



{Contracts.ContractDate}

{ToContact.Prefix} {ToContact.DisplayName}
{ToCompany.Name}
{Addresses.Address1}
{Addresses.City}, {Addresses.State} {Addresses.Zip}

RE: {Projects.Name}
{Projects.Address}

Dear {ToContact.Prefix} {ToContact.LastName}:

An electronic copy of the contract documents for the above referenced project is attached for your review and acceptance. This is a two-part contract. Part I (first page through Exhibit "I") is specific information and requirements for this particular project. (Part I may also be referred to as the "Project Specific Contract".) Part II (Subcontract General Provisions through the end page) is the contract document with the terms which apply to every project and do not change, regardless of the project, unless specifically changed in the Project Specific Contract signed by you and Pogue. (Part II may also be referred to as the "General Provisions".)

Once we have a fully executed General Provisions with your company, you will be eligible to work on projects for which Pogue is the Contractor. To streamline the contracting process we will keep the General Provisions on file. You should keep a copy too, as they will be applicable on your Projects with Pogue Construction going forward. Future contracts will require execution of the Project Specific Contract only. The intent is to make the contracting processing smoother with less repetitive and unnecessary review.

You will not be permitted to commence work until we have received all required information as listed below:

- Executed subcontract
- Registration with ProQual, a division of Assurance Screening (Contact ProQual at 214-347-7240) (Reference Exhibit "G")
- Subcontractor Default Insurance enrollment or Payment & Performance Bond, if required (Reference Exhibit "G"- Continued)
- Schedule of Values in GC Pay (reference Exhibit "E")
- List of Suppliers over \$25,000 (Exhibit "D")
- Subcontractor Responsibility Matrix Contact Log

In the event there are any delays in performance because you have not timely delivered the information required above, you will be responsible for any and all repercussions which follow from the delay.

The following persons shall be your primary contacts during the construction of the project:

Job Number: {Projects.Number}

Project Manager: {Projects.ProjectManager}

Assistant PM: {Projects.FieldEngineer}

Office: (972) 529-9401

Superintendent: {Projects.Superintendent}

Cell: {Projects.JobTel}

Sincerely,

{User.CurrentUser}

POGUE CONSTRUCTION CO., LP

1512 Bray Central Drive, Suite 300
McKinney, TX 75069
972-529-9401 phone
972-529-9832 fax

PROJECT SUBCONTRACT – PART I

Project No: {Projects.Number}

Project Subcontract No: {Contracts.ContractNumber}

This Agreement made and entered into on {Contracts.IssuedDate} between Pogue Construction Co., LP, a Texas limited partnership (“Contractor”) and Subcontractor:

{ToCompany.Name}

| | | |
|---|---|--|
| Attention: {ToContact.Prefix} {ToContact.DisplayName} | Address: {Addresses.Address1} {Addresses.City}, {Addresses.State} {Addresses.Zip} | Phone: {ToContact.Tel} Fax: {ToContact.Fax} |
|---|---|--|

PROJECT:

| |
|--|
| {Projects.Name} {Projects.Address} |
|--|

OWNER:

| |
|---|
| {LegalDocInfo.Owner} {LegalDocInfo.OwnerAddr1} {LegalDocInfo.OwnerAddr2} |
|---|

ARCHITECT:

| |
|--|
| {LegalDocInfo.ArchName} {LegalDocInfo.ArchAddr1} {LegalDocInfo.ArchAddr2} |
|--|

The subcontractor promises, covenants and agrees to furnish all labor, material, equipment, services and supplies required for a complete job of:

| |
|--|
| {Contracts.Description} (more specifically described in Exhibit “A.1”) in strict accordance with the project plans, specifications, (and labor and material which is reasonably inferable from plans and specifications), notes, codes, ordinances, manufacturers’ recommendations and all applicable local, state and federal regulations. (This and any and all services and materials which may be reasonably inferred from the Construction Documents which you must perform or provide to complete this undertaking may be referred to herein as the “Work”.) |
|--|

Subcontractor shall commence the Work and shall substantially complete the Work within such time period to be determined by Contractor in accordance with Contractor’s obligations under the Contract Documents. The Contractor agrees to pay the Subcontractor for properly performing the Work, and the Subcontractor agrees to accept, therefore, the sum of:

{{Contracts.OrigValue} "NumToText"}} ({{Contracts.OrigValue} "Currency"}})

(The "Subcontract Sum").

The Subcontract Sum is based upon the alternates, if any, and the unit prices, if any, set forth in Exhibit "A.1".

Based upon the Subcontractor's compliance with all conditions precedent set forth in this Agreement, proper completion and full execution of applications for payment in the form set forth in Exhibit "E" or provided through the GC Pay system, receipt of certificates for payment issued by the Architect authorizing payment for the Work, and receipt of payment from Owner, Contractor shall make progress payments on the third Friday of the month on account of the Subcontract Sum to Subcontractor. All applications for payment must be submitted through GC Pay with an appropriate release of lien and an updated Supplier List no later than the 20th day of the month preceding the month payment is requested. Any applications for payment after such day may be held until the following billing period.

Contractor shall withhold from each progress payment a retainage amount equal to ten percent (10 %), or such other amount as specified in the Agreement between Contractor and Owner. It is agreed that Contractor has exercised diligence in ascertaining and communicating in writing to Subcontractor the financial viability of the Owner and the existence of financial arrangements to pay for the improvements, including the Work. This means that Subcontractor has satisfied itself as to the financial viability of the Owner, and prior to executing this agreement the Subcontractor has been provided in writing whatever information is required by Tex. Bus. & Comm. Code Sec. 56.054 to ensure enforcement of a contingent payment clause is not unconscionable. In the event that the Project is a public project governed by Tex. Government Code Ch. 2253 the written information which has been provided includes the name, address and business telephone number of the primary obligor, the name and address of the surety on the payment bond provided to the primary obligor to which any notice of claim should be sent, and a statement from the Owner that funds are available and have been authorized for the full contract amount for the construction of the improvements. Subcontractor is satisfied that the Owner has sufficient financial resources to pay for the Project, including Subcontractor's Work. Contractor shall make payments to Subcontractor, including but not limited to final payment, only after receipt of payment from Owner.

When submitting any request for a Change Order, a proposed Change Order, or responding to an inquiry for a change in the Scope of Work, (requests for a Change Order, proposed Change Orders, and responses to inquiries for a change in the Scope of Work are considered a "request for a Change Order" in the Subcontract Agreement) Subcontractor is to provide an itemized breakdown of all costs associated with any changes, including but not limited to labor, materials, equipment, services, supplies and any other costs or fees not contemplated in performance of the Work. The Subcontractor shall ensure the request for a Change Order contains a reasonable itemization from which Pogue, the Architect and the Owner can evaluate the various elements which constitute the proposed work. Pogue, the Architect, and the Owner have no obligation to consider or evaluate the request for a Change Order until it includes the itemization required herein. Any other request from the Subcontractor shall not be considered a valid request for a Change Order and the parties agree that "requests" without sufficient itemization will not be considered for purposes of determining whether the Subcontractor timely submitted a request for a Change Order in compliance with contractual obligations. All change orders must be executed by both Pogue and Subcontractor prior to performance of any work described therein and prior to requesting payment of the additional work on Monthly Pay Applications. **TIME IS OF THE ESSENCE FOR THE SUBCONTRACTOR TO SUBMIT REQUESTS FOR CHANGE ORDERS.**

By signing this Project Subcontract or providing or causing to be provided a certificate of coverage, the person signing this contract is representing to the governmental entity that all employees of the person signing this contract who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Subcontractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The following exhibits are attached hereto and are hereby made a part of this Subcontract:

| | | | |
|----------------------|---|--------------------|----------------------------------|
| Exhibit "A" | Scope of Work | Exhibit "H" | Schedule |
| Exhibit "A.1" | Project Specific Scope of Work | Exhibit "I" | Unit Prices (if applicable) |
| Exhibit "B" | List of Drawings & Specifications | Exhibit "J" | Subcontractor Contact Matrix |
| Exhibit "C" | Workplace Policy | Exhibit "K" | Financial Disclosure of Owner |
| Exhibit "D" | Supplier List and Joint Check Agreement | Exhibit "L" | Severe Weather Preparedness Plan |
| Exhibit "E" | GCPay Notice | Exhibit "M" | Project Close Out Requirements |
| Exhibit "F" | Release of Lien | | |
| Exhibit "G" | Insurance Bond & Requirements | | |

As of the date set forth in this Agreement, the most recent version of the subcontract general conditions entitled Pogue Construction Co., LP Subcontract General Provisions or the subcontract general conditions entitled Paul Pogue, L.P. Subcontract General Provisions, executed by Subcontractor and Contractor, are incorporated in this Subcontract by reference as if fully set forth below and its terms and conditions are part of this agreement. By executing this Subcontract, Subcontractor acknowledges having read and agreed to all of the terms, conditions, and provisions thereof.

Sales Tax Status: {Projects.ProjectExecutive}
 Project Manager: {Projects.ProjectManager} Telephone: (972) 529-9401

| | |
|--|--|
| <p>Contractor:</p> <p>Pogue Construction Co., LP, a Texas Limited Partnership</p> <p>By: Ben Pogue, L C, a Texas limited liability company, General Partner</p> <p>By: _____</p> <p>Printed Name: <u>{Projects.ProjectManager}</u></p> <p>Title: <u>Project Manager</u></p> <p>Date: _____</p> | <p>Subcontractor:</p> <p>{ToCompany.Name}</p> <p>By: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> |
|--|--|

Please sign and initial each page of the attached exhibits and return both copies of the Project Subcontract. We will complete the execution and return a copy for your files.

Table of Contents

- Exhibit “A” Scope of Work
- Exhibit “A.1” Project specific scope of work
- Exhibit “B” List of Drawings and Specifications
- Exhibit “C” Workplace Policy
- Exhibit “D” Supplier List and Joint check Agreement
- Exhibit “E” GCPay Notice
- Exhibit “F” Release of Lien
- Exhibit “G” Insurance and Bond Requirements
- Exhibit “H” Schedule
- Exhibit “I” Unit Prices (if applicable)
- Exhibit “J” Subcontractor Contact Matrix
- Exhibit “K” Financial Disclosure of Owner
- Exhibit “L” Severe Weather Preparedness Plan
- Exhibit “M” Project Close Out Requirements

Exhibit “A”

Scope of Work

Exhibit "A" - Scope of Work

| | |
|------------|--|
| 1. | Although it may, Contractor is not required to compare Subcontractor's bid to any other person or entity's bid to determine whether the bid is reasonable in price or whether Subcontractor correctly construed the Scope of Work contemplated in the drawings, specifications and addenda for the Work. Subcontractor represents that its bid may be based on processes, prices, or other information unique to it which make effective comparison of bids for purposes of determining whether Subcontractor properly bid the Work impossible. Accordingly, Subcontractor is not looking to Contractor to inform Subcontractor if its bid varies from any or all other bids which may be submitted. |
| 2. | The Subcontractor has reviewed all drawings, specifications and addenda that exist as of the execution of the Agreement in their entirety for information related to Subcontractor's scope of work. Prior to submitting a bid, Subcontractor identified any and all material conflicts or coordination issues in the drawings, specifications and addenda for the Work, and brought those to the attention of the Contractor in writing prior to bid day . Subcontractor did not submit a bid until Subcontractor determined to its satisfaction that all material conflicts or coordination issues were resolved and there are no remaining conflicts or coordination issues to resolve. |
| 3. | The Subcontractor quote/proposal/bid will not be a part of the Contractor's bid tabulation review. If a conflict, omission or discrepancy occurs between Subcontractor's proposal and this scope of work or the Project Specific Scope of Work, then this scope of work or the Project Specific Scope of Work controls. |
| 4. | The Subcontractor agrees that contracts shall be awarded based upon best value to the Owner that complies with the conditions of the proposal package, based on the selection criteria of the Contractor. Contractor reserves the right to reject any and all proposals and to waive any informality in proposals received whenever any such rejection or waiver is in the interests of the Owner or Contractor. By executing this Agreement, Subcontractor waives any claim it has or may have against the Owner, Architect, Contractor and its employees arising out of or in connection with the administration, evaluation, or recommendation of any proposer, waiver of any requirements under the submission documents, acceptance or rejection of any submission and award of a subcontract. Subcontractor agrees that the final selection is subjective and as such the Contractor recommends subcontractors to the Owner based on the information available and in the best interest of the Owner and the Contractor. |
| 5. | All areas disturbed by Subcontractor's performance of work outside of the area of improvement to be provided by Subcontractor shall be returned to the same condition as at the time of entry by Subcontractor unless other arrangements are made in writing with Contractor. Subcontractor shall provide a minimum proctor compaction per the plans and specification, including the recommendations found in the geotechnical report, if the work of the Subcontractor may disturb the soil. Subcontractor will provide all necessary sod, landscaping and irrigation repairs to return any area disturbed by this Subcontractor back to the condition in which the area was received, if the area is not improved. |
| 6 | Subcontractor's quote includes the amount needed for all undertakings required to complete the Work, including but not limited to labor, material, equipment and supervision required to complete Subcontractor's scope of work as identified in the Request for Proposal. Subcontractor's quote is not, and any restrictions contained in it are not terms of, a Contract Document. |
| 7. | The contracts for this project will be subject to and governed by Tex. Gov't. Code Ch. 2253. This notice provided prior to the execution of the contract with Pogue, states that the contract contains a "Pay if Paid" clause. The "Pay if Paid" clause is contained in the Subcontract General Provisions incorporated into the Contract Subcontractor is executing or may execute. In essence, this section indicates that Subcontractor will not be paid for services rendered or materials provided until, among other things, such time as Contractor is paid by the Owner (defined below) for the same. If Subcontractor has not already done so, it is recommended that Subcontractor carefully review the Subcontract General Provisions, including the Contingent Payment section, to ensure Subcontractor understands the risk it is undertaking. |
| 8. | In relation to the Pay If Paid clause, Subcontractor agrees that Contractor has exercised due diligence in ascertaining and communicating in writing to the Subcontractor, before execution of this document, the financial viability of the Owner and the existence of adequate financial arrangements to pay for the improvements. Subcontractor represents to Contractor, and Contractor is relying on Subcontractor's representation, that Subcontractor has received in writing (i) the name, address and primary business telephone number of the Owner; (ii) the name and address of the surety on the payment bond provided to the Owner to which any notice of claim should be sent; and (iii) a statement from the Owner (which may be in the form of minutes from a meeting of the governing body of the Owner) that the funds are available and have been authorized for the full contract amount for the construction of the improvements. |
| 9. | Within 3 days from the date Subcontractor executes this Project Subcontract, Subcontractor will provide a fully executed copy of this Contract with complete exhibits/attachments, including but not limited to schedule of values, current insurance, list of suppliers, and bond (if required). |
| 10. | Subcontractor has reviewed the Schedule attached hereto as Exhibit H, and represents that it has sufficient resources to provide sufficient manpower to meet the Construction schedule. |
| 11. | It is the responsibility of the bidder to review Pogue Construction's Contract Document Subcontract - Part II for additional requirements – it is Contractor's intent that a copy of the General Provisions (Part II) has been included in this package. However, if a copy is not attached, the Subcontractor acknowledges that it is obligated to comply with the most recent version of the General Provisions the Subcontractor has executed. If the Subcontractor has not executed, or an executed version of the General Provision cannot be located, the Subcontractor acknowledges that it has reviewed and is agreeing to comply with the most recent version of the General Provisions drafted by Contractor. |
| 12. | Subcontractor shall furnish and install their own box-outs and/or penetrations as required for their work. In agreeing to the Schedule, Subcontractor has confirmed that sufficient time has been allowed for this work to be installed. If Subcontractor fails to install these box-outs and penetrations, then any and all additional work required "after-the-fact" shall be Subcontractor's responsibility, including costs to open, re-perform or otherwise alter Subcontractor's or other trade's work. |

| | |
|------------|--|
| 13. | The Subcontractor is responsible for its own fire-safing and/or fire caulking as required by the Contract Documents and/or applicable codes. Subcontractor shall ensure that all slab penetrations Subcontractor creates or uses, directly or indirectly, in the performance of Subcontractor's work, shall be thoroughly sealed against the penetration or infiltration of water. |
| 14. | This Subcontract shall furnish all access doors required or inferred by this scope of work. |
| 15. | |
| 16. | |
| 17. | |
| 18. | |
| 19. | |

Exhibit “A.1”

Project Specific Scope of Work

Exhibit “B”

List of Drawings and Specifications

Exhibit “C”

Workplace Policy

EXHIBIT "C"

Workplace Policy

All subcontractors and suppliers should inform your employees that this policy is in effect. New employees hired should be informed of this Policy. A copy of the Policy, which explains consequences for noncompliance, will be posted at all of our operational facilities.

I. SAFETY

DRUGS, ALCOHOL & OTHER PROHIBITED ITEMS

To help ensure a safe, healthy and productive work environment for the Owner, Owner employees and staff, Architects, their representatives and agents, employees and subcontractors of Pogue Construction Co., L P ("Pogue Construction" or "Contractor") and others on Pogue Construction or the Owner's property, to protect Owner, Pogue Construction, and other trades and subcontractors' property and assets, and to assure efficient operations, Pogue Construction has adopted a policy on drugs, alcohol and other prohibited items.

This policy restricts certain items and substances from being brought on or being present on Pogue Construction property, project sites or related work places, including but not limited to off-site storage spaces, prohibits Pogue Construction employees and others working or being present on Pogue Construction property, Project sites, or related work places from having detectable levels or identifiable traces/quantities of certain drugs and other substances, and prohibits the unauthorized possession, by employees or others, of property, equipment, materials or proprietary information belonging to Pogue Construction or others.

For purposes of this policy the terms Pogue Construction Property or Pogue Construction Premises is used in its broadest sense and includes all property, facilities, land offices, building, structures, equipment, automobiles, trucks, all other vehicles, parking areas, jobsites of a customer or to and from those locations while in course of Pogue Construction Co., LP, employment.

Pogue Construction prohibits the use, possession, transportation, concealment, selling or distribution on its premises, facilities or work places of any of the following:

1. Illegal or unauthorized drugs, controlled substances, marijuana, mood or mind altering substances, "look alike" substances, designer or synthetic drugs, and certain inhalants;
2. Unauthorized alcoholic beverages, intoxicating substances;
3. Unauthorized firearms, ammunition, explosives and weapons;
4. Equipment, paraphernalia and literature pertaining to illegal drug or substance use; or
5. Unauthorized prescription drugs and "over the counter" medications, which may affect the individuals safe performance of duties, except under the following conditions:
 - a) The drugs have been prescribed by a licensed physician for the person in possession of the drugs.
 - b) The prescription was filled by a registered/licensed pharmacist within the last (12) months for the person possessing the drug/medication and the drug/medication are in the original container from the pharmacy.
 - c) A "Prescription Drug Form" for the drug/medications completed by employee and appropriated supervisor with a copy of the signed form on file with Pogue Construction records; and
 - d) Pogue Construction at all times, reserves the right to have a physician determine if a prescription drug or medication produces hazardous effects and may restrict the use of any such drug or medication accordingly. This may also include restricting the employee's work activity.

Pogue Construction reserves the right, at all times, while on Pogue Construction premises and property described above (including but not limited to Project Sites and off-site storages areas) as circumstances warrant, to have Pogue Construction supervisors and/or search & inspection specialists conduct reasonable and voluntary searches and inspections of employees, subcontractors, or other persons, and their personal property and effects, to include but not be limited to the vehicles, lockers, baggage, office, desk, tool boxes, clothing, living quarters for the

purposes of determining if such employees, subcontractors or other persons are, or reasonably suspected of, using, possessing, selling, distributing, concealing, or transporting any of the prohibited items and substances contained in the policy. All Subcontractors shall ensure that their employees and sub-subcontractors are informed of this policy permitting searches and inspections and voluntary participation by staff in the same, and that failure to permit searches and inspections could lead to exclusion from the premises and/or property. These searches may include but are not limited to the use of electronic detection devices, scent trained dogs, or the taking of urine or blood samples for testing.

If supervisor(s) have reasonable suspicion that employees, subcontractors, or others, are in direct violation of any part of this policy, the supervisor(s) have the right to conduct an on-the-spot search and inspection of employees, subcontractors or others, and their personal property and effects as described above. All searches and inspections conducted by outside authorized specialists will be in the presence of a Pogue Construction representative. A search and inspection as defined in this policy may also require employees, subcontractors and others present on Pogue Construction property described above (including but not limited to Project Sites and off-site storages areas), to submit to a urine drug screen test and/or blood test. Among other occasions, these tests may be utilized under the following circumstances:

1. Pre-employment examinations;
2. Part of an overall Search and Inspection of an employee, or other persons work area or location, of employment;
3. When two supervisors have reasonable suspicion that an employee is intoxicated, using or under the influence of drugs or alcohol;
4. When an employee or person is found in possession of suspected illicit unauthorized drugs or and/or alcohol or when any of these items are found in the area controlled or used exclusively by designated employees; or
5. Following an on-the-job injury requiring transportation to a medical facility for treatment, or following a serious or potentially serious accident or incident involving damage to Owner, Pogue Construction, or subcontractor property, including but not limited to vehicles and other equipment. All persons involved and within the immediate vicinity of the incident may have their urine and blood tested and screened.

Searches (including urine and/or blood drug screening) and inspection by Pogue Construction supervisors and specialists are voluntary and may be conducted from time-to-time without prior announcement. Searches will be performed with concern for the personal privacy of each employee or other individual.

(*Reasonable suspicion is a belief based on facts and observations sufficient to lead a prudent supervisor to suspect that the person is using or under the influence of drugs or alcohol.)

Any person found using, possessing, selling, distributing, concealing, or transporting any of the items or substances prohibited by this policy, or who refuses to submit to a search, urine and/or blood analysis, or other detection procedure, shall be removed from Pogue Construction property described above (including but not limited to Project Sites and off-site storages areas) and be subject to disciplinary action, up to and including termination of employment.

Any person who, as a result of drug testing and screening, is found to have detectable levels or identifiable traces of prohibited drug or substance in his or her system, regardless of why or where the drug entered the persons system, without an explanation satisfactory to Pogue Construction will be considered in violation of this policy, will be removed from Pogue Construction property described above (including but not limited to Project Sites and off-site storages areas)and will be subject to disciplinary action, up to and including termination of employment.

All subcontractors and suppliers personnel and other third parties on Pogue Construction premises will be subject to the policy. Any such individual found in violation of this policy, or who refuses to be searched, will be subject to removal from the premises. Violation of this policy by subcontractors or suppliers employees may also cause cancellation of the contract between Pogue Construction Co., LP and such subcontractors and suppliers and may result in the subcontractor or supplier losing the right to do business with Pogue Construction Co., LP

Pogue Construction has the right, in its discretion, to report use, possession, transportation, concealing or selling, distributing of any substance named in this policy to law enforcement officials any and such substances.

INAPPROPRIATE BEHAVIOR

Subcontractor is aware that a construction site is a dangerous location. Accidents do happen. Steps should be taken to minimize the risk of accidents, including careful pre-planning and coordination with Owner, Architect, Contractor and other subcontractors and contractors.

Subcontractor shall emphasize to its employees, subcontractors, and suppliers that the inappropriate behavior on the Project site will not be permitted.

Pogue has no obligation to oversee Subcontractors or their workforce and does not intend to oversee the manner or method in which Subcontractor's perform the Work. It is Subcontractor's responsibility to ensure that its workforce performs the Work in a safe manner, including wearing appropriate safety equipment and complying with OSHA regulations at all times. While Pogue has no obligation to oversee Subcontractors or the manner or method in which they are performing their work, if Pogue observes or determines, in its sole discretion, that an employee, subcontractor, or supplier of Subcontractor is behaving inappropriately or in what Pogue may consider an unsafe manner, whether posing a danger to him/herself or others, Pogue reserves the right, although it has no obligation, to remove the person from the Project site and ban them from returning. This right includes but is not limited to the right to remove person(s) for fighting, threatening others, horsing or goofing around, or otherwise not using appropriate common sense and safe practices in the performance of their work.

II. BACKGROUND CHECKS & BADGING REQUIREMENTS:

For all projects, or to the extent otherwise required by state or federal law, the following background checks and badging requirements shall apply. ALL WORKERS on site must pass a background check sufficient to comply with the requirements of the Owner or the requirements of the law for working at the Project site, whichever is more stringent. Each worker or any personnel on site must have an official identification badge, created by an approved background verification company.

- Badge #
- Expiration Date
- Employee Name
- Company name (badge must NOT reference Pogue Construction in any way)
- Photo ID
- Background check company information

III. SITE CLEANUP

The Subcontractor shall: (a) follow the Contractor's clean up and safety directions; (b) allocate at least one worker for every five workers (minimum one worker) to job site cleanup at the Contractor's discretion; (c) at all times keep the building and premises free from debris and unsafe conditions resulting from the Subcontractor's Work; and (d) broom clean each work area prior to discontinuing work in the same.

If the subcontractor fails to immediately commence compliance with such safety duties or commence clean up duties within 24 hours after receipt from the Contractor of written notice of noncompliance the Contractor may implement such safety or cleanup measures without further notice and deduct the cost thereof from any amounts due or to become due to the Subcontractor.

The Subcontractor is obligated to conduct operations in a safe manner and in accordance with his scope of work during construction. The Subcontractor is obligated to conform and abide by established safety policies and procedures of the Contractor. Said policies and procedures will be made available to the Subcontractor and may be amended from time to time at the project site. The Subcontractor is obligated to conform and abide by OSHA regulations, including but not limited to those regarding the storage and use of hazardous materials, and provide

any and all information and materials required by such regulations to the Contractor at least five (5) days prior to beginning any work on the project site.

IV. PERSONAL WORK

The subcontractor is obligated to notify Pogue Construction Accounting Department in writing prior to perform any personal work for a Pogue employee. Any work regarding a personal nature must not be done for less than fair market value and must be billed directly to the said employee.

{ToCompany.Name} has AGREED, ACCEPTED AND CONSENTED to this Workplace Policy.

Signed By: _____

Printed Name: _____

Title: _____

Date: _____

Exhibit “D”

Supplier List and Joint Check

EXHIBIT "D"
Supplier List and Joint Check Agreement

Provide list of Persons or Firms Providing Labor, Materials and/or Equipment to Subcontractor:

| SUPPLIER INFORMATION LIST | | | |
|---------------------------|---------|-----------|-------|
| COMPANY NAME | CONTACT | TEL / FAX | EMAIL |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

JOINT CHECK AGREEMENT

This agreement is entered into this _____ day of _____, 20____ between POGUE CONSTRUCTION CO., LP, Contractor, and {ToCompany.Name} Subcontractor in association with the Subcontract for Building Construction attached hereto. WHEREAS it is the intent of the parties for payment to be made as provided in the Subcontract by the Contractor jointly to the Subcontractor and his suppliers and third party subcontractors if Contractor, in its sole discretion, has any concern regarding Subcontractor’s solvency, ability to make payments, or willingness to compensate suppliers and third party contractors.

THEREFORE, within (30) days from the date of this agreement the Subcontractor agrees to provide a list of anticipated major or concerned suppliers and third party subcontractors (Major or concerned suppliers and third party subcontractors shall be any person or entity who provides more than One Thousand Dollars in goods and services in any given month or any person or entity who has provided a notice of intent to lien or to assert a bond claim in relation to the Project), and to amend and update this list as necessary throughout the term of the subcontract, and to submit copies of invoices of such major or concerned suppliers and third party subcontractors on a monthly basis together with their applications for payment.

The Contractor may make, but is under no obligation to make, a joint check to the subcontractor and their major or concerned suppliers and third party subcontractors. Nothing in this Joint Check Agreement shall release the Subcontractor from its responsibility to ensure that its suppliers and third party subcontractors are promptly paid. Contractor has no obligation to Subcontractor and/or major or concerned suppliers or third party subcontractors to issue joint checks and shall have no liability to Subcontractor and/or major or concerned suppliers or third party subcontractors based on Contractor’s decision, based on the exercise of its sole discretion, to issue, or not issue, joint checks.

In witness whereof, the parties have executed this agreement on the date and year first written above.

SUBCONTRACTOR:

SUPPLIER:

By: _____ By: _____
Signature Signature

Attest: _____ Attest: _____

Exhibit “E”

GC Pay

GC PAY

During this project, subcontractors (“Subcontractor”) of Pogue Construction Co., LP (“Contractor”) will be using [GCPay.com](https://gcpay.com) to process invoices and related items. Contractor will notify Subcontractor by email to register in *GCPay* and following Subcontractor’s registration, Subcontractor will have access to the project information. If Subcontractor is already registered in *GCPay*, Contractor will notify Subcontractor by email that its project information is accessible. There is no charge for subcontractors and vendors to use the *GCPay* system. It is a web-based system so Subcontractor will be able to access *GCPay* from any device, including a computer, tablet or smart phone.

Once registered, Subcontractor should be able to process the following items in *GCPay*:

- **Schedule of Values.** Contractor provides the total contract amount and Subcontractor will submit line item details of that amount for review and approval by Contractor’s project managers. The line items can be keyed in manually or Subcontractor can upload an Excel spreadsheet.
- **Change Orders.** Approved change orders will be added to Subcontractor’s Schedule of Values as a separate line item throughout the project. Subcontractor’s invoices will include these approved change orders.
- **Compliance Documentation.** Subcontractor will have access to a list of required compliance items and Subcontractor will be able to provide compliance documentation via document upload, email or fax.
- **Applications for Payment.** Subcontractor will submit invoices on a monthly basis. When invoicing, Subcontractor will be required to list the contractors and vendors working for Subcontractor on this project. Subcontractor must provide certain information about those companies, including contract amount and current amount paid to them during the month.
- **Lien Waivers.** Subcontractor will execute lien waivers at appropriate times throughout the project. These will be emailed to Subcontractor and Subcontractor also will have access to all lien waivers in [GCPay.com](https://gcpay.com).

For support, please contact [GCPay.com](https://gcpay.com) at (877) 447-2584 or info@gcpay.com.

Exhibit “F”

Release of Lien

EXHIBIT "F"
CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____ Job No. _____

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$_____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent:

_____ (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, material men, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date: _____ (Company name)

By: _____ (Signature)

_____ (Title)

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____, the _____ of _____, on its behalf.

Notary Public, State of Texas

EXHIBIT "F"

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. IT IS PROHIBITED FOR A PERSON TO REQUIRE YOU TO SIGN THIS DOCUMENT IF YOU HAVE NOT BEEN PAID THE PAYMENT AMOUNT SET FORTH BELOW. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____ Job No. _____

The signer of this document has been paid and has received a progress payment in the sum of \$_____ for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description)

The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, material men, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date: _____ (Company name)

By: _____ (Signature)
_____ (Title)

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____, the _____ of _____, on its behalf.

Notary Public, State of Texas

EXHIBIT "F"
CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project _____ Job No. _____

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$_____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, material men, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date: _____ (Company name)

By: _____ (Signature)
_____ (Title)

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____, the _____ of _____, on its behalf.

Notary Public, State of Texas

EXHIBIT "F"

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. IT IS PROHIBITED FOR A PERSON TO REQUIRE YOU TO SIGN THIS DOCUMENT IF YOU HAVE NOT BEEN PAID THE PAYMENT AMOUNT SET FORTH BELOW. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project _____ Job No. _____

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent:

_____ (job description)

The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, material men, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date: _____

_____ (Company name)

By: _____ (Signature)

_____ (Title)

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____, the _____ of _____, on its behalf.

Notary Public, State of Texas

Exhibit “G”
Insurance and Bond
Requirements

EXHIBIT "G"

Insurance and Bond Requirements

INSURANCE

Current insurance must be on file with Pogue when you return the signed contract; if not, please send certificate with signed contract. Current insurance certificate is required PRIOR to mobilization. Insurance does not need to be project specific. (Reference Article 7 of the contract documents.) Sample certificate with required limits highlighted per below:

| CERTIFICATE OF LIABILITY INSURANCE | | DATE (MM/DD/YYYY) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|---|-------------------------------|---------------|-------------------------|-------------------------|--|--------|-------------------|--|-------------------|-------|-------------------|-------|-------------------|--|---|---|--|--|--|--|--|---|---|---|--|--|--|--|--|--|---|---|--|--|--|--|--|--|--|--|
| THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s). | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| PRODUCER Your Insurance Company 1234 Their Street Anywhere, US 12345 | CONTACT NAME: _____ PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL: _____ ADDRESS: _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| INSURED XYZ Subcontractor PO Box 123 Anywhere, US 12345 | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A : _____</td> <td>_____</td> </tr> <tr> <td>INSURER B : _____</td> <td>_____</td> </tr> <tr> <td>INSURER C : _____</td> <td>_____</td> </tr> <tr> <td>INSURER D : _____</td> <td>_____</td> </tr> <tr> <td>INSURER E : _____</td> <td>_____</td> </tr> <tr> <td>INSURER F : _____</td> <td>_____</td> </tr> </table> | | INSURER(S) AFFORDING COVERAGE | NAIC # | INSURER A : _____ | _____ | INSURER B : _____ | _____ | INSURER C : _____ | _____ | INSURER D : _____ | _____ | INSURER E : _____ | _____ | INSURER F : _____ | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | |
| INSURER(S) AFFORDING COVERAGE | NAIC # | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| INSURER A : _____ | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| INSURER B : _____ | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| INSURER C : _____ | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| INSURER D : _____ | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| INSURER E : _____ | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| INSURER F : _____ | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| COVERAGES | | CERTIFICATE NUMBER: _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | REVISION NUMBER: _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">INSR LTR</th> <th style="width: 45%;">TYPE OF INSURANCE</th> <th style="width: 10%;">ADDL INSR</th> <th style="width: 10%;">SUBR WVD</th> <th style="width: 15%;">POLICY NUMBER</th> <th style="width: 10%;">POLICY EFF (MM/DD/YYYY)</th> <th style="width: 5%;">POLICY EXP (MM/DD/YYYY)</th> <th style="width: 5%;">LIMITS</th> </tr> </thead> <tbody> <tr> <td>A</td> <td> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC </td> <td></td> <td></td> <td></td> <td></td> <td></td> <td> EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Employee \$ </td> </tr> <tr> <td>B</td> <td> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS </td> <td></td> <td></td> <td></td> <td></td> <td></td> <td> COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ </td> </tr> <tr> <td>C</td> <td> UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$ </td> <td></td> <td></td> <td></td> <td></td> <td></td> <td> EACH OCCURRENCE \$ AGGREGATE \$ \$ </td> </tr> <tr> <td>D</td> <td> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below </td> <td></td> <td></td> <td></td> <td></td> <td></td> <td> <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000 </td> </tr> </tbody> </table> | INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | A | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC | | | | | | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Employee \$ | B | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS | | | | | | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ | C | UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$ | | | | | | EACH OCCURRENCE \$ AGGREGATE \$ \$ | D | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000 | | |
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| DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required) Pogue Construction Co., LP, Owner & Architect are included as additional insureds on the General and Auto Liability Policies if required by written contract or agreement to the policy terms and conditions. A Waiver of Subrogation is provided in favor of Pogue Construction Co., LP on the General & Automobile Liability and Workers' Compensation Policies if required by written contract or agreement subject to the policy terms and conditions. This General Liability policy contains Primary/Non-Contributory wording on behalf of the additional insured. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CERTIFICATE HOLDER | | CANCELLATION | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Pogue Construction Co., LP 1512 Bray Central Drive Suite 300 McKinney, TX 75069 | | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

EXHIBIT "G" - CONTINUED

BOND REQUIREMENTS

A payment & performance bond is required for any contract that has a value of \$100,000 or more. Send bond documents along with signed contract. The contract will not be fully executed until Pogue has received the bond, if required.

A bond may be optional if your company has been approved for the Subcontractor Default Insurance program. This is an insurance program in which Pogue participates. If you would like to see if your company qualifies for this program, you must send a current, audited financial statement. All information is kept completely confidential. Contact the project PM if interested.

Pogue Construction CO., LP reserves the right to engage one or more third party consultants for purposes of validating and monitoring insurance and bonding certificates and other information provided by Subcontractor, the cost of which Subcontractor shall be required to pay directly to such third party consultant.

Exhibit “H”

Schedule

Exhibit “I”

Unit Prices

(if applicable)

Exhibit “J”
Subcontractor Contact
Matrix

SUBCONTRACTOR RESPONSIBILITY CONTACT MATRIX

Company Name: _____

| Contact Name | Responsibility | Office Phone | Mobile Phone | Email Address |
|--------------|---------------------------------|--------------|--------------|---------------|
| | General Superintendent | | | |
| | On-Site Foreman | | | |
| | Safety Director | | | |
| | Project Manager | | | |
| | Accountant | | | |
| | Shop Drawings | | | |
| | Payment Applications | | | |
| | Punchlist / Warranty Department | | | |
| | Closeout / O&M Manuals | | | |

Exhibit “K”

Financial Disclosure of Owner

Public Project Financing Verification (Tex. Bus. & Comm. Code 56.054(e))

For a Public Project governed by Tex. Gov't. Code Chapter 2253:

Name of Owner: _____ (the "Owner")

Address: _____
_____, Texas, _____

Primary Bus. Phone: _____

The Project: _____
_____, Texas, _____

If there is a need to provide a Notice of Claim in relation to the Project, the Payment Bond Surety's contact information:

Name of Surety for Payment Bond: _____

Address: _____

Primary Bus. Phone: _____

I, _____, am over eighteen years of age, am of sound mind, am fully competent to make this statement of verification, personally acquainted with the facts herein stated, and am authorized to execute this verification on behalf of the Owner.

_____ [Name of Owner] has the funds available for this Project and has been authorized for the full contract amount for the construction of the improvements.

Printed Name, Title

SWORN TO AND SUBSCRIBED BEFORE ME on this ___ day of _____, 20__.

Notary Public in and for the State of Texas

Exhibit “L”

Severe Weather Preparedness Plan

SEVERE WEATHER PREPAREDNESS PLAN

1.0 Storm Hazard Awareness

It is the responsibility of Subcontractor to remain alert to weather forecasts which may impact the Work, including hurricane which may impact the Project site. If the Subcontractor becomes aware of possible severe weather which may impact the Project site, Subcontractor shall inform the Contractor, through the Project Manager of the details known by the Subcontractor immediately if the weather event is imminent (to occur within 24 hours of discovery) and within one day (24 hours) if the weather event is not imminent.

2.0 Lightning Strikes

If lightning is observed in the vicinity of the Project site while Work is being performed, Subcontractor will inform the Project Manager and Construction Superintendent of the Contractor and withdraw from scaffolding, form work, cranes and other areas where lightning is likely to strike. If no further lightning is observed for ten minutes, Subcontractor shall resume work.

3.0 Tornadoes

If a Tornado warning or watch is issued or a tornado is observed, during the time of the Tornado warning or watch or until the tornado is no longer in the vicinity of the Project site:

(a) Operations shall be suspended. Mobile crane shall cease operation. Booms shall be lowered if time permits or the load line hooked to a sound structure at a low point. The equipment should be left while there is reasonable risk of a tornado.

(b) Subcontractors shall take refuge in a shelter, attempting to take refuge at the safest point of the structure (typically lowest, most secure in a structure.)

4.0 Hurricanes

If the Project site is in the path of a Hurricane:

(a) the Subcontractor shall inform the Contractor through the Project Manager promptly, and in any event within twenty four hours of when the Subcontractor determines that the Project site is in the possible path of a hurricane;

(b) the site will not be occupied during the storm if it is in the hurricane path – Subcontractors shall comply with Contractor’s instructions to abandon the Site if the Contractor reasonably anticipates that the Project site may be in imminent danger of being impacted by the hurricane.

5.0 Severe Weather Precautions

(a) The Subcontractor shall at all times maintain a list of emergency phone numbers for its employees and subcontractors and shall be responsible to notify its employees, subcontractors, suppliers and others working with the Subcontractor in the event that the site is not to be occupied and to notify employee, subcontractors, suppliers and others working with the Subcontractor when the Contractor has authorized return to the Project Site;

(b) Subcontractor shall identify and avoid long-term storage of material and equipment in areas prone to flooding;

(c) on a regular basis, Subcontractor shall ensure that the area in which it works is kept free from debris and scrap material which may become windblown hazards;

(d) Subcontractor will ensure that it has adequate fuel supplies and generators to promptly commence work following a severe weather event. Subcontractor understands that there is a risk that power may not be available via landlines and other traditional sources for an extended period of time, and shall be prepared to recommence work promptly following the all clear;

(e) any Subcontractor providing forming shall ensure that the erected formwork is tied together to be more resistive to high winds;

(f) if Subcontractor has tools, material or equipment stored on site or off site, Subcontractor shall be responsible to take appropriate, reasonable precautions to prevent the tools, material and equipment from being damaged, and to prevent the equipment from causing damage to other material, equipment, or structures. This includes securing tools, material and equipment to the extent reasonably possible;

(g) if Subcontractor has loose materials which can be neatly stacked and banded, they shall be if time permits;

(h) if a Subcontractor has erected scaffolding planking, if time permits it is to be dismantled, bundled and banded;

(i) if Subcontractor has electronic equipment to incorporate into its work, the Subcontractor shall ensure the electronic equipment is protected from rising water to the extent possible;

(j) Subcontractors performing water, storm drainage, or sewer services shall ensure that incomplete installation is protected from infiltration by sand, silt and debris;

(k) Subcontractors providing MEP related services shall ensure that meter pits are outfitted with pumps to prevent damage to electronic equipment from rising water;

(l) Subcontractors responsible for erosion control shall ensure that all erosion and sediment control devices are in place, meet appropriate standards, and that appropriate precautions have been taken in anticipation of the severe weather event, time permitting;

(m) if the Subcontractor has brought any trailers or storage units on site, the Subcontractor shall ensure that the same are secure and have been appropriately tied down;

(n) if time permits, crane booms shall be lowered;

(o) prior to evacuation, time permitting, Subcontractor shall take pictures and otherwise document the Project site and the precautions the Subcontractor has undertaken in anticipation of the severe weather event;

(p) If a Project site is struck by a severe weather event, Subcontractors shall not resume work until authorization to return to work is provided by the Contractor. (Typically, documenting the extent of the damage will be required to ensure an appropriate claim is provided for possible property insurance coverage.);

(q) Subcontractors shall promptly resume work once the Contractor has authorized the Subcontractors to return to the Project site;

(r) when returning to work, Subcontractor and its personnel should proceed with caution and notify the Contractor through the Project Manager and Construction Superintendent of downed power lines, damaged equipment, including damaged scaffolding, damage to stored material, damage to in place construction improvements, or any other damage they may encounter; and

(s) upon return, Subcontractor shall take pictures and otherwise document any damage the Subcontractor may observe to the Project Site.

Exhibit “M”
Project Closeout
Requirements

PROJECT CLOSE-OUT REQUIREMENTS

1. **Punch Lists:** Unless an earlier time of completion is required in the Contract Documents, Subcontractor has 15 days to complete the punch list. Subcontractor's Foreman should notify Pogue's Field Superintendent when all items on the list pertaining to Subcontractor's scope of work are resolved.
2. **Operation & Maintenance Data and Warranty Documents:** O&M information and Warranty Documents are due (60) days prior to Substantial Completion. Monthly progress payments may be placed on hold pursuant to Art. 5 of the General Provisions until documents have been received.
3. **Asbestos & Lead Free Materials Letter:** As part of Subcontractor's O&M information, Subcontractor must provide the more stringent and detailed of: (i) any certification relating to asbestos and/or lead content required in the Contract between Owner and Contract; and/or (ii) a letter stating that no materials it has brought on site contains 0.10% or more by weight of asbestos or will release .1 fibers of asbestos per cubic centimeter of asbestos or any lead. This letter or certification must be signed and notarized and is due (60) days prior to Substantial Completion. Monthly progress payments may be placed on hold pursuant to Art. 5 of the General Provisions until documents have been received.
4. **As-built Documents:** As-built documents are due (60) days prior to Substantial Completion. Monthly progress payments may be placed on hold pursuant to Art. 5 of the General Provisions until documents have been received.
5. **Extra/Attic Stock Materials:** Provide extra/attic stock materials (or monetary credit for material value) as it pertains to Subcontractor's scope of work and as detailed in the specifications. Stock materials should be delivered to owner-directed location. Stock material delivery must be documented by signed transmittal. Signed transmittal must be submitted as part of the O&M information no later than 30 days prior to substantial completion.
6. **Liquidated Damages:** The above project requirements are all subject to \$150 per day charge for every day past the due date. These damages are charged directly against your subcontract balance and are intended to address among other expenses, overhead expenses incurred by Pogue Construction in attempting to compel Subcontractor to perform its contractual obligations. Subcontractor acknowledges that its failure to timely deliver the documents as provided for herein will cause damage to Pogue Construction, that the exact amount of such damage would be difficult to fully quantify, and that the sum of \$150.00 per calendar day is a reasonable amount for liquidated damages. These Liquidated Damages are in addition to, and not in lieu of, other remedies available to Pogue Construction for Subcontractor's defaults, including but not limited to Liquidated Damages assessed per the Contract Documents due to failure to achieve substantial or final completion within the time permitted. TIME IS OF THE ESSENCE in subcontractor's performance of obligations.

Application for Retainage payment is due upon completion of work, no later than 30 days after Substantial Completion. All change orders should be reflected on the retainage billing accordingly. Any invoice or pay application submitted after 45 days of performing the work may not be considered for payment. Retainage payment will not be made: (i) without compliance with all close-out requirements; (ii) only after payment of the same by the Owner (i.e. not prior to Owner releasing retainage to Contractor); AND (iii) delivery to Contractor by Subcontractor of a fully executed Final Lien Waiver.

POGUE CONSTRUCTION CO., LP
AND
{ToCompany.Name}

POGUE CONSTRUCTION CO., LP SUBCONTRACT GENERAL PROVISIONS (“PART II”)

{Contracts.ContractDate}

ARTICLE I
CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

- .1 The Contract Documents consist of the Agreement between Pogue Construction Co., LP (“Contractor”) and the Owner (“Agreement”), General Conditions of the Contract, Supplementary and other Conditions, Exhibits and Riders enumerated and attached to the Agreement, all addenda issued prior to and all modifications issued after execution of the Agreement of which Subcontractor has notice, and plans and specifications. Notwithstanding the above, even if it is attached to the Agreement, the Subcontractor’s Proposal is not a Contract Document.
- .2 Subcontractor has reviewed or been provided the opportunity to review the Contract Documents and acknowledges and agrees that its Subcontract and the Contract Documents are adequate and sufficient to provide for the performance and completion of the Work, and include all Work, whether or not shown or specified, which reasonably may be inferred to be required for the completion of the Work in accordance with all applicable laws, codes and professional standards. Subcontractor agrees that it is most qualified to determine whether the Contract Documents provide sufficient detail and information for the Subcontractor to perform and complete the Work (as described in the Subcontract), and Subcontractor is not relying on any representation from Contractor in this regard.
- .3 Subcontractor agrees that unless otherwise reasonably and readily apparent from the context of a provision or specification that the term is meant to exclude Subcontractor, when the term “CONTRACTOR,” “CONTRACTOR” or “GENERAL CONTRACTOR” is used on the Plans or Specifications, to the extent it relates to Work to be performed by the Subcontractor, the term “CONTRACTOR,” “CONTRACTOR” or “GENERAL CONTRACTOR” means the Subcontractor and pertains to specifications and requirements for the Work to be performed by the Subcontractor and the obligations and duties of Subcontractor in the performance of that Work.

1.1.2 THE SUBCONTRACT

- .1 The Subcontract represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. Subcontractor understands and acknowledges that this means Subcontractor is not relying on any representations by Contractor, including any communications by Contractor representatives during the negotiation of the Subcontract.
- .2 The Subcontract may not be construed to create any contractual relationship of any kind between Subcontractor and Owner, between Subcontractor and Architect or between any persons or entities other than Contractor and Subcontractor.

- .3 Until Subcontractor's obligations under the Subcontract are completely fulfilled, Subcontractor agrees not to perform any Work directly for the Owner or any of its tenants, or deal directly with the Owner's representative in connection with the Project, unless directed in writing by Contractor.
- .4 With respect to the Work covered by the Subcontract, Subcontractor shall assume all obligations, risks and responsibilities to Contractor which Contractor has assumed toward the Owner and Contractor shall have all rights and remedies with respect to Subcontractor as Owner has with respect to Contractor in the Contract Documents, except to the extent of any conflict with the Subcontract. A copy of the Prime Contract (certain information not relevant to Subcontractor's performance may be redacted) is available for review by the Subcontractor upon request. A copy of the Contract Documents can be reviewed at Contractor's office.
- .5 With respect to the Work covered by the Subcontract, Contractor shall assume all of the responsibilities to Subcontractor which Owner has assumed to Contractor in the Contract Documents, except to the extent of any conflict with the Subcontract.

1.1.3 THE WORK

- .1 The Work of Subcontractor shall include the performing and furnishing by Subcontractor, in accordance with the Contractor's schedule, as described in the Subcontract or the Contract Documents and as may be reasonably amended by Contractor from time to time, of all supervision, labor, materials, plant, scaffolding, hoisting, tools, equipment, machinery, fuel, supplies, permits, licenses, fees, taxes, construction layout and surveying, and all other things necessary for the construction and completion of the Work, as described in its Subcontract and the Contract Documents, and all Work incidental thereto or reasonably inferable therefrom, in strict accordance and in full compliance with the terms of the Contract Documents. The Work includes planning and coordination by the Subcontractor to avoid delaying or interfering with the performance of Contractor's or other trades' work.
- .2 The Subcontractor represents that it is skilled in the Work to be performed and qualified to review the drawings, specifications and addenda for the Work. Subcontractor relies solely on its skill and qualifications in reviewing the drawings, specifications and addenda for the Work, and is not relying on any representations by the Contractor in determining the Scope of the Work, Subcontractor's ability to perform the Work pursuant to the drawings, specifications and addenda for the Work, the cost of performing the same, or the price to be submitted to bid to perform the Work. Subcontractor recognizes that Contractor relies on these representations, and that Subcontractor would not be selected but for them.

1.1.4 PARTICULARIZED TERMS

- .1 Unless otherwise provided, all references to "days" shall be to calendar days.
- .2 The term "contractor" appearing in any of the Specification Sections or Divisions applicable to the Subcontract shall mean Subcontractor unless specifically stated otherwise herein.
- .3 The term "subcontractor" shall mean any subcontractor, vendor or material man who is supplying material or performing Work in connection with the Subcontract and who has a direct contractual relationship with Subcontractor.

- .4 The term “lower-tier subcontractor” shall mean any subcontractor, vendor or materialman at any tier supplying material or performing Work in connection with the Subcontract.
- .5 The term “subcontract” when referencing contractual arrangements between subcontractors and Subcontractor shall include purchase orders and contracts for construction, materials and/or services relating to the Project.

1.2 INTERPRETATION OF CONTRACT DOCUMENTS

- 1.2.1** All the terms of the Subcontract are to be considered as complimentary. However, in the event that such an interpretation is not possible, the order of precedence of the documents forming the Subcontract shall be (1) modifications of any documents forming part of the Subcontract; (2) the Subcontract, including attached Exhibits (unless the Contractor General Provisions or the Contract Documents impose a higher standard or greater requirement on the Subcontractor, in which case the Contractor General Provisions or the Contract Documents shall govern); (3) the Contractor General Provisions (unless the provisions of (2) apply), and (4) the contract Documents (unless the provisions of (2) apply).
- 1.2.2** In the event of a conflict between or among modifications, the later in date shall prevail; in the event of a conflict between or among the terms of the Subcontract, the higher standard or greater requirement for Subcontractor shall prevail, so long as the same is consistent with the Subcontractor’s original scope of Work.
- 1.2.3** Should material inconsistencies or omissions appear in the Subcontract and/or the Contract Documents it shall be the duty of Subcontractor to promptly notify Contractor in writing prior to commencement of the Work. Upon receipt of said notice Contractor shall instruct Subcontractor as to the measures to be taken, and Subcontractor shall comply with Contractor’s instructions. In the event the inconsistencies or omissions appear in the Contract Documents, the Subcontractor shall promptly submit a Request for Information in time for the Contractor to submit the same to the Architect and obtain clarification without adversely impacting the Contractor’s Schedule. In the event of any discrepancies or conflicts in the Contract Documents, the Subcontractor agrees that it will perform the more stringent standard or provide the highest quality of material or equipment. Nothing herein shall bar Subcontractor’s right, if any, to seek additional compensation if allowable under the Subcontract and if Contractor receives the additional compensation from the Owner for Subcontractor’s claimed additional labor or material.

ARTICLE 2 SUBCONTRACTOR

2.1 SUBCONTRACTOR’S INVESTIGATIONS AND REPRESENTATIONS

- 2.1.1** Subcontractor represents that it is fully qualified to perform the Subcontract, and acknowledges that prior to the execution of the Subcontract it has (a) by its own independent investigation ascertained and fully evaluated: (i) the Work required by the Subcontract; (ii) the existing conditions and difficulties involved in performing the Work; (iii) the obligations of the Subcontract and the Contract Documents; and (iv) the nature, locality and site of the Work; and (b) verified all information furnished by Contractor or others, satisfying itself as to the correctness and accuracy of that information. The Subcontractor’s investigation has included not only the sections for the Construction Documents which specifically reference the Work, but also any other provisions of the Construction Documents which may impact, directly or indirectly, the Subcontractor’s ability to perform and complete the Work. In determining the Subcontract Sum, Subcontractor complied with all instructions in the Contract Documents, if any, or Subcontractor has independently, and without relying on any representation of Contractor, evaluated the Work and concluded that it is willing to perform the Work for the Subcontract Sum knowing that there will be no additional

amounts paid to the Subcontractor due to Subcontractor's decision to not include all aspects of the Work in the Subcontract Sum. This means that if Subcontractor in determining the Subcontract Sum is relying on its evaluation of information outside the Contract Documents, including but not limited to boring logs attached to any Geotechnical Reports or other reports or estimates of unseen conditions, Subcontractor does so at its own risk. Any failure by Subcontractor to investigate independently and become fully informed will not relieve Subcontractor from its responsibilities hereunder.

- 2.1.2** If Subcontractor elects to rely on boring logs in preparing an estimate or in agreeing to a Subcontract Sum, Subcontractor does so at its own risk. Regardless of any other term in the Contract Documents, boring logs are not Contract Documents, should not be assumed to accurately reflect subterranean conditions, and in any event only identify the Geotechnical technician's interpretation of the conditions at the discrete boring site. Subcontractor should anticipate in its bidding that subterranean conditions elsewhere on the Project are not consistent with the boring logs. Subcontractor's interpretation and evaluation of boring logs is not binding on Contractor, Owner or Architect, and no representative of Contractor has made any representations to the contrary.
- 2.1.3** Under no circumstances will Subcontractor be entitled to additional compensation based upon any claim that design deficiencies or inconsistencies exist unless such Design Document defects could not have been discovered or identified by a reasonable and customary diligent review of the Design Documents.
- 2.1.4** Subcontractor is licensed by any and all governing bodies for the location of the Work, including, but not limited to, as applicable, the Municipality/County in which the Work is being performed. Subcontractor shall comply with all applicable building codes, and all Federal, State and Municipal laws, codes and ordinances.

2.2 TIME OF PERFORMANCE

- 2.2.1** Subcontractor will proceed with the Work in a prompt and diligent manner, in accordance with Contractor's schedule, as reasonably amended from time to time, including working weekends and evenings if required to adhere to Contractor's schedule. Subcontractor shall be liable to Contractor for failure to adhere to Contractor's schedule, including amendments by Contractor, even if such schedules differ from schedules set forth in the Contract Documents or the time of completion called for by the Contract Documents. TIME IS OF THE ESSENCE. In agreeing to perform the Work in accordance with the Subcontract, Subcontractor has taken into account and made allowance for delays which should be reasonably anticipated or foreseeable.
- 2.2.2** Subcontractor recognizes that its Work may not be a continuous sequence of work. Subcontractor agrees that the Subcontract Sum includes an amount necessary to cover all mobilizations and returns/comebacks required for the proper completion of the Work. Subcontractor agrees that sequencing of work may require Subcontractor to halt work while other trades perform their services and agrees that the Subcontract Sum includes the possibility of multiple delays for sequencing of trades.
- 2.2.3** Subcontractor shall notify Contractor in writing of any objection to any schedule or amendment thereof, within two (2) business days after receipt of such schedule or amendment. The failure by Subcontractor to object to any schedule or amendment shall constitute acceptance.
- 2.2.4** If requested by Contractor, Subcontractor shall submit detailed schedules for the performance of Subcontractor's Work in a form acceptable to Contractor, which shall comply with all scheduling requirements of the Contract Documents and of Paragraph 2.2.1 above. Contractor from time to

time, at its discretion, may direct Subcontractor to make reasonable modifications and revisions in such schedules.

- 2.2.5** Subcontractor shall not commence Work until the Project Subcontract is completely executed. Subcontractor is aware that Subcontractor may not be paid for work performed prior to receiving a fully executed copy of the Project Subcontract and this Agreement from Contractor. Subcontractor shall perform the Work in accordance with the Project Schedule as it may be revised from time to time by Contractor.
- 2.2.6** Contractor intends to hold regularly scheduled on-site coordination meetings. The Subcontractor shall ensure that, at a minimum, its Construction Superintendent (or equivalent employee required to oversee Subcontractor's performance of the Work) attends the on-site meetings Contractor indicates the Subcontractor (or all Subcontractors) needs to attend and those conducted by the Contractor from the time two weeks prior to the time Subcontractor commences work through final completion of Subcontractor's Work. Unless Subcontractor is among the Subcontractors who first arrive on-site, the Superintendent of Subcontractor shall attend a minimum of two (2) on-site meetings prior to the commencement of work.
- 2.2.7** Subcontractor will coordinate its Work with the Work of Contractor, other subcontractors and the Owner's other contractors, if any, so no unreasonable delays or interference will occur in completion of any part and/or all of the Project. In addition to assessing its ability to comply with the schedule, the Subcontractor: (i) has evaluated (a) the date of Substantial Completion and the date of Final Completion and (b) any liquidated damages for failing to achieve the same; (ii) considers the liquidated damages reasonable, the exact amount of damage resulting for delays in achieving Substantial Completion or Final Completion being difficult to fully quantify; (iii) understands that its failure to timely perform will impact the ability of the Project to achieve Substantial Completion and Final Completion in a timely manner; and (iv) agrees that its failure (including the failure of its subcontractors) to timely perform may require not only that it supplement work and perform work at times other than when currently anticipated, but will impact the costs incurred by the Contractor, Architect, and other subcontractors, for all of which Subcontractor shall be liable.
- 2.2.8** Following Substantial Completion, Subcontractor shall prioritize all punch-list work as urgent. Subcontractor shall work diligently to complete punch list work immediately. At the latest, Subcontractor shall complete punch list work within **15 days** of receipt of the punch list.
- 2.2.9** Subcontractor understands that the start date of individual activities identified in the Contractor's schedule may change, but the duration for completion from commencement of those individual activities for work performed under this subcontract shall not change. This Subcontractor shall be responsible for performing the work in accordance to these durations and any acceleration, overtime, or additional costs incurred to maintain the Contractor's schedule due to Subcontractor's inability to perform within the duration described in the Contractor's schedule shall be the responsibility of this Subcontractor. Subcontractor understands that the Contract with the Owner may include liquidated damages, and in addition to any other claims the Owner may assert in relation to a delay, Subcontractor agrees that Subcontractor shall be responsible for liquidated damages assessed due to Subcontractor's delay in performance, based on the sole discretion of the Contractor to assess responsibility for delays.
- 2.2.10** Subcontractor agrees it is liable for any costs associated with its failure to timely perform, including but not limited to costs associated with attempts to return the Project to schedule, such as but not limited to costs incurred or assessed by the Contractor, Architect, and other subcontractors relating to, arising out of or the result of, directly or indirectly, the failure to timely perform, and

liquidated damages which Contractor may, in its sole discretion, completely or proportionately assess to delays caused by Subcontractor.

2.2.11 EXTENSION OF TIME SHALL BE SUBCONTRACTOR'S SOLE REMEDY FOR DELAY, INEFFICIENCIES OR LOSS OF PRODUCTIVITY INCURRED AS A RESULT OF DELAY OR AS A RESULT OF SCHEDULE AMENDMENTS BY CONTRACTOR, OWNER, OR THIRD PARTY(IES) UNLESS CONTRACTOR INTENTIONALLY OR IN BAD FAITH INTERFERES WITH SUBCONTRACTOR'S WORK.

2.3 WARRANTY

2.3.1 Subcontractor warrants to Contractor, the Owner and the Architect that all materials and equipment furnished under the Subcontract will be new unless otherwise specified, and that all Work will be of the quality required by the drawings and specifications, free from faults and defects and in conformance with the Contract Documents. Subcontractor warrants that it and its lower tier subcontractors will perform their Work and will manufacture and furnish material and equipment in a good and workmanlike manner. All equipment and material incorporated in the Work will be installed in accordance with manufacturer's instructions (if any) or the Contract Documents, whichever is more stringent and ensures the equipment and/or material operate as intended. Subcontractor shall ensure manufacturer will not deny warranty coverage of equipment or material based on manner or method of installation. During its review of the Contract Documents, Subcontractor looked for any instructions or requirements that would nullify the manufacturer's warranty. If Subcontractor believes or has reason to believe that the instructions or requirements of the Contract Documents will result in the manufacturer refusing to warrant equipment or materials, the Subcontractor shall immediately identify the concern in writing through a Request for Information. If no Request for Information reflecting a concern that an instruction and/or requirement in the Contract Document adversely impacts the manufacturer's warranty is provided before or contemporaneously with the execution of the Project Subcontract, Subcontractor represents that there is no instruction or requirement in the Contract Documents which adversely impacts the manufacturer's warranty.

2.3.2 Subcontractor further warrants its Work to Contractor on the same terms and for the same period as Contractor warrants the Work to the Owners under the Contract Documents.

2.3.3 In addition to any specific guarantees required by the Contract Documents, or provided by law, the Subcontractor guarantees to perform the Work in a good and workmanlike manner and, without regard to whether the manufacturer honors its warranty obligations, if any, agrees to repair or replace all Work that may prove defective in workmanship or materials commencing on the date of substantial completion and ending one year from the date of final completion and acceptance of the Work by Owner, or for the term of the warranty required of Contractor in the Contract Documents, whichever is longer in duration.

2.3.4 The warranties and guarantees provided in this Section 2.3 are in addition to, and not in limitation of, any other right that Contractor may have or any other warranty given by Subcontractor, and will not limit any recovery Contractor may seek, including consequential damages. Specifically, and not by limitation, the express warranty provided by Subcontractor and the lower-tier subcontractors will not limit, in any respect, the implied warranty at law of the Subcontractor for the entire Work, including a warranty for the quality of labor and materials.

2.4 SUBCONTRACTOR'S LIABILITY

2.4.1 Subcontractor hereby assumes the entire responsibility and liability for all Work, supervision, labor and materials provided hereunder, whether or not erected in place, and for all plant, scaffolding, hoisting, tools, equipment, supplies and other things provided by Subcontractor until final acceptance of the Work by the Owner, and shall at all times prosecute the Work in a good and

workmanlike manner, with diligence and continuity, unless instructed in writing by Contractor to suspend prosecution of the Work, in which case Subcontractor will diligently and promptly continue prosecution of the Work when instructed in writing by Contractor. In the event of any loss, damage or destruction to the Work from any cause, Subcontractor shall repair, rebuild and make good said loss, damage or destruction at Subcontractor's cost, except to the extent of any recoveries or payments from Builder's Risk or property insurance, if any, applicable to such loss, damage or destruction, and shall cooperate with Contractor to recover such loss from the party causing the loss or damage, if other than Subcontractor or its lower-tier subcontractors.

- 2.4.2** Subcontractor shall be liable to Contractor for all costs Contractor incurs or becomes responsible for as a result of Subcontractor's failure to perform this Subcontract in accordance with its terms. Subcontractor's failure to perform shall include the failure of its lower-tier subcontractors to perform. Subcontractor's liability shall include but not be limited to (1) damages and other delay costs payable by Contractor to the Owner (including liquidated damages); (2) Contractor or its agents increased costs of performance, such as extended overhead and increased performance costs resulting from delays or improper Work; (3) warranty and rework costs; (4) liability to third parties; (5) excess procurement costs; (6) consultants' fees; and (7) attorneys' fees and related costs.
- 2.4.3** In the event that Subcontractor or any of its agents, employees, suppliers, or lower-tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items belonging to or under the control of Contractor, Subcontractor shall be liable to Contractor for any loss or damage (including personal injury or death) which may arise or result from such use, except where such loss or damage shall be due solely to the negligence of Contractor employees operating Contractor-owned or Contractor-leased equipment.
- 2.4.4** Subcontractor shall be responsible for all shipping, receiving, unloading, handling, inventory, tracking, distribution, storage, security, locking and protection of materials needed for proper performance of the Work. All deliveries of materials by Subcontractor shall be scheduled with Contractor's Project Superintendent forty-eight (48) hours prior to scheduled delivery.
- 2.4.5** Subcontractor's assumption of liability is independent from, and not limited in any manner by, the Subcontractor's insurance coverage obtained pursuant to Article 7, or otherwise. All amounts owed by Subcontractor to Contractor as a result of the liability provisions of this Subcontract shall be paid upon demand.

2.5 INDEMNIFICATION

- 2.5.1** To the greatest extent permissible by law, Subcontractor shall be liable for and will defend, indemnify, hold harmless and reimburse Contractor, Owner and Architect, and each officer, agent, and employee of the same, against:
- (i)** all claims arising out of or related to, directly or indirectly, any breach of the Subcontract by the Subcontractor, or a breach of any agreement relating to the Work or any Work done by any lower-tier subcontractor, or any negligent act, gross negligence, error or omission by Subcontractor or any lower-tier subcontractor, or any patent or copyright infringement arising out of the performance of the Subcontract by Subcontractor or any of its lower-tier subcontractors and all costs, attorney's fees and testifying and consulting expert fees resulting from or relating to those claims;
 - (ii)** all liabilities, claims and demands for personal injury or bodily injury (including death) to any person or property damage (real, personal, tangible or intangible) to any property, including injury or death to Subcontractor's employees, together with any resulting costs, attorney's fees and testifying and consulting expert fees, arising out of,

relating to, or caused, directly or indirectly, by any act or omission of the Subcontractor or any lower-tier subcontractor, their agents or employees;

- (iii) all liens or bond claims, or claims of rights to enforce liens or against bonds, against the Project, Project Site or any other improvements erected on the Project Site arising out of any Work performed or to be performed or labor, services or materials furnished or to be furnished under the Subcontract, including but not limited to costs, attorney's fees and testifying and consulting expert fees resulting from or relating to any lien or bond claim provided that Subcontractor was fully and timely paid for such labor, services, or materials and the Work the subject of the lien claim was properly performed; and
- (iv) all other costs, damage, expenses and liabilities (including all resulting costs, attorney's fees and testifying and consulting expert fees) for which Contractor is liable to Owner under its Agreement, or to any third party under agreements with those third parties who may be affected by construction of the Project, on account of or in any way related to Subcontractor's Work.

IF THE CLAIM INVOLVES THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF SUBCONTRACTOR, ITS AGENT, OR ANY OF ITS LOWER-TIER SUBCONTRACTOR(S), THIS INDEMNIFICATION APPLIES EVEN THOUGH THE MATTER TO BE INDEMNIFIED IS THE RESULT OF THE SOLE OR CONCURRENT NEGLIGENCE OF CONTRACTOR, OWNER OR ARCHITECT, AND THEIR EMPLOYEES, SERVANTS, AGENTS OR OTHER SUBCONTRACTORS. FOR ALL OTHER CLAIMS INVOLVING BODILY INJURY, DEATH, OR PROPERTY DAMAGE, SO LONG AS SUBCONTRACTOR HAS COMPLIED WITH THE OBLIGATIONS AND THE CONDITIONS ARE MET FOR RESTRICTIONS ON INDEMNITY CONTAINED IN TEXAS STATUTORY LAW TO APPLY, THEN THIS INDEMNIFICATION APPLIES ONLY AGAINST A CLAIM FOR BODILY INJURY, INCLUDING DEATH, OR PROPERTY DAMAGE ARISING OUT OF, RELATING TO, OR CAUSED, DIRECTLY OR INDIRECTLY, BY ANY ACT OR OMISSION OF THE SUBCONTRACTOR OR ANY LOWER-TIER SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, TO THE EXTENT PERMITTED BY TEXAS STATUTORY LAW, INCLUDING TEXAS INS. CODE CH. 151, AND DOES NOT APPLY TO THE EXTENT A CLAIM FOR BODILY INJURY, INCLUDING DEATH, OR PROPERTY DAMAGE IS ASSERTED BY A PERSON OTHER THAN THE SUBCONTRACTOR, ITS AGENTS, EMPLOYEES OR ITS SUBCONTRACTOR OF ANY TIER, AND TO THE EXTENT CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE.

Contractor has a right to withhold from any payments due or to become due Subcontractor an amount which, in Contractor's opinion, is reasonable to protect Contractor from any claims or lawsuits subject to this indemnification paragraph. These rights are in addition to Contractor's other legal and equitable rights. The indemnification obligation under this provision and the Subcontract, or any other indemnification obligation under any other subparagraph of the Subcontract, are not limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Subcontractor, or any lower-tier subcontractor, under applicable Workers or Workmen's Compensation Acts, Disability Benefit Acts, Employee Benefit Acts, or by any requirement for insurance, or the furnishing of insurance by Subcontractor or any lower-tier subcontractor, under the Subcontract. Other than for claims by an employee of Subcontractor, its agent, or a lower-tier subcontractor, subject to Subcontractor complying with the insurance obligations of the Subcontract, Subcontractor is not assuming liability for loss or damage due solely to the negligence of Contractor.

- 2.5.2 Subcontractor understands and agrees that its obligations of indemnification shall control over any conflicting provision in the Contract Documents and shall survive the termination or expiration of the Subcontractor's Work and any project subcontract. If a court or arbitrator determines that this indemnity section is greater than permitted by law, this indemnity section shall be considered revised by the parties to provide indemnity to the greatest extent permitted under the law.

2.5.3 INTENT. NOTHING IN THIS SECTION IS INTENDED TO REQUIRE SUBCONTRACTOR TO DEFEND, INDEMNIFY OR HOLD HARMLESS ANY INDEMNITEES TO THE EXTENT PROHIBITED BY APPLICABLE LAW. THE PARTIES INTEND THAT THIS SECTION BE CONSTRUED AND ENFORCED IN COMPLIANCE WITH THE LIMITATIONS OF APPLICABLE LAW AND THAT ANY NON-COMPLIANT PART BE REFORMED OR SEVERED TO THE MINIMUM EXTENT NECESSARY TO CURE THE NONCOMPLIANCE AND THE REMAINDER BE ENFORCED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

2.6 PATENTS AND ROYALTIES

Except as otherwise provided by the Contract Documents, Subcontractor shall pay all royalties and license fees which may be due with respect to the Work. Subcontractor shall defend all suits or claims for infringement of any patent rights that may be brought against Contractor or the Owner arising out of its Work, and shall be liable to Contractor and the Owner for all loss, including all costs and expenses, on account thereof.

2.7 TAXES AND PERMITS

2.7.1 Except as otherwise provided by the Contract Documents, Subcontractor agrees to pay, comply with and hold Contractor harmless from and against the payment of all Federal, state and local contributions, taxes, duties or premiums arising out of the performance of this Subcontract, and all Sales, Use or other duties or taxes of whatever nature levied or assessed against the Owner, Contractor or Subcontractor arising out of this Subcontract, including any interest or penalties. Subcontractor waives any and all claims for additional compensation because of any new contributions, duties, taxes or premiums, or any increases therein, unless payment therefor is specifically provide for in the Contract Documents.

2.7.2 Subcontractor shall obtain and pay for all permits, licenses, fees and certificates of inspection necessary for the prosecution and completion of the Work not covered under the Building Permit. Subcontractor shall arrange for all necessary inspections and approvals by public officials.

2.7.3 Subcontractor shall be responsible for notification, coordination and payment of fees for inspections by governing agencies required by State and local codes.

2.8 SUPERVISION

2.8.1 Subcontractor and its lower-tier subcontractors shall not employ anyone to perform Work whose employment is objected to by Contractor or the Owner, but shall employ skilled and competent supervisory and subordinate personnel at the jobsite at all times who (i) are familiar with their obligations under the Subcontract, the Contract Documents and Contractor's schedule, (ii) are capable of communicating effectively with Contractor's Project staff and (iii) shall perform the Work with the highest degree of skill.

2.8.2 Before or contemporaneous with execution of the Project Subcontract, Subcontractor shall provide Contractor with a complete Contact Sheet for its employees in the positions or with the responsibilities identified in a matrix to be provided by Contractor. The contacts shall include the name, cell number, office number and email address of each person identified in the matrix. Subcontractor shall update the Contact Sheet in the event of any changes in the identity of the person(s) in the position or with the responsibilities identified in the matrix within twenty-four (24) hours of any change.

2.9 CLEANUP

2.9.1 Subcontractor shall, on a daily basis, clean its Work and remove and deposit all debris resulting from or associated with its Work in a manner that will not impede either the progress of the Project or of other trades. Should Subcontractor fail to clean its Work within one (1) business day after receipt of written notice (which may be in the form of a text or email to Subcontractor's

superintendent or similarly situated employee or agent) from Contractor, Contractor shall have the right to perform cleanup itself and charge Subcontractor the reasonable cost thereof, including an allocation of the cost of cleanup not identifiable to any source. Contractor may request composite crew cleanup activities in which this Subcontractor will participate, if performing Work during the period of such request. Subcontractor shall ensure all trash is immediately delivered to dumpster on site.

- 2.9.2** Unless explicitly required by the Contract Documents, Subcontractor agrees by the execution of the Subcontract, that no hazardous substances are to be discharged into or deposited at the Project. Title of such substances will remain the property of the Subcontractor and never revert to Contractor or Owner. Subcontractor will be required to properly dispose of all hazardous substances. All cost for any such disposal or reclamation operations are to be borne by the Subcontractor.

2.10 INTERFERENCE WITH WORK OF CONTRACTORS

Neither Subcontractor nor any lower-tier subcontractor will directly or indirectly cause, or induce others to cause, any interference with the Work of any contractor or subcontractor on the jobsite. In the event any lawful or unlawful strike, picketing or handbilling at the jobsite is directed at Subcontractor or any lower-tier subcontractor by any person, group or organization which causes or induces any interference with the Work of any contractor or subcontractor on the jobsite, Subcontractor shall immediately take all reasonable and necessary steps to terminate such strike, picketing or handbilling at the jobsite, including, but not limited to, removing of all Subcontractor's (or lower-tier subcontractor's) personnel, equipment, materials and their property from the jobsite during periods when other contractors' and subcontractor's employees are present on the jobsite. The Subcontract may be terminated for default in the event that Subcontractor fails to terminate any such interference with any such Work within two (2) business days of the receipt of written notice (which may be in the form of a text or email to Subcontractor's superintendent or similarly situated employee or agent) from Contractor. No time lost by Subcontractor hereunder shall excuse any failure of Subcontractor to timely perform or to meet its contractual obligations or deadlines under the Subcontract.

2.11 ASSIGNMENT AND SUBCONTRACTING

- 2.11.1** Except as provided in the Contract Documents, neither party hereto shall assign or transfer the Subcontract, or funds due hereunder, without the prior written consent of the other party. Lower-tier subcontracts are subject to the provisions of this Subcontract, and Subcontractor shall insert in Subcontractor's subcontracts all provisions required by the Contract Documents or necessary to enable Subcontractor to comply with the terms hereof. Subcontracting by Subcontractor shall not abrogate any obligation of Subcontractor under the Subcontract.

- 2.11.2** Subcontractor shall, within thirty (30) days after award of the Subcontract, provide a detailed, itemized list of materials and equipment to be provided under the Subcontract along with the ultimate supplier of each material item and equipment, the supplier's representative and phone number, and the current proposed delivery date of the material and equipment. This itemized list shall be updated monthly thereafter. Contractor reserves the right to review and/or approve Subcontractor's subcontractor. Such approval will not be unreasonably withheld.

- 2.11.3** Subcontractor, by execution of the Subcontract, contingently assigns to Contractor all of Subcontractor's subcontracts. The assignment of each of Subcontractor's subcontracts shall take effect only upon both Subcontractors' termination under Article 9 and Contractor's affirmative acceptance of the assignment of the specific subcontract by written notice to Subcontractor and Subcontractor's subcontractor. Contractor shall have no liability to any of Subcontractor's subcontractors unless and until Contractor affirmatively accepts the assignment as provided above.

2.12 APPROVALS

- 2.12.1** Subcontractor warrants that, to the best of its knowledge, all requisite approvals from the Owner as to its eligibility to serve as a Subcontractor, and that approvals of all materials and performance of the Work as required by the Contract Documents, are obtainable.
- 2.12.2** Subcontractor shall deliver to Contractor copies of shop drawings, cuts, samples, material lists, and other submissions, including mock-ups and temporary structures, required by Contractor or the Contract Documents within sufficient time so as not to delay performance of the Project and within sufficient time for Contractor to submit the same within the time stated in the Contract Documents, whichever is earlier. Submissions shall be in strict accordance with the Contract Documents provided, however, that if Subcontractor wishes to propose a deviation from the Contract Documents, such deviation shall be conspicuously and clearly identified on the submission and accompanied by a letter describing in detail such deviation and the effect, if any, on Subcontractor's Work and on the Work of Contractor or any other subcontractors on the Project, and the impact on the time of performance. Requested deviations will be allowed only in accordance with the Contract Documents and when specific written approval referencing the deviation is given to Subcontractor. No general approval granted by Contractor or the Owner shall relieve Subcontractor from complying with the Contract Documents. If the Owner and/or Architect assess any cost or fee to Contractor due to a deviation submitted by the Subcontractor, Subcontractor shall be responsible for the cost or fee.
- 2.12.3** Unless an earlier submittal is required by the Contract Documents for Contractor to comply with obligations for the delivery of submissions to the Owner, Subcontractor shall provide all submittals and shop drawings within ten (10) calendar days of execution of the Subcontract unless otherwise explicitly provided in the Contract Documents. Subcontractor shall provide ten (10) copies of required submittals/shop drawings in hardcopy. Subcontractor shall also submit the submittals/shop drawings electronically.
- 2.12.4** Contractor's review or approval of any shop drawings, cuts, samples, material list and other submissions, including mock-ups or temporary structures, shall not to any extent, under any circumstances, (i) alter the requirements of the Contract Documents for quality, quantity, finish, dimension, design or configuration; (ii) constitute acceptance by Contractor of any method, material or equipment not ultimately acceptable to the Owner; or (iii) relieve Subcontractor from responsibility for errors of any sort herein or from the necessity of furnishing any Work required by the Contract Documents which may have been omitted therefrom.

2.13 INSPECTION AND ACCEPTANCE

- 2.13.1** Subcontractor shall provide appropriate access to facilities at all reasonable times for inspection, by Contractor, Architect or the Owner, of the Work and materials provided under the Subcontract, whether at the Project site or any place where such Work or materials may be in preparation, manufacture, storage or installation. Subcontractor shall promptly replace or correct any Work or materials which do not conform to the requirements of the Subcontract. If Subcontractor does not do so within a reasonable time, Contractor shall have the right to do so and Subcontractor shall be liable to Contractor for the cost thereof. Subcontractor shall not receive any extension of time for performance because of the need to replace or correct Subcontractor's Work. If Contractor and Owner reasonably determine that it is not expedient to correct or replace all or any part of the non-conforming Work or materials, then Contractor, at its option, may deduct from the payments due, or to become due, to Subcontractor such amount as in Contractor's reasonable judgment will represent (i) the difference between the fair value of the rejected Work and materials and the value thereof if it complied with the Subcontract, or (ii) the cost of correction, whichever Contractor determines is more appropriate.

- 2.13.2** If rejection of Work is by the Owner, or by Contractor at the request of the Owner, Subcontractor's remedy for wrongful rejection of Work pursuant to Paragraph 2.13.1 shall be limited to Contractor's remedy under the Contract Documents. Contractor shall be liable for any increased direct cost caused by its wrongful rejection of Work only if the Owner was not involved in any such rejection.
- 2.13.3** Subcontractor shall provide electronic photographic documentation of all areas of work that will be covered up during construction. This should include, but is not limited to: flashing, window substrate connections, reinforcement layout prior to pouring concrete, electrical wall rough-in, and any other work which will be covered in the course of construction.
- 2.13.4** If a portion of the Work is covered contrary to the Architect's, Owner's, or Contractor's request or to requirements specifically expressed in the Contract Documents, it must, if requested by Contractor, be uncovered for examination and all materials removed must be replaced in compliance with the requirements and specifications set forth in the Contract Documents at the Subcontractor's expense without change in the Contract Time or Subcontract Sum.
- 2.13.5** Prior to covering any Work, Subcontractor shall take photographs of the Work which reflect compliance with the Contract Documents. If the Owner, Architect or Contractor determine that it is appropriate to uncover Work of Subcontractor and Subcontractor has not sufficiently photographed the Work to show that it is in compliance with the Contract Documents, the portion of the Work not sufficiently photographed must, if requested by Contractor, be uncovered for examination and all materials removed must be replaced in compliance with the requirements and specifications set forth in the Contract Documents at the Subcontractor's expense without change in the Contract Time or Subcontract Sum.
- 2.13.6** The Work shall be accepted according to the terms of the Contract Documents. Unless otherwise agreed in writing, however, entrance and use by the Owner or Contractor shall not constitute acceptance of the Work.

ARTICLE 3 CLAIMS AND DISPUTES

3.1 DEFINITION

A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Subcontract terms or payment or money, extension of time, or other relief with respect to the terms of the Subcontract.

3.2 TIME LIMIT ON CLAIMS

Claims by Subcontractor must be made within two (2) business days after Subcontractor first recognized or with reasonable diligence should have recognized the necessity for the claim. Claims must be made by written notice to Contractor containing a complete description of the claim and circumstances thereof.

3.3 CONTINUING CONTRACT PERFORMANCE

In the event of any dispute involving the Work other than the wrongful refusal of Contractor to pay Subcontractor with funds received from Owner, Subcontractor must proceed diligently with performance of its Work and must follow any decision by Contractor with respect to the dispute until final resolution. If Subcontractor makes a claim as provided herein, Subcontractor must continue with its Work without interruption, deficiency or delay.

3.4 ACCEPTANCE OF FINAL PAYMENT

ACCEPTANCE OF FINAL PAYMENT FOR THE WORK BY THE SUBCONTRACTOR CONSTITUTES A WAIVER OF ANY CLAIMS BY THE SUBCONTRACTOR RELATING TO THE SUBCONTRACT WORK OR TO THE CONTRACTOR'S WORK OR CONTRACT DOCUMENTS, EXCEPT THOSE CLAIMS TIMELY IDENTIFIED IN WRITING WITHIN THE TIME LIMIT FOR CLAIMS BY THE SUBCONTRACTOR AT THE TIME OF FINAL PAYMENT BUT SHALL IN NO WAY RELIEVE THE SUBCONTRACTOR OF LIABILITY FOR THE OBLIGATION FOR REPLACING FAULTY OR DEFECTIVE WORK APPEARING AFTER FINAL PAYMENT.

3.5 SETTLEMENT OF DISPUTES

3.5.1 In case of any dispute between Contractor and Subcontractor in any way relating to or arising from any act or omission of the Owner, the Architect, or involving the Contract Documents, Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to the Owner by the terms of the Contract Documents, and by any and all preliminary and final decisions or determinations made thereunder by any party, board or court so authorized in the Contract Documents or by law, whether or not Subcontractor is a party to such proceedings. In case of such dispute, Subcontractor will comply with all provisions of the Contract Documents and allow a reasonable time for Contractor to analyze and forward to the Owner any required communications or documentation sufficiently in advance of any time limits set forth in the Contract Documents. Contractor may, at its option, (1) present to the Owner in Contractor's name, or (2) authorize Subcontractor to present to the Owner, in Contractor's name, all of Subcontractor's claims and answer the Owner's claims involving Subcontractor's Work. Contractor may further invoke on behalf of Subcontractor, or allow Subcontractor to invoke, those provisions in the Contract Document for determining disputes. Nothing herein shall require Contractor to certify a claim under a contract when it cannot do so in good faith. If such dispute is prosecuted or defended by Contractor, Subcontractor at its own expense agrees to furnish all documents, statements, witnesses, and other information required by Contractor and to pay or reimburse Contractor for all costs, or if there are multiple Subcontractors whose claims are being presented to the Owner, an allocation of the costs to be determined in the sole discretion of the Contractor, incurred by Contractor in connection with the dispute, including attorneys' fees. If Contractor exercises either of the options referenced above, Subcontractor agrees that it shall only recover against Contractor to the extent Contractor recovers funds from the Owner.

If the dispute arises from Owner's failure to pay amounts due, the Contractor may: (A) make reasonable efforts to collect the amount owed to the Contractor; or (B) if a cause of action is not subject to defenses caused by the Contractor's action or failure to act, make or offer to make, at a reasonable time, an assignment by Contractor to Subcontractor of a cause of action against the Owner for the amounts owed to the Subcontractor by the Contractor and in such event will offer reasonable cooperation to the Subcontractor's collection efforts.

3.5.2 All other disputes between the parties shall be resolved by litigation, in a court of competent jurisdiction, except as follows: (i) the Contractor may, at its sole option, require that any dispute be submitted to prompt mediation pursuant to the Texas Civil Practice and Remedies Code, Section 154.023, et. seq.; and (ii) the Contractor may, at its sole option, require that any dispute between the Contractor and Subcontractor, be submitted to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association.

.1 The election of prompt mediation by Contractor shall be made no later than sixty (60) days following receipt of service of process in such litigation asserting claims against Contractor initiated by Subcontractor or, if the claim is against Subcontractor and asserted by Contractor, shall be made not later than thirty (30) days following the filing of an answer of Subcontractor in the litigation (whether by trial, arbitration or other method of binding dispute resolution.). If the Contractor elects prompt mediation the Subcontract and Contractor shall mediate their dispute, in Collin County, Texas, within

thirty (30) days of Contractor's notice that it requires prompt mediation. The mediation shall be non-binding and each party shall pay its own share of the mediator's fees and any other costs associated with the mediation. The parties shall select a mediator with at least five years' experience in construction law within ten (10) days of Contractor notifying Subcontractor of its prompt mediation election. If the parties cannot agree on a mediator within the ten (10) days, the most preferred mediator of each party shall confer, (any expense incurred with such conference shall be at the cost of the party preferring the mediator), and within ten (10) days of being informed that the parties were unable to agree on a mediator, shall select a third mediator, with at least five years' experience in construction law, which shall not be either mediator involved in the negotiations, and such determination shall be binding on the parties. If a party's preferred mediator refuses to participate in the selection process, the other party's preferred mediator shall select a mediator. Notwithstanding the above, Contractor shall not be deemed to have waived any right it may have to mediate its dispute with Subcontractor by the filing of a suit or demand for arbitration against Subcontractor and its surety.

.2 The election of arbitration may be made by Contractor at any time up until thirty (30) days prior to the most recently scheduled trial setting of a dispute between Contractor and Subcontractor. If Contractor elects to arbitrate any dispute, all arbitrators shall be attorneys with at least five (5) years' experience in construction law. In any arbitration between Subcontractor and Contractor, pretrial discovery shall be allowed to full extent as permitted by the Texas Rules of Civil Procedure as though the matter were being tried in Court. Contractor shall not be deemed to have waived any right it may have to arbitrate its dispute with Subcontractor by the filing of a suit against Subcontractor and/or its surety. At Contractor's request, Subcontractor agrees to join in any motion Contractor may file seeking stay of any suit pending resolution of arbitration between Subcontractor and Contractor.

3.5.2.2.1 If Contractor elects to arbitrate any dispute with Subcontractor, Subcontractor consents to the joint arbitration of any dispute it might have with Contractor with the arbitration of any dispute Contractor might have with any other subcontractor of Contractor or with Owner or Architect, if Contractor should so elect.

3.5.2.2.2 No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder, or in any other manner, an additional person or entity not a party to this Agreement, unless requested in writing by Contractor or except by written consent signed by Contractor containing a specific reference to this Agreement. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein.

3.5.3 In the event of litigation or arbitration of any dispute between Subcontractor and Contractor, the prevailing party shall be awarded attorneys' fees, costs of court and such other damages as may be permitted by the Subcontract and applicable law.

3.5.4 Consequential Damages. Notwithstanding anything to the contrary, Subcontractor waives all claims and rights of recovery against Contractor for any consequential or indirect damages related to this Subcontract or otherwise. With respect to any claim by Owner, Subcontractor shall have the benefit of any limitation or waiver on consequential or indirect damages applicable to Owner under Owner's Contract with Contractor. Consequential and indirect damages include loss of use,

income, anticipated profits on unperformed work or other contracts or projects, loss of business, goodwill or reputation or other consequential or indirect damages as defined by applicable law.

ARTICLE 4 CHANGES IN THE WORK

- 4.1** Subcontractor's Bid(s) were based on a thorough review of existing conditions and the full set of construction documents. It is expressly understood that the drawings, specifications and addenda do not identify every detail in Subcontractor's work, and that minor revisions and/or additions may be required to make the Work operational and complete. Subcontractor has considered work reasonably inferable from the drawings, specifications and addenda required for Subcontractor to properly perform the Work, as well all aspects of the Work specified. For any and all work inferred as may be required, there will be no adjustment to the total amount of the Subcontract Sum.
- 4.2** Contractor may, at any time, unilaterally or by agreement with Subcontractor, without notice to any surety, make changes in the Work covered by the Subcontract. Any unilateral order or agreement under this Article 4 shall be in writing. Subcontractor shall perform the Work as changed without delay.
- 4.3** Any request for a Change Order, claim for adjustment, or response to request for reasonable price quotation for proposed changes in Work submitted by Subcontractor (all of which may be referred to herein as "request for Change Order") shall be itemized as to all costs, including but not limited to labor, material, equipment, services, supplies, and any other costs, charges or fees not included in the scope of the Work at the time of execution of the Project Subcontract (Part 1). Overhead and profit proposed by Subcontractor for change orders shall be equal to or less than the percentage defined by the Agreement between Contractor and the Owner. All such requests for a Change Order, claims for adjustment, or responses to request for reasonable price quotation for proposed changes in Work shall not be considered submitted by Subcontractor until they are delivered in writing to the Project Manager. Delivery of a request for a Change Order, claim for adjustment, or response to request for reasonable price quotation for proposed changes in Work by Subcontractor delivered to any person other than the Project Manager shall be considered not submitted by Subcontractor. This restriction includes delivery to the on-site Construction Superintendent or Assistant Construction Superintendent not being considered submitted. Change Orders are binding only if they are executed by the Contractor's Project Manager. Change Orders signed by any other representative or alleged representative of the Contractor are not authorized by the Contractor and not binding on the Contractor.
- 4.4** Subcontractor shall submit to Contractor any requests or claims for adjustment in the price, schedule or other provisions of the Subcontract for changes directed by the Owner, as a result of deficiencies or discrepancies in the Contract Documents, or for circumstances otherwise permitted by the Contract Documents. Said requests or claims shall be submitted in writing by Subcontractor in time to allow Contractor to comply with the applicable provisions of the Contract Documents. Subcontract adjustments shall be made only to the extent that Contractor is entitled to relief from or must grant relief to the Owner. Further, each Subcontract adjustment shall be only to Subcontractor's allocable share of any adjustment in Contractor's Contract with the Owner. Subcontractor's allocable share shall be determined by Contractor, after allowance of Contractor's allowed overhead and profit on any recovery and Contractor's expense of recovery, by making a reasonable apportionment, if applicable, between Subcontractor, Contractor, and other subcontractors or persons with interest in the adjustment. This paragraph shall also cover other equitable adjustments or other relief allowed by the Contract Documents.
- 4.5** Payment on account of pending changes made by the Owner shall be made only when Contractor receives such payment from the Owner for Subcontractor's changed Work. Each payment to Subcontractor on account of pending change orders shall be equal to Subcontractor's allocable share of Contractor's payment from the Owner for the pending change as determined by Contractor. Amounts paid on account of pending

changes are provisional and not an admission of liability and shall be repaid to Contractor on demand whenever Contractor determines there has been an overpayment.

- 4.6** For changes ordered by Contractor independent of the Owner or the Contract Documents, Subcontractor shall be entitled to equitable adjustment in the Subcontract price. If Subcontractor considers any action or inaction by Contractor other than a formal change order to be a change, it shall so notify Contractor, in writing, within two (2) business days of said action or inaction and seek a confirmation from Contractor. Subcontractor agrees that this is a reasonable amount of time to identify and notify Contractor that an action or inaction of Contractor constitutes a change in the Work. Within five (5) days of Subcontractor notifying Contractor in writing that it considers an action or inaction by Contractor other than a formal change order to be a change, Subcontractor shall submit a request for Change Order to the Project Manager of Contractor in the form and by the method required in this Article 4. Failure to comply with said confirmation procedure or submission procedure shall constitute a waiver of the right to compensation for the action or inaction. Change orders or changes of any kind, occurring between Contractor and Subcontractor independent of the Owner or the Contract Documents shall be performed and paid for on the basis of direct cost only, without any overhead, indirect expense or profit, so long as such direct cost does not exceed five percent (5%) of the existing Subcontract price.
- 4.7** Subcontractor shall, within seven (7) days of a Contractor request, submit a reasonable price quotation for proposed changes. If Subcontractor does not do so and Contractor is required to submit a price quotation to the Owner which includes a proposed change to Subcontractor's Work, Contractor shall use its best estimate of the proposed change as it affects the Subcontract in its quotation to the Owner, which estimate shall be the maximum equitable adjustment due to Subcontractor.
- 4.8** In the event Subcontractor is presented with a deductive Change Order (whether reducing the Subcontract Sum, the scope of Work or offsetting Subcontract Sum or requiring Subcontractor to pay Contractor for defaults or deficiencies), Subcontractor shall either execute the deductive Change Order or state in writing the basis for Subcontractor's objection to the deductive Change Order and the appropriate amount, if any, Subcontractor believes should be deducted from the Subcontract Sum, within ten days of receipt of the deductive Change Order or the minimum amount of time permitted by law for review and response to a deductive Change Order, whichever is greater. Subcontractor waives any objections to a deductive Change Order not submitted within the above referenced time, agrees that Subcontractor's failure to timely return the deductive Change Order shall be deemed acceptance of the deductive change order as presented, and acknowledges that Contractor may rely on the deductive Change Order in determining how to compensate itself or others, supplement the Work, or otherwise manage the Project, without the signature of the Subcontractor if the deductive Change Order is not returned within the time identified in this paragraph.
- 4.9** The payment of any incremental increase in the cost of bonds arising as a result of changes in the Work shall be the responsibility of Subcontractor and will be included as a part of Subcontractor's price for proposed changes.
- 4.10** In the event a Change Order is authorized by the Project Manager (and no one else) and the Change Order authorizes work on a "Time & Material" basis, the request for payment for the work approved in the Change Order must be submitted with timesheets signed by the Contractor's Construction Superintendent. Timesheets for Work performed on a Time and Material basis must be submitted to the Superintendent on a daily basis. Timesheets not submitted on the day the work is performed or the following day shall not be considered for payment. The Superintendent only verifies the hours and times worked. Only the Project Manager is authorized to verify that work is outside the subcontract and if a change order is applicable. There is no authorization to perform work on a time and material basis unless the performance on a time and material basis is approved in writing by the Project Manager before performance of the same. Nothing herein modifies in any way the requirements for properly obtaining a change order.

ARTICLE 5 PAYMENTS

5.1 SCHEDULE OF VALUES

- 5.1.1** Within three days of executing the Project Subcontract, Subcontractor must submit to Contractor through the GC Pay system or its equivalent system being utilized by Contractor, for Contractor's approval an itemized schedule of values ("Schedule of Values") in the amount equal to or less than the Subcontract Sum allocated to the various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as Contractor may reasonably require and/or as required by the Contract Documents. Subcontractor's Schedule of Values shall be submitted on an Industry recognized layout, such as the Form (AIA G703).
- 5.1.2** This schedule, unless objected to by Contractor, Owner or the Architect, will be used only as a basis of Subcontractor's applications for payment. The form of the application for payment will be as directed by Contractor and/or as required by the Contract Documents together with applicable receipted bills and payroll sheets.
- 5.1.3** Subcontractor's failure to itemize in its Schedule of Values any portions of the Work necessary or reasonably inferable to properly perform and complete the Work shall constitute a representation by Subcontractor that Subcontractor intends to perform that portion of the Work but has incorporated the cost or expense into another portion of the Work to be performed. Subcontractor agrees that Contractor is not obligated to review Subcontractor's Schedule of Values to ensure that labor, material, equipment, services and supplies required for Subcontractor to perform the Work has not been omitted or excluded, and that Contractor is entitled to rely on Subcontractor's determination that the Schedule of Values is accurate. Subcontractor agrees that it is required to perform all labor, material, equipment, services and supplies required to provide the Work in strict accordance with the Contract Documents, including reasonable inferences thereto, regardless of whether the labor, material, equipment, services and supplies are identified in the Schedule of Values.

5.2 APPLICATION FOR PAYMENT

- 5.2.1** Through the GC Pay or similar program/portal selected by Contractor, Subcontractor must submit to Contractor an itemized application for payment, notarized, supported by such data substantiating the Subcontractor's right to payment as Contractor, Owner or the Architect may require, including requisitions from subcontractors and sub-subcontractors.
- 5.2.2** Subcontractor shall, as part of each request for partial payment other than the initial request, furnish claim releases and lien waivers with respect to all Work performed and materials supplied through the date of the immediately preceding request for partial payment to the fullest extent of all payments received. Prior to final payment, Subcontractor shall provide to Contractor a release of its liens and claims and all liens and claims of all persons furnishing labor and/or materials for the performance of this Subcontract, and evidence satisfactory to the Contractor and Owner that there are no other liens or claims whatsoever outstanding against the Work relating to this Subcontract.
- 5.2.3** If the Contract Documents allow partial payment for materials stored either off-site or on-site, such payments shall be made to Subcontractor in the amounts and under the standards set forth in the Contract Documents for off-site or on-site stored materials once such payments have been approved by Contractor and the Owner, but only after Contractor's receipt of payment therefor from the Owner.

- 5.2.4** As to all Work for which Owner is liable, no partial payment shall be due Subcontractor unless and until Contractor receives payment from Owner and provided that the Work has been approved by Contractor and the Owner and provided that Subcontractor is in compliance with the terms of its Subcontract. Final payment shall not be due until Subcontractor's Work has been completed and approved by the Owner, the entire Project is complete, all final payment prerequisites under the Contract Documents have been satisfied, satisfactory proof of payment of all amounts owed by Subcontractor in connection with the Subcontract has been provided and Contractor has been paid in full for the entire Project. Notwithstanding the above, Contractor may withhold from any partial or final payment to Subcontractor such amounts as may be allowed by the Subcontract. No certification of a progress payment and no partial nor final payment made to Subcontractor pursuant to the Subcontract shall constitute or imply acceptance of Work or materials. Subcontractor shall remain liable to correct the Work promptly if for any reason it does not comply with the Contract Documents, regardless of whether partial or final payment for that portion of the Work has been made.
- 5.2.5** If any time any monies earned by or due to Contractor from Owner are not paid in full, Contractor shall in its sole discretion apportion the nonpayment equitably and reduce payments otherwise due Subcontractor accordingly. Such reductions shall continue until Contractor is paid all monies due to it, provided however, if the withholdings do not relate to Subcontractor's Work, Subcontractor shall be paid in full when Contractor's right to recover from the Owner is finally determined or expires. Subcontractor acknowledges that this paragraph establishes a reasonable time for payment.
- 5.2.6** Contractor may pay all persons who have not been paid the monies due them in connection with the Subcontract, whether or not a lien has been filed, unless Subcontractor prior to payment (i) demonstrates that such sums are not due or (ii) provides Contractor security which Contractor, in its sole discretion, deems adequate. In addition, Contractor, without notice and without prejudice to any other right it may have, may issue a Joint Check to Subcontractor and any lower-tier subcontractor or supplier of Subcontractor and the delivery of said Joint Check to the lower-tier Subcontractor or supplier shall constitute payment to Subcontractor.
- 5.2.7** All material and Work incorporated into the Project or for which partial payment has been made shall become the property of Contractor, or if the Contract Documents so provide, the property of the Owner; however, this provision shall not relieve Subcontractor from the responsibility and liability for all Work and materials for which payments have been made until final acceptance thereof by the Owner.

5.3 PAYMENTS WITHHELD

- 5.3.1** Notwithstanding any provision of the Subcontract to the contrary, Contractor is not obligated to make any payment to Subcontractor under the Subcontract if any one or more of the following conditions exists:
- (a) Subcontractor has failed to perform any of its obligations under the Subcontract or otherwise is in default under the Subcontract or the Contract Documents.
 - (b) If any part of such payment is attributable to Work which is not performed in accordance with the Contract Documents; provided, however, payment will be made for the portions of the Work which have been performed in accordance with the Contract Documents so long as Contractor does not, in its sole discretion, deem that such payment would leave insufficient funds to pay for expenses and costs attributable to Work not performed in accordance with the Contract Documents;

- (c) Subcontractor or any sub-subcontractor has failed to make payments promptly to any lower-tier subcontractor, as applicable, failed to pay for material or labor used in the Work for which Subcontractor has received payment, or failed to provide adequate security;
- (d) Subcontractor has failed to provide the revised Schedule of Values with the Application for Payment;
- (e) Subcontractor has suspended the Work other than as authorized by Owner or Contractor;
- (f) Contractor has a reasonable basis, supported by reasonable evidence, to anticipate Subcontractor does not intend to perform all of the obligations of Subcontractor, the Subcontractor has not provided assurance of performance in a form the Contractor deems sufficient, and Contractor anticipates the funds may be needed to complete performance of the Subcontractor's obligations;
- (g) reasonable evidence that the Work or other obligations of Subcontractor cannot be completed for the unpaid balance of the Subcontract Price,
- (h) reasonable evidence that the Work will not be completed within the Subcontract Time, and that the unpaid balance of the Subcontract Price would not be adequate to cover anticipated damages,
- (i) Subcontractor has filed a voluntary petition for protection or relief under, or a petition has been filed placing Subcontractor under, the protection of the bankruptcy laws of the United States and Subcontractor has not (1) notified Contractor that Subcontractor has the necessary capacity and resources to finish the Work and honor the Subcontract and will dismiss such petition and remove itself from bankruptcy protection within 90 days of the filing or (2) affirmed and had the bankruptcy court approve its obligations under the Subcontract to Contractor and evidence Subcontractor's ability to perform the Subcontract to Contractor's reasonable satisfaction; and/or
- (j) Subcontractor has failed to provide or maintain required insurance and bonds.

5.3.2 In the event any of the conditions as outlined in Paragraph 5.3.1 exist, Contractor may withhold such funds as may be reasonably necessary to protect it from liability or compensate it for its damages; provided, however, that the exercising of the right of withholding by Contractor shall not be conclusive with respect to any liability of Subcontractor to Contractor.

5.4 PAYMENTS BY SUBCONTRACTOR FOR DEFAULT

5.4.1 If the Contractor incurs expenses, fees, costs, liquidated damages, losses, costs to repair, or otherwise incurs expenses due to a default of Subcontractor, including but not limited to failure or delay in performing warranty obligations, whether the default is identified before or after partial or final payment to Subcontractor, and such amount shall exceed any unpaid balance due Subcontractor, the Subcontractor shall pay Contractor the difference on demand.

5.4.2 If the Contractor must continue to administer the Project after the date scheduled for Substantial Completion or Final Completion in the Project Schedule as a result of any default of the Subcontractor, which may be determined by the Contractor in its sole discretion, the Subcontractor shall pay the Contractor its additional overhead. If the additional overhead as of the date of Final Completion is achieved is less than that amount owed to Subcontractor, Contractor may offset the same from the amount owed to the Subcontractor. Otherwise, the Subcontractor

shall pay Contractor on demand the amount calculated by Contractor for additional overhead due to failure to achieve Final Completion by the date anticipated. The parties agree that failure to achieve Substantial Completion or Final Completion as scheduled will cause damage to Contractor, that the exact amount of such damage would be difficult to fully quantify, and that the sum of \$500.00 per calendar day is a reasonable amount for liquidated damages for the overhead to be incurred by Contractor as a result of the failure to achieve Substantial Completion or Final Completion within the time set forth in the Project Schedule. Subcontractor also agrees that the liquidated damages provided for herein are in addition to, and not in substitution of, any other remedies provided to Contractor under the Contract Documents, including but not limited to recovery from the Subcontractor of liquidated damages charged to the Contractor by the Owner pursuant to the Contract Documents.

- 5.4.3** If Contractor must supplement or replace Subcontractor due to default of Subcontractor, Subcontractor shall compensate Contractor for additional overhead, even if the Contractor is able to achieve Substantial Completion or Final Completion in the time permitted in the Contract Documents. The parties agree that supplementing or replacing the Subcontractor due to a default by the Subcontractor will cause damage to Contractor, that the exact amount of such damage would be difficult to fully quantify, and that the sum of \$500.00 for every day the Project Manager, Assistant Project Manager, Superintendent or an Assistant Superintendent works more than eight hours on the Project and works any portion of a weekend day, following the date of Subcontractor's default through the scheduled date of Final Completion, is a reasonable amount for liquidated damages for the overhead to be incurred by Contractor as a result of the Subcontractor's default. Subcontractor also agrees that the liquidated damages provided for herein are in addition to, and not in substitution of, any other remedies provided to Contractor under the Contract Documents, including but not limited to recovery from the Subcontractor of liquidated damages charged to the Contractor by the Owner pursuant to the Contract Documents.

ARTICLE 6 PROTECTION OF PERSONS AND PROPERTY

6.1 SAFETY OF PERSONS AND PROPERTY

- 6.1.1** The Subcontractor must take all reasonable precautions for the safety of, and must provide all reasonable protection to prevent damage, injury or loss to:
- (a) all employees at the Project site or engaged in the Work and all other persons who may be affected by the Work or are in proximity to the Work;
 - (b) the Work and all materials and equipment to be incorporated into the Work, whether in storage on or off the property site, under the care, custody or control of the Subcontractor or any lower-tier subcontractors;
 - (c) other property at the Project site or adjacent thereto, including all existing improvements not part of the Work, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction;
 - (d) the Work of Contractor, the Owner or other separate contractors; and
 - (e) all tenants and visitors to the Project.
- 6.1.2** The Subcontractor must give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

- 6.1.3** In addition to safety requirements imposed by law, Subcontractor shall comply with all safety requirements and policies imposed by Contractor or the Owner and will conduct operations in a safe manner. Subcontractor shall designate an employee to be responsible for compliance with all federal, state, and local safety and health regulations and all safety policies and requirements imposed by Contractor or the Owner. Unless the Subcontractor designates otherwise, the responsible employee shall be the Subcontractor's jobsite supervisor. Subcontractor shall be liable to Contractor for any additional costs, including fines, which Contractor incurs as a result of Subcontractor's failure to operate safely. Contractor may conduct safety inspections from time to time. Such inspections shall not relieve Subcontractor from its obligations to adhere to safety requirements nor shall such inspections create any liability to Contractor.
- 6.1.4** Subcontractor is expected to comply with the safety requirements for the Project, including those in the Contract Documents or those required by the Owner. Subcontractor's employees and agents, including Lower-Tier Subcontractors, shall not engage in harassment of any kind, including harassment directed at Owner, Owner faculty, Architect, Contractor, other subcontractors, or students or other passersby. Subcontractor shall ensure that any employee, agent or Lower-tier subcontractor engaging in conduct reasonably considered harassing, is removed from the Project immediately.
- 6.1.5** The presence of weapons on the Project site is strictly banned, whether or not the owner of the weapon has a permit, and Subcontractor agrees that Subcontractor's representatives, employees, agents, and Lower-Tier Subcontractors will abide by the same.

ARTICLE 7 INSURANCE

7.1 SUBCONTRACTOR'S INSURANCE

- 7.1.1** The Subcontractor, prior to commencing the Work, shall procure and purchase the following insurance from a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located:
- (a) Workers Compensation and Employer's Liability;
 - (b) Commercial General Liability (including Blanket Contractual Liability, Products and Completed Operations, Bodily Injury (including sickness, disease or death of any person other than Subcontractor's employees) and Personal Injury and Broad Form Property Damage;
 - (c) Commercial Auto Liability; and
 - (d) Umbrella Liability.
- 7.1.2** Additional Insured. Contractor and Owner shall be included as insureds under the CGL policy for liability arising out of Subcontractor's work performed under this Subcontract, including products-completed operations coverage for a period of ten years following substantial completion, or as required by the Contract Documents, whichever is longer, except to the extent of liability attributable to the negligence or fault of Contractor or Owner.

Notwithstanding the foregoing, as to liability of Contractor or Owner for bodily injury or death of an employee or agent of Subcontractor or Subcontractor's subcontractor, the additional insurance provided by Subcontractor shall provide coverage for the negligence or fault of Contractor or Owner, including the sole negligence of Contractor or Owner.

The insurance provided by Subcontractor to Contractor and Owner shall be primary and noncontributory to other insurance available to Contractor or Owner. Equivalent additional insured coverage shall also be provided by Subcontractor of Contractor and Owner on Subcontractor's umbrella liability policy on a "follow form" basis and that additional insured coverage on the umbrella policy shall be primary to any other coverage available to Contractor or Owner.

7.1.3 WORKERS COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

- .1 Policy must include (a) coverage in accordance with Workers Compensation laws of the state in which the Project is located; (b) "All States" Endorsement; (c) Employer's Liability with limits of not less than \$500,000.00 per accident and \$500,000.00 per employee; and (d) a Waiver of Subrogation in favor of Contractor, the Owner, and such other parties as may be required by Contract Documents.
- .2 In the event that any employee of Subcontractor or any lower-tier subcontractor shall be leased, Subcontractor shall provide an Alternate Employer Endorsement naming Contractor in connection with employee leasing company Workers Compensation Insurance Policy. Such policy shall contain a Waiver of Subrogation in favor of Contractor and Owner.
- .3 In addition to any other obligations for insurance by Lower-Tier Subcontractors, Subcontractor shall require that any Lower-Tier subcontractor who enters the premises, including any transportation provider/motor carrier, prior to beginning work on the Project, shall have Workers Compensation insurance based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Tex. Labor Code Sec. 401.011(44) for all its employees.
- .4 Before commencing Work, Subcontractor shall provide a certificate certifying in writing that the Subcontractor and each Lower-Tier Subcontractor provides workers' compensation insurance coverage for each employee employed on the Project for the duration of the Project. Contractor may provide the subcontractor's certificate(s) to the Owner.
- .5 Prior to the end of any coverage period, the Subcontractor and each of its Lower-Tier subcontractors shall provide to Contractor a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

7.1.4 COMMERCIAL GENERAL LIABILITY INSURANCE

- .1 Coverage must be on an occurrence basis, must include Comprehensive Form, Explosion and Collapse Hazard, Underground Hazard, Products and Completed Operations and must be in the minimum liability amounts of: General Aggregate - \$2,000,000.00; Products/Completed Operations - \$2,000,000.00; Personal Injury - \$1,000,000.00; each Occurrence - \$1,000,000.00; Fire Damage - \$100,000.00; Medical Expense - \$5,000.00 Contractor may require additional coverages and/or expanded limits as set forth in the Subcontract. If there are amounts set forth in the Subcontract which differ from the amounts set forth above, the Subcontractor shall provide the greater amount of coverage designated. This insurance must include coverage for liabilities arising out of the Work or from Subcontractor or any of its subcontractors (at any tier) or their respective employees, agents, officers or directors for (a) acts or omissions, or (b) negligence or gross negligence. Aggregate limits to apply per project.

- .2 Coverage must also include contractual liability for indemnities and the contractual liability of Subcontractor under the Contract Documents, including Paragraphs 2.5 and 2.6 hereof.

7.1.5 COMMERCIAL AUTO LIABILITY INSURANCE

- .1 Coverage shall include non-ownership and hired car coverage as well as owned vehicles, with minimum liability amounts of \$1,000,000.00.
- .2 Coverage must include bodily injury, death of a person or persons, and property damage arising out of ownership, maintenance, or use of any motor vehicle, on or off the Work area or Project site.

7.1.6 UMBRELLA LIABILITY INSURANCE

- .1 Contractor may require umbrella liability insurance with coverage in the minimum amounts as set forth in the Subcontract for bodily injury and property damage.
- .2 Coverage, at a minimum, must be consistent with the primary liability policy, including, but not limited to, coverages and notice provisions and must be kept and maintained for the same time period as required for the applicable primary insurance.

7.1.7 The Subcontractor shall maintain all insurance until final completion of the Project except that completed operations coverage shall be maintained for at least ten (10) years after the date of final completion or as required by the Contract Documents, whichever is longer. An additional certificate evidencing continuation of coverage for completed operations will be submitted with Subcontractor's final application for payment. All applications for payment will be held and no payments made to Subcontractor until all insurance submissions are made and insurance coverage is confirmed and approved. Subcontractor shall retain all required certificates of coverage on file for the duration of the Project and for ten years thereafter.

7.1.8 The Subcontractor will require each of its lower-tier subcontractors to carry Commercial General Liability Insurance, Workers Compensation Insurance, Commercial Auto Liability and Employer's Liability, together with such other insurance that may also be required of Subcontractor and will require that the insurance be furnished prior to the commencement of any Work, or entering into any contracts with said lower-tier subcontractor, or approving contracts with any lower-tier subcontractor, whichever is earliest. **SUBCONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD CONTRACTOR AND OWNER HARMLESS FOR ANY FAILURE OF SUBCONTRACTOR OR ANY OF ITS LOWER-TIER SUBCONTRACTORS TO OBTAIN THE REQUIRED INSURANCE COVERAGES.**

7.1.9 No insurance coverage furnished pursuant hereto shall be changed or terminated except upon thirty (30) days advance written notice to Contractor from the carrier or the licensed agent thereof. The Subcontractor must submit to Contractor copies of insurance renewals, and in cases where previous insurance policies have been canceled, proof of new insurance. Subcontractor must notify Contractor in sufficient time for Contractor to provide sufficient notice to the Owner as required by the Contract Documents, but in no event more than five days after the Subcontractor knows or should have known of any change that materially affects the provision of coverage of any person providing services on the Project.

7.1.10 Subcontractor waives all rights of subrogation against Contractor and Owner, their employees, officers, trustees and agents, and any other party for whom waiver of subrogation is required in the Agreement between Owner and Contractor, for damages caused by perils covered by this Article, except such rights as they may have to proceeds of such insurance held by Owner or Contractor as fiduciary or as an insured. All such policies of insurance shall contain an endorsement whereby the insurance carrier agrees to waive all rights of recovery, including but not limited to

rights of subrogation, against Contractor, the Owner, and such other parties as may be required by Contractor or the Contract Documents. Subcontractor waives all rights of recovery against Contractor, the Owner and such other parties as are required by Contractor and/or the Contract Documents for losses within the scope of Subcontractor's insurance. If after a loss no other special arrangement is made, Owner has not terminated Contractor, and Contractor has not terminated Subcontractor, Subcontractor shall replace any damaged property for the insurance proceeds. To the extent Contractor receives any payment from insurance, Contractor shall pay Subcontractor its just share of insurance proceeds, if any, and Subcontractor shall pay its Lower Tier Subcontractors their just share of insurance proceeds.

- 7.1.11** Subcontractor's materials, which are incorporated into the completed Project, or properly stored on the Project site, may be covered by a Builder's Risk and Extended Coverage Insurance Policy containing certain deductibles and exclusions taken out either by Contractor or the Owner. Subcontractor shall be responsible for such deductibles and exclusions on losses which are related to this Subcontractor (or pro-rated share on multi-affected contractor occurrence). It is the Subcontractor's responsibility to evaluate the protection afforded by that policy and to carry his own Risk Insurance, if so desired, against all losses not covered by said policy. A copy of said policy will be available for Subcontractor's inspection at Contractor's office.
- 7.1.12** Subcontractor shall provide Contractor with a Certificate or Certificate of Insurance required hereunder on an Accord 25 form or other form acceptable to Contractor. Upon request, Subcontractor shall provide Contractor with certified copies of insurance policies required by this Article 7 and the Subcontract.
- 7.1.13** The requiring of any and all insurance as set forth in these paragraphs, or elsewhere, is in addition to and not in any way in substitution for all of the other protection provided under the Subcontract to Contractor, including Paragraph 2.5 (Indemnification).
- 7.1.14** No acceptance or approval of any insurance by Contractor will relieve or excuse the Subcontractor or the surety of any bond(s) called for under the Subcontract, from any liability or obligation imposed upon either or both of them by the provisions of the Subcontract.
- 7.1.15** Owner or Contractor may elect to furnish all or a portion of the insurance required by the Project Subcontract through a Controlled Insurance Program (CIP). This election will be made in writing. If any insurance is furnished through a CIP, Subcontractor shall: (1) cooperate with the CIP administrator and comply with all terms of the CIP, (2) provide and segregate its insurance cost for the Project as required by Contractor, (3) agree to a reduction of the Subcontract Sum for the cost of this insurance as determined by Contractor per the CIP Manual, and (4) furnish and pay for all coverages required by the Project Subcontract that are not provided through the CIP (including any offsite coverage). Failure of Subcontractor to qualify for the CIP may result in exclusion from the Project and/or constitute a default at Contractor's option.

ARTICLE 8

PERFORMANCE BOND AND PAYMENT BOND

8.1 PERFORMANCE BOND AND PAYMENT BOND

- 8.1.1** If required by the Subcontract, Subcontractor must furnish to Contractor and keep in force during the term of the Subcontract the required bonds, being both a performance bond (for the Work) and payment bond (covering the cost of the Work) guaranteeing the Subcontractor will perform its obligations under the Subcontract and will pay for all labor and materials furnished for the Work. Each bond must be issued in a form and by a surety acceptable to Contractor, must be submitted to Contractor for approval as to form, must name Contractor as beneficiary/obligee and each must be in an amount equal to at least 100% of the Subcontract amount (as the same may

be adjusted from time to time pursuant to the Contract), unless a greater amount is required by applicable law, in which case such greater amount will control. The Subcontractor must deliver the approved and executed bonds to Contractor upon execution of the Subcontract. In the event the surety which provided bonding becomes insolvent or fails during the term of the Subcontract, Subcontractor shall immediately replace, at its expense, the bonds with valid bonds from a new surety meeting the above requirements. Failure of Subcontractor to replace bonds would be a failure subject to the conditions defined in Article 9.1.

- 8.1.2** The payment bond must be issued in a form consistent with and as may be required by all applicable laws for the state in which the Project is located, such that, to the fullest extent possible at law, no liens can attach to the Project and all mechanics or materialmen's liens filed in connection with the Work or the Project will attach only to the bonds.
- 8.1.3** Notwithstanding the above, and in the event that liens are filed by anyone in relation to the labor performed and/or material furnished pursuant to this Subcontract for which Subcontractor has been paid, Subcontractor agrees to have the same discharged by posting a bond with the appropriate authorities, or otherwise, within three days of notice. In the event such lien is not so discharged, Contractor may discharge the lien itself and hold Subcontractor responsible for all costs and obligations incurred.
- 8.1.4** If Subcontractor is not required to furnish bonds, or if Contractor desires Subcontractor to provide additional bond coverage, Contractor may, at any time, and upon written request, instruct Subcontractor to provide, and Subcontractor shall use its best efforts to procure within ten (10) days, performance and payment bonds as provided in this Article 8. In this event, Contractor will reimburse Subcontractor for reasonable bond premiums.

ARTICLE 9 TERMINATION

9.1 SUBCONTRACTOR'S FAILURE TO PERFORM; TERMINATION FOR DEFAULT

- 9.1.1** Subcontract is in default if Subcontractor shall at any time: (a) refuse or fail to provide sufficient properly skilled workers (including but not limited to immediately replacing workers of Subcontractor being removed from the premises for failing to comply with Contractor's Workplace Policy), adequate supervision or materials of the proper quality; (b) fail in any material respect to prosecute the Work according to Contractor's current schedule; (c) cause, by any action or omission, the stoppage or delay of or interference with the Work of Contractor or of any other contractor or subcontractor; (d) fail to comply with any material provision of the Subcontract or the Contract Documents; (e) fail to perform its work to a standard which the Owner, Architect or Contractor determine does not meet the requirements and specifications of the Contract Documents; (f) make a general assignment for the benefit of its creditors; (g) have a receiver appointed; (h) become insolvent; or (i) assign all or any part of its right to receive payments hereunder to a third party. Contractor shall provide Subcontractor two (2) business days' written notice to cure a Default, which may be in the form of a text or email to the Subcontractor. If within two (2) business days of such notice (i) Subcontractor has not cured the default, or (ii) if such condition cannot reasonably be eliminated within such time, Subcontractor has not taken appropriate efforts to eliminate such condition, including but not limited to efforts identified in a detailed written step by step plan delivered by Subcontractor to Contractor within two (2) business days of the written notice, and/or if such steps are not diligently pursued, including supplementing forces if necessary to ensure the Project is not off Schedule, until the condition is eliminated, then Contractor, at its option, without voiding the other provisions of this Subcontract, and without notice to the sureties and without prejudice to any other rights of Contractor under the law, may: (i) without further notice to Subcontractor take any steps as Contractor, in its sole discretion, determine are appropriate to overcome the condition, including supplementing Subcontractor's

workforce, in which case the Subcontractor shall be liable to Contractor for the cost thereof, and any liquidated damages which may be owed as a result of Subcontractor's breach; (ii) terminate for default Subcontractor's performance of all or a part of the Subcontract Work immediately upon giving written notice to the Subcontractor; or (iii) obtain specific performance or interlocutory mandatory injunctive relief requiring performance of Subcontractor's obligations hereunder (it being agreed by Subcontractor that such relief may be necessary to avoid irreparable harm to Contractor and/or the Owner).

- 9.1.2** In the event of termination for default in accordance with Section 9.1.1 above, Contractor may, at its option: (a) enter on the premises and take possession, for the purpose of completing the Work, of all materials and jobsite equipment of Subcontractor; (b) take assignment of any or all of Subcontractor's subcontracts; and/or (c) either itself or through others complete the Work by whatever method Contractor may determine expedient. In case of termination for default, Subcontractor shall not be entitled to receive any further payment until the Work shall be fully completed and accepted by the Owner and payment in full made by the Owner. At such time, if the unpaid balance of the price to be paid Subcontractor shall exceed the expense incurred by Contractor, including overhead and profit, and any liquidated damages which may be assessed against Subcontractor, such excess shall be paid by Contractor to Subcontractor. If the expense incurred by Contractor, including overhead and profit, shall exceed such unpaid balance due Subcontractor, the Subcontractor shall pay Contractor the difference on demand.
- 9.1.3** In the event of supplementation of Subcontractor's workforce or correction of Work due to default of Subcontractor, or in the event Subcontractor is terminated, Contractor shall recover from Subcontractor all costs, expenses and fees associated with such supplementation or correction, including if deemed appropriate by Contractor, costs of hiring engineers, architects or other professionals to review and make recommendations for the completion and/or correction of the Work. Subcontractor shall pay Contractor an additional \$1500 per day over the costs of supplementation or correction for Contractor's administrative expenses as calculated in Sections 5.4.2 and 5.4.3, which the Subcontractor agrees is a reasonable amount for the administration of supplemental or corrective labor and materials due to Subcontractor's default. If any amounts remain owed to Subcontractor at the time of default, all further payments, including progress payments, may be held by Contractor for purposes of offsetting the amounts owed by Subcontractor for the costs of supplementation or correction. If, after final determination of the costs of supplementation or correction, the unpaid balance of the price to be paid Subcontractor shall exceed the expense incurred by Contractor, including overhead and profit, such excess shall be paid by Contractor to Subcontractor. If the expense incurred by Contractor, including overhead and profit, shall exceed such unpaid balance due Subcontractor, the Subcontractor shall pay Contractor the difference on demand.
- 9.1.4** Subcontractor agrees and acknowledges that supplemental labor and material often charges premium rates and is often conducted on a time and material basis because the supplementing subcontractor has greater leverage in the negotiating process: when requested, typically the need for supplemental work is high, is based on a short turnaround, involves overtime and weekend hours, there is uncertainty as to the scope of work required, there may be damages not yet recognized or which cannot be mitigated, and the pool of subcontractors willing and able to supplement on short notice is small. Subcontractor agrees that Contractor may have a restricted group of subcontractors to contact about supplementing, has no obligation to request bids for supplemental work, typically when seeking supplemental labor or material there is insufficient time to thoroughly qualify supplementing subcontractors or to attempt to obtain competing bids or the number of subcontractors willing to bid may be small, even as few as one, and Subcontractor agrees that this may mean that supplementing labor and material will be provided at significantly greater rates than the Subcontractor allocated for that labor or material.

- 9.1.5** In the event that Subcontractor prevails in a claim that it was improperly terminated for cause for one of the reasons set forth in this Article, Contractor and Subcontractor agree that the termination shall be treated as a Termination for Convenience and Subcontractor shall recover nothing more than what Subcontractor is entitled to recover pursuant to the Article relating to Termination for Convenience. In no event shall Subcontractor be entitled to unabsorbed overhead, anticipatory profit or damages of any kind or nature, direct or indirect, incidental or consequential.

ARTICLE 10 TERMINATION FOR CONVENIENCE

Contractor shall have the right to terminate for convenience Subcontractor's performance of all or any part of the Work by providing Subcontractor with a written notice of termination for convenience, to be effective upon receipt by Subcontractor. If there has been a termination of Contractor's Contract with Owner, Subcontractor shall be paid the amount due from the Owner for its Work, as provided in the Contract Documents after payment therefor by the Owner to Contractor. If Contractor's Contract has not been terminated, Subcontractor shall be paid the reasonable value of the Work performed by Subcontractor prior to termination plus reasonable direct close-out costs, including jobsite overhead and profit on Work performed, but in no event shall Subcontractor be entitled to unabsorbed overhead, anticipatory profit or damages of any kind or nature, direct or indirect, incidental or consequential. If no Work has been performed by Subcontractor at the time of termination, Subcontractor shall be paid the sum of \$100.00 for its undertaking an obligation to perform.

ARTICLE 11 SUSPENSION

Contractor shall have the right to suspend Subcontractor's performance of all or any part of the Work in the event Contractor's Contract is suspended by Owner or Contractor otherwise deems Suspension to be prudent. Contractor shall provide Subcontractor with written notice (which may be in the form of a text or email to Subcontractor's Project Manager or similarly situated employee or agent) of Owner's suspension of Contractor's Contract upon receipt of which notice Subcontractor shall immediately suspend its Work or such part thereof as designated in the notice. In the event of suspension of the Subcontractor's Work due to the suspension of Contractor's Contract by Owner, Subcontractor shall be paid the amount due from Owner for its Work, as provided in the Contract Documents, after payment therefor by Owner to Contractor, but in no event shall Subcontractor be entitled to unabsorbed overhead, anticipatory profit or damages of any kind or nature, direct or indirect, incidental or consequential.

ARTICLE 12 LAWS, REGULATIONS AND ORDINANCES

12.1 LAWS, REGULATIONS AND ORDINANCES

- 12.1.1** Subcontractor shall be bound by, and at its own cost shall comply with, all Federal, state and local laws, codes, ordinances and regulations applicable to this Subcontract and the performance of the Work whether by reason of general law or by reason of provisions in the Contract Documents. Subcontractor and all lower-tier subcontractors shall be duly licensed to operate under the laws of all applicable jurisdictions.
- 12.1.2** Specifically and without limitation of the foregoing, Subcontractor and all lower-tier subcontractors, and all employees, servants and agents of any of them, shall comply strictly with the applicable requirements of the Occupational Safety and Health Act (OSHA) of 1970, as amended, all other applicable health and safety laws and regulations, and all laws and regulations applicable to the hiring of aliens.

- 12.1.3** Subcontractor agrees to provide to Contractor a copy of its Hazard Communication Program for the Project. OSHA Hazard Communication Standard 1926.59 will be aggressively enforced by Contractor.
- 12.1.4** If there is a variance between (i) the applicable Building Code, (ii) requirements of the Americans with Disabilities Act (ADA), Amendments to the ADA, and any regulations related thereto, (iii) requirements of the Texas Architectural Barriers Act, including but not limited to the Texas Accessibility Standards (TAS), Amendments to the same, and any regulations related thereto, (iv) local ordinances and/or regulations; and/or (v) the Contract Documents, prior to commencing work on the portion subject to the variance, the Subcontractor shall immediately submit a request for information. Subcontractor shall ensure that all Work is performed in accordance with any and all Building Codes adopted by the governing entity(ies) for the location of the Project, local ordinances and/or regulations, requirements of the Texas Architectural Barriers Act, including but not limited to the Texas Accessibility Standards (TAS), Amendments to the same, and any regulations related thereto, or requirements to comply with the ADA, Amendments to the ADA, and any regulations related thereto, or as referenced in the Contract Documents, whichever is most stringent.
- 12.1.5** Subcontractor shall be liable to Contractor and the Owner for all loss, damage, cost and expense attributable to any acts of commission or omission by Subcontractor, or any lower-tier subcontractors, and all employees, servants or agents of any them, resulting from failure to comply with any Federal, state or local laws, codes, ordinances or regulations including, but not limited to, any fines, penalties or corrective measures.

ARTICLE 13 EQUAL OPPORTUNITY

- 13.1** In connection with the performance of the Work, Subcontractor agrees not to discriminate against any employee or applicant for employment because of race, religion, sex, color or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Subcontractor agrees to post hereafter, in conspicuous places, available for employees and applicants for employment, notices prepared by Subcontractor and approved by the government, when required, setting forth the provisions of this Paragraph. Subcontractor shall permit access to its books, records and accounts by representatives of Contractor or the Owner for purposes of investigation to ascertain compliance with the provisions of this Paragraph.
- 13.2** Subcontractor shall include the provisions of this Paragraph in Subcontractor's subcontracts. The requirements of this Article 13 shall be in addition to any Equal Opportunity provisions of the Contract Documents and other laws, regulations and ordinances as set forth in this Agreement.

ARTICLE 14 ADDITIONAL TERMS & CONDITIONS

14.1 LAYOUT AND ENGINEERING

Contractor shall furnish and maintain bench marks and base control lines for use by all subcontractors. All other layout, field engineering and field measurements required for the execution of this Subcontract shall be provided by Subcontractor. A surveyor retained by Subcontractor shall be licensed and registered as specified in the Contract Documents

14.2 USE OF TEMPORARY FACILITIES

Subcontractor, except for on-site offices and fabrication plants, may share with Contractor and other subcontractors, at no charge, electrical power (120V), OSHA standard lighting, water, and sanitation services which Contractor has available. Power and connections for equipment that exceed the reasonable capacity of sources provided by Contractor, such as welders, will be Subcontractor's responsibility. Any additional services, including lighting, additional outlets, and/or water requirements, which Subcontractor may require for the performance of its Work or the protection of its Work, materials, and equipment from the elements and against theft and vandalism, shall be Subcontractor's responsibility. Subcontractor shall provide its own flood and/or spot lighting should Subcontractor elect to work beyond daylight hours

14.3 INTERFACE AND COORDINATION

14.3.1 Subcontractor, as well as its sub-subcontractors and trades, shall cooperate and fully coordinate their Work with one another and all other subcontractors for the purpose of securing a complete Project as required by the Contractor's schedule.

14.3.2 Subcontractor shall review the critical dimensions and elevations of its Work, and verify the previous Work as to its relationship to the Subcontractor's Work. The Subcontractor shall promptly submit a written statement to Contractor noting any discrepancies or unacceptable conditions prior to commencing with the Work of the Subcontract. Subcontractor shall not attach to or cover over any material which is not properly installed.

14.4 PROTECTION OF WORK/MATERIALS/TOOLS/EQUIPMENT

14.4.1 Subcontractor shall secure and take all appropriate measures to protect, all materials, tools, and equipment delivered for or incorporated in the Work until the time of final acceptance by the Owner. This shall include protection from the weather and all other elements of nature, as well as any damage which may be done to same due to vandalism, theft, or any cause. Subcontractor shall be liable for all losses to stored material, tools, and equipment, whether they are on site or off site, due to vandalism, theft, or any other cause. If the cost of repairing or replacing the stored material, tools and/or equipment exceeds the deductible of a Builder's Risk insurance naming the Owner and/or Contractor as a beneficiary, and the insurer issuing the Builder's Risk policy determines the policy does cover the loss of the stored materials, tools and/or equipment, the proceeds paid by the Builder's Risk Insurer, if paid to the Contractor, may be applied to reimburse the Subcontractor for the covered portion of the loss.

14.4.2 Subcontractor shall take such steps and provide such materials as are necessary to protect its final product and all adjacent surfaces from damage, including minor damage such as scratches, until occupancy by the Owner.

14.5 TESTS AND INSPECTIONS

All costs associated with the failure of, or unpreparedness for, any required testing and/or inspection relating to the Work shall be the responsibility of this Subcontractor. Subcontractor shall coordinate all required testing and inspections with an authorized Contractor representative. Test and inspection results shall be kept as a job record and maintained by Subcontractor for twelve years following completion of the Work.

14.6 DAILY CONSTRUCTION REPORT

Subcontractor shall submit a Daily Construction Report to Contractor. The Report must include a description of the Subcontractor's activities for the day, a work force count by trade for both the Subcontractor and sub-subcontractors, as well as a listing of any major deliveries. The Reports must be submitted by noon the following day.

14.7 DELIVERY OF CLOSE-OUT DOCUMENTS

Unless an earlier delivery of close-out documents by the Subcontractor is required for the Contractor to comply with close out requirements in the Contract Documents, at the latest Subcontractor shall provide all closeout documents, as required by the Contract Documents, sixty (60) calendar days prior to Substantial Completion.

14.8 AS-BUILT DRAWINGS/RECORD DOCUMENTS

Subcontractor shall daily maintain an up-to-date and accurate record of all deviations from the approved drawings, specifications and shop drawings which may occur in the Work as actually constructed, and shall submit to Contractor for submission to the Owner, no less frequently than monthly and at completion of the Work prior to final payment, completely corrected as-built drawings representing the actual condition of the Work for the record.

14.9 LABELING OF SYSTEMS

If Subcontractor alters or installs any mechanical, electrical, or other equipment in the course of performing Work, Subcontractor shall provide identification and labeling of all systems and equipment installed or altered by Subcontractor.

14.10 OPERATIONS AND MAINTENANCE MANUALS

Subcontractor shall submit all operations and maintenance manuals and all warranties, as built plans, and maintenance bonds relating to the Work covered by the Subcontract to Contractor no later than 60 days, and attic stock no later than 30 days, prior to the date Contractor notifies Subcontractor of the date of substantial completion of the Work (the "Due Date"). Receipt of such operations and maintenance manuals in complete and proper form by Contractor shall be evidenced only by a written receipt from Contractor. Subcontractor's failure to comply with the provisions of this paragraph shall subject Subcontractor to liquidated damages in the amount of \$150.00 per day for each calendar day beyond the Due Date, until such operations and maintenance manuals have been delivered to Contractor and a written receipt evidencing the delivery has been obtained from Contractor. Subcontractor acknowledges that its failure to timely deliver the operations and maintenance manuals as provided for herein will cause damage to Contractor, that the exact amount of such damage would be difficult to fully quantify, and that the sum of \$150.00 per calendar day is a reasonable amount for liquidated damages. Subcontractor also agrees that the liquidated damages provided for herein are in addition to, and not in substitution of, any other remedies provided to Contractor under the Contract Documents, including but not limited to liquidated damages which may be assessed for failing to achieve Substantial Completion and Final Completion by the dates anticipated by the Owner and Contractor.

14.11 HOISTING AND SPECIAL RIGGING

14.11.1 Subcontractor is to perform all hoisting, rigging, and final placement of material and/or equipment as required for the Work.

14.11.2 Subcontractor is responsible for any and all special rigging, flagmen, spotters or other assistance necessary in connection with hoisting, as well as personnel required for off -loading materials.

14.12 DRUG-FREE AND SMOKE FREE WORKPLACE PROGRAM

Subcontractor shall adopt Contractor's Drug, Alcohol and Other Prohibited Items Policy for its own employees, agents and representatives who come onto the jobsite and shall require its lower-tier subcontractors who come onto the jobsite to do likewise. If Subcontractor, or anyone who comes onto the jobsite under an employment or other contractual arrangement with Subcontractor, whether direct or indirect, fails to enforce Contractor's Drug, Alcohol and Other Prohibited Items Policy, Contractor reserves the right to bar such party from the jobsite. Any resulting damage (including damage for delay) will be the responsibility of Subcontractor. Subcontractor shall review, execute and return to Contractor a copy of

Contractor's Drug, Alcohol and Other Prohibited Items Policy contemporaneously with and as a condition to, the execution of the Subcontract.

14.13 ADVERTISING - SIGNS

Either Subcontractor, lower-tier subcontractors, or any of their employees shall take photographs of the Work or site, publish or display advertising matter of any description relating to the Project, or display signs at or near the Project without first obtaining the written consent of Contractor and the Owner.

14.14 VERIFICATION OF NO BOYCOTT OF ISRAEL

Subcontractor asserts by signing this Agreement that it is currently not boycotting Israel and will not boycott Israel during the term of any work performed for Contractor. Any such action to boycott Israel will be cause of immediate termination of the Agreement.

14.15 NO KNOWN CONTACTS WITH TERRORIST ORGANIZATIONS

The Subcontractor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, foreign organizations designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law.

**ARTICLE 15
MISCELLANEOUS**

15.1 NOTICES

Except as otherwise noted herein, all notices shall be in writing addressed to the parties at the addresses set out herein or the most recently provided email addresses, and shall be considered as delivered three (3) days after deposit in the U.S. mail, or the first business day following the date of transmission if sent by electronic mail, telegram or telecopy, or when actually received if served in person.

15.2 FORBEARANCE

To the greatest extent permitted by law, the Parties agree that by forbearing from taking an action against Subcontractor, including any adverse action against Subcontractor, Contractor does not waive its right to later take action Contractor is entitled to take for the same or continuing conduct, inaction, or omission by Subcontractor or for substantially similar conduct, inaction, or omission by Subcontractor. Subcontractor's agrees that if Contractor's act or omission does waive a remedy available to the Contractor for a specific act, that act or omission does not waive Contractor's right to act if conduct, inaction, or omission by Subcontractor continues or happens again.

15.3 CONSTRUCTION OF AGREEMENT

15.3.1 SEVERABILITY AND WAIVER. The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. If any provision is invalid, in whole or in part, the provision shall be considered reformed to reflect the intent thereof to the greatest extent possible consistent with law. 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 Subcontract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

15.3.2 NEGOTIATION. This Subcontract was negotiated with input from both parties and opportunity to consult with independent legal counsel. Ambiguities shall not be construed against the drafting party and terms shall not be construed in favor of or against either party based on unequal bargaining power or under any similar theory.

15.3.3 HEADERS. Headers provided throughout this Agreement are provided for the convenience of the parties only and are not contractually-binding terms and do not limit the applicability of the contract terms following the header.

15.3.4 ELECTRONIC SIGNATURES. Contractor may request that Subcontractor accept and sign documents related to this Project (including this Subcontract and any change orders) electronically and/or issue and maintain documents in PDF or other electronic format. Contractor and Subcontractor agree that these signatures and documents are of equal dignity and effect as manual signatures or hard copies. Subcontractor is solely responsible for safeguarding its signature and any unique login, password, or other security protocol assigned or created. Subcontractor waives any objection to the authenticity or enforceability of any electronic acceptance or signature related to its failure to safeguard or maintain security protocols. This Agreement may be signed in one or more counterparts, including electronically scanned copies, and are collectively considered one original. Reproductions of the executed original(s), with reproduced signatures, will be considered of equal weight and authenticity as the original(s) of this Agreement.

15.4 COMPLETE AGREEMENT

This Subcontract contains the entire Agreement between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties, or other matters, oral or written, shall be deemed to bind the parties hereto, unless the same are in writing, clearly and conspicuously indicate that they are superseding, modifying or amending the terms of this Agreement and signed by authorized representatives of both parties. **ACKNOWLEDGEMENT OF SUBCONTRACT GENERAL PROVISIONS**

By its execution hereof, Subcontractor acknowledges that it has read and agreed to all of the terms, conditions and provisions set forth herein and that these subcontract general conditions will be incorporated by reference in all subcontracts entered into between Pogue Construction Co., LP and the undersigned unless otherwise provided in such Project Subcontract. The execution of these Pogue Construction Co., LP Subcontract General Provisions shall not confer any rights to Subcontractor with regard to any specific Work unless and until a Project Subcontract for that specific Work is executed between the parties incorporating this document by reference. Notwithstanding the foregoing provision, these Subcontract General Provisions shall control all obligations and activities of Subcontractor on any jobsite or Work undertaken by or on behalf of Contractor.

“Subcontractor”

{ToCompany.Name}

By: _____

Printed Name:

Its: _____

Date: _____

Address:

“Contractor”

Pogue Construction Co., LP, a Texas Limited Partnership acting by and through its General Partner, Ben Pogue, L C, a Texas limited liability company

By: _____

Benjamin P. Pogue, Sole Member of Ben Pogue, L C

Its: Sole Member / President

Date: _____

Address:

1512 Bray Central Drive, Suite 300
McKinney, Texas 75069