

**MASTER SUBCONTRACT GENERAL CONDITIONS**

<b>Subcontractor:</b>	<b>Date:</b>
<b>Address:</b>	
<b>City, State Zip:</b>	<b>Phone:</b>

Butler-Cohen LLC ("Contractor") may, from time to time, desire to retain Subcontractor to perform work to be described in a work order ("Work Order") under the terms and conditions set forth herein, and Subcontractor is desirous of performing such work for Contractor on a repeat basis, pursuant to an expedited contracting procedure.

In the event Contractor elects, in its sole discretion, to retain Subcontractor to perform such work, Contractor shall issue to Subcontractor a Subcontract Work Order describing the project, scope of work (including a list of applicable Contract Documents) and Subcontract Sum (the "Work Order.") Subcontractor's execution and return of such Work Order, or Subcontractor's commencement of work thereunder, whichever occurs first, shall constitute Subcontractor's acceptance of the Work Order and the terms and conditions set out therein, subject to these Master Subcontract General Conditions, which shall apply thereto.

These Master Subcontract General Conditions shall remain in full force and effect as to, and shall govern any and all work performed by Subcontractor pursuant to any Work Order issued by Contractor for a period of one year from the date of this agreement (the "Master Subcontract Term"), and the Master Subcontract Term shall thereafter be automatically extended on a month-to-month basis, absent thirty (30) days written notice of termination for convenience by Contractor or Subcontractor, except that any work commenced by Subcontractor during the Master Subcontract Term shall be governed by these Master Subcontract General Conditions. Nothing contained in this paragraph, however, shall be construed as a limitation of Contractor's termination rights under paragraph 12 of these Master Subcontract General Conditions.

It is agreed and understood that Contractor may utilize others to perform work of the nature described herein, that Contractor has made no representations or promises with respect to Subcontractor's performance of other work for Contractor, and that Subcontractor has no exclusive right or option to perform any such work. It is further agreed and understood that in the event Subcontractor defaults under any Work Order issued by Contractor, such default shall be considered an Act of Default under all Work Orders issued by Contractor to Subcontractor, and Contractor shall be entitled to offset against any sums due and owing to Subcontractor under any Work Order, any and all damages incurred by Contractor as a result of Subcontractor's default, in addition to Contractor's other rights and remedies hereunder, at law or in equity.

1. Contractor has entered into a contract (the "General Contract") with the client identified on the applicable Work Order (the "Owner") to perform certain labor and furnish certain services, equipment and/or materials for the construction and/or maintenance of the project identified on the Work Order (the "Project"). The General Contract and any general, supplementary and special conditions, plans, drawings (including any revisions thereto), specifications, bulletins, addenda and amendments are referred to herein as the "Contract Documents." The term "Subcontract" shall mean and include the applicable Work Order (and any amendments thereto), the Master Subcontract General Conditions and the Contract Documents, as the same relates to the Work. Each individual Work Order in conjunction with such documents constitutes a separate Subcontract.

a. The Subcontractor shall furnish all of the supervision, labor, material, equipment, design services (if applicable), services and supplies, all permits, licenses and fees necessary to perform, construct and complete the scope of work identified in the Work Order (hereinafter referred to as the "Subcontract Work"), associated with the construction of the Project in strict accordance with the applicable Work Order, the Master Subcontract General Conditions and the Contract Documents, to the full and complete satisfaction of the Contractor and the Owner.

b. Subcontractor agrees to perform the Subcontract Work in accordance with, and be bound by, the terms and provisions of the Contract Documents, and assumes and agrees to perform all of the obligations and responsibilities of the Contractor under the Contract Documents, to the extent the Contract Documents cover or relate to the Subcontract Work.

c. Contractor utilizes ProCore Project Management software (the "Program") for the Project. Subcontractor will be provided access to the Program solely for purposes of Subcontractor's performance of its obligations under the Subcontract, at no cost to Subcontractor. The Program will be used to handle the management, distribution and submission of all Project documents (including without limitation plans, specifications, submittals, RFIs, schedules, etc.) Subcontractor must access the Program for all such Project documents unless otherwise directed in writing by Contractor. Subcontractor acknowledges receipt of the plans and specifications for the Project through the Program. Subcontractor is responsible for all of the content contained in the Program related to the Project, including but not limited to all periodic updates, revisions, and additions to the

Project documents contained therein. All Project documents contained in the Program shall be deemed delivered to Subcontractor. Subcontractor is responsible for ensuring and maintaining the compatibility of Subcontractor's computer systems with the Program. Subcontractor shall take all necessary precautions to prevent any unauthorized access to the Program and the Project documents contained therein, and to prevent any virus or malware infiltration of the Program. Subcontractor shall comply with all ProCore terms and conditions applicable to Subcontractor's use of the Program, and shall defend, indemnify and hold harmless Butler-Cohen LLC from any and all claims, damages, loss, cost and expense incurred as a result of any Subcontractor breach of such terms and conditions.

d. Subcontractor represents that it has examined the Subcontract, including all of the Contract Documents which relate to the Work, and is fully acquainted with, or will acquaint itself with, all of the physical conditions surrounding the job site for any given Project (as that term may be defined in the General Contract) insofar as the same affects or relates to the performance of the Subcontract Work, and has made all necessary investigations essential to the full understanding of any and all difficulties that may be encountered in the performance of the Subcontract Work. Subcontractor assumes any and all risks incident to any variance between the actual physical conditions at the job site affecting the Subcontract Work and those set out in the Subcontract and Contract Documents. If the Subcontractor deems that surfaces of work to which its Work is to be applied or affixed is unsatisfactory or unsuitable, written notification of said conditions shall be given to the Contractor before proceeding or taking remedial action, otherwise the Subcontractor shall be fully and solely responsible and liable for any and all expense, loss or damages resulting from said condition and the Contractor shall be relieved of all liability in connection therewith.

e. In the event of any conflict between the Subcontract or a Work Order and the Contract Documents, including any rights or remedies provided only under the Contract Documents, this Subcontract or Work Order shall prevail.

f. Subcontractor shall have no dealings with Owner or its authorized representatives in regard to the General Contract, changes, extras, or delays relating to Subcontractor's Work, and shall deal only with Contractor.

g. Subcontractor expressly agrees and warrants to Contractor that: (i) variability of or changes in market conditions will not constitute or be construed as either invalidating the Subcontract or Work Order on Contractor's part, and Subcontractor will not make any claim to that effect; (2) the rates and prices that comprise the Subcontract Sum (as defined below) comprehend fully the likely effects of such variability or changes for the full duration of the project and until Final Completion, and therefore are not subject to modification or adjustment on the basis of the manifestation of such variability or changes; and (iii) in consideration of (2) above, it will not make any claim for price adjustment, lost or anticipated revenue, profit, or goodwill using the manifestation of such variability or changes as the grounds for same.

2. Notice All notices due under the Subcontract shall be addressed and delivered to Contractor at its offices shown on the Work Order. All notices to be given Subcontractor by Contractor shall be addressed and delivered to Subcontractor at the office of Subcontractor as shown on the Work Order. It is understood and agreed that the mailing of any such notice to Subcontractor at such address by certified mail, return receipt requested or delivery of such notice by electronic mail or hand delivery shall constitute notice to the Subcontractor for all purposes. Subcontractor hereby represents to Contractor that the person named on the attached Work Order as the contact is fully authorized to execute any and all contract documents, change orders, releases and modifications to this Subcontract on behalf of Subcontractor, and the same shall be binding upon Subcontractor upon such execution.

3. Communications The Contractor shall make available to the Subcontractor information which affects this Subcontract and which becomes available to the Contractor subsequent to execution of this Subcontract. The Contractor shall not give instructions or orders directly to employees or workmen of the Subcontractor, except to persons designated as authorized representatives of the Subcontractor. Subcontractor must submit in writing to the Contractor the name of the designated representative who will be on site full time. The Subcontractor may request directly from the Architect/Engineer information regarding the changes to the Subcontract Work with Contractor's prior consent. If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the Project site by the Subcontractor, a sub-subcontractor or anyone directly or indirectly employed by them, the Subcontractor shall, prior to exposure of employees to such substance, give written notice of the chemical composition thereof to the Contractor's Superintendent in sufficient detail and time to permit compliance with such laws. All hazardous materials must have MSDS on site prior to use of these products.

4. Notice to Proceed Time is of the essence in this Subcontract. Subcontractor shall commence the Subcontract Work when and where directed by Contractor and shall complete the same in accordance with Contractor's progress schedule, which may be modified by Contractor from time to time. Subcontractor shall, prior to commencement of the Subcontract Work, provide Contractor with a list of Subcontractor's subcontractors and suppliers for the Project, and evidence of insurance as required herein.

Subcontractor shall furnish to the Contractor such information that Contractor may require for the proper scheduling and expediting of the Subcontract Work. The Subcontractor shall cooperate with the Contractor in scheduling and performing the Subcontract Work to avoid conflict, delay in, or interference with the work of the Contractor, Contractor's other subcontractors, or Owner's separate contractors.

5. Payment

a. Contractor shall pay Subcontractor for the performance of the Subcontract Work, subject to written authorized additions and deductions, the sum as approved on the attached or any other applicable Work Order (the "Subcontract Sum").

The Subcontract Sum includes but is not limited to purchases made by Subcontractor, federal, state and local sales, use, excise, payroll, and other

taxes, and materials, tools, labor, equipment, and services furnished hereunder, all taxes and contributions required by the federal Social Security Act and any other federal or state unemployment compensation law in respect to Subcontractor's employees, freight and insurance premiums paid by Subcontractor in satisfaction of its obligations hereunder, premiums for performance and payment bonds required hereunder, all of Subcontractor's direct and indirect expenses and profit; and the Subcontract Sum shall be Subcontractor's sole, complete and total consideration for completion of all Work required hereunder, except for payments due Subcontractor for written authorized changes to the Subcontract Work, if any.

b. Contractor shall pay Subcontractor monthly progress payments in accordance with the provisions hereof. The applications for monthly progress payments (less ten percent (10%) retainage or the amount of retainage indicated on the Work Order) shall be in writing on the **Subcontractor Payment Application** form provided by Contractor and shall be submitted to the Contractor **on or before the 20th day of each month**. Subcontractor acknowledges that its Contractor's practice to include Subcontractor's verifiable payment application amounts in Contractor's payment applications to the Owner. In the event Subcontractor fails to submit timely payment applications to Contractor and Contractor is unable to request and receive payment for Subcontractor's work because of Subcontractor's failure to timely submit a payment application, Subcontractor hereby waives and releases its rights with respect to the payment of those timely payment applications.

Contractor shall pay the Subcontractor monthly progress payments within seven (7) days of Contractor's receipt of payment by the Owner for the Subcontract Work, subject to the other provisions of this Subcontract. If an application for monthly progress payment is submitted by Subcontractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Owner, and Subcontractor agrees that its belated payment application shall not be due and payable until the next monthly payment cycle. The Subcontractor has submitted, or will submit, concurrently with the execution of any applicable Work Order, a schedule of values for the various portions of the Subcontract Work which, subject to Contractor's approval, shall be used only as a basis for the Application for Payment submitted by Subcontractor. Subcontractor shall submit with each application for monthly progress payment a fully executed waiver and release in the forms required by Contractor from Subcontractor and each sub-subcontractor or supplier from which Subcontractor has purchased or required the materials, supplies, equipment or labor furnished under the Subcontract. Subcontractor agrees to promptly pay all sub-subcontractors, suppliers and laborers of Subcontractor.

c. Payment for stored materials shall be made upon Owner's and Architect/Engineer's approval and payment for same.

d. Contractor will pay Subcontractor monthly or other periodic progress payments as specified by the Contract Documents to the extent the Subcontract Work is approved by Contractor and/or Architect/Engineer and paid by Owner to Contractor, subject to a retention by Contractor in the amount of ten percent 10% of the amount of each progress payment until Owner pays Contractor its final payment, further subject, however, to all other provisions of this Subcontract.

e. When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Subcontract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within seven days of receipt of pending requirements, the Contractor shall, to the full extent allowed in the General Contract, make payment to the Subcontractor of the entire unpaid balance of the approved Subcontract Sum, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with this Subcontract and less applicable retainage for the Subcontractor's Work (which shall not be paid until completion of the entire Project).

f. Subcontractor has agreed and does hereby agree to accept the risk of non-payment by the Owner, for whatever reason, it being specifically understood that payment by the Owner to Contractor for the Subcontract Work or any work performed on the Project by Subcontractor, whether for progress payments or final payment or claims for additional compensation of any kind, is a condition precedent to Contractor's liability to pay Subcontractor. The Subcontract Sum includes the assumption of this risk. Subcontractor acknowledges that Contractor has exercised diligence in ascertaining and communicating in writing to Subcontractor the financial viability of the Owner and the existence of adequate financial arrangements to pay for the improvements, and Subcontractor has received in writing from Contractor: 1) the name, address and business telephone number of the Owner; 2) a description, legally sufficient for identification, of the property on which the improvements are being constructed, as applicable; 3) the name and address of the surety on any payment bond for the Project; 4) the name of the contracting officer, if applicable; and 5) a statement furnished by the Owner as to any loan or funds available to pay the contract amount, as applicable.

g. Title (free and clear of any and all liens, claims, stop payment notices, security interests and encumbrances) for all materials and Work covered by applications for payment for which progress payments have been made shall pass to the Contractor (or the Owner, if the arrangements between the Contractor and Owner so provide) and no materials or Work shall be removed from the Project site or, if applicable, offsite storage location, without the written approval of Contractor. However, this provision shall not be considered as relieving the Subcontractor from the sole responsibility for all materials and Work upon which payments have been made, the restoration of any damaged Work or the maintaining of insurance thereon if required by other provisions of this Subcontract; nor shall it be considered as a waiver of the right of the Contractor or the Owner to require fulfillment of all of the terms of the Subcontract.

h. All sums earned by Subcontractor by the partial or complete performance of the Subcontract Work and any balance of unearned Subcontract funds shall constitute a trust fund for the purposes of 1) first, full completion of the Subcontract Work, 2) second, payment of any back charges or claims due Contractor from Subcontractor; 3) third, payment to sub-subcontractors, laborers and suppliers of Subcontractor, and such tentative earnings shall not be due and payable to Subcontractor, or anyone else claiming in Subcontractor's place and stead, excepting however a trustee in bankruptcy that has given notice to Contractor that it will perform the Subcontract Work in accordance with the Subcontract provisions and

will cure any existing defaults, until and unless such Subcontract Work is fully and satisfactorily completed, any such back charges or claims are paid, and such sub-subcontractors, laborers and suppliers are fully paid and satisfied. Subcontractor agrees to promptly pay all sub-subcontractors, suppliers and sub-subcontractors, laborers and suppliers of Subcontractor and to provide Contractor with each application for periodic progress payment and final payment, a waiver and release in the form acceptable by Contractor, or other proof of such payment for Work performed as Contractor may require. Contractor may demand additional written evidence of Subcontractor's ability to perform and payments to such claimants by Subcontractor at any time.

i. Progress payments and final payment may be withheld in whole or in part by Contractor to protect it from loss on account of but without limitation: (i) Defective materials or Work by Subcontractor or any subcontractor or supplier of Subcontractor; or (ii) Claims, stop payment notices or liens by any subcontractor or supplier of Subcontractor, or any notice thereof arising out of or relating to the Subcontract Work; or (iii) Any breach by Subcontractor of any provision or obligation of the Subcontract or any other subcontract between Contractor and Subcontractor; or (iv) A reasonable doubt by Contractor that the Subcontract Work can be completed for the balance of the Subcontract Sum then unpaid; or (v) A reasonable doubt by Contractor that Subcontractor, for any reason, is able to complete the Subcontract Work in accordance with Contractor's then current schedule; or (vi) A reasonable doubt by Contractor that Subcontractor, for any reason, is able to complete the Subcontract Work; or (vii) Any notice, whether oral or written, that Subcontractor or any subcontractor or supplier to Subcontractor has failed, omitted or neglected to pay for any items of labor, material, equipment or services supplied, delivered, manufactured or fabricated for use on the Project; and (viii) Any debt of any kind whatsoever owed to Contractor by Subcontractor, including, without limitation, any debt owed to Contractor by Subcontractor arising out of or relating to any other subcontract or any other agreement between Contractor and Subcontractor not related to the Subcontract.

If the foregoing causes are remedied or adjusted to Contractor's satisfaction, the withheld payment shall be made promptly. If the said causes are not so remedied or adjusted, Contractor may remedy the same for Subcontractor's account, charge the entire cost thereof to Subcontractor and deduct such cost from the Subcontract Sum or from any payments due or to become due Subcontractor under any other agreement with Contractor.

j. It shall be a condition precedent to Contractor's obligation to make a final payment to Subcontractor hereunder that all of the following events shall first have occurred: (i) Final completion of the Subcontract Work shall have occurred (including the provision of all warranties, record drawings and operating and maintenance manuals approved by Contractor) and the Subcontract Work shall have been accepted by Contractor, architect and/or engineer and Owner; (ii) Contractor shall have received final payment for the Subcontract Work from Owner, subject to the limitations set out in paragraph (f), above; (iii) Subcontractor shall have furnished Contractor with fully executed conditional waivers and releases on final payment, from Subcontractor and its subcontractors and/or suppliers in the form required by Contractor; (iii) At least thirty (30) days have expired after final completion of the Contractor's work; and (iv) the Project has been accepted by Owner.

k. Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Subcontractor's Work and shall not relieve Subcontractor from its obligations to correct defective or non-conforming work and shall not relieve Subcontractor or any of its express or implied warranty obligations under this Subcontract.

l. The Subcontractor shall submit to the Contractor a schedule of values allocated to the various parts of the Subcontract Work of any Work Order, aggregating the Subcontract Sum, made out in such detail as the Contractor and Subcontractor may agree upon or as required by the Owner, and supported by such evidence as the Contractor may direct, in applying for payment. The Subcontractor shall submit payment applications based upon this schedule.

m. In the event Owner fails to pay Contractor for Work performed by Subcontractor in accordance with the Subcontract, or any claims properly asserted by Subcontractor in accordance with the Subcontract and passed through to Owner by Contractor, and any payment provision in this Agreement that provides that Contractor's receipt of payment from Owner is a condition precedent to the obligation of Contractor to pay Subcontractor, including the one set forth in this Article 5, is determined to be unenforceable by a final, non-appealable adjudication by a Court or arbitrator (such date herein referred to as the "CPC Adjudication Date"), Contractor shall pay Subcontractor for its Work (or claim) that was not paid for by Owner within a reasonable amount of time. In such event, the Parties agree that a reasonable amount of time shall be 60 days following the date of final adjudication of Contractor's claims against Owner or the date any settlement between Owner and Contractor becomes effective. In the event the date of final adjudication of Contractor's claims against Owner or the date any settlement between Owner and Contractor becomes effective precedes the CPC Adjudication Date, the Parties agree that a reasonable time for payment shall be 60 days after the CPC Adjudication Date. In the event Contractor does not pursue claims against the Owner for non-payment of Work performed by Subcontractor in accordance with the Subcontract, or for claims properly asserted by Subcontractor in accordance with the Subcontract, a reasonable time for payment shall be 60 days following the CPC Adjudication Date. Notwithstanding the above, nothing herein shall require the Contractor to pursue any claims against Owner.

n. As an alternative or, or in conjunction with, Contractor pursuing a claim against Owner for payments due to Subcontractor for work on the Project, Contractor may assign its contractual rights against Owner for such funds as Subcontractor may be entitled to for such work pursuant to this Agreement, which remain unpaid due to failure of payment by Owner to Contractor for whatever reason, and such assignment shall operate as full accord and satisfaction of any remaining debt to Subcontractor by Contractor for work performed in accordance with this Subcontract. Subcontractor hereby agrees to accept such assignment in lieu of any other form of payment for its work and to release and discharge any and all claims for those funds against Contractor upon receipt of such assignment.

o. Failure at any time by Contractor to enforce the terms of these contingent payment provisions shall not be construed as a waiver

of its right to enforce these requirements at any other time.

6. Change Orders (Subcontract Modifications)

a. In the event the Contractor requests the Subcontractor to review a proposed modification or change to the Project which may affect the Subcontractor's Work, the Subcontractor shall respond in writing within seven (7) days after receipt of such request, or other reasonable time limits as the parties may agree, stating the effect of the proposed modification or change upon Subcontractor's performance, including details of cost and time thereof. Otherwise, the Subcontractor shall accept the determination of the Contractor as to the effect of the proposed modification or change.

b. The Contractor may at any time, without notice to Subcontractor's Surety, by written order designated or indicated to be a change order, make any change in the Subcontract Work consisting of additions, deletions, or alterations to the Subcontract Work or the materials or equipment which are a part thereof.

c. Additions, deletions or alterations to the Subcontract Work shall be made only upon written order, approved by the Contractor. Any claims for additional or extra work shall be waived unless included in a change order signed by Contractor. No claims for verbal or unsigned change orders will be permitted. Should the parties hereto be unable to agree as to the value of such work to be added, deleted, or altered, the Subcontractor shall proceed under the written order of the Contractor, from which order the stated value of the work shall be omitted. The value of the work shall be determined in accordance with paragraphs 6 d and e, below.

d. In the event the Subcontractor is required by the Contractor to perform additional or altered work for which the amount of compensation is not previously agreed upon, the Subcontractor shall prepare and submit to the Contractor a proposal describing the estimated quantities and cost involved. The Subcontractor shall keep accurate, detailed and itemized records of the costs of any such change and shall report such costs to the Contractor in the form and manner prescribed by the Contractor. The Subcontractor shall, if requested, furnish each day to the Contractor, certified copies of all time sheets, receiving and inspection reports and all other basic documents required by the Contractor, to evidence the expenditures of the Subcontractor as a result of such change. The Subcontractor's application to the Contractor for payment shall be accompanied by certified copies of all pertinent payrolls, invoices, and vouchers relating to the additional or altered work. The Contractor's or Owner's receipt, or acknowledgment of the Subcontractor's change order claims, or any other alleged claim, or any notice or report, including reports of cost and time, or any payments made, shall not be construed as the Contractor's or Owner's acknowledgment, or acceptance of the accuracy and validity of any portion thereof, until such time as final change order amounts are determined and the signature of the Contractor is attached thereto.

e. For any change, the total Subcontractor's material, labor, equipment, and subcontract cost shall be marked up at the rate of 5% for profit and 10% for overhead, but if rates are set forth in the Contract Documents, then at such rates. Material costs subject to mark-up shall be defined as only those items which become a permanent part of the work. Labor costs subject to mark-up shall be defined as the direct wages of field personnel plus burden from foreman down, required to put the work in place. All other costs will be accounted for in the allowable mark-ups shown above.

7. Safety. Subcontractor shall abide by the rules and regulations pertaining to the 1970 Williams Steiger Occupational Safety and Health Act and the Occupational Safety and Health Act of the state in which an applicable Project is located, as may be amended from time to time, and any fines assessed the Contractor due to the negligence or willful acts on the part of the Subcontractor will be charged to Subcontractor's account and may be deducted from sums then or thereafter due Subcontractor. The Subcontractor agrees not to remove any guards or safety appliances and to promptly replace such guards and appliances if damaged by Subcontractor. Failure to promptly make such replacements will authorize Contractor to do such work, charge Subcontractor for same, and deduct the costs thereof from sums then or thereafter due Subcontractor. Subcontractor shall perform its work in a diligent and good and workmanlike manner and comply with all city, state, federal or municipal safety regulations, rules and codes. In addition, Subcontractor shall comply with the safety regulations outlined in Contractor's Safety Manual as may be amended from time to time and the specific requirements of the owner where the Subcontract Work is being performed. Failure to comply with any of the same shall be deemed an Act of Default under the Subcontract. Subcontractor shall provide its company's hazardous communication material data sheets to Contractor prior to the delivery or installation of any materials relating to or in connection with the Subcontractor's Work. Subcontractor shall cause its employees on the Project to wear the personnel protection equipment outlined in Contractor's Safety Manual. Violations of these or any other required safety policies shall be deemed an Act of Default under the Subcontract.

8. Taxes. The Subcontractor shall pay all federal, state and local taxes, including any sales or use taxes on any non-tax exempt materials or labor purchased or used by Subcontractor to perform the Subcontract Work. The Subcontractor shall pay all payroll taxes on itself and its employees. The Subcontractor agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for unemployment insurance and/or old age retirement benefits, pensions, or annuities now or hereafter imposed by the government of the United States, and/or by the government or any state or territory of the United States, which are measured by the wages, salaries or other remuneration paid by persons employed by the Subcontractor for work performed under the terms of the Subcontract. In the event the Contractor is obligated to pay any such tax, it is understood that the Subcontractor will reimburse the Contractor for such payments or that the Contractor may deduct such payment from any amount then or thereafter due to Subcontractor. It is understood that the Subcontractor will pay all sales and/or use taxes applicable to any non-tax exempt materials or equipment or labor and all other federal, state or local taxes applicable in any way to the Subcontract Work performed regardless of whom the assessment is made upon, and that the cost of these taxes is included in the Subcontract Sum. If the Contractor becomes obligated to pay any such taxes, it may deduct the amount of such payment from sums then due or thereafter due the Subcontractor.

9. Applicable Law and Codes. The Subcontract Work shall be performed, in all respects, in compliance with all applicable building laws, codes, ordinances and regulations of any and all governmental agencies with jurisdiction over the Subcontract Work (collectively "Codes"). Subcontractor shall, at its expense, obtain, pay for, and maintain all permits, licenses and fees required for the performance of the Subcontract Work. Subcontractor has reviewed, or will review, all plans and drawings related to any applicable Project and Work Order, and understands and agrees that the plans and drawings were prepared in accordance with the designer's best understanding of all applicable building Codes and regulations; however, it is the Subcontractor's responsibility to properly interpret and conform with all applicable Codes relating to its craft.

10. Delays and Claims for Delays. The Contract Documents provide that Contractor must complete the work covered therein within a certain stated time. If the performance of such work by Contractor is delayed in whole or in part through the failure of Subcontractor to perform the Subcontract Work in accordance with Contractor's progress schedule, as may be modified from time to time, and such delay results in the Contractor's inability to complete the work covered by the Contract Documents within the prescribed period of time, Subcontractor agrees to reimburse Contractor for any and all damages, costs and expenses that may be incurred by the Contractor which are attributable to or caused by the Subcontractor's failure to perform as set forth above, including without limitation, liquidated damages assessed by Owner against Contractor resulting from delays of Subcontractor in performing the Subcontract Work. Subcontractor acknowledges that Contractor is not liable to the Subcontractor for any damages or costs due to delays, acts of God, acceleration, hindrances, non-performance, interferences with performances, suspensions or changes in the performance or sequence of the Subcontractor's Work, unless Contractor has first recovered the same on behalf of the Subcontractor from the Owner. It is understood and agreed by Subcontractor that, apart from said recovery, the Subcontractor's sole and exclusive remedy for delay, acts of God, acceleration, hindrances, nonperformance, interferences with performances, suspensions or changes in the performance or sequence of the Subcontractor's Work shall be an extension of time in which to complete the Subcontract Work, but only to the extent Contractor is able to obtain a similar extension of time from the Owner. Any claims for additional time or compensation shall be submitted in writing by Subcontractor to Contractor at least five (5) days prior to the time Contractor is required to submit any such claim to Owner under the Contract Documents, or shall be deemed waived.

11. Insurance. Subcontractor shall, at its sole cost and expense, maintain in effect at all times during the full term of its work under the Subcontract insurance coverage as set forth **Exhibit 1**, which is incorporated herein by reference.

12. Subcontractor's Default and Contractor's Remedies:

a. Each of the following, along with other events specified herein, shall be deemed an Act of Default by the Subcontractor and a material breach of this Subcontract: (i) Refusal or neglect to supply properly skilled workmen or materials in proper quality or quantity; (ii) Failure in any respect to prosecute the Subcontract Work or any portion thereof with promptness and diligence; (iii) Failure to perform any of the agreements or covenants on its part contained herein; (iv) The voluntary or involuntary commencement of any bankruptcy or related proceedings or the making of any assignment for the benefit of creditors or related transactions; (v) Failure to keep the Project free and clear of stop payment notices, liens, claims or encumbrances; (vi) Failure to make timely payments to subcontractors or suppliers; or (vii) Failure to comply with all applicable safety, health, environmental laws, and other applicable Codes and requirements. It is recognized that: if an order for relief is entered on behalf of Subcontractor pursuant to Title 7 or Title 11 of the United States Bankruptcy Code, if another similar order is entered under any other debtor relief laws, if Subcontractor makes a general assignment for the benefit of its creditors, if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Subcontractor's performance of this Subcontract. Accordingly, it is agreed that upon the occurrence of any such event, Contractor shall be entitled to request of Subcontractor or its successor-in-interest adequate assurance of future performance in accordance with the terms and conditions of the Subcontract. Failure to comply with such request within ten (10) days of the delivery of the request shall entitle Contractor to (i) terminate the Subcontract and/or (ii) exercise the rights set forth below in Paragraph 12(b). In all events, absence receipt of adequate assurance of performance and actual performance in accordance therewith, Contractor shall be entitled to proceed with the Subcontract Work with its own forces or with other subcontractors, at Subcontractor's expense.

b. If Subcontractor, in the sole opinion of Contractor, commits an Act of Default hereunder, Contractor shall have the right to deliver a written notice thereof to Subcontractor. If such Act of Default is not cured within forty-eight hours after the delivery of such written notice, Contractor, at any time thereafter and without waiving any other rights herein or available to Contractor, at law or in equity, may do any one or more of the following: (i) Provide any labor or materials needed to complete the Subcontract Work and deduct the cost thereof from any money due or thereafter to become due Subcontractor under this Subcontract; (ii) Terminate the Subcontract, or, at the option of Contractor, such part of the Subcontract as to which such Act of Default has occurred; (iii) Take possession of all of Subcontractor's materials, equipment, tools, appliances, as built drawings, purchase orders, shop drawings and submittals relating to the Project; and (iv) Finish the Subcontract Work or any terminated part of the Subcontract Work by whatever method Contractor may deem expedient, including the hiring of another subcontractor or subcontractors as Contractor may deem advisable.

In the event that Contractor does any one or all of the above, Subcontractor shall not be entitled to receive any further payment until the Subcontract Work is finished. If the total costs to Contractor of completing the Subcontract Work plus all other expenses and damages that Contractor suffers by reason of such Act of Default shall exceed the unpaid balance, Subcontractor and its sureties, if any, shall be liable for and promptly shall pay to Contractor the amount by which the total of such costs, expenses and damages exceed such unpaid balance. The expense of completing the Subcontract Work as used in this paragraph 12 shall be defined to mean all costs incurred by Contractor (or by any subcontractor engaged by Contractor to complete the Subcontract Work) and all expenses incurred by Contractor in connection with completing the Subcontract Work, including without limitation overhead, profit, interest, attorney's fees and all other costs and damages

that Contractor suffers as a result of the Act of Default. In the event Contractor terminates this Subcontract for default and such termination is subsequently determined by a court of competent jurisdiction or an arbitration panel to be unjustified, improper and/or wrongful, such termination shall be deemed to have been a termination by Contractor for its convenience pursuant to Paragraph 12(c) and the compensation, if any, due Subcontractor shall be determined in accordance with Paragraph 12(c).

c. Contractor may at its sole discretion, by written notice to Subcontractor, terminate this Subcontract, in whole or in part when it is in the best interest of Contractor to do so. Upon receipt of twenty-four (24) hours written notice from Contractor, Subcontractor shall take all reasonable measures after consultation with Contractor to terminate or assign to Contractor all subcontracts, purchase orders or other commitments related to the Subcontract Work or the Project on terms and conditions acceptable to Contractor. Subcontractor will be paid for all reasonable costs of all Work and/or services performed and materials furnished under the Subcontract including reasonable overhead and profit for performed Work only. In no event will Subcontractor receive any payment or compensation whatsoever for interruption of business or any other items of consequential damage, for overhead or loss of profits on the unperformed work and/or services and unfurnished materials.

d. In the event of termination of the General Contract by the Owner, the Contractor may assign this Subcontract to the Owner, with the Owner's agreement, subject to the provisions of the General Contract and to the prior rights of the surety, if any, obligated under bonds relating to the General Contract.

**13. Indemnity Agreement. EXCEPT WITH RESPECT TO CLAIMS RELATING TO BODILY INJURY OR DEATH OF AN EMPLOYEE AS DEFINED IN THE PARAGRAPH BELOW, TO THE FULLEST EXTENT ALLOWED BY LAW, SUBCONTRACTOR AGREES TO AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS (COLLECTIVELY "INDEMNIFY") CONTRACTOR, ITS PARTNERS, MEMBERS, DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES, AND ANY PARTIES REQUIRED TO BE INDEMNIFIED BY CONTRACTOR UNDER THE CONTRACT (COLLECTIVELY THE "INDEMNIFIED PARTIES" OR INDIVIDUALLY AN "INDEMNIFIED PARTY") FROM AND AGAINST ANY AND ALL CLAIMS, LIENS, STOP PAYMENT NOTICES, LOSSES, DAMAGES, DEMANDS, INJURIES, JUDGMENTS, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING BUT NOT LIMITED TO ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY'S FEES (COLLECTIVELY "CLAIMS"), FOR ECONOMIC LOSS, AND FOR BODILY OR PERSONAL INJURIES, INCLUDING DEATH, TO ANY PERSON OR DAMAGES TO OR DESTRUCTION OF PROPERTY, INCLUDING THE LOSS OF USE THEREOF, ACTUALLY OR ALLEGEDLY OCCASIONED BY, CONTRIBUTED TO OR ARISING OUT OF, IN WHOLE OR IN PART, THE SUBCONTRACT WORK, THE SUBCONTRACT, OR ANY ACT OR OMISSION BY SUBCONTRACTOR, ITS EMPLOYEES, AGENTS OR ANY SUBCONTRACTOR OF SUBCONTRACTOR OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES, OR ANY OTHER PARTY FOR WHOSE ACTS SUBCONTRACTOR IS LIABLE. SUBCONTRACTOR'S OBLIGATION TO DEFEND AND INDEMNIFY SHALL APPLY EVEN IF SUCH CLAIMS ARE ACTUALLY OR ALLEGEDLY CAUSED IN PART BY THE STRICT LIABILITY, OR THE ACTS, OMISSIONS, OR NEGLIGENCE OF AN INDEMNIFIED PARTY, EVEN IF SUCH NEGLIGENCE OR OTHER ACTS OR OMISSIONS ARE ACTIVE OR PASSIVE, DIRECT OR INDIRECT, JOINT OR CONCURRENT, BUT SHALL NOT APPLY TO THE EXTENT A CLAIM IS CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF THE INDEMNIFIED PARTY, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNIFIED PARTY, OTHER THAN SUBCONTRACTOR OR ITS AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER.**

**INDEMNITY FOR EMPLOYEE CLAIMS: SUBCONTRACTOR AGREES TO AND, TO THE FULLEST EXTENT ALLOWED BY LAW, SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS (COLLECTIVELY "INDEMNIFY") CONTRACTOR, OWNER AND ANY OTHER PARTIES REQUIRED TO BE INDEMNIFIED BY CONTRACTOR UNDER THE CONTRACT AND THEIR REPRESENTATIVES, PARTNERS, MEMBERS, DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, INVITEES OR LICENSEES (COLLECTIVELY THE "INDEMNIFIED PARTIES" OR INDIVIDUALLY AN "INDEMNIFIED PARTY") FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEMANDS, INJURIES, JUDGMENTS, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING BUT NOT LIMITED TO ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY'S FEES (COLLECTIVELY "CLAIMS") , FOR BODILY INJURY OR DEATH OF ANY EMPLOYEE OF SUBCONTRACTOR, ITS AGENTS, OR ITS SUBCONTRACTORS OF ANY TIER (COLLECTIVELY "EMPLOYEE" FOR THE PURPOSE OF THIS SECTION), ACTUALLY OR ALLEGEDLY OCCASIONED BY, CONTRIBUTED TO OR ARISING OUT OF, IN WHOLE OR IN PART, THE SUBCONTRACT WORK OR THE SUBCONTRACT, INCLUDING BUT NOT LIMITED TO CLAIMS DUE TO NEGLIGENCE, GROSS NEGLIGENCE, BREACH OF WARRANTY, BREACH OF CONTRACT, VIOLATION OF ANY STATUTE, RULE OR REGULATION OR OTHER ACT OR OMISSION BY SUBCONTRACTOR, ITS EMPLOYEES, AGENTS OR ANY SUBCONTRACTOR OF SUBCONTRACTOR OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES, OR ANY OTHER PARTY FOR WHOSE ACTS SUBCONTRACTOR IS LIABLE. SUBCONTRACTOR'S OBLIGATION TO INDEMNIFY SHALL APPLY EVEN IF SUCH CLAIMS ARE ACTUALLY OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS, OR NEGLIGENCE OF AN INDEMNIFIED PARTY EVEN IF SUCH NEGLIGENCE OR OTHER ACTS OR OMISSIONS ARE ACTIVE OR PASSIVE, DIRECT OR INDIRECT, SOLE OR CONCURRENT. THIS INDEMNITY AGREEMENT IS INTENDED TO INDEMNIFY THE AFOREMENTIONED INDEMNIFIED PARTIES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, AS PROVIDED ABOVE.**

Subcontractor's obligation to Indemnify is in no way limited to or by the extent of insurance coverage otherwise required under this Subcontract and/or carried by Subcontractor.

Notwithstanding the foregoing or anything in the Subcontract to the contrary, nothing contained herein shall obligate Subcontractor to indemnify or hold harmless a registered architect, licensed engineer or an agent, servant, or employee of a registered architect or licensed engineer from liability for damage that : (1) is caused by or results from: (a) defects in plans, designs, or specifications prepared, approved, or used by the architect or engineer; or (b) negligence of the architect or engineer in the rendition or conduct of professional duties called for or arising out of the construction contract and the plans, designs, or specifications that are a part of the construction contract; and (2) arises from: (a) personal injury or death; (b) property injury; or (c) any other expense that arises from personal injury, death, or property injury.

14. Request for Information. All requests for information should be submitted in writing to the Project Superintendent at the job site or by email to the Project Manager at Contractor's main office, using Contractor's Subcontractor Request for Information form or by utilizing the Program.

15. Meetings. Subcontractor shall attend the pre-construction conference. Notice of time and place will be issued to Subcontractor. Subcontractor shall attend a weekly construction progress meeting scheduled by Contractor's job superintendent and any safety meetings scheduled by Contractor's job superintendent during the progress of the Subcontract Work or as requested by the job superintendent.

16. Cleanup. Subcontractor shall clean up and haul away all trash associated with its Work on a daily basis or as directed by the Contractor's superintendent. Subcontractor is responsible for cleaning public streets and walkways as necessary from debris or dirt caused by any portion of its Work under the Subcontract. Failure to properly clean-up will result in said cleanup being performed by others and the resulting cost being deducted from payment(s) then or thereafter due Subcontractor including a reasonable percentage of such costs to cover Contractor's supervision, insurance and overhead. Subcontractor shall keep its work area clean in a broom swept manner on a daily basis. All passageways throughout the Project must be left free of materials, debris, equipment, etc. during the course of construction. Failure to keep the Project in this condition will result in corrective action being taken by Contractor and back charges assessed against Subcontractor.

17. Submittals, Samples, and Shop Drawings

a. Subcontractor will promptly submit all shop drawings, product data, samples and other similar submittals. Submission of same will be an acknowledgement by the Subcontractor that he has determined and verified materials, field measurements and other field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Subcontract Work.

b. The Subcontractor shall furnish promptly all samples, lists, drawings, cuts, schedules, etc., required in connection with the Subcontract Work, but approval of same does not relieve Subcontractor of its responsibility of complying with the requirements of the Contract Documents. All transportation costs on samples and drawings furnished by the Subcontractor shall be paid by Subcontractor.

c. Subcontractor shall provide one reproducible and copies as requested of shop drawings (including copies needed for Subcontractor's operations) as required for the specified submittals. The product data must be bound in notebook form, if more than one product is submitted on. All submittals should be submitted for approval at the earliest possible date. The allowed review periods are as specified in the Contract Documents. All submittals must be approved as indicated in the Contract Documents. Reference is made to the section in the Contract Documents regarding the policies for substitutions of materials and equipment. If Subcontractor uses a non-approved material or equipment item in its bid or installs same in the Project, it does so at its own risk. The responsibility of supplying items that conform to the Contract Documents will be that of Subcontractor.

18. Materials. The Subcontractor shall route all equipment and materials to be used in the execution of this Subcontract as designated by the Contractor, provided the transportation costs are not increased by doing so. It is expressly agreed that the carrier so designated shall be the agent of the Subcontractor and not the agent of the Contractor. The Subcontractor shall effectively secure and protect its materials and Work and that of the Contractor and other subcontractors and shall bear and be liable for all loss and/or damage of any kind in connection therewith as a result of an act, an omission to act, faulty material or faulty workmanship on the part of Subcontractor.

19. Hoisting. If the Subcontractor makes use of the Contractor's hoisting facilities, Subcontractor shall pay for the service unless otherwise stated herein.

20. Equipment. The Subcontractor shall furnish all labor, tools, equipment, scaffolding required for the performance of the Subcontract Work.

21. Overtime. The Contractor shall pay no overtime to the Subcontractor unless specifically agreed to in writing by the Contractor before overtime work is incurred.

22. Non-Assignability

a. It is expressly understood and agreed that Subcontractor's responsibilities and obligations under the Subcontract are non-delegable personal services, that the Subcontractor shall not assign responsibility for performance nor subcontract the Subcontract or



any part thereof without first obtaining the written consent of Contractor.

b. Subcontractor may not assign or attempt to assign any funds accrued or to be accrued under the Subcontract without first obtaining the written consent of Contractor and no such assignment shall be binding on the Contractor unless or until accepted in writing by the Contractor.

c. Subcontractor acknowledges and agrees that the General Contract between Owner and Contractor for the construction of the Project may have been collaterally assigned to the Owner's Construction Lender for the Project ("Lender"). As an inducement to the Lender to disburse loan funds for the construction of the Project, Contractor and Subcontractor acknowledge and agree that the Contractor's rights under this Subcontract are hereby conditionally assigned to Owner, such assignment can become effective upon written notice from Owner to Subcontractor that the Contractor has defaulted under its agreement with the Owner. In such event, the assignment to the Owner shall become immediately effective and the Subcontractor shall recognize Owner, or its designee, as the "Contractor" under this Subcontract and shall complete the Subcontract Work pursuant to the terms of this Subcontract. This paragraph shall not, however, create any privity of contract between the Subcontractor and the Owner, unless and until the Owner provides the Subcontractor with written notice of its election to accept the foregoing conditional assignment of this Subcontract.

23. Inspection and Correction of Defective Work. Subcontractor shall provide sufficient and proper facilities at all times for the inspection of the Subcontract Work by Contractor, Architect/Engineer, Owner or their authorized representatives and shall, within two (2) working days after receiving notice to that effect, proceed to take down all portions of the Subcontract Work and remove from the grounds and buildings all material, whether worked or unworked, which Contractor, Architect/Engineer or Owner shall condemn as unsound or improper or as failing to conform in any way to the Contract Documents, and shall make good all work damaged or destroyed in removing or making good such condemned work. However, Subcontractor shall not remove any other material from the Project without Contractor's written permission. Subcontractor is responsible for obtaining any and all inspections required during the progress of all Work under this Subcontract in a timely manner. All Work shall be considered incomplete until all tests, inspections and acceptances have been completed and received, as applicable.

24. Warranty. All materials or equipment installed as part of the Subcontract Work shall be new and of first quality and free from defects. In addition to but not in limitation of any specific guarantees and/or warranties required by the Contract Documents, Subcontractor guarantees and/or warrants the work under this Subcontract against defects in material or workmanship for a period of one (1) year from the date of final acceptance of the Subcontract Work by the Owner. Subcontractor shall within a reasonable time after receipt of written notice thereof, make good any defect in materials or workmanship which may develop during said one (1) year period and any damage to other work caused by the repairing of such defects, at Subcontractor's own expense and without cost to Contractor. Nothing contained in this Paragraph 24 shall be construed to establish a period of limitation with respect to other obligations which the Subcontractor might have under this Subcontract or at law. Establishment of the time period of one (1) year as described in this Paragraph 24 relates only to the specific obligations of the Subcontractor to correct the Subcontract Work, and is not in derogation of or substitution for any other warranties or guaranties which exist under common law or by statute, all of which are in full force and effect.

25. Patents. Subcontractor shall pay all royalties and license fees arising out of the performance of the Subcontract Work. Subcontractor shall indemnify, defend and hold harmless Contractor and Owner from all suits or claims for infringement of any patent rights arising out of the performance of the Subcontract Work.

26. Arbitration

a. All claims, disputes and other matters in question arising out of or relating to the Subcontract Work, the Project or the Subcontract, or the breach thereof, may, at Contractor's sole option, be decided by litigation or arbitration. If Contractor selects arbitration, it shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. Further, Subcontractor agrees that in the event Owner and Contractor are involved in an arbitration or litigation arising out of or relating to the Contract Documents which pertain whole or in part to Work performed by Subcontractor, Subcontractor shall, by consolidation or joinder, join in the said proceeding and any such claims, disputes or other matters shall then be determined in the consolidated proceeding.

b. This agreement to arbitrate shall be specifically enforceable. Any litigation or arbitration proceeding between Contractor and Subcontractor shall, at Contractor's option, be held in Harris County, Texas or the county where the applicable Project is located.

c. The award rendered by the arbitrator(s) shall be final and conclusive, and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof.

27. Governing Law and Venue. The Subcontract shall be governed by the laws of the State of Texas and will be considered performable in Harris County, Texas for venue purposes. Further, the Subcontractor and Contractor stipulate that venue for any legal proceeding involving or touching upon the Subcontract shall lie in Harris County, Texas.

28. Attorney's Fees. The prevailing party in any lawsuit or arbitration relating to this Subcontract shall be entitled to recover its reasonable attorney's fees and costs. Subcontractor shall reimburse Contractor for Subcontractor's proportionate share of the costs incurred by Contractor to recover, or attempt to recover, from Owner payment for Subcontractor's work or payment for any claims asserted by Subcontractor

against Contractor and passed through to the Owner by Contractor. Subcontractor agrees that such costs may be offset against payments otherwise due Subcontractor under this Subcontract, or any other agreement between the Parties. Nothing herein shall require Contractor to institute such proceedings and Subcontractor does not require Contractor to obtain Subcontractor's consent to any settlement with Owner, in the event Contractor elects to institute proceedings against Owner.

29. Closeout. Final payment is further subject to the Contractor's prior receipt from the Subcontractor of all as-built drawings, certifications, maintenance manuals, operating instructions, written guarantees and warranties and bonds relating to the Subcontract Work, a waiver and release on final payment and an affidavit certifying Subcontractor's payment in full for all items relating to the Subcontract Work in the form incorporated herein by reference as stated in paragraph 35, below.

30. Punchlist. From time to time, Contractor shall communicate to Subcontractor that it is preparing for substantial completion of all or portions of the Subcontract Work. The Contractor's Superintendent will walk the Project with Subcontractor's leadman/representative to inspect all of Subcontractor's work. The Contractor will make a pre-substantial completion punch list and items thereon shall be corrected by Subcontractor within five working days unless other agreements in writing are made. After the Architect/Engineer's punch list is issued, any remaining items must be corrected within the time required by Contractor but in no event later than seven (7) calendar days unless other agreements are made with Contractor in writing. Failure to take immediate action on finishing all punch list items shall constitute an Act of Default under the Subcontract and entitle Contractor to correct or complete those punch list items and deduct the cost thereof from sums then or thereafter due Subcontractor.

31. Headings. The headings of the paragraphs are included solely for the convenience of reference and if there is any conflict between such headings and text of the Subcontract, the Subcontract shall control.

32. Non-Waiver. The waiver of any breach hereof shall not constitute a waiver of any subsequent breach of the same or any other provision hereof. Failure by the Contractor in any instance to insist upon observance or performance by Subcontractor will not be deemed a waiver by Contractor of any such observance or performance. No waiver will be binding upon Contractor unless in writing and will then be for the particular instance only. Payment of any sum by Contractor to Subcontractor with knowledge of any breach will not be deemed to be a waiver of any such breach or any other breach.

33. Entire Agreement. The Subcontract, including the Contract Documents, insofar as they relate in any part or any way to the Subcontract Work undertaken therein, constitute the entire agreement between the parties hereto, and it is expressly understood and agreed that there are no agreements, understandings or promises by and between said parties, except as aforesaid, and that any additions thereto or changes shall be in writing.

34. Severability. The provisions of this Subcontract shall be applied and interpreted in a manner consistent with each other so as to carry out the purposes and intent of the parties, but if for any reason any provision is unenforceable or invalid, such provisions shall be deemed severed from this Subcontract and the remaining provisions shall be carried out with the same force and effect as if the severed provision had not been part of this Subcontract.

35. Lien Free Project. Provided Subcontractor is paid in accordance with this Subcontract and Owner has paid Contractor in accordance with their agreement, Subcontractor shall indemnify, defend and save harmless Contractor and Owner of and from any and all stop payment notices and from any and all laborers, materialmen and mechanics liens upon the property and premises upon which the Subcontract Work is being performed that arise out of the Subcontract Work, and shall keep such property free and clear of all liens, claims, and encumbrances arising out of the performance of the Subcontract. If Subcontractor fails to do so, Contractor may, at its discretion, cure such stop payment notice or lien or satisfy such demand, and/or deduct from sums then or thereafter due Subcontractor such amounts as Contractor may deem appropriate to indemnify Contractor and Owner from such stop payment notices and/or liens, claims and encumbrances. Subcontractor shall acquire no materials, supplies, or equipment to be furnished under this Subcontract subject to any security interest or conditional sale or other agreement or interest therein is retained by or granted to the seller or supplier of such materials, supplies, or equipment.

36. Storage. The Subcontractor shall provide at its own expense whatever storage, sheds, workshops and offices are necessary for the performance of this Subcontract, and shall remove same and thoroughly clean the premises upon the completion of its Work.

37. Maintenance of Records; Audit. Subcontractor shall keep and maintain full and detailed records and accounts of all materials, equipment and labor furnished, delivered, fabricated, used, consumed and/or incorporated into the Subcontract Work. Contractor shall be given complete and convenient access to all of Subcontractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar documents and data relating to the Subcontract and the Subcontract Work. Subcontractor shall maintain and preserve all such records and documents for a period of three years after final payment hereunder and shall make such records and documents available to Contractor at any time within this three year period.

38. Labor Harmony. Subcontractor recognizes that it is imperative that work on the General Contract between Contractor and Owner proceed uninterrupted and that any strike, picketing, slowdown, work stoppage or refusal to work, involving any of the work under this Subcontract, would result in irreparable damage to Contractor. Accordingly, Subcontractor agrees that in the event any dispute arises which results in any picketing, strikes, slowdowns, work stoppages or a refusal to work by employees of Subcontractor, it shall, at its cost and for its account, take any and all steps and actions, specifically including those recommended by Contractor, for the purpose of proceeding with the work of Subcontractor under this Subcontract. If Subcontractor fails to take any and all steps or actions, including those recommended by Contractor, for the purpose of proceeding

with the work of Subcontractor, such conduct by Subcontractor shall constitute an Act of Default and a breach of this Subcontract and Contractor shall have the right to terminate the portion of this Subcontract remaining unperformed, and to relet such Work without competitive bid, or otherwise secure completion of the unperformed portions of this Subcontract at Contractor's option and at Subcontractor's expense, and Subcontractor shall be liable to Contractor for any costs and expenses which Contractor incurs in so re-letting or otherwise securing completion of this Subcontract.

Neither Subcontractor nor any of its subcontractors shall employ persons on any Project whose employment on such Project is objected to by Contractor or Owner.

39. Time of Completion. Completion of the Subcontract Work and its several parts is of the essence of this Subcontract. Therefore, Subcontractor agrees: (1) to provide at the Project site the materials, equipment, labor, and supervision necessary to begin the Subcontract Work upon Contractor's order to do so, (2) to perform the Subcontract Work and all parts thereof promptly, diligently, and in such order and sequence as Contractor may direct to assure the efficient, expeditious and timely prosecution of the entire work under the General Contract; and (3) to furnish sufficient forces, supervision, equipment, and materials, at such times and for such periods, as will result in progress according to the approved progress schedule of Contractor or any modification thereof. Contractor reserves the right to modify any such progress schedule with respect to the required sequence or duration of the Subcontract Work or any portion thereof, and Contractor makes no representation that Subcontractor will be able to commence, prosecute, or complete the Subcontract Work in accordance with any progress schedule. Subcontractor shall furnish any information requested by Contractor required for scheduling, monitoring, or expediting the Subcontract Work. Subcontractor shall keep itself fully apprised of the status of the work under the General Contract at all times and any failure to do so shall not form the basis for a claim by Subcontractor against Contractor. Subcontractor shall promptly cause all subordinate contracts and purchase orders to be executed and performed; shall immediately notify Contractor of any inability of the subordinate contractors and material suppliers to meet requirements of the Project schedule; and, when required by Contractor, shall submit the names of subordinate contractors and material suppliers for approval and comment. Subcontractor shall furnish to Contractor all necessary information required for expediting and monitoring such activity and shall provide Contractor access to its subordinate contractors and material suppliers for the purpose of verifying or expediting their performance and, if the Subcontract Work is, or will likely be, delayed by their non-performance or delay, Subcontractor shall reimburse Contractor for any expenses required to secure or remedy their performance. If, in the opinion of Contractor, Subcontractor is not complying with the production schedule or will not meet a completion date or complete a milestone within the time period specified by Contractor, Contractor may require Subcontractor to provide additional manpower, work overtime, expedite materials or otherwise expedite Subcontractor's performance under this Subcontract in order to meet the applicable deadline, and Subcontractor shall take the necessary steps to so comply, all without increase in the Subcontract Sum.

40. Damage to Work of Others. Subcontractor shall perform all Work covered under this Subcontract without any damage to other crafts' work. Subcontractor shall be responsible for any damage to other crafts' work.

41. Coordination with Others. Subcontractor has reviewed, or will review, all plans and drawings related to the applicable Project and agrees to coordinate its craft with all other crafts working on such Project. Any conflicts between crafts will be corrected, at the Contractor's discretion, by the Subcontractor, at no additional cost to the Contractor.

42. Drug-Free Workplace. No alcoholic beverages, non-prescription drugs, or unsafe practices will be allowed on the job site. Subcontractor shall dismiss anyone participating in any of the above from the job site for the duration of the Project. Only prescription drugs properly used with a doctor's authorization to perform construction activities will be allowed on the job site. Violation of this provision is an Act of Default under the Subcontract. If Subcontractor and/or Subcontractor's employees are insured under any workers' compensation insurance policy held by Contractor, or any of its affiliates, both Subcontractor and Subcontractor's employees are subject to random drug and alcohol testing at any time. The use, possession, sale, transfer, purchase, or being under the influence of alcohol, drugs, or any other illegal or unlawful substance by Subcontractor or Subcontractor's employees at any time at the job site or while on company business is prohibited.

43. Independent Contractor. It is expressly agreed and understood that Subcontractor shall perform all Work and services hereunder as an independent contractor and not as an employee, agent, partner or in any other representative capacity of Contractor. Contractor shall have no power, or authority to direct, supervise or control Subcontractor with respect to the means, manner, or method of performance of the Subcontract Work. Subcontractor, in the exercise of its independent status, shall select the means, manner, and method of performance hereunder provided, however, that the Subcontract Work shall be performed in strict accordance with the Contract Documents.

44. Subordination of Liens. Subcontractor agrees to subordinate and does hereby subordinate any and all mechanics and materialman's lien rights which Subcontractor may have under this Subcontract and the lien laws or constitution of any state in which the Subcontract Work is being performed to any lien or mortgage heretofore or hereafter granted to secure any construction loan and/or permanent loan and any renewals, extensions, or modifications thereof if requested of Contractor, by Owner. Subcontractor shall furnish such statements, agreements, and certificates as construction and/or permanent Lender of Owner may require.

45. Contractor's Default. In the event Subcontractor deems Contractor in default under this Subcontract, before exercising any remedy, Subcontractor shall provide Contractor written notice specifying the alleged default and the steps necessary to cure same and Contractor shall have twenty (20) days after receipt of such notice to cure such alleged default or cause it to be cured if Contractor elects to do so.

46. Acceptance of Defective/Non-Conforming Work. Subcontractor acknowledges that the Contractor and Owner have the authority to accept defective or non-conforming Work in lieu of requiring its removal and correction, in which case a deductive change order shall be issued

by Contractor to reflect an appropriate and equitable reduction in the Subcontract Sum.

47. Immigration. Subcontractor agrees that it has (i) complied, and shall at all times during the term of the Subcontract comply, in all respects with all applicable federal, state, and local immigration laws, ordinances, and regulations, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, (ii) has properly maintained, and shall at all times during the term of this Subcontract properly maintain, all records required by the United States Citizenship and Immigration Services (the "USCIS"), including, without limitation, the completion and maintenance of the Form I-9 for each Subcontractor's employees, and (iii) has responded, and shall at all times during the term of the Subcontract respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the Subcontract, Subcontractor shall, and shall cause its directors, officers, managers, agents and employees and sub-subcontractors to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by the USCIS of Subcontractor or any of its employees. Subcontractor shall immediately notify Contractor's authorized representative of any unscheduled inspections, raids, investigations, inquiries, visits or audits conducted by the USCIS or any other governmental agency or authority related to environmental, immigration, or employee safety issues of Subcontractor, its agents, employees or sub-subcontractors. Subcontractor certifies that during the term of the Subcontract that an audit of the I-9 Forms for its employees will be conducted and that it will promptly correct any deficiencies identified during the audit.

48. Design Responsibilities of Subcontractor (applicable if Subcontractor is providing design services). Contractor and Subcontractor acknowledge that the design services performed by Subcontractor hereunder relate to a part of the overall design of the Project and the importance of having Subcontractor's design integrated into the Project's overall design concept. The parties commit to working with each other, and with the engineer/architect responsible for coordinating the overall project design ("Architect/Engineer"), to facilitate the coordination and integration of Subcontractor's design services and Work with the overall design concept and Construction Documents.

Subcontractor shall, consistent with applicable state licensing laws, applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project, the practices involved in the Project or any portion of the Subcontract Work, or any agency that produces standards required to be met under the Contract Documents, provide the engineering and other design professional services required to perform the Subcontract Work as may be set forth in any Work Order. Subcontractor agrees that such services shall be provided through qualified, licensed design professionals who are either (i) employed by Subcontractor or (ii) procured by Subcontractor from qualified, licensed design consultants. Subcontractor shall **INDEMNIFY, DEFEND AND HOLD** Contractor **HARMLESS** of and from any and all damages, loss and liability incurred by Contractor as a result of Subcontractor's failure to comply with this Article. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Subcontract, this indemnify, defend and hold harmless provision shall not apply to the extent that it requires Subcontractor to indemnify, defend or hold harmless Contractor against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of Contractor, its agent or employee, or any third party under the control or supervision of Contractor, other than Subcontractor or its agent, employee or subcontractor of any tier.

Subcontractor shall assist Contractor regarding the selection of building systems, materials, and equipment, as well as cost, schedule, and construction feasibility assistance, for the Subcontract Work. Such assistance shall include providing advice relative to, among other things, labor availability, construction costs, procurement strategies (including scheduling the procurement of items with long-lead times) related to the requirements set forth in the Contract Documents for the Subcontract Work.

Subcontractor shall submit to Contractor all interim design submissions and revisions for the Subcontract Work as required by the Contract Documents or as Contractor may request. Such design submissions shall be in the form and quantity called for in the Contract Documents or required by the Architect/Engineer and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. The submissions shall also show the relationship of the Subcontract Work to the overall Project design. Contractor and Subcontractor agree that prior to the scheduled date for submitting all design submissions to Owner, Contractor, Subcontractor and Architect/Engineer will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Contractor's budget and pricing assumptions.

In accordance with the Contract Documents, Subcontractor shall submit to Contractor Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Subcontract Work, and showing the relationship of the Subcontract Work to the overall Project. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. Subcontractor shall provide the Construction Documents in the form and quantity called for in the Subcontract Documents or required by Architect/Engineer. Subcontractor shall perform agreed upon revisions and submit revised Construction Documents to Contractor for Contractor's and Owner's approval.

Contractor's and Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents for the Subcontract Work compatible with the requirements of the Contract Documents. The review and/or approval by either Contractor or Owner of any interim design submission or the Construction Documents shall not be deemed to transfer any design liability from Subcontractor to Contractor or Owner.

Subcontractor will, at its own cost, revise any interim design submission or Construction Document it has provided to correct any errors, mistakes or omissions. Such revisions shall be performed timely and so as not to jeopardize the Project Schedule.

All drawings, specifications and other documents and electronic data furnished by Subcontractor to Contractor under this Agreement ("Work Product") are deemed to be instruments of service and Subcontractor shall retain ownership and property interests therein provided, however, that Subcontractor hereby grants Contractor an irrevocable license to use and take possession of the Work Product in connection with any applicable Project, even if Subcontractor does not complete the Subcontract Work for any reason.

Subcontractor is aware that there could be a limited license to use the Work Product in the Agreement between Owner and Contractor which may be granted to Owner therein. Subcontractor accepts and agrees to Owner's rights with respect to the Work Product contained in the Prime Contract.

49. If the project at issue is subject to the Chapter 59 Texas Business & Commerce Code, Subcontractor waives any and all claims for relief for design defects except to the extent the Subcontractor complies with 59.051(b)

50. Licensing. Subcontractor represents and warrants that it is properly licensed to perform the Subcontract Work under the laws of the state in which applicable Work is to be performed, and will remain so throughout the course of all such Work; and will ensure that all of its subordinate contractors are properly licensed throughout performance of the Subcontract Work.

**AGREED AND ACKNOWLEDGED:**

Subcontractor: \_\_\_\_\_

By: \_\_\_\_\_

Name/Title: \_\_\_\_\_

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

Contractor: **Butler-Cohen LLC**

By: \_\_\_\_\_

Name/Title: **Sean Butler/Authorized Agent**

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