

BACALLAO CONSTRUCTION & ENGINEERING DEVELOPMENT, LLC

SUBCONTRACT AGREEMENT

DATE: _____

SUBCONTRACT PRICE: _____

PROJECT NO. _____

DO NOT MODIFY OR MAKE ALTERATIONS, DELETIONS OR CHANGE ANY PORTION OF THIS SUBCONTRACT

THIS SUBCONTRACT made and entered into between **BACALLAO CONSTRUCTION & ENGINEERING DEVELOPMENT, LLC**, a Florida limited liability company whose principal address is 14361 S.W. 192nd Street ("Contractor") and _____ whose principal address is _____ ("Subcontractor") to perform the Scope of Work ("Work") attached as Exhibit "A" to this Subcontract Agreement (the "Subcontract"), which is incorporated by reference as if fully set forth here, for a project in _____ County, Florida referred to as _____ (the "Project") and located at _____. The Project owner is _____ ("Owner").

For and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, Subcontractor and Contractor jointly negotiated, drafted and agreed to the following:

I. SCOPE OF WORK:

(a) Subcontractor agrees at its own cost to provide, perform, furnish, supply, and pay for all labor, materials, equipment, supervision, and everything of every kind and nature which may be necessary (including, but not limited to, all scaffolding, hoisting, machinery, tools, apparatus, transportation, fuel, temporary light, energy and power, layouts, etc.), in Contractor's discretion, to perform and complete the Work described in Exhibit "A" in strict accordance with the Contract Documents, and as may be directed by change order or otherwise under the terms herein or in the Contract Documents.

(b) "Contract Documents" include Contractor's contract with Owner (the "Prime Contract"), including all prior and subsequent modifications or addendums thereto, this Subcontract (including all Exhibits referenced and incorporated herein), all plans, specifications, supplemental specifications, special provisions, drawings, exhibits, reports and addenda in connection with the Prime Contract or this Subcontract, all of which are incorporated by reference as if fully set forth here. See Exhibit "B" for list of current drawings and specifications. Subcontractor shall be bound to Contractor by the same terms and to the same extent as Contractor is bound to the Owner. All terms and provisions of the Contract Documents shall be fully binding upon Subcontractor and Subcontractor shall owe Contractor all obligations that Contractor owes Owner under the Prime Contract, except as modified or changed in this Subcontract. Contractor shall be entitled to enforce all rights and obligations against Subcontractor that Owner may enforce against Contractor or Subcontractor, except as modified or changed by this Subcontract. Subcontractor acknowledges and represents that it has read, is familiar with and agrees to be bound by the obligations contained in the Contract Documents. The Contract Documents include all items necessary for the proper execution and completion of the Work by the Subcontractor. The Work shall consist of all items specifically included in the Contract Documents, as well as all additional items of work which are reasonably inferable from that which is specified in order to complete the Work in accordance with the Contract Documents. The Contract Documents are complementary, and what is required by any one Contract Document shall be as binding as if required by all. Any differences between the requirements of the drawings or any differences noted within the drawings themselves, any of which are recognized by Subcontractor or which should reasonably have been recognized by Subcontractor, shall be referred to Contractor for clarification or explanation prior to execution of the Subcontract. To the extent that there is a discrepancy among any of the Contract Documents regarding any aspect of the Work, the clause, provision, specification, drawing or the like requiring the Subcontractor to perform a stricter or higher standard, quality or quantity of Work shall control. Subcontractor shall include in its agreement with all lower tiers language which will bind all lower tiers to the same terms and conditions as Subcontractor assumes to Contractor and Owner.

(c) Subcontractor shall maintain a competent and experienced superintendent or foreman, that speaks English fluently, on the Project at all times. Subcontractor agrees to have an authorized representative (an officer, if requested by Contractor) attend all job meetings and to submit daily progress reports in writing, if requested by Contractor. Subcontractor represents that it is authorized to conduct business in Florida and possesses all applicable and required State, County and/or municipal licenses. Subcontractor shall provide technical services as required or specified to operate equipment and/or furnish material under this Subcontract, including performance of specific testing, if any, and shall instruct Contractor's and Owner's personnel in the operation, maintenance and control of such equipment.

(d) All Work shall be inspected and approved by the appropriate state and/or local government inspector, or any private inspector as delegated by Contractor or Owner, and that inspector's approval shall be the final authority concerning whether Subcontractor's Work complies with the Contract Documents and all applicable codes and/or regulations. The Contractor shall have all rights available to ensure Subcontractor's work meets quality control requirements dictated by (among other things) applicable industry standards.

(e) Upon Subcontractor's failure to promptly make good all Work, as may be ordered by Owner, any Project consultant, architect, or engineer, Contractor, and/or government agency with jurisdiction over the Project concerning compliance with the Contract Documents, applicable codes and/or quality control requirements, Contractor shall be entitled to withhold all sums necessary to remedy such Work and all other work damaged or destroyed in removing or making good such Work.

(f) All submittals, such as shop drawings, schedules, catalogs, samples, and material lists required by the Contract Documents must be furnished by Subcontractor completely and timely, and Subcontractor shall be responsible for any delays caused by its failure to do so. Unless otherwise specified, Subcontractor shall submit eight (8) sets of blue-line prints where required for the work of those trades requiring Shop Drawings within ten days after this Subcontract is signed. The Shop Drawings shall be prepared by skilled draftsmen and presented in a clear and thorough manner. If any state or local government agency's approval is required for any element of the Work, Subcontractor shall be solely responsible for submitting and obtaining the necessary approval and/or permits.

(g) Prior to Subcontractor's commencement of the Work, Subcontractor shall deliver to Contractor for Contractor's approval, a schedule of values substantially in the same form as the AIA Document G702/G703, listing the line-item descriptions of work and their corresponding labor and material costs, which shall total the Subcontract Price set forth on the first page of this Subcontract. Subcontractor shall revise the schedule of values as needed until it meets Contractor's approval. Applications for Payment will not be accepted for processing and no payment will be made until: (1) the Schedule of Values is approved, (2) the Subcontract is executed and (3) the Payment and Performance Bond, if required under this Subcontract, is furnished. The approval of Subcontractor's Schedule of Values shall not be construed as an affirmation that the Schedule of Values is accurate or reasonable. Contractor may revisit the information provided in the Schedule of Values at any time and revise such information for any purpose authorized under the Subcontract and/or the Contract Documents.

(h) Contractor reserves the right at any time to change or alter the Work by making additions to and/or deletions from the Work, without the need for any approval or agreement by Subcontractor as to the change, subject to the provisions of Article III herein.

(i) Subcontractor shall provide and be responsible for the layout necessary for Subcontractor's performance of the Work required under this Subcontract, including its accuracy. Should Subcontractor's proper and accurate performance of its Work depend upon the proper and accurate performance of other work not to be performed by Subcontractor, Subcontractor shall carefully examine such other work, determine whether it is in fit, ready and suitable condition for the proper and accurate performance of the Work under this Subcontract, use all reasonable means to discover any defects in such other work, and before proceeding with its Work, report promptly any such improper conditions or defects to Contractor and allow Contractor a reasonable time to have such improper conditions or defects remedied.

(j) The Subcontract Price is fixed throughout the duration of the Project, which means from the date this Subcontract is signed through the date the Project receives a Final Acceptance Letter from the Owner, except as the amount may be adjusted as set forth in Article III of this Subcontract. No adjustments for material escalation prices based on market shortage, delays, or any other reason shall be allowed under this Subcontract.

(k) Subcontractor shall (1) maintain its work area safe at all times, (2) keep the site free from debris or material that could injure any person on the Project, (3) protect the Work and Contractor's work and (4) comply with the Occupational Safety and

Health Act of 1970, including the latest revisions ("OSHA"). Subcontractor shall ensure that no employee or employee of Subcontractor's sub-subcontractors and suppliers possesses any weapon and/or firearm during the Project's construction. Subcontractor shall clean up its work daily and shall properly dispose of all trash and any unusual or heavy debris including, but not limited to, chemical waste, concrete rubble, masonry debris, earth spoils, wood crating, form work, lumber scraps, etc. in the area Contractor provides. Should Subcontractor fail to perform any of the foregoing to Contractor's satisfaction, Contractor shall have the right to perform and complete such safety or clean up work itself or through others and charge the cost thereof plus 15% for overhead and profit to Subcontractor.

(l) Subcontractor shall give adequate notices to authorities pertaining to the Work and secure and pay for all permits, fees, licenses, assessments, inspections and taxes necessary to complete the Work in accordance with the Contract Documents. Subcontractor shall maintain such permits and licenses throughout the entire life of this Subcontract. If Subcontractor was a qualified disadvantaged business enterprise, small business enterprise, or a minority business enterprise at the time this Subcontract is executed, a copy of said certification must be submitted to Contractor, and such certification must be maintained throughout the life of this Subcontract. Subcontractor shall immediately notify Contractor of any change to its qualifications.

(m) Subcontractor agrees not to delay or interfere with the work of others and agrees to cooperate with Contractor and all other subcontractors whose work might interfere with Subcontractor's Work. Specifically, Subcontractor agrees to advise Contractor (in writing) of any such interference within three (3) working days after such interference occurs. At Contractor's request, Subcontractor will work Saturdays and/or additional hours at no additional cost. Subcontractor must coordinate its work with that of other trades and/or utility companies, comply with Sunshine-One-Call, provide a copy to Contractor of the locate request ticket, and shall work out installation sequences so as not to cause additional work for other trades, or leave unfinished work which would impede the work of other subcontractors.

(n) Subcontractor shall provide sufficient, safe and proper facilities at all times for the inspection of the Work by the Owner and/or Contractor, as the case may be, or their authorized representatives, and shall within three (3) working days after receiving written notice from Contractor, remove and disassemble all portions of the Work, and remove from the grounds or buildings all materials, whether worked or unworked, which the Owner and/or Contractor shall deem unsound, unsafe or improper, or as in any way failing to conform to the Contract Documents, and shall replace, at Subcontractor's own expense and without any cost to Contractor, all Work damaged or destroyed by the use or removal of such materials. Subcontractor shall be responsible for requesting and paying for all inspections required for the Work. Subcontractor's Project representative must be present at the time the inspection takes place and must provide Contractor at least forty-eight hour notice of such inspection. If the work fails to pass inspection, Subcontractor shall be responsible for all costs associated with the Work and re-inspection.

(o) In the event Subcontractor encounters material on the Project reasonably believed to be asbestos, polychlorinated biphenyl, lead or other hazardous substances (collectively "Hazardous Materials"), which have not been rendered harmless, Subcontractor shall immediately stop the Work in the area affected and report the condition to Contractor in writing. The Work in the affected area shall not be resumed, except at Owner's direction and when the Hazardous Material has been rendered harmless. Prior to Subcontractor's commencement of the Work, Subcontractor shall require material and equipment manufacturers to provide clarifications, warranties or statements that such materials or equipment (1) are free of Hazardous Materials, or (2) contain specific amounts of Hazardous Materials and recommendations for handling such items. Such certifications, warranties or statements shall be in writing in a form acceptable to Contractor and Owner, and shall be forwarded by Subcontractor to Contractor. If the Manufacturer states that a material or equipment contains Hazardous Materials, Owner and Contractor shall be afforded adequate and timely opportunity to order that other materials be substituted without delaying the Project.

(p) Subcontractor's access to the work area shall be permitted only through approaches designed by Contractor and in a manner that Subcontractor's traffic will not interfere with Contractor and/or Owner's operations, and/or the operations of other trades and subcontractors. Subcontractor's work area on the Project site will be designated by Contractor, and Subcontractor shall confine its offices, shops, storage, assembly, equipment, and vehicles to those designated or assigned areas.

(q) Subcontractor is aware that any traffic control plans made part of the Contract Documents are binding on Subcontractor and that such plans may impose restrictions on the time and sequence of Subcontractor's work.

(r) Subcontractor shall be an independent contractor in all respects and shall be free of the control and supervision of Contractor, except as explicitly provided in this Subcontract, as to the means and methods of performing the Work. Subcontractor represents that all employees working or furnishing services for the Project are in compliance with applicable, current immigration

laws of the United States. Subcontractor shall ensure the Work satisfies the Contract Documents, and all applicable laws, regulations, ordinances, codes and administrative orders.

(s) Subcontractor represents and warrants the following to Contractor (in addition to any other representations and warranties contained in this Subcontract) as a material inducement to Contractor to execute this Subcontract, which representations and warranties shall survive the execution and delivery of this Subcontract, any termination of this Subcontract and the final completion of the Work:

1. Subcontractor and its sub-subcontractors are financially solvent, able to pay all debts as they mature and possess sufficient working capital to complete the Work and perform all obligations hereunder;
2. Subcontractor is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder within the time required by the Contract Documents, and has sufficient experience and competence to do so;
3. Subcontractor's execution of this Subcontract and the performance thereof is within Subcontractor's duly authorized power;
4. Subcontractor's duly authorized representative has visited the site of the Project and is familiar with the local conditions under which the Work is to be performed and has correlated observations with the requirements of this Subcontract;
5. Subcontractor has notified Contractor if based on its site investigation and all other preparation before commencing its Work, whether there are any issues with the plans and/or Contract Documents that affects Subcontractor's ability to construct the Work within the time required by the Contract Documents, coordinate its Work or achieve compliance with applicable building codes and/or regulations;
6. Subcontractor possesses a high level of experience and expertise in the business administration, construction, management and superintendence of projects of the size, complexity and nature of this Project, and will perform the Work with appropriate care, skill and diligence;
7. Subcontractor, by careful examination, has satisfied itself as to: the nature, location, and character of the Project and the site, including, without limitation, the surface and subsurface conditions of the site and all structures and obstructions thereof, both natural and man-made; all water conditions of the site and the surrounding area; the nature, location, and character of the general area in which the Project is located, including, without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents; and
8. Subcontractor acknowledges and declares that, as of the date the Subcontract is executed, Subcontractor has no knowledge of any discrepancies, omissions, ambiguities, or conflicts in said Contract Documents that affect the Project's constructability, that interfere with Subcontractor's ability to coordinate the Work, or that prevent Subcontractor from complying with existing building codes or the requirements of the Contract Documents. Contractor does not guarantee the details and accuracy of the plans for the Project.

II. PROGRESS AND COMPLETION:

(a) Time is of the essence of this Subcontract, and Subcontractor shall mobilize to the Project within the time set forth in Contractor's Notice to Proceed and the Project Schedule. Within five (5) business days' receipt of the Notice to Proceed, Subcontractor shall provide Contractor with a submittal schedule and material delivery schedule in compliance with the Project Schedule. The Project Schedule will be incorporated into the Subcontract once it is completed. The Notice to Proceed and Project Schedule shall identify the number of calendar days by which Subcontractor shall Substantially Complete its Work. More than one Notice to Proceed may be issued due to the Work Subcontractor is required to perform. In such cases, each subsequent Notice to Proceed shall identify the date on which Subcontractor shall commence its Work and the date by which Subcontractor shall

Substantially Complete its Work. "Substantially Complete" shall mean when the Work is complete (except for punch list items), can be used for its intended purpose, and has passed any required governmental inspections. The Work shall be finally complete when the punch list items have been completed to Contractor's, Owner's and/or Architect's satisfaction, and/or to the satisfaction of the governing agency with jurisdiction over the Project. It is understood that Contractor will sustain actual, direct, indirect, consequential and other such damages if Subcontractor fails to complete the Work within the time stipulated, including but not limited to liquidated damages assessed by Owner against Contractor. In that event, Subcontractor shall be liable to Contractor for all such damages, charges, expenses, losses, costs and any all liquidated or other damages sustained by Contractor due to delays in the prosecution of the Work caused by Subcontractor.

(b) Contractor, in its discretion, may vary the commencement and completion time of the Work stipulated to above in order to conform to the time of performance and completion of the Work or that of other work on the Project. Any such change of date shall be in writing signed by Contractor and delivered to Subcontractor. Subcontractor agrees to prosecute its Work in such manner and in such quantities as may be required by Contractor so that the entire Project may be completed within the time required by the Project Schedule. Subcontractor shall provide Contractor with scheduling information within three (3) working days after Contractor's request. Contractor shall prepare and revise the project schedule as necessary or required by the Contract Documents. Any job progress schedules shall be incorporated by reference as if fully set forth here. Subcontractor shall comply with Contractor's instructions to, among other things, suspend, delay, or accelerate progress of the Work. Subcontractor shall not be entitled to any extra compensation for any suspension, delay or acceleration not specifically allowed and paid for by Owner, except as otherwise provided in Article XI of this Subcontract as receipt of payment by Owner for any such issues is a condition precedent to Contractor's obligation to pay Subcontractor.

(c) Subcontractor is to employ skilled workmen who will at all times work in harmony with those employed by Contractor, and other subcontractors and suppliers on the Project. Contractor shall have the right to direct Subcontractor to provide additional workmen to prosecute the work at no additional cost if Contractor determines, in its sole discretion, that Subcontractor is not providing enough workmen to timely prosecute the work. Should Contractor's or Subcontractor's Work for any reason be stopped or materially delayed due to Subcontractor, Contractor shall have the right, three (3) working days after written notice to Subcontractor and Subcontractor's subsequent failure to correct such default within three (3) working days, to employ such workmen as necessary to complete the Work under this Subcontract. The cost of completing the Work will be charged to Subcontractor under this Subcontract and payments may be withheld under this Subcontract or any contract between Contractor and Subcontractor.

(d) Subcontractor shall not assign this Subcontract or sub-let to others any part or all of the Work herein undertaken except with the Contractor's prior written approval. Under no circumstances shall an assignment or sublet of this Subcontract by Subcontractor be valid unless such assignment or sublet includes and incorporates this Subcontract and the Contract Documents, with a clause requiring the assignee to perform all the obligations hereunder and include these provisions in any further subcontracts or assignments that may in turn be made.

(e) Contractor shall designate all storage areas for Subcontractor's use. Subcontractor shall not store any material or equipment except in areas Contractor approves. Subcontractor shall at all times maintain such storage areas in an orderly fashion.

(f) Contractor's liability to Subcontractor for delays due to the act, neglect or default of Contractor and/or Owner shall be solely limited to an extension of time equal to the amount of delay Subcontractor proves Contractor and/or Owner caused by using a Critical Path Method analysis. Subcontractor must make a written claim for extension of time within three (3) working days after the delay commences or the claim for additional time shall be barred. Subcontractor acknowledges that in the event of delay, Subcontractor's sole remedy shall be an extension of time, and that Subcontractor shall not be entitled to any compensation including, but not limited to, extended performance, unabsorbed home office overhead, loss of anticipated profits, or any consequential damage.

III. CHANGES:

(a) Contractor expressly reserves the right, at any time and from time to time (or as Owner may require) to change or alter Subcontractor's scope of Work. No changes, however, will be made in the Subcontract or in the Work except upon such written order. Contractor shall direct such change by written change order and Contractor is not required to provide Subcontractor's surety, if any, notice. Subcontractor shall commence to perform the work Contractor requests under this Section within three (3) working days after Subcontractor receives Contractor's written directive. Within three (3) business days after Subcontractor receives Contractor's written directive under this Section, Subcontractor shall notify Contractor (in writing) whether the changes contained in the written change order will impact the amount and time to complete the Work ("Notice of Impact"), a copy of which is attached as Exhibit "C".

If none is provided, Subcontractor's silence shall constitute a waiver of its right to request any additional compensation and/or contract time. If there is an impact, Subcontractor shall have ten (10) calendar days after submitting its Notice of Impact to provide Contractor with full particulars concerning the amount of additional compensation and contract time Subcontractor seeks to recover. If requesting additional contract time, Subcontractor must provide Contractor a schedule analysis evidencing the impact the additional or changed work caused to the Project's Critical Path. Adjustments to the Subcontract Price shall be determined in one or more of the following ways:

1. By mutual acceptance of a lump sum properly itemized;
2. By unit prices stated in the Contract Documents or subsequently agreed upon (all unit prices shall be deemed to include overhead and profit, burden, taxes, supervision expenses, administrative expenses and insurance costs). If a change based on unit prices includes the deletion and addition of like items before the deleted item has been installed, the net charge resulting directly for such change shall be zero. Ancillary items associated with such like change which are in addition to work previously required, and not themselves a like change, shall be charged at their unit price amounts; or
3. By actual cost plus a fixed percentage fee of ten percent (10%) which covers overhead and profit (including all lower tier subcontractors and/or materialmen), or as the Owner approves, whichever is less. "Actual cost" is defined as the verified costs of any and all materials and equipment plus the base labor wage rate with any and all benefits, insurance, welfare or other fringes included.

If Contractor and Subcontractor cannot agree to any of the methods set forth in (h) (1) through (3), Subcontractor shall nevertheless promptly proceed with the changed or altered Work. Subcontractor's failure to perform the work discussed in this Section within three (3) business days shall constitute a material breach of the Subcontract. The price to be paid for such work performed absent an agreement otherwise shall be determined based on the current market value, but in no event shall such value exceed the actual cost of performing the Work (as defined in subsection (h)(3), above), plus a fixed markup for overhead and profit in the amount of 10%. Before any adjustment is made to the Subcontract Price, Subcontractor shall keep and present in such form as Contractor prescribes, an itemized accounting together with supporting data including, but not limited to, certified payroll reports, labor reports, equipment cost reports, supplier/vendor invoices, breakdown of burden components and percentages and actual payments to Subcontractor's employees, showing Subcontractor's costs. Contractor and Owner may audit Subcontractor's costs at any time upon reasonable notice. Subcontractor shall reasonably provide access to Contractor and/or Owner, as the case may be, to inspect the cost records described above during normal working hours at a mutually agreeable time.

(b) Any payments that may otherwise be due Subcontractor for changes in the work are subject to the same condition precedent of Contractor receiving payment from Owner as set forth in Section V(d) of this Subcontract. After the Owner and Contractor approve the changes to Subcontractor's Work, Subcontractor shall include that amount in that month's application for payment. Otherwise, such requests for compensation related to additional or changed work shall not be included in Subcontractor's monthly payment application. Contractor may reject Subcontractor's monthly payment application if Subcontractor requests payment for such unapproved, additional or changed work. Payment shall be made to Subcontractor in accordance with Article V of this Subcontract. Subcontractor shall submit an itemized, detailed breakdown for each change proposal and all supporting documents. No employer or agent of Contractor is authorized to direct any extra work by an oral order. Subcontractor's field/jobsite tickets or invoices purporting to represent extra or changed work, whether or not signed by Contractor, shall not be an acknowledgement that additional compensation is due or an acceptance of any Work.

IV. ENCUMBRANCES:

(a) Subcontractor shall turn Work over to Contractor in good condition and free and clear of all claims, encumbrances, or other liens and shall protect and save harmless Contractor and Owner from all claims, encumbrances or liens growing out of the Subcontract's performance. Subcontractor will at its own cost (including attorneys' fees) defend all suits to establish such claims, and pay any such claims or liens so established. Subcontractor shall notify Contractor in writing within five (5) business days before Subcontractor actually records any Claim of Lien or Notice of Nonpayment. If any claim of lien is filed against Owner's real property or a nonpayment claim made against Contractor's bond (as the case may be) by Subcontractor's sub-subcontractors, suppliers or laborers, Subcontractor shall remove such notice of non-payment claim of lien by cash or surety bond within forty-eight (48) hours. Failure to remove such claim of lien or notice of nonpayment constitutes a material breach of this Subcontract. If Subcontractor fails to comply with its obligation under this Section, Contractor may do so and withhold all costs incurred (including recording and attorneys' fees) in connection with removing said claims. Contractor shall have the right to retain out of any payment due, or to

become due under this Subcontract or any other contract between Contractor and Subcontractor, an amount sufficient to indemnify Contractor and Owner against such lien or claim, and charge or deduct all cost of defenses, including reasonable attorneys' fees. Should any claim or lien develop after all payments are made, Subcontractor shall refund to Contractor all monies that the latter may be compelled to pay in discharging such claims or liens or incurred in collecting said monies from Subcontractor.

(b) Subcontractor shall furnish Contractor, if requested, satisfactory evidence of the payment of all bills, expenses and any liability Subcontractor incurs on the Project by providing, among other things, written releases on the forms attached as Exhibits "D" and "E" from all persons, firms, or corporations that furnished any services, equipment and materials to Subcontractor, whether on or for the Project, or any other releases or waivers required by the Contract Documents. Contractor reserves the right to pay Subcontractor with checks made jointly payable to Subcontractor and its sub-subcontractors, material suppliers and vendors. Such checks shall be in the amount due from Subcontractor to the sub-subcontractor or vendor for work performed and to the material supplier for materials Subcontractor purchased in execution of the Work.

V. PAYMENTS:

(a) It is expressly agreed that time is of the essence for this Subcontract, and that the payment of the consideration is executory and conditioned upon completion of this Subcontract and the Work herein specified. Contractor agrees to pay Subcontractor for the satisfactory and timely completion of Subcontractor's work, the Subcontract Price set forth on the first page of this Subcontract.

(b) On or before the 20th day of each month (or the next business day thereafter if the 20th day falls on a weekend or holiday), Subcontractor shall submit to Contractor, in the manner identified in Section I(g), a written requisition for payment showing the proportionate value of the work installed through the 25th day of that month. Failure to submit the payment application in the manner and time set forth in this Section may result in rejection of Subcontractor's payment application. Subcontractor's monthly payment application must be approved by Contractor, Owner, and/or Architect, and is subject to revisions by such persons. If any revision is made, Subcontractor shall have three (3) working days to revise the payment application and submit the revised payment application to Contractor. After the conditions precedent set forth in this Article V have been satisfied, Contractor will pay Subcontractor within ten (10) days after Contractor receives payment from Owner.

(c) Contractor is authorized to deduct and withhold from any payment due Subcontractor, on this or any other project on which Contractor and Subcontractor have a contract, any and all sums or percentages which Contractor may be due from Subcontractor for any debt whatsoever, or any sums Contractor at any time is required or permitted to withhold for any purpose whatsoever by the Subcontract, Contract Documents or any law, rule or regulation of any governmental agency. Any and all expenses, costs, damages or other sums which Contractor may be entitled to recover or receive reimbursement from Subcontractor may be deducted, at such times and in such amounts as Contractor in good faith deems appropriate, from any monies which would otherwise be due from Contractor to Subcontractor for the Work. If the total amount otherwise due to Subcontractor shall be insufficient to fund Contractor's complete recovery or reimbursement, Subcontractor shall pay such deficiency to Contractor within 48 hours following Contractor's written demand. Subcontractor's failure to make such payment constitutes a material breach of the Subcontract. In the event any subsequent proceeding shall determine that any deduction or withholding by Contractor was improper, Subcontractor's sole remedy shall be to receive payment of all funds which were improperly or wrongfully withheld and shall not be entitled to any other direct, indirect, special and/or consequential damage.

(d) It is understood and agreed by Subcontractor that payment for the Work is to be made solely from funds Contractor receives from Owner with respect to the Work. Payment by Owner to Contractor for the Work (which includes any changes Contractor directs and any claim Contractor submits) is a condition precedent to any payment to Subcontractor. Subcontractor relies upon Owner's financial responsibility in performing the Work and if Contractor is not paid for all or any portion of the Work by Owner, Subcontractor acknowledges that it shall not be paid. Subcontractor expressly agrees to accept the risk that payment will not be made for Work performed in the event that Contractor, for whatever reason, is not paid for such Work. This understanding and agreement shall likewise apply to any changed, extra, additional Work and/or damages Subcontractor may suffer.

(e) Periodic payments to the Subcontractor are also subject to the following:

1. As the Work progresses, all payments shall be subject to retainage in the amount of ten percent (10%) (or as Owner may require under the Contract Documents, whichever is greater) of the value of the Work completed from month to month, including the materials which are intended to be incorporated in the

Project and which are properly stored on the Project site, and meeting specification requirements as shown by Owner's certificate.

2. Payment is conditioned upon Subcontractor's delivery to Contractor of any Payroll Affidavits, Partial Waivers of Claims, in the form attached as Exhibit D, and any and all information, facts, certificates, records, and daily reports Contractor at any time may need or require, to satisfy all requirements imposed upon Contractor by Owner, the Contract Documents and all applicable laws, statutes, ordinances and regulations concerning the keeping of records and making reports and returns of every nature, all of which shall be supplied in such form, number of copies, times, and as often as may be directed by Contractor and verified by affidavit, if so desired. Subcontractor shall also submit a Partial Wavier of Claims from each of its sub-subcontractors, suppliers and laborers on a form similar to that attached as Exhibit D.

(f) No progress payment under this Subcontract shall be conclusive evidence of the performance of this Subcontract either wholly or in part, and no payment shall be construed to be acceptance of defective Work or improper materials.

(g) Payment may be withheld if Contractor, Owner, and/or Architect declines to approve an Application for Payment, or if Contractor, Owner, and/or Architect withholds certification of the following or for other good and sufficient reason:

1. defective work or material not remedied;
2. claims filed or reasonable evidence indicating probable filing of claims;
3. Subcontractor's failure to make proper payments to sub-subcontractor and/or supplier for labor, services, materials and/or equipment;
4. reasonable doubt that Subcontractor can complete Work for unpaid balance of this Subcontract's price or by the Completion Date established in the approved Project Schedule;
5. damages to another subcontractor;
6. unsatisfactory prosecution of the Work by Subcontractor;
7. erroneous estimates by Subcontractor of the value of the Work performed;
8. unauthorized deviations from the Contract Documents; or
9. failure or refusal to provide any documentation required under this Subcontract.

(h) Final payment (including retainage) shall be due: (1) within ninety (90) days after Subcontractor completes its Work, as determined by Contractor, Owner, Architect and/or any applicable government agency, (2) after Contractor receives final payment from Owner for completion of the Work or (3) within ninety (90) days after Subcontractor's Work is approved by Contractor, Owner, Architect and/or any applicable government agency, whichever occurs last. The Application for Final Payment shall be accompanied by Subcontractor's delivery to Contractor of any Payroll Affidavits, Final Waivers of Claims, in the form attached as Exhibit E, a Final Payment Affidavit attached as Exhibit F, and any and all information, facts, certificates, records, and reports Contractor at any time may need or require, to satisfy all requirements imposed upon Contractor by Owner, the Contract Documents and all applicable laws, statutes, ordinances and regulations concerning the keeping of records and making reports and returns of every nature, all of which shall be supplied in such form, number of copies, times, and as often as may be directed by Contractor and verified by affidavit, if so desired. Final Payment shall also be contingent on the following:

1. In the event a Final Waiver of Claims is not or cannot be furnished, Subcontractor shall furnish Contractor a bond or other security reasonably satisfactory to Contractor to indemnify it against such claims;
2. Subcontractor shall have made, or caused to have been made, all corrections in its portion of the Work which are required to remedy any defects therein or violations thereon or obtain compliance with the applicable drawings and specifications or any requirements of applicable codes and ordinances or to fulfill

any of the proper orders or directions of Contractor, Owner, Architect and/or any applicable government agency required under this Subcontract;

3. Subcontractor, through Contractor, shall have assigned and delivered to Owner all written guarantees, warranties, statements of account and bonds required under the Contract Documents for the Work;
4. Subcontractor shall have furnished to Contractor and Owner a detailed sworn Statement of all claims and demands, just or unjust, disputed or otherwise, of sub-subcontractors, suppliers and others then outstanding or which Subcontractor has reason to believe may hereafter be made on account of the Work or performance of the Work under this Subcontract;
5. Subcontractor shall deliver to Owner and Contractor a general release of claims and demands, an affidavit to the effect that insofar as Subcontractor has knowledge or information such releases and receipts include all labor, materials, supplies, equipment and other services or items for which a lien, claim or demand could be filed or asserted; and
6. Owner shall have issued a Final Acceptance Letter and made final payment to Contractor.

VI. INSURANCE, BONDS, INDEMNITY AND REGULATORY COMPLIANCE:

(a) Subcontractor is to secure, pay for and file with Contractor, certificates for Workmen's Compensation, General Liability and Property Damage Liability Insurance in such amounts required by the Contract Documents, and such other insurance coverage applicable to the Work required under this Subcontract.

(b) Subcontractor shall assume the defense of, and indemnify and save harmless Contractor and Owner, and their respective officers, agents and employees, from all claims, liability, loss, damage or injuries of every kind including attorneys' fees and all cost of litigation and judgments of any kind and description and patent infringements (except as hereinafter excluded) arising out of or incidental to the performance of the Work performed hereunder.

(c) Subcontractor further agrees to undertake, at its own expense, the defense of any action which may be brought against Contractor claiming damages which are alleged to have arisen out of or in connection with the performance of the Work.

(d) Subcontractor shall indemnify and hold harmless Contractor, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by Subcontractor's negligence, recklessness, or intentional wrongful misconduct, and the negligence, recklessness or intentional wrongful misconduct of persons employed or utilized by Subcontractor in connection with the performance of the Work. The specific consideration includes, but is not limited to, the first five percent (5%) for each payment made to Subcontractor under this Subcontract.

(e) Subcontractor agrees that its indemnity obligation shall include, but not be limited to, liability for damages resulting from the personal injury or death of an employee of Subcontractor, regardless of whether Subcontractor has paid the employee under the Worker's Compensation Law of the state of Florida, or other similar federal or state legislation for the protection of employees. Subcontractor's obligation also includes indemnity for all attorneys' fees and expenses incurred by Contractor to enforce the terms of this Subcontract.

(f) Pursuant to Florida Statute Section 725.06, the monetary limitation on the extent of the indemnification provided under this Section shall be set at _____ Million Dollars (\$____,000,000.00) per occurrence which bears a reasonable commercial relationship to the Subcontract. In addition to the setting of this monetary limit, it is specifically noted by the parties that Contractor will pay to Subcontractor, as specific consideration for this indemnification, the amount of Ten Dollars (\$10.00) upon execution of this Subcontract.

(g) Subcontractor **(is)** ____ **(is not)** ____ required to furnish full and duly executed performance and payment bonds for the Project, underwritten by a surety company authorized to do business in Florida with an A.M. Best Rating of A- or higher in an amount equal to the Subcontract Price, insuring the complete and faithful performance of this Subcontract. Subcontractor shall furnish said bond before beginning the Work but not later than 20 days after this Subcontract is signed. Contractor reserves the right to terminate and cancel this Subcontract in the event Subcontractor fails to deliver an acceptable bond within the time set forth herein. Failure to furnish the required bonds shall be considered a material breach of this Subcontract.

(h) Subcontractor shall comply with all regulatory conditions of the Contract Documents, and the same are incorporated here by reference. Subcontractor further agrees to comply with all municipal, state, and federal laws, immigration law, labor laws, prevailing wage ordinance (if applicable), minimum wage requirements, Equal Employment Opportunity regulations, rules, regulations, statutes, directives and ordinances, where the same may apply to or effect the Work. It is agreed that federal and state tax laws, OSHA, social security laws, immigration and unemployment compensation laws are part of this Subcontract and Subcontractor agrees to comply therewith and shall pay all applicable federal, state and local sales tax affecting his Work. In the event Subcontractor violates this provision, Subcontractor agrees to bear all costs associated therewith and shall hold Contractor and Owner harmless from any actions arising from such violations. Subcontractor further agrees to comply with the Buy America provisions of 23 CFR 635.410, as amended. If the Project is a federally-funded Project, then FHWA 1273 shall apply. Finally, Subcontractor agrees and acknowledges that it is Contractor's policy to provide a drug free environment. Anyone possessing or under the effect of alcohol or illegal drugs shall be removed from the Project immediately and permanently.

(i) If Owner requires Contractor to maintain builder's insurance coverage on the Work, Subcontractor shall also maintain such coverage at its own expense.

(j) Unless otherwise waived in writing by Contractor, Subcontractor shall maintain the following minimum coverages:

1. Workers' Compensation: statutory limits, including employer's liability limits of at least \$1,000,000 each accident, \$1,000,000 each disease, and \$1,000,000 each employee;
2. Comprehensive General Liability, including operations, premises, products, completed operations for a minimum of five years, independent contractors, contractual, personal liability, and broad form property damage with limits of at least \$2,000,000 bodily injury and property damage combined;
3. Automobile Liability, including owned, hired, and non-owned, with limits of at least \$1,000,000 bodily injury and property damage combined; and
4. Excess Liability coverage with limits of at least \$5,000,000.

The insurance required by Section VI(j) shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. Certificates of insurance shall name Contractor and Owner as additional insureds and shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Contractor and Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment.

(k) Subcontractor hereby waives any and all rights against Contractor, Owner, Architect and all other subcontractors for damages caused by fire or other perils to the extent covered by property insurance provided hereunder, except to the extent of such rights as it may have to the proceeds of any such insurance.

VII. SAFETY, INSPECTION AND COMPLIANCE WITH LAW:

(a) Subcontractor agrees to cooperate with Contractor regarding the implementation of any safety program imposed by the Contractor or Owner. However, the implementation of such safety program does not absolve Subcontractor from its own obligations to maintain safety on the Project in connection with its work. Accordingly, Subcontractor shall provide its own proposed safety program, which shall comply with all applicable legal requirements including, but not limited to, OSHA for Contractor's review within twenty (20) calendar days after Subcontractor commences to perform its Work.

(b) Contractor, Architect, Owner and any inspector the applicable government agency designates for the Project shall have the right to inspect Subcontractor's Work at all times. Subcontractor shall at all times furnish Contractor, Architect, Owner and the government inspector adequate facilities for inspecting materials at the site or any place where materials under this Subcontract may be in the course of preparation, process, manufacture or treatments.

VIII. DAMAGE TO WORK AND RISK OF LOSS:

Subcontractor shall at all times, and at its expense, protect its Subcontract Work, including all labor, materials, supplies, tools and equipment, against damage, injury, destruction, theft or loss. Contractor shall not be responsible for any loss or damage to the Work to be performed and furnished under this Subcontract, however caused. Subcontractor shall, at its sole expense, promptly repair or replace damage to its Subcontract Work and the work of others, or to any part of the Project resulting from its activities.

IX. DELAYS:

(a) Should any delay on the part of Subcontractor in the prosecution or completion of the Work, with due allowance being made for the contingencies herein provided for, cause loss or damage to Owner for which Contractor may be liable, Subcontractor shall be liable to Contractor for the amounts assessed against Contractor by Owner under the terms of the Contract Documents.

(b) Should Subcontractor be delayed in the prosecution of the Work by the act, neglect or default of Contractor or Owner, or by any damage for which Subcontractor is not responsible, and Contractor refuses to approve such claim for extension of time, the matter shall be submitted as claim as provided in Article XI herein. Permitting Subcontractor to continue after the time to complete the Work has expired shall not be construed as a waiver of damage for non-compliance with the contract time clause, and Subcontractor agrees that this provision shall be notice to that effect.

X. DEFAULT:

(a) In the event of Subcontractor's default, Contractor shall have the right, upon three (3) working days written notice to Subcontractor and Subcontractor's subsequent failure to cure said default within three (3) working days, to declare this Subcontract to be breached by Subcontractor and to proceed as follows:

1. Provide with its own forces (or those of others) such equipment, materials, supplies, labor or supervision as may be necessary to perform or assist Subcontractor in the performance of all or any portion of the Work. All costs or expenses associated therewith, whether paid by Contractor to others or charged in accordance with Contractor's usual cost accounting procedures, shall be paid by Subcontractor within fifteen (15) calendar days after Contractor requests such payment in writing;
2. Terminate this Subcontract, enter upon the job site and take possession for the purpose of completing the Work of all tools, appliances, equipment, plant, materials and supplies of Subcontractor and take an assignment of its material supply agreements, all at Subcontractor's expense;
3. Withhold payment of all or any portion of any sums otherwise due to Subcontractor under this Subcontract or any other contract between the parties until the overall Project is complete, and final payment has been received by Contractor from Owner; and/or
4. Seek specific performance of Subcontractor's obligations hereunder, it being agreed by Subcontractor that specific performance may be necessary to avoid irreparable harm to Contractor and/or Owner, and Subcontractor shall pay all reasonable attorneys' fees or costs incurred by Contractor in pursuing this remedy of specific performance.

(b) In any case where Contractor is required to furnish any labor, materials, equipment or other items which Subcontractor is obligated to furnish or to perform Subcontractor's Work, whether done by Contractor in the exercise of an option herein provided or otherwise, and whether or not provision is herein made for Contractor's reimbursement or recovery, Contractor shall be entitled to recover from Subcontractor, in addition to the cost actually incurred, overhead and profit.

(c) In the event this Subcontract is terminated, Subcontractor shall not be entitled to receive any payment for work performed which has not yet been paid until the Owners issues its Final Acceptance Letter. If the unpaid amount due Subcontractor under this Subcontract is less than the expense Contractor incurs in connection with said default, Subcontractor shall pay the

difference to Contractor, which may include consequential damages, attorneys' fees, other legal fees and costs, and any business interruption expenses, within fifteen (15) calendar days after Contractor requests such payment in writing.

(d) The following, among others, shall constitute an event of default:

1. Subcontractor at any time refuses, fails or neglects to supply a sufficient number of skilled workers or material of the proper quality and/or quantity;
2. Subcontractor fails in any respect to perform the Work with promptness, diligence and in a workmanlike manner;
3. Subcontractor stops, delays or interferes with Contractor's work or any other subcontractor's or materialmen's work on the Project;
4. Subcontractor, through any act or omission, causes any loss or damage to Contractor and/or Owner;
5. Subcontractor refuses to cooperate with Contractor and/or incites any disturbance on the Project;
6. Subcontractor fails to complete the Work within the time established under this Subcontract;
7. Subcontractor fails to attend any Project meeting without first securing Contractor's approval or fails to establish good cause;
8. A court having proper jurisdiction enters an order or decree adjudging Subcontractor bankrupt or insolvent, or approving a properly filed petition seeking Subcontractor's reorganization under the current Bankruptcy Act, or any similar applicable federal or state law, and such decree or order shall continue undischarged and/or unstayed for ninety (90) consecutive calendar days;
9. A court having proper jurisdiction enters an order or decree appointing a receiver, liquidator, trustee or assignee in bankruptcy or insolvency for Subcontractor or Subcontractor's property, or for winding up or liquidation of Subcontractor's affairs, provided such decree or order shall continue undischarged and/or unstayed for ninety (90) consecutive calendar days;
10. Subcontractor commences voluntary bankruptcy proceedings or consents to another filing a bankruptcy proceeding against Subcontractor;
11. Subcontractor files a petition, answer or consent seeking reorganization under the Federal Bankruptcy Act or any other similar applicable federal or state law, or consents to such petition's filing;
12. Subcontractor consents to a receiver's, liquidator's, trustee's or assignee's appointment concerning Subcontractor's bankruptcy or insolvency;
13. Subcontractor makes an assignment for the benefit of creditors;
14. Subcontractor is unable to pay its debts generally as they become due;
14. Subcontractor takes legal action to further any of the aforesaid purposes;
16. Subcontractor fails to satisfy and discharge any final judgment within ten (10) days of its entry;
17. Subcontractor fails to perform any obligation under this Subcontract and/or the Contract Documents; and/or
18. Subcontractor's failure to timely pay any supplier, laborer or sub-subcontractor providing Work at the Project.

(e) Contractor's remedies provided in this Section and any provision of this Subcontract shall be cumulative. All losses, damages, and expenses include interest on the funds withheld from Contractor by Owner as a result of Subcontractor's action or inaction, including attorneys' fees to prosecute or defend any action or suits, however the case may be, incurred by or resulting to Contractor on the above account, shall be borne by and charged against Subcontractor and shall be the damages for breach of the Subcontract.

(f) **TERMINATION FOR CONVENIENCE:** Contractor shall have the right to terminate this Subcontract for any reason whatsoever by providing Subcontractor with a written notice of termination to be effective upon five (5) days after receipt by Subcontractor of such notice. A termination for default under this Subcontract, if wrongfully made, shall be treated as termination for convenience under this Section. Whenever Subcontractor is terminated for convenience under this clause or is wrongfully terminated under any clause of this Subcontract, Subcontractor shall only be entitled to payment for the unpaid value of work performed through the date of termination. Any previous payment application that Subcontractor submitted and/or the Schedule of Values Subcontractor submitted is not conclusive evidence of the percentage of completion and its corresponding value. In no event shall Subcontractor be entitled to anticipatory profit, lost business opportunities or damages for any termination under this Subcontract, and hereby irrevocably waives any claim to such damages. In no event shall Subcontractor be entitled to assert a claim in quantum merit or any other measure or damages other than that stated herein. In the event of disagreement as to the amount due Subcontractor on such termination, the dispute shall be decided in accordance with Article XI of this Subcontract.

XI. CLAIMS – DISPUTES:

(a) Subcontractor shall make all claims for additional compensation or extension of time for which Owner may be responsible in sufficient time for Contractor to comply with the requirements of the Contract Documents for making such claim to Owner.

(b) Subcontractor shall carry on its Work and maintain satisfactory progress while any claim or dispute is being resolved. In no event shall a pending claim or dispute serve as a basis for Subcontractor to stop or slow down its performance of its work (including, but not limited to, changed or additional work subject to a change order dispute), and doing so shall constitute a material breach of this Subcontract. Subcontractor shall make all claims to Contractor so Contractor has at least five (5) calendar days within which to satisfy the time requirements of the Contract Documents.

(c) Contractor agrees to present to Owner, in Contractor's name, any reasonable and viable claims, as determined in Contractor's sole discretion, that Subcontractor may have for additional compensation and contract time against the Owner. Subcontractor shall post whatever security may be required by Contractor to cover costs and expenses, including attorneys' fees, as a condition of Contractor proceeding on Subcontractor's behalf in pursuing Subcontractor's claim against the Owner. Subcontractor agrees to be bound to Contractor to the same extent Contractor is bound to Owner by the final decision of an arbitration proceeding, board or a court of competent jurisdiction, whether or not Subcontractor is a party to such proceeding. If such dispute is prosecuted or defended by Contractor against Owner under the terms of the Prime Contract or in an arbitration proceeding or a court action, 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 costs, if any, incurred in connection therewith. It is expressly understood 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 this construction project, Contractor shall never be liable to Subcontractor to any greater extent than Owner is liable to Contractor.

(d) Any dispute concerning the Work of this Subcontract, shall, at Contractor's sole option, be referred to arbitration under the construction industry arbitration rules of the American Arbitration Association. Arbitration shall be conducted by the American Arbitration Association ("AAA") and governed by the AAA's Construction Industry Arbitration Rules and Mediation Procedures. The final arbitration hearing shall take place in Miami-Dade County, Florida. Further, in the event the Contract Documents provide for arbitration of disputes, the following provisions shall apply in addition to the other provisions of this Section:

1. In the event the Contract Documents provide for a joint or multi-party arbitration in which Subcontractor may participate as a party, upon written request by Contractor, Subcontractor agrees to participate in and be bound by such arbitration proceedings conducted under the Contract Documents. If the Contract Documents provide only for arbitration of disputes between Owner and Contractor, Subcontractor agrees that if it has a claim against Contractor arising out of causes for which Owner might be responsible,

Subcontractor's exclusive remedy shall be to pursue any such claim through Contractor and arbitration with Owner, and Subcontractor shall be bound by the results of the arbitration.

2. If Owner makes a claim against Contractor arising out of causes for which Subcontractor might be responsible, then upon written request by and at no expense to Contractor, Subcontractor shall cooperate in the defense and be bound by the results of the arbitration involving Owner and Contractor with regard to such claims.

(e) To the extent Contractor does not elect arbitration as the dispute resolution mechanism, then sole and exclusive venue shall lie in the state courts of Miami-Dade County, Florida.

(f) Contractor may deduct any damages (including but not limited to delay damages) assessed pursuant to this Subcontract at any time from any unpaid amounts then or thereafter due Subcontractor under this Subcontract or any other contracts, subcontracts or other such agreements between Contractor and Subcontractor. Any damages not so deducted from any unpaid amounts due Subcontractor shall be payable to Contractor upon demand of Contractor, together with interest from the date of the demand at a rate of 12% per annum

XII. GUARANTEE AND WARRANTY:

(a) Subcontractor warrants all materials and equipment furnished shall be new unless otherwise specified, and guarantees its Work, materials and equipment shall be of good quality, free from all deficiencies and defects in materials and/or workmanship and fit for use for a particular purpose as called for under this Subcontract and/or the Contract Documents. Subcontractor agrees to satisfy such warranty obligations which appear within the guarantee or warranty period established in the Contract Documents and Subcontract without cost to Owner or Contractor. Subcontractor warrants and guarantees to Contractor and Owner that all work performed, and materials and equipment furnished under this Subcontract shall be free from defects in material and workmanship for a period of one (1) year from the date of Final Acceptance or for a longer period if so specified in the Contract Documents.

(b) With respect to any of Subcontractor's warranties, if such materials or equipment or portion of the Work is found after such Final Acceptance not to comply with the requirements under this Subcontract and the Contract Documents or otherwise in breach of warranty, the warranty and guarantee period shall commence with the date it is corrected to comply with the Contract Documents.

(c) Subcontractor shall also guarantee or warranty the Work for a period of one year from the date of completion of the Work and final acceptance of the project by Owner or any warranty period Florida law provides concerning condominium construction, whichever is greater. Subcontractor further agrees to execute any special guarantees required under the Contract Documents or by Florida law. Subcontractor shall require similar guarantees from all vendors and lower tier subcontractors. Neither the issuance of the final certificate of final payment, or any provisions in this Subcontract and the Contract Documents, shall relieve Subcontractor of responsibility for faulty materials, equipment or workmanship, and Subcontractor shall remedy any defects due thereto and pay for any damage to other work resulting therefrom in accordance with the applicable guarantee or warranty provisions in the Contract Documents. The Owner or Contractor shall give written notice of such observed defects with reasonable promptness.

(d) Subcontractor shall, promptly upon receipt of written notice thereof, make good any defects in materials, equipment and workmanship of its Work which may develop within periods for which said materials, equipment and workmanship are guaranteed, and also make good any damage to other work caused by the repairing of such defects at his own expense, and without reimbursement under the Subcontract. The foregoing remedies shall not deprive Owner or Contractor of any action, right, or remedy otherwise available to it for breach of any of the provisions of the Contract Documents by Subcontractor and the periods referred to in this Section, or such longer time as may be specified elsewhere, shall not be construed as a limitation on the time in which Owner or Contractor may pursue such other action, right or remedy against any subcontractor.

(e) The warranty and guarantee provided in this Section shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

XIII. FDOT Terms and Conditions:

(a) The Project **IS** () / **IS NOT** () (*check one*) a Florida Department of Transportation ("FDOT") project. If the Project **IS** an FDOT Project, then the terms and conditions set forth in Exhibit G – FDOT Terms and Conditions shall apply. To the extent any of the terms and conditions set forth in Exhibit G directly contradict with the terms and conditions of this Subcontract, Exhibit G shall control.

XIV. CONTRACT INTERPRETATION:

(a) This Subcontract shall be governed by the laws of the State of Florida. The venue of any proceeding brought under the Subcontract shall be in Miami-Dade County, Florida. Should there be a conflict between the terms in this Subcontract and Contractor's contract with the Owner, the terms and conditions in the Subcontract shall prevail. Partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other Section or clause. Failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Subcontract, or to exercise any rights established in the Subcontract, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as to further performance. Subcontractor shall be deemed to have accepted the terms of this Subcontract, and to abide by all the obligations set forth herein and in the Contract Documents, by either executing in the space provided below or by commencing to perform any part of the Work after Contractor furnishes the Subcontract to Subcontractor.

(b) Subcontractor shall be responsible to Contractor for all damages incurred as a result of Subcontractor's breach of this Subcontract, including reasonable attorneys' fees and all costs of litigation required to enforce this Subcontract and Subcontractor's obligations thereunder, which damages shall include but shall not be restricted to any delay and liquidated damages suffered by Contractor due to Subcontractor's failure to perform the Work within the time specified in this Subcontract.

(c) The headings given to the Sections of this Subcontract are for ease of reference only and do not affect construction or interpretation of this Subcontract.

THIS SUBCONTRACT and the instruments incorporated herein contain all the terms and conditions agreed to by the parties hereto, and no other agreement, instrument or papers, oral or otherwise, respecting the subject matter of this Subcontract shall be deemed to exist or to bind any of the parties hereto. This Subcontract supersedes all prior negotiations, representations, proposals, stipulations or agreements, either written or oral. Contractor and Subcontractor for themselves, their successors, executors, administrators and assigns, hereby agree to the full performance of the covenants of this Subcontract.

IN WITNESS WHEREOF, the parties hereto have executed this subcontract the day and year first written above.

**BACALLAO CONSTRUCTION & ENGINEERING
DEVELOPMENT, LLC**

[SUBCONTRACTOR'S NAME HERE]

By: _____
Its: _____

By: _____
Its: _____

**EXHIBIT “A”
SCOPE OF WORK**

SEE ATTACHED

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK

**EXHIBIT “B”
LIST OF DRAWINGS AND SPECIFICATIONS**

SEE ATTACHED

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK

EXHIBIT “C” NOTICE OF IMPACT

In response to Contractor's *[insert date]* directive that Subcontractor perform additional and/or changed work, this notices that such work will impact the Subcontract Price and time to complete the Subcontract's Scope of Work. Subcontractor shall provide, within 10 days from the date of this Notice of Impact, full particulars concerning the amount related to the work and the precise number of days requested.

SIGNED THIS _____ DAY OF _____ 20____.

SUBCONTRACTOR'S NAME HERE

**EXHIBIT “D”
PARTIAL RELEASE OF CLAIMS**

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, for and in consideration of payment made by or on behalf of Bacallao Construction & Engineering Development, LLC (“Bacallao”), the receipt and sufficiency of which is hereby acknowledged and confessed, hereby releases, remises and quitclaims unto Bacallao and its respective parent companies, affiliated companies, and their agents, servants and employees, successors and assigns of and from any and all claims, liens, demands of every kind or character, causes of action, including any claims, for extra work, extended or additional job cost and overhead, lost profits, impact costs and the like, including claims and demands arising from any claimed delays, disruptions or changes to the work (all collectively referred to as “Claims”), which the undersigned has or could have as of _____ (insert date here) against Bacallao.

This Partial Release of Claims is given pursuant to the terms of the Agreement between Bacallao and _____ on the Project located at _____.

IN WITNESS WHEREOF, the undersigned has signed this PARTIAL RELEASE OF CLAIMS on this _____ day of _____, 20____.

INSERT LOWER TIER NAME HERE

By: _____
Its: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ as _____ of _____ on behalf of _____.

NOTARY PUBLIC

Print, Type or Stamp Name of Notary

**EXHIBIT “E”
FINAL RELEASE OF CLAIMS**

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, for and in consideration of the final payment made by or on behalf of Bacallao Construction & Engineering Development, LLC (“Bacallao”), the receipt and sufficiency of which is hereby acknowledged and confessed, hereby releases, remises and quitclaims unto Bacallao, including its respective parent companies, affiliated companies, and its agents, servants and employees, successors and assigns of and from any and all claims, liens, demands of every kind or character, causes of action, including any claims for extra work, extended or additional job cost and overhead, lost profits, impact costs and the like, including claims and demands arising from any claimed delays, disruptions or changes to the work, which the undersigned had, has or could have in any way related to the Project located at _____.

IN WITNESS WHEREOF, the undersigned has signed this FINAL RELEASE OF CLAIMS on this _____ day of _____, 20____.

INSERT LOWER TIER NAME HERE

By: _____
Its: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ as _____ of _____ on behalf of _____.

NOTARY PUBLIC

Print, Type or Stamp Name of Notary

EXHIBIT "F"
SUBCONTRACTOR'S FINAL PAYMENT AFFIDAVIT

State of Florida

County of _____

Before me, the undersigned authority, personally appeared (name of affiant), who, after being first duly sworn, deposes and says of his or her personal knowledge the following:

1. He or she is the (title of affiant), of (name of business), which does business in the State of Florida, hereinafter referred to as "SUBCONTRACTOR."

2. SUBCONTRACTOR, pursuant to a contract with Bacallao Construction & Engineering Development, LLC ("Bacallao"), has furnished or caused to be furnished labor and services for the construction of certain improvements to real property as more particularly set forth in the Subcontract dated _____ for work performed at _____ Project.

3. This affidavit is executed by SUBCONTRACTOR for the purposes of obtaining final payment from Bacallao in the amount of \$_____.

4. All work to be performed under the contract has been fully completed, and all claimants under the direct contract have been paid in full, except the following listed lienors:

<u>NAME OF LIENOR</u>	<u>AMOUNT DUE</u>	<u>BASIS FOR NONPAYMENT</u>
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Signed, sealed and delivered this ____ day of _____, 20____.

INSERT SUBCONTRACTOR NAME

By: _____

Title: _____

Sworn to and subscribed before me this ____ day of _____, 20____, by _____, who is personally known to me or produced _____ as identification, and did take an oath.

NOTARY PUBLIC, STATE OF FLORIDA

Print, Type or Stamp Name of Notary

EXHIBIT “G”

FDOT TERMS AND CONDITIONS

1. All terms and conditions of the contract between Contractor and FDOT (including, but not limited to, all applicable and pertinent FDOT Standard Specifications) are incorporated by reference as if fully set forth herein. The language set forth in Section I(b) shall apply to all documents and references that make up part of the Prime Contract, including FDOT Standard Specifications. Subcontractor, by entering into this Subcontract, acknowledges and agrees that it is familiar with all the Contract Documents and their requirements, including FDOT Standard Specifications. All provisions of the Prime Contract (including but not limited to provisions related to payment terms and timing, the making of claims, waiver of certain damages, etc.) are as binding on Subcontractor as they are on Contractor.

2. **Buy America Provision:** Source of Supply-Steel and Iron: The Subcontractor is required to use steel and iron produced in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. Ensure that all manufacturing processes for this material occur in the United States. As used in this Article, a manufacturing process is any process that modifies the chemical content, physical shape or size, or final finish of a product, beginning with the initial melding and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. When using steel and iron as a component of any manufactured product incorporated into the Project (e.g., concrete pipe, prestressed beams, corrugated steel pipe, etc.), these same provisions apply, except that the manufacturer may use minimal quantities of foreign steel and iron when the cost of such foreign materials does not exceed 0.1% of the total Prime Contract amount or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that the Subcontractor uses but does not incorporate into the finished work. The Subcontractor must provide to the Contractor a certification from the producer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the furnished product was manufactured in the United States in accordance with the requirements of this specification and the Buy America provisions of 23 CFR 635.410, as amended. Such certification shall also include (1) a statement that the product was produced entirely within the United States, or (2) a statement that the product was produced within the United States except for minimal quantities of foreign steel and iron valued at \$ (actual value). Furnish each such certification to the Contractor prior to incorporating the material into the Project. Prior to the use of foreign steel or iron on the Project, furnish invoices to document the cost of such material, and obtain the Contractor's written approval prior to incorporating the material into the Project. Contractor's acceptance of steel or iron furnished by Subcontractor on the Project without written notice from Subcontractor of the foreign nature of the material incorporated into the Project will not serve to waive Subcontractor's requirements to comply with the provisions of this provision or any other term of the Contract Documents.

3. **Cargo Preference Act – Use of United States Flag Vessels:** Pursuant to Title 46CFR Part 381, the Subcontractor agrees: (1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material or commodities pursuant to this Subcontract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels; (2) to furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy

of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 1 of this section to both the Contracting Officer (through the Contractor in the case of Subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development Maritime Administration, Washington, DC 20590; and (3) to insert the substance of the provisions of this clause in all subcontracts and/or supply contracts issued pursuant to this Subcontract.

4. The Subcontractor shall stipulate that any facility to be utilized in the performance of the Subcontract, unless such Contract is exempt under the Clean Air Act and Federal Water Pollution Control Act, both as amended, is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR, 15.20, unless and until the EPA eliminates the name of such facility from such listing. The Subcontractor shall comply with the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act, both as amended, relating to inspection, as well as other requirements specified in those sections and regulations and guidelines listed thereunder.

5. Representatives of the Contractor, Engineer, Owner, State and Federal Government shall have free entry at all times to inspect such parts of any plant as concern the production of material and the manufacture of products to be used in performance of this Subcontract at any location including at the manufacturer's plant. Subcontractor shall insert appropriate provisions into each subcontract and purchase order agreement it enters to allow such in-plant inspection of the manufacture or production of materials. Adequate facilities shall be furnished to allow inspection, however neither Contractor nor the Engineer will be obligated to inspect materials at the source of supply. The responsibility of incorporating satisfactory materials into the Work rests entirely with the Subcontractor, notwithstanding any prior inspections or tests.

6. If this Project is funded through the American Recovery and Reinvestment Act of 2009 (the "Act") which imposes employment reporting obligations on the Owner, Contractor and all subcontractors, then Subcontractor shall within five days of the execution of this Subcontract, submit to Contractor initial employment reporting information required by the Act. Thereafter, on or before the fifth calendar day of each month Subcontractor shall submit reporting information required by the Act for the preceding month. Subcontractor shall submit required information using any form or format as Contractor may reasonably require facilitating efficient reporting in compliance with the Act.

7. If this is a federally funded project, in whole or in part, then FHWA 1273 shall apply to this Subcontract, a copy of which is enclosed.

8. In accordance with applicable Federal Provisions, if hereby enclosed, Subcontractor and subordinate parties under this Subcontract shall submit to Contractor Certified Payrolls for all employees performing on the project on a weekly basis. Failure to timely provide complete and accurate certified payrolls may result in Contractor's submission of its Application for Payment to Owner without Subcontractor's portion and/or withholding amounts otherwise due to Subcontractor until it has submitted Certified Payrolls through the date of the relevant monthly progress estimate cut-off.

9. All Shop and Working Drawings submitted by Subcontractor to Contractor for submittal to the Engineer become the property of Contractor upon approval of the drawings by the Engineer.

10. The DBE/Affirmative Action Requirements of the Prime Contract in its entirety are specifically made a part of this Subcontract and are binding on Subcontractor.

11. Quality Control Program Requirements established in the Prime Contract, as applicable to Subcontractor's Work, shall be binding on Subcontractor. Subcontractor's attention is particularly directed to the submission requirements of the Prime Contract.

12. Title 29, Code of Federal Regulation, Part 1926, Occupational Safety and Health Regulation for Construction including any subsequent revision and up-date, in its entirety, is binding on Subcontractor. In addition to, and without diminishing any other requirement, Subcontractor shall take such actions as are necessary to ensure that all of its employees on the Project are issued and compelled to wear hard hats (marked with employee name and company logo), safety vests, safety boots, safety glasses and all other necessary or required equipment or clothing at all times.

13. **FDOT Digital Signature Requirement:** Effective with all contracts let after July 2016, all construction projects for the FDOT are required to be conducted in a paperless environment. As part of FDOT's push to a paperless environment, FDOT has determined that all submittals to the Department requiring a signature shall use a digital signature (the "Digital Signature Requirement"). There are several vendors you may obtain digital signatures from. You may obtain the information you need thru the following link: <http://www.fdot.gov/construction/eConstruction/DigitalSignatures.shtm>.

All (prime contractors, subcontractors, sub-subcontractors, and suppliers) signatories must acquire a digital signature certificate. Digital signature requirements include EEO documentation. Any payrolls received without a digital signature will receive a Notice of Noncompliance for Incorrect Statement of Compliance. The failure to comply with the Digital Signature Requirement shall result in the rejection of invoices, submittals, certified payrolls, etc. As a condition precedent to Contractor's obligation to make any payment otherwise due under this subcontract, Subcontractor must comply with the Digital Signature Requirement.

14. Additionally, on FDOT projects, the Owner issues a Contractor Past Performance Rating (the "CPPR") to the Contractor for each project. The CPPR impacts Contractor's pre-qualification and bidding capacity and its scores on design-build procurements. The Contractor's CPPR can be impacted by Subcontractor's actions and inactions and thus impacting Contractor's ability to obtain future work. Subcontractor acknowledges that the monetary damages to Contractor resulting from a reduction of its CPPR is difficult to determine. If Contractor's CPPR is reduced as a result of Subcontractor's actions or inactions, then Contractor result in a lowering of the Contractor's CPPR, then the following liquidated damage shall be backcharged to and paid by the Subcontractor: \$10,000.00 per point reduction to CPPR resulting from Subcontractor's actions or inactions. Subcontractor agrees that the above liquidated damages are a reasonable estimate of the damages that Contractor will incur as a result of the Owner's issuance of same and are not a penalty. Subcontractor acknowledges that the above liquidated damages do not cover delay damages or any other damages that may result from Subcontractor's actions or inactions that may be associated with the point(s) reduction in Contractor's CPPR. The failure of Contractor to insist, in any one or more instances, upon the assessment of damages set forth herein, or to exercise any rights herein, shall not be construed as a waiver

or relinquishment of such term, covenant, condition or right with respect to further performance.

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