Master Subcontract

"Contractor": Bartlett Cocke General Contractors LLC
8706 Lockway
San Antonio, TX 78217

"Subcontractor":

Legal Name (if different from above):

Master Subcontract Agreement No.

Effective Date:

Subcontractor's execution of these documents shall constitute final and binding acceptance of these documents in their printed form. Any change to the printed form of these documents will be deemed void and ineffective to alter your acceptance of and obligation to perform in accordance with their printed terms and conditions.

Contractor and Subcontractor agree as follows:

Definitions

"Affiliate" means, with respect to any Person, another Person that is controlled by, that controls or is under common control with, such Person; and, for this purpose, "control" with respect to any Person shall mean the ability to effectively control, directly or indirectly, the operations and business decisions of such Person whether by voting of securities or partnership interests or any other method.

"Applicable Law(s)" means any statute, law, rule, regulation, code, ordinance, judgment, decree, writ, order or the like, of any national, federal, provincial, state, county, municipal or local court or other governmental authority, and the interpretations thereof, including, without limitation, any statute, law, rule, regulation, code, ordinance, judgment, decree, writ, administrative ruling, order or the like, regulating, relating to or imposing liability or standards of conduct concerning:

(a) Contractor, the Site or the performance of any portion of the Subcontract Work or the Contractor's work taken as a whole, and the operation of the applicable Project;

(b) Safety and the prevention of injury to persons and the damage to property on, about or adjacent to the Site or any other location where any other portion of the Subcontractor's Work or the Contractor's work shall be performed; or

(c) Protection of human health or the environment or emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, Hazardous Materials or other industrial, toxic materials or wastes, as now or may at any time hereafter be in effect.

"Consequential Damages" means special, indirect, incidental, or consequential losses or damages arising out of the loss of profits or revenues, the loss or restricted use of property rights, the incurring of financing costs, or any other loss or damage not constituting direct damages deemed by law to be within the contemplation of the parties to this MSA at the time it becomes effective.

“Contract Documents” means the General Contract and all other documents identified therein, including without limitation any and all Contract Documents specifically listed or included in the Exhibits thereto.

“Defect” means any aspect of the Subcontract Work that fails in any way to satisfy the Subcontractor’s warranties stated herein because it:

(a) does not conform to the requirements of this MSA or the Contract Documents;
(b) is inconsistent with Industry Standards; and/or
(c) materially and adversely affects or threatens to affect either the:

(i) mechanical, electrical or structural integrity of the applicable Project or any system therein; or
(ii) safe operation of the applicable Project or any system therein.

“Fault” shall include any fault that arises by strict liability, whether by statute or common law, including strict liability arising out of the performance or failure to perform any non-delegable duty.

“Force Majeure” means any of the following which are unanticipated, unavoidable and cause the Subcontractor to be unable, despite Subcontractor’s exercise of reasonable mitigation efforts, to maintain the critical path for timely completion of the Subcontract Work according to the Subcontract Schedule: acts of God, fire, adverse weather conditions that are unusually severe and unexpected for the time and location of the Subcontract Work, war, and acts or omissions by Owner, Contractor or its other subcontractors.

“General Contract” means the general contract between Contractor and an Owner for an applicable Project.

“Hazardous Substance(s)” means any pollutant, contaminant, chemical or industrial substance, which is a toxic or Hazardous Substance or waste, the use, manufacture, processing, transport, distribution, treatment, storage, disposal, or other handling of which, and the release of which into the environment (the land, surface or ground water, or atmosphere), is prohibited, regulated or controlled by Applicable Law.

"Industry Standard(s)" means, in addition to any more stringent standard of care required under the General Contract, those methods and standards of care and diligence normally and customarily accepted and practiced by construction firms who are recognized for their excellence in performing in a high quality manner services of a similar nature for other projects in the United States that are comparable to this Project.

“Indemnified Parties” means Contractor and Contractor’s agents and employees or any third party under the Contractor’s control or supervision (other than Subcontractor or Subcontractor Personnel, as hereinafter defined), and any other third parties or persons Contractor is required by the Contract Documents to indemnify or defend, including Owner.

"Loss(es)" means any and all general or strict liabilities, obligations, losses, physical or economic damages, fines or penalties, and any claims, demands, actions, or suits (whether founded or unfounded), and any costs, expenses and disbursements (including legal fees and expenses and costs of investigation and defense), and any awards or judgments, of whatsoever kind and nature.

"Master Subcontract Agreement" or **"MSA"** means this Master Subcontract Agreement, including all of the Exhibits hereto, and each Work Authorization issued to Subcontractor hereunder.

“Master Subcontract Agreement Effective Date” or **“MSA Effective Date”** means the date indicated on the first page of this Master Subcontract Agreement.

“Owner” means the owner of the applicable Project identified in or designated pursuant to the applicable General Contract for such Project.

“Owner’s Representative” means the architect, engineer or other firm or person identified in or designated pursuant to the applicable General Contract for such Project to have authority on behalf of the Owner for the applicable Project to make and act upon decisions concerning the Subcontract Work, the applicable Project, and the Contract Documents.

“Progress Payment Schedule” means a schedule of values, approved in writing by Contractor, which allocates the entire amount of compensation that Contractor will pay to Subcontractor pursuant to a Work Authorization for each and every item of the Subcontract Work, including all items or units of labor, materials or equipment, and showing quantities and costs for all such items.

“Project” means the applicable project described in the Work Authorization.

“Satisfy,” “satisfactory,” “satisfactorily,” “to the satisfaction of,” or similar derivations of these terms shall mean that the Subcontractor shall deliver, furnish or perform what is required in the same manner, and to the same level of skill, expertise, quality and efficiency, in a manner that is customarily considered to be of a superior value by other contractors who have a reputation for commercial excellence in performing substantially similar work.

"Schedule" means the Contractor's schedule for completion of the entire work of Contractor for an applicable Project established by or pursuant to the applicable General Contract.

"Site" (and "Worksite", "job site" or "Project site") shall mean the location of the applicable Project where the Subcontract Work performed pursuant to a Work Authorization. Any offsite location owned or leased by Owner as a location where work related to the applicable Project will be performed hereunder shall also be deemed to refer to the Site.

"Subcontractor Personnel" means Subcontractor, its agents or employees, or any third party under the control or supervision of the Subcontractor. For purposes of this MSA, Subcontractor agrees that Subcontractor's lower-tier subcontractors and suppliers of any tier are, and shall be deemed to be, under the control or supervision of Subcontractor for all purposes in connection with the performance of the Subcontract Work under this MSA. Subcontractor shall bind all of Subcontractor Personnel to the obligations stated herein.

"Subcontractor Schedule" means the schedule established in the Work Authorization for the Subcontractor to complete any Subcontract Work assigned to Subcontractor on any applicable Project.

"Subcontract Work" means all Subcontract Work described in a Work Authorization and thereby assigned to the Subcontractor to be performed according to this MSA and the requirements and the prices and within the time set forth herein, including the furnishing or payment of all labor, supervision, coordination services, materials, tools, equipment, consumable supplies, taxes and other things required to complete in a good and workmanlike manner, and as necessary to deliver the Subcontract Work as a complete and functioning part of the overall Project, including any procurement, manufacturing, furnishing, assembly, construction, installation, training of personnel, start-up, testing or commissioning, and commencing commercial operation of equipment installed hereunder, as further described in the General Contract, and Section 2.0 of this MSA. Subcontractor assumes toward Contractor all obligations Contractor has assumed toward Owner under the General Contract, but only to the extent Contractor is required to fulfill such obligations in order to perform, complete and deliver the Subcontract Work as required under the General Contract. Where this Contract describes a portion of the Subcontract Work in general, but not in complete detail, the Parties acknowledge and agree that the Subcontract Work includes any incidental work that is customarily understood to be included as a part of the Subcontract Work by Industry Standards.

"Warranty Period" means the period of one (1) year from and after the date of Subcontractor's acceptance of the final payment for all of the Subcontract Work assigned under a Work Authorization. If the Contract Documents require a greater warranty or longer warranty period, Subcontractor's warranty obligations hereunder shall be expanded so that, with respect to the Subcontract Work, Subcontractor is obligated to the same warranty obligations the Contractor has assumed toward the Owner, its successors and/or assigns.

"Work Authorization" means the form of document that assigns to Subcontractor the performance of Subcontract Work on behalf of Contractor for the applicable Project, which Work Authorization shall be deemed to incorporate the terms and conditions of this MSA.

"Work Authorization Effective Date" means the date indicated on the first page of each Work Authorization issued pursuant to this MSA.

Section 1: General Basis of the Subcontract

1.01 Scope and Term of MSA. Subcontractor enters into this MSA with the intent and understanding that it will serve as a master agreement for all Subcontract Work when assigned by Contractor by issuance of a Work Authorization to Subcontractor on Contractor's Projects. The parties agree this MSA, without further acknowledgement, signature, or agreement applies to all Subcontract Work to be performed hereunder. Subcontractor agrees that all Subcontract Work assigned to Subcontractor for an applicable Project pursuant to a Work Authorization issued hereunder, or otherwise undertaken by Subcontractor without a Work Authorization, as provided for herein, will be subject to and performed by Subcontractor in accordance with the terms of this MSA. This MSA shall be for a term of one (1) year from the Effective Date and shall automatically renew and continue in effect from year to year thereafter, until and unless either party provides the other notice of intent not to renew at least sixty (60) calendar days prior to the anniversary of the MSA Effective Date, in which case this MSA shall terminate as of such anniversary. In addition, and notwithstanding the expiration of the term hereof, this MSA shall continue to apply to the performance of any Subcontract Work then in progress and remaining to be completed under any Work Authorization issued hereunder, and it shall also continue to govern the rights and obligations of the parties to the extent they have expressly agreed herein that the terms of this MSA survive its termination.

1.02 Work Authorizations. Except as otherwise expressly agreed herein, a Work Authorization shall be executed by both parties for any Subcontract Work to be assigned to Subcontractor. Work Authorizations will be issued and executed in the form attached hereto as **Exhibit "Work Authorization"**, and expressly incorporate this MSA by reference. The Work Authorization shall identify the applicable Project and describe the scope, pricing and schedule for the assigned Subcontract Work. Each Work Authorization shall be deemed to include and require, even if not specified therein, Subcontractor's furnishing of all materials and labor reasonably necessary to safely and properly perform the Subcontract Work assigned therein. A Work Authorization shall not be

deemed to modify or vary the obligations assumed by Subcontractor under this MSA. A Work Authorization shall be deemed to incorporate the terms and conditions of this MSA upon execution of a Work Authorization. This MSA shall supersede and prevail over any terms and conditions contained in Subcontractor's proposal that conflict with, or might otherwise vary or modify the terms of this MSA. In the absence of a Work Authorization, Subcontractor shall be deemed obligated to perform Subcontract Work pursuant to this MSA upon the occurrence of either of the following events: (1) Contractor's written acceptance of Subcontractor's written proposal to perform Subcontract Work under this MSA that includes scope, pricing and schedule terms, and that does not modify or vary the terms and conditions contained in this MSA; or (2) following submission of such a proposal, and pending the Contractor's acceptance thereof by issuance of a Work Authorization therefor, Subcontractor commences performance of the Subcontract Work that is the subject of the proposal.

1.03 Parties' General Understanding with respect to the MSA and the Contract Documents. The Contract Documents for an applicable Project shall, except as expressly provided otherwise in a Work Authorization, be deemed incorporated by reference therein, and governed by this MSA, without any further act or reference. The Contract Documents (excluding portions Contractor has redacted as confidential, proprietary or irrelevant to the Subcontract Work) will be made available for review by Subcontractor (i) via electronic access to Contractor's designated internet website or (ii) at Contractor's principal place of business, within a reasonable time after receipt of Subcontractor's written request. This MSA, the Work Authorization and the Contract Documents shall be interpreted to be consistent with one another, and any irreconcilable conflict shall be interpreted to require that which is most beneficial to Contractor. Subcontractor represents that Subcontractor has carefully examined this MSA, and will carefully examine each Work Authorization to be issued hereunder and the Contract Documents for any applicable Project, and that by its acceptance of this MSA and each Work Authorization, Subcontractor has the qualifications, skill, and experience required to perform the Subcontract Work, and shall perform, the Subcontract Work on the terms and conditions established therefor; that Contractor has relied on Subcontractor's skill and experience in accepting such terms and conditions; that Subcontractor has or shall have fully examined all conditions and circumstances that could adversely affect the performance or price of any Subcontract Work to be assigned hereunder; that Subcontractor has exercised all due diligence to identify any deficiencies in any applicable Contract Documents that may affect Subcontractor's ability to perform the Subcontract Work on the terms set forth herein; and that, except as otherwise expressly agreed herein, Subcontractor will make no claim against Contractor based upon, or arising out of, any contrary understanding by Subcontractor of this MSA, any Work Authorization, or any applicable Contract Documents, or the occurrence of any such deficiencies, conditions or circumstances.

1.04 Confidentiality. Subcontractor agrees to maintain as the Contractor's confidential and proprietary information, all terms and conditions of this MSA, each Work Authorization to be issued hereunder, and all details concerning the Contractor's administration of this MSA. Subcontractor agrees to provide Contractor advance written notice, and to obtain Contractor's prior written approval, of the disclosure of any information to any third party that is in anyway related to this MSA or any applicable Project. Additionally, Subcontractor hereby irrevocably authorizes and appoints the Contractor as Subcontractor's agent to request and obtain copies of, and to correct, any erroneous or inaccurate reports of any such information, and Subcontractor agrees to pay all of Contractor's costs in connection with doing so.

1.05 Accounting Records; Contractor's Right of Examination. Subcontractor shall keep full and detailed accounts as may be necessary to document Subcontractor's proper financial administration of the Subcontract Work to be performed hereunder. Such records shall include accurate payroll records, which shall be certified if and as required by the Contract Documents, and as to which Subcontractor shall maintain and make available for audit upon request backup documentation establishing its workers' acknowledgment of receipt of all wages due and paid in accordance with Applicable Law. Subcontractor shall preserve such records for a period of four (4) years after the latter of (i) the final completion of all Subcontract Work for an applicable Project, (ii) Subcontractor's receipt of final payment therefor, or (iii) for such longer period of time as may be required by the Contract Documents or by law. For Subcontract Work to be compensated on a cost-plus or other cost reimbursable basis, Contractor shall be entitled to examine all such records (1) where Contractor, for good cause, objects to payment of any Application for Payment submitted by Subcontractor, (2) where either Contractor or Subcontractor have made a claim against the other or disputes have arisen between the parties hereto, (3) in the event Subcontractor shall be in default of this MSA, (4) in the event this MSA is suspended, cancelled or terminated as provided herein, (5) to verify quantities of Subcontract Work to which unit prices apply, (6) to verify all costs pertaining to Subcontract Work for which payment is to be made on a time and material basis or unit price basis, and (7) to the extent required by the Contract Documents.

1.06 Contractor's Rights upon Receiving Notice of Subcontractor's Assignment of Receivables to a Third Party. If Contractor receives notice from a third party that it has acquired by assignment the right to receive payment of the Subcontractor's receivables as they become due and payable under this MSA, Subcontractor agrees that, as a condition of its right to continue to perform Subcontract Work under this MSA, Subcontractor shall furnish to Contractor as security for the performance of its obligations hereunder, either (i) a payment and performance bond issued by a surety reasonably acceptable to Contractor, and rated "B" or better by A. M. Best Company, or (ii) an irrevocable standby letter of credit issued by a national bank reasonably acceptable to Contractor, either of which shall be in favor of Contractor in an amount equal to the sum of the current unpaid balance of all amounts unpaid and earned, or to be earned, by Subcontractor to secure Subcontractor's performance of its obligations hereunder.

1.07 Joint Checks. Subcontractor agrees that Contractor shall have the right to seek confirmation from Subcontractor's lower-tier subcontractors and suppliers that they are being timely paid, and Subcontractor shall state in its agreements with such lower-tier subcontractors and suppliers that they will provide such written confirmation to Contractor promptly upon receipt of Contractor's request therefor. Contractor may at any time elect to issue jointly payable checks for funds due to Subcontractor hereunder to Subcontractor and Subcontractor's lower-tier subcontractors and suppliers. If Subcontractor fails upon Contractor's request to

provide proof that it has paid any sums due to a lower-tier subcontractor or supplier in connection with the Subcontract Work, such failure shall constitute a good faith dispute and Contractor shall be entitled to directly pay such sums for the Subcontractor's account in order to secure delivery of partial and/or final releases of any related lien rights; provided, however, Contractor will not make direct payment to a lower-tier subcontractor or supplier if Subcontractor has provided Contractor satisfactory evidence that Subcontractor has a bona fide reason for withholding payment due to a default by the lower-tier subcontractor or supplier.

1.08 Administration of Funds Payable to Subcontractor. If Contractor determines that Subcontractor has failed to provide evidence satisfactory to Contractor and constituting adequate assurance of Subcontractor's ability to perform hereunder, then effective immediately upon issuing written notice to Subcontractor, Contractor may elect to pay all funds earned by Subcontractor under this MSA or any Work Authorization to a third party funds administrator ("Administrator") who shall in such event be deemed automatically authorized to (a) receive, retain and marshal the distribution of all such funds to ensure proper application and timely payment of such funds, secure partial and final releases of liens from lower-tier claimants, and ensure the proper completion of the Subcontract Work, and (b) require the Subcontractor to submit in confidence directly to the Administrator a sworn copy of Subcontractor's records relating to Subcontractor's pending Subcontracts with Contractor and the current operating income, profit and loss and other financial statements of Subcontractor or any entity or entities that own a controlling interest in the Subcontractor. Contractor shall cause the Administrator to confirm in writing that it agrees to hold such information in confidence, to not disclose the information contained therein to Contractor or any third party, and to only use such information for the purposes expressly set forth herein. Contractor shall be entitled to backcharge to Subcontractor for the reasonable cost of the Administrator's services.

1.09 Personnel Background Checks. Subcontractor shall, and shall require that each of Subcontractor's lower-tier subcontractors and suppliers shall, require their respective representatives who may enter an applicable Site as an invitee (as "Subcontractor Related Personnel") to comply with any requirements for criminal history background checks, registration, certification, or badging applicable to a Project. Such requirements maybe described in either the Contract Documents or a Work Authorization.

Section 2: Prosecution, Commencement and Scheduling of Subcontract Work.

2.01 The Subcontract Work includes all of the work described in a Work Authorization, or otherwise required to be performed by Subcontractor under this MSA.

2.02 Subcontractor shall furnish all labor, supervision, services, materials, tools, equipment, consumable supplies, taxes and other things required to prosecute all available Subcontract Work in accordance with its warranty obligations set forth in Section 12, below, promptly, efficiently, and diligently, so as to promote the progress (including early completion) of the entire Project. Subcontractor shall not, by delay or otherwise, interfere with or hinder the Subcontract Work of Contractor's other work on an applicable Project.

2.03 Subcontractor shall keep a daily record, on the basis of which Subcontractor shall, by the end of the last work day of each week in which any of the Subcontract Work is performed, (or more frequently upon receipt of Contractor's request) provide a written report to Contractor of any delay or disruption to the progress of the Subcontract Work which Subcontractor believes to be attributable in any way to the failure of Contractor to comply with Contractor's obligations under this MSA, or to any other unanticipated condition which Subcontractor believes is a basis for an adjustment to the Schedule or Subcontractor's compensation. Subcontractor's failure to maintain and timely submit such daily record to Contractor shall (i) not be a basis for claiming that Contractor has waived this requirement, and (ii) preclude Subcontractor from relief otherwise provided under this MSA for such delay or disruption.

2.04 Subcontractor shall check all dimensions in advance of staging its Subcontract Work, and properly fit the Subcontract Work with the work of Contractor or others and coordinate its operations with other trades, subcontractors or material suppliers.

2.05 Upon written request by Contractor, the Subcontractor shall furnish to the Contractor such evidence as the Contractor may require to verify placement of, and progress on, all purchase orders Subcontractor or its lower-tier subcontractors or suppliers place for material and contractual arrangements pertaining to said purchase orders.

2.06 Subcontractor shall provide Contractor reasonable notice of and adequate facilities for any inspection of the Subcontract Work.

2.07 Submittals shall be delivered to Contractor according to the Schedule. Approval of Subcontractor's submittals shall not waive or excuse Subcontractor's obligations hereunder.

2.08 The Subcontractor is required to perform the Subcontract Work in a safe and reasonable manner, failing in which Contractor shall have the right, without penalty and without relieving Subcontractor of its obligations hereunder, to suspend the Subcontractor's performance of the Subcontract Work while Subcontractor resolves any safety concerns related to Subcontractor's obligations hereunder. The Subcontractor shall take all reasonable safety precautions for the safety of persons and property in the performance of the Subcontract Work, and shall comply with all applicable safety measures as required by Applicable Law, this MSA, the Work Authorization, and the Contract Documents (including the General Contract), as well as any

safety measures established by Contractor for the applicable Project ("Contractor's Safety Requirements"). Subcontractor shall be aware of and comply fully with all laws, orders, citations, rules, regulations, administrative rulings, standards and statutes with respect to occupational safety and health, accident prevention, safety equipment and practices. Subcontractor shall conduct inspections to determine the safety of working conditions and equipment and accept sole responsibility for providing a safe place to work for its employees and other personnel of its lower-tier subcontractors and suppliers. Subcontractor shall perform the Subcontract Work at all times in a safe and prudent manner, so as to avoid the risk of bodily injury or loss or damage to property, by taking reasonable steps to observe conditions of the work place and the equipment to protect:

(a) Subcontractor's employees and other persons at the job site;

(b) Materials and equipment stored at the job site or at off-site locations; and

(c) All property and structures located at the job site, whether or not involved in the Subcontract Work.

Subcontractor shall continuously and diligently inspect all Subcontract Work and any nearby or interrelated work of the Contractor or others to discover any conditions which might involve such risks and shall be solely responsible for discovery and correction of any such conditions. Subcontractor shall develop, adopt, implement and enforce, with respect to Subcontract Work at the Site, comprehensive safety policies and programs which, at a minimum, comply with Applicable Law and satisfy Contractor's Safety Requirements identified in **Exhibit "Contractor's Supplemental Safety Requirements"**. Subcontractor shall hold its own safety meetings and require its employees to attend. Subcontractor shall require the same of all lower-tier subcontractors and suppliers who engage in operations at the Site related to the performance of the Subcontract Work. The Subcontractor shall immediately report to the Contractor any accident, injury, and any near miss incident involving any person in connection with Subcontractor's operations.

2.09 The Subcontractor shall take all necessary precautions to properly handle, stock, and store equipment and materials (according to manufacturer specification or Industry Standard, whichever is most protective) and to protect the Subcontract Work and the work of Contractor or others (including all trades' finishes) from Loss. Subcontractor shall promptly remedy any Loss that Subcontractor causes. Subcontractor remains obligated to repair any Loss to the Subcontract Work as necessary to complete it. Contractor shall not be liable to Subcontractor for any Loss caused by others. Any assistance Contractor may render to Subcontractor to recover damages for a Loss caused by others shall not be deemed an admission by Contractor that it has assumed any liability to Subcontractor for such Loss.

2.10 No substitutions shall be allowed without prior written approval. To enable appropriate consideration and analysis of the value thereof, proposed substitutions shall include submittals with sealed design documents and cost and scheduling information, including procurement and impact costs and schedule impact information associated therewith appropriate to evaluate them from a technical and cost perspective. Proposed substitutions shall be issued with reasonable promptness to allow Contractor to present the same to Owner and its design professionals to determine whether the proposed substitution is in fact equal or of better value than the requirements of the Contract Documents without delaying the progress of the Work. Subcontractor shall pay, and agrees to reimburse Contractor for any increased costs associated with any permitted substitution, including costs to review, evaluate, and process substitutions proposed by Subcontractor.

2.11 Time is of the essence both as to the completion of the Subcontract Work and as to each intermediate milestone thereof set forth in Schedule. Subcontractor shall commence the Subcontract Work without delay after receipt of notice to proceed from Contractor.

(a) Unless Contractor otherwise directs in writing, the Subcontract Work is scheduled to be completed within the time specified in the Work Authorization. All of the Subcontract Work will be performed in accordance with periodic updates to the Schedule throughout the applicable Project, as directed by Contractor through its change orders revising the scope of the Subcontract Work.

(b) Contractor may issue one or more limited notices to proceed with such portions of the Subcontract Work as Contractor shall designate, or otherwise revise or change the sequence of the Subcontract Work, and Subcontractor shall make no claim for change, acceleration or delay by reason thereof, so long as the Subcontract Work can still be completed without unreasonable delay or acceleration of the Subcontract Work. Subcontractor shall agree that the Subcontract Schedule to be agreed upon in any Work Authorization will reasonably accommodate deferred commencement of all or a portion of the Subcontract Work for up to thirty (30) days from the applicable Work Authorization Effective Date.

(c) Upon commencement of the Subcontract Work, Subcontractor shall diligently and consistently cooperate with Contractor and other Subcontractors whose work or responsibilities might interfere with Subcontract Work; and perform all Subcontract Work with all possible speed consistent with approved construction practices and in accordance with the intent of the Contract Documents. Subcontractor shall schedule and complete each stage of Subcontract Work in a timely manner so as to cause no delay in commencement of the work of other contractors. Subcontractor shall take whatever precautions are necessary to properly coordinate and match the Subcontract Work with the work of other trades (including but not limited to preparation of such coordination drawings or schedules as may be required by the Contractor or Contract Documents).

2.12 Subcontractor shall fully acquaint himself with and fully abide by the applicable completion deadlines for the Work as

provided in the Work Authorization, shall plan the Subcontract Work in coordination with the work of Contractor and other subcontractors, and shall use diligence in the completion of the Subcontract Work in accordance with the Subcontract Schedule as may be modified from time to time.

2.13 The Subcontractor shall (unless a different time has been agreed in writing) furnish to the Contractor, within seven (7) days from the Work Authorization Effective Date, a Progress Payment Schedule, in a form satisfactory to the Contractor. The Progress Payment Schedule shall (i) follow the customary trade divisions, (ii) not overvalue any item of Subcontract Work, and (iii) be based upon and consistent with the Schedule for the performance of the Subcontract Work. The Progress Payment Schedule shall be used for purposes of administering partial payments to the Subcontractor for the Subcontract Work actually performed based upon the percentage of Subcontract Work actually completed in accordance with the requirements of this MSA and the Work Authorization. In determining the percentage of completion of any item of Subcontract Work, Contractor shall be entitled to use the lesser of (a) the percentage complete for such item or (b) the percentage of the maximum amount of compensation to paid to Subcontractor for such item that has been actually earned, but in no case shall the determination of a percentage of completion cause the amount of any payment to exceed any maximum amount of all compensation to be paid for all of the Subcontract Work.

2.14 The Subcontractor, before proceeding with any Subcontract Work, will accurately check and verify all previous and surrounding Work to determine the correctness of same, and shall field measure all dimensions relating to the Subcontract Work. Subcontractor's failure to detect and disclose any existing discrepancies or nonconformities and report same to the Contractor, in writing, before commencing its Subcontract Work shall relieve the Contractor of any and all responsibility for same, and the Subcontractor shall be responsible and liable for all resulting damages, costs and expenses arising as a result of discrepancies and nonconformities that should have been discovered by the Subcontractor.

2.15 The Contractor shall establish the principal access lines of each applicable Project, within which Subcontractor shall lay out Subcontract Work. Subcontractor shall be liable for any loss or damage due to Subcontractor's failure to lay out Subcontract Work correctly. The Subcontractor shall exercise prudence so that actual final conditions and details shall result in proper alignment of finished surfaces.

2.16 Within ten (10) days after execution of the Work Authorization (or at an earlier time if required by the Contract Documents), Subcontractor shall furnish Contractor with a list of its proposed lower-tier subcontractors, and equipment, and material suppliers, along with the description of the corresponding items of the Subcontract Work. Subcontractor shall bind its lower-tier subcontractors and suppliers to the requirements set forth in this MSA, the Subcontract Schedule, Schedule for the work of Contractor, and Contract Documents for the applicable Project. In those instances where the initially accepted lower-tier subcontractor or supplier fails to submit Shop Drawings, Product Data, or Samples which meet the Specifications, the additional costs (price increases and other costs due to delays in placing order) to furnish the specified equipment and/or material shall be borne solely by Subcontractor.

Section 3: Subcontract Price and Payment Terms

3.01 As full and complete consideration for the performance of the Subcontract Work, Contractor shall pay Subcontractor according to the pricing terms in the Work Authorization, subject to such additions and deductions for changes as may be agreed upon in writing (the "Subcontract Price"). No later than the **20th** day of each month during the progress of the Subcontract Work, Subcontractor shall submit to Contractor a detailed statement of the value of the labor and materials incorporated into the Subcontract Work and materials properly stored at the jobsite as of such date and, upon approval by Owner and Contractor, Contractor will pay to Subcontractor the agreed upon percentage of the stated amount as set forth in the Work Authorization (the remainder shall be withheld as retainage, to be released when final payment is due hereunder), less the aggregate of all previous payments, by the **20th** day of the following month, or as soon thereafter as Contractor receives payment from Owner.

3.02 As a condition precedent to Contractor's obligation to make payment to Subcontractor under this MSA, Contractor must have first received payment from Owner of sums invoiced to Owner for Subcontract Work. Contractor's receipt of payment from Owner shall be an absolute condition precedent to Contractor's obligation to pay Subcontractor and Subcontractor's right to receive such payment. Subcontractor hereby assumes the risk of Owner's failure or refusal to pay Contractor for the Subcontract Work. Notwithstanding any other provision of this MSA, payment to Subcontractor for the Subcontract Work shall be due and owing only to the extent that (i) Subcontractor has submitted its pay request therefor strictly in accordance with the requirements of this MSA, and (ii) Owner has paid Contractor therefor. Contractor is not obligated to pay any retainage to Subcontractor until Owner has paid Contractor all of Contractor's retainage in full. If Owner fails to pay amounts invoiced by Contractor for Subcontract Work under this MSA, then Contractor will use reasonable commercial efforts to collect such payments from Owner. Contractor will inform Subcontractor of Contractor's collection efforts. Approval or payment of Subcontractor's monthly estimate is specifically agreed not to constitute or imply acceptance by the Contractor or Owner of any portion of the Subcontractor's Work. **Notwithstanding the foregoing, if Owner's failure to pay amounts invoiced by Contractor for Subcontract Work under this MSA is due to Contractor's default in the performance of its obligations to the Owner, and such default is in no way attributable to Subcontractor, then Contractor agrees that Subcontractor may object in writing to Contractor's enforcement of this clause against Subcontractor, pursuant to applicable law. Subcontractor agrees that, in order to be effective, notice of Subcontractor's objection to Contractor's enforcement of this clause must be sent to Contractor's corporate president via certified mail, return receipt requested**.

Subcontractor agrees any such notice shall only be deemed received upon, and the time for Contractor to respond to any such notice shall not commence until, delivery thereof as required above. If any such notice is a valid objection to the enforcement of the express condition precedent stated in Section 3.02, payment for the Subcontract Work shall not become due until after Contractor has exhausted all legal remedies available to collect such payment from Owner, as further provided herein. If such notice is invalid, Contractor shall be entitled to recover from Subcontractor all costs and expenses to establish such invalidity. Any such notice shall be valid only as to the payment application request upon which it is submitted, in accordance with applicable law, if such notice shows the date on which such payment application request was timely delivered to Contractor, and if the application to which such notice relates was timely submitted with all required releases of claims for payment and other supporting documentation required under this MSA.

Subcontractor shall fully cooperate with Contractor's efforts to collect payment from Owner before insisting on payment from Contractor, provided Contractor timely takes all such action as is reasonably necessary to collect from Owner. Contractor may at any time elect to assign to Subcontractor the Contractor's rights to collect such payment, which Subcontractor agrees to accept as full and final satisfaction of Contractor's obligation to pay such sums to Subcontractor provided that Contractor (i) is not in default of its obligations to the Owner unrelated to Subcontractor's default hereunder, and (ii) has not failed to take such action as is reasonably necessary to preserve such rights.

This provision controls over all other provisions of this MSA that may vary from or be in conflict with it, and shall survive termination of this MSA. Any other provision of this MSA or any Work Authorization that conflicts with this provision shall be strictly interpreted or reformed to be consistent herewith.

3.03 Subcontractor acknowledges that, prior to execution hereof, it has received from Contractor certain information relating to the Owner's financial ability to pay and/or secure payment for the Contractor's work to be performed on the applicable Project. Subcontractor warrants and represents that it has maintained, and shall continue to maintain, the confidentiality of such information, releases the Contractor from all liability arising out of any omission, inaccuracy or misstatement by others who furnished such information, has fully considered such information, has conducted such independent investigation as it deems reasonably necessary to confirm or verify the same, has consulted its own professional advisors concerning the same, and has read, understands and accepts the full import and meaning of the preceding provision designating Owner's payment as a condition precedent to payment hereunder, with full awareness that such provision could result in Subcontractor not receiving payment for its work through no fault of the Subcontractor. Subcontractor expressly agrees that Contractor's reliance upon and enforcement of such condition precedent shall be reasonable and shall not be unconscionable. Without waiving any statutory right that Subcontractor may have to object to Contractor's enforcement of such condition precedent if Contractor independently causes the Owner to withhold payment for reasons not due to the fault of the Subcontractor, Subcontractor agrees to furnish any such objection to the Contractor's representative specifically designated above, failing in which Subcontractor agrees that any statutory deadline for Contractor to respond to such notice shall be extended to run from the time that Subcontractor delivers an effective notice to such representative. If Subcontractor's notice of objection to Contractor's enforcement of such condition precedent is determined to be ineffective under applicable law, Subcontractor shall promptly reimburse Contractor all of its costs and expenses to countermand such objection or otherwise enforce the condition precedent, including Contractor's reasonable attorney fees.

3.04 If, at any time, the provision designating Owner's payment as a condition precedent to payment hereunder becomes, or Contractor believes that such provision may be deemed, unenforceable for any reason as to all or any portion of any sums due Subcontractor hereunder, then Contractor shall have the right, by giving written notice to the Subcontractor at any time, that Contractor has, for purposes of such sums only, elected to treat such provision as one which merely governs the time for payment of such sums, in which case payment shall not become due and payable until after the expiration of a reasonable period of time for the Contractor to collect such sums from the Owner. In the event of such election, Contractor shall be entitled to delay payment to the Subcontractor for such period of time as is reasonably necessary to exhaust all legal remedies available to Contractor to collect such sums from Owner. Subcontractor shall fully cooperate with Contractor in exhausting such legal remedies. Subcontractor shall reimburse Contractor a portion of Contractor's reasonable costs, including legal fees, to do so. Subcontractor's portion of such costs shall be at least be in the same proportion that the total of Subcontractor's claims bear to the total of all claims of both Subcontractor and Contractor. Contractor may, at any time after making such written election, further elect to assign and transfer to Subcontractor in writing all rights that Contractor has to collect any sums due it from the Owner, in which case Subcontractor shall independently pursue in the Subcontractor's name recovery of such sums directly from the Owner. Subcontractor agrees to accept Contractor's assignment of its claims against Owner as full and final satisfaction of Contractor's obligation to pay such sums to Subcontractor.

3.05 Payment for completed Subcontract Work shall not be due and owing to Subcontractor, and Contractor shall be entitled to withhold any such payment, while Subcontractor is in receipt of notice of default hereunder until Subcontractor cures any such condition of default or demonstrates to Contractor's satisfaction that such condition of default does not exist. The Contractor may similarly withhold funds from any amounts due or to become due to the Subcontractor and apply the same to pay any sum or sums owed by the Subcontractor in connection with the Subcontract Work or apply such withheld payment to the satisfaction of Subcontractor's obligations hereunder. If the unpaid balance of the Subcontract Price shall at any time be less than the amount of money necessary to complete the Subcontract Work and pay or settle all claims and charges and other obligations of Subcontractor hereunder, Contractor shall be entitled to withhold such difference from any payment otherwise due Subcontractor hereunder, in the amount sufficient to completely protect the Contractor from any and all loss, damage and expense arising out of Subcontractor's breach of this MSA, until the same is satisfactorily remedied or adjusted by the Subcontractor. In no event shall payment be due, and any amounts otherwise owing may be withheld, for any portion of the Subcontract Work until Subcontractor furnishes to Contractor satisfactory proof of payment of all bills and releases of all claims for labor, materials, taxes, services and

other expenses, including all claims for changes or extra work, in connection with the Subcontract Work. The Contractor's right to withhold from Subcontractor hereunder shall be interest free. In no event shall Subcontractor be entitled to receive or retain payment for Subcontract Work not actually performed, and any payment to Subcontractor therefor shall be promptly refunded upon demand.

3.06 If approved in advance by Owner, Subcontractor's applications for payment may include materials and equipment not yet incorporated in the Subcontract Work, but delivered and properly stored at the applicable Project or at an off-site location, if approved in advance by Contractor in writing. Payments for materials and equipment stored on or off site shall not become due until Subcontractor has submitted to Contractor bills of sale or such other documents that establish the transfer of title to the same, free of all liens, claims, security interests and encumbrances, as necessary to protect the Contractor's and Owner's interests therein, including documentation of applicable insurance and transportation to the applicable Project Site.

3.07 Until final completion and Owner's assumption of the risk of loss as to the completed work of Contractor in accordance with the Contract Documents, Subcontractor shall remain solely responsible for any loss or damage to the Subcontract Work, including materials, equipment and other items within Subcontractor's scope, whether or not incorporated in the Subcontract Work and notwithstanding the fact that Subcontractor may have received payment therefor or that title thereto shall have transferred to Contractor or Owner. Once delivered, material, equipment and items shall not be removed from storage without Contractor's written consent, except for use on the applicable Project.

3.08 No payment received by Subcontractor shall be used to satisfy or secure any indebtedness other than one owed by the Subcontractor to persons furnishing labor or material for use in performing the Subcontract Work.

3.09 The Contractor shall have the right (but not the obligation) at all times to contact the Subcontractor's lower-tier subcontractors and suppliers to ensure that Subcontractor is properly paying them for labor and materials they have furnished for use in performing the Subcontract Work or to enforce any warranty obligation of a lower-tier subcontractor or supplier.

3.10 With each pay request, Subcontractor shall, as a pre-condition to payment, provide each of the following:

(a) A partial lien waiver and affidavit, acceptable to Contractor and as approved by current Applicable Law, executed by the Subcontractor and each lower-tier subcontractor or supplier who furnished labor and/or materials or equipment installed in the applicable Project that is included in the application for payment;

(b) Documentation signed by the Contractor and Owner confirming the Subcontract Work covered by the pay application has been satisfactorily performed and passed any required tests or inspections; and

(c) Any and all other supporting documentation reasonably requested by Contractor prior to Subcontractor's submission of its payment application.

Section 4: Completion, Final Payment

4.01 Contractor may prepare and submit to Subcontractor one or more punch lists of items of Subcontract Work that the Contractor considers necessary to complete or correct in order for the Subcontract Work to be considered substantially completed. Subcontractor shall commence work to complete all items on such a punch list within two (2) days after receiving it, and shall work continuously to complete and/or correct all such punch list items within thirty (30) days after receipt of the list. Contractor may, at its option, perform any or all of the punch list items, and deduct from amounts otherwise due Subcontractor hereunder the cost of completing the same, together with reasonable markup for profit and overhead.

4.02 Upon final completion of the Subcontract Work, Subcontractor shall submit to Contractor an affidavit, signed by an officer or other duly authorized representative of Subcontractor, that all bills for labor, materials, taxes, services and other cost of the Subcontract Work have been paid, and agreeing to indemnify, defend and hold harmless the Contractor and the applicable Owner from all such costs, and releasing any further claims and liens held by, through or under Subcontractor against the applicable Project, its Owner, and the Contractor.

4.03 As a condition precedent to final payment of the Subcontract Price, the Subcontractor shall submit to the Contractor with the Subcontractor's final pay request:

(a) A final lien waiver and affidavit, acceptable to Contractor and in form consistent with current Applicable Law, executed by the Subcontractor and each lower-tier subcontractor or supplier who furnished labor and/or materials or equipment installed in the applicable Project that is included in the application for payment;

(b) All warranties covering the Subcontract Work and/or satisfactory evidence of its ability to honor the warranties (including evidence of warranties as required under Section 12);

(c) Consent of Subcontractor's surety (if applicable) to final payment, if requested;

(d) Documentation signed by the Contractor and Owner that any required tests and close out procedures have been satisfied with respect to all of the Subcontract Work for which such documentation has not previously been furnished; and

(e) Other documents required by the Contractor or Owner, such as as-built drawings, operation and maintenance manuals, or other data.

4.04 To the extent the Subcontract Price is comprised of Unit Prices, the Contractor and Subcontractor shall, upon completion of all the Subcontract Work, conduct and agree upon a final measurement of quantities of Subcontract Work the Subcontractor actually performed. Subcontractor shall then prepare and submit to Contractor a final application for payment in accordance with this Section 4 stating the balance of the total amount due to Subcontractor which has not already been paid by previous progress payments.

4.05 Subcontractor's submittal of its final application for payment shall be deemed a waiver of all claims by the Subcontractor relating to Subcontract Work, but shall in no way relieve the Subcontractor of its obligations hereunder.

Section 5: Contractor's Superintendent

5.01 Contractor's general administration of this MSA and the Subcontract Work shall not relieve Subcontractor of its obligations hereunder. Contractor's superintendent is authorized to reject any portion of the Subcontract Work that does not conform to the requirements of this MSA; and, whenever in his opinion he considers it necessary or advisable to insure the proper implementation of the intent of this MSA, he will have authority to require Subcontractor to stop the Subcontract Work or any portion thereof. Contractor's determination that the Subcontract Work should be rejected, shall be deemed final and conclusively binding, unless it is finally determined through dispute resolution that Contractor's determination was intentionally arbitrary, capricious, and made in bad faith.

Section 6: Changes, Claims and Delays

6.01 Changes

(a) The Contractor may at any time, and without notice to the Subcontractor's sureties, issue a written order (a "Change Order") to make changes in, additions to or deletions from the scope of the Subcontract Work assigned under a Work Authorization, and Subcontractor shall promptly proceed to perform in accordance with such Change Order. Subject to applicable provisions of this MSA and the General Contract, the Subcontract Price and Subcontract Schedule shall be equitably adjusted on account of such Contractor's written Change Orders to the applicable Work Authorization, as hereinafter provided.

(b) Except as otherwise stated herein, a signed Change Order to a Work Authorization must be approved and executed by Contractor prior to performance of any change to the Subcontract Work covered by this MSA. Subcontractor shall bear all costs associated with correcting any unauthorized substitution, alteration, addition, deletion or other change to the Subcontract Work performed without Contractor's prior written approval, including all costs to remove or repair any work of Contractor or others that may be affected by such unauthorized change. The foregoing notwithstanding, Contractor may direct Subcontractor in writing to execute a change in the Work in the absence of a Change Order, and Subcontractor shall perform strictly in accordance with Contractor's written directive and the requirements of this MSA. Upon receipt of such written directive, Subcontractor shall submit to Contractor the Subcontractor's written proposal for any adjustment to the Subcontract Price and/or the Subcontract Schedule for the performance of change directed by Contractor prior to the earlier of:

(i) the date stated for submission in Contractor's written directive; or

(ii) the third (3) business day before the time Contractor is required by the Prime Contract to seek adjustment to compensation and/or the Schedule for a change.

Such proposal shall be in such form as may be required Contractor, or by the Contract Documents, and Subcontractor's submission thereof shall constitute Subcontractor's representation and warranty that such proposal is reasonable, appropriate and consistent with the Subcontractor's standard of care and the requirements of this MSA. Failure to so submit such proposal within the time required shall constitute a waiver of Subcontractor's right to seek any adjustment for the change.

(c) Except as provided in Section 6.01(d), any adjustment to the price and/or Subcontract Schedule will be calculated in a manner satisfactory to Contractor, or as required by the General Contract.

(d) If the General Contract does not set forth the procedure for calculating changes to contract time or price for the

Subcontract Work or the Contractor and Subcontractor are unable to agree upon a Change Order for such an adjustment, the adjustment to the Subcontract Price and/or Subcontract Schedule for a change ordered by Contractor's written directive on any such order shall be determined in the following manner:

(i) By unit prices agreed upon between Contractor and Subcontractor; or

(ii) By calculating the amount of the net increase, if any, in the amount of expenditures Subcontractor incurs, to make the change, after taking into account any savings Subcontractor realizes by performing the change, plus a reasonable allowance for Subcontractor's overhead and profit on the amount of the net increase, if any. In such event, the Subcontractor shall be required to keep and present, in such form as the Contractor may prescribe, an itemized accounting of all expenditures and savings associated with the change to the Subcontract Work, together with appropriate supporting data for Contractor's review. Expenditures shall be calculated in accordance with the terms of the MSA and limited to the following, as applicable: cost of materials, including sales tax and cost of delivery; cost of labor, including withholding for taxes, insurance, and fringe benefits required by agreement or custom; workers' compensation insurance; bond premiums; reasonable value of equipment and machinery (not to exceed the reasonable third party rental values); and additional cost of supervision and field office personnel directly attributable to the changed Subcontract Work. The amount of savings will be the amount of the decrease in Subcontractor's cost of performance as a result of the change, as confirmed by the Contractor. When both net increases and savings occur with respect to any one order, the allowance for overhead and profit shall be calculated on the basis of the net increase, if any, with respect to that one order.

(e) Upon acceptance of a Change Order, Subcontractor shall be deemed to have waived any rights to seek further adjustment to the Subcontract Price and/or Schedule beyond what is set forth in such Change Order.

(f) Subcontractor's only means of adjustment of the Subcontract Price and/or Schedule shall be by Change Order or by Contractor's written directive ordering any change in the Subcontract Work, including any delays, suspensions, escalations, impact or other cost factors arising out of such orders. The Subcontractor agrees it shall not be entitled to receive any compensation or allowance for any written Change Order that Contractor does not also receive from the Owner, less a reasonable deduction for Contractor's cost (plus profit and overhead) to perform any changed work incident to such Change Order that Subcontractor fails to perform.

(g) No Change Order shall vary, abrogate, avoid, or otherwise affect the terms, conditions and provisions of this MSA, except as specifically set forth in the Change Order with respect to the scope, schedule and price of the Subcontract Work.

6.02 Delays

(a) The Subcontractor acknowledges that the Subcontract Price is based on the fact that the Contractor is not liable to the Subcontractor, except as otherwise provided in and subject to the written notice requirement of Section 6.02(b) for any damages or costs due to delays, accelerations, nonperformance, interference with performance, suspension or change in the performance or sequence of the Subcontract Work.

(b) Should the Subcontractor's performance of the Subcontract Work, in whole or in part, be delayed due to Force Majeure, then Subcontractor shall be entitled only to seek an extension of time in which to complete the Subcontract Work so affected. Subcontractor agrees that Contractor has no duty, obligation or liability to Subcontractor for any loss, cost or damages suffered by Subcontractor due to Force Majeure, except to seek an extension of time from the Owner. Except as otherwise expressly provided in Section 6.02(c) Subcontractor shall only be entitled to seek an extension of time for delay if Subcontractor has, within forty-eight (48) hours after the first occurrence of the cause of any delay, requested in writing an extension of time, stating in detail the reasons therefor, certifying that the extension sought is limited to the amount of delay caused by circumstances for which an extension is permitted hereunder, and stating Subcontractor's detailed plans for recovering as much as possible all time lost by reason of the event of Force Majeure in order to mitigate the delay. Subcontractor's right to an extension of time shall be deemed waived if Subcontractor fails to timely comply with these requirements.

(c) Subcontractor may be entitled to compensation as a result of interference, delay or suspension due to Force Majeure, but only if the Contract Documents also entitle Contractor to, and Contractor is paid, compensation therefor; such recovery shall be an absolute condition precedent to Contractor's obligation to pay any damages to Subcontractor.

(d) Subcontractor shall present to Contractor any permitted claim for extension of time, extra work, delay or disruption, or breach of contract, together with full documentation, in writing, to Contractor's Project Manager within sufficient time for Contractor to evaluate and determine whether to assert such claim against the Owner within the time limits in the Contract Documents (even if such time limitation is shorter than the time limitations in this MSA). Subcontractor agrees to be bound to Contractor to the same extent Contractor is bound to the Owner in the final determination relating to such claim, whether administrative, judicial, or otherwise, and whether or not Subcontractor is a party to such proceeding. Contractor shall not be obligated to appeal from any such determination. Contractor may at any time, and without further recourse, permit Subcontractor at Subcontractor's own cost and expense, to assert directly against

Owner any claim for which Owner is responsible by giving written notice to Subcontractor that Contractor will no longer prosecute such claim in the name of Contractor. Subcontractor agrees to exhaust all remedies which are available to it through Contractor prior to instituting a separate action in court or otherwise; and in the event a separate action is instituted prior to the exhaustion of such remedies, Subcontractor agrees to abate or stay such action pending the exhaustion of Contractor's remedies against the Owner. If Subcontractor's claim is prosecuted by Contractor against the Owner under the terms of the General Contract, or if Contractor defends a claim by the Owner which involves the Subcontract Work or obligations of Subcontractor, Subcontractor agrees to furnish all documents, statements, witnesses, and other information required by Contractor for such purpose, and to pay or reimburse Contractor for all expenses and cost, if any, incurred in connection therewith. It is expressly understood and agreed that, as to any and all materials or services furnished or agreed to be furnished by Subcontractor, and as to any and all damages, if any, incurred by Subcontractor in connection with the applicable Project, Contractor shall be liable to Subcontractor to the same extent that the Owner is liable to Contractor, but never to any greater extent than the Owner is liable to Contractor. No unresolved dispute shall interfere with the continuation and progress of the Subcontract Work.

(e) Subcontractor agrees to be bound to the Contractor by the terms and conditions of the Contract Documents, and to assume toward the Contractor all of the obligations and responsibilities that the Contractor, by these documents, assumes to the Owner with respect to the Subcontract Work. The relationship of the Contractor hereunder to the Subcontractor shall be the same as that of the Owner towards the Contractor under the General Contract.

(f) No allowance of an extension of time shall, in any event, be made to the Subcontractor for delay by the Subcontractor in preparing submittals or in securing approval of the Owner's Representative when such submittals are not properly prepared or when the Subcontractor by the exercise of reasonable diligence and judgment could have anticipated and avoided the delay.

(g) If the General Contract provides for liquidated damages for delay beyond the completion date set forth in the General Contract, and they are so assessed, then the Contractor may assess same against the Subcontractor if Subcontractor is responsible for such delay.

(h) The aggregate liability of the Contractor to Subcontractor pursuant to the scope of Subcontract Work assigned to Subcontract under a Work Authorization, whether arising out of contract, tort, strict liability, statute or any other cause of action, shall not exceed an amount equal to the unpaid portion of the Subcontract Price stated in the Work Authorization.

Section 7: Subcontractor's Superintendent

7.01 Subcontractor shall appoint a competent superintendent satisfactory to Contractor, who shall be in attendance at the job site on a regular basis and who shall have charge of the Subcontract Work and authority to act for Subcontractor. The superintendent shall be satisfactory to Contractor and shall not be changed except with the written consent of Contractor, unless the superintendent proves to be unsatisfactory to Subcontractor or Contractor, or ceases to be in Subcontractor's employ. The superintendent shall represent Subcontractor and all communications given to the superintendent shall be as binding as if given to Subcontractor. The superintendent shall attend all coordination, scheduling, and safety meetings where the Subcontractor's Work is involved and as required by Contractor. Subcontractor shall advise Contractor in writing of the name, address, and telephone number of such superintendent and of any change in designation. The superintendent will report to the Contractor's superintendent on a regular basis while the Subcontract Work is being performed. Subcontractor shall not terminate or reassign its superintendent to other projects of Subcontractor unless and until Subcontractor has proposed a substitute superintendent who has substantial familiarity with the applicable Project and is acceptable to Contractor.

Section 8: Mechanic's Liens or Claims

8.01 In the event Subcontractor receives notice of the filing of any mechanic's liens or claims to secure payment for the labor and/or materials or equipment furnished in connection with the Subcontract Work, Subcontractor shall provide to Contractor notice of its receipt, together with a copy thereof. Additionally, Subcontractor shall provide within five (5) days of the date of receiving said notice an indemnity bond and, if necessary, institute and prosecute legal proceedings, to cause the applicable Project to be discharged from the filing of such mechanic's liens or claims. In the event Subcontractor fails to comply with the foregoing, the Contractor shall have the right to exercise either or both of the following remedies:

(a) The Contractor shall have all the rights against the Subcontractor set forth under Sections 17, 18 or 19 of this MSA; and/or

(b) The Contractor may cause such mechanic's liens or claims to be discharged and the expenses thereof, including any deposit by the Contractor and the amount of any obligation assumed by the Contractor by bond, indemnity or otherwise, as well as reasonable attorneys' fees and other costs incurred in connection therewith, shall be charged to and paid by

the Subcontractor and, at the option of the Contractor, deducted from the Subcontract Price.

8.02 In the event the Subcontractor files an improper or invalid mechanic's lien against the Contractor, the Contractor may cause such mechanic's lien to be discharged, and the expenses thereof, together with the fees of the attorney for the Contractor in connection therewith, are to be charged to and paid by the Subcontractor, which payment, at Contractor's option, may be deducted from the Subcontract Price.

Section 9: Bonds

9.01 Contractor shall have the right to require Subcontractor to furnish a statutory payment bond and a performance bond to secure Subcontractor's obligations under this MSA pursuant to the terms of the Work Authorization. Bonds shall be issued in such form and be issued by a corporate surety authorized to transact business in Texas approved by Contractor. Subcontractor's rights hereunder are subject to Contractor's written confirmation that both the bond forms and the issuing surety are satisfactory to the Contractor.

Section 10: Lower-Tier Subcontractors and Suppliers

10.01 Prior to commencement of the Subcontract Work, Subcontractor shall provide Contractor a final list identifying in advance, and obtain Contractor's prior written approval of, all lower-tier subcontractors and suppliers, if any, that Subcontractor intends to use in the performance of the Subcontracted Work, indicating the scope of responsibility to be assumed by each of them. Subcontractor may not proceed with the use of any lower-tier subcontractor or supplier who is not noted on such list or identified on Subcontractor's proposal. If Contractor discovers Subcontractor is using an unlisted subcontractor or supplier to perform the Subcontract Work, Contractor shall be entitled to withhold payment for the services of such unlisted subcontractor or supplier until Subcontractor has furnished Contractor all such information as Contractor may reasonably request to evaluate and determine whether the lower-tier subcontractor or supplier is properly bound to the terms of this MSA and financially responsible and able to perform its assigned portion of the Subcontract Work, and whether surety bonding to secure its performance will be required. However, in the performance of Subcontract Work that it self-performs, Subcontractor shall only use personnel who are direct employees of the Subcontractor, and shall not use personnel borrowed from a labor broker, personnel employment services company, or other third party unless (i) such third party has expressly waived any right to assert a mechanic's lien for the labor services provided, and (ii) the Contractor has provided its prior written consent to the use of such borrowed labor. At least ten (10) days prior to the submission of Subcontractor's first progress payment application, Subcontractor shall submit to Contractor a complete list of all such lower-tier subcontractors and suppliers who will deliver goods or perform any services in connection with portion of the Subcontract Work, complete with addresses, phone numbers, contact person, contract amount and a description of the services, equipment or material to be provided by each such entity. Subcontractor agrees to bind every lower-tier subcontractor, and cause every lower-tier subcontractor to agree in writing to be bound by, the terms of this MSA. The subcontracting of all or any part of the Subcontract Work by Subcontractor shall not relieve Subcontractor from any of the obligations or conditions of this MSA. As between the parties hereto, each lower-tier subcontractor shall be considered the agent of Subcontractor; and Subcontractor shall remain liable and responsible to Contractor as if no Subcontract had been made.

Section 11: Labor Disputes

11.01 Subcontractor agrees to hire only such labor as will work harmoniously with the labor employed by Contractor and any other contractors or subcontractors on each applicable Project site. Should any dispute arise between the labor employed by Subcontractor and that of others, it is agreed that Contractor may direct Subcontractor to resolve the dispute and the Subcontractor shall promptly do so, and shall continue to perform the Subcontract Work in keeping with such decision. Any additional cost incurred by Contractor because of any matters mentioned in this paragraph will be borne by Subcontractor. Should Subcontractor cause a strike, work stoppage or slow down because of the labor employed by him and refuse, after request to remedy the situation, Contractor may cancel and terminate this Contract in the manner provided herein. Contractor shall decide all disputes that may arise between any two or more subcontractors as to the scope of their work, the order in which their work will be performed, as well as claims between subcontractors for damage claimed to have been done by one subcontractor to work already completed by another subcontractor. Subcontractor agrees that Contractor's decision in the exercise of its rights hereunder shall be final and conclusively binding, unless it is finally determined through dispute resolution that Contractor's actions were intentionally arbitrary and capricious, and made in bad faith.

Section 12: Warranties

12.01 In consideration of the award of this MSA or the assignment of any Subcontract Work under any Work Authorization, Subcontractor makes the following representations and warranties to Contractor, independently of any other obligation of Subcontractor Personnel hereunder. The warranties provided herein shall be in addition to and shall not limit any other warranty or remedy provided or required by law or by the Contract Documents or this MSA. Neither the Contractor's nor any third party's

inspection or failure to inspect shall relieve the Subcontractor of any obligation hereunder. No acceptance or payment by the Contractor for the Subcontract Work shall constitute a waiver of the foregoing and nothing herein shall exclude or limit any warranties implied by law. Subcontractor further agrees to execute written certificates to evidence any special guaranties or warranties as are required by the terms of the Contract Documents prior to final payment. The warranty obligations stated in this Section 12 shall survive termination of this MSA for any reason.

12.02 Representation and Warranty to Protect Against Unsafe Conditions. Subcontractor represents and warrants to Contractor that it shall, and shall cause and require all Subcontractor Personnel to, assume full responsibility to: (i) preserve safety in the conducting of all operations of Subcontractor Personnel; (ii) provide all training and supervision to the Subcontractor Personnel as necessary to assure that all operations of Subcontractor Personnel will comply with all applicable rules and regulations relating to health, safety and the environment, the violation of which could expose Contractor to an enforcement action and liability for a fine, levy, or other penalty; and (iii) keep each applicable Project Site and any areas affected by the Subcontract Work free of any Hazardous Substance. Subcontractor further represents and warrants that the operations of the Subcontractor Personnel shall not be permitted to result in the introduction to or the release into the environment of any Hazardous Substance. Subcontractor further represents and warrants it shall be responsible to, and shall cause and require all Subcontractor Personnel to, continuously inspect, monitor, correct, and warn any and all persons, including all Subcontractor Personnel, of the existence of, and protect them from, and prevent their exposure to, any hazardous work activity, unsafe condition or safety hazard that may exist in or about the areas involved in, or affected by the performance of, Subcontractor's Work. Subcontractor further represents and warrants that it shall take, and shall cause all Subcontractor Personnel to take, all reasonable precautions appropriate to ensure that the Subcontract Work will be safely performed hereunder without injury or death to any person or damage or loss to any property. In the event of Subcontractor's breach of a warranty hereunder, Subcontractor shall, upon Contractor's written demand, promptly pay to or on behalf of Contractor, (such payment to be made at Contractor's election either as a reimbursement or paid directly to the affected third party), all cost, loss, liability and damage arising out of injury or death to any person, or loss or damage to any property, including all costs associated with Contractor's defense of any legal action or proceeding arising from such breach of warranty (including without limitation reasonable attorney fees and expenses, expert witness fees and expenses, costs of discovery, and other costs of defense), EVEN IF ANY SUCH CONDITION WAS KNOWN TO OR ATTRIBUTABLE TO ANY NEGLIGENCE OR FAULT OR BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR BREACH OF CONTRACT, NEGLIGENT MISREPRESENTATION, GROSS NEGLIGENCE, NEGLIGENCE PER SE, OR FRAUD WHATSOEVER OF THE CONTRACTOR, ITS INDEPENDENT CONTRACTORS, AGENTS OR EMPLOYEES. THE TERM "FAULT" AS USED HEREIN INCLUDES FAULT BASED UPON STRICT LIABILITY, WHETHER ARISING BY STATUTE OR COMMON LAW, INCLUDING STRICT LIABILITY ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM ANY NON-DELEGABLE DUTY.

12.03 Representation and Warranty to Prevent Unauthorized Use of Contractor's Equipment. Subcontractor represents and warrants that it shall at all times prohibit, and cause Subcontractor Personnel to prohibit, any use of Contractor's equipment by any of them without first obtaining prior written permission from Contractor's Regional Manager or Contractor's Regional Vice President. Subcontractor acknowledges and agrees that no other person is authorized to grant such permission, unless such other person is expressly and specifically authorized to do so by an officer of the Contractor's organization. Any use not so authorized shall be considered an unauthorized use. Subcontractor represents and warrants that it shall, upon Contractor's written demand, promptly pay to or on behalf of Contractor (such payment to be made at Contractor's election either as a reimbursement or paid directly to the affected third party), all cost, loss, liability and damage arising out of any unauthorized use of Contractor's equipment by Subcontractor Personnel, including all costs associated with Contractor's defense of any legal action or arising from such breach of warranty (including without limitation reasonable attorney fees and expenses, expert witness fees and expenses, costs of discovery, and other costs of defense), EVEN IF SUCH UNAUTHORIZED USE, CONDITION OR MANNER OF OPERATION WAS KNOWN TO OR ATTRIBUTABLE TO ANY NEGLIGENCE OR FAULT WHATSOEVER OF THE CONTRACTOR, ITS INDEPENDENT CONTRACTORS, AGENTS OR EMPLOYEES. THE TERM "FAULT" AS USED HEREIN INCLUDES FAULT BASED UPON STRICT LIABILITY, WHETHER ARISING BY STATUTE OR COMMON LAW, INCLUDING STRICT LIABILITY ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM ANY NON-DELEGABLE DUTY.

12.04 Good and Workmanlike Manner. Subcontractor warrants to Owner and Contractor for the Warranty Period that all labor, material and equipment furnished for and incorporated by it into any applicable Project and the Subcontract Work in its entirety shall be performed in a good and workmanlike manner by experienced workers well qualified in their respective trades, in strict accordance with this MSA (including but not limited to the Work Authorization and the plans, specifications and drawings describing the Subcontract Work therein, whether expressly stated or incorporated by reference into this MSA), and the requirements of the Contract Documents, Industry Standards, and all applicable manufacturer's requirements, and that it shall be performed in strict accordance with all applicable federal, state and local laws, regulations, rules, codes and ordinances and at all times using Subcontractor's best efforts to perform the Subcontract Work with the level of skill, expertise, quality and efficiency that is customarily considered to be of superior value by other contractors who have a reputation for commercial excellence in performing substantially similar work. The standard of care required hereunder shall not, however, be deemed to alter or expand the Subcontractor's common law duty to Owner with respect to liability for, or the duty to indemnify, defend or hold Owner harmless under Section 15 (Indemnification), with respect to claims or liability for bodily injury or property damage, for which the standard of care hereunder shall be deemed and construed to be no greater than that imposed upon the Subcontractor by common law.

12.05 Materials and Equipment. Subcontractor warrants that title to all materials and equipment (including in particular any specially fabricated goods) to be installed in each applicable Project shall pass to the Owner immediately upon either installation, segregation or identification as materials specifically designated to be used on the applicable Project, or receipt of payment

therefor, whichever occurs first, free and clear of all liens, claims, security interests and encumbrances in favor of any third party. Subcontractor shall continue to bear the risk and responsibility for care and protection of all such materials and equipment and any loss or damage thereto, until Owner's final written acceptance of the entire completed Project following the delivery and installation thereof. Once delivered, materials and equipment shall not be removed from the applicable Project or their place of storage without the Contractor's written consent, except for use on the applicable Project. Subcontractor warrants that any drawings, plans and specifications for engineered equipment in Subcontractor's scope of work have been prepared and certified by a licensed professional engineer who has reviewed and approved all such drawings, plans and specifications, copies of which shall be made available to Contractor within a reasonable time after Subcontractor's receipt of Contractor's request therefor. Unless directed by Contractor otherwise in writing, Subcontractor shall install materials and equipment that shall be of the best kind and grade for the exact purpose intended, and are unquestionably new, unused and undamaged, of good and merchantable quality, suitable for their intended use, free of any Defect in their design, materials and workmanship, and in conformity with the requirements of Section 12.04. Subcontractor shall make available to Contractor and Owner all guarantees of manufacturers and suppliers which shall be independent of and not in lieu of the Subcontractor's warranty obligations hereunder.

12.06 Licensed Professional Engineer Approval of Drawings, Plans and Specifications. Subcontractor warrants that any drawings, plans and specifications for engineered equipment in Subcontractor's scope have been prepared and certified by a licensed professional engineer who has reviewed and approved all such drawings, plans and specifications, copies of which shall be made available to Contractor within a reasonable time after Subcontractor's receipt of Contractor's request therefor.

12.07 Warranty Against Defects. Subcontractor warrants that the completed Subcontract Work and portions thereof shall operate and perform satisfactorily as specified in this MSA and during the Warranty Period shall remain free of any weakness, deficiency, Defect, failure, break down, or deterioration during testing, startup, and commissioning. Subcontractor shall, without cost to Contractor or Owner, and, immediately upon receiving notice of a Defect, proceed diligently to promptly remove, replace, correct and/or repair, at Contractor's election, any portion of the Subcontract Work that the Contractor or Owner determines is defective or is otherwise not in compliance with the Contract Documents. Subcontractor shall also be responsible for and pay for replacement or repair of adjacent materials or other work which may be damaged due to the Subcontractor's breach hereof or as a result of the replacement or repairs of any Defect. Subcontractor shall bear the expense of making good all other property destroyed or damaged by its Defect(s) or its performance of warranty work, and indemnify Contractor for all loss, cost and expense incurred as a result of or to overcome the impact of such Defect(s). If Contractor or an Owner determines it to be necessary to avoid or minimize any delay in connection with, or impact to the intended operation of, the applicable Project, Subcontractor shall conduct such warranty work on an overtime schedule basis. The cost of investigating, gaining access to and uncovering Defect(s) are the responsibility of Subcontractor.

12.08 Application of Warranties to Repair and Replacement Work. The warranties set forth in this Section 12 shall apply to all repairs or replacement materials and equipment to the same extent as it applies to the original Subcontract Work and the remedy period for same shall extend for a period of twelve (12) months beyond the date the repair or replacement Subcontract Work is complete. Subcontractor shall, at its expense, perform all reasonably necessary inspections and tests.

Section 13: Permits and Licenses

13.01 All permits and licenses necessary for the prosecution of the Subcontract Work shall be secured and paid for by Subcontractor. Subcontractor shall give all notices and comply with Applicable Law bearing on the conduct of the Subcontract Work and perform all tests and inspections required by any authority having jurisdiction where the Subcontract Work is performed. Subcontractor agrees to hold Contractor harmless from liability or penalty which might be imposed by reason of an asserted or established violation of Applicable Law by Subcontractor or any entity for which Subcontractor is legally responsible.

13.02 Subcontractor shall pay for all inspections, fees, royalties, and license fees applicable to the Subcontract Work. Subcontractor shall make all necessary arrangements so as not to infringe any patents, trademarks or copyrights and shall hold Contractor, Owner and the Architect/Engineer harmless from any infringement claim or suit. In addition to Subcontractor's obligations of indemnity in Section 15.02 Subcontractor shall, at no cost to Contractor, make all necessary arrangements so as not to infringe on any patents, trademarks or copyrights and shall indemnify, defend, and hold Contractor, Owner and Owner's Representative harmless from any infringement claim or suit.

Section 14: Taxes

14.01 Subcontractor shall pay all sales, use, excise, gross income, occupational, and other taxes applicable to materials and supplies furnished and Subcontract Work performed hereunder, and State and Federal Payroll Taxes, including contributions or taxes assessed against employees on wages earned, in connection with the Subcontract Work. **Subcontractor agrees to defend, indemnify and hold Contractor harmless from and against all liability in connection therewith and to make all reports required by the applicable governmental authority.**

Section 15: Indemnification

15.01 General Indemnity and Defense Obligations of Subcontractor Personnel. To the maximum extent permitted by law, Subcontractor Personnel shall, with counsel acceptable to the Contractor, and at no expense to the Indemnified Parties, indemnify, defend and hold harmless the Indemnified Parties from and against any Claim; provided that, except as expressly provided otherwise in Section 15, and then only to the extent permitted by Applicable Law, Subcontractor's obligations of indemnity and defense under this Section 15.01 shall not apply to any Claim to the extent it is attributed to an Indemnified Party's negligence or Fault (including Fault based upon strict liability, whether arising by statute or common law, including strict liability arising out of the performance or failure to perform any non-delegable duty), or breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or breach of contract.

15.02 Indemnity and Defense Obligations with Respect to (i) Bodily Injury to or Death of Persons Other Than Subcontractor Personnel and (ii) Damage to Property. Subcontractor shall indemnify, defend and hold the Indemnified Parties harmless from and against any Claim due to bodily injury or death to any person who is not within the classification of Subcontractor Personnel, and any Claim due to loss or damage to any property, arising out of or in any way related to, or alleged to be caused in whole or in part by, the operations of Subcontractor Personnel; provided, however, Subcontractor shall not be obligated under this Section 15.02 to assume liability for an Indemnified Party's own negligence or Fault.

15.03 Indemnity and Defense Obligations with Respect to Bodily Injury to or Death of Subcontractor Personnel. **SUBCONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD THE INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ANY CLAIM DUE TO BODILY INJURY OR DEATH TO SUBCONTRACTOR PERSONNEL EVEN IF CAUSED OR ALLEGED TO BE CAUSED BY AN INDEMNIFIED PARTY'S NEGLIGENCE OR FAULT, IN WHOLE OR IN PART, OR BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR BREACH OF CONTRACT, NEGLIGENT MISREPRESENTATION, GROSS NEGLIGENCE, NEGLIGENCE PER SE, OR FRAUD. THE TERM "FAULT" AS USED HEREIN INCLUDES FAULT BASED UPON STRICT LIABILITY, WHETHER ARISING BY STATUTE OR COMMON LAW, INCLUDING STRICT LIABILITY ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM ANY NON-DELEGABLE DUTY.**

15.04 Other Indemnity and Defense Obligations of Subcontractor. Subcontractor shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all Claims due to or arising out of the duty of Subcontractor Personnel to:

(a) Observe, and to not infringe upon, misappropriate, or violate any trade secret, copyright, trademark, trade name, service mark, patent or other intellectual or intangible property right in connection with this MSA;

(b) Prevent the imposition or attempted imposition or filing of any lien or encumbrance affecting the applicable Project or other property associated therewith (failing in which Subcontractor shall also be liable for and pay promptly upon demand any cost Contractor incurs to remove it);

(c) Obtain and pay for all permits, licenses and official inspections necessary to the performance of the Subcontract Work (failing in which Subcontractor shall also be liable for and shall pay promptly to Contractor upon written demand, all costs, including costs of delay (in addition to any liquidated damages that may be assessed hereunder), resulting from such failure);

(d) Comply with all laws, ordinances and regulations bearing on the conduct of the Subcontract Work, including any state or federal anti-discrimination law, or any anti-harassment policy (failing in which Contractor shall also be liable for and shall pay promptly to Owner upon written demand, all costs, including costs of any penalties, fines, levies or sanctions, resulting from such failure); and

(e) Comply with any other provision or covenant of this MSA.

15.05 The indemnity and defense obligations stated in this Section 15 shall survive termination of this MSA for any reason and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by any insurance procured or maintained by Subcontractor or any Subcontractor Personnel.

Section 16: Clean-up

16.01 Subcontractor shall at all times keep each applicable Project Site and the Contractor's entire premises clean of rubbish and debris caused by the Subcontractor's operations. Subcontractor shall perform daily clean-up of all debris occasioned by the Subcontract Work and haul the same to an approved and proper location as necessary to keep the applicable Project Site clean and safe. If after twenty four (24) hours' written notice by Contractor to Subcontractor, Subcontractor has not diligently proceeded with such clean up, then the Contractor has the right, but not the obligation, to proceed with clean up at Subcontractor's cost and expense, and to deduct the cost from the Subcontract Price. Subcontractor shall also remove all of its tools, equipment and surplus materials from each applicable Project Site as requested and when the need to use the same has passed.

Section 17: Default

17.01 Subcontractor shall be in default of this MSA for any of the following reasons, each of which shall constitute a material breach of this MSA if Subcontractor fails to cure the same within forty-eight (48) hours after receiving notice thereof:

(a) failure to supply sufficient and properly skilled personnel (or failure to provide Subcontractor's superintendent, as required by Section 7.01);

(b) failure to provide sufficient materials necessary for carrying on the Subcontract Work;

(c) failure to maintain the Subcontract Schedule;

(d) failure to promptly pay laborers, subcontractors or suppliers;

(e) failure to comply with any laws, ordinances, rules, regulations or orders or administrative rulings of any public authority pertaining to the Subcontract Work;

(f) breach of any provision of this MSA or failure to comply with any of the Contract Documents;

(g) insolvency of Subcontractor or any entity or entities that own a controlling interest in the Subcontractor, or the making of a general assignment for the benefit of Subcontractor's creditors;

(h) failure to promptly perform changes to the Subcontract Work, in accordance with Contractor's written order to proceed, pending Contractor's issuance of a Change Order;

(i) failure to provide within five (5) business days after Contractor's written request therefor, adequate assurance satisfactory to Contractor of Subcontractor's present and future ability to perform its obligations under this MSA and the Contract Documents (whereupon no further notice shall be required and Subcontractor shall be deemed to be in material breach of this MSA). Such five (5) day period shall run commensurate with the forty-eight (48) hour cure period if Contractor's written request for adequate assurance coincides with a notice of default. Subcontractor agrees that Contractor's determination that Subcontractor has failed to provide adequate assurance as required hereunder shall not be subject to the dispute resolution procedures of this MSA, and shall be final and conclusively binding, unless it is finally determined through dispute resolution that Contractor's determination was intentionally arbitrary and capricious, and made in bad faith;

(j) failure to furnish and maintain evidence of current insurance in accordance with the requirements of this MSA; or

(k) failure, upon receiving written notice of a default hereunder, to promptly commence to cure such default.

17.02 If Subcontractor, upon receiving written notice, fails to promptly commence to cure such default within the applicable cure period, or if Subcontractor fails to timely provide adequate assurance of its ability to perform within the five (5) day period prescribed in Section 17.01, Contractor shall have the right, but not the obligation, to exercise any one or more the following remedies (in addition to and without waiving any other remedy available to Contractor hereunder):

(a) supply such number of workers and quantity of materials, equipment and other facilities as the Contractor deems necessary for the satisfactory correction of such default or to continue the progress of any Subcontract Work, which the Subcontractor has failed to complete or perform after the aforesaid notice, and charge the costs thereof to the Subcontractor, who shall be liable for the payment of same including reasonable overhead, profit and attorneys' fees;

(b) contract with one or more additional contractors, to perform such part of the Subcontract Work as the Contractor shall determine will provide the most expeditious correction of the default and charge the cost thereof to the Subcontractor;

(c) take without further notice exclusive possession and control of, and to use, all of Subcontractor's equipment, tools, computers, materials, supplies, files and documents, or other things Subcontractor may have used or stored on the job site, as necessary to complete the performance of Subcontract Work hereunder;

(d) withhold without interest payment of any monies due the Subcontractor hereunder to pay any damages for which Subcontractor may become liable; or

(e) terminate this MSA, in lieu of or in addition to, and without waiving, any other remedy under this MSA or at law or in equity.

17.03 Subcontractor agrees to pay promptly to the Contractor, on demand, the full amount of all Losses attributable to Subcontractor's default hereunder, together with all reasonable costs incurred by Contractor, plus a reasonable fee thereon, in completing Subcontract Work, together with interest that shall accrue thereon at the maximum rate allowed by Applicable Law,

currently eighteen percent (18%) per annum, until paid. For purposes of this provision, the term Losses shall also be deemed to include all sums paid or incurred by Contractor to (1) complete or relet the Subcontract Work, and (2) settle, discharge or compromise any claim, demand, suit and judgment pertaining to or arising out of the Subcontract Work. Contractor's sworn itemized statement of such damages or the checks or other evidence of Contractor's payment thereof shall be deemed prima facie evidence thereof and Subcontractor's liability therefor.

17.04 The Contractor's determination that the Subcontractor has defaulted and the Contractor's decision as to the Subcontractor's failure to timely remedy and cure, shall be final and conclusively binding, unless it is finally determined through dispute resolution that Contractor's determination was intentionally arbitrary and capricious, and made in bad faith.

17.05 In the event of (i) the bankruptcy or insolvency of Subcontractor, or (ii) a general assignment by Subcontractor for the benefit of its creditors, or (iii) the appointment of a receiver for the benefit of Subcontractor's creditors, or (iv) institution of any action or proceeding under any bankruptcy, insolvency, reorganization, composition or arrangement law, or any law of similar import of the United States, any state thereof, or any other country, by or against Subcontractor or any entity or entities that own a controlling interest in the Subcontractor, Subcontractor agrees such event could impair or frustrate its ability to perform under this MSA or any Work Authorization between the parties (collectively, the "parties' contracts"), and Contractor shall be entitled to request of Subcontractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the parties' contracts. Failure to comply with such request within ten (10) days after the date it is delivered shall constitute Subcontractor's material default hereunder, and all rights of Subcontractor under the parties' contracts shall automatically terminate. From and after said date Subcontractor shall remain liable for the performance of the parties' contracts, but Subcontractor shall cease to have any right to receive any further payment thereunder until final completion and settlement of all of the Subcontractor's obligations thereunder. This provision, when applicable, supersedes all contrary provisions of the parties' contracts.

Notwithstanding the foregoing, if an order for relief under Chapter 11 of the Bankruptcy Code is entered with respect to Subcontractor during the term of the Subcontracts, then the Subcontractor acknowledges and agrees that it will, subject to Bankruptcy Court approval, formally assume or reject, subject to the requirements of 11 U.S.C. §365, the parties' contracts within seven (7) days after delivery of written request for such action by the Contractor. If Subcontractor fails to timely move for approval or rejection of the parties' contracts, it acknowledges and agrees that (i) it will not contest or in any way otherwise take any action to oppose such a motion filed by the remaining Parties or the Contractor for the lifting of the automatic stay of 11 U.S.C. §362 (the "Lift Stay Order") to permit the Contractor to enforce its rights under the parties' contracts; (ii) it waives all rights it may have under 11 U.S.C. §362(f); (iii) it hereby consents to the ex parte entry of the Lift Stay Order pursuant to 11 U.S.C. §362(f); and (iv) at the option of the Contractor, it hereby agrees that it will execute an agreed Lift Stay Order on forty-eight (48) hours' notice. Subcontractor acknowledges and represents to Contractor, and agrees, that (i) Subcontractor is familiar with the parties' contracts and the importance of completing the parties' contracts on time and within their terms; and (ii) based upon such familiarity, it is critical to performance of the parties' contracts that the Contractor have prompt and immediate access to the contractual remedies thereunder in the event of Subcontractor's default thereunder.

17.06 Contractor shall be entitled to written notice and reasonable opportunity to cure any contended condition of default on the part of the Contractor before the Subcontractor shall be entitled to consider the same a material breach of this MSA. IN NO EVENT SHALL CONTRACTOR'S LIABILITY TO SUBCONTRACTOR EXCEED THE UNPAID BALANCE DUE HEREUNDER FOR WORK PROPERLY COMPLETED IN ACCORDANCE WITH THIS MSA. CONTRACTOR AND ITS AFFILIATES SHALL HAVE NO LIABILITY TO SUBCONTRACTOR FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES. NOTWITHSTANDING THE FAILURE OF ANY OTHER REMEDY HEREUNDER FOR WANT OF ITS ESSENTIAL PURPOSE, CONTRACTOR AND ITS AFFILIATES SHALL HAVE NO LIABILITY TO SUBCONTRACTOR, AND SUBCONTRACTOR HEREBY WAIVES, ALL LIABILITY OF CONTRACTOR FOR SUBCONTRACTOR'S CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, THAT MAY ARISE IN CONNECTION WITH CONTRACTOR'S LIABILITY TO SUBCONTRACTOR FOR ANY DIRECT DAMAGES FOR BREACH OF THIS MSA, BREACH OF ANY WARRANTY HEREUNDER, OR CONTRACTOR'S NEGLIGENCE OR STRICT LIABILITY, OR CONTRACTOR 'S BREACH OF ANY OTHER LEGAL DUTY, WHETHER ARISING IN STATUTE, EQUITY, OR UNDER ANY OTHER THEORY OF LAW. THE PROVISIONS OF THIS SECTION 17.06 SHALL SURVIVE THE TERMINATION OF THIS MSA FOR ANY REASON.

Section 18: Termination for Convenience

18.01 Contractor may, at its convenience, and by written notice to Subcontractor, terminate this MSA, and Subcontractor's performance under any Work Authorization issued hereunder, and/or the whole or any part of any Subcontract Work assigned hereunder. Upon Subcontractor's receipt of such notice, such termination shall be effective to the extent stated in the notice. Upon termination under this Section 18, Subcontractor, as its sole and exclusive remedy, shall be entitled to be paid a portion of the Subcontract Price, calculated on the basis of the actual value of the Subcontract Work properly completed by Subcontractor prior to termination, together with the direct, substantiated close out costs incurred by Subcontractor as a result of termination, less previous payments to Subcontractor on account of work performed. If Contractor's termination of this MSA or any Work Authorization for cause under Section 17 is determined for any reason to have been wrongful, Subcontractor agrees that such termination for cause shall be considered a termination for convenience under this Section 18.

Section 19: Governing Law; Venue

19.01 This MSA shall be construed and interpreted under the laws of the State of Texas. Unless Contractor agrees to waive any objection it may have to an alternate venue, the place of venue for any judicial or arbitration proceedings between the parties shall be in Bexar County, Texas.

Section 20: Independent Contractor

20.01 Subcontractor shall perform the Subcontract Work hereunder as an independent contractor and not as an agent or employee of Contractor. Subcontractor shall be responsible for compliance with the Federal Equal Employment Opportunity Act with respect to its employees and with the provisions of the Occupational Safety and Health Act of 1970, as amended, with respect to its operations, equipment and procedures on the jobsite.

Section 21: Assignment and Lower-Tier Subcontracts

21.01 The Subcontractor shall not, in whole or in part, assign or sublet this MSA or the proceeds hereof without the prior written consent of Contractor. Contractor shall have the right to assign this MSA to Owner.

21.02 Subcontractor hereby agrees to incorporate into any subcontracts or purchase orders it has with any other party, all those provisions required by law to be incorporated therein, and all those provisions of this MSA which establish the rights of the Contractor. This MSA shall not create a contractual relationship between Contractor and Subcontractor's lower-tier subcontractors or suppliers, or between Subcontractor and Owner, except as hereinafter expressly provided.

21.03 Assignment Of Lower-Tier Subcontracts And Purchase Agreements. Subcontractor agrees to the terms of, and shall expressly state in each permitted lower-tier subcontract, purchase order or supply agreement with any third party ("Lower-Tier Provider") whose performance of such lower-tier agreement is related in any way to this MSA, the following provision for the collateral assignment of any such lower-tier subcontract, purchase order or supply agreement that relates to (i) the procurement of specially fabricated goods or items of equipment, materials or commodities that are required by specification in the Contract Documents (ii) the installation of any component for which specially trained and skilled labor will be used to accomplish the installation, and (iii) the procurement of any materials or commodities required for the Subcontract Work that are anticipated to be in high demand or short supply:

> "[INSERT SUBCONTRACTOR'S NAME] (as "Subcontractor") has irrevocably and collaterally assigned to Bartlett Cocke General Contractors, LLC (as "Contractor") this [DESCRIBE LOWER TIER AGREEMENT] with [INSERT NAME OF LOWER-TIER PROVIDER] (as "Lower-Tier Provider") to secure Subcontractor's obligations to perform under Work Authorization No._____, dated [DATE], with Contractor for the benefit of [INSERT NAME OF OWNER OF APPLICABLE PROJECT], ("Owner") in connection with Contractor's Master Subcontract Agreement for the _____Project [INSERT NAME OF APPLICABLE PROJECT]. Lower-Tier Provider hereby consents to this assignment, and shall execute all documents reasonably required to evidence or facilitate the effectiveness of such assignment. Such assignment shall not, however, become effective until Contractor or Owner delivers notice of intent to Lower-Tier Provider that Contractor or Owner has elected to accept and assume such assignment, whereupon Contractor or Owner may elect in writing to require Lower-Tier Provider to (a) cease work on and/or vacate the Project, (b) continue performance hereunder, or (c) enter into a new agreement directly with Contractor or Owner on the same terms and conditions contained herein as to all of Lower-Tier Provider's obligations remaining to be performed after the date of such notice. The Lower-Tier Provider agrees to notify Contractor simultaneously with its issuance of any notice to the Subcontractor of the circumstances relating to the occurrence of any material default by the Subcontractor in its obligations to Lower-Tier Provider hereunder, as a result of which Lower-Tier Provider elects to exercise its rights to terminate hereunder, and Contractor shall have an opportunity to cure such default by Subcontractor, provided that such cure is effected within a reasonable period of time, but in no event later than thirty (30) days after the date of Contractor's receipt of such default notice. The Lower-Tier Provider further agrees to extend to Contractor and/or Owner directly any warranties and remedies required of Lower-Tier Provider hereunder; provided however, the foregoing shall not change Subcontractor's or Lower-Tier Provider's rights and obligations hereunder, other than to provide to Owner and/or Contractor, the right to directly enforce against Lower-Tier Provider such warranties and remedies."

Subcontractor agrees to consult with Contractor's Project Manager in advance of the transaction of any lower-tier subcontracts and purchase orders to determine and agree whether Contractor will waive the foregoing requirement as to any such transactions.

Section 22: Right of Offset

22.01 If the Subcontractor, whether prior to or after the execution of this MSA and any Work Authorization for a Project hereunder, enters into another Work Authorization or any other agreement with the Contractor or its Affiliates involving a different Project, Contractor or its Affiliates shall have the right to withhold and apply any and all monies due to Subcontractor under any Work Authorization issued hereunder or any such other agreement and apply the same to pay Subcontractor's lower-tier subcontractors and suppliers for all labor and materials to be furnished in connection herewith, or to pay or settle claims for any damages arising out of Subcontractor's default related so such Project, or to hold the same interest free as security to satisfy any anticipated default by Subcontractor in the performance of the Subcontract Work for such Project. The Contractor may also offset against any sums due or to become due the Subcontractor under this MSA all costs incurred in enforcing this MSA or pursuing any of the Contractor's remedies provided hereunder, including, but not limited to, reasonable overhead, profit and attorney's fees. Additionally, Contractor may apply any sum due Subcontractor hereunder against any past due obligation Subcontractor may owe to Contractor or its Affiliates under any other agreements with Subcontractor. Contractor's exercise of the right of offset hereunder shall not be a breach of any payment provision hereof, nor shall such withholding be construed as a violation of any statute relating to the duty to pay funds received for completed work. The foregoing notwithstanding, however, Contractor agrees that, in exercising its right of offset, Contractor shall not apply to the Subcontractor's default(s) under any Work Authorization or other agreement any funds due for work performed or materials and equipment delivered and/or installed thereunder for one Project to another Work Authorization or agreement involving another Project, to the extent such funds are due to Subcontractor's lower-tier subcontractors and suppliers for work they have properly performed and materials and equipment they have properly installed on the applicable Project in accordance with such Work Authorization or agreement, as to which funds Contractor may exercise its rights under Section 1.07.

Section 23: Compliance with Laws, Ordinances and Regulations

23.01 Subcontractor represents and warrants that it is familiar with the requirements of Applicable Law, and that Subcontractor is able to and shall comply with such requirements, without additional charge or compensation. Subcontractor shall promptly notify Contractor in writing of any variance between this MSA or any Work Authorization issued hereunder and Applicable Law that Subcontractor discovers or should have discovered, and to take all action necessary to comply with Applicable Law before proceeding with the Subcontract Work. If Subcontractor or any person or party for whom Subcontractor is legally responsible, violates the Federal Equal Employment Opportunity Act with respect to its employees or the Occupational Safety and Health Act of 1970, as amended, with respect to its operations, equipment and procedures on the jobsite, or any other laws, rules or regulations, resulting in the imposition of fines, penalties or other sanctions upon Contractor or Owner, Subcontractor shall promptly pay such fines or penalties or comply with such sanctions so as to absolve the responsibility of Contractor and/or Owner for the same, and the imposition of such fines, penalties or other sanctions upon Contractor or Owner under such circumstances shall constitute a material breach of this MSA for which Contractor may terminate this MSA or any Work Authorization issued hereunder, in whole or in part, without further notice, notwithstanding any other provision in this MSA or any Work Authorization issued hereunder.

Section 24: Document Review

24.01 Subcontractor acknowledges having carefully reviewed and examined this MSA, the Contract Documents for each Applicable Project, and by its execution of any Work Authorization issued hereunder, Subcontractor acknowledges having also carefully reviewed it, as well as all attachments, exhibits and addenda to any of the foregoing. Subcontractor agrees by its execution thereof that no conditions exist which would adversely affect the progress, performance or price of the applicable Subcontract Work; that any and all prior ambiguities and discrepancies have previously been clarified and/or corrected and that it will not make any claim or demand upon Contractor based upon or arising out of any misunderstanding or misconception on its part of the provisions and requirements of those documents. However, in the event any ambiguity or discrepancy in the requirements stated under any of the above described documents should arise, the Subcontractor shall promptly submit the matter to the Contractor, in writing, failing in which Subcontractor will be solely liable for any cost or other obligation to complete the Subcontract Work despite such ambiguity or discrepancy. Any and all decisions made by the Owner or the Architect relative to any ambiguity or discrepancy which might arise shall be binding on the Subcontractor.

Section 25: Insurance

25.01 Commencing on the Effective Date of the MSA, Subcontractor shall, at its own expense, purchase, maintain and keep in full force and effect, such lines of insurance coverage as set forth in the Insurance Requirements Exhibit to the Work Authorization.

25.02 Subcontractor agrees to attach hereto current Certificates of Insurance in conformance with Section 1.07 of the Insurance Requirements Exhibit to the Work Authorization. Subcontractor shall promptly provide Contractor revised Certificates of Insurance upon renewal of any of the insurance coverages required hereunder.

25.03 Within five (5) calendar days of any cancellation or non-renewal of any required line of insurance coverage, the

Subcontractor shall provide Contractor a replacement certificate of insurance with all applicable endorsements included therewith. Contractor shall have the right, in its sole discretion, to suspend the Subcontractor's performance under any Work Authorization or terminate this MSA should there be a lapse in coverage at any time during this MSA. In addition to any other remedies available to Contractor, Contractor shall have the right, upon the Subcontractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, to withhold any payment(s) which become due to the Subcontractor hereunder until the Subcontractor demonstrates compliance with the insurance requirements of the MSA.

25.04 Subcontractor shall not commence under a Work Authorization until such time as all required insurance has been accepted by Contractor's Approval. Contractor's approval of Subcontractor's insurance shall not relieve or decrease the liability of Subcontractor hereunder. Contractor shall have no duty to pay or perform under the MSA until all certificates of insurance and required insurance policies have been confirmed by Contractor's advisors to comply with the requirements set forth herein. Subcontractor's failure to fulfill these insurance requirements shall not be a basis for any adjustment to Subcontractor's compensation or schedule. Contractor reserves the right to terminate this MSA or any Work Authorization for convenience without any expense or liability in the event Subcontractor fails to maintain all insurance required herein within ten (10) days of Subcontractor's execution of a Work Authorization.

25.05 If Subcontractor fails to obtain or renew the insurance required herein and to provide Contractor with acceptable evidence thereof, Contractor shall have the right, but not the obligation, to: (1) procure such insurance and reduce any Work Authorization amount by the cost thereof; and/or (2) deem the Subcontractor's failure to do so a as a material breach of this MSA.

25.06 Contractor reserves the right to review the insurance requirements set forth in the Insurance Requirements Exhibit to the Work Authorization during the term of this MSA, and any extension or renewal hereof, and to request modification of lines of insurance coverage and their respective liability limits when deemed necessary and prudent by Contractor based upon changes in Applicable Law or circumstances surrounding this MSA or any Work Authorization, subject to the right of the Subcontractor to seek reimbursement of reasonable and necessary increased premium costs.

Section 26: Disputes Resolution Procedures

26.01 Any dispute between the Subcontractor and Contractor arising out of or in any way related to the Subcontract Work, a Work Authorization, this MSA, or any Contract Documents for an applicable Project shall be subject to the Disputes Resolution Procedures set forth in this Section. At Contractor's election, the Subcontractor shall be bound to the Contractor to the same extent that the Contractor is bound to the Owner by final outcome of any dispute resolution procedures set forth in the Contract Documents. The Subcontractor also agrees to be bound to the final decision of a court of competent jurisdiction, whether or not the Subcontractor is a party to such proceeding. If such a dispute is prosecuted or defended by the Contractor against the Owner under the terms of the General Contract for an applicable Project, the Subcontractor agrees to furnish all documents, statements, witnesses and other information required by the Contractor for such purpose. It is expressly understood that as to any and all claims relating to the Subcontract Work, and as to any and all Losses incurred by the Subcontractor in connection with this MSA or any Work Authorization issued hereunder, the Contractor shall not be liable to the Subcontractor for such Losses to any greater extent than the Owner is liable to and pays the Contractor for such Losses. All decisions of Contractor relating to continuation of the Subcontract Work pending the outcome of the dispute resolution process shall be followed by Subcontractor. No such controversy or dispute shall interfere with the continuation and progress of the Subcontract Work, and Subcontractor shall proceed with the Subcontract Work accordingly, or as directed by Contractor, pending the outcome of dispute resolution.

26.02 SUBCONTRACTOR HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY JUDICIAL PROCEEDING THAT ARISES OUT OF OR RELATES TO THIS MSA AND THAT IS NOT OTHERWISE PRECLUDED BY THE DISPUTE RESOLUTION PROCEDURES.

26.03 Any dispute, claim, or controversy arising out of or in any way related to the Subcontract Work, the above referenced Subcontract and the Contract Documents, or the performance, breach, validity, interpretation, application, or termination thereof ("Dispute"), shall be resolved in accordance with the procedures specified in this Section, which shall be the sole and exclusive procedures for the resolution of any such Dispute.

26.04 The parties shall first attempt to resolve a Dispute (whether before or after any termination of this MSA) by negotiations between their senior executives, to be convened within five (5) days after a Dispute has been declared. If the parties are unable to resolve a Dispute by such negotiations, then either party may issue notice to the American Arbitration Association ("AAA") requesting resolution of the Dispute through the AAA, as hereinafter provided. Such notice shall be deemed a written request to the AAA for administration of both mediation and (if necessary) arbitration of the Dispute. The AAA shall first administer resolution of the Dispute through non-binding mediation according to the Construction Industry Mediation Procedures. Unless the parties and the mediator agree to a different time, mediation shall be completed within 30 days after notice has been issued to the AAA. The mediator shall have at least ten (10) years of construction contract dispute resolution experience. The expenses of the mediator and the mediation shall be borne by the parties equally. If the parties do not resolve the Dispute by mediation, the AAA shall request Contractor to confirm whether Contractor has elected, at its sole option, to proceed to arbitration of the Dispute. If Contractor confirms that it elects to proceed in arbitration, then the AAA shall proceed with the appointment of the arbitrator(s) in accordance with the AAA Construction Industry Fast Track Procedures for Arbitration. The arbitration will be governed by the AAA Construction Industry Fast Track Procedures in effect as of the MSA Effective Date, which rules shall be subject to and applied

consistently with the provisions of this MSA. Discovery shall be limited to each party's prompt production of all relevant and non-privileged documents, including reports of any expert witness, for the other party's inspection. Unless the arbitrator requires otherwise, for good cause shown, no further discovery will be permitted. The arbitration shall be concluded as soon as reasonably possible. The award shall be rendered in writing, include award of attorney's fees and costs to the prevailing party, shall be final and binding, and may be entered in any court of competent jurisdiction. This agreement to arbitrate is subject to the Federal Arbitration Act, 9 U.S.C. §§ 1-16.

26.05 If a party claiming a right to payment of an amount in dispute is awarded all or substantially all of such disputed amount, then such claiming party shall be the prevailing party. If a party defending against such claim is found to be not liable to pay all or substantially all of the disputed amounts claimed by the claiming party, then the party so defending against such claim shall be the prevailing party. If both parties prevail with respect to different claims by each of them, then the party who is prevailing with respect to the substantially greater monetary sum shall be deemed the prevailing party; otherwise, if both parties prevail with respect to monetary sums on different claims, neither of which sums is substantially greater than the other, the tribunal having jurisdiction over the controversy, claims or action shall in rendering the award determine in its discretion whether either party should be entitled to recover any portion of its attorney fees.

Section 27: Late Claims Time-Barred

27.01 Any claim or action by the Subcontractor shall be deemed waived and shall be barred if it is not formally asserted, with a detailed statement of all relevant facts and copies of all relevant documents, within two (2) years and one (1) day after the earlier of (i) the date such claim or action first accrues, or (ii) Subcontractor's submission of its application for final payment to the Contractor.

Section 28: Merger Clause

28.01 This MSA and any Work Authorization issued hereunder may not be changed, modified, altered or terminated orally and Contractor assumes no responsibility for any understanding or representations made by any of its officers or agents prior to the execution of this MSA, unless such understanding or representations by Contractor are expressly stated in this MSA. This MSA, combined with each Work Authorization issued hereunder, contains the entire agreement between Subcontractor and Contractor with respect to the applicable Subcontract Work assigned to Subcontractor, and supersedes any prior comments or statements by either party relating in any way to the Contract Documents and this MSA (whether written or oral); provided, however, prior comments or statements by Subcontractor's employees or agents shall not be superseded to the extent that they do not lessen or diminish or vary Subcontractor's obligations hereunder, and Subcontractor agrees Contractor may offer such statements in evidence in any proceeding to enforce the same. In the event of a conflict between the provisions of this MSA or any Work Authorization and any other Contract Documents, the provision that confers the greater benefit upon Contractor shall govern.

Section 29: Severability

29.01 If any term or provision of this MSA is found to be invalid, it shall not affect the validity or enforcement of all remaining terms and provisions of this MSA.

Section 30: Waiver

30.01 Except as may be specifically agreed in writing, the failure of Contractor to insist in any one or more instances upon the strict performance of any one or more provisions of this MSA or any Work Authorization issued hereunder, or to exercise any rights therein or provided by law, shall not be construed as a waiver or relinquishment of the Contractor's right to require performance of such provision or right(s) or the right to subsequently demand strict performance thereof, which rights shall continue unchanged and remain in full force and effect.

Section 31: Damages

31.01 Subcontractor agrees that he can be adequately compensated by monetary damages for any breach of this MSA which may be committed by Contractor and hereby agrees that no default, act, or omission of the Contractor, Owner, or Owner's representative, except for the failure to make payments within the time required by this MSA or any Work Authorization issued hereunder, shall constitute a material breach thereof entitling Subcontractor to cancel or rescind the provisions of this MSA or, except as otherwise provided herein, to suspend or abandon performance of all or any part of the Subcontract Work.

Section 32: Authority of Party Representatives

32.01 Subcontractor agrees that, upon Contractor's request (whether before or after execution of this MSA or any Work Authorization issued hereunder, and prior to commencement of the Subcontract Work), Subcontractor shall identify and confirm to Contractor in writing the name and authority of Subcontractor's individual representative to execute, authorize or approve this MSA or any Change Order or other agreement affecting time, price or the amendment, change, or the substitution of any clause, covenant or condition of this MSA or any Work Authorization issued hereunder.

32.02 Contractor's field personnel have no authority to bind or otherwise contract on behalf of Contractor; and Subcontractor may not reasonably rely upon the authority of such personnel.

Section 33: Exhibits

The MSA includes the attached Exhibits, each of which are incorporated by reference as if fully stated herein:

EXECUTED as of the Effective Date first above written.

CONTRACTOR	***SUBCONTRACTOR***
BARTLETT COCKE GENERAL CONTRACTORS LLC	
By:	By:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:

EXHIBIT

TO

MASTER SUBCONTRACT AGREEMENT

WORK AUTHORIZATION SAMPLE

MSA NO. *Master Subcontract Agreement Number*

BETWEEN

<<Comp Legal Name>> ("CONTRACTOR")

AND

Subcontractor Company Name ("SUBCONTRACTOR")

DATED: *Contract Award Date*

WORK AUTHORIZATION	Effective Date:	*Contract Award Date*
	Job No.:	*General Contractor Project Number*
	Subcontract No.:	*Contract Number*

Contractor:
General Contractor Company Name
General Contracor Company Address
Telephone: *General Contractor Phone*
Fax: *General Contractor Fax*

Subcontractor:
Subcontractor Company Name
Subcontracor Contact Company Address
Telephone: *Subcontractor Contact Company Phone*
Fax: *Subcontractor Contact Company Fax*
Email: *Subcontractor Contact Company Email*

Project & Location:
Project Name
Project Address
Telephone: *Project Phone*
Fax: *Project Fax*
Email: *Contractor Email*

Owner:
Owner Name
Owner Address
Telephone: *Owner Phone*
Fax: *Owner Fax*

Owner's Representative:
Owner's Representative Name
Owner's Representative Company Address
Telephone: *Owner's Representative Phone*
Fax: *Owner's Representative Fax*
Email: *Owner's Representative Email*

Contractor and Subcontractor agree as follows:

This Work Authorization is subject to and governed exclusively by the terms and conditions of the Master Subcontract Agreement effective on ***Execution Date*** by and between Contractor and Subcontractor. All terms defined in the Work Authorization shall have the same meaning as set forth in the Master Subcontract Agreement if used herein unless expressly provided otherwise in this Work Authorization. Conflicts between the terms of this Work Authorization, the Master Subcontract Agreement and any attachment hereto shall be resolved in favor of this Work Authorization.

SECTION 1: Scope of Subcontract Work.

1.01 The Subcontract Work includes the following: *Contract Description*

1.02 Plans Dated: *Contract Drawings Date*

1.03 Specifications: *Contract Specifications Date*

1.04 Addenda: *Contract Addenda Date*

1.05 Subcontract Price Total (Lump Sum): *Original Contract Amount*

1.06 Retainage: *Contract Retainage %*

1.07 Allowable markup on changes: *Markup %*

1.08 Scope of Work

The Subcontract Work includes, but is not limited to, the following:

1. Compliance with the Contractor's project safety program, record-keeping and work rules.
2. Daily clean-up and removal of debris to a designated on-site receptacle as directed by Superintendent.
3. Adequate personnel and/or extended work hours to meet the project schedule requirements.
4. Because of the fast-track schedule, ALL submittals are due no later than two weeks after the date of this contract, unless a specific date is listed below.
5. Weekly Sub meetings with Superintendent, attendance is mandatory.
6. Protection of other trades' finishes.
7. All material handling, stocking and protection of stored material.
8. Any other related work to insure a complete working system.
9. If Subcontractor will be providing a crane on a Bartlett Cocke project, the operator must have a current National Commission for the Certification of Crane Operators (NCCCO) certificate or license.
10. Supply all Operations and Maintenance Manuals (1) one week after approved submittals are received. The operations and maintenance manuals must be provided in electronic format (in addition to any requirements spelled out in the contract documents) and must be separated and tabbed per Bartlett Cocke requirements. Requirements for electronic copies of Operation and Maintenance Manuals are as follows:
    a) Each electronic copy shall include all information included in the corresponding printed copy.
    b) Submit each electronic copy on a separate Compact Disc (CD) or Digital Versatile Disc (DVD), unless another
    c) electronic data transfer method or format is specified in the Contract Documents.
    File Format:
        i) Files shall be in "portable document format" (PDF).
        ii) Files shall be electronically searchable.
        iii) Submit a separate file for each specification section document in the printed copy. The file name shall be the
        iv) specification section and name as submitted.
    Within each file, provide bookmarks for the following:
        (1) Each item and subsection listed in the corresponding printed copy document's table of contents.
        (2) Each figure.
        (3) Each table.
        (4) Each appendix.

Project Specific Scope of Work

The following items are excluded from this Subcontract:

Project Specific Contract Exclusions

SECTION 2: Exhibits

This Work Authorization includes the attached Exhibits, each of which are incorporated by reference as if fully stated herein:

EXECUTED as of the Effective Date first above written.

CONTRACTOR		***SUBCONTRACTOR***	
BARTLETT COCKE GENERAL CONTRACTORS LLC		***Subcontractor Company Name***	
By:	_____	By:	_____
Printed Name:	_____	Printed Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

EXHIBIT

TO

MASTER SUBCONTRACT AGREEMENT

CONTRACTOR'S SUPPLEMENTAL SAFETY REQUIREMENTS

MSA NO.

BETWEEN

("CONTRACTOR")

AND

("SUBCONTRACTOR")

DATED:

A. Subcontractor warrants and represents to Contractor that it has the supervision necessary to, and shall train, manage, supervise, monitor, and inspect the activities of its forces for the purpose of enforcing compliance with these safety requirements in connection with Subcontractor's Work. Subcontractor acknowledges and agrees that Contractor does not undertake any duty toward Subcontractor's employees to train, manage, supervise, monitor, and inspect Subcontractor's Work activities for the purpose of enforcing compliance with these safety requirements.

B. Subcontractor shall be familiar with and shall abide by the safety rules and regulations of Contractor, Owner, and any governmental body having the authority to control the manner or method of carrying out the Work, including, but not limited to the Occupational Safety and Health Act of 1970 (OSHA), all rules and regulations established pursuant thereto, and all amendments and supplements thereto. Subcontractor further agrees to require all of its employees, subcontractors and suppliers to comply with these requirements.

C. Subcontractor shall be responsible without limitation for complying with the provisions of OSHA Standard 1926.59 and/or other Laws relating to hazard communications or "right-to-know." Subcontractor shall ensure that Contractor is furnished with a copy of all current Material Safety Data Sheets required by the Hazardous Communication Standards for all Hazardous Substances, which Subcontractor will introduce to any Work location where Contractor's employees may be present. To the extent that Material Safety Data Sheets must be posted in Work locations where Subcontractor uses, or stores Hazardous Substances on any Work location subject to this Agreement, Subcontractor shall see that such Material Safety Data Sheets are prepared and posted as required by Laws. Subcontractor hereby warrants that any chemical or substance used or stored on any Work location subject to this Agreement that is unaccompanied by a Material Safety Data Sheet as required by OSHA is not hazardous.

D. Subcontractor shall observe and comply with all Laws with respect to environmental protection applicable to the Site and to Subcontractor's Work, including those Laws relating to the use of water, the release, discharge or disposal of wastes, the control of drainage, and the protection of vegetation, wildlife, habitats, or surroundings. Subcontractor shall also observe and comply with any environmental commitments made by Owner and Contractor in securing any permit or authorization for the Site.

E. Without limiting the foregoing, Subcontractor specifically shall require all its subcontractors, employees, visitors, suppliers, and agents under its direction to:

1. Ensure the use of required and approved appropriate personal protective equipment including but not limited to hardhats, safety glasses with side shields, proper clothing, Work shoes, fall protection devices, respiratory protection and other equipment that may be necessary.

2. Ensure that platforms and scaffolding conform to OSHA specifications and have decking, toe boards, mid- and top-rail, cross bracing, level pads and/or wheels and appropriate ladders for platform access. The construction and maintenance shall be supervised by a designated competent person. They shall be designed by a registered engineer when appropriate.

3. Provide for and ensure the use of continuous fall protection equipment when activities take place above 6'0" with a potential fall exposure or such lower elevations as may be established for the Site.

4. Provide competent persons designated in accordance with OSHA 29 CFR Part 1926 for all applications that require that designation.

F. Without limiting the foregoing, Subcontractor and its Subcontractors shall:

1. Provide for and ensure the use of safety equipment in its Work in accordance with Contractor's and/or Owner's safety requirements, to the extent these may be stricter than federal, state, or local standards, or generally recognized industry applicable standards.

2. Conduct a weekly safety meeting with its employees and list the topics discussed with signatures of attendees. Such a list shall be made available to Contractor upon request. Subcontractor and Subcontractor's Subcontractors are invited to attend Contractor's safety meetings in lieu of their own but attendance at these weekly safety meetings is not intended to and shall not relieve Subcontractor of its duty to provide safety training to its employees in accordance with safety requirements of generally recognized industry standards, and any applicable Laws.

3. Provide Contractor's on-site management with an "Emergency List" showing Subcontractor's designated medical doctor, hospital, insurance company, and any other health service providers, such list to be updated within 24 hours of any change in the information provided. Subcontractor shall furnish its employees first aid or send first aid injuries to Subcontractor's designated doctor.

4. Within eight (8) hours from the time of accident (or such shorter period as Laws may require), advise Contractor of any accident resulting in injury to any person or damage to any equipment or facility. Upon request, Subcontractor shall promptly furnish Contractor with a written report of any such accident as well as a copy of all Insurance and Workers' Compensation Claims involving this Project.

5. Maintain clean Work areas and secure and protect all Work materials in accordance with safety requirements of generally recognized industry standards.

6. If it becomes necessary to have access to any openings or shafts or to remove handrails, Subcontractor shall ensure that the openings or shafts are protected in accordance with generally accepted practices and any applicable federal, state or local standards while the Work is in progress, and that any covers or handrails removed by the Subcontractor are replaced before leaving the area.

7. Dig and maintain all excavations in a manner consistent with OSHA guidelines under the supervision of a competent person.

8. Maintain and inspect all construction equipment, including cranes and other lifting equipment prior to each use. Subcontractor warrants that all equipment operators shall be qualified for each piece of construction equipment they intend to operate. Documentation of specific training (e.g., forklift training, scaffold training) is the responsibility of the Subcontractor.

9. Implement Lock Out/Tag Out procedures that are consistent with Contractor and/or Owner's procedures.

10. Coordinate Work adjacent to stored energy devices (e.g., overhead power lines or underground utilities) with the appropriate authorities.

G. Subcontractor agrees and acknowledges that the failure to perform or comply with any of the requirements set out in this Attachment shall constitute a default of Subcontractor's obligations under the Subcontract.

Exhibit - Contractor's Supplemental Safety Requirements

Subcontractor Initials:

Contractor Initials: