



Project #: 2020-20-003

721 Corporate Circle  
Salisbury, N.C. 28147  
(704)310-5711 Office  
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This contract agreement made on February 11, 2020 by and between Vertex Construction Company, LLC hereinafter referred to as Contractor, and Foothill Flooring, Inc. referred to as Subcontractor.

Subcontractor Name: Foothill Flooring, Inc.  
Address: 510 Riverside Drive, Suite 115 Mount Airy, NC 27030  
Phone Number: 336-789-7581  
Fax: 336-789-7588  
Attention: Brad Coalson  
Email Address: brad@foothillflooring.net

Hereinafter referred to as Subcontractor to perform part of this work on the following project:

Project No.2020-20-003  
Project Name: Food Lion 2250  
Owner: Food Lion, LLC  
Address: 2210 Executive Drive Salisbury, NC 28145

Subcontractor Work: The Contractor employs the Subcontractor as an independent contractor, to finish all labor, material, equipment, insurance and any and all taxes there on to perform, the following part of the work on the project, under general limits and subject to the approval of the Contractor:

Contract Sum: \$17,500.00

Contractor shall pay the Subcontractor for the performance of the work, subject to addition and deletion by Change Order, the total of the Contract Sum.

Retainage: Contractor shall hold 10.0% of each Application of Payment as retainage.

**Description:**

Foothill Flooring, Inc. will provide all labor, material and equipment to complete the ceramic tile installation at Food Lion 2250 in Morganton, NC. All work will be completed in accordance with the drawings by YCH Architecture, specifications, and walkthrough notes to include tile demo in repair and new installation areas. This subcontractor will be responsible for completing all items in the walk-through notes that pertain to ceramic wall tile and quarry tile floor work. This subcontractor will be responsible for daily cleanup of its work area, all debris are to be placed in the dumpster provided by Vertex Construction Company, LLC. This subcontractor will have a storage container for all materials to be stored on site in the area designated by Vertex Construction Company, LLC. At no time will it be acceptable for any materials to be stored in the store's backrooms and specifically the mechanical rooms. This subcontractor's onsite personnel will be required to wear a safety vest with the company's name or logo imprinted on the back of the vest for identification purposes. Subcontractor agrees to provide adequate manpower to meet the stringent project schedule provided by Food Lion and attached to this contract. The schedule attached is a critical path schedule with firm dates for critical path items

and does not incorporate the complete scope. Subcontractor's onsite personnel will be required to communicate with Vertex Construction Company, LLC onsite supervisor in order to schedule work on a weekly basis for daily task that will need to be coordinated with other trades. It is imperative that any punch list provided by either the Food Lion construction supervisor, 3rd party inspector or Vertex Construction Company be completed prior to the completion date in the schedule. In the event that this subcontractor does not complete their scope of work prior to the completion date, Subcontractor may be liable for cost incurred by Food Lion or Vertex Construction Company. All change orders to be billed separate from the contract pay application.

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This Subcontract is made as of the Contract Date by and between Vertex Construction Company, LLC (Contractor) and (Subcontractor). For the consideration set forth in this Subcontract, Contractor and Subcontractor agree as follows:

- 1. Contract Documents.** Subcontractor acknowledges that it is familiar with the Project and has reviewed and understands the plans, specifications, conditions and addenda for the Project which are on file with or furnished by the Contractor (collectively, the "Contract Documents"), and agrees to be bound by the terms of the Contract Documents, including without limitation, all guarantees and warranties. In case of conflict, this Subcontract shall control. Contractor makes no representations regarding any of the information contained in the Contract Documents.
- 2. Scope of Work.** Contractor agrees to employ Subcontractor as an independent contractor to perform the Work described on Page 1 of this Subcontract Agreement. Subcontractor agrees to perform and complete the Work in a good and workmanlike manner and in a timely fashion in accordance with Contractor's Project Schedule. In performing the Work, Subcontractor agrees to furnish all labor, material, equipment and services (including proper supervision) necessary to properly and fully complete the Work. Contractor reserves the right to inspect all Work at any time, to determine whether the Work has been completed to its satisfaction, and to reject any labor, materials, equipment or services that, in Contractor's opinion, do not comply with the Contract Documents. Subcontractor agrees to abide by all directives set forth by Contractor.
- 3. Subcontract Sum/Payments.**
  - A.** In consideration for the complete and timely completion of the Work, Contractor agrees to pay Subcontractor for Work satisfactorily performed, the Contract Price, payable in monthly progress payments, less the Retainage Percentage, following Contractor's receipt of (a) Subcontractor's payment application, (b) an affidavit from Subcontractor certifying that all labor, materials and equipment and other indebtedness has been paid to date, and (c) to the extent requested, executed partial releases of lien from Subcontractor's material men and suppliers.
  - B.** The Subcontractor shall submit progress payment applications (invoices) to the Contractor by the 20<sup>th</sup> day of the month. If a progress payment application (invoice) is received by the 20<sup>th</sup> then payment will be made, less the retainage percentage on the 30th day of the following month. If the 30th day shall fall on a weekend or holiday, then payment shall be made on the next business day.
  - C.** In addition to the Retainage Percentage, Contractor may withhold from any payment any amounts that may be necessary to resolve disputed liens or claims involving the Work. All payments received by Subcontractor shall be used to pay for labor, materials, equipment and services used in performing the Work. No payment made by Contractor shall imply acceptance of the Work or waiver of any rights under this Subcontract.

**D.** Progress payments to the Subcontractor shall be made only upon receipt by the Contractor of payment from the Owner. In the event a controversy occurs between the Contractor and the Owner concerning the contract with the Owner, Contractor will utilize its best efforts to collect sums due the Subcontractor and to protect the collection rights of the Subcontractor by the Contractor's timely assertion of its lien right or similar activities against the Owner.

- 4. Time; Schedule.** Time is of the essence in this Subcontract and the performance of the Work. The Project Schedule shall be prepared by Contractor, and may be revised as necessary while the Work progresses (without additional compensation unless approved by Contractor in writing). In addition to any other rights or remedies of Contractor, if Subcontractor fails to complete the Work within the time set forth in the Project Schedule for any reason other than adverse weather conditions, an act of God or other reasons beyond Subcontractor's control, the Contractor may assess damages against Subcontractor for any damages incurred by the Contractor as a result of such delay.
- 5. Shop Drawings and Submittals.** All shop drawings and submittals must be furnished for approval before proceeding with the Work as outlined in the project specifications and drawings. 6 copies must be submitted to the Contractor for distribution unless otherwise stated.
- 6. Changes.** No change may be made to the Work unless directed by the Contractor's Project Manager in writing. All charges for extras or changes must be authorized by Contractor in writing, in advance by the Project Manager.

**7. Insurance.**

**Indemnification and Subcontractor's Liability**

Subcontractor hereby assumes the entire responsibility and liability for all Work, supervision, labor and materials provided, whether or not erected in place, and for all plant, scaffolding, tools, equipment, supplies and other things provided by Subcontractor until final acceptance of the entirety of the Work by Owner. In the event of any loss, damage or destruction thereof from any cause, Subcontractor shall be liable therefor, and shall repair, rebuild and make good said loss, damage or destruction at Subcontractor's cost, subject only to the extent that any net proceeds are payable under any builder's risk property insurance that may be maintained by Owner or Contractor, if any. To the fullest extent permitted by law, the Subcontractor shall indemnify, defend, and hold harmless the Contractor, Owner and their respective officers, directors, employees and agents ("Indemnified Parties") from and against all claims, damages, demands, losses, expenses, fines, causes of action, suits or other liabilities, (including all costs reasonable attorneys' fees, consequential damages, and punitive damages), arising out of or resulting from, or alleged to arise out of or arise from, the performance of Subcontractor's Work under the Purchase Order, whether such claim, damage, demand, loss or expense is attributable to bodily injury, personal injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom; but only to the extent attributable to the negligence of the Subcontractor or any entity for which it is legally responsible or vicariously liable: regardless of whether the claim is presented by the Subcontractor's employee, his/her spouse, legal or domestic partner under applicable state law and/or dependents of the Subcontractor's employee. Such indemnity obligation shall not be in derogation or limitation of any other obligation or liability of the Subcontractor or the rights of the Contractor contained in this Subcontract or otherwise. This indemnification shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under any workers' compensation acts, disability benefits acts or other employee benefits acts and includes any loss or injury suffered by an employee of the Subcontractor or any others who claim to have directly or derivatively

- 7. Insurance Requirements** the Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability.

- 1) Commercial General Liability (CGL) with limits of Insurance not less than \$1,000,000 each occurrence, \$1,000,000 Personal Injury and Advertising Injury, \$2,000,000 Products/Completed and \$2,000,000 Annual General Aggregate.
  - A) If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall separately to each project.
  - B) CGL coverage shall be written on ISO occurrence form CG 00 01 (1093) or a substitute form providing equivalent coverage shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.
  - C) Vertex Construction Company, LLC shall be included as insured on the CGL, using ISO additional Insured Endorsement CG 20 10 (11 85) or an endorsement providing equivalent coverage to the additional insured. This insurance for the additional insured shall be as broad as the coverage provided for the named insured subcontractor. It shall apply as Primary Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.
  - D) Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the work.

## 2) Automobile Liability

- A) Business Auto Liability with limits of at least \$1,000,000 each accident.
- B) Business Auto coverage must include a liability arising out of all owned, leased, hired and non-owned automobiles.

## 3) Commercial Umbrella

- A) Umbrella limits must be at least \$1,000,000
- B) Umbrella coverage must include as insureds all entities that are additional insureds on the CGL.
- C) Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Auto Liability and Employers Liability coverages maintained by the Subcontractor.

## 4) Workman's Compensation and Employers Liability

- A) Employers Liability Insurance limits of at least \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee for injury by disease.
- B) Where applicable, U.S. Longshore and Harbor workers Compensation Act Endorsement shall be attached to the policy.
- C) Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.

## Waiver of Subrogation

Subcontractor waives all rights against Vertex Construction Company, LLC, Owner, and Architect and their agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability, or worker's compensation and employer's liability insurance maintained per requirements stated above.

Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor's Commercial General Liability Policy.

The Subcontractors' insurer/insurers shall maintain a rating of A minus or better as set by A.M. Best and Company.

## **9. Safety & Clean-up**

The Contractor makes no representation with respect to the physical conditions or safety of any Project Site. The Subcontractor or Sub-Subcontractor shall, at its own expense, preserve and protect from injury its employees engaged in the performance of the Work and all property and persons which may be affected by its operations in performing the Work. The prevention of accidents to workers engaged in the Work and others affected by the Work is the responsibility of the Subcontractor or Sub-Subcontractor, and Subcontractor or Sub-Subcontractor shall comply with all federal, state, labor and local laws, regulations and codes concerning safety as shall be applicable to the Work and to the safety standards established by Contractor during the progress of the Work. Subcontractor or the Sub-Subcontractor shall clean up the areas used by it or its Work on a daily basis in a manner that will not impede either the progress of the Project or of other trades.

**10 Indemnity.** To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Contractor, and their respective agents and employees, from any and all claims, damages, losses or expenses, including reasonable attorneys' fees, caused in whole or in part by any act or omission of Subcontractor, its agents, employees or subcontractors (provided that the same is not caused by or a result of the negligence of Contractor).

**11 Warranty.** Subcontractor hereby warrants that all Work shall be free from defects and deficiencies in material and workmanship for a period of one year after the date of final payment (or such longer period as may be required by the Contract Documents). Subcontractor further warrants that all materials and equipment furnished under this Subcontract will be good quality and fit for the purposes intended.

**12 Responsibility for Tools, Equipment, Etc.** Subcontractor shall at all times and at its expense protect all of its labor, materials, supplies, tools and equipment (and those of its mechanic, laborers, and material-men ) supplied by or on behalf of Subcontractor with respect to the Project against any damage, injury, destruction, theft or loss, and in no event shall Contractor be liable or responsible therefore.

## **13 Compliance with Laws.**

- A.** Subcontractor shall (and shall require all of its material-men and suppliers to) strictly comply with all applicable federal, state and local laws, regulation, statutes, ordinances and directives (collectively, "Laws") now in force or hereafter in effect, including without limitation, Laws regarding wages, occupational safety and health, workers' compensation and employment discrimination. Subcontractor represents that it is familiar with all Laws applicable to this Subcontract and the Work. Subcontractor shall maintain all records required for compliance with the Laws and Subcontractor agrees to furnish all labor, service, equipment and materials necessary to comply with the Laws, without additional compensation. If any fine or penalty for failure to comply with any Law is levied against Contractor as a result of Subcontractor's actions or omissions, then Contractor may (but shall not be obligated to) pay such fine, whereupon Subcontractor shall immediately reimburse Contractor for any amount(s) paid. Or Contractor may offset such amount(s) against the Contract Price.
- B.** Subcontractor shall fully indemnify and reimburse Contractor against any fines or penalties issued to Contractor due to the failure of Subcontractor or its sub-subcontractors to perform in a safe and compliant manner.

- C. If ordered, Subcontractor shall stop any part of the Work that Contractor deems unsafe until corrective measures satisfactory to Contractor have been taken. Should Subcontractor neglect to adopt such corrective measures, then Contractor may do so and deduct the cost from payments due to Subcontractor.
  - D. Subcontractor will have competent person(s) on the project that has the ability to communicate with their workers as well as communicate in English, with Contractor's supervision.
- 14 Default by Subcontractor.** If Subcontractor fails in any respect to (a) prosecute the Work with promptness and diligence, or (b) correct defective Work promptly, or (c) comply with any of the requirements herein, then after 48 hours written notice to Subcontractor (except in case of emergency), Contractor may elect to do any or all of the following: (i) withhold payment of any amount due to Subcontractor pending corrective action to the satisfaction of Contractor; or(ii) perform the same for Subcontractor (or contract with one or more additional persons to) and charge all costs therefore to Subcontractor, including reasonable overhead, profit and attorneys' fees; or (iii) terminate this Subcontract; or(iv) pursue any other rights or remedies at law.
- 15 Clean-up.** The Subcontractor will keep the Project clean of debris at all times arising out of the performance of the Work by Subcontractor. If the Subcontractor fails to commence to comply with this paragraph after receipt of written notice of non-compliance from the Contractor, the Contractor may perform the necessary clean-up and deduct the cost of such performance from any amount due the Subcontractor.
- 16 Assignments.** Neither this Subcontract nor Subcontractor's interest therein nor any payments or proceeds thereunder may be transferred or assigned, nor the Work or any part thereof be sub-subcontracted, without written consent of Contractor.
- 17 Disputes.** If a dispute arises between the Contractor and Subcontractor, the parties agree to first attempt to resolve these differences without involving third parties (other than the recommendation of the Architect, if applicable). In the event efforts to resolve such matters fail, then any dispute arising out of or relating to this Agreement, or breach thereof, shall be determined in accordance with the Construction Industry's Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The non-prevailing party shall pay the costs of arbitration, including reasonable attorneys' fees.
- 18 Partial Invalidity.** If at any time any provision or clause of this Agreement shall be held by any court of competent jurisdiction to be illegal, void, or unenforceable, the unenforceability of such provision shall not have an effect upon and shall not impair the enforceability of any other provision of this Agreement.
- 19 No Waiver.** No failure to exercise and no delay in exercising any right, power or privilege shall operate as a waiver thereof unless consented to in writing by Contractor. No waiver of any breach of any covenant or agreement hereunder shall be deemed a waiver of any subsequent breach of the same or any other covenant or agreement.
- 20 Notices.** All notices delivered pursuant to this Subcontract shall be in writing and shall not be effective unless personally delivered or sent by facsimile transmission, registered or certified mail, postage prepaid, or by reputable overnight courier, and properly address to the respective party as indicated in the address appearing on the signature page below.
- 21 Choice of Law.** This Subcontract shall be construed and governed by the laws of the State of North Carolina.
- 22 Entire Agreement.** This Subcontract supersedes any and all contracts, oral or written, previously entered into between Contractor and Subcontractor, and together with all exhibits attached hereto, constitutes the entire agreement of the parties, which may not be amended or modified except in writing signed by both parties.

Food Lion #2250

This agreement entered into as of the date first listed above.

**Contractor:**

Vertex Construction Company, LLC

\_\_\_\_\_  
Signature

Steve Thurston Vice President

Print Name/Title

Date: \_\_\_\_\_

**Subcontractor:**

Foothill Flooring, Inc.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name/Title

Date: \_\_\_\_\_

Federal Tax ID #\_\_\_\_\_