



LC BVD

CONTRACTOR: **CTC Contractors, LLC.**
ADDRESS: **3200 North Freeway, Houston, Texas 77009**
Phone No. (713) 936-1970
Facsimile No. (713) 936-1969

DATE: 10/19/22

SUBCONTRACTOR: National TAB
ADDRESS: 1329 E. Kemper Rd. Ste. 4210 Cincinnati Ohio 45246
OWNER: Fitness International, LLC
PLANS & SPECIFICATIONS ENTITLED: LA Fitness Décor Remodel

SUBCONTRACTOR'S PHONE NO.: 513-860-2050
VENDOR NO: _____
ARCHITECT: Heights Venture Architects

ADDENDUMS NO.: _____ ALTERNATES NO.: _____ PLANS DATED: 01/17/2022

JOB NAME: LA Fitness Missouri City Sienna Pkwy. JOB ADDRESS: 9026 Sienna Crossing Dr. Missouri City, Texas 77459

The Contractor and Subcontractor agree as set forth below.

ARTICLE 1
THE CONTRACT DOCUMENTS

1.1 The term "Contract Documents" include this Subcontract, the entire Agreement between the Owner and Contractor dated 03/16/2022 including any general, supplementary and other conditions, any addenda and modification (the "Prime "Contract"); the Exhibits listed below; and all addenda issued prior to and all modifications issued after execution of the Subcontract, including Change Orders. It is intended that the Contract Documents and the Subcontract supplement each other, and in the event of any inconsistency between the terms and conditions of the Contract Documents and the Subcontract, the more restrictive provisions as applied to the Subcontractor shall prevail and govern.

- Exhibit A: Subcontractor's Insurance Requirements**
- Exhibit B: Plans and Specifications**
- Exhibit C: Project Schedule**
- Exhibit D: Subcontractor's Billing Forms & Instructions**
- Exhibit E: Subcontractor Change Order**
- Exhibit F: Subcontractor Back Charge Notice**
- Exhibit G: Lien Waivers and Release for Payment**

1.2 The agreement between the Owner and Contractor ("Prime Contract") is incorporated herein by reference. Subcontractor assumes towards Contractor all obligations and responsibilities which the Contractor assumes towards Owner under the Prime Contract, in so far as applicable to this Subcontract.

1.3 Subcontractor acknowledges that it has been provided the Contract Documents or has been given a reasonable opportunity to review the Contract Documents.

ARTICLE 2
THE WORK

2.1 The Subcontract Work is part of the total Work, and Subcontractor acknowledges that the Contract Documents as a whole are applicable to the Subcontract Work; Subcontractor agrees to furnish all design, labor, supervision, materials, fixtures, equipment, tools, supplies, other property and services necessary to timely and fully perform and complete in a neat, first class, good and workmanlike manner and in strict compliance with the Contract Documents, as applicable to this Agreement, all of the Work and services ("the Work" or the "Subcontract Work") described below:

Will furnish labor and equipment for the following: Turnkey test and balance of HVAC system. Work will commence 10/20/2022 and will be completed by 11/10/2022.

Subcontractor is responsible to clean-up debris generated from the Subcontract Work. Clean-up will take place on a daily basis and will be to the satisfaction of the Contractor's onsite supervisor. Notwithstanding any other provisions in this Agreement, any failure to adequately clean and fulfill this obligation is subject to Contractor's supplementation and back charge by Contractor upon 24 hours written notice to remedy and cure such default.

Subcontractor will secure all field measurements and produce all work required by or implied by those documents in accordance with the Contract Documents. Subsequent drawings and specifications will become a part of the Contract Documents. Subcontractor has taken all steps necessary to ascertain the nature and location of the Work.

- 2.2 The term "Project" as used herein shall mean and refer to the Project as defined in the Prime Contract.

ARTICLE 3
THE SUBCONTRACT SUM

- 3.1 Contractor agrees to pay Subcontractor, upon full performance of the Subcontract Work, fulfillment of the Subcontract to the satisfaction of Contractor and in accordance with the terms and conditions contained herein the sum of Seven Thousand Dollars and No/100 (\$7,000.00) (the "Subcontract Sum") subject to additions, deductions and conditions as stated herein, which includes the following alternates.

In the event Contractor elects not to have Subcontractor perform one or more of the alternates, the agreed value as set forth in the alternate above shall be deducted from the contract value. Subcontractor shall not be entitled to lost profits on work omitted from the scope including these alternate items.

- 3.2 Contractor shall pay Subcontractor monthly progress payments in accordance with this Agreement. Applications for monthly progress payments shall be in writing, which when submitted shall state the estimated percentage of work that has been satisfactorily completed and shall be submitted to the Contractor on or before the 25th day of each month. Subcontractor must include the following with its Application for Payment as a condition of payment to payment:

- a. Conditional Waiver and Release on Progress Payment for the pay period.
- b. Affidavit of Bills Paid.
- c. Unconditional Waiver and Release on Progress Payment for the amount paid for the previous pay period; and
- d. Any other proofs of payment of subcontractors and suppliers required by Contractor.

- 3.3 Upon receipt of a proper Application for Payment, Contractor shall pay the Subcontractor monthly progress payments within seven (7) days of Contractor's receipt of payment by the Owner for Subcontractor's work, subject to other provisions of this Agreement. Subcontractor has submitted, concurrently with the execution hereof, the schedules of values of the various portions of the Work which shall be used only as a basis for the Applications for Payment submitted by Subcontractor.

- 3.4 Contractor shall pay to Subcontractor monthly or other periodic progress payments as specified by the Contract Documents to the extent the Subcontract Work is approved by Contractor and/or Owner and/or Architect and paid by Owner to Contractor, subject to a retention by Contractor in the amount of ten percent (10%) of the amount of each progress payment or in such percentage as the Owner withholds from Contractor, whichever is greater, until Owner pays Contractor final payment, subject however, to all other provisions of this Agreement. Subcontractor and Contractor have addressed in their negotiations the contingency that the Owner may not pay Contractor for work performed by Subcontractor, and Subcontractor has agreed and does hereby agree to accept the risk of nonpayment by the Owner, for whatever reason, **it being specifically understood that**

payment by the Owner to Contractor for Subcontractor's work, whether for progress payments or final payment, is a condition precedent to Contractor's obligation to pay Subcontractor. Subcontractor's price for the work includes the assumption of this risk.

In the event Owner fails to pay Contractor for Work performed by Subcontractor in accordance with the Subcontract, or any claims properly asserted by Subcontractor in accordance with the Subcontract and passed through to Owner by Contractor, and any payment provision in this Agreement that provides that Contractor's receipt of payment from Owner is a condition precedent to the obligation of Contractor to pay Subcontractor, including the one set forth in this Article 3.3, is determined to be unenforceable by a final, non-appealable adjudication by a Court or arbitrator (such date herein referred to as the "CPC Adjudication Date"), Contractor shall pay Subcontractor for its Work (or claim) that was not paid for by Owner within a reasonable amount of time. In such event, the Parties agree that a reasonable amount of time shall be 60 days following the date of final adjudication of Contractor's claims against Owner or the date any settlement between Owner and Contractor becomes effective. In the event the date of final adjudication of Contractor's claims against Owner or the date any settlement between Owner and Contractor becomes effective precedes the CPC Adjudication Date, the Parties agree that a reasonable time for payment shall be 60 days after the CPC Adjudication Date. In the event Contractor does not pursue claims against the Owner for non-payment of Work performed by Subcontractor in accordance with the Subcontract, or for claims properly asserted by Subcontractor in accordance with the Subcontract, a reasonable time for payment shall be 60 days following the CPC Adjudication Date. Notwithstanding the above, nothing herein shall require the Contractor to pursue any claims against Owner.

As an alternative to, or in conjunction with, Contractor pursuing a claim against Owner for payments due to Subcontractor for Work performed by Subcontractor in accordance with the Subcontract, or any claims properly asserted by Subcontractor in accordance with the Contract Documents, Contractor may assign its contractual rights against Owner for such funds as Subcontractor may be entitled to which remain unpaid due to failure of payment by Owner to Contractor for whatever reason, and such assignment shall operate as full accord and satisfaction of any remaining debt to Subcontractor by Contractor for Work performed by Subcontractor in accordance with the Subcontract, or any claims properly asserted by Subcontractor in accordance with the Contract Documents. Subcontractor hereby agrees to accept such assignment in lieu of any other form of payment for Work performed by Subcontractor in accordance with the Subcontract, or any claims properly asserted by Subcontractor in accordance with the Contract Documents, and to release and discharge any and all claims for those funds against Contractor upon receipt of such assignment.

3.5 All sums tentatively earned by Subcontractor by the partial or complete performance of the Subcontract Work and any balance of unearned Subcontract funds shall constitute a trust fund for the purposes of (a) first, full completion of the Subcontract Work, (b) second, payment of any back charges or claims due Contractor from Subcontractor; (c) third, payment to sub-subcontractors, laborers and suppliers of Subcontractor who have valid and enforceable mechanic's lien claims or other lien claims against the Project as a result of furnishing labor or material for improvement thereof, or bond claims (if the project is bonded), and such tentative earnings shall not be due and payable to Subcontractor, or anyone else claiming in Subcontractor's place and stead, excepting however a trustee in bankruptcy that has given notice to Contractor that it will perform the Subcontract Work in accordance with the Subcontract provisions and cure any existing defaults, until and unless such Subcontract Work is fully and satisfactorily completed and such claimants are fully paid and satisfied. Subcontractor agrees to promptly pay all sub-subcontractors, suppliers to sub-subcontractors, laborers and suppliers of Subcontractor and to provide Contractor with each application for periodic progress payment and final payment, and as a condition of payment, a lien waiver, Bills Paid Affidavit or other proof of such payment for work performed as Contractor may reasonably require. Contractor may demand additional written evidence of Subcontractor's ability to perform and make payments to such claimants at any time. Payments may be withheld in whole or in part by Contractor on account of:

- (i) Defective work not remedied.
- (ii) Third party claims filed or reasonable evidence indicating probable filing of such claims.

- (iii) Failure of the Subcontractor to make payments properly to its suppliers, materialmen, or subcontractors or for labor, materials, or equipment.
- (iv) Damage to the Owner, Contractor, or another Contractor.
- (v) Any breach by Subcontractor of any provision or obligation of the Subcontract or payment is allowed to be withheld under Article 10.
- (vi) A reasonable doubt that the Subcontract Work can be completed for the unpaid balance of the Subcontract Sum or within the Subcontract Time.
- (vii) A reasonable doubt that Subcontractor, for any reason, is able to complete the Subcontract Work or any warranty work; or
- (viii) Failure of Subcontractor to procure and maintain the insurance required by Article 8.

If the foregoing causes are remedied or adjusted to Contractor's satisfaction, the withheld payment shall be made promptly. In the event any of the above grounds exist and are not remedied to the Contractor's satisfaction, Contractor shall be entitled to take such action as it deems necessary to protect against such loss which may include, without limitation, requiring security satisfactory to Contractor for Subcontractor's performance, repairing or replacing defective work, issuing payments due to Subcontractor directly to or jointly payable to any supplier, materialman or subcontractor of Subcontractor or any other party furnishing labor, materials or equipment to Subcontractor and in the event Contractor expends any sums or occurs any expenses in connection with remedial action relating to the above grounds, offsetting the Entire Costs incurred by Contractor against future payments due to Subcontractor under the terms hereof.

ARTICLE 4
SUBCONTRACT TIME: DELAYS AND EXTENSIONS

- 4.1 The Work to be performed under this Agreement shall be commenced within twenty-four (24) hours following Notice to Proceed from Contractor. For purposes hereof the Notice to Proceed from Contractor to Subcontractor may be a written or verbal Notice. The Subcontract Work shall be completed in accordance with Contractor's schedule, as may be amended from time to time, or by 07/29/2022 or as otherwise directed by the Contractor (the "Subcontract Time"). The Contractor's schedule is attached hereto as Exhibit "B".
- 4.2 Time is of the essence in this Subcontract, and Subcontractor shall timely order materials, equipment, services, fabrication, and similar items, and prosecute and complete this Subcontract Work as directed by the Contractor. Subcontractor shall perform the Subcontract Work in a prompt, timely and diligent manner and in consonance with all the Project work, whenever such Subcontract Work or any part thereof becomes available. Subcontractor shall not interfere with, impede, delay or hinder the work of others including, without limitation, the work of Contractor, other subcontractors to Contractor or other contractors to Owner, and shall attend meetings and supply schedules, delivery data, work data and other information as required by Contractor, Owner and/or Architect necessary to plan, coordinate and depict the progress of the Project. Subcontractor shall **INDEMNIFY, DEFEND and HOLD HARMLESS** Contractor and Owner from any liability for losses, costs, expenses and damages which Contractor and/or Owner and/or Architect may suffer or incur by reason of delay in performance, hindrance or interference where such delay, hindrance or interference is attributable to or caused by the failure of Subcontractor to pursue the Subcontract work as directed by Contractor. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Subcontract, this indemnify, defend and hold harmless provision shall not apply to the extent that it requires Subcontractor to indemnify, defend or hold harmless Contractor or Owner against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of Contractor or Owner, its agent or employee, or any third party under the control or supervision of Contractor or Owner, other than Subcontractor or its agent, employee or subcontractor of any tier. The foregoing is in addition to other remedies available to Contractor under this Agreement or by operation of law. Should Subcontractor be delayed, hindered, interfered with or impeded by any act or omission of Contractor, Owner or Architect, or by any cause beyond Subcontractor's control and if a cause of the delay, hindrance, interference or impediment is not due to any act or omission of Subcontractor, Subcontractor shall

be entitled to request a reasonable extension of time for completion of the Subcontract Work. However, no such request for an extension of time shall be granted unless:

- (i) written notice has been delivered to Contractor by Subcontractor within forty-eight (48) hours of the commencement of any event claimed to be a cause of delay, which notice must state the nature thereof and the time extension requested; and
- (ii) such extension of time requested is approved in writing by Owner and/or Architect. The Subcontractor shall receive no payment of any kind for compensation or for damages, or otherwise, for delays, interferences, hindrances or impediments to the Work even though Subcontractor's extension of time request has been granted, unless Owner is obligated to pay Contractor compensation or damages because of such delay, interference or hindrance and then, as and when the Owner pays such compensation or damages to Contractor, Subcontractor shall receive the share of compensation or damages which can be agreed to or proven to have been directly incurred by Subcontractor as a result of such delay, interference, hindrance or impediment. It is specifically understood that payment by the Owner for such compensation or damages to Contractor is an express condition precedent to Contractor's obligation to pay Subcontractor as stated in the preceding sentence.

4.3 Subcontractor shall be liable to Contractor for all damages incurred by Contractor as a result of delays, hindrances or interferences by Subcontractor and Subcontractors' failure to timely and properly perform the Subcontract Work in strict compliance with the Project Time. Such damages shall include, but are not limited to, liquidated damages assessed by Owner against Contractor, extended job and home office overhead of Contractor, interest on delayed payments as a result of such delays and lost profits.

ARTICLE 5
TAXES, PERMITS AND FEES

5.1 The Subcontract Sum includes all local, state and Federal taxes, license fees and permit charges based upon or measured by the work to be done hereunder, labor performed, materials furnished and services rendered, including, but not limited to, business license taxes, sales, use and occupation taxes, whether levied or assessed against Owner, Contractor or Subcontractor arising out of the ownership, acquisition, furnishing, installation, or use of materials, equipment or other personal property; furnishing labor or services in respect to the Subcontract Work of any such taxes to be separately stated or charged, the total of such taxes and charges for all work required hereunder shall not exceed the Subcontract Sum.

ARTICLE 6
PAYMENT AND PERFORMANCE BONDS

6.1 If Contractor has required Subcontractor to furnish performance and labor and material payment bonds, Subcontractor shall furnish a performance bond in the full amount of the Subcontract Sum guaranteeing the full performance of all the terms and conditions hereof and a labor and materials payment bond in the full amount of the Subcontract Sum guaranteeing that Subcontractor shall pay promptly and fully all charges, expenses, or costs incurred by it in connection with the Subcontract Work. Such bonds shall be executed on forms furnished by or acceptable to Contractor and by surety or sureties satisfactory to Contractor and submitted to Contractor prior to the commencement of Subcontractor's work. No charge, alteration, modification or deviation from this Subcontract, its terms, conditions, plans or specifications, or in the manner, time or amount of payment, including overpayment, as provided herein, whether or not made in the manner herein provided, shall release or exonerate, in whole or in part, any surety for such bonds, or any bond given in connection with this Subcontract. Such bond shall extend to and cover any extra work or changes performed by Subcontractor pursuant to this Subcontract unless advised otherwise in writing by Contractor.

ARTICLE 7
TEMPORARY FACILITIES AND SERVICES

- 7.1 When needed, Subcontractor shall furnish the following facilities for his own use, or pay his pro rata share of the same for the entire construction: job sheds, storage and warehouse space, telephone, scaffolding, shoring and vertical transportation, hoisting equipment and any other service or facility applicable to the Subcontract Work. The Subcontractor further agrees to **INDEMNIFY, DEFEND and HOLD HARMLESS** Contractor and Owner for any and all loss, cost, expenses, damages and liabilities arising from the use, operation, acquisition of the aforementioned facilities by Subcontractor, Subcontractor's agents, servants, or employees or any subcontractors to Subcontractor, or any supplier of labor, materials and/or equipment to Subcontractor. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Subcontract, this indemnify, defend and hold harmless provision shall not apply to the extent that it requires Subcontractor to indemnify, defend or hold harmless Contractor or Owner against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of Contractor or Owner, its agent or employee, or any third party under the control or supervision of Contractor or Owner, other than Subcontractor or its agent, employee or subcontractor of any tier.

ARTICLE 8
INSURANCE AND INDEMNIFICATION

- 8.1 Prior to starting work, Subcontractor shall obtain the required insurance indicated by the document titled Contractor's Insurance Requirements of Subcontractor, a copy of which is attached hereto as Exhibit "C" and incorporated herein. Subcontractor acknowledges that this document declares the minimum insurance coverages which Subcontractor must maintain under this Agreement. This document also constitutes a Contract Document as that term is defined above. Subcontractor expressly understands and agrees that no payment of any kind whatsoever under Article 3 above will be paid by Contractor to Subcontractor unless and until Subcontractor has complied with the requirements set forth in this Article 8.
- 8.2 If Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Subcontract, the additional insured endorsement shall not require or provide coverage the scope of which is prohibited under Subchapter C of Chapter 151 of the Texas Insurance Code for an agreement to indemnify, hold harmless or defend.

8.3 **INDEMNIFICATION.**

- A. EXCEPT WITH RESPECT TO CLAIMS RELATING TO BODILY INJURY OR DEATH OF AN EMPLOYEE AS DEFINED IN SUBPARAGRAPH 8.3 B. BELOW, SUBCONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS CONTRACTOR, ALONG WITH ITS PARENTS, SUBSIDIARIES, AFFILIATED COMPANIES AND PARTNERS AND THEIR OFFICERS, DIRECTORS, MANAGERS, AGENTS, SERVANTS AND EMPLOYEES, AND ANY PARTIES REQUIRED TO BE INDEMNIFIED BY CONTRACTOR UNDER THE CONTRACT DOCUMENTS (COLLECTIVELY THE "INDEMNIFIED PARTIES" OR INDIVIDUALLY AN "INDEMNIFIED PARTY") FROM ALL CLAIMS, SUITS, JUDGMENTS, COSTS AND EXPENSES – INCLUDING ATTORNEY'S FEES AND EXPENSES OF LITIGATION – INVOLVING ECONOMIC LOSS, PERSONAL INJURY, PROPERTY DAMAGE OR WRONGFUL DEATH ("CLAIMS) THAT ACTUALLY OR ALLEGEDLY ARISE OUT OF OR ARE CONNECTED WITH SUBCONTRACTOR'S WORK OR ITS PRESENCE OR THE PRESENCE ANY OF SUBCONTRACTOR'S SUBCONTRACTORS ON THE PROJECT. NOTWITHSTANDING THE FOREGOING, THIS INDEMNITY AND HOLD HARMLESS PROVISION SHALL NOT APPLY TO THE EXTENT THAT IT REQUIRES SUBCONTRACTOR TO INDEMNIFY AN INDEMNIFIED PARTY AGAINST A CLAIM CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF THE INDEMNIFIED PARTY, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNIFIED PARTY, OTHER THAN SUBCONTRACTOR OR ITS AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER.**

B. INDEMNITY FOR EMPLOYEE CLAIMS: SUBCONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS (COLLECTIVELY "INDEMNIFY") CONTRACTOR AND OWNER, AND ANY OTHER PARTIES REQUIRED TO BE INDEMNIFIED BY CONTRACTOR UNDER THE CONTRACT DOCUMENTS AND THEIR REPRESENTATIVES, PARTNERS, MEMBERS, DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, INVITEES OR LICENSEES (COLLECTIVELY THE "INDEMNIFIED PARTIES" OR INDIVIDUALLY AN "INDEMNIFIED PARTY") FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEMANDS, INJURIES, JUDGEMENTS, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING BUT NOT LIMITED TO ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY'S FEES (COLLECTIVELY "CLAIMS") , FOR BODILY INJURY OR DEATH OF ANY EMPLOYEE OF SUBCONTRACTOR, ITS AGENTS, OR ITS SUBCONTRACTORS OF ANY TIER (COLLECTIVELY "EMPLOYEE" FOR THE PURPOSE OF THIS SECTION), ACTUALLY OR ALLEGEDLY OCCASIONED BY, CONTRIBUTED TO OR ARISING OUT OF, IN WHOLE OR IN PART, THE SUBCONTRACT WORK, THE PERFORMANCE OF THE SUBCONTRACT WORK OR THIS SUBCONTRACT, OR PRESENCE AT THE PROJECT SITE, INCLUDING BUT NOT LIMITED TO CLAIMS DUE TO NEGLIGENCE, GROSS NEGLIGENCE, BREACH OF WARRANTY, BREACH OF CONTRACT, VIOLATION OF ANY STATUTE, RULE OR REGULATION OR OTHER ACT OR OMISSION BY SUBCONTRACTOR, ITS EMPLOYEES, AGENTS OR ANY SUBCONTRACTOR OF SUBCONTRACTOR OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES, OR ANY OTHER PARTY FOR WHOSE ACTS SUBCONTRACTOR IS LIABLE. SUBCONTRACTOR'S OBLIGATION TO INDEMNIFY SHALL APPLY EVEN IF SUCH CLAIMS ARE ACTUALLY OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS, OR NEGLIGENCE OF AN INDEMNIFIED PARTY, EVEN IF SUCH NEGLIGENCE OR OTHER ACTS OR OMISSIONS ARE ACTIVE OR PASSIVE, DIRECT OR INDIRECT, SOLE, JOINT OR CONCURRENT. THIS INDEMNITY AGREEMENT IS INTENDED TO INDEMNIFY THE AFOREMENTIONED INDEMNIFIED PARTIES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, AS PROVIDED ABOVE.

C. Subcontractor further agrees that any Indemnified Party has the right to select its own counsel at Subcontractor's expense as well as the right to control its own defense and enter into any settlement of any indemnified Claim that the Indemnified Party believes in its sole judgment is in its best interest to settle. The indemnity obligations stated herein are not limited by the insurance requirements of this Subcontract or available insurance coverage.

In the event and to the extent the foregoing obligations of Subcontractor as stated in this paragraph 8.3 are found to be invalid or unenforceable under applicable law, in whole or in part, it is agreed and understood that paragraph 8.3 shall be reformed and modified to the minimum extent necessary to comply with applicable law and be valid and enforceable, and Subcontractor shall be bound by such provision as so reformed and modified, and the remainder of this paragraph 8.3 shall remain in full force and effect.

8.4 Subcontractor agrees to **INDEMNIFY, DEFEND and HOLD HARMLESS** Contractor and Owner from any and all claims, demands, suits, damages, consequential damages, interest, litigation, expense, court costs, attorney's fees, costs, liens, claims for liens and expenses of whatsoever kind or nature when the same, in whole or in part, result from or arise out of (a) any failure of Subcontractor to fully perform each and every provision of this Subcontract or (b) any failure by Subcontractor, its subcontractors, suppliers, invitees or others acting in behalf of the Subcontractor to pay for all labor, materials, services, supplies and equipment, the nonpayment of which causes any lien, encumbrance, claim for lien, claim against any bond furnished by Contractor, demand or claim that may be made or asserted against the Project, Subcontract Work, Contractor, Contractor's surety or Owner. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Subcontract, this indemnify, defend and hold harmless provision shall not apply to the extent that it requires Subcontractor to indemnify, defend or hold harmless Contractor or Owner against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of Contractor or Owner, its agent or employee, or any third party under the control or supervision of Contractor or Owner, other than Subcontractor or its agent, employee or subcontractor of any tier. Notwithstanding any of the provisions hereof, if any act or omission (or alleged act or

omission) of Subcontractor, a sub-subcontractor, materialman, supplier or any other person for whom Subcontractor is responsible, results in or gives rise to any lien, claim for lien or claim against any bond furnished by Contractor in connection with the project or against Owner or any fixture included in the Work made the basis of the Agreement by Owner and Contractor, Subcontractor shall, at no cost, charge or expense to Contractor, cause the same to be canceled and discharged of record or Subcontractor shall, at Contractor's request, purchase an indemnity bond or bond for release of lien and such bond will either be in accordance with applicable statutory provisions or in an amount equal to two hundred percent (200%) of the amount of the lien or claim, whichever is greater, prior to Contractor making any progress payment following receipt by Contractor or Owner of the notice of such claim. The obligee of this bond shall be, at the Owner's discretion, Contractor, Owner or Contractor and Owner or any other party designated by Contractor. The form, content and surety of such bond must be satisfactory to Contractor. Upon Subcontractor's furnishing of such bond with respect to any such claim, payment otherwise due under the Subcontract shall be made to Subcontractor, subject to all other provisions of this Agreement. Alternatively, Contractor shall have the option of issuing checks jointly to Subcontractor and any third parties for unpaid labor and/or materials. In the event and to the extent the foregoing obligations of Subcontractor as stated in this paragraph 8.5 are found to be invalid or unenforceable under applicable law, in whole or in part, it is agreed and understood that paragraph 8.5 shall be reformed and modified to the minimum extent necessary to comply with applicable law and be valid and enforceable, and Subcontractor shall be bound by such provision as so reformed and modified, and the remainder of this paragraph 8.4 shall remain in full force and effect.

ARTICLE 9
RISK OF LOSS

- 9.1 As between Contractor and Subcontractor, Subcontractor shall be responsible for, and shall bear all risks of loss of or damage to the Subcontract Work and all materials, appliances, supplies and equipment, until final acceptance thereof, unless such loss or damages result from the direct and sole negligence of Contractor. Subcontractor agrees to pay for any damages that may be caused to other work of the Project by Subcontractor or its sub-subcontractors, suppliers, invitees and others acting for the benefit of the Subcontract Work to be performed hereunder and their respective agents, servants and employees. In the event an insurance claim is filed by Contractor in relation to any of Subcontractor's material and/or equipment, Subcontractor shall be responsible to pay for Contractor's deductible, if any.

ARTICLE 10
DEFAULT: SUPPLEMENTATION AND TERMINATION

- 10.1 If Subcontractor, for any reason, fails or is unable to commence, prosecute and complete the Subcontract Work skillfully, safely, promptly and diligently, breaches this Agreement or shall become involved in any insolvency, bankruptcy or debtor's proceeding, unless a Trustee in bankruptcy has given notice to Contractor that it will perform the Subcontract Work in accordance with Subcontract provisions and will cure any existing defaults, Contractor shall have the right, if it so elects and without prejudice to any other rights it may have, by giving seventy-two (72) hours prior written notice to Subcontractor, to terminate Subcontractor's performance under the Subcontract in whole or in part, and take over or cause others to take over all or any portion of the Work being performed and to be performed under this Subcontract, together with any tools and equipment, any appliances, materials and supplies specially ordered or fabricated for the Project, whether at the job site or elsewhere, and to complete such work for the account of Subcontractor by whatever method Contractor deems reasonably practical and expedient. In this regard, Subcontractor agrees and acknowledges that it is reasonable to employ a reputable substitute subcontractor upon a cost plus or time and materials basis or for Contractor to utilize its own forces to complete partially performed work. In such event, no further payments to Subcontractor shall be made until said work is completed and accepted and paid for by Owner; then, if the unpaid balance of the Subcontract Sum exceeds the Entire Cost, as defined in Article 11, of completing said work plus any damages associated with any delay in the progress of the work caused by Subcontractor's default, such excess shall be paid to Subcontractor; however, if such Entire Costs exceeds such unpaid balance, Subcontractor and Subcontractor's surety shall immediately pay the amount of such excess to

Contractor. If for any reason whatsoever the termination in whole or in part of Subcontractor's services hereunder for default shall be determined by a court of competent jurisdiction or, as applicable, by an arbitration panel or arbitrator, to have been wrongful or unjustified then such termination shall be deemed and considered a termination for convenience as provided in paragraph 10.5 of this Section 10.

- 10.2 If Subcontractor at any time shall fail to furnish skilled workers, suitable materials, supplies or adequate equipment sufficient for the safe, prompt and diligent prosecution of the work in accordance with Contractor's direction, Contractor shall have the right, by giving forty-eight (48) hours prior written notice to Subcontractor, without prejudice to the exercise of other remedies for the same default and without fully taking over the work, supplement Subcontractor by expediting delivery of and procuring and furnishing supplemental workers, materials, tools, supplies or equipment for Subcontractor's account by employing other subcontractors engaged in the same class of work and charge the Entire Cost thereof to Subcontractor by way of a Subcontract Modification pursuant to Article 19.
- 10.3 Any attempt by Subcontractor to cure any such claimed default during the notice period must be pursued in good faith and be effective to correct, or substantially assure correction of, the default in order to merit withdrawal of the notice of default.
- 10.4 In the event Subcontractor or any of its sub-subcontractors, vendors or suppliers fails or refuses for any reason to provide timely manufacture, fabrication, delivery, installation, erection, construction or completion of any supplies, materials, expendables, equipment, machineries, accessories or appurtenances to be furnished hereunder, Subcontractor acknowledges and agrees that such items are required, necessary and essentially unique to the Project and Subcontract Work and will cause irreparable harm to Contractor and the Project if not furnished in accordance with this Subcontract; Contractor shall have the right to obtain a decree of specific performance and mandatory injunctive relief from any court of competent jurisdiction to insure that timely furnishing of such items which right shall be in addition to any and all other remedies set forth herein and provided by law.
- 10.5 Contractor may by written notice to Subcontractor terminate this Subcontract for Contractor's convenience, in whole or in part, when Contractor determines, at its sole discretion, it is in the best interest of Contractor to do so. Upon receipt of seventy-two (72) hours written notice from Contractor, Subcontractor shall take all reasonable measures after consultation with Contractor to terminate or assign to Contractor all subcontracts, purchase orders or other commitments related to the Subcontract Work or the project on terms and conditions acceptable to Contractor. Subcontractor will be paid for all Subcontract Work properly completed in accordance with the Contract Documents prior to the date of termination, based upon the Subcontract Sum set forth in Article 3 of the Subcontract and the approved schedule of values, and any unavoidable, direct costs of termination, in accordance with the Subcontract terms and conditions of payment, and such payment shall be Subcontractor's sole and exclusive remedy in the event of a termination for convenience. In no event will Subcontractor receive any payment or compensation whatsoever for interruption of business or loss of business opportunities, any other items of consequential damages, for overhead or profit on work not completed, for any intangible, impact or similarly described cost, damages or expense, and under no circumstances shall the total sum paid to or received by Subcontractor on the Subcontract exceed the contract price set forth in Article 3 of the Subcontract.
- 10.6 If at any time, the Contractor shall determine that the Subcontractor's financial condition has become, in Contractor's opinion, unsatisfactory to Contractor and if Subcontractor fails to furnish security satisfactory to Contractor for Subcontractor's performance of all its obligations under this Agreement, the Contractor shall have the option to terminate this Subcontract in accordance with the provision of Article 10 above.
- 10.7 For the purposes of paragraphs 10.1 and 10.2 above, in the event Subcontractor fails to clean up or otherwise keep Subcontractor's portion of the work free and clear of debris, rubbish or other materials, Contractor shall have the right to immediately and without prior notice arrange for the clearing and cleaning of such work by whatever method Contractor deems reasonably practical and expedient and Subcontractor agrees to pay Contractor for the Entire Cost thereof.

ARTICLE 11
ENTIRE COSTS

- 11.1 Wherever the terms "Entire Cost" or "Entire Costs" are used in connection with the work performed and materials, services or other items furnished by Contractor or others for the account of Subcontractor under this Agreement, such terms shall include all sums paid and obligations incurred to do the work and furnish the material, services and other items, or to have same done or furnished by, including, but not limited to, reasonable overhead and profit, all litigation or arbitration expenses, court costs, consultant fees, attorney's fees and any other necessary or expedient expenses of any nature reasonably incurred in connection with or incident to the Subcontract Work. Contractor may offset and deduct the Entire Cost from Subcontractor's progress payments or final payment and if the Entire Cost exceeds said progress payments for the Subcontract Sum set forth in Article 3 above, Subcontractor shall immediately pay Contractor the amount of such excess.

ARTICLE 12
CHANGES

- 12.1 Contractor may, at any time, by written instructions, without notice to Subcontractor's surety, direct Subcontractor to make changes, additions and deletions concerning the Subcontract Work. Subcontractor shall promptly proceed in compliance with such written instructions. Any claim for an increase in the Subcontract Sum or time for performance based upon Contractor's written instruction must be made by Subcontractor, in writing, within ten (10) days from the date of Contractor's written instruction. Any increase or decrease in the Subcontract Sum resulting from such changes and any increase or decrease in the Subcontract Time shall be agreed upon writing by the parties and Contractor shall issue a Subcontract Modification pursuant to Article 19 below to memorialize that agreement. In addition, pricing of changes may be determined by Owner's designated representative pursuant to the Prime Contract. Any and all such changes hereunder must be first preceded by written notice from Contractor to Subcontractor and then followed by the writing required above. It is expressly understood that any changes, alterations, or deviations must be preceded by written authorization from Contractor as stated above. Further, any claim for an increase in the Subcontract Sum or time for performance must also be made within the ten (10) day period stipulated above. Subcontractor's failure to comply with these written notification requirements shall serve as a complete, absolute, and total bar to any claim for an increase in the Subcontract Sum or time for performance. It is the responsibility of the Subcontractor to promptly respond to Contractor's Request for Pricing. Any tardiness in response could cause delay to the Project and activate a damage claim against the Subcontractor. Requests for Pricing should usually specify the time that is needed for that pricing. If no such time is specified, then pricing is requested within seventy-two (72) hours. Any extra work performed without Contractor's written order will be at Subcontractor's expense. In the event and to the extent the foregoing obligations of Subcontractor or any time period as stated in this paragraph 12.1 are found to be invalid or unenforceable under applicable law, in whole or in part, it is agreed and understood that paragraph 12.1 shall be reformed and modified to the minimum extent necessary to comply with applicable law and be valid and enforceable, and Subcontractor shall be bound by such provision and time periods as so reformed and modified, and the remainder of this paragraph 12.1 shall remain in full force and effect.

ARTICLE 13
SHOP DRAWINGS; DELIVERIES; EXECUTING AND PROGRESS OF WORK

- 13.1 Subcontractor agrees to use at all times on the work hereunder such labor as will in no way whatsoever disturb or affect labor employed by the Contractor, Owner or other contractors on the site and further agrees that Subcontractor's employees shall work in harmony with all employees and contractors. Subcontractor agrees to consult with Contractor before making any assignment of the work.
- 13.2 Subcontractor shall promptly and in accordance with the Contract Documents submit to Contractor within ten (10) days of such request shop drawings, product data, samples and similar submittals required in order to perform Subcontract Work efficiently and expeditiously in a manner that will not cause delay, interference or

hindrance in the progress of the work of the Contractor or of other subcontractors or contractors. Subcontractor shall submit sufficient copies for Contractor's, Architect's, and Owner's use. Subcontractor shall bear full and complete responsibility for properly preparing, drafting, and submitting on a timely basis, any such shop drawings, product data, samples and similar submittals required. Subcontractor shall perform no portion of the Subcontract Work for which the Contract Documents require submittal and review of shop drawings, product data, samples or similar submittals until the respective submittal has been approved by the Architect. By submitting shop drawings, product data, samples and similar submittals, the Subcontractor represents that the Subcontractor has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Subcontract Work and of the Contract Documents. Subcontractor shall bear full and complete responsibility for any variation or deviations appearing in such shop drawings, product data, samples, and submittals from the plans and specifications applicable to the Project. Subcontractor shall further bear full and complete responsibility for any errors or omissions appearing in such shop drawings, product data, samples, and submittals. **Subcontractor agrees to INDEMNIFY, DEFEND and HOLD HARMLESS Contractor from any and all liability, losses, expenses, and damages which may arise from or relate to the Subcontractor's obligations hereunder or which may arise from and relate to the said shop drawings, submittals, and samples prepared, drafted and submitted by the Subcontractor pursuant to the terms hereof. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Subcontract, this indemnify, defend and hold harmless provision shall not apply to the extent that it requires Subcontractor to indemnify, defend or hold harmless Contractor against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of Contractor, its agent or employee, or any third party under the control or supervision of Contractor, other than Subcontractor or its agent, employee or subcontractor of any tier.**

- 13.3 Subcontractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Owner's, Architect's or Contractor's approval of shop drawings, product data, submittals or similar submittals unless the Subcontractor has specifically informed the Contractor and Architect in writing of such deviation at the time of the submittal and the Architect has given written approval to the specific deviation as a minor change in the Work or a Change Order or Construction Change Directive has been issued authorizing the deviation. The Subcontractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the Contractor's, Owner's, or Architect's approval thereof. The Subcontractor may make substitutions only with the consent of the Contractor and Owner and only pursuant to a written Subcontract Modification.
- 13.4 Upon request by Contractor, the Subcontractor shall promptly furnish periodic reports on the work including information on the status of materials and equipment under this Subcontract which may be in the course of preparation or manufacture.
- 13.5 Subcontractor agrees that all work shall be done subject to the final approval and acceptance of the Architect, or in the absence of the Architect, the Owner. The Architect's decisions, or in the absence of the Architect, the Owner's decisions, in matters relating in aesthetic effect shall be final. Subcontractor acknowledges that it has reviewed the plans and specifications for the Project and agrees to furnish all materials and drawings and perform all work strictly in accordance with such plans and specifications subject to changes in accordance with Article 12 above.
- 13.6 Subcontractor may, from time to time, seek payment for materials or equipment not incorporated in the work but delivered and suitably stored at the site or at some other location agreed upon in writing by Contractor. Contractor may, at Contractor's option and discretion, pay for these materials or equipment in accordance with the terms and conditions of this Agreement provided (1) Contractor has consented in writing to the delivery and storing of these items and material or equipment at the site or some other location; and (2) Contractor has agreed in writing to permit Subcontractor to make Application for Payment for such materials and equipment in accordance with the terms and conditions of this Subcontract Agreement.

- 13.7 The Subcontractor agrees that the Contractor's tools and equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms. Subcontractor agrees to exercise care in the use of Contractor's tools and equipment and further agrees to **INDEMNIFY, DEFEND and HOLD HARMLESS** Contractor of and from any claims, including attorney's fees, arising or resulting from Subcontractor's use of said tools and equipment. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Subcontract, this indemnify, defend and hold harmless provision shall not apply to the extent that it requires Subcontractor to indemnify, defend or hold harmless Contractor against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of Contractor, its agent or employee, or any third party under the control or supervision of Contractor, other than Subcontractor or its agent, employee or subcontractor of any tier.

ARTICLE 14
PROJECT: LOCAL CONDITIONS

- 14.1 Subcontractor represents that it has fully acquainted itself with the nature and location of this Subcontract Work, all general and local conditions, particularly those bearing upon transportation, disposal, handling and storage of materials, availability of labor, the procurement of water, electrical power and other utilities, roads, weather conditions, river stages or similar physical conditions, ground topography, soil structure and subsurface conditions and obstruction, the nature and types of equipment and facilities needed to prepare for and perform the Subcontract Work, taxes, costs and materials and wage rates and all other matters which in any way might affect the Work under this Subcontract, or the cost thereof.
- 14.2 Subcontractor shall assign to and maintain on the Subcontract Work a force of experienced employees and equipment and tools in first class operating condition, adequate to complete the work within the prescribed time schedule and shall furnish careful, efficient, experienced business administration and supervision of the work force. Further, Subcontractor shall assign to the Project an experienced, competent supervisor who shall at all times attend any and all jobsite meetings and represent the Subcontractor in these meetings.
- 14.3 Any of the Subcontractor's assigned personnel or subcontractors who the Contractor or Owner may consider to be incompetent, careless, insubordinate or otherwise objectionable, or whose conduct or presence is considered to be detrimental to the best interest of the Project, or who are not required for the Subcontract Work, shall be removed at Contractor's or Owner's request. Neither Contractor nor Owner shall incur any liability, responsibility, or obligation whatsoever in regard to exercising its rights herein either to Subcontractor or any other person, and Subcontractor agrees to **INDEMNIFY, DEFEND and HOLD HARMLESS** Contractor and Owner from any such claims.
- 14.4 Subcontractor shall in all respects comply with and shall cooperate with the Contractor in enforcing the site procedures, conditions and rules established by the Contractor that affects the Subcontract Work being performed for the Project or at the site, including, but not limited to, project schedules, access, security, traffic, solicitation, work and storage areas, utilities, safety, medical and first aid facilities, fire and explosion precautions, pollution, sanitation, cleanup and work conditions. Subcontractor shall be required to attend all site or project meetings scheduled by Contractor in regard to site control, procedures, schedule, or coordination.
- 14.5 If any part of the Subcontract Work depends on proper execution or results upon any work of any other contractor, subcontractor or supplier, Subcontractor shall inspect the work of said party and promptly report to Contractor, in writing, any defects in such work and the performance thereof that adversely affects the Subcontract Work. Subcontractor's failure to inspect and report any such defects shall constitute an acceptance of such work as fit and properly performed.
- 14.6 The Subcontractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the work under this Subcontract. Subcontractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for the proper execution

and completion of the Subcontractor's work, the furnishing of which is required of the Contractor by the Contract Documents. Subcontractor shall comply with Federal, state, and local tax laws, social security acts, unemployment compensation acts and worker's compensation acts insofar as applicable to the performance of this Subcontract.

ARTICLE 15
SAFETY PRECAUTIONS AND PROCEDURE

- 15.1 Subcontractor shall take all reasonable precautions pertaining to the work and the conduct thereof and shall comply with all safety and health laws, ordinances, rules, regulations, or orders issued by a public authority. Subcontractor shall familiarize itself with and abide by the safety rules and regulations of Contractor, as well as the safety laws, rules, regulations of any governmental body having the authority to control the manner of method of carrying out the Work, including but without limitation to, the Williams-Steiger Occupational Safety and Health Act of 1970 (OSHA), all rules and regulations established pursuant thereto, and all amendments and supplements thereto. Subcontractor shall establish and enforce such other safety measures as may be required by the nature of the Work. Without limiting the foregoing, Subcontractor shall specifically cooperate in Contractor's Hazardous Communications Programs, including Material Safety Data Sheets on all such substances, which the Subcontractor may use on the Project. Subcontractor is to comply with all requirements of the OSHA Fall Protection Plan including latest revisions on this project.
- 15.2 Subcontractor shall be responsible for the safety of the agents, employees and representatives of Subcontractor or its subcontractors, and for the invitees and guests of Subcontractor or its subcontractors. Subcontractor agrees Contractor shall have no duty to ensure that Subcontractor performs its work in a safe manner and shall have no responsibility, under any circumstances, for the safety of the agents, employees and representatives of Subcontractor or its subcontractors, or for the invitees and guests of Subcontractor or its subcontractors, or for training such individuals in procedures adequate to safely perform the tasks they are on Contractor premises to perform. Neither the right of Contractor to terminate a transaction and/or this Agreement, the right of Contractor to conduct searches and inspections nor any other right reserved to Contractor hereunder, shall reserve to Contractor any right of control or impose upon Contractor any duty to be responsible for the safety of Subcontractor's agents, employees or representatives, to be responsible for the safety of agents, employees or representatives of Subcontractor's subcontractors, or to be responsible for the safety of any guests or invitees of Subcontractor or its subcontractors. Subcontractor also agrees that Contractor shall have no responsibility to provide or to ensure that Subcontractor's agents, employees, representatives, subcontractors, invitees and guests have been provided with, or are properly utilizing, any necessary protective and safety equipment in connection with the provision of goods and services hereunder. Subcontractor agrees to ensure that all machinery and equipment Subcontractor furnishes will be maintained in safe running order and inspected regularly to ensure continued safe operation. Subcontractor shall immediately notify Contractor of any work-related accidents or injuries that take place on the Project (can be verbal) and follow up with a written report 48 hours after any such incident. Subcontractor agrees to provide Contractor documentation, when requested, which reflects work-related injury and/or accident frequency rates and applicable employee training.

ARTICLE 16
INDEPENDENT CONTRACTOR, RECORDS AND IMMIGRATION LAW

- 16.1 Subcontractor warrants that it is an independent contractor and an employing unit, subject, as an employer, to all applicable income tax withholding, unemployment compensation laws and other business and employee benefit laws and regulations. Nothing contained in this Agreement shall be construed to constitute Subcontractor as a partner, employee, or agent of Contractor, nor shall either party have any authority to bind the other in any respect. It is intended that Subcontractor shall, in all instances, be and remain an independent contractor responsible for its own actions and for its own agents, employees and representatives. In this respect, the parties hereby acknowledge that the Contractor shall only have the right to prescribe and designate the result to be accomplished, and that Contractor does not retain any supervisory control or authority or right to

direct or control any part of the work to be performed by Subcontractor. Actions taken by Contractor relating to any part of the work to be performed by Subcontractor hereunder, if any, shall be suggestions only and may be accepted or rejected by Subcontractor, and shall in no instance be the basis for the recognition of a right or duty in Contractor to direct or control the details of Subcontractor's performance. Subcontractor agrees that it is Subcontractor's responsibility for:

- (i) The production purchase and sale, furnishing and delivering, pricing and use or consumption of materials, supplies and equipment.
- (ii) The hire, tenure or conditions of employment of employees and their hours of work and rates of payment of their wages.
- (iii) The keeping of records, making of reports and the payment, collection and/or deduction of federal, state, municipal taxes, and contributions; and
- (iv) All other matters in connection with the Subcontract.

16.2 Subcontractor will keep and have available all necessary records and make all payments, reports, collections, and deductions, and otherwise do any and all things so as to fully comply with all federal, state and municipal laws, ordinances and regulations.

16.3 Subcontractor shall perform all work described in this Subcontract in accordance with all legal requirements, including, but not limited to, all applicable federal, state, and local laws, codes, rules, regulations, ordinances, and decrees of any governmental or quasi-governmental entity having jurisdiction over this Subcontract, the Project, work, or the practices involved in the Project. Subcontractor further agrees that it will adhere and comply with any and all obligations imposed pursuant to any local, state, or federal laws applicable to hiring/managing employees, all applicable wage and hour laws, maintaining payroll records, reporting/paying payroll taxes, and maintaining workers' compensation insurance.

16.4 Subcontractor agrees that it has (i) complied, and shall at all times during the term of the Subcontract comply, in all respects with all applicable federal, state, and local immigration laws, ordinances, and regulations, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, (ii) has properly maintained, and shall at all times during the term of this Contract properly maintain, all records required by the United States Citizenship and Immigration Services (the "USCIS"), including, without limitation, the completion and maintenance of the Form I-9 for each Subcontractor's employees, and (iii) has responded, and shall at all times during the term of the Subcontract respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the Subcontract, Subcontractor shall, and shall cause its directors, officers, managers, agents and employees and Sub-subcontractors to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by the USCIS of Subcontractor or any of its employees. Subcontractor shall immediately notify Contractor's authorized representative of any unscheduled inspections, raids, investigations, inquiries, visits or audits conducted by the USCIS or any other governmental agency or authority related to environmental, immigration, or employee safety issues of Subcontractor, its agents, employees or Sub-Subcontractors. Subcontractor certifies that during the term of the Subcontract that an audit of the I-9 Forms for its employees will be conducted and that it will promptly correct any deficiencies identified during the audit.

16.5 In addition to, and by way of supplement if conflicting with, any other indemnification obligations contained in this Subcontract, Subcontractor agrees to **DEFEND** (with counsel of Contractor's choosing), **INDEMNIFY**, **RELEASE** and **HOLD HARMLESS** Contractor and its affiliates, officers, directors, agents, licensees, shareholders and employees (herein an "Indemnified Party") from and against any and all claims, actions, liability, judgments, damages, penalties, investigations, costs and expenses (including reasonable attorneys' fees and taxes) relating to or arising directly or indirectly out of, or in connection with, Subcontractor's nonperformance of any or all obligations under this Article 16 of the Subcontract or representations contained therein, including, without limitation, obligations to Subcontractor's employees, subcontractors, or other representatives. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Subcontract, this indemnify, defend and hold harmless provision shall not apply to the extent that

it requires Subcontractor to indemnify, defend or hold harmless an Indemnified Party against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of an Indemnified Party, its agent or employee, or any third party under the control or supervision of an Indemnified Party, other than Subcontractor or its agent, employee or subcontractor of any tier.

ARTICLE 17 **WARRANTY**

- 17.1 The Subcontractor warrants to the Owner, the Architect and the Contractor that all Performance Standards will be met and maintained for a period of one (1) year from substantial completion and materials and equipment furnished shall be new unless otherwise specified, and that all work under the Subcontract shall be of good quality, free from faults and defects, and in conformance with the Contract Documents. Subcontractor shall, at its sole cost, inspect work in place upon request by Owner or Contractor to investigate any alleged defect in the work, workmanship and materials and shall replace defective materials, workmanship and equipment and re-execute defective work as required of Contractor under the Contract Documents. Failure to meet and/or maintain a required Performance Standard shall constitute defective work. If within one year from the date of substantial completion, or such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of Subcontractor's work is found to be defective or not in accordance with the Contract Documents, Subcontractor shall, at its sole cost, correct it promptly after receipt of a written notice from Contractor to do so.

ARTICLE 18 **ARBITRATION OR LITIGATION**

- 18.1 All claims, disputes, and other matters in question arising out of or relating to this Subcontract, or the breach thereof, as between Contractor and Subcontractor, shall be decided by arbitration, which shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, unless the parties mutually agree otherwise. Any arbitration shall take place in Houston, Harris County, Texas, or, in the event such venue for arbitration is precluded by applicable law, arbitration shall take place in the largest metropolitan city closest to the Project in the state where the Project is located. Notwithstanding the foregoing, Subcontractor agrees that in the event Owner, Architect and/or Contractor are involved in an arbitration or litigation proceeding arising out of or related to the Contract Documents which pertains in whole or in part to work performed by Subcontractor under this Agreement, Contractor may, by consolidation or joinder, join Subcontractor in the arbitration or litigation proceeding, and any such claims, disputes or other matters shall then be determined in the consolidated arbitration or litigation proceeding.
- 18.2 This agreement to arbitrate or litigate, as applicable, shall be specifically enforceable.
- 18.3 The award rendered by the arbitrators shall be final and binding, and judgment may be entered upon it in accordance with the applicable law in the court having jurisdiction thereof.

ARTICLE 19 **ENTIRE AGREEMENT, ASSIGNMENTS AND MODIFICATIONS**

- 19.1 This Subcontract comprises the entire agreement between the parties. All prior negotiations and dealings between the parties are merged in, integrated and superseded by this Subcontract, which is binding upon and inures to the benefit of the parties and their successors, legal representatives and assigns. Notwithstanding the foregoing, Subcontractor shall not assign this Subcontract, or sublet or subcontract any part of the Work hereunder without the prior written consent of Contractor.
- 19.2 All modifications of this Subcontract must be in writing and approved by Contractor to be valid. Both Contractor and Subcontractor acknowledge and recognize there is inherent risk and prejudice to each of them in regard to

any oral modification of this Subcontract since miscommunication, lack of communication, misunderstandings or mistakes can occur in such situation, it is expressly agreed by Contractor and Subcontractor that any modifications, including but not limited to changes pursuant to Article 12 or back charges assessed by Contractor under the Subcontract, must be reduced to writing before such modification is valid and enforceable under this Subcontract.

**ARTICLE 20
DESIGN RESPONSIBILITIES OF SUBCONTRACTOR**

- 20.1 Contractor and Subcontractor acknowledge that the design services performed by Subcontractor, if any, relate to a part of the overall design of the Project and the importance of having Subcontractor's design integrated into the Project's overall design concept. The parties commit to working with each other, and with the Architect, to facilitate the coordination and integration of Subcontractor's design services and Work Product with the overall design concept and Construction Documents.
- 20.2 If Subcontractor performs any design services, Subcontractor shall, consistent with applicable state licensing laws, applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project, the practices involved in the Project or any portion of the Work, or any agency that produces standards required to be met under the Contract Documents, provide the architectural, engineering and other design professional services required to perform the Work. Subcontractor agrees that such services shall be provided through qualified, licensed design professionals who are either (i) employed by Subcontractor or (ii) procured by Subcontractor from qualified, licensed design consultants. Subcontractor shall **INDEMNIFY, DEFEND AND HOLD HARMLESS** Contractor from and against any and all damages incurred by Contractor as a result of Subcontractor's failure to comply with this Article. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Subcontract, this indemnify, defend and hold harmless provision shall not apply to the extent that it requires Subcontractor to indemnify, defend or hold harmless Contractor against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of Contractor, its agent or employee, or any third party under the control or supervision of Contractor, other than Subcontractor or its agent, employee or subcontractor of any tier.
- 20.3 Subcontractor shall not engage the services of any design consultant without first obtaining the approval of Contractor, which approval shall not be unreasonably withheld. Subcontractor agrees that each design consultant shall be fully bound to Subcontractor in the same manner as Subcontractor is bound to Contractor for all the requirements of the Contract Documents which are applicable to the design consultant's scope of services. Subcontractor shall at all times be responsible for the services performed by its design consultants and shall coordinate the services of its design consultants to satisfy Subcontractor's obligations under the Contract Documents. Nothing in this Agreement shall relieve Subcontractor from responsibility for the services performed by its design consultants or create any legal or contractual relationship between Contractor and any design consultant.
- 20.4 Subcontractor shall assist Contractor regarding the selection of building systems, materials, and equipment, as well as cost, schedule, and construction feasibility assistance, for the Work. Such assistance shall include providing advice relative to, among other things, labor availability, construction costs, procurement strategies (including scheduling the procurement of items with long-lead times) related to the requirements set forth in the Contract Documents for the Work.
- 20.5 In accordance with the times set forth in the Project Schedule, Subcontractor shall submit to Contractor all interim design submissions and revisions for the Work as required by the Contract Documents or as Contractor may request. Such design submissions shall be in the form and quantity called for in the Contract Documents or required by the Architect and may include design criteria, drawings, diagrams, and specifications setting forth the Project requirements. The submissions shall also show the relationship of the Work to the overall Project design. Contractor and Subcontractor agree that prior to the scheduled date for submitting all design

submissions to Owner, Contractor, Subcontractor and Architect will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Contractor's budget and pricing assumptions.

- 20.6 In accordance with the Contract Documents and with the times set forth in the Project Schedule, Subcontractor shall submit to Contractor Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work, and showing the relationship of the Work to the overall Project. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. Subcontractor shall provide the Construction Documents in the form and quantity called for in the Contract Documents or required by Architect. Subcontractor shall perform agreed upon revisions and submit revised Construction Documents to Contractor for Contractor's and Owner's approval.
- 20.7 Contractor's and Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents for the Work compatible with the requirements of the Contract Documents. The review and/or approval by either Contractor or Owner of any interim design submission or the Construction Documents shall not be deemed to transfer any design liability from Subcontractor to Contractor or Owner.
- 20.8 Subcontractor will, at its own cost, revise any interim design submission or Construction Document it has provided to correct any errors, mistakes, or omissions. Such revisions shall be performed timely and so as not to jeopardize the Project Schedule.
- 20.9 All drawings, specifications and other documents and electronic data furnished by Subcontractor to Contractor under this Agreement ("Work Product") are deemed to be instruments of service and Subcontractor shall retain ownership and property interests therein provided, however, that Subcontractor hereby grants Contractor an irrevocable license to use and take possession of the Work Product in connection with this Project, even if Subcontractor does not complete the Work for any reason.
- 20.10 Subcontractor is aware that there could be a limited license to use the Work Product in the Agreement between Owner and Contractor which may be granted to Owner therein. Subcontractor accepts and agrees to Owner's rights with respect to the Work Product contained in the Agreement between Owner and Contractor.
- 20.11 Subcontractor shall **DEFEND, INDEMNIFY and HOLD HARMLESS** Contractor and Owner from and against any action or proceeding brought against Owner or Contractor based on any claim that Subcontractor's Work, or any part thereof, or the operation or use of the Project or any part thereof, as it relates to Subcontractor's Work constitutes infringement of any United States patent or copyright, now or hereafter issued. Contractor shall give prompt written notice to Subcontractor of any such action or proceeding and will reasonably provide authority, information, and assistance in the defense of same. Subcontractor shall **INDEMNIFY, DEFEND and HOLD HARMLESS** Contractor and Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Contractor in any such action or proceeding. Subcontractor agrees to keep Contractor informed of all developments in the defense of such actions.

ARTICLE 21
WAIVER

- 21.1 Failure by Contractor in any instance to insist upon observance or performance by Subcontractor of any of the terms, conditions, or provisions of this Subcontract, shall not be deemed a waiver by Contractor of any such terms, conditions or provisions, in observance or performance thereof; no waiver shall be binding upon the Contractor unless the same is in writing signed by the Contractor and shall then be for the particular instance referred to in said writing only; waiver of any one breach shall not be deemed a Waiver of any other breach; payment of any sum by the Contractor to Subcontractor without knowledge of any breach shall not be deemed

to be a waiver of any such breach or any other breach. The remainder of this Subcontract will not be voided by the invalidity of one or more of the terms hereof.

- 21.2 Subcontractor is required to provide the insurance required under Article 8. In the event Subcontractor does not provide the insurance required under Article 8, neither the execution of this Agreement by Contractor nor the commencement of work by Subcontractor shall be construed as a waiver of the requirements of Article 8 by Contractor.
- 21.2 Waiver of Consequential Damages. Contractor shall not be liable to Subcontractor in any action or claim for consequential or special damages or loss of profits. The protections against such liability afforded by this Subcontract shall be applicable in any action whether based on contract, negligence, either sole or concurrent, strict liability, tort, statute or otherwise. To the extent permitted by law, any statutory remedies which are inconsistent with the provisions of this Subcontract are waived.

ARTICLE 22
GOVERNING LAW, VENUE, REFORMATION AND SEVERANCE

- 22.1 This Subcontract shall be governed by the laws of the State of Texas, or, in the event such choice of law is precluded by applicable law, shall be governed by the laws of the state where the Project is located.
- 22.2 All sums payable hereunder by Contractor to Subcontractor, or by Subcontractor to Contractor, shall be due and payable at Contractor's office in Cypress, Harris County, Texas.
- 22.3 Unless otherwise provided by applicable law, Contractor and Subcontractor agree that in the event Article 18 does not otherwise apply to compel arbitration that any legal proceeding concerning this Subcontract is instituted, jurisdiction and venue of such proceeding shall be in a court of competent jurisdiction in Harris County, Texas, or, if such jurisdiction and venue are precluded by applicable law, then in a court of competent jurisdiction in the county and state where the Project is located.
- 22.4 In the event and to the extent any terms and/or conditions of this Subcontract are found to be invalid or unenforceable under applicable law, in whole or in part, it is agreed and understood that such terms and/or conditions shall be reformed and modified to the minimum extent necessary to comply with applicable law and be valid and enforceable, and Subcontractor shall be bound by such terms and/or conditions as so reformed and modified, or if such reformation and modification is precluded by applicable law, any terms and/or conditions of this Subcontract found to be invalid or unenforceable shall be severed from this Subcontract, and the remainder of this Subcontract shall remain in full force and effect.

ARTICLE 23
ATTORNEY'S FEES

- 23.1 Subcontractor agrees to pay Contractor all reasonable attorney's fees incurred by Contractor in the event Contractor seeks to enforce any provision of this Subcontract, whether by suit or arbitration. Further, in the event Subcontractor institutes an arbitration proceeding against Contractor, or, with Contractor's consent, a lawsuit against Contractor, Subcontractor agrees to pay Contractor all reasonable attorney's fees incurred by Contractor in defending such lawsuit or arbitration proceeding, provided Contractor is the prevailing party in such action on any affirmative claim or defense. Subcontractor further agrees that Contractor shall have the right to retain from any amounts which might be owed to Subcontractor under this Subcontract Agreement, any retainage earned by Subcontractor under this Subcontract Agreement or any unearned, unpaid amounts under this Subcontract Agreement that sum of money which Contractor, in its reasonable discretion, determines is necessary to compensate Contractor for attorney's fees which Contractor may incur in connection with any threatened lawsuit or arbitration as described above, provided, however, if Contractor is not the prevailing party in any such lawsuit or arbitration, Contractor will return such unbilled funds to Subcontractor.

23.2 Subcontractor shall reimburse Contractor for Subcontractor's proportionate share of the costs incurred by Contractor to recover, or attempt to recover, from Owner payment for Subcontractor's work or payment for any claims asserted by Subcontractor against Contractor and passed through to the Owner by Contractor. Subcontractor agrees that such costs may be offset against payments otherwise due Subcontractor under this Agreement, or any other agreement between the Parties. Nothing herein shall require Contractor to institute such proceedings and Subcontractor does not require Contractor to obtain Subcontractor's consent to any settlement with Owner, in the event Contractor elects to institute proceedings against Owner.

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

CONTRACTOR: CTC Contractors, LLC.

SUBCONTRACTOR:

By: Josh Crescenzi
Title: President

By:
Title:



Exhibit "A"
Contractor's Insurance Requirements of Subcontractor

Insurance. Subcontractor shall, at its sole cost and expense, maintain in effect at all times during the full term of its Work insurance coverage as set forth below with limits not less than those set forth below:

- a. Commercial General Liability - combined single limit for Bodily Injury and Property Damage Liability

\$2,000,000 General Aggregate,
 \$2,000,000 Products/Completed Operations Aggregate
 \$1,000,000 Personal Injury
 \$1,000,000 Each Occurrence

Coverage provided shall include the following:

1. Premises/Operations;
2. Contractors Protective for Subcontractor's liability arising out of the hire of sub- Subcontractors;
3. Aggregate Limits of Insurance Per Project;
4. Broad Form Contractual Liability specifically in support of, but not limited to, the indemnity provisions of the Contract Documents, or to the fullest extent permitted by law;;
5. Broad Form Personal Injury Liability with Employment and Contractual exclusions removed, or to the fullest extent permitted by law;
6. Broad Form Property Damage, including Completed Operations, or to the fullest extent permitted by law;
7. Product/Completed Operations for a period of three years following acceptance of Subcontractor's Work;
8. All other "Broad form CGL" coverage, without limitation, or to the fullest extent permitted by law; and
9. Explosion, collapse and underground, where such exposures exit.

- b. Business Automobile Liability - \$500,000 per occurrence combined single limit for Bodily Injury and Property Damage Liability. This policy shall be on a standard form written to cover all owned, hired and non- owned automobiles.

- | | |
|--|--|
| c. Workers' Compensation
Employer's Liability | Statutory Limits
\$1,000,000 Each Accident
\$1,000,000 Each Employee for Disease
\$1,000,000 Policy Limit for Disease |
|--|--|

Subcontractor shall maintain during the life of the Work Workers' Compensation coverage for all of Subcontractor's workers at the site of the Project, and in case any Work is sublet, the Subcontractor shall require all sub-subcontractors similarly to provide Workers' Compensation Insurance for all the latter's' employees unless such employees are covered by the protection afforded by the Subcontractor. U.S.L.&H. shall be provided where such exposure exists. No "alternative" form of coverage will be accepted under any condition.

- d. Umbrella/Excess Insurance \$1,000,000

Rating and Form. Subcontractor's insurance coverage must be written with insurance companies licensed to do business in the State of Texas, rated no less than A as shown in the most current issue of A.M. Best's Key Rating Guide, and under forms of policies satisfactory to Contractor.

Occurrence Basis. All such policies shall be written on an Occurrence (not Claims Made) basis.

Primary Liability. All such policies carried and maintained by Subcontractor must be endorsed to be primary to any liability insurance policies carried by Contractor and Owner with respect to Subcontractor's operations hereunder.

Waiver of Subrogation. Waivers of Subrogation shall be provided in favor of Contractor and Owner on General, Auto, Workers' Compensation/Employers and all other liability policies carried and maintained by Subcontractor.

Additional Insured. Contractor and Owner shall be added as an Additional Insured on General, Auto, and all other liability policies carried and maintained by Subcontractor excepting Workers' Compensation/Employers Liability. This additional insured coverage shall include completed operations and the endorsement for the additional insured coverage shall be on an ISO Additional Insured Endorsement CG 20

10 01 and CG 20 37 10 01 or a substitute endorsement providing equivalent coverage. Subcontractor's coverage will be considered primary and non-contributing as to any other insurance carried by Contractor or Owner.

Severability of Interest. The General and Auto Liability policies shall provide cross liability coverage as would be achieved under the standard ISO separation of insureds clause.

Claims Against Aggregate. Contractor must be notified immediately upon knowledge of possible damage claims that might cause a reduction below seventy-five percent (75%) of any aggregate limit of any policy.

Certified Copies. Subcontractor shall provide to Contractor a certified copy of any and all applicable insurance policies upon request of Contractor. Renewal policies, if necessary, shall be delivered to Contractor at least thirty (30) days prior to the expiration of the previous policy.

None of the requirements contained herein as to types, limits or Contractor's approval of insurance coverage to be maintained by Subcontractor are intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by Subcontractor under this Subcontract or otherwise provided by law.

In the event of any failure by Subcontractor to comply with these provisions, Contractor may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to Subcontractor, purchase such insurance, at Subcontractor's expense, provided that Contractor shall have no obligation to do so and if Contractor shall do so, Subcontractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

Subcontractor shall bear the cost of all deductibles.

Evidence of Insurance. Evidence of insurance coverage required to be maintained by the Subcontractor, represented by Certificates of Insurance issued by the insurance carrier or its legal agent must be furnished to the Contractor prior to Subcontractor commencing the Work and not later than fifteen (15) days after receipt of this Subcontract. No payments shall be made to Subcontractor unless the required insurance coverages are in effect and evidence thereof has been submitted to Contractor. New Certificates of Insurance shall be provided to Contractor at least thirty (30) days prior to the current certificate(s) coverage termination date if prior to completion of the Work. Lapsed or cancelled coverage of insurance required by this Subcontract is an Act of Default under the Subcontract. A sample Certificate of Insurance, filled out as required, is attached. Such Certificates of Insurance shall specify:

- a. The Contractor as a Certificate Holder with correct mailing address,
- b. Insured's name, which must match that on the Subcontract,
- c. Companies affording each coverage, policy number of each coverage, policy dates of each coverage, all coverages and limits described herein, and signature of authorized representative of insurance company,
- d. Producer of the certificate with correct address and phone listed,
- e. Certificate Holder and Owner have been named as Additional Insureds as respects the General, Auto Liability and other liability policies described herein,
- f. Waivers of Subrogation in favor of Certificate Holder in General, Auto, and Workers' Compensation/Employers Liability policies,
- g. The General and Auto Liability policies described are primary in respect to the Additional Insured,
- h. All Workers' Compensation classifications listed on Subcontractor's policy,
- i. The Contractor will be notified in writing thirty (30) days prior to the cancellation of or reduction in coverage, or intent not to review coverage, and elimination of "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" from the cancellation provision.

Sub-subcontractor Insurance. Insurance similar to that required of Subcontractor shall be provided by all sub-subcontractors (or provided by Subcontractor on behalf of sub-subcontractors) to cover their operations performed under any subcontract agreement. Subcontractor shall be held responsible for any modification in these insurance requirements as they apply to sub-subcontractors. Subcontractor shall maintain Certificates of Insurance from all sub-subcontractors, enumerating, among other things, the Waivers in favor of, any Additional Insured status of, the Contractor, as required herein, and make them available to Contractor upon request. The term "sub-subcontractor(s)" shall include sub-subcontractors of any tier.

Subcontractor(s) Equipment. The Subcontractor may obtain insurance coverage(s) in sufficient amounts and form to cover its own expense to loss from fire, lightning, wind, vandalism, theft, or other perils of that nature, that are not protected or covered by the Contractor's Builders Risk Policy if such a policy is obtained. The Contractor may provide Builders Risk Insurance for all delivered materials, incorporated and Owner accepted Work. Payment for materials stored or work incorporated constitutes acceptance by the Owner for the purposes of Builders Risk Insurance Coverage under the Contractor's policy. Builders Risk Insurance does not cover Subcontractor's tools or equipment. If the Subcontractor makes a valid claim on the Contractor's Builders Risk Policy, the Subcontractor shall bear the deductible cost.

Any insurance policy covering Subcontractor or its sub-subcontractors' equipment against loss by physical damage shall include an endorsement waiving the insurer's right of subrogation against Contractor and Owner. Such insurance shall be Subcontractor's, and if Subcontractor or its sub-subcontractors choose to self-insure this risk, it is expressly agreed that the Subcontractor and/or its sub-subcontractor(s) hereby waive any claim for damage or loss to said equipment in favor of Contractor and Owner.

Releases and Waiver. Subcontractor hereby releases, and shall cause its sub-subcontractors to release, Contractor and Owner from any and all claims or causes of action whatsoever which Subcontractor and/or its sub-subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered or which should have been covered by insurance, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by Subcontractor and/or its sub-subcontractors pursuant to this Subcontract.

Contractor hereby waives all claims against Subcontractor for damages caused by fire or other perils to the extent of the insurance proceeds which Contractor obtains from its insurance policies, however, nothing contained herein shall prevent or limit Contractor's right to recover paid deductibles and/or excess losses.



EXHIBIT "B" – PLANS & SPECIFICATIONS





CTC Contractors

Printed on Tue Aug 9, 2022 at 04:06 pm CDT

LA Fitness Sienna Pkwy
9026 Sienna Crossing Drive
Missouri City, Texas 77459

Current Drawings

Drawing No.	Drawing Title	Revision	Drawing Date	Received Date	Set
Demolition					
D0.1	COVER SHEET & NOTES	0	01/17/2022	02/07/2022	BID SET (01/17/22)
D0.2	ADA DETAILS	0	01/17/2022	02/07/2022	BID SET (01/17/22)
D1.1	EXISTING/ DEMO FLOOR PLAN	0	01/17/2022	02/07/2022	BID SET (01/17/22)
D1.2A	FLOOR PLAN	0	01/17/2022	02/07/2022	BID SET (01/17/22)
D1.2B	FLOOR FINISH PLAN	0	01/17/2022	02/07/2022	BID SET (01/17/22)
D1.3	EQUIPMENT & SIGNAGE PLAN	0	01/17/2022	02/07/2022	BID SET (01/17/22)
D1.4	RCP	0	01/17/2022	02/07/2022	BID SET (01/17/22)
D1.5	JUICE BAR	0	01/17/2022	02/07/2022	BID SET (01/17/22)
D3.1	INTERIOR ELEVATION	0	01/17/2022	02/07/2022	BID SET (01/17/22)
D3.2	INTERIOR ELEVATION	0	01/17/2022	02/07/2022	BID SET (01/17/22)
D3.3	INTERIOR ELEVATION	0	01/17/2022	02/07/2022	BID SET (01/17/22)
D3.4	INTERIOR ELEVATION	0	01/17/2022	02/07/2022	BID SET (01/17/22)
D4.1	DETAILS	0	01/17/2022	02/07/2022	BID SET (01/17/22)
D4.2	DETAILS	0	01/17/2022	02/07/2022	BID SET (01/17/22)
D4.3	DETAILS	0	01/17/2022	02/07/2022	BID SET (01/17/22)
D4.4	DETAILS	0	01/17/2022	02/07/2022	BID SET (01/17/22)
D4.5	FINISH SCHEDULES	0	01/17/2022	02/07/2022	BID SET (01/17/22)
D4.6	DOOR & WINDOW SCHEDULES	0	01/17/2022	02/07/2022	BID SET (01/17/22)
Electrical					
E1.0	ELECTRICAL DETAILS & NOTES	0	01/17/2022	02/07/2022	BID SET (01/17/22)
E1.1	PANEL SCHEDULES	0	01/17/2022	02/07/2022	BID SET (01/17/22)
E1.2	PANEL SCHEDULES	0	01/17/2022	02/07/2022	BID SET (01/17/22)
E2.0	FLOOR PLAN - LIGHTING	0	01/17/2022	02/07/2022	BID SET (01/17/22)
E2.1	FLOOR PLAN - POWER	0	01/17/2022	02/07/2022	BID SET (01/17/22)
E3.0	ELECTRICAL SPECS & DETAILS	0	01/17/2022	02/07/2022	BID SET (01/17/22)
EQ-1	EQUIPMENT LAYOUT PLAN	0	04/05/2022	04/11/2022	EQUIPMENT LAYOUT PLAN (04/05/22)
Mechanical					
M1.0	MECHANICAL SCHEDULES & DETAILS	1	01/27/2022	05/12/2022	MECHANICAL REVISIONS (01/27/22)
M2.0	MECHANICAL FLOOR PLAN	1	01/27/2022	05/12/2022	MECHANICAL REVISIONS (01/27/22)
Plumbing					
P1.0	LEGENDS & SCHEDULES PLUMBING	0	01/17/2022	02/07/2022	BID SET (01/17/22)
P2.0	FLOOR PLAN WASTE & VENT	0	01/17/2022	02/07/2022	BID SET (01/17/22)
P2.1	FLOOR PLAN COLD & HOT WATER	0	01/17/2022	02/07/2022	BID SET (01/17/22)



CTC CONTRACTORS

Exhibit "C"
Project Schedule



CTC CONTRACTORS

Exhibit “D”

**Subcontractor’s Billing Forms
and Instructions**

**CTC Contractors, LLC
INSTRUCTIONS FOR COMPLETING THE SUB'S BILLING FORMS**

Billings are due to GC by the 20th of each month, and must be emailed to ap@ctccontractors.com.

Do not submit an Application for Payment to bill for change orders which have not been issued by CTC Contractors. They will not be accepted.

Completion Amounts should be estimated completion for the end of the billing month.

Instructions for Page 1, the 2nd tab of this file

1. Complete the heading of the first page. Replace information with correct info where it shows to put info. What you enter to the first page's heading will be transferred automatically to the 2nd page's heading.
Application No. is the sequential number, 1 (first billing), 2 (second billing), 3 (third billing), etc.
Period To: Date to which the completion billed covers.
2. Enter your contract amount in Cell E25.
3. **Enter the total amount of change orders approved by GC in Cell E26. All change orders are to be listed separately on the 2nd page.**
4. Where previous billings apply, enter in Cell E40.
5. The sheet will do the rest of the math for you on the first billing. You may have to edit some cells on future billings.
6. Make sure the Change Order Summary section is completed correctly.
7. You must use the 2nd tab for your breakdown of your subcontract and billing.
8. **Bill retainage on a separate billing at the same time you bill 100% completion.**
9. Attach your own invoice to this pay application as support.

Instructions for Page 2, the 3rd tab of this file

1. Complete all the information in the heading. Some of the information will auto-fill from info entered on the first page.
2. List scope of work items in Column B starting with Line 1. The first line can be your original contract. Change orders must be listed, one per line.
3. Enter the values for each line item in Column C.
4. Enter the amount for which you will bill each line item in Column E, This Period. The % column will prefill for you. See example below.

A	B	C	D	E	F	G	H	I	
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G ÷ C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
1	Example Line Item	\$100.00		\$50.00	\$0.00	\$50.00	50%	\$50.00	\$5.00

a. For first billings on a project, the Prev.Comp. column should be \$0. On subsequent billings, the Prev.Comp should equal the To Date from the prior billing.

5. List all **Approved Change Orders** and Descriptions of Change Order work are to be listed after all base contract line items.
6. Erase any lines you do not need.

TO: CTC Contractors, LLC
3200 North Freeway
Houston, TX 77009

PROJECT: (Enter the job name here)
(Enter the job address)
(Enter the job's city, state, and zip code)

APPLICATION NO 1

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR

PERIOD TO: (Enter billing period)

From: (Enter your company name here)
(Enter your company address here)
(Enter the city, state, and zip code here)

VIA ARCHITECT: Architect Name

PROJECT NOS:

CONTRACT FOR: (Enter the type of work subcontracted here)

CONTRACT DATE (Enter contract date here)

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

1. ORIGINAL CONTRACT SUM	\$	<u>0.00</u>
2. Net change by Change Orders	\$	<u>0.00</u>
3. CONTRACT SUM TO DATE (Line 1 ± 2)	\$	<u>0.00</u>
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	<u>50.00</u>
5. RETAINAGE:		
a. 10 % of Down Payment (Column D + E on G703)	\$	<u>5.00</u>
b. 10 % of Completed Work (Column F on G703)	In Above	
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$	<u>5.00</u>
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)	\$	<u>45.00</u>
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$	<u>0.00</u>
8. CURRENT PAYMENT DUE	\$	<u>45.00</u>
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	<u>(45.00)</u>

CONTRACTOR: (Enter your company name here)

By: _____ Date: _____
(Printed Name, Position)

State of: TEXAS County of: HARRIS

Subscribed and sworn to before me this day (Enter Date)

Notary Public: _____

My Commission expires: (Enter Date)

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	

CONTINUATION SHEET

AIA DOCUMENT G703

PAGE 2 OF 2 PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.
 In tabulations below, amounts are stated to the nearest dollar.
 Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 1
 APPLICATION DATE: (Enter billing period)
 PERIOD TO: (Enter billing period)
 PROJECT NUMBER: 0

A	B	C	D	E	F	G	H	I	
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G ÷ C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
1	Example Line Item	\$100.00		\$50.00	\$0.00	\$50.00	50%	\$50.00	\$5.00
2		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
3		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
4		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
5		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
6		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
7		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
8		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
9		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
10		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
11		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
12		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
13		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
14		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
15		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
16		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
17		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
18		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
19		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
20		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
21		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
22		\$0.00		\$0.00	\$0.00	\$0.00	#DIV/0!	\$0.00	\$0.00
GRAND TOTALS		\$100.00	\$0.00	\$50.00	\$0.00	\$50.00	50%	\$50.00	\$5.00

Users may obtain validation of this document by requesting of the license a completed AIA Document D401 - Certification of Document's Authenticity



CTC CONTRACTORS

Exhibit “E”

Subcontractor Change Order

Subcontractor Change Order



CTC Contractors, LLC.
3200 North Freeway
Houston, Texas 77009
(713) 936-1970

Date: _____

Subcontractor: _____

General Contractor: CTC Contractors LLC

Project name: _____

Change order number: _____

Owner Change Order No: _____

Original contract date: _____

You are directed to make the following changes in this contract:

The original contract sum: _____ \$

Net amount of previous change orders: _____

Total original contract amount plus or minus net change orders: _____

Total amount of this change order: _____

The new contract amount including this change order: _____

The contract time will be changed by the following number of days: () Days

The date of completion as of the date of this change order is: _____

Subcontractor:

Company name

Address

City, State, Zip

Date

Signature

General Contractor:

CTC Contractors LLC
Name

3200 North Freeway
Address

Houston, Texas 77009
City, State, Zip

Date

Signature



CTC CONTRACTORS

Exhibit "F"

Subcontractor Back Charge Notice



Subcontractor Back Charge Notice

Subcontractor's Name:		Subcontractor's Address:	
Subcontractor's City:	Subcontractor's Zip Code:	Subcontractor's Phone No.	Date of this Notice:
Project Name and Address:			

To whom this may concern:

- CTC Contractors will** incur additional expense due to the following:
- CTC Contractors has** incurred additional expense due to the following:
 - Correcting your defective work
 - Finishing your uncompleted work
 - Repairing damage you made to the work of others

Description of the work:

Estimated Back Charge Cost (\$): _____

Submitted by:
CTC Contractors, LLC.

Accepted by:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Date: _____

Date: _____



CTC CONTRACTORS

Exhibit “G”

Lien Waivers and Release for Payment

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project _____

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

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

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

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

Date _____

_____ (Company name)

By _____ (Signature)

_____ (Printed Name)

_____ (Title)

This instrument was executed and acknowledged before me on this _____ day of _____, 20____, by _____ (name), known to me as the person whose name is subscribed above, as _____ (title) of _____ (company), on behalf of and as the authorized act of said entity.

Notary Public in and for the State of Texas
My Commission Expires: _____

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project: _____

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

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

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

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

Date: _____

_____ (Company name)

By _____ (Signature)

_____ (Printed Name)

_____ (Title)

This instrument was executed and acknowledged before me on this _____ day of _____, 20____, by _____ (name), known to me as the person whose name is subscribed above, as _____ (title) of _____ (company), on behalf of and as the authorized act of said entity.

Notary Public in and for the State of Texas
My Commission Expires: _____

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

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project: _____

"The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to CTC CONTRACTORS, LLC. (person with whom signer contracted) on the property of _____ (owner) located at _____(location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

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

Date: _____

_____ (Company)

By _____ (Signature)

_____ (Printed Name)

_____ (Title)

This instrument was executed and acknowledged before me on this ____ day of _____, 20____, by _____ [printed name], known to me as the person whose name is subscribed above, as _____ [title] of _____ [company], on behalf of and as the authorized act of said entity.

Notary Public in and for the State of Texas

My Commission Expires: _____

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

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project: _____

"The signer of this document has been paid and has received a progress payment in the sum of \$ _____ for all labor, services, equipment, or materials furnished to the property or to CTC CONTRACTORS, LLC. (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

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

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

Date: _____

_____ (Company)

By _____ (Signature)

_____ (Printed Name)

_____ (Title)

This instrument was executed and acknowledged before me on this _____ day of _____, 20____, by _____ [printed name], known to me as the person whose name is subscribed above, as _____ [title] of _____ [company], on behalf of and as the authorized act of said entity.

Notary Public in and for the State of Texas
My Commission Expires: _____