

## ARTICLE 1 – THE CONTRACT DOCUMENTS

- 1.1 The contract documents for this subcontract agreement consist of : this subcontract agreement, along with any exhibits referenced, attached or as elsewhere specified herein; the agreement between the owner/prime contractor and this contractor; the conditions of the contract between the owner/prime contractor and this contractor (general, supplementary, and other conditions); the drawings; the specifications; and any addendums between the owner/prime contractor and this contractor, issued prior to execution of this subcontract agreement and all applicable modifications issued subsequent thereto.
- 1.2 The subcontract incorporates these above-mentioned documents by reference, with the same force and effect as if they were given full text. Upon written request the contractor will make their full text available during normal working hours, 8:00 AM – 4:00 PM, Monday through Friday, excluding contractor observed holidays.
- 1.3 Subcontractor has read and is thoroughly familiar with the contract documents and agrees to be bound to the contractor insofar as they relate in any manner to the work and to assume to the contractor all the obligations and responsibilities which contractor assumes to the prime contractor/owner. Should inconsistencies or omissions appear in the contract documents as they may be revised from time to time, it shall be the continuing duty of the subcontractor to notify the contractor in writing within two (2) working days of the date subcontractor learns of, or reasonably should have learned of, such inconsistencies or omissions.
- 1.4 It is the intention of the parties that all terms of this contract are to be considered complementary; however, in the event such an interpretation is not possible, the following order of precedence shall apply:
- (a) The terms and conditions of the agreement between the owner and the prime contractor shall take precedence over the terms of the agreement between the subcontractor and the contractor.
  - (b) The terms and conditions of the agreement between the owner and the contractor shall take precedence over the terms of the agreement between the subcontractor and the contractor.
  - (c) Written modification to this agreement shall take precedence over this agreement unless the contract documents place a higher standard or greater requirement on the subcontractor, in which case the original contract documents shall apply.
- 1.5 In the event of a conflict between or among written modifications, the later in date shall prevail. In the event of a conflict between or among the terms of agreement, the higher standard for the subcontractor shall prevail.
- 1.6 All drawings, plans, specifications, and contract documents, and any copies of such documents, shall remain contractor's property and shall be returned to contractor upon request.

## ARTICLE 2 – NOTICES

- 2.1 Any notification required by the terms and conditions of this agreement and/or any of the contract documents referenced above shall only be effective if provided in writing by the authorized representative of the contractor or the subcontractor and delivered in person or by certified mail to the authorized representative within the time period that may be set forth in the terms and conditions of this contract or any of the documents incorporated into the terms of this contract.
- 2.2 It is specifically agreed that any communications between the parties by fax or e-mail shall not be considered "Notice" under the terms and conditions of this contract unless the parties agree in writing to accept such communications.

## ARTICLE 3 – THE WORK

- 3.1 The subcontractor shall provide all labor, materials and resources necessary to complete the work in complete compliance with the statement of work (see exhibit A), approved submittals, contract specifications, contract drawings, and the prime contract, unless excluded or modified in writing and signed by an authorized representative of the contractor.

- 3.2 The subcontractor shall perform the work in a good and workmanlike manner and shall furnish and pay labor, services, material, taxes, permit fees, charges and equipment and other incidentals necessary for the timely completion of the work.
- 3.3 The work included in this agreement shall be performed under the direction of the contractor who shall have sole responsibility for coordinating any matters that may arise under this agreement with the prime contractor/owner. Subcontractor shall address all requests for information, requests for clarification, and/or any other matters that require coordination with the prime contractor/owner directly to contractor and all such replies shall be provided to subcontractor by contractor. Subcontractor specifically acknowledges that, in the event it makes any communications, whether orally or in writing to the prime contractor/owner, it does so at its own risk, that contractor is not responsible for any increase in cost or time caused by any such communication but that subcontractor shall be liable to contractor should such communications cause any delay in the completion of this Agreement or an increase, whether direct or indirect, in contractor's cost to perform the work required by its contract.
- 3.4 Subcontractor acknowledges and agrees that, prior to the execution of this subcontract, it has verified all information furnished by the contractor or others as contained in the various contract documents referenced above and has satisfied itself as to the correctness and accuracy of all such information. Contractor expressly disclaims any representations or warranties with regard to the accuracy of any of the above referenced contract documents. Subcontractor acknowledges that any failure on its part to independently investigate the contract documents and become fully informed as to the total scope of the work to be performed shall not relieve subcontractor of any of its responsibilities under the terms of this agreement and shall not serve as a basis for any claims against this contractor of the prime contractor/owner.
- 3.5 The subcontractor shall at all times have one individual designated as the subcontractor's representative for this agreement who shall have absolute authority to act in all respects on behalf of the subcontractor. Subcontractor shall provide the name, exact mailing address, phone and fax number, and e-mail address of this individual within two (2) working days of the execution of this agreement and shall notify contractor of any changes in the identity or address of such individual within one (1) working day of the date any such change becomes effective.
- 3.6 Subcontractor shall make all alternation, furnish materials and perform all extra work or omit any work contractor may require without invalidating this subcontract at a reasonable addition or deduction from the agreed price. IN NO EVENT SHALL SUCH ALTERATIONS OR CHANGES BE MADE UNLESS SUBCONTRACTOR HAS BEEN DIRECTED TO DO SO BY A WRITTEN NOTICE OR CHANGE ORDER ISSUED BY THE CONTRACTOR CONTRACTS REPRESENTATIVE.
- 3.7 Subcontractor shall submit any claims it may have arising from the terms of this subcontract in the same manner and within that same time as the contractor is required to submit claims to the prime contractor/owner, except that any claims for extra cost or time shall be submitted to contractor within five (5) working days from the date of the event or occurrence giving rise to such claim. Subcontractor failure to submit any such claims within the time provided by this paragraph shall be deemed a complete waiver by subcontractor.
- 3.8 When requested by contractor, subcontractor shall submit a detailed schedule for performance of the work in a form acceptable to contractor and which shall comply with all scheduling requirements of the contract documents and any schedule prepared by contractor. If required by the contractor, subcontractor shall also submit detailed reports as to the progress of the work, at such periods of time as contractor may direct, but not more frequently than daily.
- (a) In the event the work, or any part of the work, is delayed more than twenty-four (24) hours by subcontractor or not completed by subcontractor by the scheduled date, as determined by the contractor, the parties agree that subcontractor shall promptly increase its work force, accelerate its performance, work overtime, work Saturdays, Sundays and holidays, all without additional compensation, if in the sole discretion of the contractor such work is necessary to maintain proper progress of the work to meet schedules. The acceleration costs shall include the cost of the contractor's designated representative, when required.
- (b) Any such demand by the contractor to increase the subcontractor's work force or accelerate its performance and/or work overtime shall not be a "compensable acceleration" unless subcontractor provides

written notice of its objection with one (1) working day of any such demand and establishes, to the reasonable satisfaction of the contractor and prime contractor/owner that the work can be completed on a timely basis in accordance with all schedules.

- (c) Should subcontractor object to increasing its work force and/or accelerating its performance, it shall notify contractor in writing within one (1) working day of receipt of contractor's demand. Failure to provide such notice shall be deemed a waiver by the subcontractor of any such claim and/or claims for additional costs arising out of the contractor's direction that the subcontractor increase its work force or make other arrangements in order to ensure timely completion of the work.

- 3.9 Contractor will conduct weekly or bi-weekly meetings for the purpose of planning, scheduling, coordination and reviewing the work in all respects. The subcontractor will have a representative at these meetings who is familiar with the project and who has the authority to make decisions and commitments on behalf of the subcontractor. The subcontractor will provide an updated schedule and progress reviews at the meetings.
- 3.10 Contractor shall not be liable to subcontractor for any delays caused or contributed to by any other parties or any other cause whatsoever. Subcontractor specifically acknowledges that its sole remedy for any delay, regardless of the cause, shall be an extension in time equal to the length of the delay and that subcontractor is not entitled to any financial compensation for any such delays. Subcontractor further agrees that it must provide written notice of any such claim within (2) working days of the event causing such delay and that its failure to do so shall be deemed a waiver of any claims subcontractor may have for additional time to perform the work required by this agreement.

#### **ARTICLE 4 – TIME OF COMMENCEMENT**

- 4.1 The "work" to be performed under this subcontract shall commence within three (3) days after notification, whether verbal or written, subject to authorized adjustments, and shall be substantially completed not later than the time specified in the contract progress schedule submitted to and approved by the prime contractor/owner and contractor. Once approved by the contractor, the subcontractor's schedule shall be considered incorporated into this subcontract agreement. Upon request, the contractor agrees to provide the subcontractor with an opportunity to review the contractor's schedule submittal prior to its delivery by the contractor to the prime contractor/owner, for purpose of confirming the subcontractor's "work" can be accomplished and completed in the allotted time. Subcontractor agrees to schedule "work" so that there will be little or no interference with work being completed by contractor or other subcontractors. The subcontractor shall commence and complete the work of this subcontract and any separate parts thereof within such period(s), and at the time set forth in the contractor's current schedule. Failure by the subcontractor to comply with the contractor's schedule may result in the actions as prescribed herein this subcontract.
- 4.2 Time is of the essence of this subcontract.

#### **ARTICLE 5 – THE CONTRACT SUM**

- 5.1 The contractor shall pay the subcontractor in current funds for the performance of the work the contract sum specified in section A, subject to additions and deductions authorized pursuant to paragraph 13.1
- 5.2 Subcontractor specifically acknowledges that prime contractors payment to contractor for work performed by subcontractor is a condition precedent to contractor's obligation to make payment to subcontractor.

#### **ARTICLE 6 – PROGRESS PAYMENTS**

- 6.1 The subcontractor, on execution of the subcontract agreement, shall plan the "work" with the contractor and shall complete and submit a "Schedule of Values", similar to the attached, within 10 days of execution of the subcontract agreement. The "Schedule of Values" shall be in sufficient detail to allow discrete inspection of the "work" performed by the contractor.
- 6.2 A draft "Schedule of Values" with undated percentages complete will be submitted for approval by contractor 10 days prior to the payment request due date specified in Section A. The "Schedule of Values" after approval along with the completed Requisition for Payment form is required to request payment for each billing cycle. The contractor will withhold retainage indicated in section A until such time as the prime contractor/owner reduces the

contractor's retainage. Compliance to the procedure is mandatory if the subcontractor's payments are to be processed for the respective period. The owner must issue payment to the contractor before payment is released to the subcontractor.

- 6.3 The contractor shall pay the subcontractor milestone or monthly progress payments in accordance with the contractor's approved "Schedule of Values" or milestones.
- 6.4 Progress payments or final payment(s) due and payable under this subcontract shall not bear interest or finance charges.
- 6.5 A "Partial Waiver and Lien Release" will be forwarded to the subcontractor for acknowledgment, and must be notarized and returned to the contractor for all partial progress payments. Failure to provide the contractor with a fully executed "Partial Waiver and Lien Release" will result in a delay in payment.
- 6.6 Contractor may withhold amounts otherwise due under this agreement, or any other agreement between contractor and subcontractor, to cover contractor's reasonable estimate of any costs or liability which contractor has incurred or may incur for which contractor may be responsible under the terms of this agreement, including, but not limited to, all costs in connection with:
- (a) Discharging any claims of lien or claims against the bond filed with respect to the work.
  - (b) Any claims, whether such claims have been filed or for which there is a reasonable probability a claim may be filed with respect to the work.
  - (c) And upon the reasonable belief by the contractor, that the work which remains unfinished cannot be completed for the balance then unpaid or within the time requirements of applicable schedule.
- 6.7 Each request for payment shall constitute a representation by the subcontractor that the work conforms to the contract documents and to applicable laws, regulations, codes or any administrative requirements, which may apply to the work.
- 6.8 No payment made under this agreement shall be construed to constitute acceptance of defective design, defective work or improper materials. No payment made under this agreement shall be construed as a waiver of contractor's right to require subcontractor to correct or replace defective and/or nonconforming design, defective and/or nonconforming work or to assess a reasonable deduction against the subcontractor for the loss of value caused by defective and/or nonconforming design or work.
- 6.9 The amount of each progress payment to the subcontractor shall be the amount to which the subcontractor is entitled, reflecting the percentage of completion allowed to the contractor for the "work" of this subcontractor applied to the contract sum of this subcontract, and the percentage actually retained, if any, from payments to the contractor on account of such subcontractor's "work", plus to the extent permitted by the contract documents, the amount allowed for materials and equipment suitably stored by the subcontractor, less the aggregate of previous payments to the subcontractor, or if applicable, the amounts reflected in the subcontractor's schedule of values for the achievement of specific milestones.

### **ARTICLE 7 – FINAL PAYMENT**

- 7.1 Before issuance of the final or "lump sum" payment, the subcontractor, if required, shall submit evidence (Final Waiver and Lien Release) satisfactory to the contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the contractor's work has been satisfied.
- 7.2 Final payment, constituting the entire unpaid balance of the contract sum, shall be due when the work is fully completed in accordance with the contract documents and is accepted by the prime contractor/owner and within seven (7) to ten (10) days after the contractor received payment from the prime contractor. As payment of the contractor by the prime contractor/owner is a condition precedent to contractor's payment to subcontractor, contractor shall have no obligation to make final payment to subcontractor in the event contractor is not paid in full, or in part, by prime contractor/owner.

### **ARTICLE 8 – TEMPORARY FACILITIES AND SERVICES**

- 8.1 Temporary facilities and services as provided to the contractor by the prime contractor/owner, or unless otherwise provided in this subcontract, shall be furnished and made available at no cost to subcontractor the temporary facilities and services listed in section A.

### **ARTICLE 9 – COMPLIANCE WITH LAW/MASTER CONTRACT**

- 9.1 Subcontractor shall at its sole expense comply with all federal, state and local laws, codes, regulations and ordinances effective where the work is performed or any portion of the work is to be performed, shall pay all taxes and contributions imposed or required by any law for any employment insurance, worker's compensation, pensions, retirement funds, social security benefits, unemployment compensation insurance or for similar purposes with respect to the work and the employees of subcontractor in connection with the work, and shall obtain and pay for any and all permits, licenses, fees, certificates of inspection and all necessary certifications required by contractor or otherwise in connection with the work and shall arrange for all necessary inspections and approvals by the public officials and/or as required by the contractor.
- 9.2 Subcontractor and all of its employees shall comply with the applicable requirements and safety regulations issued by the U.S Department of Labor pursuant to the Occupational Safety and Health Act as amended and all other applicable safety laws and regulations. Subcontractor shall be liable to contractor and prime contractor/owner for all loss, cost and expense, including legal, professional and/or consultant fees attributable to any acts of commission or omission by subcontractor, its contractors, employees, and agents resulting from failure to comply with such laws or regulations, including, but not limited to, any fines, penalties or corrective measures imposed with respect to any such alleged or actual violations.
- 9.3 For subcontracts placed under a prime contract of subcontract with the U.S Government valued at more than \$10,000.00, the subcontractor shall comply with Executive Order 11246, as amended, and the regulations in 41 CFR 60.
- 9.4 If the contract documents contain a wage determination/decision of the U.S Secretary of Labor, the wages and benefits paid under this contract shall be no less than those contained in such wage determination/decision, regardless of any contractual relationship which may be alleged to exist between the subcontractor and any such laborers, mechanics, or craftsmen. Please refer to exhibit D for the specific wage determination/decision for this subcontract agreement.
- 9.5 Subcontractor shall comply with all terms, conditions and provisions of the prime contract; however, this provision is not intended to and shall not be construed to alter any provision in this agreement stating that receipt of payment for the prime contractor/owner is a condition precedent to contractor's obligation to make any payments to subcontractor.

### **ARTICLE 10 – GENERAL FEDERAL ACQUISITION REGULATION (FAR) CLAUSES**

- 10.1 If required by the owner/prime contractor's contract of if this subcontract is placed under a prime contract with the U.S Government, the Federal Acquisition Regulations (FAR) clauses and provisions (including applicable Federal Agency Supplements thereto) listed in exhibit C, are incorporated in this subcontract by reference with the same force and effect as if set forth in full text. The completed text for all of these clauses and provisions is available on the internet at <http://www.arnet.gov/far>. By acceptance of this subcontract, the subcontractor acknowledges they are in possession of or are familiar with all the government clauses and provisions incorporated by reference, and agree to perform the requirements of this agreement in accordance with the provisions of such referenced laws and provisions of this subcontract.

FOR THE GENERAL PROVISION AND CLAUSES INCORPORATED HEREIN BY REFERENCE, THE FOLLOWING DEFINITIONS SHALL APPLY: "GOVERNMENT" SHALL MEAN CONTRACTOR AND "CONTRACTING OFFICER" SHALL MEAN CONTRACTOR'S REPRESENTATIVE.

ALL OTHER WORDS AND PHRASES RETAIN COMMON OR TRADE USE MEANING, AS APPLICABLE.

### **ARTICLE 11 – INSURANCE**

- 11.1 Prior to starting work, the subcontractor shall procure; (with contractor and prime contractor/owner named as additional insured parties) insurance coverage in a form acceptable to the Contractor and from insurers licensed to do business and provide such insurance in the state where the project located and maintains such insurance at its own expense until final acceptance of the subcontractor's work. See exhibit B for the specific insurance requirements for this subcontract agreement.
- 11.2 Prior to commencing the work, subcontractor shall furnish such evidence as may be required by the contractor of all such insurance required by this agreement. Any insurance policy issued under this agreement shall provide that all notices by the insurer to the insured shall be simultaneously given to the contractor and that at thirty (30) days prior to any cancellation of such policies written notice shall be given to the contractor and that unless such notice is given the purported cancellation shall be ineffective.
- 11.3 The contractor and subcontractor waive all rights against each other and against the contractor, owner, and government and separate contractors and all other contractors, for damages caused by fire or other perils to the extent covered by property insurance provided under the general conditions, except such rights as they may have to the proceeds of such insurance.

## **ARTICLE 12 – CONTRACTOR / SUBCONTRACTOR DESIGNATED REPRESENTATIVES**

- 12.1 Direction, received by the subcontractor, from the contractor shall be binding only when issued in writing by the contractor's contract representative. The contracts representative shall be the only individual authorized to direct and/or redirect the effort or in any way amend any of the terms and conditions of this subcontract agreement. All direction received shall be acknowledged by the subcontractor within five (5) working days of the date of the communication. All communications shall be sent to the contracts representative identified in section A. The contracts representative is the agent of the contractor and the only representative agent authorized to enter into a subcontract change order or agreement(s) that contractually binds the contractor. The contracts representative shall monitor all administrative matters, i.e., correspondence, schedule, RFI's, etc. The contracts representative also is responsible for ensuring all contractual requirements are met. In the event the designated contracts representative will be unavailable to perform his/her duties for any period of time, contractor will so notify subcontractor in writing, specifically identifying the individual that will be serving as the contractor's contract representative and the duration for which such individual will be serving in that capacity.
- 12.2 The performance of the work shall be subject to the technical direction of the contractor's technical representative. As used herein, technical direction is direction provided to that subcontractor that is within the scope and price of the subcontract agreement. Direction that invoices a change in price, period of performance, scope of work, or other provisions of the subcontract will be issued by said technical representatives, or any other person, unless such direction is issued by the cognizant contracts manager, or duly authorized agent/officer of contractor in accordance with Article 13 "Changes in Work" clause.
- 12.3 The subcontractor shall designate a single point of contact with full authority over and responsibility of compliance with all aspects of this subcontract agreement. This designated representative shall not be changed without express written notification to contractor. The subcontractor's designated representative shall remain intimately involved in the day-to-day operation of the project and shall be the primary contact for all issues, concerns and activities. All communications between the subcontractor and contractor shall be channeled through the subcontractor's designated representative. In connection with the performance of work, contemplated by the subcontract agreement, the subcontractor's designated representative, who has full authority to contractually bind the subcontractor, is named in section A.
- 12.4 All correspondence shall be forwarded to the attention of contractor's contracts manager at the address listed in section A. All correspondence must reference/include the following: subcontract number, project name, contractor job number/phase number and subject matter.

## **ARTICLE 13 – CHANGES IN WORK**

- 13.1 The subcontractor may be ordered in writing by the contractor, without invalidating this subcontract, to make changes in the work within the general scope of this subcontract consisting of additions, deletions or other revisions, with the contract sum and the contract time being adjusted accordingly. The subcontractor, prior to

commencement of such changed or revised work, shall submit promptly to the contractor written copies of any claim for adjustment to the contract sum and contract time for such revised work in a manner consistent with the contract documents.

- 13.2 The subcontractor agrees that the maximum consideration or monetary value of any single “change” to this subcontract shall be limited to the consideration or the monetary value recovered by the contractor from the contractor’s customer, or in the event of “back-charges”, the consideration or monetary value recovered from the contractor’s supplier, vendors, or subcontractors, less an amount sufficient enough to cover the contractor’s normal general and administrative cost and profit.

#### **ARTICLE 14 – SUBCONTRACTORS**

- 14.1 Within five (5) days after award of the subcontract agreement, the subcontractor shall deliver to the contracts manager a statement setting forth the name and address of any contracted lower tier subcontractor(s) and a summary description of the work subcontracted. The contractor must approve any lower tier subcontractors before any work is performed.

#### **ARTICLE 15 – BOND REQUIREMENT**

- 15.1 Subcontractor shall furnish and pay for surety bond from a surety acceptable to contractor in the full amount of the contract for the faithful performance of this contract and for the payment of all persons furnishing labor, services or materials used or purchased in connection with the work. The bond shall be for a period ending one (1) year after final completion of the project. The payment of any incremental increase in the cost of any bond required hereunder resulting from changes in the work shall be the sole responsibility of the subcontractor.
- 15.2 If at any time after the execution of this subcontract and the subcontract bond required hereunder, the contractor or the prime contractor/owner shall deem the surety or sureties to be unsatisfactory, or if for any reason ceases to be adequate to cover the performance of the work, the subcontractor shall, at its expense, and within three (3) days after receipt of such a notice from contractor to do so, furnish such additional bonds in such forms and amounts and with such sureties as shall be deemed to be satisfactory to the contractor. In such event, no further payments to subcontractor shall be deemed due under this agreement until such new or additional security for faithful performance of the work shall be furnished in a form satisfactory to contractor.

#### **ARTICLE 16 – INDEMNITY**

- 16.1 Subcontractor shall and hereby agrees to defend, indemnify and hold harmless the contractor, the prime contractor/owner, including their respective employees, officers, directors, shareholders, agents, successors and assigned (hereafter referred to as the indemnities) for any claims, suits, judgments, awards, causes of action, losses, damages, demands, liability, exposure, fines, penalties, assessments, cost and expenses, including attorney fees whether or not suit is brought and through and including all post-judgment and appellate levels, which occur or are asserted by anyone or are incurred by any or all of indemnities arising out of the performance of this agreement and the work by the subcontractor or by a subcontractor’s laborers, employees, agents, material, men or other for whom the contractor may be responsible.
- 16.2 Subcontractor acknowledges that one hundred (100.00) dollars of the consideration under this contract is the specific consideration for this indemnity.
- 16.3 Without limiting the general application of the foregoing, this indemnity applies to and shall include all liabilities, claims, damages, losses or expenses, fines, penalties, assessments and judgments for bodily or personal injury, property damage, unfair competition, infringement of any patent trademark or copyright, for defamation, false arrest, malicious prosecution or other intentional acts and subcontractor’s violation of any ordinance or failure to comply with OSHA or other similar regulations.
- 16.4 The subcontractor shall, at its own expense, investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon and pay all charges or attorneys fees, including those of the contractor’s attorney and all other costs and expenses of any kind arising from any such liability, claim, damage, loss or expense.

16.5 If Florida Statute Section 725.06 is applicable to this paragraph, then this paragraph shall be construed to comply with the statute, and any and all applicable limitations and/or restrictions set forth in that statute are incorporated herein by reference. If a monetary limitation on indemnification is required by law, the limitation shall be One Million Dollars (\$1,000,000.00) per occurrence, which sum, it is agreed, bears a reasonable commercial relationship to this Agreement. If a court determines that such monetary limitation does not bear a reasonable commercial relationship to this Agreement, then this paragraph shall not be void or unenforceable, but instead, the parties hereto agree that the court may establish a monetary limitation that bears a reasonable commercial relationship to this Agreement. The Subcontractor agrees and acknowledges that this indemnity obligation is part of the Project Specifications or bid documents, if any. The Subcontractor's obligation to provide a defense for Indemnities shall arise regardless of the merits of the matter and shall continue until a final determination of fault is made. Indemnities shall be entitled to recover actual reasonable attorney's fees and reasonable court costs and all other costs, expenses and liabilities incurred and/or suffered by Indemnities in an action brought to enforce all or any part of this paragraph. The Subcontractor's obligations under this paragraph shall in no way limit Contractor's other rights and remedies under this Agreement. Notwithstanding the foregoing, Subcontractor's indemnity obligations shall not include claims of, or damages resulting from, gross negligence or willful wanton or intentional misconduct of any Indemnity or its officers, directors, agents or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Subcontractor or any of the Subcontractor's contractors, sub-subcontractors, sub-sub-contractor, material men or agents of any tier or their respective employees.

#### **ARTICLE 17 – GUARANTY / WARRANTIES**

- 17.1 The subcontractor's warranties will remain in effect for a minimum of one (1) year from the time the work is accepted as substantially completed by the contractor, or as may be extended by modification to the subcontract.
- 17.2 Subcontractor warrants that all items furnished hereunder shall be free from defects in workmanship and materials; and shall comply with the requirements of this agreement and any drawings or specifications incorporated herein. Acceptance of items shall not relieve subcontractor of its responsibilities hereunder. The warranties of subcontractor together with its service warranties and guaranties, if any, shall run to the contractor and its customers.
- 17.3 In the event any portion of the work is determined to contain a defect or does not comply with the requirements of this agreement and any drawings or specifications, subcontractor agrees to correct all such work within seven days of its receipt of notice of any such defects.

#### **ARTICLE 18 – GOVERNING LAW**

- 18.1 The parties agree that this subcontract agreement is governed by the laws of the State of Florida.

#### **ARTICLE 19 – DISPUTES**

- 19.1 The parties agree that the sole remedies available in a dispute between the contractor and the subcontractor are those remedies provided for in the agreement between the contractor and the prime contractor/owner. If the contract documents do not provide for arbitration or fail to specify the manner and procedure, arbitration shall be conducted in accordance with the rules of the American Arbitration Association unless the parties mutually agree otherwise.
- 19.2 The parties specifically agree to comply with the following procedures before either party may file suit or make a demand for arbitration for any matters arising out of, or related to, this agreement.
- (a) In the event a dispute arises regarding the interpretation of the terms and conditions of this agreement, the parties agree to meet each other in an effort to achieve a good faith resolution of the matter within five (5) working days of the date either party provides written notification to other that there is a dispute.
  - (b) In the event the parties are unable to arrange a meeting within the required time, the parties may mutually agree, in writing, to schedule the meeting at a later date. In the event the meeting is delayed by mutual agreement, neither party shall be entitled to compensation for any delay arising from, or related to, the dispute.

- (c) Either party's refusal, or failure, to comply with the above requirement shall serve as a complete abandonment of any rights or defenses that party may have in regard to the matter in dispute and that party may not bring, or defend, any law suit or demand for arbitration involving any matters for which it failed to comply with the above provisions.
- (d) In the event the parties are unable to reach an amicable resolution of the matter at the meeting required above, the parties agree to participate in non-binding mediation in a good faith effort to resolve the dispute within five (5) working days of the date of their initial dispute resolution meeting. The mediator shall be selected by mutual agreement of the parties. Each party shall be responsible for its own costs in participating in any such mediation and one-half of the costs of the mediator.
- (e) In the event, the parties are unable to reach agreement on a mediator, the mediator shall be appointed under the provisions of the American Arbitration Associations mediation procedures. Each party shall bear its own costs in preparing for and participating in the mediation and each shall be responsible of one-half of the cost of the mediator, which include any fees or costs required by the American Arbitration Association, the cost of the mediators services and any cost the mediator incurs in arranging for and conducting the mediation.
- (f) In the event, the parties are unable to arrange mediation within the required time, the parties may mutually agree, in writing to schedule the meeting at a later date. In the event the meeting is delayed by mutual agreement, neither party shall be entitled to compensation for any delay arising from, or related to the dispute.
- (g) In the event the mediator declares an impasse, either party may file a demand for arbitration or a law suit.
- (h) In no event shall any statements or other communications between the parties, whether the communication is with the other party, a third party or the mediator or any documents produced by either party, a third party or the mediator in accordance with the requirements of these provisions be admissible in the event of any subsequent litigation between the parties.
- (i) Either party's refusal, or failure, to comply with the above requirement shall serve as a complete abandonment of any rights or defenses that party may have in regard to the matter in dispute and that party may not bring, or defend, any law suit or demand for arbitration involving any matters for which it failed to comply with the above provisions.

19.3 In any litigation, or binding arbitration, including breach of this agreement or enforcement and/or interpretation of any of its provisions, the prevailing party in such litigation shall be entitled to recover reasonable attorney's fees, cost and expenses, including any costs or expenses incurred in pretrial investigation, at trial, or on appeal.

## **ARTICLE 20 – LIQUIDATED DAMAGES**

20.1 The contractor shall make no demand for liquidated damages for delay in any sum in excess of such amount as may be specifically named in the contract documents and this subcontract. Liquidated damages shall be assessed against this subcontractor only for his negligent acts and his failure to act in accordance with the terms of this agreement, and in no case for delays or causes arising outside the scope of this subcontract, or for which other subcontractors are responsible.

## **ARTICLE 21 – BACK CHARGES**

21.1 Except as may be indicated in this agreement, the contractor agrees that no claim for payment for services rendered or materials and equipment furnished by the contractor to the subcontractor shall be valid without prior notice to the subcontractor and unless written notice thereof is given by the contractor to the subcontractor not later than the tenth day of the calendar month following that in which the claim originated.

21.2 If the Subcontractor defaults or neglects to carry out the "Work" in accordance with this agreement and fails within three (3) working days after receipt of written notice from the contractor to commence and continue correction of such default or neglect with diligence and promptness, the contractor may without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payments then or thereafter due the subcontractor, provided, however, that if such action is based upon faulty workmanship or materials and

equipment, the contractor shall first have determined that the workmanship or materials and equipment are not in accordance with the contract documents.

## ARTICLE 22 – MISCELLANEOUS PROVISIONS

- 22.1 Except as expressly stated herein, this subcontract constitutes the entire agreement between the parties and supersedes all agreements, representations, warranties, statements, promises and understandings not specifically set forth in this agreement or in the documents incorporated by reference in this agreement. Neither party has in any way relied, nor shall party rely, upon any oral or written agreements, representations, warranties, statements, promises or understanding not specifically set forth in this agreement.
- 22.2 This agreement, and any benefits thereunder, shall be binding and inure to the benefit of the parties hereto, their respective successors in interest, heirs and personal representatives.
- 22.3 By signing this agreement each party warrants that they have read this agreement in its entirety, has no objections or reservation to any of the terms and conditions of this agreement and has full authority to execute this agreement on behalf of the respective parties.
- 22.4 This agreement may be altered or modified only by an agreement in writing signed by the parties.
- 22.5 In case any one or more of the provisions contained in this agreement, shall for any reason be held to be invalid, illegal or unenforceable in any respect, the same shall not affect any other provision of this agreement, but this agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained therein.
- 22.6 The subcontractor shall not assign this subcontract without the written consent of the contractor, nor subcontract the whole of this subcontract without the written consent of the contractor, nor further subcontract portions of this subcontract without written notification to the contractor. The subcontractor shall not assign any amounts due or to become due under this subcontract without written notice to the contractor.
- 22.7 Contractor reserves the right to write joint checks to the subcontractor and their material suppliers, the subcontractors of the subcontractor, labor unions, equipment suppliers, etc. if in the contractor's sole judgment it is necessary to do so to insure payment to the above named parties or if the above named parties have filed a "Notice to Owner", lien, or intent to lien, etc.
- 22.8 This subcontract or any subcontract/contract documents may be executed simultaneously in two or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement. A facsimile of this subcontract or subcontract/contract documents and any signature thereon shall be considered as an original for all purposes. Subcontractor agrees that such signed facsimile copies shall be valid and enforceable.
- 22.9 The headings in this subcontract are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this agreement.
- 22.10 The subcontractor represents and warrants that no technical data furnished to it by the contractor or developed by the subcontractor during performance of the work shall be disclosed to any foreign national, firm or country, including foreign nations employed by or associated with the United States, without first complying with all requirements of the International Traffic in Arms Regulation, 22 CFR Paragraph 120 et seq., the Export Administration Act, 28 USC, paragraph 2778 et seq., DOD Directive 5230.25, "Withholding of Unclassified Technical Data from Public Disclosure," and 32 CFR paragraph 250, including the requirement for obtaining any export license, if applicable. The subcontractor shall first obtain the written consent of the contractor prior to submitting any request for authority to export any such technical data. The subcontractor shall indemnify and hold the contractor harmless for all claims, demands, damages, costs, fines, penalties, attorney's fees, and all other expenses arising from failure of the subcontractor to comply with this clause.

## ARTICLE 23 – TERMINATION

- 23.1 If the subcontractor persistently or repeatedly fails or neglects to carry out the "work" in accordance with the contract documents or otherwise to perform in accordance with the contract documents or otherwise to perform in

accordance with this agreement and fails within seven (7) days after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the contractor may without prejudice to any other remedy he may have, terminate the subcontract and finish the work by whatever method he may deem expedient.

- 23.2 If the contractor terminates the “work” for convenience, the subcontractor shall immediately discontinue work and the placement of any orders for materials, supplies, facilities and services related to the “work”, and make every effort to cancel orders already placed. The contractor shall compensate the subcontractor for the reasonable cost of services requested by the contractor after the termination and for the reasonable costs of protecting the prime contractor/owner’s and contractor’s property. The contractor shall pay the subcontractor for the actual percentage of the “work” that is completed and accepted, less previous payments. The total payment shall not exceed the subcontract amount.
- 23.3 Prior to final settlement of the termination, the subcontractor shall furnish a complete release of all claims against the contractor and prime contractor/owner.

## ARTICLE 24 – ENVIRONMENTAL & SAFETY

- 24.1 General – The requirements listed herein shall not relieve the subcontract from complying with the Occupational Safety and Health Act (OSHA) or any other contractual environmental and safety requirements. It is the responsibility of the subcontractors to share the contractual environmental health and safety requirements with their employees and their vendors. Non-compliance or a violation of any of the applicable requirements constitutes grounds for immediate suspension of the subcontract.
- 24.2 Applicable Standards – While performing the contract awarded by Precision, the subcontractor shall be aware and comply with applicable portions of 29 CFR 1910 (General Industry), 29 CF 1926 (Construction Industry). In addition, the subcontractor shall comply with all other federal, state and local environmental, safety and health laws, rules and regulations, as applicable.
- 24.3 Environmental Health & Safety (EH&S) Program – Before starting work, each subcontractor shall submit its written project specific EH&S program for Precision’s review and comment. Subcontractor’s Environmental Health and Safety Program/Plan shall meet the applicable federal, state, local requirements and other contract documents. In areas where these documents address the same subject, the most stringent shall apply. Accident/Injury prevention must be one of the goals of the subcontractor EH&S program and as part of this program, weekly safety meetings must be conducted and documented and furnished to Precision upon request. Also, subcontractors shall conduct a weekly field audit (Environmental Health and Safety Audit/Inspection) of all subcontractors’ work areas. A written report of the inspection/audit findings including corrective actions must be forwarded to Precision. The EH&S program must be effectively implemented and all its requirements clearly enforced.
- 24.4 EH&S Training – All training required by OSHA, EPA, state or local agencies for performing the assigned specific tasks is mandatory. Documentation of the training prior to start of work may be required. Lack of proof of training will constitute grounds for stopping the work. The training required includes, but it not limited to:
- New Hire Orientation
  - Hazard Communication “Right-To-Know”
  - Lockout/Tagout
  - Confined Spaces
  - Fall Protection
  - Personal Protective Equipment (PPE) Training
  - Spill Control/Emergency Response
- 24.5 Reporting – All accidents, mishaps, and significant incidents which result in serious personnel injuries, death, or damage to resources, equipment, and/or facilities must be reported to Precision immediately. All these incidents must be investigated thoroughly to determine the root cause and appropriate corrective actions must be taken to minimize/prevent such reoccurrences. Spills (any amount) of any material (hazardous/non-hazardous) must be

reported to Precision immediately. Precision must be involved while notifying the government agencies, if it is required.

- 24.6 Environmental Considerations – The Subcontractor shall comply with applicable U.S Environmental Protection Agency (EPA), state environmental agencies, U.S. DOT and all other applicable environmental rules and regulations. The subcontractor is responsible for proper handling, storing, and transportation and disposal of all waste materials generated at the jobsite by the subcontractor. The subcontractor’s environmental program must describe the procedures for identification, safe handling and proper disposal of hazardous and/or non-hazardous material/waste generated at the job site. Subcontractor must ensure that these wastes are handled and disposed of in accordance with all applicable requirements. The subcontractor must ensure, while performing the work, that there is minimal risk to employees, the public and the environment (air, ground, water) resulting from the subcontractor’s operations
- 24.7 All chemicals including, but not limited to, cleaning solution must be stored, used or transported in DOT approved containers, and properly identified at all times while at the job site. Good housekeeping practices must be followed while handling/storing chemicals at the job site. Liquid hazardous/non-hazardous materials/waste must be stored with appropriate secondary containment to prevent spillage. The subcontractor shall provide all its employees with the necessary environmental training e.g., hazardous waste management, etc., as applicable. The subcontractor shall ensure that their employees are aware and prepared for emergency response in the event of an accident or spill of any hazardous material/waste and implement the Spill Response Emergency Response Plan accordingly. The subcontractor must submit copies of all employee training documentation, analysis of waste determination and all waste manifests, etc.

## ARTICLE 25 – WORKING CONDITIONS AND CLEAN UP

- 25.1 Subcontractors shall maintain acceptable working conditions at all times, including:
- A full time superintendent shall be on the job at all times
  - Employees shall wear long pants, shirts, and work shoes at all times, and present themselves in a manner that is professional
  - No abusive language will be tolerated
  - No pets of any kind will be allowed on the job
  - No alcoholic beverages of any kind will be permitted
  - No drugs of any kind, whether prescription or not, if their use is judged by contractor’s superintendent to imperil worker’s ability to work safely
- 25.2 Debris and dirt will not be allowed to accumulate in the building areas occupied by the subcontractor. Debris shall be removed immediately by subcontractor and subcontractor shall maintain premises broom clean during the construction operations. Clean up shall include daily clean up, as well as trade clean up. If the subcontractor fails to clean up as required, the contractor will perform the required clean up and back charge the cost from subcontractor at each pay period.
- 25.3 In addition to daily cleaning requirements, the subcontractor shall, in preparation for substantial completion, perform final cleaning operations as directed by the contractor. This shall include, but is not limited to, removal of grease, dust, dirt, stains, labels, fingerprints and other foreign matter from all exposed surfaces; polish surfaces if designated; clean all glass surfaces; removal of all tools, equipment, scaffolds, temporary structures, and surplus materials; leave project clean and ready for occupancy.

## ARTICLE 26 – QUALITY PLAN

- 26.1 Subcontractor’s shall agree to work to the project / contract overall quality requirements.
- 26.2 Prior to commencement of subcontractor’s work, the subcontractor shall submit to the contractor for approval, a project specific quality control plan. This plan shall include identification of key personnel, planned actions to ensure quality, processes to remedy quality deficiencies, and required testing/inspections. Subcontractor shall communicated the approved plan to their key project personnel and ensure that the plan is implemented to the contractor’s satisfaction.