



**HARRISON
WALKER &
HARPER, LP**

Subcontract No: 0000-00000.000-00

This AGREEMENT made as of the 18th day of January in the year 2005

BETWEEN the Contractor:

Harrison, Walker & Harper, LP

By: HWH-GP, LLC

General Partner

222 East Hickory Street

Paris, Texas 75460-2698

Phone: 903-785-1653

Fax: 903-784-1471

and the Subcontractor

For services in connection with the

SUBCONTRACT WORK

Specifically defined in Exhibit D and generally defined as;

For a total

LUMP SUM PRICE of

_____(\$_____) **As defined in Paragraph 9.1 Payment and Performance Bonds are required by this subcontract. As defined in Paragraph 13.7**

The Contractor has made a contract for construction dated

With the Owner:

For the following Project:

Which Contract is hereinafter referred to as the Prime Contract and which provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein has been made available to the Subcontractor.

The Architect for the Project is:

The Contractor and the Subcontractor agree as follows:

ARTICLE 1 THE SUBCONTRACT DOCUMENTS

1.1 Subcontract Documents: The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are fully a part of the Subcontract as if attached to this Agreement or enumerated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

1.2 General Conditions: Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

1.3 Changes: The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual or third-party beneficiary relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

1.4 Availability of Documents: The Subcontract Documents are available for examination by the Subcontractor at all reasonable times at the offices of the Contractor.

1.5 Familiarity with Conditions: The Subcontractor represents and agrees that it has carefully examined and understands this Subcontract and the other Subcontract Documents, that it has investigated the nature, locality, and site of the Work and the conditions and difficulties under which the Work is to be performed, and that it enters into this Subcontract on the basis of its own examination, investigation, and evaluation of all such matters and not in reliance upon any opinions or representations of the Contractor, or the Owner, or of any of their respective officers, agents, or employees.

1.6 Complete Scope: All of the Work shall be performed in accordance with all the contract drawings and specifications and any addenda and modifications thereto, according to the true intent and meaning of the Contract Documents, including all labor, materials, and engineering incident thereto, or as are usually performed or furnished in connection with such work, and regardless of whether the labor or materials hereby subcontracted are referred to under one or more headings in the specifications, it being the intention of the parties that all work usually performed by the trade(s) covered by this Subcontract and required by the Prime Contract shall be performed by the Subcontractor.

1.7 Clarifications: Should it appear that the Work hereby intended to be done or the material to be furnished, or any of the matters relating to said Work or materials, are not sufficiently detailed or explained on the drawings or in the specifications, the Subcontractor shall apply to the Contractor for such other and further drawings or explanations as may be necessary and shall conform to the same without extra compensation as part of this Subcontract.

ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

2.1 Obligations: The Subcontractor binds itself to the Contractor under this Agreement in the same manner as the Contractor is bound to the Owner and will so bind its Subcontractors. The terms and provisions of this Agreement regarding the work to be performed by the subcontractor shall be in addition to and not in substitution for any of the terms and provisions of the Prime Contract and other Subcontract Documents.

2.2 Responsibilities: The Subcontractor agrees to furnish its best skill and judgment in the performance of the Subcontractor's Work and to cooperate with the Contractor so that the Contractor may fulfill its obligations to the Owner. The Subcontractor shall furnish all of the labor, materials, equipment, and services, including but not limited to, competent workers, shop drawings, samples, tools, and scaffolding as are necessary and in sufficient quantity for the proper performance of the Subcontractor's Work. The Subcontractor shall provide the Contractor a list of its proposed subcontractors and suppliers, and be responsible for taking field dimensions, providing tests, obtaining required permits and affidavits, ordering of materials and all other actions as required to meet the progress Schedule. Should Subcontractors performance, as deemed by the Contractor, be insufficient to maintain the project schedule the

subcontractor shall provide additional resources or work extended hours to recover lost time and continued schedule compliance.

ARTICLE 3 CONTRACTOR RESPONSIBILITIES

3.1 SERVICES PROVIDED BY THE CONTRACTOR

3.1.1 Schedules: The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Paragraph 4.1 and Article 5. As soon as practicable after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Subcontractor shall be notified promptly of subsequent changes in the construction and submittal schedules and additional scheduling details.

3.1.2 Laydown Areas: The Contractor shall provide areas for storage of the Subcontractor's materials and equipment during the course of the Work. Subcontractor shall schedule deliveries so as not to exceed storage capacity on the site, shall store materials only in assigned areas and shall maintain all storage areas in orderly and clean condition.

3.1.3 Contractors Equipment: Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion on mutually satisfactory terms.

3.2 COMMUNICATIONS

3.2.1 Information Sharing: The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, which affects this Subcontract and which becomes available to the Contractor subsequent to execution of this Subcontract. Information that affects this Subcontract may include information relating to such matters as modifications to the Prime Contract or other subcontracts that affect the Work of the Subcontractor, notices from the Architect that the Work of the Subcontractor does not conform to the Contract Documents, responses to Requests for Information that affect the Work of the Subcontractor, and Construction Change Directives that affect the work of the Subcontractor.

3.2.2 Chain of Command: The Subcontractor is an independent contractor to the Contractor and as such the Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

3.2.3 Approved Payments: The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

3.2.4 Hazard Communications: If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

3.2.5 Lien Rights: The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

3.3 Liquidated Damages: The Subcontractor shall be responsible for liquidated damages to the extent provided for in the contract documents for delays caused by or contributed to by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, including all or a portion of any liquidated damages assessed by the Owner against the Contractor attributable in whole or in part to such Subcontractor-caused delays. In addition, the Subcontractor shall be responsible for actual damages to the Contractor caused or contributed to by delay caused by the Subcontractor or any person or entity for whom the Subcontractor is responsible. In the event liquidated damages or actual damages, or both, are caused by the Subcontractor and another entity, the Contractor shall have the right to reasonably apportion said damages between the parties, and such apportionment shall be binding on the Subcontractor.

3.4 Contractor Remedies: If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within three (3) working days after receipt of written notice from the Contractor to commence and

continue correction of such default or neglect with diligence and promptness, the Contractor may, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR RESPONSIBILITIES

4.1 EXECUTION AND PROGRESS OF THE WORK

4.1.1 Independent Contractor: Subcontractor shall be an independent contractor under this Subcontract and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder and any provisions in this Subcontract which may appear to give Contractor the right to direct Subcontractor as to details of doing the work herein covered or to exercise a measure of control over the work shall be deemed to mean that Subcontractor shall follow the desires of Contractor in the results of the work only.

4.1.2 Cooperation: The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors or Owner's own forces.

4.1.3 Submittals: The Subcontractor shall, within thirty calendar days following the execution of this Agreement, submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

4.1.4 Progress Reports: The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment which may be in the course of preparation, manufacture or transit.

4.1.5 Right of Rejection: The subcontractor agrees that the Contractor and the Architect will each have the authority to reject Work of the Subcontractor which does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

4.1.6 Payments by Subcontractor: The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish releases, lien waivers, and satisfactory evidence to verify compliance with the above requirements. If payment for material stored off-site and not delivered to the site is requested and made, title to such material shall pass to the Contractor and through to the Owner as may be agreed between the Contractor and the Owner, but the Subcontractor shall remain fully liable for all such material not delivered to the job site and shall be responsible for providing insurance for such stored material

4.1.7 Protection of Work: The Subcontractor shall take necessary precautions to protect properly the Work of the Contractor, of other Subcontractors, of separate Contractors to the Owner, or of the Owner's own forces from damage caused by operations under this Subcontract.

4.1.8 Coordination: The Subcontractor shall cooperate with the Contractor, other subcontractors and the Owner's own forces whose Work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors or the Owner's own forces.

4.1.9 Layout Responsibilities and Layout: The Contractor shall establish principal axis lines of the building and site, and benchmarks. The Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontractor's Work and for any loss or damage to the Contractor or others by reason of the Subcontractor's failure to lay out or perform Subcontractor's Work correctly. The Subcontractor shall exercise prudence so that the actual final conditions and details shall result in alignment of finish surfaces.

4.2 LAWS, PERMITS, FEES AND NOTICES

4.2.1 Permits and Fees: The Subcontractor shall give notices and comply with laws, ordinances, rules, regulations and orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

4.2.2 Labor Burdens: The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

4.3 SAFETY PRECAUTIONS AND PROCEDURES

4.3.1 Safety Required: The Subcontractor is required to perform the Subcontractor's Work in a safe and reasonable manner. The Subcontractor shall seek to prevent injury, loss or damage to persons or property by taking reasonable steps to protect; employees and other persons at the site; materials and equipment stored at the site or at off-site locations for use in performance of the Work; and all property and structures located at the site and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

4.3.2 Responsibility: Hazardous substances shall not be used at the site without prior written approval of the Contractor. Prevention of accidents at the site is the responsibility of the Contractor, Subcontractor, and all other subcontractors, persons and entities at the site. Establishment of a safety program by the contractor shall not relieve the Subcontractor or other parties of their safety responsibilities. The Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by the Contractor and Owner, including, but not limited to, requirements imposed by the Subcontract Documents. The Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project, and shall stop any part of the Subcontractor's Work, which the Contractor deems unsafe until corrective measures satisfactory to the Contractor shall have been taken. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility therefore. The Subcontractor shall notify the Contractor immediately following an accident and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by the Contractor. The Subcontractor shall indemnify the Contractor for fines, or penalties imposed on the Contractor as a result of safety violations, but only to the extent that such fines, or penalties are caused by the Subcontractor's failure to comply with applicable safety requirements.

4.3.3 Prompt Remedy: The Subcontractor is required to promptly remedy any loss or damage caused to the work, materials, equipment and property referred to in Clauses 4.3.1 if said loss or damage is not covered by insurance required under the Subcontract Documents.

4.3.4 Adherence to Rules and Regulations: Subcontractors shall familiarize themselves with and abide by the safety rules and regulations of the Contractor and all governmental agencies having jurisdiction over their work. This includes, but is not limited to, the Williams-Steigner Occupational Safety and Health Act of 1970 (OSHA), all rules, regulations, amendments and supplements thereto. Subcontractor is expected to enforce their own safety program for their scope of work. In no way does the Contractor release the Subcontractor of their responsibilities concerning safety issues. It shall be the responsibility of the Subcontractor to furnish and pay for any special tools and equipment necessary to comply with the safety standards herein stated.

4.3.5 Specific Attention: Without limiting the foregoing, subcontractor shall specifically be expected to:

1. Require all of his employees, visitors and suppliers to wear hard hats at all times on the jobsite while the site is so designated. Employees must wear appropriate personal protective equipment such as hearing protection, dust masks, safety glasses/goggles, and/or face shields when chipping concrete, driving nails, hitting steel on steel, etc. Workers and visitors will be properly dressed for construction when entering the jobsite.
2. Work off of ladders, platforms, lifts and scaffolding that conform to OSHA requirements.
3. Use appropriate fall protection at all times as required by the specific OSHA sections governing the work of the Subcontractor.
4. If it becomes necessary to have access to any opening or shaft or to remove any guardrail system, Subcontractor shall see that the openings or shafts are adequately protected while the work is in progress and that covers or handrails are replaced before leaving the area. If a Subcontractor does not follow this procedure the Contractor will assess a backcharge for its time and material in order to correct the problem without prior notice as required in subparagraph 3.4 above.
5. Require foremen and all employees to attend weekly safety meetings. Subcontractors may attend the Contractor's safety meetings in lieu of holding their own meetings.
6. Furnish the Contractor with a report on any accident involving any of the subcontractor's employees or equipment as well as a copy of all Insurance and Worker's Compensation Claims involving this project.
7. Furnish the project with a first aid kit. The Contractor's first aid kit will not be available to subcontractor's employees.

4.3.6 Removal of Personnel: If Subcontractor's foreman and/or his employee(s) do not comply with the above, the Contractor has the authority to remove them from the project and Subcontractor agrees to provide a new foreman and/or employee(s) who will abide by the safety rules.

4.3.7 Charges: If it is necessary for the Contractor to loan hard hats or other safety equipment to employees of subcontractor, their visitors or suppliers, in order to comply with the state and federal law, there shall be a charge against the subcontractor of \$10/day for each hard hat or piece of safety equipment loaned. This money shall be withheld from the monthly payments due the subcontractor. Safety equipment loaned that is not returned will be also charged at replacement cost.

4.3.8 Drug Free Work Place: Subcontractor shall be responsible for providing drug-free employees to the Construction jobsite. Subcontractor warrants and agrees to advise its employees that alcohol and drugs will not be tolerated on any of the Contractor jobsites. Subcontractor will furnish a post-accident drug test on any Subcontractor employee involved in a lost-time accident. The Contractor reserves the right to direct random drug testing of all Subcontractor employees on its worksite(s), if reasonable suspicion of substance abuse is being experienced on said sites. This test will be conducted as outlined in the Contractor's Substance Abuse Program Testing Procedure (copy available upon request). If the Subcontractors' employee refuses a drug test in either case, the Contractor will not allow him (or her) back on the project site.

4.3.9 Material Safety Data Sheets (MSDS): If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractors Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

4.3.10 Delays for Abatement: If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor.

4.4 CLEANING UP

4.4.1 Housekeeping: The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for unclean conditions caused by other contractors or subcontractors.

4.4.2 Cleanup Backcharges: If, in the sole opinion of the Contractor, the Subcontractor fails to keep the premises clean as provided in Subparagraph 4.4.1 of the Subcontract Documents, the Contractor may clean and remove waste materials or rubbish from the premises and surrounding area and charge the Subcontractor for the cost thereof. The provisions of Subparagraph 3.4 shall apply to such cleanup services and cost except that only 24-hour prior written notice shall be given to the Subcontractor.

4.4.3 Allocation of Costs: In the event a dispute arises among the Subcontractor and any others as to the responsibility for such cleanup, the Contractor may perform the cleanup and allocate the cost among the parties responsible for keeping the premises and surrounding area free from accumulation of waste materials or rubbish as described in Subparagraph 4.4.1. The allocation thus made by the Contractor shall be binding on the Subcontractor.

4.5 Warranty: The subcontractor warrants to the Owner, Architect and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless otherwise required or permitted by the Subcontract Documents, that the Work of this Subcontract will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Subcontract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract Documents.

4.6 INDEMNIFICATION

4.6.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, THE ARCHITECT AND ALL OF THEIR AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES,

LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO, ATTORNEY'S FEES ARISING OUT OF OR RELATING TO OR CONNECTED WITH THE PERFORMANCE, OR FAILURE IN PERFORMANCE, OF THE SUBCONTRACTOR'S WORK UNDER THIS AGREEMENT REGARDLESS OF WHETHER IT IS CAUSED IN PART BY THE NEGLIGENCE OF A PARTY INDEMNIFIED HEREUNDER. THIS INDEMNITY SHALL INCLUDE, BUT NOT BE LIMITED TO, ALL CLAIMS, DAMAGES AND LOSSES WHICH ARE (I) ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY OR DESTRUCTION OF TANGIBLE PERSONAL PROPERTY INCLUDING THE LOSS OF USE RESULTING THEREFROM; AND (II) CAUSED IN WHOLE OR IN PART BY WORK PERFORMED BY THE SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY HIM.

4.6.2 IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS PARAGRAPH 4.6 BY AN EMPLOYEE OF THE SUBCONTRACTOR, THE SUBCONTRACTOR'S SUB-SUBCONTRACTORS, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SUBPARAGRAPH 4.6.1 SHALL NOT BE LIMITED BY A LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE SUBCONTRACTOR OR THE SUBCONTRACTOR'S SUB-SUBCONTRACTORS UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

4.6.3 THE OBLIGATIONS OF THE SUBCONTRACTOR UNDER PARAGRAPHS 4.6.1 AND/OR 4.6.2 SHALL NOT EXTEND TO THE LIABILITY OF THE ARCHITECT, HIS AGENTS OR EMPLOYEES, ARISING OUT OF: (I) THE PREPARATION OR APPROVAL OF MAPS, DRAWINGS, OPINIONS, REPORTS, SURVEYS, CHANGE ORDERS, DESIGNS OR SPECIFICATIONS; OR (II) THE GIVING OR FAILURE TO GIVE DIRECTIONS OR INSTRUCTIONS BY THE ARCHITECT, HIS AGENTS OR EMPLOYEES, PROVIDING SUCH GIVING OR FAILURE TO GIVE IS THE PRIMARY CAUSE OF THE INJURY OR DAMAGE.

ARTICLE 5 CHANGES IN THE WORK

5.1 Prime Contract Changes: The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work, which would be inconsistent with the changes made by the Modifications to the Prime Contract. The Subcontractor shall review each Modification issued by the Owner, and advise the Contractor in writing within seven (7) days of receipt of the Modification, unless requested sooner by the Contractor, as to the impact, if any, on the Subcontractor's Work, including any adjustment in Subcontract Time or Subcontract Sum. Failure to advise the Contractor within the specified time period as to any impact shall constitute a waiver of the Subcontractor's right to assert a subsequent claim.

5.2 Subcontract Adjustments: The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents. The Subcontractor shall proceed with the Changed work as directed by the Contractor while such claim for adjustment is being determined as provided in the Subcontract Documents.

5.3 Direction to Proceed: In the event the Subcontractor is ordered in writing to perform extra work and no agreement as to an adjustment of the subcontract sum and/or subcontract time is reached prior to the subcontractors commencement of said extra work, subcontractor shall proceed with that work at the contractor's directions with the dispute as to cost or time to be resolved in accordance with the disputes resolution section of this contract. Receipt of payment from the Owner by the Contractor for extra work, damages for delay, and any other claims shall be a condition precedent to the right of the Subcontractor to receive payment from the Contractor for such costs, damages, or claims [unless the extra work was ordered solely for the benefit of the Contractor or the claim results solely from the fault of the Contractor].

5.4 Timely Notification: The Subcontractor shall make all claims to the Contractor for additional cost, extensions of time and damages for delays or other causes within 3 working days of the occurrence. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

5.5 Delays: Should the Subcontractor's performance of this Subcontract be delayed by any acts of the contractor, other subcontractors or the contractor's suppliers, or delayed by any acts or causes which would entitle the contractor to an extension of time under the contract documents, the Subcontractor shall receive an equitable extension of time for the performance of this Subcontract, but shall not be entitled to any increase in the subcontract price or to damages or additional compensation as a consequence of such delays, unless the owner is liable for and pays for such delay damages. The contractor will pay the subcontractor the amount allowed and paid by the owner for the subcontractor's delay. Within five days after the commencement of any delay caused by the contractor, the subcontractor shall notify the contractor in writing stating full details of the cause of the alleged delay. The subcontractor shall notify the contractor in writing of any delays for which the owner is responsible in sufficient time so its claim may be timely processed against the owner.

ARTICLE 6 MEDIATION AND ARBITRATION

6.1 MEDIATION

6.1.1 Mediation: Any claim arising out of or related to this Subcontract, except claims as otherwise provided in Article 5 and except those waived in this Subcontract, shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

6.1.2 Mediation Rules: The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Subcontract and the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

6.1.3 Fees, Venue: The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Lamar County, Texas unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

6.2 ARBITRATION

6.2.1 Arbitration: Any claim arising out of or related to this Subcontract, except those claims as otherwise provided in Article 5 and except those waived in this Subcontract, that have not been resolved through mediation in accordance with Paragraph 6.1 shall be subject to arbitration.

6.2.2 Arbitration Rules: Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Demand for arbitration shall be filed in writing with the other party to this Subcontract and with the American Arbitration Association, and a copy shall be filed with the Architect.

6.2.3 Timing: A demand for arbitration shall be made within the time limits specified in the conditions of the Prime Contract as applicable, and in other cases within a reasonable time after the claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations.

6.2.4 Limitation on Joinder: Limitation on Consolidation or Joinder. Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Subcontract shall include, by consolidation or joinder or in any other manner, any person or entity not a party to the Subcontract under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such a person or entity is required if complete relief is to be accorded in the arbitration, (3) the interest or responsibility of such person or entity in the matter is not insubstantial, and (4) such person or entity is not the Architect, the Architect's employee, the Architect's consultant, or an employee or agent of any of them. This agreement to arbitrate and any other written agreement to arbitrate with an additional

person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

6.2.5 Complete Filing: The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

6.2.6 Final Judgment: The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

7.1 Termination by Subcontractor: The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer past the delay provisions of paragraph 10,14. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages. However, receipt of payment by the Owner to the Contractor for termination of the Subcontract shall be a condition precedent to the right of the Subcontractor to payment for termination, unless the right of the Subcontractor to termination is due solely to the fault of the Contractor, but in any event, the Subcontractor shall not be entitled to unexpended overhead, unearned profit, or damages.

7.2 TERMINATION BY THE CONTRACTOR

7.2.1 Termination for Cause: If the Subcontractor persistently or repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within three calendar days after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, and without prejudice to any other remedy the Contractor may terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor. In addition to the foregoing, the Contractor may terminate the Subcontract for the same reasons and circumstances, and in accordance with the same procedures, as the Owner may terminate the Prime Contract provided in the General Conditions of the Prime Contract.

7.2.2 Termination for Convenience: If the Owner terminates the Contract for the Owner's convenience, the Contractor shall deliver written notice to the Subcontractor.

7.2.3 Required Action: Upon receipt of written notice of termination, the Subcontractor shall:

- .1 cease operations as directed by the Contractor in the notice;
- .2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

7.2.4 Compensation for Termination: In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed. However, receipt of payment by the Owner to the Contractor for such termination of the Subcontract shall be a condition precedent to the right of the Subcontractor to payment for termination.

7.2.5 Termination for Convenience: The Contractor may at any time, without notice to the surety or sureties, terminate the Subcontract for the convenience of the Contractor without articulating any reason and without any default under the Subcontract Documents. In the event of such a termination for convenience and notwithstanding any other provision of the Subcontract to the contrary, provided the Subcontractor is not in default, the Subcontractor shall receive, as its entire and sole compensation, its actual, necessary, and reasonable costs of performing the Work to date of termination, as determined by audit of the Subcontractor's records, plus a reasonable markup for overhead and profit, but in no event shall such amounts paid and payable hereunder exceed the total Subcontract Sum. The Subcontractor shall make its records available at reasonable times and places for the Contractor's audit. In the event

any termination of the Subcontractor for default under the Subcontract is later determined to have been improper, the termination shall be automatically converted to a termination for convenience, and the Subcontractor shall be limited in its recover strictly to the compensation provided for in this subparagraph.

7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

7.3.1 Equitable Adjustment: The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

7.3.2 Limitations on Adjustments: An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible;
- .2 that an equitable adjustment is made or denied under another provision of this Subcontract.

7.4 ASSIGNMENT OF THE SUBCONTRACT

7.4.1 Assignment to Owner: In the event of termination of the Prime Contract by the Owner, the Contractor may assign this Subcontract to the Owner, with the Owner's agreement, subject to the provisions of the Prime Contract and to the prior rights of the surety, if any, obligated under bonds relating to the Prime Contract. In such event, the Owner shall assume the Contractor's rights and obligations under the Subcontract Documents. If the Work of the Prime Contract has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted.

7.4.2 Assignment by Subcontractor: The Subcontractor shall not assign the Work of this Subcontract, or subcontract the whole of this Subcontract, or assign or subcontract any portions thereof or any right to payment or other Subcontract right without the written consent of the Contractor. In the event the Subcontractor seeks to further subcontract portions of the Work of this Subcontract, the Subcontractor shall furnish written notification to the Contractor in advance of such subcontracting.

ARTICLE 8

DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

8.1 Start Date: The Subcontractor's date of commencement is the date from which the Contract Time of Paragraph 8.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.

8.2 Subcontractor Notification: Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

8.3 Substantial Completion: The Work of this Subcontract shall be substantially completed not later than _____, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.

8.4 Time is of the Essence: Time is of the essence for both parties. They mutually agree to see to the performance of their respective obligations so that the entire Project may be completed in accordance with the Subcontract Documents and particularly the Progress Schedule.

8.5 Time Extensions: No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Paragraph 5.3

ARTICLE 9

SUBCONTRACT SUM

9.1 Lump Sum: The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of _____\$, subject to additions and deductions as provided in the Subcontract Documents.

9.2 Alternates: The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:

9.3 Unit Prices: if any, are as follows:

ARTICLE 10 PROGRESS PAYMENTS

10.1 Schedule of Values: Each application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

10.2 Applications: The Subcontractor's applications for payment (Forms HWH 702 and HWH 703) shall be itemized consistent with the approved Schedule of Values and supported by substantiating data as required by the Subcontract Documents. The Subcontractor's application shall be notarized and may include properly authorized Subcontract Change Orders. The Contractor shall incorporate the approved amount of the Subcontractor's progress payment application into the Contractor's payment application to the Owner for the same period and submit it to the Owner in a timely fashion. The Contractor shall immediately notify the Subcontractor of any changes in the amount requested on behalf of the Subcontractor.

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

10.4 Release of Liens: All requests for payment shall be accompanied by an executed and notarized Partial Release of Lien and General Release (Form 502). The amount of the lien release shall be the net amount of the pay request. No payments will be made without an executed lien release indicating that the funds to be paid will be used to pay bills related to this project.

10.5 Period: The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

10.6 Timing: Provided an application for payment is received by the Contractor not later than the 20th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Architect. The Contractor shall pay the Subcontractor each progress payment within ten working days after the Contractor receives payment from the Owner.

10.7 Result of Delay: If an application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

10.8 Percentage of Completion: Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of line item of the approved Schedule of values as of the end of the period covered by the application for payment.

10.9 Retainage: Ten (10%) retention will be withheld on all monthly progress payments until final completion and acceptance by Owner and Contractor.

10.11 Sub-tier Subcontractors: If requested in writing by contractor, subcontractor will provide to contractor a list of all lower-tier subcontractors and major suppliers. If contractor feels that it is in the best interest of the project and owner, contractor may require joint payments be made to subcontractor and his lower-tier subcontractor and/or suppliers. In the event joint payments are made, partial release of lien and general release by subcontractor's supplier (Form HWH 502) fully executed and notarized must accompany request for final payment. Release of lien and general release by subcontractor's supplier (Form HWH 501) must accompany request for final payment.

10.12 Notification of Changes: Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

10.13 Payment from Owner: Payments to Subcontractor, as described in the preceding paragraphs, will be made out of funds received by Contractor from the Owner. However, the Contractor shall only be obligated or required to advance or make payments to the Subcontractor if the funds have been advanced or paid to Contractor by the Owner or its representative.

10.14. Payment Delays: If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate adjustment, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

10.15 Substantial Completion: When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon written application by the Subcontractor, make prompt application for payment for such Work. After the Architect issues the Certificate for Payment covering such substantially completed work, and within ten (10) working days after the receipt of payment from the Owner, the Contractor shall make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's work withheld in accordance with the Certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment may also be reduced by an amount that in the opinion of the Contractor is necessary to protect the Contractor from loss resulting from causes enumerated in the Prime Contract General Conditions Article 9, whether or not the Owner has made a deduction from payment to the Contractor.

10.16 Payment at Substantial Completion: The amount to be paid hereunder shall be such that, when added to previous payments to the Subcontractor, will reduce the retainage on the work substantially completed by the Subcontractor to the same percentage retained on the Contractor's Work covered by the Certificate, but in no event less than five percent (5%) of the Subcontract amount as adjusted by change orders. Payment to the Contractor by the Owner shall be a condition precedent to the right of the Subcontractor to receive payment from the Contractor. Payment to the Subcontractor by the Contractor shall not constitute acceptance of the work.

10.17 Acceptance of Payment: Acceptance of periodic progress payments by the Subcontractor shall constitute a waiver of any and all claims by the Subcontractor against the Contractor, the Owner, the Architect, the Surety, the premises, or any payment bond unless such claims are expressly reserved on the face of the application for payment, or on the face of the affidavit and release, or on the attachment thereto. The Subcontractor shall furnish a periodic affidavit and release of claims form and a periodic lien waiver form acceptable to the Contractor and Owner.

ARTICLE 12 FINAL PAYMENT

12.1 Application: Upon acceptance of the Subcontractor's Work by the Owner and the Contractor and receipt from the Subcontractor of evidence of fulfillment of the Subcontractor's obligations in accordance with the Subcontract Documents and the provisions of this Subcontract, the Contractor shall incorporate the Subcontractor's application for final payment into the Contractor's next application for payment to the Owner without delay, or notify the Subcontractor if there is a delay and the reasons therefore. Payment to the Contractor by the Owner shall be a condition precedent to the right of the Subcontractor for final payment from the Contractor, unless failure of the Contractor to receive payment is solely the fault of the Contractor. Final payment shall be made ten (10) days after receipt of same by the Contractor from the Owner.

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

- .1 full, final and complete Lien Release certifying that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontractor's Work for which the Owner or its property or the Contractor or the Contractor's surety might in any way be liable, have been paid or otherwise satisfied;
- .2 consent of surety to final payment, if required;
- .3 satisfaction of required closeout procedures;

- .4 certification that insurance required by the Subcontract Documents to remain in effect beyond final payment pursuant to Clauses 9.2.3.1 and 9.2.6 is in effect and will not be cancelled or allowed to expire without at least thirty (30) days' written notice to the Contractor unless a longer period is stipulated in this Agreement;
- .5 other data, if required by the Contractor or Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be designated by the Contractor or Owner;
- .6 written warranties, equipment manuals, startup and testing required in Paragraph 3.28; and
- .7 as-built drawings if required by the Subcontract Documents.

12.3 Time of Payment: Receipt of final payment by the Contractor from the Owner for the Subcontractor's Work is a condition precedent to payment by the Contractor to the Subcontractor. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Contractor for payment of Subcontractor's Work. Final payment of the balance due of the Contract price shall be made to the Subcontractor:

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

12.4 Interest: Payments due and unpaid under this Subcontract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

12.5 Acceptance of Final Payment: Acceptance of final payment by the Subcontractor shall constitute a waiver of any and all claims by the Subcontractor against the Contractor, the Owner, or the Architect.

**ARTICLE 13
INSURANCE AND BONDS**

13.1 Subcontractor Insurance: Before commencing the Subcontractor's Work, and as a condition of payment, the Subcontractor shall purchase and maintain insurance that will protect it from the claims arising out of its operations under this Agreement, whether the operations are by the Subcontractor, or any of its consultants or subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Any sub-subcontractor shall meet the same indemnity and insurance requirements as the Subcontractor.

13.2 Limits: The commercial general liability, automobile liability, and umbrella liability policies of the Subcontractor shall be written on an "Occurrence" basis. **Harrison, Walker & Harper, LP and the Owner and their agents and employees shall be named as additional insured on all General Liability, Automobile Liability, and Umbrella Liability policies with coverage on a primary and non-contributory basis for the additional insured. The Commercial General Liability policy shall contain Broad Form Property Damage, Contractual Liability, Products/Completed Operations, Independent Contractors and XCU (for all subcontractors involved in utility work, excavation, mechanical, electrical and/or plumbing) coverage. All Worker's Compensation, General Liability, Automobile Liability and Umbrella Liability policies shall contain a waiver of subrogation endorsement in favor of Harrison, Walker & Harper, LP and the Owner.** Additional Insured endorsement must be the CG 2010 (11-85) or the CG 2026 (11-85) or another endorsement that provides the same coverage. Subcontractor shall provide the Contractor current certificates of insurance coverage for each ensuing project for which this Agreement shall be applicable. Insurance Certificates shall include a list and name of any exclusionary endorsements

Statutory

| | |
|-----------------------------------|--|
| Workers' Compensation | \$500,000 Each Accident |
| Employer's Liability | \$500,000 Disease – Policy Limit |
| | \$500,000 Disease – Each Employee |
| Commercial General Liability | \$2,000,000 General Aggregate |
| & Occurrence Basis & | \$2,000,000 Products-Comp/OP Aggregate |
| Include Aggregate Limit Per Proj. | \$1,000,000 Personal & Adv Injury |
| | \$1,000,000 Each Occurrence |
| | \$ 100,000 Fire Damage Limit |
| | \$ 5,000 Medical Expense |
| Commercial Automobile Liability | \$1,000,000 Combined Single Limit |

Including all owned vehicles
and hired & Non-Owned Liability

| | |
|--------------------|--|
| Umbrella Liability | \$1,000,000 Each Occurrence \$1,000,000 Aggregate |
|--------------------|--|

13.3 Cancellation, Renewal and Modification: The Subcontractor shall maintain in effect all insurance coverages required under this Agreement at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor. The policies shall contain a provision that coverage will not be cancelled, materially changed or not renewed until at least thirty (30) days' prior written notice has been given to the Contractor. Certificates of insurance showing required coverage to be in force pursuant to Subparagraph 9.2.2 shall be filed with the Contractor prior to commencement of the Subcontractor's Work. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, the Contractor may purchase such coverage as desired for the Contractor's benefit and charge the expense to the Subcontractor, or terminate this Agreement.

13.4 Continuation of Coverage: The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least Two years after either ninety (90) days following Substantial Completion of the Work or final payment to the Contractor, whichever is earlier. The Subcontractor shall furnish the Contractor evidence of such insurance at final payment and one year from final payment.

13.5 BUILDER'S RISK INSURANCE:

13.5.1 Proof of Insurance: Upon written request of the Subcontractor, the Contractor shall provide the Subcontractor with a copy of the Builder's Risk policy of insurance or any other property or equipment insurance in force for the Project and procured by the Owner or Contractor.

13.5.2 Contractor's Liability: The Contractor shall not be liable or responsible for loss or damage to the equipment, tools, facilities, or other personal property owned, rented or used by Subcontractor or anyone employed by the Subcontractor, in the performance of the work, except to the extent of any proceeds received by Contractor for the benefit of Subcontractor under a policy of builders risk insurance. Subcontractor shall be liable and responsible for the correction or restoration of any such loss or damage to the work or to the work of the Contractor or any other Subcontractor resulting from the operations of the Subcontractor or its employees, subcontractors or agents. The subcontractor is responsible for the deductible under the builder's risk (if any) or a pro-rata share of the deductible based on the proportion of their claim to the total claim made.

13.5.3 Notification: If the Owner or Contractor has not purchased Builder's Risk Insurance satisfactory to the Subcontractor, the Subcontractor may procure such insurance as will protect the interests of the Subcontractor, its subcontractors and their subcontractors in the Subcontractor's Work.

13.5.4 Subcontractor Purchased Insurance If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Subcontract Documents, the Subcontractor shall procure and maintain at the Subcontractor's own expense property and equipment insurance for the Subcontractor's Work including portions of the Subcontractor's Work stored off the site or in transit, when such portions of the Subcontractor's Work are to be included in an application for payment under Article 8.

13.6 Waiver of Subrogation: The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

13.7 Payment and Performance Bonds: If so stated on the cover of this agreement subcontractor shall, before commencing the subcontractor's work and precedent to payment, provide Payment and Performance Bonds on the forms supplied with this subcontract as Exhibit G. The penal sum of each bond shall be for the full Subcontract Sum as defined in Article 9 of this agreement and shall list Harrison, Walker & Harper, LP as the Oblige. The Surety underwriting this agreement shall be licensed to do business in the state in which the project is situated, be listed as a certified company on the most recent US Department of the Treasury's Listing of Approved Sureties (Circular 570) and have an A.M Best rating of at least B++ IX. The bonds shall be executed by The Subcontractor and the Surety's Attorney in Fact with a current Power of Attorney attached indicating that the Attorney in Fact is authorized to execute bonds of the type and value provided.

ARTICLE 14
TEMPORARY FACILITIES AND WORKING CONDITIONS

14.1 Contractor Provided Facilities: The Contractor shall furnish and make available to the Subcontractor the following temporary facilities, equipment and services; these shall be furnished at no cost to the Subcontractor unless otherwise indicated below:

1. Sanitary Facilities
2. Job site phone – for Local calls only.

14.2 Specific working conditions:

Refer to Exhibit C – Notes of Clarification and Exhibit D – Specific Inclusions and Exclusions.

14.3 Field Verification: The subcontractor is responsible for verifying the dimensions and elevations at the site by field measurement prior to ordering materials or in any way commencing to perform Work. The Subcontractor shall be solely responsible for monitoring the progress of the project and coordinating and performing all field measurements in a timely manner sufficient to support the project schedule.

14.4 Notification of Deficiencies: The Subcontractor shall notify the Contractor in writing of any deficiencies in any work at the site prior to the commencement of the Subcontract Work. Any unreported deficiencies shall be deemed accepted by the Subcontractor as of the commencement of the Subcontractor's Work in such areas and become the responsibility of the Subcontractor.

ARTICLE 15
MISCELLANEOUS PROVISIONS

15.1 Governing Law: This Agreement shall be governed by the laws of the State of Texas.

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

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

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

15.5 Other Provisions and Documents: Other provisions and documents applicable to the Subcontractor's Work are set forth in Exhibit(s) as identified in 16.1.4.

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

15.7 Wage Rates: Subcontractor shall pay to all laborers, workmen, and mechanics employed in execution of this Contract not less than rates set forth by law and as noted in the following Wage Rate Scale, for each craft or type of workman or mechanic needed to execute Contract.

15.8 Governing Law: This Agreement shall be governed by the Laws of the State of Texas.

ARTICLE 16
ENUMERATION OF SUBCONTRACT DOCUMENTS

16.1 Subcontract Documents: except for Modifications issued after execution of this Subcontract, are enumerated as follows:

- .1 This executed Construction Agreement Between Contractor and Subcontractor;
- .2 The Prime Contract, consisting of the Agreement between Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement;

.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification _____ Date _____

16.1.4 Other Documents: if any, attached or included by reference, forming part of the Subcontract Document are as follows:

- | | |
|---|---|
| <u>Exhibit A – General Conditions</u> | <u>Exhibit E – Pay Request and Lien Forms</u> |
| <u>Exhibit B – List of Subcontract Documents</u> | <u>Exhibit F – Subcontract Daily Report Forms</u> |
| <u>Exhibit C – Notes of Clarification</u> | <u>Exhibit H – HWH Substance Abuse Control</u> |
| <u>Exhibit D – Specific Inclusions & Exclusions</u> | <u>Policy</u> |

16.1.5 Entire Agreement: The Subcontract and the documents designated herein constitute the entire agreement between the Contractor and the Subcontractor and cannot be amended, modified, or changed except in writing, executed by the Contractor and the Subcontractor.

This Agreement entered into as of the day and year first written above.

SUBCONTRACTOR : _____ **CONTRACTOR: Harrison Walker & Harper, L.P.**

BY: _____ BY: _____

Printed Name BY: _____

DATE: _____ DATE: _____

TITLE: _____ TITLE : _____