary for the protection of workers and the public;

(c) Provide suitable waste, sewage, sanitary and garbage disposal methods and procedures app-roved by Construction Manager;

(d) Provide suitable equipment, facilities and pre-cautions to prevent the discharge of contaminants into the atmosphere, any body of water, or land areas;

(e) Provide all documentation required by all levels of governing authority over this Agreement concerning environmental requirements; and

(f) Be responsible for developing and maintaining a written Environmental Compliance Plan (ECP) in accordance with Subcontractor's established practices, including but not limited to compliance with all applicable laws and all applicable requirements in the Project Environmental Control Plan. Subcontractor shall have sole responsibility for developing, implementing and enforcing its ECP.

Subcontractor shall submit its written ECP to Construction Manager for review prior to commencing work at the Project site. Construction Manager's review of Subcontractor's ECP shall not relieve Subcontractor of its obligations under this Agreement or as imposed by law, and Subcontractor shall be solely responsible for the adequacy of its ECP.

In the event Subcontractor encounters material on the Project site reasonably believed to be toxic or hazardous material or waste which has not been addressed in this Agreement, Subcontractor shall immediately stop work in the affected area and notify Construction Manager and Owner of the condition in writing. Pending receipt of written instructions from Construction Manager, Subcontractor shall not resume work in the affected area.

17. **CLEANING UP**. Subcontractor shall, at its own expense keep the premises at all times free from waste materials, packaging and other debris accumulated in connection with the Work by collecting and disposing of such debris to a dumpster provided by Construction Manager on a daily or other basis requested by Construction Manager; (b) at the completion of the Work in each area, sweep and otherwise make the Work and its immediate vicinity "broom-clean;" (c) remove all of its tools, equipment, scaffolds, temporary structures and surplus materials as directed by Construction Manager at the completion of the Work; and (d) at final inspection clean and prepare the Work for acceptance by Owner. Subcontractor agrees to provide all cleaning and cleanup required under the

Contract Documents pertaining to the Work to the extent such requirements are in excess of those contained in this paragraph.

During the progress of Construction, a composite cleanup crew may be requested by the Construction Manager to perform project cleanup. Participation will be required based on the number of employees Subcontractor has on the project. If Subcontractor fails to participate in this composite crew, without prior approval of the Project Superintendent, Construction Manager will provide adequate manpower for this effort and deduct the cost from Subcontractor's contract amount.

18. **TEMPORARY FACILITIES**. All temporary site facilities, such as storage, sheds, water, heat, light, power, toilets, hoists, elevators, scaffolding, cold weather protection, ventilating, pumps, watchman service, etc., required in performing the Work shall be furnished by Subcontractor except as follows:

1. The Construction Manager will furnish temporary power for construction purposes, however; it is anticipated that this service may not be available by the start of construction. It will be the Subcontractor's responsibility to provide generators for any required power until temporary construction service has been completed. Power for welders will not be provided.

2. The Construction Manager will furnish temporary water for construction purposes. All drinking water and ice as required for personnel is the sole responsibility of the Subcontractor (i.e. containers, cups, and distribution).

3. Designated telephone service will be made available for this Subcontractor's foreman use and/or employee emergencies only. Telephones in the Construction Manager's office are not for Subcontractor use.

All temporary facilities furnished by Construction Manager shall be without charge to Subcontractor except as otherwise indicated above.

The Construction Manager shall designate an area for construction trailers and storage trailers. Locations and scheduled duration shall be coordinated by the Construction Manager. Each Subcontractor is responsibility to verify that all field offices, trailers and storage sheds shall be in accordance with the local fire marshal having jurisdiction. Each Subcontractor shall arrange and pay for temporary water, sewer, telephone and electrical hook-up and use fees. The Subcontractor shall pay for all power used for the Subcontractor's temporary field office. Subcontractors shall maintain the designated space including removal of debris, trash and clean up of the area after removal of such temporary structures.

Subcontractors will be required to park in designated areas only; spaces to be confirmed by Construction Manager. If adequate spaces are not available on site, Construction Manager will not be responsible for providing parking for Subcontractor's employees.

In connection with its furnishing of the temporary facilities indicated, Construction Manager shall not be liable for conditions beyond the control of Construction Manager that may interrupt, delay, or otherwise interfere with the availability of such facilities to Subcontractor. Unless otherwise expressly indicated, the temporary facilities furnished by Construction Manager shall not be for the exclusive use of Subcontractor, but shall be shared by others performing work on the Project. Construction Manager, therefore, reserves the exclusive right to schedule the use of any facilities in accordance with its determinations as to the needs of the Project, and shall incur no liability as a result thereof.

19. **QUALITY**. Subcontractor shall at all times provide first quality, new materials (unless otherwise specified in the Contract Documents) and workmanship conforming to the Contract requirements. Subcontractor shall at all times provide proper facilities and an opportunity for the inspection of the Work by Construction Manager, Architect and Owner and their representatives. Subcontractor shall, within twenty-four (24) hours after receiving written notice from Construction Manager or Architect, proceed to take down and remove all portions of the Work which Construction Manager or Architect shall have condemned as unsound, improper, or in any way failing to conform to the Contract Documents of this Subcontract and shall replace the same with proper and satisfactory Work and make good all work damaged or destroyed thereby. Construction Manager's failure to discover or notify Subcontractor of defective or nonconforming Work at the time Work, or any portion thereof, is performed or completed shall not relieve Subcontractor of full responsibility for replacement of the defective or

nonconforming Work and all damages resulting therefrom. If the Owner elects to accept defective or nonconforming Work, Construction Manager may require an appropriate adjustment in the Price to the extent required of Construction Manager.

20. **GUARANTEES**. Subcontractor warrants and guarantees the Work to the full extent provided for in and required by the Contract Documents. Without limiting the foregoing or any other liability or obligation with respect to the Work, Subcontractor shall at its expense and by reason of its express warranty, make good any faulty, defective, or improper parts of the Work discovered within one year from the date of acceptance of the Project by Architect and Owner or within such longer period as may be provided in the Contract Documents. Subcontractor shall maintain its performance bond for the project through the end of the warranty period or, substitute a warranty bond therefore to guarantee performance of its warranty obligations for the warranty period. The warranty bond must be in a form, and from a surety, acceptable to Construction Manager. Subcontractor warrants that all materials furnished hereunder meet the requirements of the Contract Documents and impliedly warrants that they are both merchantable and fit for the purpose for which they are to be used under the Contract Documents.

21. **SUBMITTALS**. Subcontractor shall immediately prepare or obtain and promptly submit to Construction Manager shop and erection drawings, samples, product data, catalogue cuts, laboratory and inspection reports and engineering calculations, all as may be required by the Contract Documents or as may be necessary or appropriate to describe the details of the Work. Approval of drawings or other submittals by Construction Manager or Architect shall not relieve Subcontractor of its obligation to perform the Work in strict accordance with the Contract Documents or its responsibility for the proper matching of the Work to contiguous work.

22. **PERFORMANCE**. The Work shall be performed and furnished under the direction and to the satisfaction of Architect and Construction Manager, but Subcontractor shall not thereby be relieved of its obligation to supervise the Work, using its best skill and attention, or its obligation to perform the Work as provided for herein. Subcontractor shall be bound by the interpretations and decisions of Architect and Owner to the same extent as Construction Manager may be bound thereby under the Contract Documents.

Subcontractor shall notify and obtain the approval of Construction Manager before the arrival of forces or delivery of materials and equipment to the project site, before any substantial change in its forces, and before leaving the project site for any reason.

Subcontractor shall promptly and carefully check all Contract Documents and notify Construction Manager of any discrepancies or conflicts before performing any Work, and Subcontractor shall be responsible for any extra costs resulting from its failure to do so. Subcontractor shall cooperate with Construction Manager and other Subcontractors in the preparation of coordination drawings, where required by Contract Documents.

23. **LIENS**. Subcontractor shall defend, indemnify and save harmless Construction Manager, Construction Manager's sureties and Owner from any lien or claim of lien filed or maintained by any laborer, materialman, subcontractor, or other person or entity directly or indirectly acting for, through, or under Subcontractor, against the Project or any part thereof or any interest therein or against any monies due or to become due from Owner to Construction Manager or from Construction Manager to Subcontractor. Without limiting the foregoing, Subcontractor shall cause any such lien or claim of lien to be satisfied, removed, or discharged by bond, payment, or otherwise within such time as provided under the Contract Documents or ten (10) days from the date of receipt by Construction Manager, whichever is shorter.

24. **PATENTS**. Subcontractor shall defend, indemnify and save harmless Construction Manager and Owner, from and against any claim, cost, expense, or liability (including attorneys' fees) arising out of or resulting from infringement or alleged infringement of any patent rights attributable to the Work, except to the extent that Owner may have assumed responsibility therefor under the Contract Documents.

25. **LABOR**. Subcontractor agrees that, where the Work is stopped, delayed or interfered with by strikes, slow-downs, or similar interruptions or disturbances (including cases where Subcontractor's employees are engaged in a work-stoppage solely as a result of a labor dispute involving Construction Manager or others and not in any manner involving Subcontractor), Construction Manager shall have the rights and remedies provided for in paragraph 26. Subcontractor shall maintain and exercise control over all employees engaged in the performance of the Work, and Subcontractor shall, to the extent permitted by law, remove or cause to be removed from the Project any employee whose presence is detrimental to the orderly prosecution of the Work. Subcontractor shall comply with all instructions by Construction Manager relating to the ingress and egress of its employees, materialmen and

suppliers to the Project and shall take all necessary steps to restrain and enjoin any illegal picketing, demonstrating, violence, or similar activity against Subcontractor at the Project.

26. **DAMAGE**. Construction Manager shall not be liable or responsible for loss or damage to the equipment, tools, facilities, or other personal property owned, rented, or used by Subcontractor, or anyone employed by or through Subcontractor, in the performance of the Work; and Subcontractor shall maintain such insurance coverages and take such protective action as Subcontractor deems desirable with respect to such property. Except to the extent of any proceeds received by Construction Manager for the benefit of Subcontractor under a policy of builder's risk or fire insurance, Construction Manager shall not be liable or responsible for any loss or damage to the Work, and Subcontractor shall be responsible for the correction or restoration of any such loss or damage to the Work, or to the work of Construction Manager or any other subcontractor, resulting from the operations of Subcontractor, or its subcontractors, agents servants, or employees hereunder. Subcontractor shall take all reasonable precautions to protect the Work from loss or damage prior to acceptance by Owner.

27. **TERMINATION AND REMEDIES FOR DEFAULT**. Should Subcontractor at any time: (a) fail to supply the labor, materials, equipment, supervision and other things required of it in sufficient quantities and of required quality to perform the Work with the skill, conformity, promptness and diligence required hereunder; (b) cause interference, stoppage or delay to the Project or any activity necessary to complete the Project; (c) become insolvent; or (d) fail in the performance or observance of any of the covenants, conditions, or other terms of this Subcontract, then in any such event, each of which shall constitute a default hereunder by Subcontractor, Construction Manager shall, after giving Subcontractor notice of default and forty-eight (48) hours within which to cure, have the right to exercise any one or more of the following remedies:

(i) require that Subcontractor utilize, at its own expense, overtime labor (including Saturday and Sunday work) and additional shifts as necessary to overcome the consequences of any delay attributable to Subcontractor's default.

(ii) attempt to remedy the default by whatever means Construction Manager may deem necessary or appropriate, including, but not limited to, correcting, furnishing, performing, or otherwise completing the Work, or any part thereof, by itself or through others (utilizing where appropriate any materials and equipment previously purchased for that purpose by Subcontractor) and deducting the cost thereof (plus an allowance for administrative burden equal to fifteen percent (15%) of such costs) from any monies due or to become due to Subcontractor hereunder.

(iii) after giving Subcontractor an additional (48) hours notice (at any time following the expiration of the initial forty-eight (48) hours notice and curative period), terminate this Subcontract without thereby waiving or releasing any rights or remedies against Subcontractor or its sureties and, by itself or through others, take possession of the Work and all materials, equipment, facilities, plant, tools, scaffolds and appliances of Subcontractor relating to the Work, for the purposes of completing the Work and securing to Construction Manager the payment of its costs (plus an allowance for administrative burden equal to fifteen percent (15%) of such costs) and other damages under this Subcontract and for the breach thereof, it being intended that Construction Manager shall, for the stated purposes, be the assignee of, and have a security interest in, the property described above to the extent located on the Project site (and Construction Manager may at any time file this Subcontract as a financing statement under applicable law)

(iv) recover from Subcontractor all losses, damages, penalties and fines, whether actual or liquidated, direct or consequential (including without limitation any increase in Construction Manager's cost of insurance resulting from Subcontractor's failure to maintain insurance coverages required hereunder), and all reasonable attorneys' fees, expert witness fees, court costs, and other similar costs suffered or incurred by Construction Manager by reason of or as a result of Subcontractor's default.

After completion of the Work by the exercise of any one or more of the above remedies and acceptance of the Work by Architect and full payment therefor by Owner, Construction Manager shall promptly pay Subcontractor any undisbursed balance of the Price, if any. If the cost of completion of the Work, plus the allowance for administrative burden, together with any other damages or losses sustained or incurred by Construction Manager, shall exceed the undisbursed balance of the Price, Subcontractor and its guarantors, surety, or sureties shall pay the difference within fifteen (15) days of written demand from Construction Manager.

The foregoing remedies shall be considered separate and cumulative and shall be in addition to every other remedy given hereunder or under the Contract Documents or now or hereafter existing at law or in equity. Subcontractor's guarantors, surety, or sureties agree to be bound to Construction Manager with respect to such remedies notwithstanding any provision of the bonds provided pursuant to paragraph 10 hereof.

Except as limited by this Subcontract, Subcontractor shall have the rights and remedies available at law or in equity for a breach of this Subcontract by Construction Manager. Any default by Construction Manager shall be deemed waived unless Subcontractor shall have given Construction Manager written notice thereof within five (5) days after the occurrence of such default. Subcontractor shall not be entitled to stop the Work or terminate this Subcontract on account of Construction Manager's failure to pay an amount claimed due hereunder (including payment for claimed changed Work) so long as Subcontractor shall not have adequately substantiated the amount due or so long as a good faith dispute exists as to the amount due. Subcontractor shall not be entitled to stop the Work on account of a default by Construction Manager unless such default shall have continued for more than seven (7) days after Construction Manager's receipt of written notice of such default from Subcontractor, specifying in detail the nature of the default and the steps necessary to cure the claimed default.

Subcontractor shall not be entitled to terminate this Subcontract except for a substantial and material breach by Construction Manager which shall have continued, incurred, for a least an additional thirty (30) days after (a) Subcontractor shall have stopped working in accordance with this paragraph and (b) Construction Manager shall have received thirty (30) days written notice of Subcontractor's intention to terminate this Subcontract.

Should any termination for default under paragraph 27 (iii) be determined to be invalid, improper or wrongful, such termination shall be deemed to have been a termination for convenience as provided in paragraph 28 below.

28. **TERMINATION FOR CONVENIENCE**. If Owner terminates the Contract or stops the Work, Construction Manager may terminate this Subcontract or stop the Work for the same reason, and Subcontractor's rights and remedies, including the basis for payment of any unpaid portion of the Price, shall be limited to the corresponding rights and remedies available to Construction Manager under the Contract Documents, and controlled by paragraph 27 above. Should this Subcontract be terminated for default, Subcontractor shall assign all purchase orders and subcontracts to Construction Manager if Construction Manager, in its sole and absolute discretion, requests such assignments. Subcontractor agrees to incorporate such provisions in its agreements with suppliers and subcontractors to effectuate this provision. Nothing herein shall create any duty on the part of Construction Manager to accept the assignment of any purchase order or subcontract hereunder.

Further, in its sole discretion and without notice to any guarantors, surety, or sureties, Construction Manager may terminate this subcontract for its convenience upon the giving of written notice to Subcontractor. In no event shall Subcontractor be entitled to consequential damages or loss of profits on portions of the Work not yet performed. If terminated for convenience, Subcontractor shall be entitled to be paid costs of all Work satisfactorily performed provided hereunder including necessary and unavoidable costs of termination, together with a ten percent mark-up for overhead and profit. Payment shall be made in accordance with and subject to the requirements of paragraph 4. Upon determination by an arbitration panel or court of competent jurisdiction that any termination for default of this Agreement was wrongful or unjustified, then such termination will be deemed converted to a termination for convenience and Subcontractor's rights and remedies shall be limited to those set out herein.

29. **CLAIMS**. Subcontractor agrees to make all claims against Construction Manager for which Owner is or may be liable in the same manner and within the time limits provided in the Contract Documents for like claims by Construction Manager against Owner. Notice of such claims shall be given by Subcontractor to Construction Manager at the earlier of: (1) within the time required for Construction Manager to give Owner any notices required by the Contract Documents; (2) within seven (7) days of the occurrence of the event for which such claim is made; and (3) prior to performance of the affected portion of Subcontractor's Work; otherwise, such claim shall be deemed waived. Subcontractor shall be entitled to an adjustment to the Subcontract Price or Schedule of Work only for performing and completing that portion of Subcontractor's Work associated with any claim for which Owner is or may be liable, and only to the extent actually granted to Construction Manager by Owner. Any decision of Owner or Engineer with respect to such claims which, under the terms of this Agreement, is binding on Construction Manager, and any decision in arbitration or litigation between Owner and Construction Manager which becomes final and binding on Construction Manager shall likewise be final and binding on Subcontractor. To the extent Construction Manager prosecutes or defends a claim on behalf of Subcontractor, Subcontractor agrees to: (a) cooperate fully with Construction Manager; (b) furnish all documents, statements, witnesses and other information

required by Construction Manager, at no cost to Construction Manager; and (c) reimburse Construction Manager for all related expenses and costs, including reasonable attorneys' fees.

Notice of any claim not covered by the paragraph above shall be given by Subcontractor to Construction Manager at the earlier of: (1) within seven (7) days of the event for which such claim is made, and (2) prior to performance of the affected portion of Subcontractor's Work; otherwise, such claim shall be deemed waived.

In the event Construction Manager terminates Subcontractor for default and it is later determined that such termination was not warranted, Construction Manager's liability to Subcontractor shall be no greater than, and subject to, the same limitations provided in paragraph 30 hereof, and Subcontractor's termination shall be treated as a termination for convenience.

Under no circumstances shall Construction Manager be liable for lost profits, unabsorbed overhead, lost work, lost bonding capacity, or incidental, consequential or special damages of any nature in connection with or related to this Agreement or the breach thereof, such being expressly waived by Subcontractor.

30. **DISPUTE RESOLUTION**

A. Any claim, dispute, or controversy between Construction Manager and Subcontractor shall be conclusively resolved and settled as follows:

Subcontractor shall conclusively be bound by and abide by Construction Manager's decision, unless Subcontractor shall timely commence arbitration proceedings in strict accordance with the following provisions:

i. If Subcontractor decides to appeal the decision of Construction Manager, then the controversy shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association prevailing at that time, and the arbitration decision shall be final and binding upon both parties; provided, however, that arbitration proceedings shall be commenced by Subcontractor not later than 30 days following Subcontractor's receipt of notice of Construction Manager's decision; otherwise, the Construction Manager's decision becomes final and binding. Venue for arbitration or any subsequent litigation whatsoever shall be in the city of Construction Manager's office as shown on page 1 of this Agreement.
ii. Any arbitration arising out of or relating to this Agreement or the breach thereof may, at Construction Manager's sole option and election, include by consolidation, joinder or any other manner, any other entities or persons whom Construction Manager believes to be substantially involved in a common question of fact or law. Without limiting the generality of the foregoing, this provision shall specifically entitle Construction Manager, at its sole option and election, to consolidate any arbitration proceeding between Construction Manager and Subcontractor with any other arbitration proceeding(s) arising out of the same Project (unless and except to the extent Construction Manager is precluded from doing so by the terms of its arbitration agreement with the parties to the other arbitration proceeding(s).
iii. In the event Subcontractor fails to abide by a final binding decision of Construction Manager or any arbitrator(s). Construction Manager shall have the right to enforce said decision by withholding appropriate sums from any payments that would otherwise be due Subcontractor, or, to the extent the Subcontract balance is insufficient to satisfy Subcontractor's obligation, by legal action; with all costs of such legal action, including Construction Manager's reasonable attorneys' fees, to be borne by Subcontractor.

B. In the event of any dispute between Owner and Construction Manager or Subcontractor relating to the Subcontract or a breach thereof, Subcontractor agrees to exhaust all remedies available through Construction Manager under Construction Manager's Contract with Owner prior to instituting any separate action or, in the event that a separate action is instituted prior to the exhaustion of the aforesaid remedies, Subcontractor agrees to stay said action pending the exhaustion of all remedies against the Owner.

In any arbitration proceeding involving Owner, Construction Manager and Subcontractor, Subcontractor agrees to the appointment of arbitrators as may be selected by Construction Manager and Owner pursuant to the requirements of the arbitration provision in the Construction Manager's Contract with Owner. It is expressly agreed and understood that as to any and all materials or services furnished or agreed to be furnished by Subcontractor, and

as to any and all damages, if any, incurred by Subcontractor in connection with this Project, Construction Manager shall never be liable to Subcontractor to any greater extent than Owner is liable to Construction Manager for same.

C. In the event of any claim by Subcontractor or dispute between Subcontractor and Construction Manager, Subcontractor and its sureties agree to be bound to Construction Manager to the same extent that Construction Manager is bound to Owner by the terms of the Construction Manager's Contract with Owner and by any and all decisions or determinations made thereunder by the party or entity so authorized in Construction Manager's Contract with Owner.

D. No claim, dispute or controversy shall interfere with the progress of construction, and Subcontractor shall proceed with its work without interruption, deficiency or delay irrespective of any clam, dispute, or controversy which may arise. Subcontractor agrees to continue to perform the Work despite the existence of claims, disputes or the pendency of an arbitration. The existence of an unresolved claim, dispute or the pendency of an arbitration shall not be grounds for any failure to perform by Subcontractor nor limit the right of Construction Manager to proceed, in good faith, to remedy any default by Subcontractor

E. Should either party to this Agreement demand arbitration or institute a lawsuit to enforce any of the provisions hereof, to protect its interest in any matter arising under the Subcontract, to collect damages for the breach of the Subcontract, or to recover on a surety bond given by a party to the Subcontract, the prevailing party shall be entitled to recover, and the losing party agrees to pay, all reasonable attorneys' fees, costs, charges, and expenses expended or incurred therein.

31. **SETOFF**. If Subcontractor is, or hereafter begins, performing any work for Construction Manager other than the Work under the Subcontract and the unpaid balance of the Price becomes insufficient to complete such Work or compensate Construction Manager for any damages or deficiencies by the Subcontractor in the performance of the other work, Subcontractor hereby consents and agrees to allow Construction Manager, in its sole discretion and judgment, to setoff any of Construction Manager's claims against any funds due, or which may become due, Subcontractor under any other agreement with Construction Manager, or any subcontract on any other project. No refusal or failure of Construction Manager to exercise its rights hereunder shall constitute the basis of any right or claim against Construction Manager.

32. **JOBSITE RULES**.

a) This Subcontractor's working hours for this project shall be 7:00 a.m. to 3:30 p.m., Monday through Friday, unless otherwise specified by the Project Superintendent.

b) This Subcontractor's deliveries to the jobsite must be scheduled with the Project Superintendent at least forty-eight (48) hours in advance.

c) This Subcontractor's employees working on the project must comply with the Project Safety Rules posted at the jobsite. Violation of these rules may result in immediate removal of Subcontractor's employees from the project site.

d) This Subcontractor's parking, material storage and office storage buildings shall be located by the Project Superintendent.

e) Construction Manager's representative must be present at all times while this Subcontractor is working onsite. If after hours work becomes necessary, the Project Superintendent must approve it in advance.

f) This Subcontractor must participate in daily clean up and organization of its work, tools, stored materials, etc.

g) This Subcontractor must complete Daily Reports, in a form acceptable to Construction Manager, and submit them to Construction Manager's office at least weekly. This requirement applies to days on which the Subcontractor is working at the project site.

33. **MISCELLANEOUS**.

(a) All matters relating to validity, performance, or interpretation of this Subcontract shall be governed by the law applicable to the validity, performance, or interpretation, as the case may be, of the Contract.

(b) This Subcontract, including the documents incorporated herein by reference, embodies the entire agreement of the parties and supersedes all prior negotiations, agreements and understandings relating to the subject matter hereof.

(c) This Subcontract may not be changed in any way except as herein provided or by a writing signed by a duly authorized officer or agent of each party. No requirement of this Subcontract may be waived except in writing signed by a duly authorized officer of the waiving party.

(d) The provisions of this Subcontract and the Contract Documents are intended to supplement and complement each other. If, however, any provision of this Subcontract irreconcilably conflicts with a provision of the Contract Documents, the provision imposing the greater duty on Subcontractor shall govern.

(e) Where the context requires, neuter terms used herein shall include the masculine and feminine, and singular terms shall include the plural, and vice versa.

(f) If this Subcontract is for electrical, mechanical, plumbing, fire sprinkler, and/or site work, Subcontractor shall be responsible for; (1) making all final connections to supply lines; (2) excavation, backfill, compaction, and restoration of grades associated with the Work; (3) cutting, patching, dewatering, supports, and penetrations associated with the Work; and (4) fire stop, draft stop, and fireproof of all penetrations so as not to diminish and/or void the fire rating through assemblies in accordance with any applicable building code, rules or regulations. In addition, this Subcontractor agrees to coordinate its work with the other MEP/FP Subcontractors working on the Project to ensure complete and operational systems without additional costs to the Construction Manager.

(g) In connection with the performance of work under this Contract, the Equal Opportunity Clauses as set forth in Section 202 of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and Section 402 of the Vietnam Era Veterans Readjustment Act of 1974, as amended, are incorporated by reference.

IF SUBCONTRACTOR HAS BEEN IN RECEIPT OF THIS SUBCONTRACT AGREEMENT FOR THIRTY (30) CALENDAR DAYS OR MORE OR HAS BEEN PROVIDED A COPY OF THIS SUBCONTRACT AND HAS COMMENCED WORK ON THE PROJECT IN ANY MANNER, THEN SUBCONTRACTOR SHALL BE DEEMED TO HAVE ACCEPTED AND AGREED TO ALL TERMS AND CONDITIONS OF THIS SUBCONTRACT.

IN WITNESS WHEREOF, the parties have duly executed this Subcontract as of the date first above written.

_____	**The Evergreen Corporation**
Subcontractor (Printed Name of Subcontractor)	**dba Evergreen Construction**
By: _____ (Signature)	By: _____ (Signature)
Name/Title: _____ (Printed Name & Title)	Name/Title: **William F. McCorkle, Vice President** (Printed Name & Title)
Attest: _____	Attest: _____

CORPORATE SEAL

Subcontractor Check ONE:

- ☐ Corporation
- ☐ Partnership/Joint Venture
- ☐ Individual

LICENSING: By executing this Subcontract, Subcontractor affirms that it holds the following license (s) applicable to the Work as required by the state in which the Project is located.

State of _____ County of _____ Business License No._____

Expiration Date:_____

Subcontractor's Federal Employer Identification No: _____
If no Federal Employer Identification Number, enter business owner's Social Security No._____

Payments will not be processed without complete licensing information and Federal Employer Identification Number.

EXHIBIT A - WORK: Pursuant to paragraph 1 of this Subcontract, Subcontractor shall prosecute and complete the following Work:

Furnish all labor, materials, tools, taxes, equipment, insurance and services necessary to install and complete the _____ work as authorized by the Construction Manager, all complete and in accordance with the Contract Documents listed in Exhibit B, without exception, unless otherwise herein provided, subject to the approval of the Architect, Owner and Construction Manager. Particular reference is made to Specification Sections _____ .

All work shall be performed in accordance with both State and Local code requirements to the best of current practices and to a quality of work acceptable to the Owner, Architect and Construction Manager. In the event that any discrepancies and/or errors are found in the drawings or specifications, this Subcontractor shall be required to notify the Construction Manager before proceeding with the work, and shall be deemed to have estimated the highest quality way of doing the work.

This Subcontract is intended to cover all of the Construction Manager's responsibility to the Owner for all __ _____ work unless specifically stated otherwise in this Agreement. This Subcontract specifically includes, but is not limited to the following items, which may or may not be clearly defined in the Contract Documents as being within the scope of Work of this Subcontractor.

1.

2.

3.

4.

UNIT PRICES: The following unit prices shall be used in determining the price adjustment for work affected by Change Order: These unit prices shall include all costs of Subcontractors performance of the work including but not limited to the cost of labor, supervision, layout, services, equipment, tools, scaffolds, hoisting, transportation, insurance and taxes, overhead and profit.

EXHIBIT B - CONTRACT DOCUMENTS: The Contract Documents referred to in paragraph 1 and elsewhere in this Subcontract consist of the Contract and the following:

Drawing	Description	Latest Revision Date
INDEX		

Specifications:

Addenda:

Initials _____/_____

EXHIBIT C - CONTRACTOR'S STANDARD ACCIDENT PREVENTION PROGRAM FOR SUBCONTRACTORS

THIS PROGRAM IS MADE AVAILABLE IN ACCORDANCE WITH THE SAFETY CLAUSE OF YOUR SUBCONTRACT. ALL OR PARTS OF THE CONTENTS OF THIS PROGRAM WILL APPLY TO YOUR WORK DEPENDING ON THE NATURE OF YOUR WORK AND THE SEQUENCE OF YOUR WORK.

ADVANCE ANALYSIS

Before starting work on any job, Subcontractor shall make a complete analysis of the plans and specifications in order to determine the exposure to accidents, which may develop on the jobsite. With this information, Subcontractor will be able to make plans to control all exposures before contributing to an accident or loss.

SAFETY INSTRUCTIONS WITH WORK ASSIGNMENTS

Any Subcontractor's employee supervising or assigning work to any man or group of men, will in each instance give sufficient caution with the assignment to adequately provide safety in the operation. This same principle will apply when changing personnel from one work area to another. Hazardous chemicals will be discussed with guidelines on use and protective equipment required.

SAFETY TRAINING SESSIONS

A. Subcontractor shall attend periodic supervisory safety training sessions held by the Contractor's Superintendent or his designated representative. (at least monthly)

B. Subcontractor's foreman shall hold weekly "tool box" safety training sessions with their own personnel to encourage employees' interest in safety and to give specific safety instructions relative to existing or expected hazards. Notes and minutes of these safety meetings and training sessions shall be documented, with 'sign-in' sheets and submitted to Contractor's Superintendent and/or main office.

FIRST AID

Adequate first aid supplies shall be maintained by Subcontractor. These should be stored in a special kit or box. Treatments shall be administered by the most qualified person appointed by Subcontractor, preferably someone who has completed a Red Cross first aid training course.

ACCIDENT INVESTIGATION AND REPORTING

All accidents shall be investigated by Subcontractor and reviewed by the Contractor's Superintendent. Subcontractor shall fill out and submit a copy of "Subcontractor's Report of Accident" form on all accidents, including verification of Post Accident Drug and Alcohol testing, to be turned in to Contractor's Superintendent within 24 hours. Report forms can be obtained from Contractor's Project Manager or Superintendent and are located in Contractor's Safety Manual. A copy of this report as well as all First Report of Injury forms, required by State and Local authorities, must be forwarded to the Contractor's main office. These forms shall note the action taken to prevent a recurrence.

PROTECTIVE EQUIPMENT

The protective equipment to be furnished by Subcontractor to his employees shall be determined by the advance analysis of the job and by conditions that occur as the work progresses. However, on all jobs the following protective equipment shall be the minimum:

A. Safety goggles or face shields shall be issued to employees who are engaged in chipping, grinding, or performing any operations where they are exposed to eye hazards. Eye Protection must bear the "Z87" stamp.
B. Welders' hoods and face shields must be worn only by attaching them to hard hats.
C. Hard hats are to be worn throughout the jobsite, at all times, start to finish of job.
D. Subcontractor shall require his employees to wear work shoes in good condition.
E. Life preservers shall be provided and shall be worn by all employees wherever working over water.
F. Subcontractor is responsible for enforcing the use of protective equipment worn by its employees.
G. Hearing protection shall be worn when work involves or is near abnormal noise levels.
H. All jobsite workers shall wear a highly visible, bright colored safety vest, warning vest or safety shirt.

HOUSEKEEPING

A. Plastic bottles, scraps, paper cups and similar rubbish shall be placed by subcontractor's employees in trash containers for that purpose. No glass containers onsite.
B. Rubbish, debris and waste materials shall be removed from the work area daily by subcontractor's employees. Form and scrap lumber with protruding nails shall be kept clear from all work areas.
C. Stairways, ladders, ramps, platforms, walkways and work areas shall be kept clear and clean of loose material and trash by subcontractors employees.
D. All material must be kept back from the outer edge of a building a minimum of 10'-0" at building perimeter and 6'-0" at interior floor openings.

SCAFFOLDS

A. All scaffolding shall be erected by a competent person. All scaffolding shall be thoroughly checked by the subcontractor's competent person before and after erection and at least daily while in use. All scaffolding must conform with OSHA standards.
B. All scaffolding over ten feet in height shall be equipped with guard rails and toe boards. Guard rails must support a 200-pound thrust.
C. All scaffolding, other than suspended scaffolding, shall be erected on firm level foundations and shall be braced or guyed to the structure.
D. Planking shall have at least twelve inches of overlap and extend six inches beyond center of support or be cleated at both ends to prevent sliding off supports. Planking shall be 2 x 10 nominal lumber or greater.
E. Access ladders permanently secured shall be provided on all scaffolding, and employees will be prohibited from climbing on structural members.
F. All scaffolding shall have proper access.
G. Do not ride rolling scaffolds, and remove all material from the platform before moving the scaffold.
H. Workers on a swinging scaffold shall be tied off to the building with a full body harness with an independent life line and guardrails. There shall be a safety life line for each person.

LADDERS

A. All ladders shall be inspected at least weekly. Broken and or damaged ladders shall be removed from service immediately and destroyed. All ladders must conform with OSHA standards.
B. All straight ladders shall be set on firm level foundations at a four (4) to one (1) pitch, have clear access at top and bottom, extend the landing a minimum of 36 inches and be secured against movement while in use. All ladders shall be secured top and bottom. Safety feet will be used on all straight ladders.
C. Portable metal ladders shall not be used for electrical work or where they might contact electrical conductors.
D. Single portable ladders over 24 feet in length shall not be used.
E. A double-gang ladder or two single-gang ladders must be available when 25 or more workers must access each elevated working surface above ground level.

FLOOR OPENINGS AND STAIRWAYS

A. At all unprotected floor openings and stairways, provisions shall be made by Contractor, or erecting Subcontractor for barriers and toe boards. These shall remain in place until the openings have been closed or permanent stairs installed. When Subcontractor must remove such barriers in the performance of their work, they are responsible for replacing barriers so as to provide maximum protection at all times.
B. Never, under any circumstance, cover a floor opening with a piece of plywood, sheetrock, or other unsuitable material. All floor coverings must support a minimum of 500 lbs. or twice their intended load, whichever is greater. All floor openings must be marked with the word "Hole" or "Cover" <u>and</u> fully secured.

FIRE PROTECTION

A. Gasoline or other flammable liquids shall be stored in UL approved safety containers and properly labeled.
B. Approved heating devices, stove pipes, etc. shall be properly insulated to prevent setting fire to adjacent structures.
C. Fire extinguishers shall be selected by Subcontractor on the basis of type of fire anticipated. Extinguishers, fire barrels, sand pails, hose lines, etc. shall be located where they are readily accessible and easily visible.
D. Do not smoke or use an open flame, exposed heating element or any other sources of ignition in areas or rooms where spray painting is done.
E. A fire extinguisher shall be adjacent to all stairwells and within reasonable of travel distance at all times.

POWER TOOLS

A. Provisions shall be made on each jobsite for the grounding of all fixed and portable electrical tools and equipment.
B. It shall be the responsibility of Subcontractor to ascertain that all power saws and grinders in use are provided with the proper guards.
C. Power saws shall be operated only by authorized and qualified personnel.
D. All extension cords shall be of the rounded type utilizing twist lock connections rated for heavy duty use.
E. Faulty electrical cords shall be removed from service and destroyed immediately.

POWDER ACTUATED TOOLS

A. Low velocity pistol type tools with a pistol grip shall be used in all cases where applicable.
B. High velocity tools shall be used only for those applications where low velocity tools will not meet job requirements. When a high velocity tool is no longer required, it shall be removed from the jobsite.
C. Powder actuated tools shall be used, operated, repaired, serviced, and handled only by authorized personnel who have been trained and certified by the manufacturer and workers must carry the certified “card”. Tools will be tested daily and all defects corrected before use.
D. Tools shall not be loaded until immediately before use. Loaded tools shall not be left unattended.

EXCAVATION / TRENCHES

A. Subcontractor shall have an “excavation competent person” onsite during excavation operations.
B. The sides of trenches five feet or more in depth entered by personnel shall be sloped, shielded, or shored.
C. Ladders that extend at least three feet above the edge of the trench shall be located as to require no more than 25 feet lateral travel for rapid exit in case of emergency.
D. All equipment and spoils should be kept a minimum of 2’-0” from the top of slope.

PUBLIC AND PROPERTY PROTECTION

A. Only authorized personnel shall be allowed on the jobsite.
B. Barricades and warning lights shall be provided on all open ditches and excavations where there is a public exposure.
C. Blasting, pile driving, underpinning and similar operations may present special exposures to adjoining or adjacent structures. When such operations are planned, it is important that the subcontractor's foreman or project manager make a preliminary survey of the property to determine structural defects, which exist. If such defects exist and there is a possibility of aggravating them, precise pre-construction surveys should be made to establish that the conditions were not caused by our operations but existed before the job started. Depending on the seriousness of the possible aggravations, these surveys should be made by an independent, qualified professional engineer and may include photographs, which should be made and dated by an impartial commercial photographer.

PROJECT SAFETY RULES

1. THE USE OR POSSESSION OF INTOXICANTS OR NON-APPROVED DRUGS ON OR AROUND THE JOBSITE IS STRICTLY PROHIBITED. NO EMPLOYEE WILL BE ALLOWED TO REPORT FOR WORK WHILE UNDER THE INFLUENCE OF INTOXICANTS OR DRUGS. VIOLATION OF THIS RULE BY ANY EVERGREEN EMPLOYEE WILL RESULT IN IMMEDIATE TERMINATION. VIOLATION BY OTHER PERSONS WILL RESULT IN IMMEDIATE, PERMANENT REMOVAL FROM THE JOB.

2. HARD HATS WILL BE WORN AT ALL TIMES BY ANY PERSON ENTERING THE JOBSITE.

3. ALL EMPLOYEES ARE REQUIRED TO WEAR SHOES THAT MEET OSHA GUIDELINES. NO TENNIS SHOES ARE ALLOWED.

4. DRESS ON SITE MUST CONFORM TO OSHA GUIDELINES. SHIRTS OR T-SHIRTS WILL BE WORN AT ALL TIMES. NO CUT OFF SHIRTS WILL BE PERMITTED.

5. EYE AND EAR PROTECTION IS REQUIRED WHEN WORKING CONDITIONS OR TOOLS BEING USED REQUIRE SUCH PROTECTION.

6. NO RADIOS, TAPE DECKS, CD PLAYERS, MP3, OR SIMILAR DEVICES ARE ALLOWED ON THE JOBSITE.

7. A COMPLETE FIRST AID KIT IS AVAILABLE AT THE FIELD OFFICE.

8. NO WEAPONS OR FIREARMS ARE ALLOWED ON THE JOBSITE.

9. NO GLASS CONTAINERS WILL BE PERMITTED ON THE JOBSITE.

10. ALL PERSONS AND VEHICLES ENTERING THE PROJECT ARE SUBJECT TO REASONABLE SEARCH UPON ENTERING OR LEAVING.

11. ALL PERSONS WORKING ABOVE GROUND MUST FOLLOW THE MOST CURRENT OSHA FALL PROTECTION GUIDELINES.

12. ALL ACCIDENTS MUST BE REPORTED TO THE PROJECT SUPERINTENDENT.

13. M.S.D.S. INFORMATION IS AVAILABLE AT THE FIELD OFFICE.

14. ANY PERSON DESIRING TO WORK ON THE PROJECT MUST ATTEND THE PROJECT SAFETY/ORGANIZATIONAL MEETING HELD ON SITE.

15. AN EVERGREEN SUPERVISOR MUST BE ON SITE AT ALL TIMES WHILE WORK IS TAKING PLACE. THERE SHALL BE NO AFTER HOUR ADDMITTANCE TO THE SITE WITHOUT PRIOR SUPERINTENDENT APPROVAL.

16. ALL JOBSITE WORKERS SHALL WEAR A HIGHLY VISIBLE, BRIGHT COLORED SAFETY VEST, WARNING VEST OR SAFETY SHIRT.

VIOLATION OF THESE RULES BY ANY PERSON
WILL BE GROUNDS FOR DISCIPLINARY ACTION,
TERMINATION AND/OR REMOVAL FROM THE JOBSITE

EXHIBIT D - ALCOHOL & DRUG TESTING PROGRAM COMPLIANCE

Subcontractor agrees to be responsible for implementing and maintaining an effective Substance Abuse Program. Should Subcontractor not have a written Substance Abuse Program, it agrees to abide by the minimum standards stated herein. Any costs incurred in the adoption, implementation or administration of the Subcontractor's Substance Abuse Program shall be the responsibility of the Subcontractor.

Minimum Standards

The Subcontractor's Substance Abuse Policy prohibits their employees and employees of their Subcontractors or Suppliers, from the following:

1. Reporting to and/or being at work under the influence of illegal drugs, unauthorized controlled substances, alcohol or other intoxicants.

2. The on-premises use, manufacture, distribution, dispensing, possession, sale, or purchase of illegal drugs, drug paraphernalia, or any unauthorized controlled substance.

3. Reporting to and/or being at work under the influence of prescribed or over the counter drugs where such use prevents the employee from performing the duties of the job or poses a safety risk to the employee, other persons or property are prohibited. Legally prescribed drugs may be permitted on the work site or company property provided the drugs are contained in the original prescription container and are prescribed by an authorized medical practitioner for current use by the person in possession. It is the employee's responsibility to inform their supervisor if he is taking a prescribed drug which his attending physician has advised may have adverse side affects.

4. Refusal to comply with authorized search.

Drug and/or Alcohol Testing (urinalysis and/or blood) will be required, but not limited to, the following conditions:

1. Post Accident
   Employees will be tested after the occurrence of a work place accident or incident resulting in personal injury, injury of co-workers, damage to property or work place circumstances which could have resulted in personal injury or damage to property.

2. Reasonable Suspicion
   All employees are subject to testing for reasonable suspicion.

3. Random
   All employees will be subject to unannounced random drug tests.

The following are minimum disciplinary actions to be implemented under Subcontractor's Substance Abuse Program.

1. Positive Drug Tests
   Any employee who tests positive for an unauthorized, illegal drug or alcohol, as determined by the testing laboratory's testing thresholds, will not be permitted to work on property under the control of Evergreen Corporation.

2. Refusal to Comply
   Any employee who refuses to submit a urine or blood sample for testing under this Policy, will be treated as a positive drug test. Any employee who refuses to execute the necessary paperwork, or who fails to disclose ingested drugs, or who refuses to cooperate with a search, or otherwise fails to cooperate with the Substance Abuse Policy will be treated as a positive drug test.

Exhibit "E"

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Subcontractor / Supplier Name & Address

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A:	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$1,000,000
		X COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	$100,000
		CLAIMS MADE X OCCUR				MED EXP (Any one person)	$5,000
		X Contract. Liab.				PERSONAL & ADV INJURY	$1,000,000
		X XCU Included				GENERAL AGGREGATE	$2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	$2,000,000
		POLICY X PRO-JECT LOC					
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
		X ANY AUTO					
		ALL OWNED AUTOS				BODILY INJURY (Per person)	$
		SCHEDULED AUTOS					
		HIRED AUTOS				BODILY INJURY (Per accident)	$
		NON-OWNED AUTOS					
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	$2,000,000
		X OCCUR CLAIMS MADE				AGGREGATE	$2,000,000
							$
		DEDUCTIBLE					$
		RETENTION $					$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				X WC STATU-TORY LIMITS OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	$1,000,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$1,000,000
						E.L. DISEASE - POLICY LIMIT	$1,000,000
		OTHER					

SAMPLE

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The Evergreen Corporation (Contractor) and Project Owner are included as additional insureds as respects to (name of project) and this insurance shall be primary and non-contributory over any other collectable insurance.

CERTIFICATE HOLDER

The Evergreen Corporation
3200 Cobb Galleria Parkway
Suite 240
Atlanta, GA 30339

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

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S & UT – 214-1 (Rev. 11/96)
State of Georgia
Department of Revenue
Sales and Use Tax Division
Contract Section
Post Office Box 38040
Atlanta, GA 30334
(404) 656-4080

Notice of General or Prime Contractor
Of Contract Let to a Subcontractor

Each general or prime contractor shall within ten (10) days after the execution of a contract with a subcontractor file with the Commissioner of Revenue, a notice in the following form:

1. The Evergreen Corporation dba Evergreen Construction
(Name) (If a partnership, also name the partner)

Roger E. Ashley, William F. McCorkle, Jay A. Porter
(If a corporation, also name it's Executive Officers)

2. 3200 Cobb Galleria Parkway, Suite 240, Atlanta, GA 30339 678-244-6500
(Address) (Area Code and Telephone Number)

3. Construction Management
(Kind of business engaged in)

4. _____
(Name of Subcontractor)

5. _____
(Address of Subcontractor)

6. _____
(Nature of work to be performed) (Indicate if labor contract only)

7. _____
(Where work is to be performed) (State, County, City, Street Number)

8. _____
(When work is to be performed)

9. _____
(Total gross amount of the contract)

EXECUTED THIS ____ DAY OF _____, 2004.

_____
(General or Prime Contractor)

Initials ____ / ____