

**MASTER SERVICE AGREEMENT
(Subcontractor)**



ARTICLE 1

1.1 AGREEMENT

This **Master Service Agreement** (“**Agreement**”) is made this _____ day of _____, in the year _____, by and between:

CONTRACTOR

Name:	All-In Construction Services, LLC
Attn:	Margie Wendzel
Address:	275 Hunt Park Cove, Longwood, FL 32750
Phone:	407-260-0018
Facsimile:	321-256-5050

and the **SUBCONTRACTOR**

Name:	
Attn:	
Address:	
Phone:	
Facsimile:	
FEIN:	

This Agreement is a written understanding between Contractor and Subcontractor containing contract clauses applying to future subcontracts between Contractor and Subcontractor for the furnishing of construction and construction related services (“**Subcontract**”). The capitalized terms not defined in this Agreement have their definition ascribed to them in the Subcontract(s). A separate Subcontract will be entered into for each Project. The approved form of Subcontract is attached hereto as **Exhibit “A”**. Hereinafter, all future Subcontracts incorporate

Initials of Contractor _____

Initials of Subcontractor _____

the terms and conditions stated in this Agreement.

1.2 TERM The term of this Agreement shall commence on the Effective Date and shall continue for a period of two (2) years. The term shall automatically renew for successive one-year periods unless terminated earlier by either party pursuant to the terms herein. Either party may terminate this Agreement for convenience by providing at least 30 days' prior written notice to the other party. Notwithstanding anything in the foregoing to the contrary, neither party may terminate this Agreement with respect to Subcontract Work that it has previously agreed in writing to perform by executing a Subcontract.

ARTICLE 2

SCOPE OF WORK

2.1 SUBCONTRACT WORK The Contractor contracts with the Subcontractor as an independent contractor to provide all labor, materials, equipment and services necessary or incidental to complete the work described in a Subcontract in accordance with, and reasonably inferable from, that which is indicated in the Subcontract Documents, and consistent with the Project Schedule, as may change from time to time (“**Subcontract Work**”). The Subcontractor shall perform the Subcontract Work under the general direction of the Contractor and in accordance with the Subcontract Documents.

In the event that all or any portion of the Subcontractor's proposal or form agreement is attached to a Subcontract, the parties acknowledge and agree that such item is attached thereto solely to set forth the scope of work, compensation to be paid and/or expenses to be reimbursed to Subcontractor, and/or performance schedule (although if there is any conflict between such terms and those set forth in this Agreement, the terms in this Agreement shall govern and control), and no other terms, provisions or conditions of such attached proposal or Subcontractor's form agreement shall have any force or effect whatsoever.

2.2 CONTRACTOR'S WORK The Contractor's work is the construction and services required of the Contractor to fulfill its obligations pursuant to its agreement with the Owner (the “**Work**”). The Subcontract Work is a portion of the Work.

2.3 SUBCONTRACT DOCUMENTS The Subcontract Documents include this Agreement, the Owner-Contractor agreement (sometimes referred to as a prime contract), special conditions, general conditions, specifications, drawings, addenda, Subcontract change orders, amendments and any pending and exercised alternates, which may be more specifically identified in each Subcontract. The Contractor will make available to the Subcontractor, prior to the execution of the Subcontract Agreement, copies of the Subcontract Documents to which the Subcontractor will be bound. The Subcontractor similarly shall make copies of applicable portions of the Subcontract Documents available to its proposed subcontractors and suppliers. Nothing shall prohibit the Subcontractor from obtaining copies of the Subcontract Documents from the Contractor at any time after a Subcontract is executed.

2.4 CONFLICTS In the event of a conflict between this Agreement and the Subcontract Documents, this Agreement shall govern.

2.5 EXTENT OF AGREEMENT Nothing in this Agreement shall be construed to create a contractual relationship between persons or entities other than the Contractor and Subcontractor. This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

2.6 TIME Unless otherwise indicated, the term “**Day**” or “**day**” shall mean calendar day.

Initials of Contractor _____

Initials of Subcontractor _____

ARTICLE 3

SUBCONTRACTOR'S RESPONSIBILITIES

3.1 OBLIGATIONS The Contractor and Subcontractor are hereby mutually bound by the terms of this Subcontract. To the extent the terms of the prime contract between the Owner and Contractor apply to the work of the Subcontractor, then the Contractor hereby assumes toward the Subcontractor all the obligations, rights, duties, and redress that the Owner under the prime contract assumes toward the Contractor. In an identical way, the Subcontractor hereby assumes toward the Contractor all the same obligations, rights, duties, and redress that the Contractor assumes toward the Owner and Architect under the prime contract. In the event of an inconsistency among the documents, the specific terms of this Agreement shall govern.

3.2 RESPONSIBILITIES The Subcontractor agrees to furnish its best skill and judgment in the performance of the Subcontract Work and to cooperate with the Contractor so that the Contractor may fulfill its obligations to the Owner. The Subcontractor shall furnish all of the labor, materials, equipment, and services, including but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of the Subcontract Work.

3.3 INCONSISTENCIES, OMISSIONS AND WORK OF OTHERS

3.3.1 The Subcontractor shall make a careful analysis and comparison of the drawings, specifications, other Subcontract Documents and information furnished by the Owner relative to the Subcontract Work. Such analysis and comparison shall be solely for the purpose of facilitating the Subcontract Work and neither for the discovery of errors, inconsistencies or omissions in the Subcontract Documents nor for ascertaining if the Subcontract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules or regulations. Should the Subcontractor discover any errors, inconsistencies or omissions in the Subcontract Documents, the Subcontractor shall report such discoveries to the Contractor in writing within three (3) days. Upon receipt of notice, the Contractor shall instruct the Subcontractor as to the measures to be taken and the Subcontractor shall comply with the Contractor's instructions. If the Subcontractor performs work knowing it to be contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations without notice to the Contractor and advance approval by appropriate authorities, including the Contractor, the Subcontractor shall assume appropriate responsibility for such work and shall bear all associated costs, charges, fees and expenses necessarily incurred to remedy the violation. Nothing in this Paragraph 3.3 shall relieve the Subcontractor of responsibility for its own errors, inconsistencies and omissions.

3.3.2 Subcontractor shall cooperate with all other contractors engaged on the Project to ensure their work is not impeded. Subcontractor shall in no way impede access by other contractors to applicable areas of the Project necessary to perform their work. Subcontractor shall be responsible for inspecting the work and materials of others that may affect the Subcontract Work, including inspecting for defects. Upon discovery of any defect in the work or materials of others, and prior to commencing the Subcontract Work, Subcontractor shall first report any defect in writing to Contractor. As to any work of others covered over, or integrated with, Subcontractor shall be deemed to have accepted such work as correct and sufficient to accommodate and warrant the Subcontract Work.

3.4 SITE VISITATION Prior to performing any portion of the Subcontract Work, the Subcontractor shall conduct a visual inspection of the Project site to become generally familiar with local conditions and to correlate site observations with the Subcontract Documents. If the Subcontractor discovers any discrepancies between its site observations and the Subcontract Documents, such discrepancies shall be promptly reported in writing to the Contractor. Subcontractor's continuation of the Subcontract Work without written objection is a continuing acknowledgement the site is safe as well as ready for such performance of the Subcontract Work.

Initials of Contractor _____

Initials of Subcontractor _____

3.5 INCREASED COSTS AND/OR TIME The Subcontractor may assert a Claim as provided in Article 7 if Contractor's clarifications or instructions in responses to requests for information are believed to require additional time or cost. If the Subcontractor fails to perform the reviews and comparisons required in Paragraphs 3.3 and 3.4, above, to the extent the Contractor is held liable to the Owner because of the Subcontractor's failure, the Subcontractor shall pay the costs and damages to the Contractor that would have been avoided if the Subcontractor had performed those obligations.

3.6 COMMUNICATIONS Unless otherwise provided in the Subcontract Documents and except for emergencies, Subcontractor shall direct all communications related to the Project to the Contractor.

3.7 SUBMITTALS

3.7.1 The Subcontractor promptly shall submit for approval to the Contractor all shop drawings, samples, product data, manufacturers' literature and similar submittals required by the Subcontract Documents. The Subcontractor shall be responsible to the Contractor for the accuracy and conformity of its submittals to the Subcontract Documents. The Subcontractor shall prepare and deliver its submittals to the Contractor in a manner consistent with the Project Schedule and in such time and sequence so as not to delay the Contractor or others in the performance of the Work. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Subcontract Documents unless express written approval is obtained from the Contractor and Owner authorizing such deviation, substitution or change. In the event that the Subcontract Documents do not contain submittal requirements pertaining to the Subcontract Work, the Subcontractor agrees upon request to submit in a timely fashion to the Contractor for approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Contractor, Owner or Architect.

3.7.2 The Contractor, Owner, and Architect are entitled to rely upon the adequacy, accuracy and completeness of any professional certifications required by the Subcontract Documents concerning the performance criteria of systems, equipment or materials, including all relevant calculations and any governing performance requirements.

3.8 DESIGN DELEGATION

3.8.1 If the Subcontract Documents specifically require the Subcontractor to provide design services, the Subcontractor shall provide those design services necessary to satisfactorily complete the Subcontract Work. Design services provided by the Subcontractor shall be procured from licensed design professionals retained by the Subcontractor as permitted by the law of the place where the Project is located (the "**Designer**"). The Designer's signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by the Designer. Shop Drawings and other submittals related to the Subcontract Work designed or certified by the Designer, if prepared by others, shall bear the Subcontractor's and the Designer's written approvals when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by the Designer.

3.8.2 If the Designer is an independent professional, the design services shall be procured pursuant to a separate agreement between the Subcontractor and the Designer. The Subcontractor Designer agreement shall not provide for any limitation of liability or exclusion from participation in the multiparty proceedings requirement of Paragraph 11.4. The Subcontractor shall notify the Contractor in writing if it intends to change the Designer. The Subcontractor shall be responsible for conformance of the design with the design concept expressed in the Subcontract Documents.

Initials of Contractor _____

Initials of Subcontractor _____

3.8.3 The Subcontractor shall not be required to provide design services in violation of any applicable law.

3.9 LIENS Subcontractor shall pay when due, all liens and claims for labor and/or materials furnished to the Project involving the Subcontractor or the Subcontract Work (“**Liens**”). Subcontractor will, within five (5) days after written notice from Contractor or after Subcontractor otherwise becomes aware of such Liens, terminate the effect of any Liens by filing or recording an appropriate release or bond. If Contractor requests Subcontractor to file and obtain such release or other bond and Subcontractor fails to do so within five (five) days of such request, Contractor may obtain such bond on Subcontractor’s behalf and deduct the cost thereof and all attorneys’ fees and costs related thereto from any such amounts due Subcontractor. If such fees and costs result in a deficiency, Subcontractor shall be fully responsible for the deficiency, together with damages and costs, including without limitation court costs and attorneys’ fees incurred by Contractor, and interest shall accrue on the aggregate amount at the rate of fifteen percent (15%) per annum until Contractor is reimbursed for all such amounts and interest thereon.

3.10 COORDINATION The Subcontractor shall:

- .1 cooperate with the Contractor and all others whose work may interface with the Subcontract Work;
- .2 specifically note and immediately advise the Contractor of any such interface with the Subcontract Work; and
- .3 participate in the preparation of coordination drawings and work schedules in areas of congestion.

3.11 SUBCONTRACTOR’S REPRESENTATIVE The Subcontractor shall designate a person, subject to Contractor's approval, who shall be the Subcontractor's authorized representative. This representative shall be the only person to whom the Contractor shall issue instructions, orders or directions, except in an emergency. The Subcontractor's representative will be set forth in each Subcontract.

3.12 TESTS AND INSPECTIONS The Subcontractor shall schedule all required tests, approvals and inspections of the Subcontract Work at appropriate times so as not to delay the progress of the work. The Subcontractor shall give proper written notice to all required parties of such tests, approvals and inspections. The Subcontractor shall bear all expenses associated with tests, inspections and approvals required of the Subcontractor by the Subcontract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity approved by the Contractor and Owner. Required certificates of testing, approval or inspection shall, unless otherwise required by the Subcontract Documents, be secured by the Subcontractor and promptly delivered to the Contractor.

3.13 CLEANUP

3.13.1 The Subcontractor shall at all times during its performance of the Subcontract Work keep the work site clean and free from debris resulting from the Subcontract Work. Prior to discontinuing the Subcontract Work in an area, the Subcontractor shall clean the area and remove all its rubbish and its construction equipment, tools, machinery, waste and surplus materials. Subcontractor shall make provisions to minimize and confine dust and debris resulting from its construction activities. The Subcontractor shall not be held responsible for unclean conditions caused by others.

3.13.2 If the Subcontractor fails to commence compliance with cleanup duties within forty-eight (48) hours after notification from the Contractor of non-compliance, the Contractor may implement appropriate

Initials of Contractor _____

Initials of Subcontractor _____

cleanup measures without further notice and the cost thereof shall be deducted from any amounts due or to become due to the Subcontractor.

3.14 SAFETY

3.14.1 The Subcontractor is required to perform the Subcontract Work in a safe and reasonable manner. The Subcontractor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

- .1** employees and other persons at the site;
- .2** materials and equipment stored at the site or at offsite locations for use in performance of the Work; and
- .3** all property and structures located at the site and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

3.14.2 The Subcontractor shall give all required notices and comply with all applicable rules, regulations, orders and other lawful requirements established to prevent injury, loss or damage to persons or property.

3.14.3 The Subcontractor shall implement appropriate safety measures pertaining to the Subcontract Work and the Project, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers, and establishing proper notice procedures to protect persons and property at the site and adjacent to the site from injury, loss or damage.

3.14.4 The Subcontractor shall exercise extreme care in carrying out any of the Subcontractor Work which involves explosive or other dangerous methods of construction or hazardous procedures, materials or equipment. The Subcontractor shall use properly qualified individuals or entities to carry out the Subcontract Work in a safe and reasonable manner so as to reduce the risk of bodily injury or property damage.

3.14.5 Damage or loss not insured under property insurance which may arise from the performance of the Subcontract Work, to the extent of the negligence attributed to such acts or omissions of the Subcontractor, or anyone for whose acts the Subcontractor may be liable, shall be promptly remedied by the Subcontractor.

3.14.6 The Subcontractor is required to designate an individual at the site in the employ of the Subcontractor who shall act as the Subcontractor's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Subcontractor in writing to the Contractor, the designated safety representative shall be the Subcontractor's project superintendent.

3.14.7 The Subcontractor has an affirmative duty not to overload the structures or conditions at the Project site and shall take reasonable steps not to load any part of the structures or site so as to give rise to an unsafe condition or create an unreasonable risk of bodily injury or property damage. The Subcontractor shall have the right to request, in writing, from the Contractor loading information concerning the structures at the site.

3.14.8 The Subcontractor shall give prompt written notice to the Contractor of any accident involving bodily injury requiring a physician's care, any property damage exceeding Five Hundred Dollars (\$500.00) in value, or any failure that could have resulted in serious bodily injury, whether or not such an injury was sustained.

3.14.9 Prevention of accidents at the site is the responsibility of the Contractor, Subcontractor, and all other subcontractors, persons and entities at the site. Establishment of a safety program by the Contractor shall not

Initials of Contractor _____

Initials of Subcontractor _____

relieve the Subcontractor or other parties of their safety responsibilities. The Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by the Contractor and Owner, including, but not limited to, requirements imposed by the Subcontract Documents. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility therefor. The Subcontractor shall notify the Contractor immediately following an accident and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by the Contractor.

3.15 PROTECTION OF THE WORK The Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of others from damage caused by the Subcontractor's operations and/or weather. Should the Subcontractor cause damage to the Work, the Subcontract Work, the work of others or property of the Owner, the Contractor or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor, or the Contractor may remedy the damage and deduct its cost from any amounts due or to become due the Subcontractor.

3.16 PERMITS, FEES, LICENSES AND TAXES The Subcontractor shall give timely notices to authorities pertaining to the Subcontract Work, and shall be responsible for all permits, fees, licenses, assessments, inspections, testing and taxes necessary to complete the Subcontract Work in accordance with the Subcontract Documents.

3.17 ASSIGNMENT OF SUBCONTRACT WORK The Subcontractor shall not assign the whole nor any part of the Subcontract Work without prior written approval of the Contractor.

3.18 HAZARDOUS MATERIALS To the extent that the Contractor has rights or obligations under the Owner-Contractor agreement or by law regarding hazardous materials as defined by the Subcontract Document within the scope of the Subcontract Work, the Subcontractor shall have the same rights or obligations.

3.19 MATERIAL SAFETY DATA (MSD) SHEETS When applicable, the Subcontractor shall submit to the Contractor all Material Safety Data Sheets required by law for materials or substances necessary for the performance of the Subcontract Work. MSD sheets obtained by the Contractor from other subcontractors or sources shall be made available to the Subcontractor by the Contractor upon request.

3.20 LAYOUT RESPONSIBILITY AND LEVELS When the Subcontract Work requires, the Contractor will establish principal axis lines of the building and site and/or benchmarks. The Subcontractor shall layout and be strictly responsible for the accuracy of the Subcontract Work and for any loss or damage to the Contractor or others by reason of the Subcontractor's failure to lay out or perform Subcontract Work correctly. The Subcontractor shall exercise prudence so that the actual final conditions and details shall result in alignment of finish surfaces.

3.21 WARRANTIES

3.21.1 The Subcontractor warrants that all materials and equipment furnished under this Agreement shall be new, unless otherwise specified, of good quality, in conformance with the Subcontract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of Substantial Completion of the Work or a designated portion. Substantial Completion of the Subcontract Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Subcontract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use of which it is intended.

3.21.2 Warranty Period All Subcontract Work not in conformity with the Subcontract Documents may be deemed "**Defective Work**" by Contractor in its sole discretion. Subcontractor warrants that all labor and

Initials of Contractor _____

Initials of Subcontractor _____

materials furnished by Subcontractor shall be free from defects from the date of completion of the Subcontract Work until the expiration of any warranties the Laws (defined herein at §3.29) and/or the prime contract require Contractor to provide.

3.21.3 Call Back Responsibility Subcontractor shall correct Defective Work (“**Corrective Work**”) promptly upon receipt of notice from Contractor (“**Notice of Defect**”). Subcontractor shall commence Corrective Work not later than three (3) business days after receipt of the Notice of Defect, except emergency, in which case Subcontractor shall commence the Corrective Work within twenty-four (24) hours after receipt of the Notice of Defect, and Subcontractor shall diligently and continuously complete Corrective Work to the reasonable satisfaction of Contractor. Subcontractor shall be solely responsible for the entire cost of Corrective Work, including costs incurred as a result of any disturbance of work or materials of other contractors.

3.21.4 Failure to Correct Defective Work Should Subcontractor fail to commence the Corrective Work within the time specified above and diligently and pursue the Corrective Work to completion, Contractor, without further notice, may provide or arrange for others to provide the labor and materials necessary to correct any Defective Work, and all costs thereof shall be charged to Subcontractor. In the event there are not sufficient funds owing Subcontractor by Contractor, then Subcontractor shall reimburse Contractor for such costs and fees immediately upon receipt of written demand from Contractor, and interest shall accrue on the aggregate amount at the rate of fifteen percent (15%) per annum from the date incurred until Contractor is fully reimbursed for all such amounts and interest thereon.

3.22 UNCOVERING/CORRECTION OF SUBCONTRACT WORK

3.22.1 UNCOVERING OF SUBCONTRACT WORK

3.22.1.1 If required in writing by the Contractor, the Subcontractor must uncover any portion of the Subcontract Work which has been covered by the Subcontractor in violation of the Subcontract Documents or contrary to a directive issued to the Subcontractor by the Contractor. Upon receipt of a written directive from the Contractor, the Subcontractor shall uncover such work for the Contractor's or Owner's inspection and restore the uncovered Subcontract Work to its original condition at the Subcontractor's time and expense.

3.22.1.2 The Contractor may direct the Subcontractor to uncover portions of the Subcontract Work for inspection by the Owner or Contractor at any time. The Subcontractor is required to uncover such work whether or not the Contractor or Owner had requested to inspect the Subcontract Work prior to it being covered. Except as provided in Clause 3.22.1.1, a Subcontract shall be adjusted by Change Order (**as defined in Article 7.1**) for the cost and time of uncovering and restoring any Subcontract Work which is uncovered for inspection and proves to be installed in accordance with the Subcontract Documents, provided the Contractor had not previously instructed the Subcontractor to leave the work uncovered. If the Subcontractor uncovers work pursuant to a directive issued by the Contractor, and such work upon inspection does not comply with the Subcontract Documents, the Subcontractor shall be responsible for all costs and time of uncovering, correcting and restoring the work so as to make it conform to the Subcontract Documents. If the Contractor or some other entity for which the Subcontractor is not responsible caused the nonconforming condition, the Contractor shall be required to adjust a Subcontract by Change Order for all such costs and time.

3.22.2 CORRECTION OF WORK

3.22.2.1 If the Owner, Architect or Contractor rejects the Subcontract Work or the Subcontract Work is not in conformance with the Subcontract Documents, the Subcontractor shall promptly correct

Initials of Contractor _____

Initials of Subcontractor _____

the Subcontract Work, at its own expense. The Subcontractor shall be responsible for the costs of correcting such Subcontract Work, any additional testing, inspections, and compensation for services and expenses of the Architect and Contractor made necessary by the defective Subcontract Work.

3.22.2.2 In addition to the Subcontractor's obligations under Paragraph 3.21, the Subcontractor agrees to promptly correct, at its own expense, after receipt of notice from the Contractor, all Subcontract Work performed under this Agreement which proves to be defective in workmanship or materials within a period of two years from the date of Substantial Completion of the Subcontract Work or for a longer period of time as may be required by specific warranties in the Subcontract Documents. If the Subcontractor fails to correct defective or nonconforming Subcontract Work within a reasonable time after receipt of notice from the Contractor, the Contractor may correct such Subcontract Work pursuant to Subparagraph 10.1.1.

3.22.2.3 If Subcontract Work is first performed after Substantial Completion, the two-year period for corrections shall be extended by the time period after Substantial Completion and the performance of that portion of Subcontract Work. The Subcontractor's obligation to correct Subcontract Work within two years as described in this Paragraph 3.22 does not limit the enforcement of Subcontractor's other obligations with regard to the Agreement, a Subcontract and Subcontract Documents.

3.22.2.4 If the Subcontractor's correction or removal of Subcontract Work destroys or damages completed or partially completed work of the Owner, the Contractor or any separate contractors, the Subcontractor shall be responsible for the cost of correcting such destroyed or damaged construction.

3.22.2.5 If portions of Subcontract Work which do not conform with the requirements of the Subcontract Documents are neither corrected by the Subcontractor nor accepted by the Contractor, the Subcontractor shall remove such Subcontract Work from the Project site, at its own expense, if so directed by the Contractor.

3.23 MATERIALS OR EQUIPMENT FURNISHED BY OTHERS In the event the scope of the Subcontract Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to exercise proper care in receiving, handling, storing and installing such items, unless otherwise provided in the Subcontract Documents. The Subcontractor shall examine the items provided and report to the Contractor in writing any items it may discover that do not conform to requirements of the Subcontract Documents. The Subcontractor shall not proceed to install nonconforming items without further instructions from the Contractor. Loss or damage due to acts or omissions of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor.

3.24 SUBSTITUTIONS No substitutions shall be made in the Subcontract Work unless permitted in the Subcontract Documents, and only upon the Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions.

3.25 USE OF CONTRACTOR'S EQUIPMENT The Subcontractor, its agents, employees, subcontractors or suppliers shall use the Contractor's equipment only with the express written permission of the Contractor's designated representative and in accordance with the Contractor's terms and conditions for such use. If the Subcontractor or any of its agents, employees, subcontractors or suppliers utilize any of the Contractor's equipment, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Contractor, the Subcontractor shall defend, indemnify and be liable to the Contractor as provided in Article 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Contractor's employees operating the

Initials of Contractor _____

Initials of Subcontractor _____

Contractor's equipment.

3.26 WORK FOR OTHERS Until final completion of the Subcontract Work, the Subcontractor agrees not to perform any work directly for the Owner or any tenants, or deal directly with the Owner's representatives in connection with the Subcontract Work, unless otherwise approved in writing by the Contractor.

3.27 SUBCONTRACT BONDS

3.27.1 The Subcontract will indicate whether Subcontractor must furnish to the Contractor, as the named Obligee, appropriate surety bonds to secure the faithful performance of the Subcontract Work and to satisfy all Subcontractor payment obligations related to Subcontract Work.

3.27.2 If a performance or payment bond, or both, are required of the Subcontractor under a Subcontract, the bonds shall be in a form and by a surety mutually agreeable to the Contractor and Subcontractor, and in the full amount of the Subcontract Amount (**as defined in Article 6**), unless otherwise specified.

3.27.3 In the event the Subcontractor shall fail to promptly provide any required bonds, the Contractor may terminate the Subcontract and enter into a subcontract for the balance of the Subcontract Work with another subcontractor. All Contractor costs and expenses incurred by the Contractor as a result of said termination shall be paid by the Subcontractor.

3.28 SYSTEMS AND EQUIPMENT STARTUP When part of the Subcontract Work, with the assistance of the Owner's maintenance personnel and the Contractor, the Subcontractor shall direct the checkout and operation of systems and equipment for readiness, and assist in their initial startup and the testing of the Subcontract Work.

3.29 COMPLIANCE WITH LAWS The Subcontractor agrees to be bound by, and at its own costs comply with, all federal, state and local laws, ordinances and regulations ("**Laws**") applicable to the Subcontract Work, including but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety and all other Laws with which the Contractor must comply. The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply with Laws, including, but not limited to, any fines, penalties or corrective measures.

3.30 CONFIDENTIALITY To the extent the Owner-Contractor agreement provides for the confidentiality of any of the Owner's proprietary or otherwise confidential information disclosed in connection with the performance of Subcontract Work, the Subcontractor is equally bound by such confidentiality requirements.

3.31 ROYALTIES, PATENTS AND COPYRIGHTS The Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Subcontractor and incorporated in the Subcontract Work. The Subcontractor shall defend, indemnify and hold the Contractor and Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Subcontractor shall be liable for all loss, including all costs, expenses, and attorneys' fees, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Subcontract Documents. However, if the Subcontractor has reason to believe that a particular design, process or product required by the Subcontract Documents is an infringement of a patent, the Subcontractor shall promptly furnish such information to the Contractor or be responsible to the Contractor and Owner for any loss sustained as a result.

Initials of Contractor _____

Initials of Subcontractor _____

ARTICLE 4

CONTRACTOR'S RESPONSIBILITIES

4.1 CONTRACTOR'S REPRESENTATIVE The Contractor shall designate a person who shall be the Contractor's authorized representative. The Contractor's representative shall be the only person the Subcontractor shall look to for instructions, orders and/or directions, except in an emergency. The Contractor's representative will be set forth in each Subcontract.

4.2 OWNER'S ABILITY TO PAY

4.2.1 The Subcontractor shall have the right upon request to receive from the Contractor such information as the Contractor has obtained relative to the Owner's financial ability to pay for the Work, including any subsequent material variation in such information. The Contractor, however, does not warrant the accuracy or completeness of the information provided by the Owner.

4.2.2 If the Subcontractor does not receive the information referenced in Subparagraph 4.3.1 with regard to the Owner's ability to pay for the Work as required by the Contract Documents, the Subcontractor may request the information from the Owner and/or the Owner's lender.

4.3 INFORMATION OR SERVICES The Subcontractor is entitled to request through the Contractor any information or services relevant to the performance of the Subcontract Work which is under the Owner's control. To the extent the Contractor receives such information and services, the Contractor shall provide them to the Subcontractor. The Contractor, however, does not warrant the accuracy or completeness of the information provided by the Owner.

4.4 STORAGE AREAS The Contractor shall allocate adequate storage areas, if available, for the Subcontractor's materials and equipment during the course of the Subcontract Work.

4.5 TIMELY COMMUNICATIONS The Contractor shall transmit to the Subcontractor, with reasonable promptness, all submittals, transmittals, and written approvals relative to the Subcontract Work. Unless otherwise specified in the Subcontract Documents, communications by and with the Subcontractor's subcontractors, materialmen and suppliers shall be through the Subcontractor.

4.6 USE OF SUBCONTRACTOR'S EQUIPMENT The Contractor, its agents, employees or suppliers shall use the Subcontractor's equipment only with the express written permission of the Subcontractor's designated representative and in accordance with the Subcontractor's terms and conditions for such use. If the Contractor or any of its agents, employees or suppliers utilize any of the Subcontractor's equipment, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Subcontractor, the Contractor shall defend, indemnify and be liable to the Subcontractor as provided in Article 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Subcontractor's employees operating the Subcontractor's equipment.

ARTICLE 5

PROJECT SCHEDULE

5.1 TIME IS OF THE ESSENCE Time is of the essence for both parties as to each provision of this Agreement and Subcontract. They mutually agree to see to the performance of their respective obligations so that both the entire Project, including the Subcontract Work, may be completed in accordance with the Subcontract

Initials of Contractor _____

Initials of Subcontractor _____

Documents and particularly the “**Project Schedule**” which is identified in each Subcontract.

5.2 SCHEDULE OBLIGATIONS The Subcontractor shall provide the Contractor with any scheduling information proposed by the Subcontractor for the Subcontract Work. In consultation with the Subcontractor, the Contractor shall prepare the schedule for performance of the Work and shall revise and update such schedule, as necessary, as the Work progresses. The Project Schedule and all subsequent changes and additional details shall be submitted to the Subcontractor promptly and reasonably in advance of the required performance. The Contractor shall have the right to determine and, if necessary, change the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the Subcontract Work.

5.3 DELAYS AND EXTENSIONS OF TIME

5.3.1 OWNER CAUSED DELAY Subject to Subparagraph 5.3.2, if the commencement and/or progress of the Subcontract Work is delayed without the fault or responsibility of the Subcontractor, the time for the Subcontract Work shall be extended by Change Order to the extent obtained by the Contractor under the Subcontract Documents, and the Project Schedule shall be revised accordingly.

5.3.2 CLAIMS RELATING TO OWNER The Subcontractor agrees to initiate all claims for which the Owner is or may be liable in the manner and within the time limits provided in the Subcontract Documents for like claims by the Contractor upon the Owner and in sufficient time for the Contractor to initiate such claims against the Owner in accordance with the Subcontract Documents. At the Subcontractor's request and expense to the extent agreed upon in writing, the Contractor agrees to permit the Subcontractor to prosecute a claim in the name of the Contractor for the use and benefit of the Subcontractor in the manner provided in the Subcontract Documents for like claims by the Contractor upon the Owner.

5.3.3 CONTRACTOR CAUSED DELAY Nothing in this Article shall preclude the Subcontractor's recovery of delay damages caused by the Contractor.

5.3.4 CLAIMS RELATING TO CONTRACTOR The Subcontractor shall give the Contractor written notice of all claims not included in Subparagraph 5.3.2 within seven (7) days of the Subcontractor's knowledge of the facts giving rise to the event for which claim is made; otherwise, such claims shall be deemed waived. All unresolved claims, disputes and other matters in question between the Contractor and the Subcontractor not relating to claims included in Subparagraph 5.3.2 shall be resolved in the manner provided in Article 11.

5.3.5 SUBCONTRACTOR FAILURE TO MEET PROJECT SCHEDULE If Subcontractor fails to prosecute the Subcontract Work in accordance with the Project Schedule, then in addition to all other rights and remedies Contractor may have (including termination and offset rights), Contractor may direct Subcontractor to accelerate progress of the Subcontract Work at Subcontractor's sole cost, by any means, including but not limited to, employing additional workers and/or working overtime.

5.3.6 DAMAGES Subcontractor expressly consents that to the extent the Subcontract Documents provide for liquidated or other damages for delay beyond the completion date set forth in the Subcontract Documents, and such damages are assessed against the Contractor, the Contractor may assess a share of the damages against the Subcontractor in proportion to the Subcontractor's share of the responsibility for the delay. However, the amount of such assessment shall not exceed the amount assessed against the Contractor. Subcontractor understands this is not a penalty. This Paragraph 5.3 shall not limit the Subcontractor's liability to the Contractor for the Contractor's actual delay damages caused by the Subcontractor's delay.

Initials of Contractor _____

Initials of Subcontractor _____

5.4 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

5.4.1 To the extent the Owner-Contractor agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, the Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Agreement and a Subcontract, including to the extent provided in the Owner-Contractor agreement, damages for principal office expenses and the compensation of personnel stationed there; loss of financing, business and reputation; rental expense; loss of use; loss of management or employee productivity or of the services of such persons; and for loss of profit. Similarly, the Subcontractor shall obtain from its sub-subcontractors mutual waivers of consequential damages that correspond to the Subcontractor's waiver of consequential damages herein. To the extent applicable, this mutual waiver applies to consequential damages due to termination by the Contractor or the Owner in accordance with this Agreement or the Owner Contractor agreement. To the extent the Owner-Contractor agreement does not preclude the award of liquidated damages, nothing contained in this Paragraph 5.4 shall preclude the imposition of such damages, if applicable in accordance with the requirements of the Subcontract Documents.

5.4.2 To the extent the Owner-Contractor agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, damages for which the Contractor is liable to the Owner including those related to Section 9.1 and its subsections are not consequential damages for the purpose of this waiver.

ARTICLE 6

SUBCONTRACT AMOUNT

As full compensation for satisfactory performance of this Agreement, which includes the Subcontract Work in each respective Subcontract, Contractor agrees to pay Subcontractor the amount set forth in the Subcontract (“**Subcontract Amount**”).

ARTICLE 7

CHANGES IN THE SUBCONTRACT WORK

7.1 SUBCONTRACT CHANGE ORDERS When the Contractor orders in writing, the Subcontractor, without nullifying this Agreement or the Subcontract, shall make any and all changes in the Subcontract Work which are within the general scope of the Subcontract. Any adjustment in the Subcontract Amount or Project Schedule shall be authorized by a Change Order. No adjustments shall be made for any changes performed by the Subcontractor that have not been ordered by the Contractor. A Change Order is a written instrument prepared by the Contractor and signed by the Subcontractor stating their agreement upon the change in the Subcontract Work of Subcontract.

7.2 CONSTRUCTION CHANGE DIRECTIVES To the extent that the Subcontract Documents provide for “**Construction Change Directives**” (or a similar concept using a different name) in the absence of agreement on the terms of a Change Order, the Subcontractor shall promptly comply with the Construction Change Directive and be entitled to apply for interim payment if the Subcontract Documents so provide.

7.3 UNKNOWN CONDITIONS If in the performance of the Subcontract Work the Subcontractor finds latent, concealed or subsurface physical conditions which differ materially from those indicated in the Subcontract Documents or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist, and not generally recognized as inherent in the kind of work provided for in this Agreement, the Subcontract Amount and/or the Project Schedule shall be equitably adjusted by a Change Order within a reasonable time after the conditions are first observed. The adjustment which the Subcontractor may receive shall

Initials of Contractor _____

Initials of Subcontractor _____

be limited to the adjustment the Contractor receives from the Owner on behalf of the Subcontractor, or as otherwise provided under Subparagraph 5.3.2.

7.4 ADJUSTMENTS IN SUBCONTRACT AMOUNT If a Change Order requires an adjustment in the Subcontract Amount, the adjustment shall be established by one of the following methods:

- .1 mutual acceptance of an itemized lump sum;
- .2 unit prices as indicated in the Subcontract Documents or as subsequently agreed to by the parties;
- .3 costs determined in a manner acceptable to the parties and a mutually acceptable fixed or percentage fee; or
- .4 another method provided in the Subcontract Documents.

7.5 SUBSTANTIATION OF ADJUSTMENT If the Subcontractor does not respond promptly or disputes the method of adjustment, the method and the adjustment shall be determined by the Contractor on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Subcontract Amount, an allowance for overhead and profit of the percentage provided in Paragraph 7.6. The Subcontractor may contest the reasonableness of any adjustment determined by the Contractor. The Subcontractor shall maintain for the Contractor's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Change Order:

- .1 labor costs, including Social Security, health, welfare, retirement and other fringe benefits as normally required, and state workers' compensation insurance;
- .2 costs of materials, supplies and equipment, whether incorporated in the Subcontract Work or consumed, including transportation costs;
- .3 costs of renting machinery and equipment other than hand tools;
- .4 costs of bond and insurance premiums, permit fees and taxes attributable to the change; and
- .5 costs of additional supervision and field office personnel services necessitated by the change.

7.6 Adjustments shall be based on net change in Subcontractor's reasonable cost of performing the changed Subcontract Work plus, in case of a net increase in cost, an agreed upon sum for overhead and profit not to exceed ten percent (10%).

7.7 NO OBLIGATION TO PERFORM The Subcontractor shall not perform changes in the Subcontract Work until a Change Order has been executed or written instructions have been issued in accordance with Paragraphs 7.2 and 7.9.

7.8 EMERGENCIES In an emergency affecting the safety of persons and/or property, the Subcontractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Subcontract Amount and/or the Project Schedule on account of emergency work shall be determined as provided in this Article.

7.9 INCIDENTAL CHANGES The Contractor may direct the Subcontractor to perform incidental changes in the Subcontract Work which do not involve adjustments in the Subcontract Amount or Project Schedule. Incidental changes shall be consistent with the scope and intent of the Subcontract Documents. The Contractor

Initials of Contractor _____

Initials of Subcontractor _____

shall initiate an incidental change in the Subcontract Work by issuing a written order to the Subcontractor. Such written notice shall be carried out promptly and is binding on the parties.

ARTICLE 8

PAYMENT

8.1 SCHEDULE OF VALUES As a condition to payment, the Subcontractor shall provide a schedule of values satisfactory to the Contractor not more than fifteen (15) days from the date of execution of a Subcontract.

8.2 PROGRESS PAYMENTS

8.2.1 APPLICATIONS The Subcontractor's applications for payment shall be itemized and supported by substantiating data as required by the Subcontract Documents. If the Subcontractor is obligated to provide design services pursuant to Paragraph 3.8, Subcontractor's applications for payment shall show the Designer's fee and expenses as a separate cost item. The Subcontractor's application shall be notarized if required and if allowed under the Subcontract Documents may include properly authorized Subcontract Construction Change Directives. The Subcontractor's progress payment application for the Subcontract Work performed in the preceding payment period shall be submitted for approval of the Contractor in accordance with the schedule of values if required and Subparagraphs 8.2.2, 8.2.3, and 8.2.4. The Contractor shall incorporate the approved amount of the Subcontractor's progress payment application into the Contractor's payment application to the Owner for the same period and submit it to the Owner in a timely fashion. The Contractor shall immediately notify the Subcontractor of any changes in the amount requested on behalf of the Subcontractor.

8.2.2 RETAINAGE The rate of retainage shall be set forth in a Work Order.

8.2.3 TIME OF APPLICATION The Subcontractor shall submit payment applications or invoice to the Contractor as soon as work is complete. Payments will be paid 30 days from the date the Contractor receives the invoice within that pay period, and to the extent allowed under Subparagraph 8.2.4, materials suitably stored during the preceding payment period.

8.2.4 STORED MATERIALS Unless otherwise provided in the Subcontract Documents, and if approved in advance by the Owner, applications for payment may include materials and equipment not incorporated in the Subcontract Work but delivered to and suitably stored at the site or at some other location agreed upon in writing. Approval of payment applications for such stored items on or off the site shall be conditioned upon submission by the Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to the Owner and Contractor to establish the Owner's title to such materials and equipment, or otherwise to protect the Owner's and Contractor's interest including transportation to the site.

8.2.5 TIME OF PAYMENT Receipt of payment by the Contractor from the Owner for the Subcontract Work is a condition precedent to payment by the Contractor to the Subcontractor. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Contractor for payment of Subcontract Work. Progress payments received from the Owner for the Subcontractor for satisfactory performance of the Subcontract Work shall be made no later than ten (10) days after receipt by the Contractor of payment from the Owner for the Subcontract Work.

8.2.6 PAYMENT DELAY If the Contractor has received payment from the Owner and if for any reason not the fault of the Subcontractor, the Subcontractor does not receive a progress payment from the Contractor within ten (10) days after the date such payment is due, as defined in Subparagraph 8.2.5, the Subcontractor, upon giving seven (7) days' written notice to the Contractor, and without prejudice to and in

Initials of Contractor _____

Initials of Subcontractor _____

addition to any other legal remedies, may stop work until payment of the full amount owing to the Subcontractor has been received. The Subcontract Amount and Time shall be adjusted by the amount of the Subcontractor's reasonable and verified cost of shutdown, delay, and startup, which shall be effected by an appropriate Change Order.

8.2.7 PAYMENTS WITHHELD The Contractor may reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, as may reasonably be necessary to protect the Contractor from loss or damage based upon:

- .1 the Subcontractor's repeated failure to perform the Subcontract Work;
- .2 loss or damage arising out of or relating to the Subcontract and caused by the Subcontractor to the Owner, Contractor or others to whom the Contractor may be liable;
- .3 the Subcontractor's failure to properly pay for labor, materials, equipment or supplies furnished in connection with the Subcontract Work;
- .4 rejected, nonconforming or defective Subcontract Work which has not been corrected in a timely fashion;
- .5 reasonable evidence of delay in performance of the Subcontract Work such that the Subcontract Work will not be completed within the Project Schedule, and that the unpaid balance of the Subcontract Amount is not sufficient to offset the liquidated damages or actual damages that may be sustained by the Contractor as a result of the anticipated delay caused by the Subcontractor;
- .6 reasonable evidence demonstrating that the unpaid balance of the Subcontract Amount is insufficient to cover the cost to complete the Subcontract Work;
- .7 third party claims involving the Subcontractor or reasonable evidence demonstrating that third party claims are likely to be filed unless and until the Subcontractor furnishes the Contractor with adequate security in the form of a surety bond, letter of credit or other collateral or commitment which are sufficient to discharge such claims if established.

The Contractor shall give written notice to the Subcontractor, at the time of disapproving or nullifying an application for payment stating its specific reasons for such disapproval or nullification. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be made for amounts previously withheld.

8.3 FINAL PAYMENT

8.3.1 APPLICATION Upon acceptance of the Subcontract Work by the Owner and the Contractor and receipt from the Subcontractor of evidence of fulfillment of the Subcontractor's obligations in accordance with the Subcontract Documents and Subparagraph 8.3.2, the Contractor shall incorporate the Subcontractor's application for final payment into the Contractor's next application for payment to the Owner without delay, or notify the Subcontractor if there is a delay and the reasons therefor.

8.3.2 REQUIREMENTS Before the Contractor shall be required to incorporate the Subcontractor's application for final payment into the Contractor's next application for payment, the Subcontractor shall submit to the Contractor:

Initials of Contractor _____

Initials of Subcontractor _____

- .1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontract Work for which the Owner or its property or the Contractor or the Contractor's surety might in any way be liable, have been paid or otherwise satisfied;
- .2 consent of surety to final payment, if required;
- .3 satisfaction of required closeout procedures
- .4 certification that insurance required by the Subcontract Documents to remain in effect beyond final payment is in effect and will not be cancelled or allowed to expire without at least thirty (30) days' written notice to the Contractor unless a longer period is stipulated in this Agreement or the Subcontract;
- .5 other data, if required by the Contractor or Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be designated by the Contractor or Owner;
- .6 written warranties, equipment manuals, startup and testing required in Paragraph 3.28; and
- .7 as-built drawings if required by the Subcontract Documents.

8.3.3 TIME OF PAYMENT Receipt of final payment by the Contractor from the Owner for the Subcontract Work is a condition precedent to payment by the Contractor to the Subcontractor. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Contractor for payment of Subcontract Work. Final payment of the balance due of the Subcontract Amount shall be made to the Subcontractor.

- .1 upon receipt of the Owner's waiver of all claims related to the Subcontract Work except for unsettled liens, unknown defective work, and non-compliance with the Subcontract Documents or warranties; and
- .2 within ten (10) days after receipt by the Contractor of final payment from the Owner for such Subcontract Work.

8.3.4 FINAL PAYMENT DELAY If the Owner or its designated agent does not issue a certificate for final payment or the Contractor does not receive such payment for any cause which is not the fault of the Subcontractor, the Contractor shall promptly inform the Subcontractor. The Contractor shall also diligently pursue, with the assistance of the Subcontractor, the prompt release by the Owner of the final payment due for the Subcontract Work. At the Subcontractor's request and expense, to the extent agreed upon in writing, the Contractor shall institute reasonable legal remedies to mitigate the damages and pursue payment of the Subcontractor's final payment including interest.

8.3.5 WAIVER OF CLAIMS Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontract Work, but shall in no way relieve the Subcontractor of liability for the obligations assumed under Paragraphs 3.21 and 3.22, or for faulty or defective work or services discovered after final payment.

8.4 LATE PAYMENT INTEREST To the extent obtained by the Contractor under the Subcontract Documents, progress payments or final payment due and unpaid under this Agreement shall bear interest from the date payment is due at the rate provided in the Subcontract Documents.

Initials of Contractor _____

Initials of Subcontractor _____

8.5 CONTINUING OBLIGATIONS Provided the Contractor is making payments on or has made payments to the Subcontractor in accordance with the terms of this Agreement, the Subcontractor shall reimburse the Contractor for any costs and expenses for any claim, obligation or lien asserted before or after final payment is made that arise from the performance of the Subcontract Work. The Subcontractor shall reimburse the Contractor for costs and expenses including attorneys' fees and costs and expenses incurred by the Contractor in satisfying, discharging or defending against any such claims, obligation or lien including any action brought or judgment recovered. In the event that any applicable law, statute, regulation or bond requires the Subcontractor to take any action prior to the expiration of the reasonable time for payment referenced in Subparagraph 8.2.5 and 8.3.3 in order to preserve or protect the Subcontractor's rights, if any, with respect to mechanic's lien or bond claims, then the Subcontractor may take that action prior to the expiration of the reasonable time for payment and such action will not create the reimbursement obligation recited above nor be in violation of this Agreement or considered premature for purposes of preserving and protecting the Subcontractor's rights.

8.6 PAYMENT USE RESTRICTION Payments received by the Subcontractor shall be used to satisfy the indebtedness owed by the Subcontractor to any person furnishing labor or materials, or both, for use in performing the Subcontract Work through the most current period applicable to progress payments received from the Contractor before it is used for any other purpose.

8.7 PAYMENT USE VERIFICATION If the Contractor has reason to believe that the Subcontractor is not complying with the payment terms of this Agreement, the Contractor shall have the right to contact the Subcontractor's subcontractors and suppliers to ascertain whether they are being paid by the Subcontractor in accordance with this Agreement.

8.8 PARTIAL LIEN WAIVERS AND AFFIDAVITS As a prerequisite for payments, the Subcontractor shall provide, in a form satisfactory to the Owner and Contractor, partial lien or claim waivers in the amount of the application for payment and affidavits covering its subcontractors and suppliers for completed Subcontract Work. Such waivers may be conditional upon payment. In no event shall Contractor require the Subcontractor to provide an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

8.9 SUBCONTRACTOR PAYMENT FAILURE Upon payment by the Contractor, the Subcontractor shall promptly pay its subcontractors and suppliers the amounts to which they are entitled. In the event the Contractor has reason to believe that labor, material or other obligations incurred in the performance of the Subcontract Work are not being paid, the Contractor may give written notice of a potential claim or lien to the Subcontractor and may take any steps deemed necessary to assure that progress payments are utilized to pay such obligations, including but not limited to the issuance of joint checks. If upon receipt of notice, the Subcontractor does not (a) supply evidence to the satisfaction of the Contractor that the moneys owing have been paid; or (b) post a bond indemnifying the Owner, the Contractor, the Contractor's surety, if any, and the premises from a claim or lien, the Contractor shall have the right to withhold from any payments due or to become due to the Subcontractor a reasonable amount to protect the Contractor from any and all loss, damage or expense including attorneys' fees that may arise out of or relate to any such claim or lien.

8.10 SUBCONTRACTOR ASSIGNMENT OF PAYMENTS The Subcontractor shall not assign any moneys due or to become due under this Agreement, without the written consent of the Contractor, unless the assignment is intended to create a new security interest within the scope of Article 9 of the Uniform Commercial Code. Should the Subcontractor assign all or any part of any moneys due or to become due under this Agreement to create a new security interest or for any other purpose, the instrument of assignment shall contain a clause to the effect that the assignee's right in and to any money due or to become due to the Subcontractor shall be subject to the claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Subcontract Work.

Initials of Contractor _____

Initials of Subcontractor _____

8.11 PAYMENT NOT ACCEPTANCE Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Subcontract Work.

ARTICLE 9

INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION

9.1 INDEMNITY

9.1.1 Indemnity and Duty to Defend. In addition to any other obligation in this Agreement, to the fullest extent permitted by law, and subject to the specific limitations set forth on Exhibit "B" (if any), Subcontractor shall indemnify, defend and hold harmless each Indemnitee (as defined in Section 9.1.4 below) for, from and against any and all Claims (as defined in Section 9.1.4 below); provided, however, that Subcontractor shall not be required to indemnify an Indemnitee for, and solely to the extent of, a Non-Indemnified Matter (as defined in Section 9.1.4 below). The parties acknowledge and agree that the existence of a Non-Indemnified Matter shall in no event relieve Subcontractor of its indemnity, defense and other obligations hereunder for, or with respect to, any other portion of a Claim that is not a Non-Indemnified Matter. Subcontractor's duty to defend the Indemnitees is entirely separate from, independent of and freestanding from Subcontractor's duty to indemnify the Indemnitees. Notwithstanding Subcontractor's duty to defend, Subcontractor acknowledges and agrees that Contractor is entitled to defend any and all Claims with counsel and experts of Contractor's choice. Contractor will promptly reimburse Subcontractor the defense costs reasonably incurred and paid by Subcontractor for the reasonable defense of any portion of a Claim against an Indemnitee solely to the extent such portion is ultimately determined to be a Non-Indemnified Matter. Payment by any Indemnitee is not a condition precedent to enforcing such Indemnitee's rights to indemnification and defense under this Agreement.

9.1.2 Indemnity and Defense Not Limited; Survival Nothing in this Agreement shall be construed to negate, abridge or otherwise reduce: (a) any other obligation or liability of Subcontractor for breaching any of its agreements, covenants, representations, warranties, or obligations under this Agreement, a Subcontract and/or any of the other Subcontract Documents; or (b) any other right or obligation of indemnity that otherwise exists in favor of Contractor or any Indemnitees. Further, payments by Subcontractor to any Indemnitee(s) in connection with this Section 9 shall be in addition to any and all other legal remedies available to the Indemnitees and shall not be considered the exclusive remedy of any of the Indemnitees. Subcontractor's obligations under this Section 9 shall apply without regard to the particular allegations or theories of recovery asserted or omitted by any third party, including, without limitation, Claims based on duties, obligations or liabilities imposed on the Indemnitees by Law, and Claims based on theories of peculiar risks or non-delegable duty arising from conditions of the workplace and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefits acts or other employee benefits acts.

9.1.3 Applicability of Insurance The indemnification obligations of Subcontractor under this Agreement shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) that Subcontractor is required to carry under this Agreement. The right to indemnification and defense by Subcontractor shall be in addition to Contractor's separate rights under the insurance to be provided by Subcontractor under this Agreement.

9.1.4 Definitions For purposes of Section 9.1 and its subsections, the following capitalized terms shall have the following meanings:

- (a) **"Claim"** means (i) any action, administrative action, legal proceeding, claim, demand, obligation and cause of action of every kind and character made or asserted against an Indemnitee, whether based on tort, contract or equitable principles, and whether asserted

Initials of Contractor _____

Initials of Subcontractor _____

by one or more owners of any residence constructed on the Project, any applicable associations or any other person or entity; and (ii) any damage, loss, liability, lien, judgment, cost and expense (including, without limitation, attorney fees, paralegal fees and legal costs, investigative and expert witness fees and costs and other litigation, mediation, arbitration or judicial reference expenses) suffered or incurred by an Indemnitee; which are in any way occurring, incident to, or arising from or in connection with (A) the performance or nonperformance of the Subcontract Work or any term or provision of any of the Subcontract Documents by Subcontractor; (B) the failure to comply with applicable Laws by Subcontractor; and (C) any other breach of any provision of any of the Subcontract Documents by Subcontractor. A Claim also includes all costs incurred by the Indemnitees for corrective work performed by Contractor or an entity on behalf Contractor. For purposes of Section 9.1 and its subsections, attorney and other professional and witness fees and costs shall be deemed reasonable if such fees and costs are incurred at the rate customarily charged by the professional or witness rendering the services.

- (b) “**Indemnitee**” means each of the following: Contractor and any of its respective subsidiaries, affiliates, members, managers, shareholders, owners, officers, directors, partners, employees, agents, successors and assigns.
- (c) “**Non-Indemnified Matter**” means any portion (and solely to the extent of such portion) of any Claim against an Indemnitee to the extent the Claim (or portion thereof, if applicable) is determined by entry of a non-appealable final judgment after trial to have been caused by the negligent act of the Indemnitee sought to be indemnified.

9.2 INSURANCE Subcontractor represents, warrants and covenants to Contractor that Subcontractor is, as of the Effective Date, in compliance with, and shall at all times hereafter (including without limitation, throughout the duration of all Warranty Periods) fully comply with the insurance requirements set forth on **Exhibit “B”**. Contractor’s failure to enforce any of the insurance provisions in this Section 9.2 or set forth on **Exhibit “B”** shall not act as a waiver of or estoppel to assert Subcontractor's obligation to procure and maintain the required insurance coverages in accordance with the insurance requirements set forth on **Exhibit “B”**.

ARTICLE 10

CONTRACTOR'S RIGHT TO PERFORM SUBCONTRACTOR'S RESPONSIBILITIES AND TERMINATION OF AGREEMENT

10.1 FAILURE OF PERFORMANCE

10.1.1 NOTICE TO CURE If the Subcontractor refuses or fails to supply enough properly skilled workers, proper materials, or maintain the Project Schedule, or fails to make prompt payment to its workers, subcontractors or suppliers, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or commence to correct Subcontractor’s deficient work, or otherwise is guilty of a material breach of a provision of this Agreement and/or Subcontract, the Subcontractor shall be deemed in default of this Agreement. If the Subcontractor fails within three (3) days after written notification to commence and continue satisfactory correction of the default with diligence and promptness, then the Contractor without prejudice to any other rights or remedies shall have the right to any or all of the following remedies:

- .1 supply workers, materials, equipment and facilities as the Contractor deems necessary for the completion of the Subcontract Work or any part which the Subcontractor has failed to

Initials of Contractor _____

Initials of Subcontractor _____

- complete or perform after written notification, and charge the cost, including reasonable overhead, profit, attorneys' fees, costs and expenses to the Subcontractor;
- .2 contract with one or more additional subcontractors to perform such part of the Subcontract Work as the Contractor determines will provide the most expeditious completion of the Work, and charge the cost to the Subcontractor as provided under Clause 10.1.1.1;
 - .3 withhold any payments due or to become due the Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of the Contractor; and/or
 - .4 terminate the Agreement.

In the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice, but the Contractor shall give the Subcontractor notice promptly after the fact as a precondition of cost recovery.

10.1.2 TERMINATION BY CONTRACTOR If the Subcontractor fails to commence and satisfactorily continue correction of a default within three (3) days after written notification issued under Subparagraph 10.1.1, then the Contractor may, in lieu of or in addition to Subparagraph 10.1.1, issue a second written notification, to the Subcontractor and its surety, if any. Such notice shall state that if the Subcontractor fails to commence and continue correction of a default within seven (7) days of the written notification, the Agreement will be deemed terminated. A written notice of termination shall be issued by the Contractor to the Subcontractor at the time the Subcontractor is terminated. The Contractor may furnish those materials, equipment and/or employ such workers or subcontractors as the Contractor deems necessary to maintain the orderly progress of the Work. All costs incurred by the Contractor in performing the Subcontract Work, including reasonable overhead, profit and attorneys' fees, costs and expenses, shall be deducted from any moneys due or to become due the Subcontractor. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount. At the Subcontractor's request, the Contractor shall provide a detailed accounting of the costs to finish the Subcontract Work.

10.1.3 USE OF SUBCONTRACTOR'S EQUIPMENT If the Contractor performs work under this Article, either directly or through other subcontractors, the Contractor or other subcontractors shall have the right to take and use any materials, implements, equipment, appliances or tools furnished by, or belonging to the Subcontractor and located at the Project site for the purpose of completing any remaining Subcontract Work. Immediately upon completion of the Subcontract Work, any remaining materials, implements, equipment, appliances or tools not consumed or incorporated in performance of the Subcontract Work, and furnished by, belonging to, or delivered to the Project by or on behalf of the Subcontractor, shall be returned to the Subcontractor in substantially the same condition as when they were taken, normal wear and tear excepted.

10.2 BANKRUPTCY

10.2.1 TERMINATION ABSENT CURE If the Subcontractor files a petition under the Bankruptcy Code, this Agreement shall terminate if the Subcontractor or the Subcontractor's trustee rejects the Agreement or, if there has been a default, the Subcontractor is unable to give adequate assurance that the Subcontractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

10.2.2 INTERIM REMEDIES If the Subcontractor is not performing in accordance with the Project

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Schedule at the time a petition in bankruptcy is filed, or at any subsequent time, the Contractor, while awaiting the decision of the Subcontractor or its trustee to reject or to assume this Agreement and provide adequate assurance of its liability to perform, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Project Schedule. The Contractor may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided including, but not limited to, reasonable overhead, profit and attorneys' fees. The Subcontractor shall be liable for the payment of any amount by which costs incurred may exceed the unpaid balance of the Subcontract Price.

10.3 SUSPENSION BY OWNER Should the Owner suspend the Work or any part which includes the Subcontract Work and such suspension is not due to any act or omission of the Contractor, or any other person or entity for whose acts or omissions the Contractor may be liable, the Contractor shall notify the Subcontractor in writing and upon receiving notification the Subcontractor shall immediately suspend the Subcontract Work. In the event of Owner suspension, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor.

10.4 TERMINATION BY OWNER Should the Owner terminate its contract with the Contractor or any part which includes the Subcontract Work, the Contractor shall notify the Subcontractor in writing within three (3) days of the termination and upon written notification, this Agreement shall be terminated and the Subcontractor shall immediately stop the Subcontract Work, follow all of Contractor's instructions, and mitigate all costs. In the event of Owner termination, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the Owner termination and to permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor.

10.5 SUSPENSION BY CONTRACTOR The Contractor may order the Subcontractor in writing to suspend all or any part of the Subcontract Work for such period of time as may be determined to be appropriate for the convenience of the Contractor. Phased Work or interruptions of the Subcontract Work for short periods of time shall not be considered a suspension. The Subcontractor, after receipt of the Contractor's order, shall notify the Contractor in writing in sufficient time to permit the Contractor to provide timely notice to the Owner of the effect of such order upon the Subcontract Work. The Subcontract Amount or Project Schedule shall be adjusted by Change Order for any increase in the time or cost of performance of a Subcontract caused by such suspension. Neither the Subcontract Amount nor the Project Schedule shall be adjusted for any suspension, to the extent that performance would have been suspended, due in whole or in part to the fault or negligence of the Subcontractor or by a cause for which Subcontractor would have been responsible. The Subcontract Amount shall not be adjusted for any suspension to the extent that performance would have been suspended by a cause for which the Subcontractor would have been entitled only to a time extension under this Agreement.

10.6 WRONGFUL EXERCISE If the Contractor wrongfully exercises any option under this Article, the Contractor shall be liable to the Subcontractor solely for the actual value of Subcontract Work performed by the Subcontractor prior to the Contractor's wrongful action, including actual overhead and profit on the Subcontract Work performed, less prior payments made, together with reasonable overhead and profit on the Subcontract Work not executed.

10.7 TERMINATION BY SUBCONTRACTOR If the Subcontract Work has been stopped for thirty (30) days because the Subcontractor has not received progress payments or has been abandoned or suspended for an unreasonable period of time not due to the fault or neglect of the Subcontractor, then the Subcontractor may

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terminate this Agreement upon giving the Contractor seven (7) days' written notice. Upon such termination, Subcontractor shall be entitled to recover from the Contractor payment for all Subcontract Work satisfactorily performed but not yet paid for, including reasonable overhead, profit and attorneys' fees, costs and expenses, subject to the terms of Paragraphs 8.2 and 8.3. The Contractor's liability for any other damages claimed by the Subcontractor under such circumstances shall be extinguished by the Contractor pursuing said damages and claims against the Owner, on the Subcontractor's behalf, in the manner provided for in Subparagraphs 10.3 and 10.4 of this Agreement.

ARTICLE 11

DISPUTE RESOLUTION

11.1 INITIAL DISPUTE RESOLUTION If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions amongst principals of the companies.

11.2 WORK CONTINUATION AND PAYMENT Unless otherwise agreed in writing, the Subcontractor shall continue the Subcontract Work and maintain the Project Schedule during any dispute resolution proceedings. If the Subcontractor continues to perform, the Contractor shall continue to make payments in accordance with this Agreement.

11.3 NO LIMITATION OF RIGHTS OR REMEDIES Nothing in this Article shall limit any rights or remedies not expressly waived by the Subcontractor which the Subcontractor may have under lien laws or payment bonds.

11.4 MULTIPARTY PROCEEDING The parties agree that to the extent permitted by Subcontract Document all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. To the extent disputes between the Contractor and Subcontractor involve in whole or in part disputes between the Contractor and the Owner, disputes between the Subcontractor and the Contractor shall be decided by the same tribunal and in the same forum as disputes between the Contractor and the Owner.

11.5 DISPUTES BETWEEN CONTRACTOR AND SUBCONTRACTOR In the event that the provisions for resolution of disputes between the Contractor and the Owner contained in the Subcontract Documents do not permit consolidation or joinder with disputes of third parties, such as the Subcontractor, resolution of disputes between the Subcontractor and the Contractor involving in whole or in part disputes between the Contractor and the Owner shall be stayed pending conclusion of any dispute resolution proceeding between the Contractor and the Owner.

11.6 COST OF DISPUTE RESOLUTION The cost of any mediation or other alternative dispute resolution process proceeding shall be shared equally by the participating parties.

11.7 NOTICE AND OPPORTUNITY TO REPAIR STATUTES Subcontractor represents and warrants that it is familiar with the provisions of the notice and opportunity to repair statute found at Florida Statute §558 (“**Notice and Opportunity to Repair Statute**”). Subcontractor agrees to cooperate with Contractor in connection with any matters relating to the Notice and Opportunity to Repair Statute, including, without limitation, (i) providing copies of all applicable documents described in the Notice and Opportunity to Repair Statute, and (ii) at Contractor’s request, participating in the non-adversarial proceedings set forth in the Notice and Opportunity to Repair Statute, including attending any inspections and providing destructive testing and/or repair services in connection therewith (“**Non-Adversarial Proceedings**”) all at the Subcontractor’s sole cost and expense. If the Subcontractor refuses to participate in any Non-Adversarial Proceedings, Contractor will, without prejudice to

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any other rights and remedies available to Contractor, have the right to correct any defective Subcontract Work, and Subcontractor shall, upon demand, immediately reimburse Contractor the full cost of such corrective work, plus fifteen percent (15%) for Contractor's overhead and administration costs, and interest shall accrue on the aggregate amount at the rate of fifteen percent (15%) per annum from the date incurred until Contractor is fully reimbursed for all such amounts and interest thereon.

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 GOVERNING LAW This Agreement shall be construed and interpreted under and shall be governed by Florida law, without regard to choice of law rules.

12.2 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

12.3 NO WAIVER OR PERFORMANCE The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of any term, covenant, condition or right with respect to further performance.

12.4 TITLES The titles given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

12.5 INDEPENDENT SUBCONTRACTOR STATUS Subcontractor shall be an independent Subcontractor with respect to the Subcontract Work, and neither Subcontractor, nor anyone employed by, or working for, Subcontractor, shall be deemed for any purpose to be the agent, employee, servant or representative of Contractor in the performance of the Subcontract Work. Subcontractor acknowledges and agrees that Contractor shall have no direction or control over the means, methods, procedures, details or manner of the Subcontract Work performed by Subcontractor or any of its sub-subcontractors, employees, or agents, or any of their employees, agents, vendors or suppliers. Notwithstanding anything contained herein to the contrary, any provisions in this Agreement which may appear to give Contractor the right to direct Subcontractor as to details of doing the Subcontract Work or to exercise a measure of control over the Work shall be deemed to mean that Subcontractor shall follow the desires of Contractor in the results of the Subcontract Work only.

12.6 JOINT DRAFTING The parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

12.7 NOTICES Notice to the parties shall be given at the addresses listed in Article 1. All notices and other communications required or provided to be sent by either party pursuant to this Agreement shall be in writing and deemed properly delivered, received, given and served: (i) on the same day as personally delivered if delivered before 5:00PM EST on a business day, and if on Saturday or Sunday, deemed delivered on the next business day; (ii) when delivered by US mail postage prepaid, certified, return receipt requested; (iii) when delivered by any nationally known overnight delivery service, charges prepaid, if delivered before 5:00PM EST on a business day, and if on Saturday or Sunday, deemed delivered on the next business day; (iv) on the same day as actually sent by facsimile transmission to the parties at their respective addresses or facsimile numbers listed in Article 1.

12.8 AMENDMENTS All additions and modifications to this Agreement shall be valid only if made in

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writing and signed by both parties to this Agreement.

12.9. ATTORNEYS' FEES AND COSTS The prevailing party in any action shall be entitled to recover from the other party all of the prevailing party's costs and expenses incurred in such proceeding, including without limitation the cost of reasonable attorneys' fees, paralegal fees and expert witness costs.

12.10 SEVERABILITY If a court determines that a provision provided for herein cannot be enforced as written, the court will enforce the provision to such lesser extent as is allowed by law and/or reform the provision where such is necessary to make it enforceable by each party's legitimate business interests. If, despite the foregoing, any provision contained in this Agreement is determined to be void, illegal or unenforceable, in whole or in part, then the other provisions contained herein shall remain in full force and effect as if the provision that was determined to be void, illegal, or unenforceable had not been contained herein.

12.11 AUTHORITY TO BIND Each party, and each individual on behalf of each party signing this Agreement and any other Subcontract Document, represents that it has the full authority and legal power, authority and right to execute, deliver and perform its obligations under this Agreement, and each party's performance hereunder and the transaction contemplated hereby have been duly authorized by all requisite actions on the part of such party and no remaining action is required to make this Agreement binding.

12.12 COUNTERPARTS This Agreement may be executed in counterparts, each of which, when taken together, will constitute a fully executed original.

12.13 CROSS-DEFAULT AND OFFSET Contractor and Subcontractor acknowledge and agree that Contractor's continued confidence in the ability of Subcontractor to properly and expeditiously perform the Subcontract Work is a substantial and material concern of Contractor. Consequently, if Contractor and Subcontractor enter into or have entered into any other agreements and Subcontractor defaults under this Agreement or under any other agreement, Contractor may, at Contractor's election, treat that default as a default of all agreements between Contractor and Subcontractor and may terminate any or all such agreements for cause pursuant to Article 10 above. In the event of any such default, Contractor may offset amounts owing to Subcontractor under this Agreement and/or any other agreement between Contractor and Subcontractor any losses, damages, costs and expenses incurred by Contractor arising from such default.

12.14 CUMULATIVE REMEDIES All rights, options and remedies contained in this Agreement or otherwise available at law or in equity are cumulative so that not one of them is exclusive of the other. The parties reserve all rights and causes of action to the fullest extent permitted by law.

12.15 ENTIRE AGREEMENT. This Agreement shall constitute the entire agreement between the parties hereto and supersede all other agreements or understanding between the parties with respect to the subject matter of all future Subcontracts, and there are no other agreements, oral or written, made by or relied upon by and between the parties hereto with respect to the subject matter hereof.

12.16 SURVIVAL Without limiting the survival of any express provision to that effect, all representations; warranties; agreements of Subcontractor to reimburse, defend, hold harmless or indemnify; waivers of consequential damages; maintenance of insurance; dispute resolution provisions; and all covenants or agreements of Contractor that contemplate performance after completion of the Subcontract Work and/or payment of amounts owed under this Agreement, including, without limitation, corrective work, shall survive the termination of this Agreement and receipt of final payment by Subcontractor.

12.17 SUCCESSORS AND ASSIGNS Subcontractor shall not assign or subcontract this Agreement, or any portion thereof, or any money due or which may become due hereunder, without the prior written consent of

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Initials of Subcontractor _____

Contractor; provided however, subject to the forgoing provision, this Agreement will be binding upon and extend to the benefit of the parties and their heirs, successors and assigns.

ARTICLE 13

EXISTING SUBCONTRACT DOCUMENTS

The following Exhibits are a part of this Agreement.

EXHIBIT "A" Form of Subcontract

EXHIBIT "B" Required Insurance Provisions and Documents

IN WITNESS WHEREOF, this Agreement is entered into as of the date set forth in Article 1 ("Effective Date").

CONTRACTOR

ATTEST: _____

BY: _____

PRINT NAME: _____

PRINT TITLE: _____

SUBCONTRACTOR

ATTEST: _____

BY:

PRINT NAME: _____

PRINT TITLE: _____

Initials of Contractor _____

Initials of Subcontractor _____

EXHIBIT "A"
Form of Subcontract

1. Owner:

Name: _____

Address: _____

Phone: _____

2. Architect:

Name: _____

Address: _____

Phone: _____

3. Project:

Name: _____

Address: _____

4. Subcontract Amount: _____ (\$ _____ .00)

5. Subcontract Work:

Generally: _____

_____ as more fully set forth in
the Subcontract Documents.

6. Project Schedule: _____ as may be
amended by Contractor from time to time.

7. Subcontract Documents:

The Project prime contract, special conditions, general conditions, specifications, drawings, addenda,
change orders.

8. Contractor Representative:

Name: _____

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Initials of Subcontractor _____

Address: _____

Phone: _____

Email: _____

9. Subcontractor Representative:

Name: _____

Address: _____

Phone: _____

Email: _____

10. Retainage: _____

11. Bond Required: ___ No or ___ Yes

 If yes, identify which type of bond(s) apply and refer to Article 3.27 of the Master Service Agreement:

 ___ Payment Bond

 ___ Performance Bond

12. The Terms of that certain Master Service Agreement by and between Contractor and Subcontractor are incorporated herein by reference. Likewise, this Subcontract is considered appended to and made part of that certain Master Service Agreement.

13. Subcontractor shall provide a copy of the Master Service Agreement and exhibits to any sub-subcontractor it may use to perform the Subcontract Work.

Initials of Contractor _____

Initials of Subcontractor _____

IN WITNESS WHEREOF, this Subcontract is entered into as of _____, 2015.

CONTRACTOR

BY: _____

PRINT NAME: _____

PRINT TITLE: _____

SUBCONTRACTOR

BY: _____

PRINT NAME: _____

PRINT TITLE: _____

Initials of Contractor _____

Initials of Subcontractor _____

EXHIBIT "B"
Insurance Provisions and Documents

- B.1** Subcontractor shall purchase and maintain, at its own expense, with an insurer or insurers acceptable to Contractor, at least the following minimum insurance coverages prior to commencement of Subcontract Work, during the remainder of the term of the Agreement to which this **Exhibit** is attached (the "**Agreement**"), and during the entirety of the Warranty Period for all Projects. Initially capitalized terms used and not otherwise defined in this **Exhibit** shall have the meanings given to them in the Agreement.
- B.1.1** Commercial General Liability Commercial general liability insurance, on no occurrence policy form (ISO CG 00 01 10 01 or later edition) ("modified occurrence" and "claims-made" are not acceptable), including premises-operations (including explosion, collapse and underground coverage) and products-completed operations coverage, with limits of liability of not less \$2,000,000 bodily injury and property damage per occurrence, \$2,000,000 general aggregate limit, \$2,000,000 personal injury and advertising limit, and \$2,000,000 products-completed operations aggregate limit, or limits carried, whichever are greater, and with deductibles or self-insured retentions acceptable to Contractor and clearly stated on the certificates of insurance evidencing coverage. All liability policies shall provide, without limitation, full separation of insureds, contractual liability coverage (including coverage to the maximum extent possible for the indemnification contained in the Agreement) and broad form property damage coverage (including completed operations) or equivalents. The required limits of liability may be provided by a combination of primary and umbrella and/or excess liability policies, all written on an occurrence policy form ("modified occurrence" and "claims made" forms are not acceptable), with umbrella/excess coverage at least as broad as the primary general liability insurance. The products-completed operations coverage shall be maintained continuously during the term of the Agreement and so long as the insurance is commercially reasonably available, for a period of three (3) years after completion of the Subcontract Work. Subcontractor shall require each of its sub-subcontractors of all tiers ("**Sub-subcontractor Parties**") to purchase and maintain insurance coverage as provided in this subparagraph.
- B.1.2** Workers' Compensation Workers' compensation insurance with statutory limits complying with the laws of the State where the applicable Project is located and employer's liability insurance with limits of liability of not less than \$1,000,000 for bodily injury by accident (each accident), \$1,000,000 bodily injury by disease (policy limit), and \$1,000,000 bodily injury by disease (each employee), or limits carried, whichever are greater. Such policies shall contain a waiver of subrogation endorsement in favor of Contractor and Owner. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance by Subcontractor pursuant to the Agreement or during performance by any Sub-subcontractor Parties. The required limits may be provided by a combination of primary and umbrella and/or excess liability policies, with umbrella/excess coverage at least as broad as the primary employer's liability insurance. Subcontractor shall require each Sub-subcontractor Parties to purchase and maintain insurance coverage as provided in this subparagraph, with the same waiver of subrogation in favor of Contractor and Owner.
- B.1.3** **Commercial Auto Liability** Commercial automobile liability insurance, including, without limitation, coverage for liability arising out of "any auto" or any and all owned, non-owned, leased, and hired automobiles, trucks and trailers, or semi-trailers, including, without limitation, any machinery or apparatus attached thereto, with limits of liability not less than \$1,000,000 each accident, or limits carried, whichever is greater, with a deductible or self-insured retention amount acceptable to Contractor. The commercial automobile liability insurance shall be written

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on the most recent edition of ISO form CA 0101 or equivalent acceptable to Contractor and shall include, without limitation, contractual liability coverage and insured status for Contractor and Owner. Subcontractor waives all rights against Contractor and Owner and the other Indemnitees for recovery of loss, injury and/or damages to the extent such loss, injury and/or damages are covered by the commercial automobile liability insurance maintained by Subcontractor. The required limits may be provided by a combination of primary and umbrella and/or excess liability policies, with umbrella/excess coverage at least as broad as the primary commercial automobile liability insurance. Subcontractor shall require the Sub-subcontractor Parties to purchase and maintain insurance coverage, and provide the same waiver of rights, as provided in this subparagraph.

- B.2 Additional Insured** Contractor and Owner, and such other persons and entities as may from time to time be designated by Contractor in writing, shall be named as additional insureds under the general liability insurance required above (including umbrella/excess policies) by issuance of ISO Form CG 20 10 11 85 or equivalent additional insured endorsement(s) reasonably acceptable to Contractor. The additional insured endorsements shall contain a primary insurance clause stating: "It is further agreed that such insurance as is afforded by this policy for the benefit of the additional insureds shall be primary insurance, and any insurance maintained by or available to the additional insureds shall be non-contributing to the insurance provided hereunder." The coverage provided to the additional insureds must be at least as broad as that provided to Subcontractor and may not contain any additional exclusionary language or limitations applicable to the additional insureds. All certificates of insurance shall include the following wording: "All-In Construction Services, LLC, including its subsidiaries, partners, partnerships, affiliated companies and successors and assigns, is an additional insured to the full extent assumed under written contract."
- B.3 Primary Coverage** All commercial general liability, workers' compensation/employer's liability and automobile liability policies maintained by Subcontractor shall be primary coverage, and any coverage maintained by or available to Contractor or Owner shall be non-contributory.
- B.4** Prior to commencing Subcontract Work, Subcontractor shall deliver to Contractor the endorsements and waivers of subrogation referred to in this **Exhibit**, as well as certificates of insurance evidencing the coverages referred to in this **Exhibit**. Promptly upon Contractor's request, Subcontractor shall deliver to Contractor a copy of any and all of the insurance policies and other insurance documents required by this **Exhibit**. In the case of policies expiring while Subcontract Work is in progress, a renewal certificate with all applicable endorsements must be received at the business office of Subcontractor prior to the expiration of the existing policy or policies. Permitting Subcontractor to start Subcontract Work, continue Subcontract Work, or releasing any progress payment prior to compliance with these requirements shall not constitute a waiver thereof. If at any time the Subcontractor's insurance fails to meet the requirements stated herein all payments may be held until the deficiency has been resolved. Each certificate and endorsement must be executed by an authorized agent of the respective insurers. All certificates of insurance must provide Contractor with thirty (30) days advance written notice of cancellation or non-renewal and ten (10) days' notice in the event of cancellation for non-payment of premium).
- B.5** All insurance referred to in this **Exhibit** to be carried by Subcontractor shall be maintained by Subcontractor at its sole expense, with insurance carriers qualified to do business in the State in which the applicable Project is located and maintaining a rating of not less than A-, VII from A.M. Best & Co., unless Contractor, in writing, in its sole discretion, accepts a lower Best's rating.
- B.6** In the event Subcontractor fails to secure or maintain any policy of insurance required hereby, Contractor, at its sole discretion and election, may terminate the Agreement and shall retain all remedies there under for breach of the Agreement.

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- B.7** The insurance requirements set forth herein are independent of Subcontractor's indemnification and other obligations under the Agreement and at law. Nothing in this **Exhibit** shall be construed to limit or alter any of the other obligations of Subcontractor, under the Agreement, at law, or otherwise, including, without limitation, Subcontractor's indemnification obligations. Nothing contained herein shall be construed as limiting the type, quality or quantity of insurance Subcontractor should maintain or the extent of Subcontractor's responsibility or liability for damages or other relief, under the Agreement or otherwise. Neither receipt nor acceptance of policies, endorsements or certificates, whether or not showing less or different coverage than required herein, nor any other forbearance or omission by Contractor with respect to these insurance requirements or otherwise shall be deemed a waiver of, or estoppel to assert, any right of Contractor regarding these insurance requirements. Subcontractor shall be solely responsible to pay any loss amount that lies within the deductible(s) or self-insured retention(s) of Subcontractor's policies, up to the maximum amount of the deductible(s) or self-insured retention(s).
- B.8** None of the requirements contained herein shall relieve Subcontractor and Sub-subcontractor Parties of their respective obligations to exercise due care in the performance of their duties in connection with the Subcontract Work or to complete the Subcontract Work in strict compliance with the Subcontractor Documents.
- B.9** Any insurance policies required of or maintained by Subcontractor pursuant to the Agreement may not contain any exclusions or limitations applicable to (a) additional insured vs. named insured Claims or suits; (b) any condominiums, townhomes, multi-unit, multi-family and/or attached projects, residential development or construction, common interest subdivisions or projects with a homeowner's association, or similar exclusions or limitations, or (c) exclusions encompassing any of the Subcontract Work.
- B.10** With regard to its personal property and its property insurance (if any), Subcontractor agrees and acknowledges as follows:
- B.10.1** Subcontractor and Sub-subcontractor Parties shall have the risk of loss as to all materials, supplies, equipment and/or fixtures until such time as such materials, supplies, equipment and/or fixtures have been installed or otherwise affixed permanently to the Project (and accepted by Contractor and/or Owner in accordance with the Agreement). Contractor and Owner shall not be liable for loss or damage to, or theft of, any materials, supplies, equipment and/or fixtures prior to such time, whether such materials, supplies, equipment and/or fixtures are off the site, in transit, on the site, under the control of Contractor, Owner or otherwise.
- B.10.2** Subcontractor and Sub-subcontractor Parties shall be solely responsible for any loss or damage to its or their tools, equipment and other personal property and that of their employees and workmen (collectively, "**Personal Property**"). Subcontractor and Sub-subcontractor Parties, at its or their option and own expense, may purchase and maintain insurance for such Personal Property and any deductible or retention in relation thereto shall be its or their sole responsibility. Any such insurance shall be Subcontractor's and Sub-subcontractor Parties sole source of recovery in the event of loss or damage to its or their Personal Property. Any such insurance purchased and maintained by Subcontractor and Sub-subcontractor Parties shall include a waiver of subrogation as to Contractor and Owner.
- B.10.3** Subcontractor waives all rights of recovery, whether under subrogation or otherwise, against Contractor and Owner for (a) loss or damage covered by Subcontractor's property insurance and (b) loss or damage to Subcontractor's Personal Property. Subcontractor shall require the same waivers from each of the Sub-subcontractor Parties and from the insurers issuing property

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insurance policies relating to the Subcontract Work or the applicable Project or the applicable “**Project Site**” (defined herein) purchased and maintained by any other of the Sub-subcontractor Parties. The waivers of recovery, including, subrogation, referred to in this subparagraph shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium, directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property that is the subject of the loss or damage. If the policies of insurance referred to in this section require an endorsement to effectuate the waivers of subrogation required hereunder, the parties procuring such policies will cause them to be so endorsed at their own expense.

- B.11** For the purposes of this **Exhibit**, “**Project Site**” shall mean the applicable Project, the real estate and adjacent and nearby areas where incidental operations are performed in connection with the Project, excluding permanent locations of any insured party, except Contractor and/or Owner.
- B.12** Upon request, Contractor will furnish each of the bidding and negotiating Sub-subcontractor Parties a copy of this **Exhibit**, and shall make the same requirement of all with respect to their subcontracting or procurement procedures.
- B.13** Any type of insurance or any increase of its limits of liability not described above that Subcontractor requires for its protection, or on account of statute, shall be its own responsibility and at its own expense.

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Initials of Subcontractor _____