

AGREEMENT WITH SUBCONTRACTOR

This Agreement between The Rothell Co., Inc. (hereinafter termed "General") and General Heating and Air Conditioning, Inc. ^{BOOK 20 PAGE 585r}

In consideration of the mutual promises herein contained, the General and the Sub agree as follows:

1. **Description of Work.** The Sub shall fully perform the following described work: Furnish and install one and one half (1 1/2) ton heat pump systems (Bryant or equal) with five (5) 1/2" strip heaters. Furnish and install all duckwork, grills, venting for range hoods and bath fans & concrete pads for condensing units. Furman Place
at the Project known as _____
located in Greenville, South Carolina

This work shall be performed in accordance with the plans and specifications prepared by Rothell Co., Inc. and delivered to the Sub, which acknowledges receipt of such plans and specifications. All work shall be first-class and satisfactory to the General and the owner. The Sub shall be solely responsible for all work required under this subcontract including the techniques, sequences, procedures and means for coordination. The Sub shall be solely responsible for providing and paying for all labor, materials, equipment, utilities, facilities and services necessary for proper completion of the work. In the event that the General provides any such items to the Sub, such items shall be deemed accepted by the Sub unless rejected in writing within 2 days of receipt and the Sub shall reimburse the General fully for such items.

2. **Changes in the Work.** The General reserves the right to order work changes in the nature of additions, deletions or modifications and shall make corresponding adjustments in the subcontract price and time for completion. No change shall be effective unless authorized by a written change order executed by both parties.

3. **Time for Commencement and Completion.** The work described in this subcontract shall be completed on or before the specified by project. The Sub agrees to begin work within two days after notification from the General and to continue with the work in a manner that will not delay the progress of the project as to other trades. All requests for extensions of time shall be submitted in writing by the Sub to the General within one week of the event causing the request for extension of time. No request for an extension of time shall extend the time for completion unless accepted in writing by the General. Such acceptance shall be at the General's sole discretion.

4. **Damages.** In the event that the work is not fully completed within the specified time, the Sub shall be liable to the General for \$ 15/ unit for each day that completion is delayed.

In the event that the Sub does not continue with the work in a manner that will not delay the progress of the project as to other trades, the Sub shall be liable for all damages resulting from such delays, including liquidated damages due by the General to the owner.

5. **Right to Intervene.** Should the Sub fail to employ sufficient competent workers to fulfill its obligations under this subcontract, the General, after 2 days written notice delivered to the Sub, may employ additional workers to undertake the work and charge to the Sub the costs of their employment, including tools and supervision.

6. **Insurance.** The Sub shall keep in force at its own expense during the time of its work on the project such liability insurance as will protect it, the General and the owner from all claims that may arise out of work under this subcontract. The limits of such insurance shall not be less than the following:

Workers' compensation	\$ <u>100,000.00</u>
Public Liability	
(A) property damage	
(i) one occurrence	\$ <u>500,000.00</u>
(ii) aggregate	\$ <u>500,000.00</u>
(B) personal injury	
(i) one occurrence	\$ <u>500,000.00</u>
(ii) aggregate	\$ <u>500,000.00</u>

The Sub shall provide casualty insurance in an amount not less than this subcontract price, which insurance shall remain in effect until the project is completed. The Sub hereby waives all claims against the General for damage covered by insurance. Proof of all insurance shall be filed by the Sub with the General within a reasonable time after execution of this contract.

7. **Correction of Work.** When it appears during the course of construction that any work does not conform to the provisions of this subcontract, the Sub shall make all necessary corrections so that such work will so conform. Also, the Sub shall correct any defects in its work caused by faulty materials, equipment or workmanship appearing within one year from the date of issuance of a certificate of occupancy. The Sub hereby assigns to the General all rights to warranties from its materials suppliers; such assignment shall not diminish the Sub's responsibilities as described in the preceding sentence.

8. **Termination.** The General may, upon 7 days notice to the Sub, terminate performance by the Sub under this subcontract without prejudice to any other remedy if the Sub shall default in performance of any provision. Upon such termination, the General may take possession of the work site and all materials, equipment, plans, tools and machinery thereon and finish the work. If the unpaid balance on this subcontract price at the time of termination exceeds the expense of finishing the work, the General will pay such excess to the Sub. If the expense of finishing the work exceeds the unpaid balance on this subcontract price at the time of termination, the Sub shall pay the difference to the General.

9. **Taxes.** The Sub shall pay all taxes required by law in connection with its work, including sales and use taxes, shall secure all licenses and permits necessary for proper completion of the work, and shall pay all fees.

10. **Compliance with Laws.** The Sub shall comply with all laws and ordinances and the rules, regulations and orders of all public authorities relating to the performance of the work. If any of the plans or specifications is at variance therewith, it shall notify the General promptly in writing.

11. **Indemnity.** The Sub assumes full responsibility for all acts and omissions of all its employees on the project and for those of its subcontractors and suppliers and their employees. The Sub shall pay the General for all damages to the project caused by such persons and shall fully indemnify the General as to all claims and the defense of all claims caused by such persons.

12. **New Materials.** The Sub represents and warrants to the General that all materials used in the work will be new, of good quality, free of defects and in conformity with the plans and specifications. All materials not so in conformity are hereby deemed defective.

13. **Cleanup.** The Sub shall keep the work premises and adjoining ways free of material relating to its work. It shall remove all of its materials, equipment and rubbish upon termination of this subcontract.

14. **Payments.** The General shall pay to the Sub for its work under this subcontract the sum of \$ 1,135.00 per unit. The General shall make progress payments of this subcontract price on the basis of percentage of completion requests for payment submitted by the Sub and approved by the General. Requests for payment shall be made not more frequently than monthly. Progress payments may be withheld if:

- (a) work is found defective by the General and not remedied by the Sub;
- (b) the Sub does not make prompt and proper payments to its subcontractors, suppliers and laborers;
- (c) any person is damaged and not made whole by an act or omission for which the Sub is responsible;
- (d) claims or liens relating to the Sub's work are filed on the project;
- (e) in the opinion of the General the Sub's work is not progressing satisfactorily.

In no event shall payments to the Sub be greater than its pro rata share of payments made to the General by the owner. At all times until final payment, the General shall withhold 10 per cent of the subcontract price as retainage. The General shall make final payment to the Sub within 5 days after the work is completed and the General has been paid for the work by the owner, subject to the condition that final payment shall not be due until the Sub has delivered to the General a complete release of all liens arising out of the subcontract.

15. **Specific Performance.** This subcontract shall be enforceable by specific performance.

16. **Assignments.** This contract shall not be assignable by the Sub without the consent of the General.

17. **Bonds.** If requested by the General, the Sub shall furnish full payment and performance bonds relating to its work.

18. **Attorneys' Fees.** In the event legal action is instituted by either party to this subcontract, the prevailing party shall be entitled to attorneys' fees and costs.

19. **Entire Agreement.** This subcontract is the entire agreement between the parties, merging all prior discussions and agreements and shall not be varied except by a writing signed by both parties.

THE ROTHELL CO., INC.

By: Roger W. Rothell, PRESIDENT

Its: PRESIDENT

General Heating and Air Conditioning Inc.

By: Melvin J. Clark

Its: V-P

Reginald D. Diver
Robert F. Thompson
Dated: 10/31/84