



<p><u>“Contractor”</u> PALA-Interstate, LLC 16347 Old Hammond Hwy Baton Rouge LA 70816 Phone: 225-272-5194 Fax: 225-272-5239</p>	<p><u>“Subcontractor”</u> _____ _____ (Louisiana Contractor License Number _____) _____ Attention: _____ Phone #: _____ Fax #: _____ Email Address: _____</p>
<p><u>“Project”</u> _____</p>	<p><u>“Subcontract Price”</u> \$.</p>

1. THE WORK; THE PROJECT; THE CONTRACT DOCUMENTS; RELATIONSHIP OF THE PARTIES.....17
 - (a) SUBCONTRACTOR SHALL FURNISH ALL LABOR, MATERIALS, TOOLS, EQUIPMENT, FACILITIES, SUPERVISION, MANAGEMENT, FINANCING, SERVICES, SHOP DRAWINGS, SUBMITTALS, TESTING, AND EVERY OTHER THING OR SERVICE OF WHATEVER NATURE NECESSARY TO FULLY PERFORM AND IN EVERY RESPECT COMPLETE THE WORK GENERALLY DESCRIBED ON EXHIBIT A (THE “WORK”) FOR THE PROJECT. THE WORK FURTHER INCLUDES EVERYTHING REASONABLY NECESSARY OR CUSTOMARY FOR THE PROPER EXECUTION OF ALL WORK DESCRIBED IN EXHIBIT A AND AS FURTHER DESCRIBED IN THE CONTRACT DOCUMENTS (AS DEFINED BELOW).....17
 - (b) SUBCONTRACTOR SHALL PERFORM ALL WORK IN STRICT ACCORDANCE WITH THE FOLLOWING (THE “CONTRACT DOCUMENTS”): (I) THIS SUBCONTRACT, INCLUDING ALL EXHIBITS, SCHEDULES AND ATTACHMENTS, (II) ANY AGREEMENT BETWEEN CONTRACTOR AND THE OWNER (“OWNER”) OF THE PROJECT (THE “PRIME CONTRACT”), (III) ANY OTHER DOCUMENTS INCORPORATED INTO OR REFERENCED IN THE PRIME CONTRACT THAT APPLY, GOVERN OR RELATE TO THE WORK, INCLUDING, WITHOUT LIMITATION, ALL DRAWINGS, PLANS, SPECIFICATIONS, STANDARDS, SCHEDULES, AND ADDENDA (THE “OTHER PRIME DOCUMENTS”), AND (IV) ANY CHANGES, MODIFICATIONS OR AMENDMENTS TO THIS SUBCONTRACT AUTHORIZED BY THE TERMS HEREOF AND ANY CHANGES, MODIFICATIONS OR AMENDMENTS TO THE PRIME CONTRACT OR THE OTHER PRIME DOCUMENTS TAKING EFFECT AFTER THE DATE OF THIS AGREEMENT PROVIDED SUBCONTRACTOR HAS ACCESS TO SUCH MODIFICATIONS AND AMENDMENTS. THE DOCUMENTS MENTIONED IN SUBSECTIONS (II) – (IV) ABOVE ARE INCORPORATED INTO AND FORM AN INTEGRAL PART OF THIS SUBCONTRACT AS IF ATTACHED TO THIS SUBCONTRACT OR REPEATED HEREIN. THE SUBCONTRACTOR AGREES AND ACKNOWLEDGES THAT IT IS RESPONSIBLE TO READ AND REVIEW ALL OF THE CONTRACT DOCUMENTS, AND IF SUBCONTRACTOR HAS NOT BEEN TOLD WHERE ALL CONTRACT DOCUMENTS CAN BE REVIEWED, SUBCONTRACTOR SHALL ASK THE CONTRACTOR FOR SUCH LOCATION.....17
 - (c) SUBCONTRACTOR SHALL BE BOUND TO CONTRACTOR BY ALL TERMS AND CONDITIONS OF THE CONTRACT DOCUMENTS. IN THE EVENT OF AN AMBIGUITY OR

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CONFLICT BETWEEN THE PRIME CONTRACT AND THIS SUBCONTRACT,
THIS SUBCONTRACT SHALL GOVERN. 17

2. WORK PRICE. 18

3. TIME; PERFORMANCE; DELAYS. 18

(A) TIME IS OF THE ESSENCE OF THIS SUBCONTRACT AND ALL WORK. SUBCONTRACTOR SHALL BEGIN AND PROCEED WITH THE WORK WHEN AND AS DIRECTED BY CONTRACTOR. SUBCONTRACTOR SHALL COORDINATE AND CONTINUOUSLY PERFORM THE WORK COMPETENTLY, EFFICIENTLY, AND AT A SPEED SO AS TO FACILITATE THE GENERAL PROGRESS OF THE PROJECT. SUBCONTRACTOR SHALL NOT DELAY, DISRUPT, DAMAGE, OR RENDER MORE EXPENSIVE TO THE WORK OF CONTRACTOR OR ANY OTHER SUBCONTRACTOR PERFORMING WORK ON THE PROJECT. SUBCONTRACTOR AGREES TO ABIDE BY CONTRACTOR'S DECISIONS AS TO ALL MATTERS RESPECTING THE ORGANIZATION, FLOW, COORDINATION, AND SEQUENCING OF WORK. IF SO ORDERED BY CONTRACTOR, SUBCONTRACTOR SHALL PROSECUTE CERTAIN PORTIONS OF THE WORK IN PREFERENCE TO OTHER PORTIONS, AT NO INCREASE IN THE SUBCONTRACT PRICE. SUBCONTRACTOR SHALL REIMBURSE CONTRACTOR FOR ANY COSTS AND DAMAGES INCURRED BY CONTRACTOR AS A RESULT OF DELAYS OR DIFFICULTIES CAUSED BY OR ATTRIBUTABLE TO SUBCONTRACTOR. 18

(B) SUBCONTRACTOR AGREES TO PERFORM AND COMPLETE THE WORK WITHIN DAYS FROM MOBILIZATION DATE. SUBCONTRACTOR'S FAILURE TO TIMELY COMPLETE THE WORK WITHIN THIS TIME SHALL ONLY BE EXCUSED OR EXTENDED BY A FORCE MAJEURE EVENT, AS DEFINED BELOW. WHERE SUBCONTRACTOR'S PERFORMANCE IS DELAYED DUE TO A LEGITIMATE FORCE MAJEURE EVENT, ITS TIME TO PERFORM AND COMPLETE THE WORK SHALL BE EXTENDED BY THE AMOUNT OF TIME THAT SUBCONTRACTOR WAS DELAYED BY THE EVENT. 18

4. SUBCONTRACTOR RESPONSIBILITIES; PERFORMING AND COORDINATING THE WORK. ...
18

(a) SUBCONTRACTOR SHALL, AT ALL TIMES, FURNISH AND MAINTAIN: ADEQUATE TOOLS, MATERIALS, SUPPLIES, FACILITIES AND EQUIPMENT; SUFFICIENT NUMBERS OF QUALIFIED WORKMEN; AND AT LEAST ONE COMPETENT, SUPERINTENDENT PRESENT AT THE PROJECT SITE AT ALL TIMES OF SUBCONTRACTOR PERFORMANCE. 18

(b) SUBCONTRACTOR SHALL COMPLY WITH ALL LAWS, ORDINANCES, BUILDING CODES, SAFETY RULES AND REQUIREMENTS, AND REGULATIONS OF WHATEVER NATURE THAT APPLY TO THIS SUBCONTRACT, THE WORK, OR SUBCONTRACTOR'S OPERATIONS AND THAT ARE OTHERWISE EFFECTIVE WHEN AND WHERE THE WORK IS TO BE PERFORMED, INCLUDING, BUT NOT LIMITED TO, THE "FEDERAL SAFETY AND HEALTH ACT OF 1970", AND ANY ADDENDA THERETO. 18

(c) SUBCONTRACTOR SHALL NOT PLACE SIGNS OF ANY KIND UPON THE PROJECT SITE WITHOUT PRIOR WRITTEN APPROVAL OF CONTRACTOR. 19

(d) THE WORK SHALL BE PERFORMED UNDER THE SUPERVISION OF CONTRACTOR, WHOSE DECISION AS TO THE TRUE INTENT, PROPER CONSTRUCTION, AND CORRECT MEANING OF THE DRAWINGS, SPECIFICATIONS AND OTHER CONTRACT DOCUMENTS SHALL BE FINAL. SUBCONTRACTOR SHALL CONFORM TO AND ABIDE BY ANY ADDITIONAL SPECIFICATIONS, DRAWINGS AND/OR EXPLANATIONS FURNISHED BY CONTRACTOR TO DETAIL AND ILLUSTRATE THE WORK. 19

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- (e) BEFORE PROCEEDING WITH ANY WORK, SUBCONTRACTOR SHALL LAY OUT AND FIELD MEASURE ALL WORK, AND SUBCONTRACTOR SHALL VERIFY ALL PREVIOUS AND SURROUNDING WORK DONE BY OTHERS TO ENSURE THAT ALL WORK FITS AND FUNCTIONS PROPERLY. SUBCONTRACTOR SHALL DETECT AND, PRIOR TO COMMENCEMENT OF WORK, REPORT IN WRITING TO CONTRACTOR ANY DEFECT, INTERFERENCE, VARIATION, OR NONCONFORMITY IN THE WORK OF OTHERS OR IN THE PLANS AND SPECIFICATIONS; AND IF SUBCONTRACTOR FAILS TO DO SO, SUBCONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR AND BEAR ALL COSTS OF ANY ADDITIONS, CUTTING, PATCHING, REROUTING, OR REPLACEMENT WHICH CONTRACTOR DIRECTS TO OVERCOME OR CORRECT SUCH PROBLEMS. 19

- (f) THE SUBCONTRACTOR SHALL NOTIFY THE CONTRACTOR WHEN PORTIONS OF THE SUBCONTRACTOR'S WORK ARE READY FOR INSPECTION. THE SUBCONTRACTOR SHALL FURNISH TO THE CONTRACTOR IN SUCH DETAIL AND AS OFTEN AS REQUIRED, FULL REPORTS OF THE PROGRESS OF THE SUBCONTRACTOR'S WORK IRRESPECTIVE OF THE LOCATION OF SUCH WORK. 19

- (g) EXCEPT AS TO ITEMS PURCHASED FROM STOCK, ITEMS SUPPLIED HEREUNDER, AND MATERIAL COMPONENTS INCORPORATED THEREIN, SHALL BE SUBJECT TO INSPECTION AT CONTRACTOR'S OPTION DURING OR AFTER MANUFACTURE; ITEMS PURCHASED FROM STOCK SHALL BE SUBJECT TO INSPECTION BEFORE FINAL ACCEPTANCE. NEITHER INSPECTION, NOR FAILURE TO INSPECT, SHALL RELIEVE SUBCONTRACTOR OF RESPONSIBILITY WITH RESPECT TO ITEMS SUPPLIED HEREUNDER OR IMPLY ACCEPTANCE THEREOF. 19

- (h) IN THE EVENT THE SCOPE OF THE SUBCONTRACTOR'S WORK INCLUDES THE INSTALLATION OF MATERIALS OR EQUIPMENT PURCHASED BY THE SUBCONTRACTOR OR OTHERS, IT SHALL BE THE RESPONSIBILITY OF THE SUBCONTRACTOR TO EXAMINE THE ITEMS SO PROVIDED AND THEREUPON HANDLE, STORE AND INSTALL THE ITEMS WITH SUCH SKILL AND CARE AS TO ENSURE A SATISFACTORY AND PROPER INSTALLATION. LOSS OR DAMAGE DUE TO ACTION OR INACTION OF THE SUBCONTRACTOR SHALL BE THE RESPONSIBILITY OF THE SUBCONTRACTOR. 19

- (i) UNTIL FINAL COMPLETION OF THE PROJECT, THE SUBCONTRACTOR AGREES NOT TO PERFORM ANY WORK DIRECTLY FOR OWNER OR ANY TENANTS THEREOF, OR DEAL DIRECTLY WITH THE OWNER'S REPRESENTATIVES IN CONNECTION WITH THE PROJECT, WITHOUT THE PRIOR CONSENT OF THE CONTRACTOR. ALL WORK FOR THIS PROJECT PERFORMED BY THE SUBCONTRACTOR SHALL BE PROCESSED AND HANDLED EXCLUSIVELY BY THE CONTRACTOR..... 19

- (j) SUBCONTRACTOR SHALL UTILIZE LABOR FORCES COMPATIBLE WITH THE CONTRACTOR AND THE OWNER. 19

- 5. SUBCONTRACTOR WARRANTIES. 19**

- (a) SUBCONTRACTOR WARRANTS AND GUARANTEES THE WORK TO COMPLY STRICTLY WITH THIS SUBCONTRACT AND WITH ALL PARTS OF THE CONTRACT DOCUMENTS APPLICABLE TO THE WORK. SUBCONTRACTOR FURTHER WARRANTS AND GUARANTEES THAT THE WORK AND ALL MATERIALS AND EQUIPMENT FURNISHED IN CONNECTION THEREWITH ARE NEW, OF GOOD MATERIAL AND WORKMANSHIP, FREE FROM DEFECTS, FIT,

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SAFE, MERCHANTABILITY, AND SUFFICIENT FOR THE PURPOSES INTENDED. THESE WARRANTIES AND GUARANTEES SHALL EXTEND FOR ONE YEAR AFTER FINAL PAYMENT TO SUBCONTRACTOR. THE WARRANTIES AND GUARANTEES SET FORTH HEREIN ARE IN ADDITION TO ANY OTHER WARRANTIES OR GUARANTEES REQUIRED BY THE PRIME CONTRACT, PROVIDED BY LAW, OR SET FORTH BY SEPARATE AGREEMENT. ANY WORK NOT CONFORMING TO THE REQUIREMENTS OF THIS SUBCONTRACT AND THE CONTRACT DOCUMENTS, INCLUDING SUBSTITUTIONS NOT PROPERLY AUTHORIZED, SHALL BE CONSIDERED DEFECTIVE AND SHALL BE PROMPTLY REPLACED OR CORRECTED AS DIRECTED BY CONTRACTOR.19

- (b) SUBCONTRACTOR SHALL, WITHIN TWENTY-FOUR HOURS AFTER WRITTEN NOTICE FROM CONTRACTOR, PROCEED TO TAKE DOWN AND REMOVE FROM THE PREMISES OF THE PROJECT ALL PORTIONS OF THE WORK AND ALL MATERIAL, WHICH CONTRACTOR SHALL DEEM AS UNSOUND OR IMPROPER OR WHICH FAILS TO CONFORM IN ANY WAY TO CONTRACT DOCUMENT REQUIREMENTS. SUBCONTRACTOR SHALL MAKE GOOD ALL SUCH DISAPPROVED WORK, EQUIPMENT, AND FACILITIES AND RESTORE ALL OTHER WORK DAMAGED OR DESTROYED IN REMOVING OR MAKING GOOD SUCH DISAPPROVED ITEMS, ALL AT SUBCONTRACTOR'S SOLE RISK AND EXPENSE. HOWEVER, SUBCONTRACTOR SHALL NOT REMOVE ANY OTHER MATERIALS FROM THE PROJECT SITE WITHOUT CONTRACTOR'S WRITTEN PERMISSION. ... 20

6. GENERAL PAYMENT TERMS.20

- (a) AT TIMES AND INTERVALS DIRECTED BY CONTRACTOR, SUBCONTRACTOR SHALL PRESENT TO CONTRACTOR AN APPLICATION FOR PAYMENT IN SUCH FORM AND WITH SUCH CONTENT AND SUPPORT AS REQUESTED BY CONTRACTOR AND SUBJECT TO CONTRACTOR'S APPROVAL. SUBCONTRACTOR'S APPLICATION MUST INCLUDE AN ITEMIZED STATEMENT OF THE WORK PROPERLY COMPLETED BY SUBCONTRACTOR DURING THE PERIOD FOR WHICH PAYMENT IS BEING REQUESTED.20

- (b) SUBJECT TO THE ABOVE PROVISIONS AND ALL OTHER TERMS AND CONDITIONS OF THIS SUBCONTRACT, CONTRACTOR AGREES TO PAY SUBCONTRACTOR'S APPLICATION FOR PAYMENT WITHIN WORKING DAYS AFTER CONTRACTOR'S ACTUAL RECEIPT OF SUBCONTRACTOR'S APPLICATION FOR PAYMENT IN ACCORDANCE WITH SECTION 6(A). A RETAINAGE SHALL BE WITHHELD FROM EACH CONTRACTOR PAYMENT. THE FINAL PAYMENT REQUEST SHALL INCLUDE THE RELEASE OF THE RETAINAGE AND SHALL BE SUBMITTED TO THE OWNER UPON FINAL COMPLETION AND ACCEPTANCE OF THE WORK BY THE OWNER AND FINAL APPROVAL. FINAL INVOICE MUST BE RECEIVED WITHIN 30 DAYS FROM COMPLETION AND ACCEPTANCE OF SCOPE OF WORK AFTER SAID TIME SUBCONTRACT HEREBY WAIVES ANY RIGHTS FOR PAYMENT OR LIABILITIES.20

7. CONDITIONS PRECEDENT TO PAYMENT.....20

- (a) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SUBCONTRACT, IN THE PRIME CONTRACT, OR IN ANY OTHER DOCUMENT, CONTRACTOR'S AND OWNER'S APPROVAL OF THE WORK FOR WHICH PAYMENT IS REQUESTED SHALL BE AN ABSOLUTE CONDITION PRECEDENT TO ANY RIGHT OF SUBCONTRACTOR TO RECEIVE PAYMENT, IN ANY FORM

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- WHATSOEVER, FROM CONTRACTOR.20
- (b) IN ADDITION TO THE SATISFACTION OF THE CONDITION PRECEDENT IN SECTION 7(A) AND ANY OTHER REQUIREMENTS UNDER THIS SUBCONTRACT OR THE CONTRACT DOCUMENTS, CONTRACTOR SHALL NOT BE OBLIGATED TO PAY SUBCONTRACTOR ANY PROGRESS PAYMENT UNLESS SUBCONTRACTOR IS IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS SUBCONTRACT AND UNTIL SUBCONTRACTOR HAS SUBMITTED TO CONTRACTOR:.....20
- (c) IN ADDITION TO THE SATISFACTION OF THE CONDITION PRECEDENT IN SECTION 7(A) AND ANY OTHER REQUIREMENTS UNDER THIS SUBCONTRACT OR THE CONTRACT DOCUMENTS, CONTRACTOR SHALL NOT BE OBLIGATED TO PAY SUBCONTRACTOR THE FINAL PAYMENT UNLESS SUBCONTRACTOR IS IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS SUBCONTRACT AND UNTIL SUBCONTRACTOR HAS SUBMITTED TO CONTRACTOR:21
- (d) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN CONTAINED, CONTRACTOR SHALL HAVE THE RIGHT, WITHOUT ANY DUTY, TO WITHHOLD FROM ANY PAYMENTS DUE OR TO BECOME DUE SUBCONTRACTOR SUCH AMOUNTS AS CONTRACTOR, IN ITS SOLE DISCRETION, DEEMS NECESSARY TO PROTECT CONTRACTOR'S INTERESTS WITH RESPECT TO (1) ANY INDEBTEDNESS OWED BY SUBCONTRACTOR TO CONTRACTOR UNDER THIS SUBCONTRACT OR ANY OTHER CONTRACT; (2) ANY DEFECTIVE WORK OR MATERIALS NOT REMEDIED, REMOVED OR REPLACED, AS APPLICABLE; (3) ANY THIRD-PARTY CLAIMS FILED OR REASONABLE EVIDENCE INDICATING PROBABLE FILING OF ANY SUCH CLAIMS FOR WHICH SUBCONTRACTOR IS RESPONSIBLE; (4) ANY LIEN IN FAVOR OF ANY WORKERS, SUPPLIERS OF MATERIAL, OR LABORERS; (5) A CLAIM, WITH REASONABLE SUPPORT, BY ANY SUBCONTRACTOR PERSONNEL THAT CONTRACTOR HAS FAILED TO PAY AMOUNTS DUE TO SUCH SUBCONTRACTOR PERSONNEL IN CONNECTION WITH THE WORK; (6) REASONABLE DOUBT THAT THE WORK CAN BE COMPLETED FOR THE UNPAID BALANCE OF THE SUBCONTRACT PRICE FOR SUCH WORK; (7) REASONABLE INDICATION THAT THE WORK WILL NOT BE COMPLETED ON THE AGREED SCHEDULE; (8) UNSATISFACTORY OR UNTIMELY PROSECUTION OF THE WORK BY SUBCONTRACTOR; (9) ANY FAILURE OF SUBCONTRACTOR TO COMPLY WITH THE CONTRACT DOCUMENTS PERTAINING TO ANY WORK; (10) THE NEGLIGENCE, WILLFUL MISCONDUCT, ACTS OR OMISSIONS OF SUBCONTRACTOR OR ANY SUBCONTRACTOR PARTIES IN CONNECTION WITH THE WORK; AND/OR (11) ANY SET OFF TO WHICH COMPANY IS LEGALLY ENTITLED.21
- (e) ACCEPTANCE OF PAYMENT BY SUBCONTRACTOR CONSTITUTES A GENERAL RELEASE OF, AND WAIVER OF CLAIMS AGAINST, CONTRACTOR AND CONTRACTOR'S SURETY FROM ALL CLAIMS AND LIABILITY OF WHATEVER NATURE. NO PAYMENT, INCLUDING FINAL PAYMENT, BY CONTRACTOR SHALL BE CONSTRUED AS ACCEPTANCE OF DEFECTIVE OR INCOMPLETE WORK, AND SUBCONTRACTOR SHALL REMAIN RESPONSIBLE AND LIABLE FOR PERFORMANCE AND ITS OBLIGATIONS IN STRICT COMPLIANCE WITH THIS SUBCONTRACT.....21
- (f) CONTRACTOR'S PAYMENT BY OWNER SHALL BE A CONDITION PRECEDENT TO ANY PAYMENT OBLIGATION THAT CONTRACTOR MAY HAVE TO SUBCONTRACTOR21
- 8.** PAYMENT OF LOWER-TIER SUBCONTRACTORS; CONTRACTOR'S RIGHTS.21

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SUBCONTRACTOR HEREBY AGREES THAT CONTRACTOR HAS THE RIGHT TO PAY ANY INVOICES OR PAST DUE OBLIGATIONS OF SUBCONTRACTOR ARISING ON THIS PROJECT, INCLUDING BACKCHARGES OWED TO CONTRACTOR. ANY SUCH PAYMENTS MADE BY CONTRACTOR, WHETHER BY JOINT CHECK, DIRECT PAYMENT, OFFSET OR OTHERWISE, SHALL APPLY AS A PAYMENT TO SUBCONTRACTOR OF EARNED PROCEEDS ON THIS SUBCONTRACT. CONTRACTOR SHALL FURTHER HAVE THE OPTION, BUT NOT THE OBLIGATION, TO USE FUNDS OTHERWISE EARNED BY SUBCONTRACTOR ON THIS PROJECT OR OTHER PROJECTS TO PAY OR SET OFF SUBCONTRACTOR'S PAST DUE INVOICES AND OBLIGATIONS, INCLUDING BACKCHARGES OWED TO CONTRACTOR WHETHER ON THIS PROJECT OR ANY OTHER PROJECT.22

9. SUBCONTRACTOR DEFAULT; CONTRACTOR REMEDIES.22

(a) SHOULD SUBCONTRACTOR, AT ANY TIME, REFUSE, NEGLECT, OR FAIL: TO FURNISH AND MAINTAIN SUFFICIENT LABOR, MATERIAL, EQUIPMENT, SERVICES, OR SUPERVISION; TO PAY FOR LABOR, EQUIPMENT OR MATERIAL FURNISHED TO OR USED BY SUBCONTRACTOR; TO PROSECUTE THE WORK COVERED BY THIS SUBCONTRACT WITH PROMPTNESS AND DILIGENCE SO AS NOT TO DELAY EITHER WORK OF OTHERS OR THE PROJECT AS A WHOLE; OR TO PERFORM ANY OTHER TERM OR CONDITION OF THIS SUBCONTRACT (OR BREACH ANY PROVISION, REPRESENTATION OR COVENANT OF THIS SUBCONTRACT), ALL OF WHICH ARE CONSIDERED MATERIAL; THEN UPON ANY ONE OF THESE EVENTS, CONTRACTOR MAY, AT ITS OPTION, AFTER SEVENTY-TWO (72) HOUR NOTICE TO SUBCONTRACTOR, DO ONE OR MORE OF THE FOLLOWING: (1) SUPPLEMENT SUBCONTRACTOR WITH LABOR, MATERIAL, AND EQUIPMENT; OR (2) TERMINATE THIS SUBCONTRACT IN WHOLE OR IN PART AND COMPLETE THE SUBCONTRACT WITH CONTRACTOR'S OWN FORCES OR WITH OTHERS; OR (3) ISSUE A DEDUCTIVE CHANGE TO ELIMINATE PORTIONS OF THE WORK; OR (4) TAKE ANY OTHER ACTION WHICH CONTRACTOR IN GOOD FAITH DEEMS REASONABLE UNDER THE CIRCUMSTANCES. IN THE EVENT OF ANY FAILURE OR INADEQUACY OF PERFORMANCE BY SUBCONTRACTOR, SUBCONTRACTOR SHALL BE LIABLE TO CONTRACTOR FOR ALL EXPENDITURES MADE AND ALL DAMAGES, LOSSES, EXPENSES, ATTORNEYS' FEES, AND COSTS OF WHATEVER NATURE, INCURRED BY CONTRACTOR IN SUPPLEMENTING OR REPLACING SUBCONTRACTOR, IN COMPLETING THE WORK, OR OTHERWISE AS A RESULT OF SUBCONTRACTOR'S PERFORMANCE DELAYS OR FAILURES.22

(b) IF FOR ANY OTHER CAUSE OR REASON WHATSOEVER SUBCONTRACTOR SHALL FAIL TO CARRY ON THE WORK IN AN ACCEPTABLE MANNER, THE CONTRACTOR MAY ELECT TO GIVE NOTICE IN WRITING OF SUCH DEFAULT, SPECIFYING THE SAME, AND IF THE SUBCONTRACTOR, WITHIN A PERIOD OF SEVENTY TWO (72) HOURS AFTER SAID NOTICE, NOT INCLUDING SATURDAY OR SUNDAY, SHALL NOT PROCEED IN ACCORDANCE THEREWITH, THEN THE CONTRACTOR SHALL HAVE FULL POWER AND AUTHORITY TO IMMEDIATELY TAKE THE EXECUTION OF ALL OR PART OF THE WORK OUT OF THE HANDS OF THE SUBCONTRACTOR AND COMPLETE IT WITH ITS OWN FORCES, OR CONTRACT WITH OTHER PARTIES FOR ITS COMPLETION, OR USE SUCH OTHER MEASURES AS IN CONTRACTOR'S OPINION ARE NECESSARY FOR ITS COMPLETION. NEITHER BY THE TAKING OVER OF THE WORK NOR BY ITS COMPLETION IN ACCORDANCE WITH THE TERMS OF THIS PROVISION SHALL CONTRACTOR FORFEIT ITS RIGHT TO RECOVER DAMAGES FROM SUBCONTRACTOR OR FROM SUBCONTRACTOR'S SURETY FOR FAILURE

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TO COMPLETE OR FOR DELAY IN SUCH COMPLETION INCLUDING THE USE OF THE EQUIPMENT, PLANT AND OTHER PROPERTY OF SUBCONTRACTOR ON THE WORK AT NO COST TO THE CONTRACTOR FOR THE USE OF THE SAME. SHOULD THE EXPENSES INCURRED BY CONTRACTOR IN TAKING OVER AND COMPLETING THE WORK BE LESS THAN THE SUM THAT WOULD HAVE BECOME PAYABLE UNDER THIS AGREEMENT IF SAID WORK HAD BEEN COMPLETED BY SUBCONTRACTOR, THEN SUBCONTRACTOR SHALL BE ENTITLED TO THE DIFFERENCE. SHOULD THE EXPENSE EXCEED THE SAID SUM, SUBCONTRACTOR AND SUBCONTRACTOR'S SURETY SHALL BE LIABLE TO THE CONTRACTOR FOR THE AMOUNT OF SUCH EXCESS. UPON THE TAKING OVER OF THE WORK BY CONTRACTOR AS HEREIN PROVIDED FOR, NO FURTHER PAYMENT WILL BE MADE TO SUBCONTRACTOR UNTIL THE WORK IS COMPLETED, AND ANY MONEYS DUE OR THAT MAY BECOME DUE SUBCONTRACTOR UNDER THIS AGREEMENT WILL BE WITHHELD AND MAY BE APPLIED BY THE CONTRACTOR.22

(c) IN THE EVENT OF TERMINATION OF THIS SUBCONTRACT, IN WHOLE OR IN PART, CONTRACTOR MAY, AT ITS OPTION AND WITHOUT PREJUDICE TO OR WAIVER OF ANY OTHER RIGHT OR REMEDY TAKE POSSESSION OF MATERIALS, TOOLS, EQUIPMENT, FACILITIES, AND OTHER PROPERTY BELONGING TO SUBCONTRACTOR AT THE PROJECT SITE AND ASSUME COMPLETE CONTROL OF THE WORK. IN CASE OF PARTIAL OR TOTAL TERMINATION OF THIS SUBCONTRACT, SUBCONTRACTOR SHALL NOT BE ENTITLED TO RECEIVE ANY FURTHER PAYMENT UNDER THIS SUBCONTRACT UNTIL SUBCONTRACTOR'S ENTIRE WORK HAS BEEN COMPLETED AND ACCEPTED BY CONTRACTOR, ENGINEER, AND OWNER AND ALL OBLIGATIONS OF SUBCONTRACTOR HAVE BEEN SATISFIED. IF THE CHARGES, LOSSES, EXPENSES, ATTORNEYS' FEES, AND DAMAGES SUSTAINED BY CONTRACTOR IN COMPLETING THE WORK OR OTHERWISE ATTRIBUTABLE TO SUBCONTRACTOR'S PERFORMANCE DELAYS OR FAILURES EXCEED THE UNPAID PORTION OF THE SUBCONTRACT AMOUNT, SUBCONTRACTOR SHALL PAY THE DIFFERENCE TO CONTRACTOR WITHIN FIVE (5) DAYS AFTER DEMAND FOR SAME BY CONTRACTOR.22

(d) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SUBCONTRACT AND IN ADDITION TO CONTRACTOR'S RIGHT TO TERMINATE THIS SUBCONTRACT FOR BREACH OR DEFAULT, CONTRACTOR MAY TERMINATE ALL OR ANY PART OF THIS SUBCONTRACT, REGARDLESS OF FAULT OR THE LACK THEREOF BY ANY PARTY. UPON SUCH NO-FAULT TERMINATION, SUBCONTRACTOR SHALL BE ENTITLED TO PAYMENT FOR THE WORK SATISFACTORILY PERFORMED AND ACCEPTED BY OWNER, ENGINEER, AND CONTRACTOR. SUBCONTRACTOR SHALL NOT BE ENTITLED TO ANY PAYMENT, COMPENSATION, OR DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR OTHER THEORY OF RECOVERY, WITH RESPECT TO THE WORK NOT PERFORMED OR NOT ACCEPTED. IF CONTRACTOR TERMINATES THE SUBCONTRACT FOR DEFAULT OR BREACH BUT IT IS DETERMINED, FOR ANY REASON, THAT SUFFICIENT GROUNDS DID NOT EXIST FOR TERMINATING THE SUBCONTRACT, SUBCONTRACTOR, AS ITS SOLE AND EXCLUSIVE REMEDY, SHALL BE ENTITLED ONLY TO THE AMOUNT DUE UNDER THE SUBCONTRACT AS IF THE TERMINATION WERE FOR NO FAULT AS PROVIDED IN THIS SECTION.23

10. SUBCONTRACTOR STATUS; EMPLOYEES' STATUS.....23

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- (a) IN CONNECTION WITH THIS SUBCONTRACT, SUBCONTRACTOR SHALL AT ALL TIMES AND IN ALL RESPECTS BE AN INDEPENDENT CONTRACTOR TO CONTRACTOR. NO PERSONNEL EMPLOYED BY SUBCONTRACTOR SHALL BE DEEMED UNDER ANY CIRCUMSTANCES TO BE AGENTS, REPRESENTATIVES OR EMPLOYEES (EXCEPT AS STATUTORY EMPLOYEES AS SPECIFIED IN SECTION 10(C)) OF CONTRACTOR. SUBCONTRACTOR SHALL HAVE NO AUTHORITY TO BIND CONTRACTOR BY ANY REPRESENTATION, PROMISE, OR STATEMENT OF ANY KIND WITHOUT FIRST OBTAINING CONTRACTOR'S SPECIFIC WRITTEN CONSENT AND AUTHORIZATION. SUBCONTRACTOR SHALL NOT INTERFERE WITH CONTRACTOR'S RELATIONSHIP WITH OTHER SUBCONTRACTORS.....23

 - (b) SUBCONTRACTOR HAS EXCLUSIVE LIABILITY FOR ALL CONTRIBUTIONS, TAXES, DEPOSITS, AND PAYMENTS REQUIRED OF EMPLOYERS BY FEDERAL, STATE, OR LOCAL GOVERNMENTS, WITH RESPECT TO WAGES, SALARIES, REMUNERATION, OR BENEFITS PAID OR OWED BY SUBCONTRACTOR TO ANY OF SUBCONTRACTOR'S EMPLOYEES OR OTHERS WHO PERFORM THE WORK OR RENDER SERVICES FOR SUBCONTRACTOR IN CONNECTION WITH THIS SUBCONTRACT. SUBCONTRACTOR HAS EXCLUSIVE LIABILITY FOR ALL INCOME, GROSS RECEIPTS, SALES, USE, OR OTHER TAXES APPLICABLE TO MATERIALS, EQUIPMENT, LABOR, OR PERFORMANCE OF THE WORK AND SERVICES PURSUANT TO THIS SUBCONTRACT.23

 - (c) IN ALL CASES AND TO THE EXTENT WHERE SUBCONTRACTOR'S EMPLOYEES (DEFINED TO INCLUDE WITHOUT LIMITATION SUBCONTRACTOR'S DIRECT, BORROWED, SPECIAL, OR STATUTORY EMPLOYEES) ARE PERFORMING WORK IN LOUISIANA OR ARE OTHERWISE COVERED BY THE LOUISIANA WORKERS' COMPENSATION LAW, LA. R.S. 23:1020.1 ET SEQ., CONTRACTOR AND SUBCONTRACTOR RECOGNIZE, ACKNOWLEDGE AND AGREE THAT ALL WORK AND OPERATIONS PERFORMED BY SUBCONTRACTOR AND ITS EMPLOYEES AND SUBCONTRACTORS PURSUANT TO THIS AGREEMENT ARE AN INTEGRAL PART OF CONTRACTOR'S TRADE, BUSINESS OR OCCUPATION OR ARE ESSENTIAL TO THE ABILITY OF CONTRACTOR TO GENERATE CONTRACTOR'S GOODS, PRODUCTS AND SERVICES; THAT FOR PURPOSES OF THE LOUISIANA WORKERS' COMPENSATION LAW, THE EMPLOYEES OF SUBCONTRACTOR ARE THEREFORE STATUTORY EMPLOYEES OF CONTRACTOR IN ACCORDANCE WITH THE LOUISIANA WORKERS' COMPENSATION LAW; AND THAT CONTRACTOR SHALL BE ENTITLED TO THE PROTECTIONS THAT ARE AFFORDED A STATUTORY EMPLOYER UNDER LOUISIANA LAW. FURTHERMORE, CONTRACTOR AND SUBCONTRACTOR AGREE THAT CONTRACTOR IS THE STATUTORY EMPLOYER OF SUBCONTRACTOR'S EMPLOYEES FOR PURPOSES OF LA. R.S. 23:1061(A)(3). IRRESPECTIVE OF CONTRACTOR'S STATUS AS THE STATUTORY EMPLOYER OR SPECIAL EMPLOYER (AS DEFINED IN LA. R.S. 23:1031(C)) OF SUBCONTRACTOR'S EMPLOYEES, SUBCONTRACTOR SHALL REMAIN PRIMARILY RESPONSIBLE FOR THE PAYMENT OF LOUISIANA WORKERS' COMPENSATION BENEFITS TO ITS EMPLOYEES, AND SHALL NOT BE ENTITLED TO SEEK CONTRIBUTION FOR, AND SHALL INDEMNIFY CONTRACTOR AGAINST, ANY SUCH PAYMENTS FROM CONTRACTOR, AND ALL SUCH EMPLOYEES SHALL REMAIN EMPLOYEES OF SUBCONTRACTOR, NOT CONTRACTOR, FOR ALL PURPOSES.23
11. SUBCONTRACTOR'S INSURANCE REQUIREMENTS.....23

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- (a) SUBCONTRACTOR SHALL OBTAIN, BEFORE COMMENCEMENT OF ANY WORK, AND MAINTAIN UNTIL FINAL ACCEPTANCE OF THE WORK, FULL INSURANCE COVERAGE, INCLUDING AS A MINIMUM THE TYPES OF INSURANCE AND AT THE POLICY LIMITS SET FORTH ON EXHIBIT B OF THIS SUBCONTRACT.
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- (b) SAID INSURANCE SHALL NAME THE OWNER AND CONTRACTOR, INCLUDING THEIR OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND SURETIES, AS AN ADDITIONAL INSURED ON ALL POLICIES WITH THE EXCEPTION OF WORKERS COMPENSATION. SUBCONTRACTOR'S INSURANCE SHALL BE PRIMARY AS TO ANY INSURANCE UNDER WHICH CONTRACTOR IS A NAMED OR ADDITIONAL INSURED OR WHICH OTHERWISE EXTENDS COVERAGE TO CONTRACTOR. SUBCONTRACTOR'S INSURANCE SHALL CONTAIN A STANDARD CROSS-LIABILITY ENDORSEMENT AND A WAIVER OF ALL RIGHTS OF SUBROGATION AGAINST OWNER, CONTRACTOR, CONTRACTOR'S SURETY, AND CONTRACTOR'S INSURERS. THIS INCLUDES SUCCESSORS OR ASSIGNS OF CONTRACTOR. SUCH COVERAGE SHALL BE WRITTEN ON FORMS CG 20 10 10 01 AND CG 20 37 10 01, OR A SUBSTITUTE ENDORSEMENT PROVIDING "EQUIVALENT" COVERAGE MAY BE DEEMED ACCEPTABLE AT CONTRACTOR'S SOLE DISCRETION. THE ADDITIONAL INSURED COVERAGE WILL BE REQUIRED AT A MINIMUM FOR THE LIMITS SPECIFIED IN THIS AGREEMENT, HOWEVER IF THE POLICY LIMITS ARE GREATER THAN THOSE SPECIFIED IN THIS AGREEMENT, THIS AGREEMENT REQUIRES INSURED COVERAGE FOR THE FULL POLICY. COPIES OF CGL ADDITIONALLY INSURED ENDORSEMENT MUST BE ATTACHED TO SUBCONTRACTORS CERTIFICATE OF INSURANCE. FOR PURPOSES OF THIS ADDITIONAL INSURED REQUIREMENT, "EQUIVALENT" COVERAGE MEANS COVERAGE FOR LIABILITY ARISING OUT OF SUBCONTRACTOR'S WORK PERFORMED FOR CONTRACTOR, INCLUDING COVERAGE FOR THE NEGLIGENCE OR FAULT OF CONTRACTOR OR OWNER AS TO BODILY INJURY OR DEATH OF AN EMPLOYEE OR AGENT OF SUBCONTRACTOR OR SUBCONTRACTOR'S SUBCONTRACTOR, INCLUDING PRODUCTS-COMPLETED OPERATIONS.
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- (c) UPON REQUEST, SUBCONTRACTOR SHALL DELIVER TO CONTRACTOR (I) CERTIFICATES OF INSURANCE, AND (II) THE ACTUAL POLICIES, IN EACH CASE CERTIFYING AND EVIDENCING THE TYPES AND THE AMOUNTS OF COVERAGE, THAT CONTRACTOR IS ALSO NAMED AS AN ADDITIONAL INSURED, THAT SAID INSURANCE WILL BE IN FORCE BEFORE SUBCONTRACTOR STARTS ANY WORK AND CONTINUALLY THEREAFTER UNTIL COMPLETION, AND THAT SAID INSURANCE APPLIES TO ALL ACTIVITIES AND LIABILITY OF SUBCONTRACTOR PURSUANT TO THIS SUBCONTRACT. NO POLICY OF INSURANCE MAY BE CANCELLED NOR COVERAGE REDUCED DURING THE PERIOD OF CONSTRUCTION, AND SUBCONTRACTOR SHALL OBTAIN AN ENDORSEMENT TO ITS POLICIES AND INSURANCE CERTIFICATES PROHIBITING THE INSURER'S CANCELLATION OR COVERAGE REDUCTION FOR A PERIOD OF NO LESS THAN THIRTY (30) DAYS AFTER CONTRACTOR HAS ACKNOWLEDGED RECEIPT OF WRITTEN NOTICE OF THE INSURER'S INTENTION TO CANCEL OR REDUCE THE COVERAGE.24

- (d) IF NOT COVERED UNDER THE BUILDER'S RISK POLICY OF INSURANCE OR ANY OTHER PROPERTY OR EQUIPMENT INSURANCE REQUIRED BY THE CONTRACT DOCUMENTS, THE SUBCONTRACTOR SHALL PROCURE AND MAINTAIN COVERAGE ON THE MATERIALS AND/OR EQUIPMENT RELATED TO THE SUBCONTRACTOR'S WORK STORED ON SITE, OFF SITE OR IN TRANSIT.
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- (e) SUBCONTRACTOR'S FAILURE TO MAINTAIN COMPLETE INSURANCE SHALL BE A MATERIAL BREACH AUTHORIZING CONTRACTOR, AT CONTRACTOR'S SOLE ELECTION, EITHER TO TERMINATE THIS SUBCONTRACT FOR DEFAULT OR TO PROVIDE FULL INSURANCE COVERAGE AT SUBCONTRACTOR'S SOLE EXPENSE; HOWEVER, IN NEITHER CASE SHALL SUBCONTRACTOR'S LIABILITY BE LESSENED.24
- 12. RISK ALLOCATION; SUBCONTRACTOR'S INDEMNITY OBLIGATIONS.24**
- (a) SUBCONTRACTOR HEREBY COVENANTS TO DEFEND, INDEMNIFY, HOLD HARMLESS AND EXONERATE CONTRACTOR AND OWNER FROM AND AGAINST ANY LIABILITY, LOSS, COST AND EXPENSE ("LIABILITY") CLAIMED BY A THIRD PARTY (INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS OF DEFENSE) WHETHER FOR (I) BREACH OF CONTRACT, OR (II) RELATING TO SUBCONTRACTOR'S PERFORMANCE OF THE WORK AND ATTRIBUTED TO THE SOLE OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE SUBCONTRACTOR OR THE EMPLOYEES, AGENTS OR SUBCONTRACTORS OF THE SUBCONTRACTOR, OR ARISING OUT OF ANY OTHER OPERATION NO MATTER BY WHOM PERFORMED FOR OR ON BEHALF OF THE SUBCONTRACTOR TO THE EXTENT THAT SUCH LIABILITY IS FOR: (1) BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR (2) LOSS OR DESTRUCTION OF PROPERTY. WHERE LIABILITY IS ATTRIBUTABLE TO THE JOINT NEGLIGENCE OR FAULT OF SUBCONTRACTOR AND ANY OTHER PERSON (INCLUDING CONTRACTOR), SUBCONTRACTOR'S DUTY OF INDEMNIFICATION SHALL BE LIMITED TO SUBCONTRACTOR'S ALLOCABLE SHARE OF SUCH JOINT NEGLIGENCE OR FAULT. IN ANY AND ALL CLAIMS AGAINST THE CONTRACTOR OR OWNER ARISING OUT OF THE SUBCONTRACTOR'S PERFORMANCE OF THE WORK OR THE SOLE OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE SUBCONTRACTOR BROUGHT BY ANY EMPLOYEE OF THE SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE SUBCONTRACTOR OR ANYONE FOR WHOSE ACTS THE SUBCONTRACTOR MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS ARTICLE 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 WORKER'S OR WORKMEN COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.24
- (b) CONTRACTOR HEREBY COVENANTS TO DEFEND, INDEMNIFY, HOLD HARMLESS AND EXONERATE SUBCONTRACTOR FROM AND AGAINST ANY LIABILITY, LOSS, COST AND EXPENSE ("LIABILITY") CLAIMED BY A THIRD PARTY (INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS OF DEFENSE) RELATING TO CONTRACTOR'S PERFORMANCE OF THE WORK AND ATTRIBUTED TO THE SOLE OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CONTRACTOR OR THE EMPLOYEES, AGENTS OR SUBCONTRACTORS OF THE CONTRACTOR, OR ARISING OUT OF ANY OTHER OPERATION NO MATTER BY WHOM PERFORMED FOR OR ON BEHALF OF THE CONTRACTOR TO THE EXTENT THAT SUCH LIABILITY IS FOR: (1) BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR (2) LOSS OR DESTRUCTION OF PROPERTY. WHERE LIABILITY IS ATTRIBUTABLE TO THE JOINT NEGLIGENCE OR FAULT OF CONTRACTOR AND ANY OTHER PERSON (INCLUDING SUBCONTRACTOR), CONTRACTOR'S DUTY OF INDEMNIFICATION SHALL BE LIMITED TO CONTRACTOR'S ALLOCABLE SHARE OF SUCH JOINT NEGLIGENCE OR FAULT.25

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- (c) SUBCONTRACTOR ACKNOWLEDGES AND AGREES THAT ANY CONTRACTOR PARTY WHO IS NOT A SIGNATORY TO THIS SUBCONTRACT SHALL BE CONSIDERED AND/OR DEEMED TO BE A THIRD-PARTY BENEFICIARY OF THIS SUBCONTRACT, ENTITLED TO RELY HEREON AND ENFORCE THE PROVISIONS HEREOF.....25
- (d) THE DUTIES AND OBLIGATIONS IMPOSED BY, AND THE RIGHTS AND REMEDIES AVAILABLE UNDER, THIS SUBCONTRACT, INCLUDING CONTRACTOR'S RIGHTS UNDER THIS SECTION 12, ARE IN ADDITION TO, AND NOT A LIMITATION OF, ANY OTHER DUTIES AND OBLIGATIONS IMPOSED, AND RIGHTS AND REMEDIES AVAILABLE, AT LAW OR IN EQUITY.....25
- (e) TERMINATION OF THIS SUBCONTRACT BY CONTRACTOR OR ABANDONMENT BY SUBCONTRACTOR DOES NOT RELIEVE SUBCONTRACTOR FROM ITS LIABILITY AND OBLIGATIONS IN CONNECTION WITH SUBCONTRACTOR'S WORK PERFORMED PRIOR TO TERMINATION OR ABANDONMENT, NOR RELIEVE OR TERMINATE ANY OF SUBCONTRACTOR'S OBLIGATIONS OR LIABILITY UNDER, OR RIGHTS OR REMEDIES AFFORDED TO THE CONTRACTOR PARTIES UNDER, THIS SECTION 12.25
- (f) THE "SUBCONTRACTOR PARTIES" INCLUDE SUBCONTRACTOR, ITS DIRECT AND INDIRECT LOWER-TIER SUBCONTRACTORS, SUPPLIERS, CONSULTANTS, INVITEES, ANY OTHER PARTY FOR WHOM SUBCONTRACTOR IS RESPONSIBLE OR UNDER SUBCONTRACTOR'S CONTROL, AND THEIR AGENTS, OFFICERS, DIRECTORS, MANAGERS, OWNERS, EMPLOYEES, AND REPRESENTATIVES.....25
- (g) SUBCONTRACTOR SHALL REQUIRE THAT EACH OF ITS SUBCONTRACTORS HIRED OR RETAINED TO PERFORM ANY PORTION OF THE WORK AGREE TO INDEMNIFY CONTRACTOR IN THE SAME MANNER THAT SUBCONTRACTOR HAS AGREED TO INDEMNIFY CONTRACTOR HEREIN. SUCH AGREEMENT BY SUBCONTRACTOR'S SUBCONTRACTORS SHALL AFFIRMATIVELY ACKNOWLEDGE THAT CONTRACTOR IS A THIRD PARTY BENEFICIARY OF SAID AGREEMENT.25
- (h) SUBCONTRACTOR HEREBY AFFIRMATIVELY AND IRREVOCABLY WAIVES ANY AND ALL RIGHTS THAT IT MAY HAVE TO RECOVER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES BASED UPON LOST GOODWILL, LOST SALES OR PROFITS, OR WORK STOPPAGES, AGAINST CONTRACTOR FOR ANY CAUSES OF ACTION ARISING FROM OR RELATED TO THE PERFORMANCE OF THE WORK OR THIS AGREEMENT.25
- 13. SUBCONTRACTING; ASSIGNMENT.....25**
SUBCONTRACTOR SHALL NOT SUBCONTRACT NOR ASSIGN ANY PART OF THIS SUBCONTRACT WITHOUT FIRST OBTAINING THE WRITTEN CONSENT AND APPROVAL OF CONTRACTOR. ANY SUCH SUBCONTRACTING OR ASSIGNMENT WITHOUT THE PRIOR WRITTEN CONSENT OF CONTRACTOR SHALL BE VOID AND OF NO FORCE OR EFFECT.....25
- 14. SUBCONTRACTOR'S SUPERINTENDENT AND EMPLOYEES.25**
- 15. CHANGES.....26**
- (a) CONTRACTOR MAY ISSUE WRITTEN CHANGE ORDERS TO THIS SUBCONTRACT, WITHOUT NOTICE TO SUBCONTRACTOR'S SURETIES. CHANGES MAY BE ADDITIVE OR DEDUCTIVE. SUBCONTRACTOR SHALL BE OBLIGATED TO PERFORM IN ACCORDANCE WITH SUCH CHANGE ORDERS, AND THE

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SUBCONTRACT PRICE SHALL BE ADJUSTED AS SPECIFIED BY SUCH CHANGE ORDER. NO ALTERATIONS OR CHANGES SHALL BE MADE EXCEPT UPON CONTRACTOR'S WRITTEN ORDER; ORAL CHANGES TO THE WORK ARE NOT VALID AND WILL NOT BE RECOGNIZED. SUBCONTRACTOR SHALL HAVE NEITHER CLAIM NOR ENTITLEMENT TO PAYMENT FOR ANY ADDITION TO THE WORK OR CHANGE IN THE WORK UNLESS, PRIOR TO COMMENCEMENT OF PERFORMANCE, SUBCONTRACTOR RECEIVES A WRITTEN CHANGE ORDER FOR SUCH WORK AT AN AGREED PRICE, OR A WRITTEN DIRECTIVE AS PROVIDED IN SECTION 15(B), FROM AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR.....26

(b) SUBCONTRACTOR SHALL GIVE WRITTEN NOTICE OF ANY CLAIMS FOR ADDITIONAL TIME OR EXTRA COMPENSATION, INCLUDING, BUT LIMITED TO, ANY CLAIM ARISING UNDER SECTIONS 4(D) OR 4(E), WITHIN 5 DAYS AFTER SUBCONTRACTOR BECAME, OR SHOULD HAVE BECOME, AWARE OF THE CIRCUMSTANCE GIVING RISE TO SUCH CLAIM. SUBCONTRACTOR SHALL PROVIDE SUCH ADDITIONAL BACKUP OR BREAKDOWNS AS MAY BE REQUESTED BY CONTRACTOR. IF SUBCONTRACTOR REQUESTS A WRITTEN CHANGE ORDER AS PROVIDED HEREIN BUT THERE IS A DISPUTE AS TO WHETHER THE ITEM OF WORK CONSTITUTES A CHANGE OR THE VALUE OF SUCH CHANGE OR ANY OTHER MATTER IN CONTROVERSY, CONTRACTOR SHALL BE ENTITLED TO ISSUE A WRITTEN DIRECTIVE TO SUBCONTRACTOR TO PERFORM THE DISPUTED WORK AND SUBCONTRACTOR SHALL BE OBLIGATED TO PROCEED WITH AND COMPLETE PERFORMANCE OF THE DISPUTED WORK, WITHOUT EITHER PARTY ADMITTING TO LIABILITY FOR THE ISSUES IN DISPUTE OR WAIVING RIGHTS UNDER THIS SUBCONTRACT. IF THE DISPUTE IS LIMITED TO THE VALUE OF AN ADMITTED CHANGE, CONTRACTOR AGREES TO PAY, SUBJECT TO ALL CONDITIONS PRECEDENT TO PAYMENT TO SUBCONTRACTOR CONTAINED IN SECTION 7 ABOVE, SUBCONTRACTOR'S ACTUAL, DOCUMENTED DIRECT COSTS OF LABOR AND MATERIAL PLUS A REASONABLE ALLOWANCE FOR OVERHEAD AND PROFIT; PROVIDED SUBCONTRACTOR SHALL KEEP AND PRESENT, IN SUCH FORM AS CONTRACTOR MAY PRESCRIBE, AN ITEMIZED ACCOUNTING TOGETHER WITH APPROPRIATE SUPPORTING DATA OF DIRECT LABOR AND MATERIAL COSTS ACTUALLY INCURRED IN PERFORMING SUCH CHANGE ORDER.....26

16. SAFETY.....26

(a) SUBCONTRACTOR SHALL PROVIDE SUFFICIENT, SAFE AND PROPER FACILITIES, EQUIPMENT, AND WORKING CONDITIONS FOR PERFORMING THE WORK, WHICH SHALL AT ALL TIMES BE SUBJECT TO INSPECTION BY CONTRACTOR, OWNER, OR THEIR AUTHORIZED REPRESENTATIVES. SUBCONTRACTOR SHALL KEEP ITS AREAS OF OPERATION ON THE PROJECT IN A NEAT AND CLEAN CONDITION. SUBCONTRACTOR SHALL PERFORM WHATEVER CLEANUP IS DIRECTED BY CONTRACTOR AT NO ADDITIONAL COST TO CONTRACTOR. SHOULD SUBCONTRACTOR FAIL TO DO SO PROMPTLY UPON NOTICE, CONTRACTOR MAY, AT ITS OPTION, PERFORM SUCH CLEANUP AT SUBCONTRACTOR'S EXPENSE AND WITHOUT FURTHER NOTIFICATION. UPON COMPLETION OF VARIOUS PORTIONS OF THE WORK, SUBCONTRACTOR SHALL BROOM CLEAN ITS WORK AREAS AND DO WHATEVER ELSE IS NECESSARY TO PUT ITS WORK IN PROPER CONDITION EITHER FOR APPLICATION OR PERFORMANCE OF FOLLOW-ON WORK OR FOR ACCEPTANCE OF THE WORK.....26

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- (b) SUBCONTRACTOR SHALL COMPLY WITH ALL SAFETY MEASURES REQUIRED BY CONTRACTOR, OWNER, AND THE PRIME CONTRACT.26
- (c) SUBCONTRACTOR SHALL REPORT ALL INJURIES TO CONTRACTOR IMMEDIATELY. SUBCONTRACTOR SHALL SUBMIT TO CONTRACTOR A WRITTEN REPORT OF EACH INJURY WITHIN TWENTY FOUR (24) HOURS AFTER THE OCCURRENCE.26
- 17. DISPUTE RESOLUTION.....26**
 - (a) EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE CONTRACT DOCUMENTS, ALL CLAIMS, DISPUTES, AND OTHER MATTERS IN CONTROVERSY BETWEEN CONTRACTOR AND SUBCONTRACTOR ARISING OUT OF OR RELATING TO THIS SUBCONTRACT SHALL BE DECIDED BY MEDIATION THEN LITIGATION. CLAIMS, DISPUTES, OR OTHER MATTERS IN CONTROVERSY ARISING OUT OF OR RELATED TO THIS SUBCONTRACT SHALL BE SUBJECT TO MEDIATION AS A CONDITION PRECEDENT TO LITIGATION. THE PARTIES SHALL ENDEAVOR TO RESOLVE THEIR CLAIMS BY MEDIATION WHICH, UNLESS THE PARTIES MUTUALLY AGREE OTHERWISE, SHALL BE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS CONSTRUCTION INDUSTRY MEDIATION PROCEDURES THEN CURRENTLY IN EFFECT. A REQUEST FOR MEDIATION SHALL BE MADE IN WRITING, DELIVERED TO THE OTHER PARTY TO THIS SUBCONTRACT AND FILED WITH THE PERSON OR ENTITY ADMINISTERING THE MEDIATION. THE REQUEST MAY BE MADE CONCURRENTLY WITH THE FILING OF LITIGATION PROCEEDINGS BUT, IN SUCH EVENT, MEDIATION SHALL PROCEED IN ADVANCE OF LITIGATION PROCEEDINGS, WHICH SHALL BE STAYED PENDING MEDIATION FOR A PERIOD OF 60 DAYS FROM THE DATE OF FILING, UNLESS STAYED FOR A LONGER PERIOD BY AGREEMENT OF THE PARTIES OR COURT ORDER. THE PARTIES SHALL SHARE THE MEDIATOR'S FEE AND ANY FILING FEES EQUALLY. THE MEDIATION SHALL BE HELD IN BATON ROUGE, LOUISIANA. AGREEMENTS REACHED IN MEDIATION SHALL BE ENFORCEABLE AS SETTLEMENT AGREEMENTS IN ANY COURT HAVING JURISDICTION THEREOF.27
 - (b) CLAIMS NOT RESOLVED BY MEDIATION SHALL BE DETERMINED IN STATE COURT LOCATED WITHIN EAST BATON ROUGE PARISH, LOUISIANA. EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON ON ARISING OUT OF THIS SUBCONTRACT. THE PARTIES ACKNOWLEDGE THAT EACH HAS RELIED ON THIS WAIVER IN ENTERING INTO THIS SUBCONTRACT AND THAT EACH KNOWINGLY WAIVES ITS JURY TRIAL RIGHTS.27
 - (c) NOTWITHSTANDING THE FOREGOING, IF CONTRACTOR IN GOOD FAITH BELIEVES THAT ANY CLAIM, DISPUTE, OR MATTER IN CONTROVERSY WITH SUBCONTRACTOR ALSO INVOLVES RIGHTS OR LIABILITIES OF OWNER, ENGINEER, OR OTHER THIRD PARTY, THEN, CONTRACTOR MAY ELECT, IN ITS SOLE DISCRETION AND NOTWITHSTANDING SECTIONS 17(A) AND 17(B), SUBCONTRACTOR AGREES TO RESOLVE SUCH ISSUES IN THE SAME FORUM OR PROCEEDING, INCLUDING LITIGATION, ARBITRATION OR ADMINISTRATIVE AUTHORITY, WHICH HAS JURISDICTION OVER SOME OR ALL CLAIMS, DISPUTES, AND MATTERS IN CONTROVERSY INVOLVING OWNER, ENGINEER, OR OTHER THIRD PARTY SO AS TO PROMOTE ECONOMY AND AVOID INCONSISTENT RESULTS AND THEREFORE SUBCONTRACTOR SUBMITS TO THE JURISDICTION AND VENUE OF SUCH COURT OR TRIBUNAL.27

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- (d) CONTRACTOR AND SUBCONTRACTOR INTEND AND AGREE THAT THE FOREGOING DISPUTE RESOLUTION PROVISIONS AND RIGHTS OF ELECTION GIVEN TO CONTRACTOR ARE NOT INDEPENDENT OF NOR SEVERABLE FROM THE REMAINDER OF THIS SUBCONTRACT AND THAT SUCH PROVISIONS AND ELECTION RIGHTS ARE SUPPORTED BY THE CONSIDERATION AND MUTUALITY OF THE SUBCONTRACT AS A WHOLE.27
- (e) NO CLAIM, DISPUTE, OR MATTER IN CONTROVERSY OR QUESTION SHALL INTERFERE WITH THE PROGRESS OF CONSTRUCTION, AND SUBCONTRACTOR SHALL PROCEED DILIGENTLY WITH PERFORMANCE OF THIS SUBCONTRACT, NOTWITHSTANDING THE EXISTENCE OF ANY CLAIM, DISPUTE, OR MATTER IN CONTROVERSY OR QUESTION.....27
- 18. EQUAL EMPLOYMENT OPPORTUNITY (EEO).....27**
- (a) THE SUBCONTRACTOR WILL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN. THE SUBCONTRACTOR WILL TAKE AFFIRMATIVE ACTION TO ENSURE THAT APPLICANTS ARE EMPLOYED, AND THE EMPLOYEES ARE TREATED DURING EMPLOYMENT WITHOUT REGARD TO THEIR RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN. SUCH ACTION SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING: EMPLOYMENT, UPGRADING, DEMOTION, OR TRANSFER; RECRUITMENT OR RECRUITMENT ADVERTISING; LAYOFF OR TERMINATION; RATES OF PAY OR OTHER FORMS OF COMPENSATION; AND SELECTION FOR TRAINING, INCLUDING APPRENTICESHIP. THE SUBCONTRACTOR AGREES TO POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES TO BE PROVIDED SETTING FORTH THE PROVISIONS OF THIS NONDISCRIMINATION CLAUSE.....27
- (b) THE SUBCONTRACTOR WILL, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE SUBCONTRACTOR, STATE THAT ALL QUALIFIED APPLICANTS WILL RECEIVE CONSIDERATION FOR EMPLOYMENT WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN.....28
- (c) THE SUBCONTRACTOR WILL SEND TO EACH LABOR UNION OR REPRESENTATIVE OF WORKERS WITH WHICH HE HAS A COLLECTIVE BARGAINING AGREEMENT OR OTHER CONTRACT OR UNDERSTANDING, A NOTICE TO BE PROVIDED ADVISING THE SAID LABOR UNION OR WORKERS' REPRESENTATIVE OF THE SUBCONTRACTOR'S COMMITMENTS UNDER THIS SECTION, AND SHALL POST COPIES OF THE NOTICE IN CONSPICUOUS PLACES AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT.28
- (d) THE SUBCONTRACTOR WILL COMPLY WITH ALL PROVISIONS OF EXECUTIVE ORDER 11246 OF SEPTEMBER 24, 1965, AND OF THE RULES, REGULATIONS AND RELEVANT ORDERS OF THE SECRETARY OF LABOR.....28
- (e) THE SUBCONTRACTOR WILL FURNISH ALL INFORMATION AND REPORTS REQUIRED BY EXECUTIVE ORDER 11246 OF SEPTEMBER 24, 1965, AND BY RULES, REGULATIONS AND ORDERS OF THE SECRETARY OF LABOR, OR PURSUANT THERETO, AND WILL PERMIT ACCESS TO HIS BOOKS, RECORDS AND ACCOUNTS BY THE ADMINISTERING AGENCY AND THE SECRETARY OF LABOR FOR PURPOSES OF INVESTIGATION TO ASCERTAIN COMPLIANCE WITH SUCH RULES, REGULATIONS AND ORDERS.28

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- (f) IN THE EVENT OF THE SUBCONTRACTOR'S NONCOMPLIANCE WITH THE NONDISCRIMINATION CLAUSES OF THIS CONTRACT OR WITH ANY OF THE SAID RULES, REGULATIONS, OR ORDERS, THIS CONTRACT MAY BE CANCELED, TERMINATED OR SUSPENDED IN WHOLE OR IN PART AND THE SUBCONTRACTOR MAY BE DECLARED INELIGIBLE FOR FURTHER GOVERNMENT CONTRACTS OR FEDERALLY ASSISTED CONSTRUCTION CONTRACTS IN ACCORDANCE WITH PROCEDURES AUTHORIZED IN EXECUTIVE ORDER 11246 OF SEPTEMBER 24, 1965, AND SUCH OTHER SANCTIONS MAY BE IMPOSED AND REMEDIES INVOKED AS PROVIDED IN EXECUTIVE ORDER 11246 OF SEPTEMBER 24, 1965, OR BY THE RULE, REGULATION, OR ORDER OF THE SECRETARY OF LABOR, OR AS OTHERWISE PROVIDED BY LAW.....28

- (g) THE SUBCONTRACTOR WILL INCLUDE THE PORTION OF THE SENTENCE IMMEDIATELY PRECEDING PARAGRAPH (1) AND THE PROVISIONS OF PARAGRAPHS (A) THROUGH (G) IN EVERY SUBCONTRACT OR PURCHASE ORDER UNLESS EXEMPTED BY RULES, REGULATIONS, OR ORDERS OF THE SECRETARY OF LABOR ISSUED PURSUANT TO SECTION 204 OF EXECUTIVE ORDER 11246 OF SEPTEMBER 24, 1965, SO THAT SUCH PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR. THE SUBCONTRACTOR WILL TAKE SUCH ACTION WITH RESPECT TO ANY SUBCONTRACT OR PURCHASE ORDER AS THE ADMINISTERING AGENCY MAY DIRECT AS A MEANS OF ENFORCING SUCH PROVISIONS, INCLUDING SANCTIONS FOR NONCOMPLIANCE. PROVIDED, HOWEVER, THAT IN THE EVENT A SUBCONTRACTOR BECOMES INVOLVED IN, OR IS THREATENED WITH LITIGATION WITH A SUBCONTRACTOR OR VENDOR AS A RESULT OF SUCH DIRECTION BY THE ADMINISTERING AGENCY THE SUBCONTRACTOR MAY REQUEST THE UNITED STATES TO ENTER INTO SUCH LITIGATION TO PROTECT THE INTERESTS OF THE UNITED STATES.
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- 19. MISCELLANEOUS.....28**

 - (a) THE SUBCONTRACT REPRESENTS THE ENTIRE AND INTEGRATED AGREEMENT BETWEEN THE PARTIES HERETO AND SUPERSEDES PRIOR NEGOTIATIONS, REPRESENTATIONS OR AGREEMENTS, EITHER WRITTEN OR ORAL. THIS SUBCONTRACT CANNOT BE CHANGED, MODIFIED, ALTERED, SUSPENDED, OR TERMINATED, EXCEPT IN WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR AND SUBCONTRACTOR. NO DELAY, WAIVER, FORBEARANCE, OR FAILURE BY CONTRACTOR TO EXERCISE RIGHTS OR REMEDIES UNDER THIS SUBCONTRACT OR TO INSIST UPON STRICT COMPLIANCE BY SUBCONTRACTOR SHALL PREVENT CONTRACTOR FROM STRICTLY ENFORCING ANY OF THE PROVISIONS OF THIS SUBCONTRACT, NOR SHALL RELIEVE SUBCONTRACTOR FROM STRICT COMPLIANCE WITH ALL TERMS AND CONDITIONS HEREOF NOR SHALL WAIVE, RESTRICT, OR ADVERSELY AFFECT ANY OF CONTRACTOR'S RIGHTS AND REMEDIES AS TO ANY SUBSEQUENT OR CONTINUING FAILURE OF SUBCONTRACTOR TO COMPLY STRICTLY WITH ALL TERMS AND CONDITIONS OF THIS SUBCONTRACT.....28

 - (b) ANY NOTICE REQUIRED BY THIS SUBCONTRACT OR GIVEN IN CONNECTION WITH IT, SHALL BE IN WRITING USING THE NOTICE INFORMATION LISTED ON THE FIRST PAGE OF THIS SUBCONTRACT AND SHALL BE GIVEN TO THE RECEIVING PARTY BY (I) PERSONAL DELIVERY, (II) CERTIFIED MAIL, POSTAGE PREPAID AND RETURN RECEIPT REQUESTED, (III) RECOGNIZED OVERNIGHT DELIVERY SERVICE SUCH AS FEDERAL

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EXPRESS OR UPS, (IV) FACSIMILE TRANSMISSION PROVIDED THE SENDING PARTY RECEIVES A TRANSMISSION CONFIRMATION REPORT, OR (V) BY EMAIL. IN CONNECTION WITH DELIVERY PURSUANT TO SUBSECTIONS (IV) OR (V) ABOVE, THE SENDING PARTY SHALL ALSO FORWARD THE RECEIVING PARTY A COPY OF SUCH NOTICE BY REGULAR U.S. MAIL POSTMARKED WITHIN 1 BUSINESS DAY OF THE INITIAL TRANSMISSION. EITHER PARTY MAY CHANGE ITS NOTICE INFORMATION BY WRITTEN NOTICE TO THE OTHER PARTY DELIVERED IN ACCORDANCE WITH THIS SECTION.....29

- (c) IF ANY TERM OR PROVISION OF THIS SUBCONTRACT (INCLUDING WITHOUT LIMITATION THOSE CONTAINED IN SECTION 12 AND THE EXHIBITS OR SCHEDULES), OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE, SHALL AT ANY TIME OR TO ANY EXTENT BE INVALID, ILLEGAL OR UNENFORCEABLE IN ANY RESPECT AS WRITTEN, THE PARTIES INTEND FOR ANY COURT OR ARBITRATOR CONSTRUING THIS SUBCONTRACT TO MODIFY OR LIMIT SUCH PROVISION TEMPORALLY, SPATIALLY OR OTHERWISE SO AS TO RENDER IT VALID AND ENFORCEABLE TO THE FULLEST EXTENT ALLOWED BY LAW. ANY SUCH PROVISION THAT IS NOT SUSCEPTIBLE OF SUCH REFORMATION SHALL BE IGNORED SO AS TO NOT AFFECT ANY OTHER TERM OR PROVISION HEREOF, AND THE REMAINDER OF THIS SUBCONTRACT, OR THE APPLICATION OF SUCH TERM OR PROVISION TO PERSONS OR CIRCUMSTANCES OTHER THAN THOSE AS TO WHICH IT IS HELD INVALID, ILLEGAL OR UNENFORCEABLE, SHALL NOT BE AFFECTED THEREBY AND EACH TERM AND PROVISION OF THIS SUBCONTRACT SHALL BE VALID AND ENFORCED TO THE FULLEST EXTENT PERMITTED BY LAW.....29
- (d) THE LAWS OF THE STATE OF LOUISIANA SHALL GOVERN THE INTERPRETATION AND ENFORCEABILITY OF THIS SUBCONTRACT, WITHOUT REGARD TO ITS CONFLICT OF LAW PROVISIONS.....29
- (e) SUBCONTRACTOR SHALL BE LIABLE FOR ALL COSTS, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED BY CONTRACTOR IN ENFORCING THE TERMS AND CONDITIONS OF THIS SUBCONTRACT OR ANY OF SUBCONTRACTOR'S OBLIGATIONS UNDER THIS SUBCONTRACT. IN THE EVENT OF A DISPUTE CONCERNING SUBCONTRACTOR'S DEFENSE AND INDEMNITY OBLIGATIONS IN SECTION 12, SUBCONTRACTOR SHALL BE LIABLE FOR COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED BY CONTRACTOR IN PROPORTION TO THE ALLOCATION OF LIABILITY, RESPONSIBILITY OR FAULT OF THE SUBCONTRACTOR PARTIES.29
- (f) THIS SUBCONTRACT SHALL BE BINDING UPON THE SUCCESSORS IN INTEREST OF THE PARTIES HERETO.....29
- (g) THIS SUBCONTRACT HAS BEEN PREPARED BY THE COMBINED EFFORTS OF THE PARTIES HERETO (AND THEIR RESPECTIVE ATTORNEYS TO THE EXTENT EITHER PARTY HAS ELECTED TO EXERCISE ITS RIGHT TO ENGAGE COUNSEL) AND SHALL NOT BE CONSTRUED AGAINST EITHER PARTY AS THE DRAFTSMAN OF THIS SUBCONTRACT.29
- (h) THE HEADING OF THE SECTIONS AND PARAGRAPHS OF THIS SUBCONTRACT HAVE BEEN INSERTED SOLELY FOR CONVENIENCE AND SHALL IN NO WAY RESTRICT OR MODIFY ANY OF THE TERMS OR PROVISIONS HEREOF.29
- (i) THIS SUBCONTRACT MAY BE EXECUTED IN MULTIPLE COUNTERPARTS, ALL OF WHICH TAKEN TOGETHER SHALL CONSTITUTE ONE AND THE SAME

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INSTRUMENT AND ANY OF THE PARTIES HERETO MAY EXECUTE THIS SUBCONTRACT BY SIGNING ANY SUCH COUNTERPART. DELIVERY OF AN EXECUTED COUNTERPART OF THIS SUBCONTRACT BY FAX OR ELECTRONIC MAIL SHALL BE EQUALLY AS EFFECTIVE AS DELIVERY OF AN ORIGINAL EXECUTED COUNTERPART OF THIS SUBCONTRACT. ANY PARTY DELIVERING AN EXECUTED COUNTERPART OF THIS SUBCONTRACT BY FAX OR ELECTRONIC MAIL ALSO SHALL DELIVER AN ORIGINAL EXECUTED COUNTERPART OF THIS SUBCONTRACT TO THE OTHER PARTY IN DUE COURSE, BUT THE FAILURE TO DELIVER AN ORIGINAL EXECUTED COUNTERPART SHALL NOT AFFECT THE VALIDITY, ENFORCEABILITY, AND BINDING EFFECT OF THIS SUBCONTRACT.....29

- (j) THE UNDERSIGNED SIGNATORY, ACTING FOR AND ON BEHALF OF SUBCONTRACTOR, DOES HEREBY ATTEST THAT HE/SHE IS AN OFFICER, MEMBER, OR IS OTHERWISE DULY AUTHORIZED TO ACT FOR AND ON BEHALF OF SUBCONTRACTOR. THE EXECUTION OF THIS SUBCONTRACT BY THE UNDERSIGNED LEGALLY BINDS SUBCONTRACTOR TO ANY AND ALL OF THE CONDITIONS SET FORTH HEREIN.29

This Subcontract Agreement (this "**Subcontract**") is made this ____ day of ____, 20____, by and between Contractor and Subcontractor.

For the consideration stated herein and in exchange for the mutual covenants herein made, Subcontractor and Contractor hereby agree as follows.

1. The Work; the Project; the Contract Documents; Relationship of the Parties.

- (a) Subcontractor shall furnish all labor, materials, tools, equipment, facilities, supervision, management, financing, services, shop drawings, submittals, testing, and every other thing or service of whatever nature necessary to fully perform and in every respect complete the work generally described on Exhibit A (the "**Work**") for the Project. The Work further includes everything reasonably necessary or customary for the proper execution of all work described in Exhibit A and as further described in the Contract Documents (as defined below).
- (b) Subcontractor shall perform all Work in strict accordance with the following (the "**Contract Documents**"): (i) this Subcontract, including all exhibits, schedules and attachments, (ii) any agreement between Contractor and the owner ("**Owner**") of the Project (the "**Prime Contract**"), (iii) any other documents incorporated into or referenced in the Prime Contract that apply, govern or relate to the Work, including, without limitation, all drawings, plans, specifications, standards, schedules, and addenda (the "**Other Prime Documents**"), and (iv) any changes, modifications or amendments to this Subcontract authorized by the terms hereof and any changes, modifications or amendments to the Prime Contract or the Other Prime Documents taking effect after the date of this Agreement provided Subcontractor has access to such modifications and amendments. The documents mentioned in subsections (ii) – (iv) above are incorporated into and form an integral part of this Subcontract as if attached to this Subcontract or repeated herein. The Subcontractor agrees and acknowledges that it is responsible to read and review all of the Contract Documents, and if Subcontractor has not been told where all Contract Documents can be reviewed, Subcontractor shall ask the Contractor for such location.
- (c) Subcontractor shall be bound to Contractor by all terms and conditions of the Contract Documents. In the event of an ambiguity or conflict between the Prime Contract and this Subcontract, this Subcontract shall govern.

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2. Work Price.

In exchange for Subcontractor's full and timely performance of the Work in strict accordance with the terms and conditions of this Subcontract, Contractor agrees to pay Subcontractor the Subcontract Price, subject to any increase or decrease that may be mutually agreed upon in writing and further subject to the terms and conditions of this Subcontract, specifically including but not limited to the conditions precedent to payment contained in Section 7 below or in the Contract Documents and all other requirements set forth in or incorporated by reference into this Subcontract. Subcontractor agrees that its quoted price is based on its thorough review of the drawings, specifications and other Contract Documents, and to the extent Subcontractor failed to properly interpret such drawings, specifications and other Contract Documents, Subcontractor shall be solely responsible for and bare all costs to perform the Work in accordance with the drawings, specifications and other Contract Documents.

3. Time: Performance: Delays.

(a) Time is of the essence of this Subcontract and all Work. Subcontractor shall begin and proceed with the Work when and as directed by Contractor. Subcontractor shall coordinate and continuously perform the Work competently, efficiently, and at a speed so as to facilitate the general progress of the Project. Subcontractor shall not delay, disrupt, damage, or render more expensive to the work of Contractor or any other subcontractor performing work on the Project. Subcontractor agrees to abide by Contractor's decisions as to all matters respecting the organization, flow, coordination, and sequencing of work. If so ordered by Contractor, Subcontractor shall prosecute certain portions of the Work in preference to other portions, at no increase in the Subcontract Price. Subcontractor shall reimburse Contractor for any costs and damages incurred by Contractor as a result of delays or difficulties caused by or attributable to Subcontractor.

(b) Subcontractor agrees to perform and complete the Work within _____ days from mobilization date. Subcontractor's failure to timely complete the work within this time shall only be excused or extended by a Force Majeure event, as defined below. Where Subcontractor's performance is delayed due to a legitimate Force Majeure event, its time to perform and complete the Work shall be extended by the amount of time that Subcontractor was delayed by the event.

(c) "Force Majeure" means any of the following which are unanticipated, unavoidable and cause the Subcontractor to be unable, despite Subcontractor's exercise of reasonable mitigation efforts, to maintain the critical path for timely completion of the Subcontract Work according to the Subcontract Schedule: acts of God, fire, adverse weather conditions that are unusually severe and unexpected for the time and location of the Subcontract Work, war, and acts or omissions by Owner, Contractor or its other subcontractors. Subcontractor shall only be entitled to a reasonable adjustment to the Subcontract Schedule for such delay; and entitlement to any adjustment is subject to Subcontractor timely providing notice of the delay, which notice must include Subcontractor's detailed plans for recovering as much as possible time lost by reason of the event of Force Majeure.

4. Subcontractor Responsibilities; Performing and Coordinating the Work.

(a) Subcontractor shall, at all times, furnish and maintain: adequate tools, materials, supplies, facilities and equipment; sufficient numbers of qualified workmen; and at least one competent, superintendent present at the Project site at all times of Subcontractor performance.

(b) Subcontractor shall comply with all laws, ordinances, building codes, safety rules and requirements, and regulations of whatever nature that apply to this Subcontract, the Work, or Subcontractor's operations and that are otherwise effective when and where the Work is to be performed, including, but not limited to, the "Federal Safety and Health Act of 1970", and any addenda thereto.

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- (c) Subcontractor shall not place signs of any kind upon the Project site without prior written approval of Contractor.
- (d) The Work shall be performed under the supervision of Contractor, whose decision as to the true intent, proper construction, and correct meaning of the drawings, specifications and other Contract Documents shall be final. Subcontractor shall conform to and abide by any additional specifications, drawings and/or explanations furnished by Contractor to detail and illustrate the Work.
- (e) Before proceeding with any Work, Subcontractor shall lay out and field measure all Work, and Subcontractor shall verify all previous and surrounding work done by others to ensure that all work fits and functions properly. Subcontractor shall detect and, prior to commencement of Work, report in writing to Contractor any defect, interference, variation, or nonconformity in the work of others or in the plans and specifications; and if Subcontractor fails to do so, Subcontractor shall be solely responsible for and bear all costs of any additions, cutting, patching, rerouting, or replacement which Contractor directs to overcome or correct such problems.
- (f) The Subcontractor shall notify the Contractor when portions of the Subcontractor's work are ready for inspection. The Subcontractor shall furnish to the Contractor in such detail and as often as required, full reports of the progress of the Subcontractor's work irrespective of the location of such work.
- (g) Except as to items purchased from stock, items supplied hereunder, and material components incorporated therein, shall be subject to inspection at Contractor's option during or after manufacture; items purchased from stock shall be subject to inspection before final acceptance. Neither inspection, nor failure to inspect, shall relive Subcontractor of responsibility with respect to items supplied hereunder or imply acceptance thereof.
- (h) In the event the scope of the Subcontractor's Work includes the installation of materials or equipment purchased by the Subcontractor or others, it shall be the responsibility of the Subcontractor to examine the items so provided and thereupon handle, store and install the items with such skill and care as to ensure a satisfactory and proper installation. Loss or damage due to action or inaction of the Subcontractor shall be the responsibility of the Subcontractor.
- (i) Until final completion of the Project, the Subcontractor agrees not to perform any work directly for Owner or any tenants thereof, or deal directly with the Owner's representatives in connection with the Project, without the prior consent of the Contractor. All work for this Project performed by the Subcontractor shall be processed and handled exclusively by the Contractor.
- (j) Subcontractor shall utilize labor forces compatible with the Contractor and the Owner.

5. Subcontractor Warranties.

- (a) Subcontractor warrants and guarantees the Work to comply strictly with this Subcontract and with all parts of the Contract Documents applicable to the Work. Subcontractor further warrants and guarantees that the Work and all materials and equipment furnished in connection therewith are new, of good material and workmanship, free from defects, fit, safe, merchantable, and sufficient for the purposes intended. These warranties and guarantees shall extend for one year after final payment to Subcontractor. The warranties and guarantees set forth herein are in addition to any other warranties or guarantees required by the Prime Contract, provided by law, or set forth by separate agreement. Any Work not conforming to the requirements of this Subcontract and the Contract Documents, including substitutions not properly authorized, shall be considered defective and shall be promptly replaced or corrected as directed by Contractor.

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- (b) Subcontractor shall, within twenty-four hours after written notice from Contractor, proceed to take down and remove from the premises of the Project all portions of the work and all material, which Contractor shall deem as unsound or improper or which fails to conform in any way to Contract Document requirements. Subcontractor shall make good all such disapproved work, equipment, and facilities and restore all other work damaged or destroyed in removing or making good such disapproved items, all at Subcontractor's sole risk and expense. However, Subcontractor shall not remove any other materials from the Project site without Contractor's written permission.

6. General Payment Terms.

- (a) At times and intervals directed by Contractor, Subcontractor shall present to Contractor an application for payment in such form and with such content and support as requested by Contractor and subject to Contractor's approval. Subcontractor's application must include an itemized statement of the Work properly completed by Subcontractor during the period for which payment is being requested.
- (b) Subject to the above provisions and all other terms and conditions of this Subcontract, Contractor agrees to pay Subcontractor's application for payment within _____ working days after Contractor's actual receipt of Subcontractor's application for payment in accordance with Section 6(a). A _____ retainage shall be withheld from each Contractor payment. The final payment request shall include the release of the _____ retainage and shall be submitted to the Owner upon final completion and acceptance of the work by the Owner and final approval. Final invoice must be received within 30 days from completion and acceptance of scope of work after said time Subcontract hereby waives any rights for payment or liabilities.

7. Conditions Precedent to Payment.

- (a) Notwithstanding anything to the contrary in this Subcontract, in the Prime Contract, or in any other document, Contractor's and Owner's approval of the Work for which payment is requested shall be an absolute condition precedent to any right of Subcontractor to receive payment, in any form whatsoever, from Contractor._
- (b) In addition to the satisfaction of the condition precedent in Section 7(a) and any other requirements under this Subcontract or the Contract Documents, Contractor shall not be obligated to pay Subcontractor any progress payment unless Subcontractor is in compliance with the terms and conditions of this Subcontract and until Subcontractor has submitted to Contractor:
- (i) an application for payment pursuant to Section 6(a);
 - (ii) evidence satisfactory to Contractor, in its reasonable discretion, in both form and substance that Subcontractor paid all material, labor, equipment, and other invoices and obligations that relate to the Work or this Subcontract, through the period covered by previous payments received from Contractor;
 - (iii) a fully executed release, satisfactory to Contractor, in its reasonable discretion, in both form and substance of liens or other encumbrances respecting the Project up to the amount previously paid by Contractor plus the amount of the applicable application for payment, with the understanding that such release shall be effective as to owed but unpaid contract balances only upon receipt of payment for same; and
 - (iv) a fully executed general release of claims, satisfactory to Contractor, in its reasonable discretion, in both form and substance respecting the Project up to

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the amount previously paid by Contractor plus the amount of the applicable application for payment, with the understanding that such release shall be effective as to owed but unpaid contract balances only upon receipt of payment for same.

- (c) In addition to the satisfaction of the condition precedent in Section 7(a) and any other requirements under this Subcontract or the Contract Documents, Contractor shall not be obligated to pay Subcontractor the final payment unless Subcontractor is in compliance with the terms and conditions of this Subcontract and until Subcontractor has submitted to Contractor:
- (i) its final application for payment pursuant to Section 6(a);
 - (ii) evidence satisfactory to Contractor, in its reasonable discretion, in both form and substance that Subcontractor paid in full all material, labor, equipment, and other invoices and obligations that relate to the Work or this Subcontract;
 - (iii) a fully executed full release, satisfactory to Contractor, in its reasonable discretion, in both form and substance of liens or other encumbrances respecting the Project, with the understanding that such release shall be effective as to owed but unpaid contract balances only upon receipt of payment for same;
 - (iv) a fully executed general release of claims, satisfactory to Contractor, in its reasonable discretion, in both form and substance respecting the Project, with the understanding that such release shall be effective as to owed but unpaid contract balances only upon receipt of payment for same; and
 - (v) any other documents or items reasonably required by Contractor.
- (d) Notwithstanding anything to the contrary herein contained, Contractor shall have the right, without any duty, to withhold from any payments due or to become due Subcontractor such amounts as Contractor, in its sole discretion, deems necessary to protect Contractor's interests with respect to (1) any indebtedness owed by Subcontractor to Contractor under this Subcontract or any other contract; (2) any defective Work or materials not remedied, removed or replaced, as applicable; (3) any third-party claims filed or reasonable evidence indicating probable filing of any such claims for which Subcontractor is responsible; (4) any lien in favor of any workers, suppliers of material, or laborers; (5) a claim, with reasonable support, by any Subcontractor personnel that Contractor has failed to pay amounts due to such Subcontractor personnel in connection with the Work; (6) reasonable doubt that the Work can be completed for the unpaid balance of the Subcontract Price for such Work; (7) reasonable indication that the Work will not be completed on the agreed schedule; (8) unsatisfactory or untimely prosecution of the Work by Subcontractor; (9) any failure of Subcontractor to comply with the Contract Documents pertaining to any Work; (10) the negligence, willful misconduct, acts or omissions of Subcontractor or any Subcontractor Parties in connection with the Work; and/or (11) any set off to which Company is legally entitled.
- (e) Acceptance of payment by Subcontractor constitutes a general release of, and waiver of claims against, Contractor and Contractor's surety from all claims and liability of whatever nature. No payment, including final payment, by Contractor shall be construed as acceptance of defective or incomplete work, and Subcontractor shall remain responsible and liable for performance and its obligations in strict compliance with this Subcontract.
- (f) Contractor's payment by Owner shall be a condition precedent to any payment obligation that Contractor may have to subcontractor

8. Payment of Lower-Tier Subcontractors; Contractor's Rights.

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Subcontractor hereby agrees that Contractor has the right to pay any invoices or past due obligations of Subcontractor arising on this Project, including backcharges owed to Contractor. Any such payments made by Contractor, whether by joint check, direct payment, offset or otherwise, shall apply as a payment to Subcontractor of earned proceeds on this Subcontract. Contractor shall further have the option, but not the obligation, to use funds otherwise earned by Subcontractor on this Project or other projects to pay or set off Subcontractor's past due invoices and obligations, including backcharges owed to Contractor whether on this Project or any other project.

9. Subcontractor Default; Contractor Remedies.

- (a) Should Subcontractor, at any time, refuse, neglect, or fail: to furnish and maintain sufficient labor, material, equipment, services, or supervision; to pay for labor, equipment or material furnished to or used by Subcontractor; to prosecute the Work covered by this Subcontract with promptness and diligence so as not to delay either work of others or the Project as a whole; or to perform any other term or condition of this Subcontract (or breach any provision, representation or covenant of this Subcontract), all of which are considered material; then upon any one of these events, Contractor may, at its option, after seventy-two (72) hour notice to Subcontractor, do one or more of the following: (1) supplement Subcontractor with labor, material, and equipment; or (2) terminate this Subcontract in whole or in part and complete the Subcontract with Contractor's own forces or with others; or (3) issue a deductive change to eliminate portions of the Work; or (4) take any other action which Contractor in good faith deems reasonable under the circumstances. In the event of any failure or inadequacy of performance by Subcontractor, Subcontractor shall be liable to Contractor for all expenditures made and all damages, losses, expenses, attorneys' fees, and costs of whatever nature, incurred by Contractor in supplementing or replacing Subcontractor, in completing the Work, or otherwise as a result of Subcontractor's performance delays or failures.
- (b) If for any other cause or reason whatsoever Subcontractor shall fail to carry on the Work in an acceptable manner, the Contractor may elect to give notice in writing of such default, specifying the same, and if the Subcontractor, within a period of seventy two (72) hours after said notice, not including Saturday or Sunday, shall not proceed in accordance therewith, then the Contractor shall have full power and authority to immediately take the execution of all or part of the Work out of the hands of the Subcontractor and complete it with its own forces, or contract with other parties for its completion, or use such other measures as in Contractor's opinion are necessary for its completion. Neither by the taking over of the Work nor by its completion in accordance with the terms of this provision shall Contractor forfeit its right to recover damages from Subcontractor or from Subcontractor's surety for failure to complete or for delay in such completion including the use of the equipment, plant and other property of Subcontractor on the Work at no cost to the Contractor for the use of the same. Should the expenses incurred by Contractor in taking over and completing the Work be less than the sum that would have become payable under this Agreement if said Work had been completed by Subcontractor, then Subcontractor shall be entitled to the difference. Should the expense exceed the said sum, Subcontractor and Subcontractor's surety shall be liable to the Contractor for the amount of such excess. Upon the taking over of the Work by Contractor as herein provided for, no further payment will be made to Subcontractor until the Work is completed, and any moneys due or that may become due Subcontractor under this Agreement will be withheld and may be applied by the Contractor.
- (c) In the event of termination of this Subcontract, in whole or in part, Contractor may, at its option and without prejudice to or waiver of any other right or remedy take possession of materials, tools, equipment, facilities, and other property belonging to Subcontractor at the Project site and assume complete control of the Work. In case of partial or total termination of this Subcontract, Subcontractor shall not be entitled to receive any further payment under this Subcontract until Subcontractor's entire Work has been completed and accepted by Contractor, Engineer, and Owner and all obligations of Subcontractor have been satisfied. If the charges, losses, expenses, attorneys' fees, and damages sustained by Contractor in completing the Work or otherwise attributable to Subcontractor's performance delays or failures exceed the unpaid portion of the

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Subcontract amount, Subcontractor shall pay the difference to Contractor within five (5) days after demand for same by Contractor.

- (d) Notwithstanding anything to the contrary in this Subcontract and in addition to Contractor's right to terminate this Subcontract for breach or default, Contractor may terminate all or any part of this Subcontract, regardless of fault or the lack thereof by any party. Upon such no-fault termination, Subcontractor shall be entitled to payment for the Work satisfactorily performed and accepted by Owner, Engineer, and Contractor. Subcontractor shall not be entitled to any payment, compensation, or damages, including but not limited to lost profits or other theory of recovery, with respect to the Work not performed or not accepted. If Contractor terminates the Subcontract for default or breach but it is determined, for any reason, that sufficient grounds did not exist for terminating the Subcontract, Subcontractor, as its sole and exclusive remedy, shall be entitled only to the amount due under the Subcontract as if the termination were for no fault as provided in this section.

10. Subcontractor Status; Employees' Status.

- (a) In connection with this Subcontract, Subcontractor shall at all times and in all respects be an independent contractor to Contractor. No personnel employed by Subcontractor shall be deemed under any circumstances to be agents, representatives or employees (except as statutory employees as specified in Section 10(c)) of Contractor. Subcontractor shall have no authority to bind Contractor by any representation, promise, or statement of any kind without first obtaining Contractor's specific written consent and authorization. Subcontractor shall not interfere with Contractor's relationship with other subcontractors.
- (b) Subcontractor has exclusive liability for all contributions, taxes, deposits, and payments required of employers by federal, state, or local governments, with respect to wages, salaries, remuneration, or benefits paid or owed by Subcontractor to any of Subcontractor's employees or others who perform the Work or render services for Subcontractor in connection with this Subcontract. Subcontractor has exclusive liability for all income, gross receipts, sales, use, or other taxes applicable to materials, equipment, labor, or performance of the Work and services pursuant to this Subcontract.
- (c) In all cases and to the extent where Subcontractor's employees (defined to include without limitation Subcontractor's direct, borrowed, special, or statutory employees) are performing work in Louisiana or are otherwise covered by the Louisiana Workers' Compensation Law, La. R.S. 23:1020.1 et seq., Contractor and Subcontractor recognize, acknowledge and agree that all work and operations performed by Subcontractor and its employees and subcontractors pursuant to this Agreement are an integral part of Contractor's trade, business or occupation or are essential to the ability of Contractor to generate Contractor's goods, products and services; that for purposes of the Louisiana Workers' Compensation Law, the employees of Subcontractor are therefore statutory employees of Contractor in accordance with the Louisiana Workers' Compensation Law; and that Contractor shall be entitled to the protections that are afforded a statutory employer under Louisiana law. Furthermore, Contractor and Subcontractor agree that Contractor is the statutory employer of Subcontractor's employees for purposes of La. R.S. 23:1061(A)(3). Irrespective of Contractor's status as the statutory employer or special employer (as defined in La. R.S. 23:1031(C)) of Subcontractor's employees, Subcontractor shall remain primarily responsible for the payment of Louisiana Workers' Compensation benefits to its employees, and shall not be entitled to seek contribution for, and shall indemnify Contractor against, any such payments from Contractor, and all such employees shall remain employees of Subcontractor, not Contractor, for all purposes.

11. Subcontractor's Insurance Requirements.

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- (a) Subcontractor shall obtain, before commencement of any Work, and maintain until final acceptance of the Work, full insurance coverage, including as a minimum the types of insurance and at the policy limits set forth on Exhibit B of this Subcontract.
- (b) Said insurance shall name the Owner and Contractor, including their officers, directors, managers, employees, agents, representatives and sureties, as an additional insured on all policies with the exception of workers compensation. Subcontractor's insurance shall be primary as to any insurance under which Contractor is a named or additional insured or which otherwise extends coverage to Contractor. Subcontractor's insurance shall contain a standard cross-liability endorsement and a waiver of all rights of subrogation against Owner, Contractor, Contractor's surety, and Contractor's insurers. This includes successors or assigns of Contractor. Such coverage shall be written on forms CG 20 10 10 01 and CG 20 37 10 01, or a substitute endorsement providing "equivalent" coverage may be deemed acceptable at Contractor's sole discretion. The additional insured coverage will be required at a minimum for the limits specified in this agreement, however if the policy limits are greater than those specified in this Agreement, this Agreement requires insured coverage for the full policy. Copies of CGL additionally insured endorsement must be attached to subcontractors certificate of insurance. For purposes of this additional insured requirement, "equivalent" coverage means coverage for liability arising out of Subcontractor's work performed for Contractor, including coverage for the negligence or fault of Contractor or Owner as to bodily injury or death of an employee or agent of Subcontractor or Subcontractor's subcontractor, including products-completed operations.
- (c) Upon request, Subcontractor shall deliver to Contractor (i) Certificates of Insurance, and (ii) the actual policies, in each case certifying and evidencing the types and the amounts of coverage, that Contractor is also named as an additional insured, that said insurance will be in force before Subcontractor starts any Work and continually thereafter until completion, and that said insurance applies to all activities and liability of Subcontractor pursuant to this Subcontract. No policy of insurance may be cancelled nor coverage reduced during the period of construction, and Subcontractor shall obtain an endorsement to its policies and insurance certificates prohibiting the insurer's cancellation or coverage reduction for a period of no less than thirty (30) days after Contractor has acknowledged receipt of written notice of the insurer's intention to cancel or reduce the coverage.
- (d) If not covered under the Builder's Risk Policy of insurance or any other property or equipment insurance required by the Contract Documents, the Subcontractor shall procure and maintain coverage on the materials and/or equipment related to the Subcontractor's work stored on site, off site or in transit.
- (e) Subcontractor's failure to maintain complete insurance shall be a material breach authorizing Contractor, at Contractor's sole election, either to terminate this Subcontract for default or to provide full insurance coverage at Subcontractor's sole expense; however, in neither case shall Subcontractor's liability be lessened.

12. Risk Allocation; Subcontractor's Indemnity Obligations.

- (a) Subcontractor hereby covenants to defend, indemnify, hold harmless and exonerate Contractor and Owner from and against any liability, loss, cost and expense ("Liability") claimed by a third party (including reasonable attorney's fees and costs of defense) whether for (i) breach of contract, or (ii) relating to Subcontractor's performance of the Work and attributed to the sole or concurrent negligence or strict liability of the Subcontractor or the employees, agents or subcontractors of the Subcontractor, or arising out of any other operation no matter by whom performed for or on behalf of the Subcontractor to the extent that such Liability is for: (1) bodily injury, sickness, disease or death, or (2) loss or destruction of property. Where liability is attributable to the joint negligence or fault of Subcontractor and any other person (including Contractor), Subcontractor's duty of indemnification shall be limited to Subcontractor's allocable share of such joint negligence or fault. In any and all claims against the Contractor or Owner

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arising out of the Subcontractor's performance of the Work or the sole or concurrent negligence or strict liability of the Subcontractor brought by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation under this Article 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 worker's or workmen compensation acts, disability benefit acts or other employee benefit acts.

- (b) Contractor hereby covenants to defend, indemnify, hold harmless and exonerate Subcontractor from and against any liability, loss, cost and expense ("Liability") claimed by a third party (including reasonable attorney's fees and costs of defense) relating to Contractor's performance of the Work and attributed to the sole or concurrent negligence or strict liability of the Contractor or the employees, agents or subcontractors of the Contractor, or arising out of any other operation no matter by whom performed for or on behalf of the Contractor to the extent that such Liability is for: (1) bodily injury, sickness, disease or death, or (2) loss or destruction of property. Where liability is attributable to the joint negligence or fault of Contractor and any other person (including Subcontractor), Contractor's duty of indemnification shall be limited to Contractor's allocable share of such joint negligence or fault.
- (c) Subcontractor acknowledges and agrees that any Contractor Party who is not a signatory to this Subcontract shall be considered and/or deemed to be a third-party beneficiary of this Subcontract, entitled to rely hereon and enforce the provisions hereof.
- (d) The duties and obligations imposed by, and the rights and remedies available under, this Subcontract, including Contractor's rights under this Section 12, are in addition to, and not a limitation of, any other duties and obligations imposed, and rights and remedies available, at law or in equity.
- (e) Termination of this Subcontract by Contractor or abandonment by Subcontractor does not relieve Subcontractor from its liability and obligations in connection with Subcontractor's Work performed prior to termination or abandonment, nor relieve or terminate any of Subcontractor's obligations or liability under, or rights or remedies afforded to the Contractor Parties under, this Section 12.
- (f) The "**Subcontractor Parties**" include Subcontractor, its direct and indirect lower-tier subcontractors, suppliers, consultants, invitees, any other party for whom Subcontractor is responsible or under Subcontractor's control, and their agents, officers, directors, managers, owners, employees, and representatives.
- (g) Subcontractor shall require that each of its subcontractors hired or retained to perform any portion of the Work agree to indemnify Contractor in the same manner that Subcontractor has agreed to indemnify Contractor herein. Such agreement by Subcontractor's subcontractors shall affirmatively acknowledge that Contractor is a third party beneficiary of said agreement.
- (h) Subcontractor hereby affirmatively and irrevocably waives any and all rights that it may have to recover special, incidental or consequential damages, including but not limited to damages based upon lost goodwill, lost sales or profits, or work stoppages, against Contractor for any causes of action arising from or related to the performance of the Work or this Agreement.

13. Subcontracting; Assignment.

Subcontractor shall not subcontract nor assign any part of this Subcontract without first obtaining the written consent and approval of Contractor. Any such subcontracting or assignment without the prior written consent of Contractor shall be void and of no force or effect.

14. Subcontractor's Superintendent and Employees.

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Subcontractor's superintendent shall have absolute authority, in all respects, to act for and on behalf of Subcontractor and to bind Subcontractor. Subcontractor shall replace said superintendent or any other employee, without additional charge, if so demanded by Contractor.

15. Changes.

- (a) Contractor may issue written change orders to this Subcontract, without notice to Subcontractor's sureties. Changes may be additive or deductive. Subcontractor shall be obligated to perform in accordance with such change orders, and the Subcontract Price shall be adjusted as specified by such change order. No alterations or changes shall be made except upon Contractor's written order; oral changes to the Work are not valid and will not be recognized. Subcontractor shall have neither claim nor entitlement to payment for any addition to the Work or change in the Work unless, prior to commencement of performance, Subcontractor receives a written change order for such work at an agreed price, or a written directive as provided in Section 15(b), from an authorized representative of Contractor.
- (b) Subcontractor shall give written notice of any claims for additional time or extra compensation, including, but limited to, any claim arising under Sections 4(d) or 4(e), within 5 days after Subcontractor became, or should have become, aware of the circumstance giving rise to such claim. Subcontractor shall provide such additional backup or breakdowns as may be requested by Contractor. If Subcontractor requests a written change order as provided herein but there is a dispute as to whether the item of work constitutes a change or the value of such change or any other matter in controversy, Contractor shall be entitled to issue a written directive to Subcontractor to perform the disputed work and Subcontractor shall be obligated to proceed with and complete performance of the disputed work, without either party admitting to liability for the issues in dispute or waiving rights under this Subcontract. If the dispute is limited to the value of an admitted change, Contractor agrees to pay, subject to all conditions precedent to payment to Subcontractor contained in Section 7 above, Subcontractor's actual, documented direct costs of labor and material plus a reasonable allowance for overhead and profit; provided Subcontractor shall keep and present, in such form as Contractor may prescribe, an itemized accounting together with appropriate supporting data of direct labor and material costs actually incurred in performing such change order.

16. Safety.

- (a) Subcontractor shall provide sufficient, safe and proper facilities, equipment, and working conditions for performing the Work, which shall at all times be subject to inspection by Contractor, Owner, or their authorized representatives. Subcontractor shall keep its areas of operation on the Project in a neat and clean condition. Subcontractor shall perform whatever cleanup is directed by Contractor at no additional cost to Contractor. Should Subcontractor fail to do so promptly upon notice, Contractor may, at its option, perform such cleanup at Subcontractor's expense and without further notification. Upon completion of various portions of the Work, Subcontractor shall broom clean its work areas and do whatever else is necessary to put its Work in proper condition either for application or performance of follow-on work or for acceptance of the Work.
- (b) Subcontractor shall comply with all safety measures required by Contractor, Owner, and the Prime Contract.
- (c) Subcontractor shall report all injuries to Contractor immediately. Subcontractor shall submit to Contractor a written report of each injury within twenty four (24) hours after the occurrence.

17. Dispute Resolution.

SUBCONTRACT AGREEMENT

- (a) Except as otherwise specifically provided in the Contract Documents, all claims, disputes, and other matters in controversy between Contractor and Subcontractor arising out of or relating to this Subcontract shall be decided by mediation then litigation. Claims, disputes, or other matters in controversy arising out of or related to this Subcontract shall be subject to mediation as a condition precedent to litigation. The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures then currently in effect. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of litigation proceedings but, in such event, mediation shall proceed in advance of litigation proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Baton Rouge, Louisiana. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

- (b) Claims not resolved by mediation shall be determined in state court located within East Baton Rouge Parish, Louisiana. EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON ON ARISING OUT OF THIS SUBCONTRACT. THE PARTIES ACKNOWLEDGE THAT EACH HAS RELIED ON THIS WAIVER IN ENTERING INTO THIS SUBCONTRACT AND THAT EACH KNOWINGLY WAIVES ITS JURY TRIAL RIGHTS.

- (c) Notwithstanding the foregoing, if Contractor in good faith believes that any claim, dispute, or matter in controversy with Subcontractor also involves rights or liabilities of Owner, Engineer, or other third party, then, Contractor may elect, in its sole discretion and notwithstanding Sections 17(a) and 17(b), Subcontractor agrees to resolve such issues in the same forum or proceeding, including litigation, arbitration or administrative authority, which has jurisdiction over some or all claims, disputes, and matters in controversy involving Owner, Engineer, or other third party so as to promote economy and avoid inconsistent results and therefore Subcontractor submits to the jurisdiction and venue of such court or tribunal.

- (d) Contractor and Subcontractor intend and agree that the foregoing dispute resolution provisions and rights of election given to Contractor are not independent of nor severable from the remainder of this Subcontract and that such provisions and election rights are supported by the consideration and mutuality of the Subcontract as a whole.

- (e) No claim, dispute, or matter in controversy or question shall interfere with the progress of construction, and Subcontractor shall proceed diligently with performance of this Subcontract, notwithstanding the existence of any claim, dispute, or matter in controversy or question.

18. Equal Employment Opportunity (EEO).

The following does not apply if this Contract is exempt under the rules and regulations of Secretary of Labor. Exemptions include Contracts and subcontracts not exceeding \$10,000, (ii) not exceeding \$100,000 for standard commercial supplies or raw materials, and (iii) under which work is performed outside the United States and no recruitment of workers within the United States is involved.

During the performance of this contract, the Subcontractor agrees as follows:

- (a) The Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Subcontractor will take affirmative action to ensure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but

SUBCONTRACT AGREEMENT

not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (b) The Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (c) The Subcontractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Subcontractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The Subcontractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (e) The Subcontractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (f) In the event of the Subcontractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Subcontractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by the rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (g) The Subcontractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Subcontractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Subcontractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency the Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

19. Miscellaneous.

- (a) The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. This Subcontract cannot be changed, modified, altered, suspended, or terminated, except in writing signed by an authorized representative of Contractor and Subcontractor. No delay, waiver, forbearance, or failure by Contractor to exercise rights or remedies under this Subcontract or to insist upon strict compliance by Subcontractor shall prevent Contractor from strictly enforcing any of the provisions of this Subcontract, nor shall relieve Subcontractor from strict compliance with all terms and conditions hereof nor shall waive, restrict, or adversely affect any of Contractor's

SUBCONTRACT AGREEMENT

rights and remedies as to any subsequent or continuing failure of Subcontractor to comply strictly with all terms and conditions of this Subcontract.

- (b) Any notice required by this Subcontract or given in connection with it, shall be in writing using the notice information listed on the first page of this Subcontract and shall be given to the receiving party by (i) personal delivery, (ii) certified mail, postage prepaid and return receipt requested, (iii) recognized overnight delivery service such as Federal Express or UPS, (iv) facsimile transmission provided the sending party receives a transmission confirmation report, or (v) by email. In connection with delivery pursuant to subsections (iv) or (v) above, the sending party shall also forward the receiving party a copy of such notice by regular U.S. mail postmarked within 1 business day of the initial transmission. Either party may change its notice information by written notice to the other party delivered in accordance with this section.
- (c) If any term or provision of this Subcontract (including without limitation those contained in Section 12 and the exhibits or schedules), or the application thereof to any person or circumstance, shall at any time or to any extent be invalid, illegal or unenforceable in any respect as written, the parties intend for any court or arbitrator construing this Subcontract to modify or limit such provision temporally, spatially or otherwise so as to render it valid and enforceable to the fullest extent allowed by law. Any such provision that is not susceptible of such reformation shall be ignored so as to not affect any other term or provision hereof, and the remainder of this Subcontract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid, illegal or unenforceable, shall not be affected thereby and each term and provision of this Subcontract shall be valid and enforced to the fullest extent permitted by law.
- (d) The laws of the State of Louisiana shall govern the interpretation and enforceability of this Subcontract, without regard to its conflict of law provisions.
- (e) Subcontractor shall be liable for all costs, and expenses, including reasonable attorneys' fees incurred by Contractor in enforcing the terms and conditions of this Subcontract or any of Subcontractor's obligations under this Subcontract. In the event of a dispute concerning Subcontractor's defense and indemnity obligations in Section 12, Subcontractor shall be liable for costs and expenses, including reasonable attorneys' fees, incurred by Contractor in proportion to the allocation of liability, responsibility or fault of the Subcontractor Parties.
- (f) This Subcontract shall be binding upon the successors in interest of the parties hereto.
- (g) This Subcontract has been prepared by the combined efforts of the parties hereto (and their respective attorneys to the extent either party has elected to exercise its right to engage counsel) and shall not be construed against either party as the draftsman of this Subcontract.
- (h) The heading of the sections and paragraphs of this Subcontract have been inserted solely for convenience and shall in no way restrict or modify any of the terms or provisions hereof.
- (i) This Subcontract may be executed in multiple counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Subcontract by signing any such counterpart. Delivery of an executed counterpart of this Subcontract by fax or electronic mail shall be equally as effective as delivery of an original executed counterpart of this Subcontract. Any party delivering an executed counterpart of this Subcontract by fax or electronic mail also shall deliver an original executed counterpart of this Subcontract to the other party in due course, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Subcontract.
- (j) The undersigned signatory, acting for and on behalf of Subcontractor, does hereby attest that he/ she is an officer, member, or is otherwise duly authorized to act for and on behalf of

SUBCONTRACT AGREEMENT

Subcontractor. The execution of this Subcontract by the undersigned legally binds Subcontractor to any and all of the conditions set forth herein.

**<<< REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK >>>
<<< SIGNATURE PAGE TO FOLLOW >>>**

IN WITNESS WHEREOF, the said parties, for themselves, heirs, executors, administrators, successors, and assigns, do hereby agree to the full performance of all the terms and provisions herein contained and further affirm that they are authorized representatives of the parties hereto and execute this Subcontract to be effective on the date first written above.

(Subcontractor)

Signature: _____

Date Signed: _____

Printed Name: _____

Title: _____

AND

PALA – Interstate LLC
(Contractor)

Signature: _____

Date Signed: _____

Printed Name: _____

Title: _____

**EXHIBIT A
of
SUBCONTRACT AGREEMENT**

Scope of Work

The Work to be performed by Subcontractor on the Project shall include the following:

EXHIBIT B
of
STANDARD SUBCONTRACT

Minimum Insurance Requirements

1. Commercial General Liability Insurance

Commercial General Liability insurance written on an Occurrence Basis including Products/ Completed Operations coverage and Contractual Liability coverage (covering Subcontractor's obligations under this Subcontractor, including without limitation, Section 14(b)) in form and substance satisfactory to Contractor, with limits of liability not less than \$1,000,000 per occurrence, \$2,000,000 aggregate applicable to all bodily injury and property damage combined. Claims –made policy form is unacceptable.

- a) This policy shall name the Owner, Prime Contractor (if applicable), and Contractor, including its officers, directors, managers, employees, agents, representatives and sureties, as additional insureds. The additional insured endorsement must include completed operations coverage.
- b) This policy shall provide waiver of subrogation in favor of the Owner, Prime Contractor (if applicable), and Contractor, including its officers, directors, managers, employees, agents, representatives and sureties.
- c) This policy shall provide, via specific endorsement, 30-day notice of cancellation to the Contractor, except 10-day for non-payment.
- d) This policy shall contain a standard cross-liability endorsement.
- e) The aggregate limit of insurance provided must be on a per project basis.
- f) This policy is considered primary and non-contributory.

2. Comprehensive Automobile Liability

Comprehensive Automobile Liability insurance issued to provide liability coverage on owned, hired, and non-owned vehicles, in form and substance satisfactory to Contractor, with limits of liability not less than \$1,000,000 per occurrence applicable to all bodily injury and property damage combined.

- a) This policy shall name the Owner, Prime Contractor (if applicable), and Contractor, including its officers, directors, managers, employees, agents, representatives and sureties, as additional insureds.
- b) This policy shall provide waiver of subrogation in favor of the Owner, Prime Contractor (if applicable), and Contractor, including its officers, directors, managers, employees, agents, representatives and sureties.
- c) This policy shall provide, via specific endorsement, 30-day notice of cancellation to the Contractor, except 10-day for non-payment.

3. Workers Compensation

Workers Compensation insurance issued to provide Statutory benefits in all jurisdictions where Subcontractor performs work for Contractor in form and substance satisfactory to Contractor, to cover all of Subcontractor's employees and/or volunteers. Coverage shall include Employers liability limits not less than \$500,000 each accident, \$500,000 disease each employee, and \$500,000 disease policy limit.

- a) This policy shall name the Owner, Prime Contractor (if applicable), and Contractor, including its officers, directors, managers, employees, agents, representatives and sureties, as alternate employers.
- b) This policy shall provide waiver of subrogation in favor of the Owner, Prime Contractor (if applicable), and Contractor, including its officers, directors, managers, employees, agents, representatives and sureties.
- c) This policy shall provide, via specific endorsement, 30-day notice of cancellation to the Contractor, except 10-day for non-payment.

If Subcontractor, any Subcontractor thereof and/or any Seller thereof leases one or more employees through the use of a payroll, leasing, employee management or other company,

EXHIBIT B
of
STANDARD SUBCONTRACT

Subcontractor, any Subcontractor thereof and/or any Seller thereof must directly procure workers compensation/employer's liability insurance in addition to insurance provided by the payroll, leasing, employee management or other company. The insurance shall be written on a "Minimum Premium" or "If Any" policy form. In addition, the workers compensation/employers liability coverage provided to and for the leased employees by the payroll, leasing, employee management or other company must be evidenced and include an Alternate Employer/Leased Employee Endorsement naming the Contractor, the Subcontractor thereof and/or the Seller thereof as the alternate employer.

4. Umbrella/Excess Liability

Umbrella or Excess Liability insurance written on an Occurrence Basis providing coverage at least as broad as that required in paragraphs 1 and 2 above in form and satisfactory to Contractor with limits of liability not less than \$5,000,000 per occurrence applicable to all bodily injury and property damage combined. The policy terms shall be "follow form" or contain the conditions listed below.

- a) This policy shall name the Owner, Prime Contractor (if applicable), and Contractor, including its officers, directors, managers, employees, agents, representatives and sureties, as additional insureds. The additional insured endorsement must include completed operations coverage.
- b) This policy shall provide waiver of subrogation in favor of the Owner, Prime Contractor (if applicable), and Contractor, including its officers, directors, managers, employees, agents, representatives and sureties.
- c) This policy shall provide, via specific endorsement, 30-day notice of cancellation to the Contractor, except 10-day for non-payment.
- d) This policy shall contain a standard cross-liability endorsement.
- e) The aggregate limit of insurance provided must be on a per project basis.

This policy is considered primary and non-contributory.

The insurance coverage and limits stated are offered as minimum acceptable limits. It is the decision of the Subcontractor to determine the appropriate limits of insurance needed for the Work outlined in the contract.