



Master Subcontract Agreement

THIS MASTER SUBCONTRACT AGREEMENT (the "Agreement") entered into effective **December 29, 2023**, between Metropolitan Contracting Company, LLC, a Texas limited liability company, 990 Isom Road, San Antonio, TX 78216-4135, TL (210) 829-5542, FX (210) 829-8515 (the "Contractor") and the Subcontractor identified below.

Legal name of subcontractor is «**FirmName**» and will be referred to hereinafter as "Subcontractor".

Subcontractor's address for notices is «**FirmAddress**», «**FirmCity**», «**FirmState**» «**FirmZip**»;

its telephone number is «**FirmPhone**»;

its email address is «**FirmEMailAddress**».

ARTICLE 1, CONTRACT DOCUMENTS:

1.1 General Conditions: Contractor and Subcontractor agree, subject to the provisions of this Agreement, to incorporate herein for all purposes and to be bound by the terms, conditions and definitions of that certain document known as the American Institute of Architect's General Conditions of the Contract for Construction, 2017 Edition ("AIA Document A201-2017"), as modified by Owner and Contractor.

1.2 Contract Documents: The Contract Documents consist of this Agreement, the Subcontract Agreement Work Order (issued by Contractor to and accepted by Subcontractor for specific work on a project by project basis, which will be the only authorization for work under this Agreement), AIA Document A201-2017 (as modified), and those additional documents defined in AIA Document A201-2017 as Contract Documents.

ARTICLE 2, THE WORK:

2.1 This Agreement does not authorize Subcontractor to provide any labor or material for Contractor until a fully completed Subcontract Agreement Work Order signed by Subcontractor and Contractor is delivered to Contractor. Subcontractor must perform the Work as generally described in the Subcontract Agreement Work Order in a good and workmanlike manner and furnish all labor, materials and equipment as required to complete its portion of the Work as specified in the Contract Documents. The Work may be changed at any time only by written order of the Contractor in which case Subcontractor must comply with all such changes without delay. Any change that results in an adjustment to the Subcontract Sum will be accompanied by a detailed itemization of the actual material costs, actual labor costs, reasonable labor benefits, reasonable overhead and reasonable profit. If a change is approved without submittal of the detailed itemization, the payment for that change will be subject to Subcontractor's provision and Contractor's acceptance of the reasonableness of the component charges. Deviations from the requirements of the Contract Documents indicated on shop drawings, product data, samples, or other submittals will not be valid, even if such shop drawings, etc., are approved, unless such deviations are clearly highlighted as such therein.

2.2 Subcontractor must comply in every respect with all laws, codes, ordinances, and regulations of any organization having legal jurisdiction over the Work. Contractor will provide a building permit for the overall Project work. Subcontractor must obtain and pay for all other permits, governmental fees, licenses and inspections necessary for proper execution and completion of the Subcontractor's Work.

2.3 If the quality of any existing work will not allow Subcontractor to complete its Work in a manner that will result in a finished product that complies in all respects with the Contract Documents, Subcontractor must notify Contractor in writing before commencing its Work. By commencing Work, Subcontractor accepts the condition of the existing work as being a fully satisfactory component to be integrated with Subcontractor's Work.

2.4 Project meetings will be held on a scheduled basis for the purpose of reviewing Project issues and coordinating work schedules. Important information is exchanged in these meetings and Subcontractor must send a representative who is empowered to act on behalf of the Subcontractor.

2.5 Subcontractor is responsible for the daily clean-up of all debris created by its Work and, if Subcontractor fails to do so, Contractor may perform such clean-up and withhold the cost of same from any money payable to the Subcontractor.

ARTICLE 3, THE SUBCONTRACT TIME:

3.1 The Work to be performed under this Agreement must be executed in accordance with Contractor's Project Schedule and in cooperation with other subcontractors' work to achieve Substantial Completion of the Project by the Project Substantial Completion Date. Time is of the essence with respect to Subcontractor's performance pursuant to this



Agreement. Upon request, Subcontractor will supply Contractor with an accurate and complete critical path schedule indicating Subcontractor's Work schedule. If such schedule indicates Subcontractor's inability to complete the Work within the required schedule, Subcontractor must undertake all necessary steps, without cost to the Contractor, to meet the schedule, including over-time hours of operation if required. If the Subcontractor fails to properly staff and execute the Work, Contractor, upon written notice and at Subcontractor's expense, may: (i) terminate this Agreement without penalty or (ii) supply additional labor to perform Subcontractor's Work.

3.2 Subcontractor will be liable to Contractor in an amount equal to the Pre-Agreed Schedule Failure Damages for each day the Work is not completed after the Substantial Completion Date or, in the absence of Pre-Agreed Schedule Failure Damages, for the Contractor's actual damages suffered as a result of Subcontractor's failure to timely perform its Work. Within two weeks of the execution of a Subcontract Agreement Work Order, Subcontractor shall submit to Contractor all required Submittals using Procore Software, unless stated otherwise in the project Subcontract Agreement Work Order. Contractor will provide Subcontractor access to Procore at no cost. Any item of Subcontractor's Work appearing on what is commonly known as a *Punch List* must be completed within 48 hours of notice thereof unless the nature of the Work requires additional time in which case Subcontractor must diligently commence and pursue the Punch List Work to completion. Subcontractor must provide all close-out documentation required by the Contract Documents within two weeks of the completion of Subcontractor's Work. Failure to timely provide submittals, complete Punch Lists, or submit close-out documentation adds additional administrative burden on the Contractor that will be reimbursed to the Contractor by the Subcontractor at the rate of \$50.00 per day.

3.3 If Subcontractor's performance of the Subcontract Agreement Work Order is delayed for any reason, including without limitation acts of the Project Owner, Contractor, or other subcontractors, Subcontractor may request an extension of time for the performance of the Work in writing within 5 days of the event causing such delay, but will not be entitled to any increase in the Subcontract Sum or to damages or to additional compensation as a consequence of such delays.

3.4 Subcontractor warrants that it has an effective Hazardous Communications Program and that its employees have received training in that program. Subcontractor warrants that, before commencement of the Work, all Safety Data Sheets relative to materials to be used by it at the Project are immediately accessible.

ARTICLE 4, SUBCONTRACTOR'S RESPONSIBILITIES:

4.1 Subcontractor acknowledges that it will be performing the Work as an independent contractor and is responsible for including any required sales taxes in the Subcontract Sum and remitting same to the collecting authority. Subcontractor is solely responsible for the acts and omissions of its employees and sub-subcontractors, for directing their work, and for the payment of all their wages, taxes, and sub-subcontract amounts.

4.2 To the extent of Work to be performed by Subcontractor pursuant to the Subcontract Agreement Work Order and this Agreement, Subcontractor agrees to be bound to Contractor by the terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities, including without limitation responsibility for the safety of Subcontractor's Work, that Contractor, by the Contract Documents, assumes toward the Project Owner and Architect. Contractor has the benefit of all rights, remedies, and redress against Subcontractor that Project Owner has against Contractor under the Contract Documents, and Subcontractor has the benefit of all rights, remedies, and redress against Contractor that Contractor has against Project Owner under the Contract Documents and not inconsistent with the Subcontract Agreement Work Order and this Agreement. Subcontractor must require that each of its sub-subcontractors agree to the same rights and obligations set out in this Section.

4.3 Subcontractor must (a) take all safety precautions necessary with respect to the performance of the Work under the Subcontract Agreement Work Order and this Agreement, (b) administer an effective, written safety program for the protection of its employees, (c) comply with all safety measures and substance abuse programs initiated by the Contractor, and (d) comply with all applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons and property. Subcontractor must not initiate or proceed with any portion of the Work that a prudent commercial subcontractor would or should have recognized as unsafe. Subcontractor must immediately report to Contractor any unsafe condition or any injury to an employee or agent of Subcontractor that occurred at the Project site.

4.4 Subcontractor has sufficient financial resources to perform the Work pursuant to the Subcontract Agreement Work Order and this Agreement. Subcontractor's request of Contractor to enter into contractual credit guarantees directly with Subcontractor's suppliers, vendors, or other third-parties, such as "Joint Pay Agreements", are viewed as credit guarantees and represent additional administrative burdens and financial risk to Contractor and Contractor is under no obligation to provide such credit guarantees. If Contractor agrees to provide such credit guarantees, as



Contractor is essentially buying the material direct, Subcontractor shall not be entitled to any mark-up, including profit or overhead, related to such payments and the Subcontract Sum will be adjusted accordingly.

4.5 If Subcontractor provides any labor or materials for Contractor without having delivered to Contractor a fully completed Subcontract Agreement Work Order signed by Subcontractor and Contractor, then, anything in this Agreement to the contrary notwithstanding, Subcontractor will be liable to Contractor for all obligations imposed on Subcontractor by this Agreement.

ARTICLE 5, REQUIRED INSURANCE COVERAGE: Subcontractor must maintain in full force and effect, at its own expense, the minimum insurance coverage outlined in **Exhibit "A"** to this Agreement, which is incorporated by reference, unless the specifications, plans, or Project Owner requirements are greater in which case those greater requirements will supersede those outlined in **Exhibit "A"**.

ARTICLE 6, WARRANTY

6.1 Subcontractor warrants to Project Owner and Contractor that materials and equipment furnished by or on behalf of Subcontractor will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work pursuant to the Subcontract Agreement Work Order and this Agreement will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly authorized, will be considered defective. Defective Work will be replaced by and at the expense of the Subcontractor during hours convenient to the Project Owner. All damage caused by defective Work will be restored at the sole expense of Subcontractor. This warranty is in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

6.2 If, within one year after the date of Final Completion of the Project work or designated portion thereof, or after commencement of warranties by terms of an applicable warranty required by the Contract Documents, whichever is longer, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Subcontractor must commence correcting such Work promptly after receipt of written notice from Contractor to do so and thereafter promptly and diligently complete correcting it. The one (1) year period for correction of Work will not be extended by corrective work performed by the Subcontractor, but any corrective work will itself be warranted for one year from completion of the corrective work.

6.3 If a receiver is appointed for Subcontractor or its assets, or if Subcontractor is adjudged a bankrupt, or if there is a reason to believe that such a condition could reasonably be expected to occur within a 12-month period following completion of the Work, Contractor may withhold for the 12-month period a portion of the final payment, not to exceed 5% of the Subcontract Sum, as security for the Subcontractor's warranty obligation.

ARTICLE 7, INDEMNITY:

7.1 For purposes of this Article 7, the following definitions apply:

"Arising From" means directly or indirectly, in whole or in part, (i) occurring in connection with or as a result of, (ii) causing or resulting in, or (iii) based upon.

"Beneficiary" means the intended recipient of the benefits of an indemnity.

"Claim" or "Claims" means the assertion of a legal right and must be interpreted in its broadest sense to include without limitation all claims, requests, accusations, allegations, assertions, complaints, petitions, demands, suits, actions, proceedings, governmental inquiries and investigations of any and every nature (including but not limited to subpoenas, expressions of interest, audits, and all other phases of inquiries and investigations), and causes of action of every kind and description, regardless of whether based on intentional acts, negligence, gross negligence, fraud, misfeasance, malfeasance, nonfeasance, common law grounds, statutory grounds, breach of contract, or otherwise.

"Defend" means to protect a Person against the occurrence of a Loss, including defending or contesting on behalf of a Beneficiary a Claim in litigation, arbitration, mediation, or other proceeding with counsel reasonably acceptable to the Beneficiary and paying all Legal Costs associated with such defense or contest as they become due.

"Indemnify" means to compensate the Beneficiary for a Loss actually incurred.

"Legal Costs" means all costs and expenses incurred or paid relating to any investigation, administrative service, travel, housing expense, hourly cost of personnel providing services, consultants, independent contractors, attorneys' fees, witness fees and expenses, expert witness fees and expenses, filing fees, court costs, arbitration costs and fees, mediation



costs and fees, postage, telephone charges, copying costs, data retrieval, processing and storage costs, exhibit development and production costs, support personnel costs; payments, funding, and other expenditures in settlement or compromise; all other costs, fees, expenditures and expenses, of any nature, arising, in any way, from any Claim; and any fine, debt, penalty, deficiency, obligation, diminution of value, and any incidental or consequential damage.

“Loss” means any actual or alleged liability, cost or expense (including Legal Costs), loss, damage (including actual, consequential, and punitive), judgment, or penalty of whatever nature or description, incurred by a Person or property, including, without limitation, (i) harm to or impairment, loss, or diminution in the value of tangible or intangible property or its use, including, without limitation, loss of business or revenues, (ii) bodily injury, physical harm to, or death of a natural Person, or (iii) “personal and advertising injury” as such term or terms are defined by the edition of ISO form CG 00 01 in effect on the date of this Agreement.

“Person” means a natural person, a trust or estate, or a corporation, partnership, limited liability company, or other form of entity.

7.2 TO THE FULLEST EXTENT PERMITTED BY LAW AND SUBJECT TO Section 7.3, BELOW, SUBCONTRACTOR MUST INDEMNIFY THE CONTRACTOR, PROJECT OWNER, ARCHITECT, AND ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF ANY OF THEM, AND ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AFFILIATES, SUBSIDIARIES, AND PARTNERS (INDIVIDUALLY, AN “INDEMNITEE” AND, COLLECTIVELY, “INDEMNITEES”), FROM AND AGAINST ALL CLAIMS ARISING FROM OR ALLEGED TO ARISE FROM ANY LOSS RELATING DIRECTLY OR INDIRECTLY TO THE (1) PERFORMANCE OF THE WORK PURSUANT TO THIS AGREEMENT, (2) NEGLIGENCE, (3) FAULT, (4) INTENTIONAL ACTS, (5) BREACH OF THIS AGREEMENT, OR (6) BREACH OR VIOLATION OF A STATUTE (INCLUDING WITHOUT LIMITATION ANY OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (“OSHA”) LAW, RULE, OR REGULATION), ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, BY SUBCONTRACTOR OR ITS AGENT, EMPLOYEE, OR SUB-SUBCONTRACTOR OF ANY TIER, OR ANYONE FOR WHOSE ACTS OR OMISSIONS THEY MAY BE LIABLE (INDIVIDUALLY, AN “INDEMNITOR” AND, COLLECTIVELY, “INDEMNITORS”), BUT ONLY FOR THE PERCENTAGE OF RESPONSIBILITY AN INDEMNITOR CAUSED OR CONTRIBUTED TO CAUSE IN ANY WAY.

7.3 NOTWITHSTANDING THE FOREGOING Section 7.2 AND TO THE FULLEST EXTENT PERMITTED BY LAW, AND IN REGARD TO ANY CLAIM AGAINST ANY INDEMNITEE BY, THROUGH, OR UNDER ANY EMPLOYEE OF SUBCONTRACTOR, OR EMPLOYEE OF SUBCONTRACTOR’S AGENT OR SUB-SUBCONTRACTOR OF ANY TIER, SUBCONTRACTOR MUST INDEMNIFY THE INDEMNITEES FROM AND AGAINST ANY LOSS FOR BODILY INJURY AND DEATH ARISING FROM OR ALLEGED TO ARISE FROM THE (1) PERFORMANCE OF THE WORK PURSUANT TO THIS AGREEMENT, (2) NEGLIGENCE, (3) FAULT, (4) BREACH OF THIS AGREEMENT, OR (5) BREACH OR VIOLATION OF A STATUTE (INCLUDING WITHOUT LIMITATION ANY OSHA LAW, RULE, OR REGULATION), ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, BY SUBCONTRACTOR OR ITS AGENT, EMPLOYEE, OR SUB-SUBCONTRACTOR OF ANY TIER, OR ANYONE FOR WHOSE ACTS OR OMISSIONS THEY MAY BE LIABLE, REGARDLESS OF WHETHER ANY SUCH LOSS ARISES FROM THE ACTUAL OR ALLEGED SOLE OR CONCURRENT NEGLIGENCE OR OTHER FAULT OF ANY INDEMNITEE.

7.4 SUBJECT TO THE TERMS OF THIS ARTICLE 7, SUBCONTRACTOR IS OBLIGATED TO PROVIDE A DEFENSE FOR ANY INDEMNITEE FOR ALL CLAIMS ARISING FROM OR ALLEGED TO ARISE FROM THE (1) PERFORMANCE OF THE WORK PURSUANT TO THIS AGREEMENT, (2) NEGLIGENCE, (3) FAULT, (4) INTENTIONAL ACT, (5) BREACH OF THIS AGREEMENT, OR (6) BREACH OR VIOLATION OF A STATUTE (INCLUDING WITHOUT LIMITATION ANY OSHA LAW, RULE, OR REGULATION), ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, BY ANY INDEMNITOR, BUT ONLY FOR THE PERCENTAGE OF RESPONSIBILITY AN INDEMNITOR CAUSED OR CONTRIBUTED TO CAUSE IN ANY WAY UNLESS THE CLAIM IS BY, THROUGH, OR UNDER ANY EMPLOYEE OF SUBCONTRACTOR, OR EMPLOYEE OF SUBCONTRACTOR’S AGENT OR SUB-SUBCONTRACTOR OF ANY TIER, IN WHICH CASE A DEFENSE MUST BE PROVIDED BY SUBCONTRACTOR REGARDLESS OF WHETHER ANY SUCH CLAIM IS ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE SOLE OR CONCURRENT NEGLIGENCE OR OTHER FAULT OF ANY INDEMNITEE.

7.5 SUBCONTRACTOR AGREES THAT SUBCONTRACTOR MUST FURNISH ALL EQUIPMENT NECESSARY TO PERFORM SUBCONTRACTOR’S WORK UNDER THIS AGREEMENT AND A SUBCONTRACT WORK ORDER. NOTWITHSTANDING THE FOREGOING, CONTRACTOR OR SUBCONTRACTOR, EACH IN ITS SOLE DISCRETION, MAY ALLOW THE OTHER TO RENT ITS EQUIPMENT FOR USE ON THE PROJECT FOR SUCH CONSIDERATION AS THE PARTIES AGREE. THE PARTY PROVIDING THE EQUIPMENT WILL BE CALLED THE “LESSOR” AND THE PARTY USING THE EQUIPMENT WILL BE CALLED THE “LESSEE” FOR PURPOSES OF THIS SECTION 7.5. LESSEE AGREES TO RETURN THE EQUIPMENT TO LESSOR IN THE SAME CONDITION THAT IT



WAS IN ON THE DAY PROVIDED TO LESSEE, NORMAL WEAR AND TEAR EXCEPTED. IF THE EQUIPMENT IS LOST OR DESTROYED DURING THE RENTAL PERIOD, LESSEE AGREES TO REPLACE THE EQUIPMENT AT LESSEE'S OWN EXPENSE. IF THE EQUIPMENT IS DAMAGED DURING THE RENTAL PERIOD, LESSEE AGREES TO HAVE THE EQUIPMENT REPAIRED OR REPLACED. CONTRACTOR AND SUBCONTRACTOR UNDERSTAND THAT LESSOR IS NOT WARRANTING THAT THE EQUIPMENT IS FIT FOR ANY SPECIFIC USE OR FOR ANY PARTICULAR PURPOSE AND THAT LESSEE IS SOLELY RESPONSIBLE FOR THE SELECTION OF THE EQUIPMENT. LESSEE RELEASES FROM LIABILITY AND AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR, AND ANY OF LESSOR'S EMPLOYEES, AGENTS OR VOLUNTEERS REPRESENTING OR RELATED TO LESSOR, FOR ANY LOSS IN CONNECTION WITH THE USE OR POSSESSION OF THE EQUIPMENT AS PROVIDED IN SECTIONS 7.2, 7.3, AND 7.4. THIS RELEASE AND INDEMNITY IS FOR ANY AND ALL LOSS ARISING FROM THE POSSESSION OR USE OF THE EQUIPMENT BY LESSEE. LESSEE WILL NOT USE OR ALLOW ANYONE TO USE THE EQUIPMENT: (A) FOR ANY ILLEGAL PURPOSE OR IN AN ILLEGAL MANNER, (B) WITHOUT A LICENSE, IF REQUIRED UNDER ANY APPLICABLE LAW, OR (C) WHO IS NOT QUALIFIED TO OPERATE IT. LESSEE AGREES, AT LESSEE'S SOLE EXPENSE, TO COMPLY WITH ALL APPLICABLE MUNICIPAL, STATE, AND FEDERAL LAWS, ORDINANCES AND REGULATIONS (INCLUDING OSHA REQUIREMENTS) THAT MAY APPLY TO THE USE OF THE EQUIPMENT. LESSEE ACKNOWLEDGES AND ASSUMES ALL RISKS INHERENT IN THE OPERATION AND USE OF THE EQUIPMENT BY LESSEE AND WILL TAKE ALL NECESSARY PRECAUTION TO PROTECT ALL PERSONS AND PROPERTY FROM INJURY OR DAMAGE WHILE IN POSSESSION OF THE EQUIPMENT. LESSOR WILL NOT BE RESPONSIBLE TO LESSEE OR TO ANY OTHER PARTY FOR ANY LOSS, DAMAGE OR INJURY (INCLUDING ANY LOSS OF PROFITS, BUSINESS INTERRUPTION OR OTHER SPECIAL OR CONSEQUENTIAL DAMAGES) CAUSED BY, RESULTING FROM, ARISING FROM, OR IN ANY WAY CONNECTED WITH THE EQUIPMENT, ITS OPERATION OR USE, OR ANY DEFECT WITH RESPECT THERETO. LESSOR DOES NOT WARRANT, EITHER EXPRESSLY OR IMPLIEDLY, AS TO THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. THERE IS NO WARRANTY THAT THE EQUIPMENT IS SUITED FOR LESSEE'S INTENDED USE, OR THAT IT IS FREE FROM DEFECTS. LESSOR DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, IN CONNECTION WITH SUCH A RENTAL TRANSACTION.

7.6 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ITS INDEMNITY OBLIGATIONS ARE INTENDED TO COMPLY WITH CHAPTER 151 OF THE TEXAS INSURANCE CODE AND MUST BE INTERPRETED AS BROADLY AS PERMISSIBLE TO SATISFY THAT INTENT. IT IS AGREED THAT WITH RESPECT TO ANY LEGAL LIMITATION NOW OR HEREAFTER IN EFFECT AND AFFECTING THE VALIDITY OR ENFORCEABILITY OF THE INDEMNITY OBLIGATIONS OF THIS AGREEMENT, SUCH LEGAL LIMITATIONS ARE MADE A PART OF THESE INDEMNITY OBLIGATIONS TO THE MINIMUM EXTENT NECESSARY TO BRING THOSE INDEMNITY OBLIGATIONS INTO CONFORMITY WITH CHAPTER 151 OF THE TEXAS INSURANCE CODE AND, AS SO MODIFIED, CONTINUE IN FULL FORCE AND EFFECT.

7.7 THE OBLIGATIONS OF SUBCONTRACTOR UNDER THIS ARTICLE 7 MUST NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE SUBCONTRACTOR UNDER WORKER'S OR WORKMAN'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

7.8 THE SUBCONTRACTOR'S OBLIGATIONS SET OUT IN THIS ARTICLE 7 SURVIVE THE PERFORMANCE OF WORK UNDER THIS AGREEMENT FOR THAT PERIOD OF TIME NECESSARY FOR THE INDEMNITEES TO RECEIVE THE BENEFITS OF THIS ARTICLE 7.

ARTICLE 8, THE SUBCONTRACT SUM & PROGRESS PAYMENTS:

8.1 For the performance of the Subcontractor's Work, Contractor will pay Subcontractor, subject to additions and deductions by Change Order and subject to payment by Project Owner to Contractor, the Subcontract Sum. Attached as **Exhibit "Y"** is the form of evidence that will be provided with each Subcontract Agreement Work Order concerning the financial viability of Project Owner.

8.2 Subcontractor must invoice Contractor by the 25th day of the month for all material and labor incorporated in the Work that month, providing written, substantiating backup if required. To be processed for payment, Subcontractor's invoices must be submitted using Procore software. Contractor will provide access to the software for each Project at no cost to Subcontractor. Subcontractor must provide the appropriate Waiver and Release form, which are attached to this Agreement as **Exhibits "D-1"**, **"D-2"**, and **"D-3"**. Contractor may apply any payment due pursuant to a Subcontract Agreement Work Order to any other indebtedness owed by Subcontractor to Contractor.

8.3 Subcontractor is not entitled to payment for any labor or material until a fully completed Subcontract Agreement Work Order signed by Subcontractor and Contractor is delivered to Contractor. Payments due to Subcontractor



will be withheld if Subcontractor has failed to (a) provide the required insurance certificates, (b) to correct defective Work, (c) failed to update Contractor's "As-Built" plans and specifications kept at the project site, or (d) to satisfy any claim or lien (existing or, on the basis of reasonable evidence, expected to exist in the next 45 days) relative to the Work. Contractor will not be obligated whatsoever to pay for any Work not invoiced within 60 days following the month of its installation. Contractor will pay Subcontractor 90% of all material and labor incorporated in the Work within 5 days of Contractor's receipt from Project Owner of payment for same, but subject to Contractor's receipt of such payment. The remaining 10% will be withheld by Contractor and will be payable to Subcontractor within 5 days of Contractor's receipt from Project Owner of payment for same, but subject to Contractor's receipt of such payment.

8.4 If the condition precedent to payment (that is, Contractor's obligation to pay Subcontractor is contingent upon payment from the Owner) is not enforceable against Subcontractor, then Subcontractor and Contractor agree that Contractor will pay Subcontractor on its application for progress payment within a reasonable period of time after all other conditions to payment have been satisfied by Subcontractor. Subcontractor agrees that a reasonable period of time for payment is the time it takes the Contractor to fully and finally resolve through settlement, arbitration, litigation, or otherwise, the disputes with the Owner that have resulted in non-payment to the Contractor.

ARTICLE 9, LIENS:

9.1 Except for Contractor's failure to pay Subcontractor in accordance with the terms of this Agreement, Subcontractor will save and keep the Project free from all liens by reason of its Work or of any materials or other things used by it in the Work and shall indemnify and hold the Contractor harmless against all loss, damage, expense, or claim arising out of Subcontractor's failure to do so. If Subcontractor fails to remove any lien by bonding it or otherwise, Contractor may, but shall not be obligated to, retain sufficient funds to pay the same out of any money due or thereafter to become due to Subcontractor. In addition, Contractor may remove the lien by bonding it, the cost of which shall be paid by the Subcontractor, but in no event will such cost be less than \$1,000.

9.2 Prior to commencing the Work pursuant to any Subcontractor Agreement Work Order, Subcontractor must deliver to Contractor a completed Affidavit of Sub-Subcontractors and Suppliers the form of which is attached to this Agreement as **Exhibit "E"**.

9.3 Subcontractor recognizes that the Project Owner may finance a portion or all of the Project in which case Subcontractor subordinates its lien priority, in full, to any such first lien note. Subcontractor agrees to execute any further documentation necessary to effect such subordination.

ARTICLE 10, DEFAULT:

If Subcontractor at any time fails to supply adequate and complete supervision or a sufficient number of properly skilled workmen or materials of the proper quality, fails in any respect to perform the Work with promptness and diligence, fails in the performance of any agreement for the benefit of its creditors, fails to pay promptly its obligations, fails in the performance of any of the agreements on its part contained in this Agreement or the Subcontract Agreement Work Order, or if a receiver is appointed for Subcontractor or its assets, or if Subcontractor is adjudged a bankrupt, or if any workmen performing work covered by this Subcontract engage in a strike or other work stoppage, or cease to work due to picketing or other activity, then Contractor may, in any such event, at its option after twenty-four (24) hours written notice to Subcontractor, provide any such labor and materials required to maintain necessary job progress, and charge the cost thereof to Subcontractor.

ARTICLE 11, ARBITRATION:

Any dispute, controversy, or claim arising out of or related to the Subcontract Agreement Work Order and this Agreement or the breach thereof, may in the sole discretion of Contractor be resolved by binding arbitration in accordance with the Construction Industry's Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof; provided, however, if Project Owner and Contractor are parties to a court proceeding and, if Subcontractor can be joined as a party, then Subcontractor agrees it may be joined as a party to the proceeding.

ARTICLE 12, CANCELLATION FOR CONVENIENCE:

Contractor may, without cause, cancel this Agreement or a Subcontract Agreement Work Order upon written notice to Subcontractor. In such case, the Subcontractor must cease operations as directed, take such steps to protect the Work as directed, deliver as directed all materials for which payment has been or will be made and terminate all existing sub-subcontracts and purchase commitments (all of which shall include these same cancellation provisions). Subcontractor will be paid for its reasonable expenses in connection with any such cancellation, as well as the pro-rata value of its Subcontract profit for Work completed to date.

ARTICLE 13, MISCELLANEOUS:



13.1 Contractor is an Equal Opportunity Employer and may be subject to Executive Order 11246. The provisions of Articles 1 through 7 of such Executive Order are incorporated herein by reference.

13.2 Subcontractor will not assign this Agreement or any Subcontract Agreement Work Order, or subcontract any portion of the Subcontract Work, without prior written notice to and authorization by Contractor. Contractor may assign this Agreement and a Subcontract Agreement Work Order to the Project Owner.

13.3 This Agreement and a Subcontract Agreement Work Order will be governed by the laws of the State of Texas and all obligations arising from them are performable in Bexar County, Texas.

13.4 All materials attached to this Agreement as exhibits are incorporated by reference as part of this Agreement for all purposes as if set forth verbatim in the text of this Agreement.

13.5 This Agreement and all Contract Documents constitute the entire agreement of Contractor and Subcontractor and supersede all prior agreements, written or oral, between the parties hereto and no amendment or modification of this Agreement or a Subcontract Agreement Work Order will be binding unless executed in writing by the parties hereto.

13.6 The individual signing this Agreement on behalf of Subcontractor represents and warrants that he or she is authorized to bind Subcontractor to this Agreement and Subcontractor represents and warrants that the individual signing any Subcontract Agreement Work Order on behalf of Subcontractor is authorized to bind Subcontractor to such Work Order.

13.7 This Agreement, entered into as of the day and year first written above, will become binding and of full force and effect upon receipt by Contractor of a fully completed copy executed by both parties, which copy may be sent by electronic means.

13.8 Contractor and Subcontractor agree to conduct transactions by electronic means pursuant to the Uniform Electronic Transactions Act (Title 10, Subtitle B, Chapter 322, of the Texas Business and Commerce Code). Either party may withdraw its consent and agreement to continue to conduct this transaction or future transactions by electronic means by delivering electronic notice to the other party.

CONTRACTOR:

SUBCONTRACTOR:

By: _____

By: _____

Title: Authorized Officer

Title: _____

***** To be completed by SUBCONTRACTOR *****

Current Insurance Certificate with required coverage and language attached (See Exhibit A)? Yes No

SAMPLE



Exhibit "A"

SUBCONTRACTOR INSURANCE REQUIREMENTS

I. Subcontractor must maintain in full force and effect, at its own expense, at least the minimum insurance coverage and limits listed below. Subcontractor must require Sub-subcontractors to maintain in full force and effect, at their own expense, at least the minimum insurance coverage and limits listed below prior to mobilization at the jobsite and ensure that the insurance requirements set forth in this Exhibit "A" are a part of any purchase order or sub-subcontract issued by Subcontractor as though fully set forth in such purchase order or sub-subcontract. The coverage and amounts below are minimum requirements and do not establish limits to Subcontractor's liability.

A. Worker's Compensation

1. Statutory
2. Employer's Liability Insurance – \$1,000,000 bodily injury – each accident, \$1,000,000 bodily injury by disease – policy limits, \$1,000,000 bodily injury by disease – each employee
3. Worker's Compensation policy must contain a waiver of subrogation endorsement (WC 42 03 04 A) in favor of the Contractor and Project Owner
4. Worker's Compensation policy must contain 30-day Notice of Cancellation (WC 42 06 01)

B. Commercial General Liability Insurance ("CGLI") on an occurrence coverage form with

1. Minimum limits as follows:
 - a. \$1,000,000 Each Occurrence
 - b. \$1,000,000 Products and Completed Operations
 - c. \$2,000,000 General Aggregate
 - d. \$2,000,000 Products and Completed Operations Aggregate
2. CGLI Policy must include the following coverage where applicable:
 - a. Bodily Injury and Property Damage on an "occurrence" basis
 - b. Premises and Operations
 - c. Independent Contractors
 - d. Blanket Broad Form Contractual Liability (insuring the liability assumed under the Subcontract)
 - e. Blanket XCU (Explosion, Collapse, Underground Damage)
 - f. Products/Completed Operations
 - g. Knowledge/Notice of Occurrence (to Project Owner)
 - h. Personal Injury Liability
 - i. Employees as Additional Insured
 - j. Host Liquor Law Liability
 - k. Incidental Malpractice
 - l. Non-Owned Watercraft (Under 26 feet)
 - m. Broad Form Property Damage (including completed operations)
 - n. Elevators
3. CGLI Policy must be endorsed as follows:
 - a. Contractor and Project Owner, and their officers and employees (and others, if required by the Contract Documents), must be named as additional insureds, both for ongoing work and completed operations, using endorsements CG 20 10 (10/01) and CG 20 37 (10/01) or their equivalents.
 - b. Waiver of subrogation in favor of additional insureds, including Contractor and Project Owner (and others, if required by the Contract Documents) by endorsement if necessary.



- c. Subcontractor's CGLI Policy shall be primary and insurance carried by Owner and Contractor shall be excess to and non-contributory with Subcontractor's insurance and coverage afforded to Contractor as additional insured must be at least as broad as coverage afforded to Subcontractor as named insured.
- C. Commercial Automobile Insurance for all owned, non-owned, and hired vehicles with a minimum combined single limit of \$1,000,000 each occurrence, including bodily injury, death and property damage, and naming Contractor and its officers and employees and Project Owner (and others, if required by the Contract Documents) as additional insureds using form CA 20 48 or an endorsement providing equivalent coverage. A waiver of subrogation must be included in favor of additional insureds, including Contractor, Project Owner, and Project Architect (and others, if required by the Contract Documents) by endorsement if necessary.
- D. Commercial Umbrella Liability Insurance on an "occurrence" basis, providing excess coverage for Employers Liability, Commercial General Liability, and Commercial Auto Liability, including bodily injury and property damage coverage with minimum limits of \$1,000,000 each occurrence and \$1,000,000 general aggregate, and naming Contractor and its officers and employees and Project Owner (and others, if required by the Contract Documents) as additional insureds. A waiver of subrogation must be included in favor of additional insureds, including Contractor, Project Owner, and Project Architect (and others, if required by the Contract Documents) by endorsement if necessary.
- E. Professional Liability Insurance (Errors and Omissions). If Subcontractor's scope of work includes the design of any system, component or portion of the Work, the Subcontractor, and any of its sub-subcontractors or sub-consultants involved in such design, must procure, pay for, and maintain Professional Liability Insurance for claims arising from the negligent performance of such design, issued by a carrier acceptable to Contractor, and must provide coverage for bodily injury or death, property damage, passive malfunction and economic loss, basic professional errors and omissions, punitive damages (where not prohibited by law), and contractual liability arising out of any act, failure to act, or omission arising out of the Subcontractor's performance or provision of any such design service under or in connection with this Agreement, or as to the Subcontractor's sub-subcontractors or sub-consultants, arising out of their performing or providing any such design service under or in connection with their respective agreements with Subcontractor. Limits for Professional Liability Insurance must not be less than \$1,000,000 per claim with a deductible not to exceed \$50,000, which deductible must be paid by Subcontractor. The policy must include prior acts coverage sufficient to cover all design performed by the Subcontractor, sub-subcontractor or sub-consultant with a retroactive date that is no later than the date of inception of design services. Certificates evidencing existence of coverage required under this Section must be maintained from the date work commences until four (4) years after the Work has been completed and final payment under this Agreement has been received.
- F. The "aggregate" limits must apply separately to each project.
- II. Subcontractor must furnish to the Contractor evidence of the required insurance and Certificates of Insurance on the earlier of (i) ten (10) days after signing a Subcontract Agreement Work Order or (ii) ten (10) business days prior to the commencement of Subcontractor's Work at the Project site. Failure of Contractor to demand a certificate of insurance or failure of Contractor to identify a deficiency in required coverages must not be construed as a waiver of Subcontractor's obligation to purchase and maintain such insurance.
- III. Subcontractor must not commence work at the Project site under the Subcontract Agreement Work Order until it has obtained all required insurance and delivered Certificates of Insurance to Contractor prior to commencing work, but delivery of such Certificates will not relieve or decrease the liability of Subcontractor nor be considered approval of any lesser coverage except by specific written agreement of Contractor. Failure to furnish either satisfactory insurance or certificates within 10 days of notice to proceed shall not be cause for modification of any contractual time limits.
- IV. The required insurance must be written by a company licensed to do business in the state where the Subcontractor's Work is to be performed at the time the policy is issued with a minimum Best's Financial Strength Rating of A-/VIII, and with a company acceptable to Contractor. Subcontractor must not cause any required insurance to be canceled nor permit any insurance to lapse.
- V. All insurance policies must include a provision or be endorsed to provide that the policy will not be canceled or reduced, restricted, or limited until 30 days after Contractor has received written notice as evidenced by a certified mail return receipt or registered letter.
- VI. Subcontractor waives all rights against Contractor and Project Owner for damages, including but not limited to the right of subrogation, caused by fire, theft, destruction, or other peril or casualty loss except to the extent that such loss is covered by any other Property or Builder's Risk insurance applicable to the Work.



- VII. If Subcontractor fails or neglects to obtain or renew the insurance required by this Agreement and furnish Contractor an executed Certificate of Insurance form as evidence thereof, Subcontractor must pay Contractor an amount equal to .04889 times the Subcontract Sum (adjusted for increases or decreases by change order), which Contractor may deduct from amounts due Subcontractor.
- VIII. Subcontractor must fill in appropriate blanks and sign the Texas Department of Insurance, Division of Workers' Compensation DWC Form-85 and deliver it to Contractor unless Subcontractor does not have employees in which case Subcontractor must check and sign the Joint Agreement portion of DWC Form-83 and deliver it to Contractor. In the alternative, Contractor may in its sole discretion deem such failure or neglect on the part of Subcontractor as a material breach of this Agreement.
- IX. Subcontractor must incorporate all provisions of this Exhibit "A" into its subcontracts so all sub-subcontractors have the same coverage and provisions as required above.
- X. Coverage for Subcontractor's Tools and Equipment. Subcontractor is responsible for insuring its own tools and equipment that Subcontractor uses in connection with its Work. A Waiver of Subrogation must apply in favor of Contractor and Project Owner (and others, if required by the Contract Documents).
- XI. Waiver of Subrogation. Contractor and Subcontractor waive all rights against each other, against the Project Owner, and against all other subcontractors for damages caused by fire or other perils to the extent covered by applicable builders risk or similar property insurance, except such rights as they may have to the proceeds of such insurance. Subcontractor must require the same waiver from its suppliers and sub-subcontractors.
- XII. Notwithstanding anything to the contrary in this Agreement, its insurance provisions, including but not limited to the additional insured requirements, are intended to comply with Chapter 151 of the Texas Insurance Code and must be interpreted as broadly as permissible to satisfy that intent. It is agreed that with respect to any legal limitation now or hereafter in effect and affecting the validity or enforceability of the additional insured obligations of this Agreement, such legal limitations are made a part of the additional insured obligations to the minimum extent necessary to bring those insurance provisions into conformity with Chapter 151 of the Texas Insurance Code and, as so modified, the additional insured obligations will continue in full force and effect.
- XIII. See following page for examples of acceptable certificate language.

SAMPLE

SAMPLE



Exhibit "A" Continued
SUBCONTRACTOR INSURANCE REQUIREMENTS

ACORD CERTIFICATE OF LIABILITY INSURANCE						DATE (MM/DD/YYYY) CURRENT DATE	
PRODUCER AGENT'S NAME ADDRESS PHONE: FAX:			THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.				
INSURED SUBCONTRACTOR'S NAME ADDRESS PHONE: FAX:			INSURERS AFFORDING COVERAGE		NAIC #		
			INSURER A: COMPANY				
			INSURER B: COMPANY				
			INSURER C: COMPANY				
			INSURER D:				
			INSURER E:				
COVERAGES THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
FORM LTR	ACORD (NSRD)	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/>	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> _____ <input type="checkbox"/> _____ GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	EXAMPLE 123456789	10/01/XX	10/01/XX	EACH OCCURRENCE	\$1,000,000
						DAMAGE TO RENTED PREMISES (Per occurrence)	\$50,000
						MED EXP (Any one person)	\$5,000
						PERSONAL & ADV INJURY	\$1,000,000
						GENERAL AGGREGATE	\$2,000,000
						PRODUCTS - COM/OP AGG	\$1,000,000
							\$
B	<input checked="" type="checkbox"/>	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> _____ <input type="checkbox"/> _____	EXAMPLE 123456789	10/01/XX	10/01/XX	COMBINED SINGLE LIMIT (Each Occurrence)	\$1,000,000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
I	<input type="checkbox"/>	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> _____				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN AUTO ONLY:	
						EA ACC	\$
						AGG	\$
A	<input checked="" type="checkbox"/>	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000	EXAMPLE 123456789	10/01/XX	10/01/XX	EACH OCCURRENCE	\$1,000,000
						AGGREGATE	\$1,000,000
							\$
						UMBRELLA FORM	\$
							\$
C	<input type="checkbox"/>	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	EXAMPLE 123456789	10/01/XX	10/01/XX	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER	
						E.L. EACH ACCIDENT	\$1,000,000
						E.L. DISEASE - EA EMPLOYEE	\$1,000,000
						E.L. DISEASE - POLICY LIMIT	\$1,000,000
	<input type="checkbox"/>	OTHER					
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS							
CERTIFICATE HOLDER METROPOLITAN CONTRACTING COMPANY, LLC 990 ISOM ROAD SAN ANTONIO, TX 78216-4135				CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE			

As might be allowed by law, either indicate in the Certificate, or attach endorsements indicating that your policy(s) provide: SAME COVERAGE FOR ALL JOBS IN POLICY YEAR AS PER WRITTEN CONTRACT(S). CERTIFICATE HOLDER & PROJECT OWNER ARE NAMED AS AN ADD'L INSURED ON ALL POLICIES EXCEPT WORKER'S COMP (as written on contract). GENERAL LIABILITY INCLUDES ADD'L ENDORSEMENT THAT APPLIES TO ONGOING WORK & PRODUCTS/COMPLETED OPERATIONS. GENERAL LIABILITY IS PRIMARY AND NON-CONTRIBUTORY. WAIVER OF SUBROGATION ENDORSEMENT IN FAVOR OF HOLDER IS ATTACHED TO THE WORKER'S COMP & GENERAL LIABILITY. UMBRELLA TO FOLLOW FORM.



Exhibit "B"
Not Used

SAMPLE

SAMPLE

SAMPLE

SAMPLE



Exhibit "C"
Not Used
Exhibit "D-1"

SUBCONTRACTOR'S CONDITIONAL WAIVER AND RELEASE
To be included with each Progress Payment Application

Project		Project Owner:	
Subcontractor:		Subcontract Number:	
Paid to Date:	\$	Current Pay Request:	\$
For all work, materials, equipment or services provided for or to the Project through the last day of _____, 20__ ("Release Date")			

On receipt by Subcontractor of a check from Metropolitan Contracting Company, LLC ("Contractor") in the sum of the amount of the Current Pay Request payable to Subcontractor 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 all rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the Subcontractor's position that the Subcontractor has on the property of Project Owner located at the Project Location to the extent of the Work as defined in the agreement referenced by the Subcontract Number.

This release covers a progress payment in the amount of the Current Pay Request for all labor, services, equipment, or materials furnished to the Project or to Contractor or in the attached statement(s) or progress payment request(s), except for unpaid retainage, and pending modifications and changes. Before any recipient of this document relies on this document, the recipient should verify evidence of payment to Subcontractor. Subcontractor warrants that Subcontractor has already paid or will use the funds of the Current Pay Request to promptly pay in full all of Subcontractor's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the Project through the Release Date.

Subcontractor warrants and guarantees to Contractor that if a lien is filed against the Project arising from labor performed or material, equipment and/or tools furnished in connection with the work under the Subcontract for which Subcontractor has been paid, Subcontractor shall immediately obtain a settlement and furnish Contractor and Project Owner a release. Subcontractor additionally will indemnify Contractor and Project Owner against all costs and expenses, including attorney's fees, which may be incurred with respect to such lien.

The undersigned hereby represents and warrants that he or she is the duly authorized agent of Subcontractor and is fully authorized to sign this Lien Waiver and Release.

It is the intent of this waiver and release to comply with the provisions of Subchapter L of Chapter 53 of the Property Code of the State of Texas.

Executed on behalf of Subcontractor this _____ day of _____, 20__

By: _____

Printed Name: _____

Title: _____

SUBSCRIBED & SWORN TO before me this _____ day of _____, 20__

Notary Public Signature: _____

Notary Public Seal: _____ Notary Public, State of _____



Exhibit "D-2"
SUBCONTRACTOR'S CONDITIONAL WAIVER AND RELEASE

To be included with Final Payment Application if you have not received your Final Payment

Project:		Project Owner:	
Subcontractor:		Subcontract Number:	
Paid to Date:	\$	Final Pay Request:	\$

On receipt by Subcontractor of a check from Metropolitan Contracting Company, LLC ("Contractor") in the sum of the amount of the Final Pay Request payable to Subcontractor 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 all rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the Subcontractor's position that the Subcontractor has on the property of Project Owner located at the Project Location to the extent of the entire scope of Work as defined in the Agreement referenced by the Subcontract Number.

This waiver and release covers the final payment to the Subcontractor for all labor, services, equipment, or materials furnished to the Project or to Contractor. Before any recipient of this document relies on this document, the recipient should verify evidence of payment to Subcontractor. Subcontractor warrants that Subcontractor has already paid or will use the funds of the Final Pay Request to promptly pay in full all of Subcontractor's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the Project that were required to fully complete the entire scope of Work as defined in the agreement referenced by the Subcontract Number.

Subcontractor warrants and guarantees to Contractor and Project Owner that if a lien is filed against the Project arising from labor performed or material, equipment and/or tools furnished in connection with the work under the Subcontract for which Subcontractor has been paid, Subcontractor shall immediately obtain a settlement and furnish Contractor and Project Owner a release. Subcontractor additionally will indemnify Contractor and Project Owner against all costs and expenses, including attorney's fees, which may be incurred with respect to such lien.

The undersigned hereby represents and warrants that he or she is the duly authorized agent of Subcontractor and is fully authorized to sign this Lien Waiver and Release.

It is the intent of this waiver and release to comply with the provisions of Subchapter L of Chapter 53 of the Property Code of the State of Texas.

Executed on behalf of Subcontractor this _____ day of _____, 20_____

By: _____

Printed Name: _____

Title: _____

SUBSCRIBED & SWORN TO before me this _____ day of _____, 20_____

Notary Public Signature: _____

Notary Public Seal: _____ Notary Public, State of _____

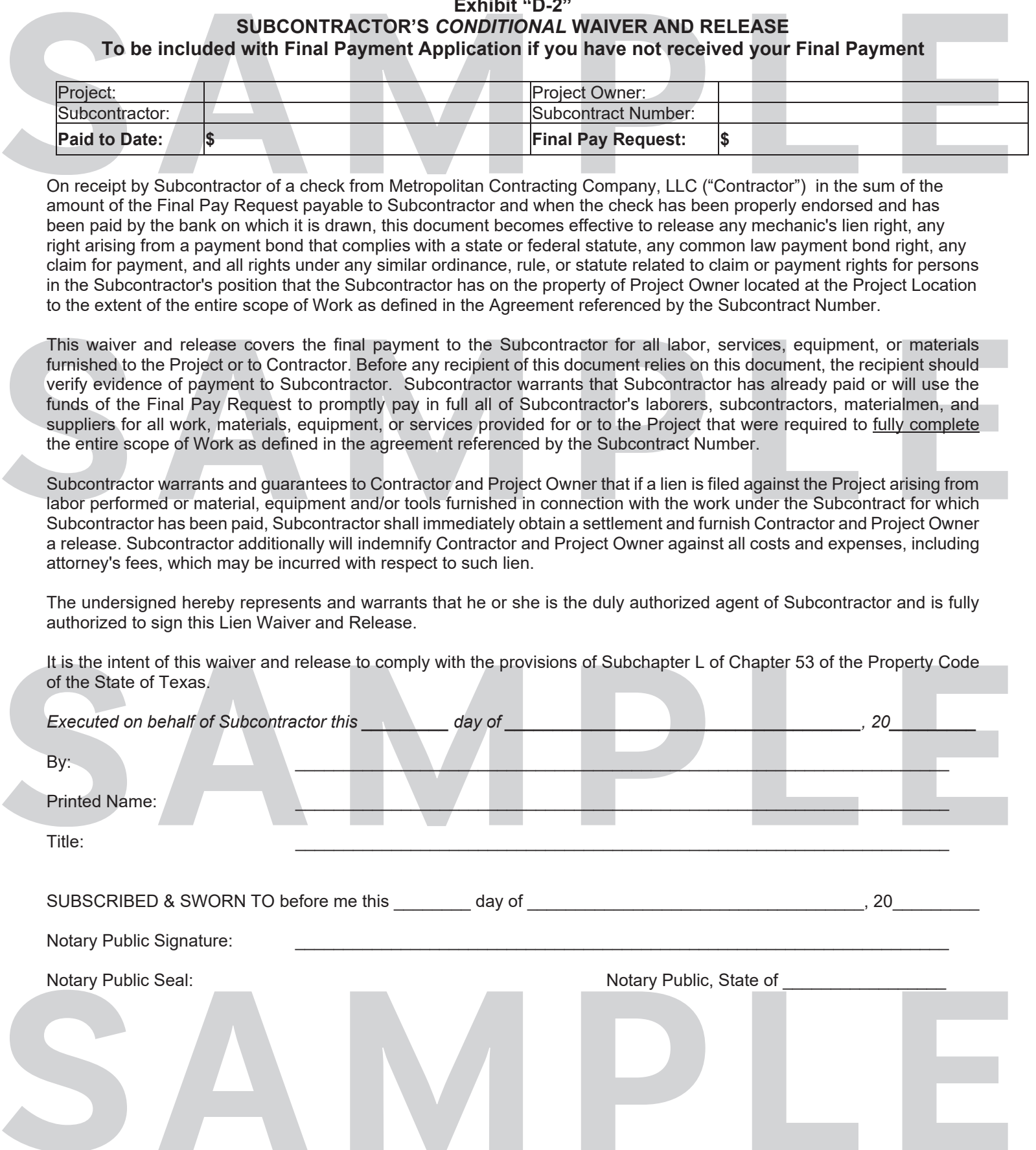




Exhibit "D-3"
SUBCONTRACTOR'S UNCONDITIONAL WAIVER AND RELEASE
To be provided if you have received your Final Payment

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 RELEASE FORM.

Project:		Project Owner:	
Subcontractor:		Subcontract Number:	
Paid to Date:	\$	Final Pay Request:	\$

Subcontractor has been paid in full for all labor, services, equipment, or materials furnished to the Project, Metropolitan Contracting Company LLC ("Contractor"), or Project Owner on the property of Project Owner located at the Project Location described above to the extent of the Work as defined in the agreement referenced by the Subcontract Number. Subcontractor 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 Subcontractor's position.

Subcontractor warrants that Subcontractor has already paid or will use the funds received from the Final Pay Request to promptly pay in full all of the Subcontractor's laborers, sub-subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the Project up to the date of this waiver and release.

Subcontractor warrants and guarantees to Contractor and Project Owner that if a lien is filed against the Project arising from labor performed or material, equipment and/or tools furnished in connection with the Work as defined in the agreement referenced by the Subcontract Number for which Subcontractor has been paid, Subcontractor shall immediately obtain a settlement and furnish Contractor and Project Owner a release. Subcontractor additionally will indemnify Contractor and Project Owner against all costs and expenses, including attorney's fees, that may be incurred with respect to such lien.

The undersigned hereby represents and warrants that he or she is the duly authorized agent of Subcontractor and is fully authorized to sign this Lien Waiver and Release.

It is the intent of this waiver and release to comply with the provisions of Subchapter L of Chapter 53 of the Property Code of the State of Texas.

Executed on behalf of Subcontractor this _____ day of _____, 20_____

By: _____

Printed Name: _____

Title: _____

SUBSCRIBED & SWORN TO before me this _____ day of _____, 20_____

Notary Public Signature: _____

Notary Public Seal: _____ Notary Public, State of _____



Exhibit "E"

AFFIDAVIT OF SUB-SUBCONTRACTORS AND SUPPLIERS

Project:	Project Owner:
Subcontractor:	Subcontract #:

I, the authorized undersigned representative of the Subcontractor, known to the undersigned Notary Public to be the person whose signature is affixed hereto, appeared and, being first duly sworn according to law, on his oath deposed and said: "I am legally authorized to make this sworn statement on behalf of the Subcontractor. Pursuant to the Subcontract described above, Subcontractor has or will furnish certain labor and/or materials in the construction of the Project. Except as listed below, in the performance of the Subcontract no entity whatsoever shall provide goods or services in total value greater than \$500 (five hundred dollars) that will be incorporated in the work of the Subcontract and that now have, or may hereafter be entitled to, any liens or claims against the Project. Subcontractor agrees to immediately notify Contractor of any change to this list. Any breach of this agreement is a material default under the Subcontract.

Material Supplier or Sub-Subcontractor	Description of Goods or Services	Value of Goods or Services
Name: _____ Address: _____ Telephone: _____ Email: _____		
Name: _____ Address: _____ Telephone: _____ Email: _____		
Name: _____ Address: _____ Telephone: _____ Email: _____		
Name: _____ Address: _____ Telephone: _____ Email: _____		
ATTACH ADDITIONAL PAGES IF NECESSARY		

SUBCONTRACTOR SIGNATURE: _____ TITLE: _____

SUBSCRIBED & SWORN TO before me this _____ day of _____, 20____

NOTARY PUBLIC SIGNATURE: _____ NOTARY PUBLIC, STATE OF: _____



Form **W-9**
(Rev. December 2011)
Department of the Treasury
Internal Revenue Service

Exhibit "F" Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:

Individual/sole proprietor C Corporation S Corporation Partnership Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶

Other (see Instructions) ▶

Exempt payee

Address (number, street, and apt. or suite no.) Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number										
			-				-			

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number										
			-							

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here Signature of U.S. person ▶

Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.



EXHIBIT Y
CONFIRMATION OF FUNDING TO PAY FOR WORK

An Owner ("Primary Obligor") is required to furnish certain information pursuant to Texas Property Code § 53.159(a) and Texas Business & Commerce Code Ch. 56 (the "Statutes"). The following information is provided by the Primary Obligor pursuant to the Statutes.

1. Name, address, and business telephone number of Primary Obligor: _____

2. Legal description of Project location (attach, if necessary): _____

3. Name and address of payment bond surety, if any: _____
_____ (attach copy of bond).

4. The amount of the loan available to pay for the improvements (the "Loan"): \$ _____

5. The term of the Loan: _____

6. Is the Loan interest rate commercially reasonable? Yes ___ No ___ If "No", please explain: _____

7. Is the loan payable on terms that are commercially reasonable? Yes ___ No ___ If "No", please explain: _____

8. Are the loan default provisions commercially reasonable? Yes ___ No ___ If "No", please explain: _____

9. Is it currently foreseeable that the Primary Obligor will default on the loan(s)? Yes ___ No ___ If "Yes", please explain: _____

10. Lender(s) name, contact, address, and business telephone number: _____

11. One of the Statutes requires "reasonable and credible evidence from all applicable lenders, of the amount of the loan . . .": (a) if a deed of trust or similar security instrument (the "Mortgage"), stating the amount of the loan, has been recorded in the Official Records of the County where the Project is located, provide a copy of the recorded document; **or** (b) obtain a signature below on behalf of the bank(s).

12. If there is no loan or the loan is not sufficient to pay for all of the construction of the improvements, one of the Statutes requires that the Primary Obligor provide "a statement . . . supported by reasonable and credible evidence from all applicable banks or other depository institutions, of the amount, source, and location of funds available to pay the balance of the contract amount . . .": (a) please provide such information; **or** (b) obtain a signature below on behalf of the bank(s).

The Statutes require signatures by the Owner and the Bank as indicated below.

<p>Bank/Depository, Check and sign as appropriate:</p> <p><input type="checkbox"/> Items 4, 5, and 10, above, are correct.</p> <p><input type="checkbox"/> The Primary Obligor has on deposit sufficient funds to pay that part of the contract for which there is no loan.</p> <p>Bank/Depository: _____</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>Owner/Primary Obligor, Check and sign as appropriate:</p> <p><input type="checkbox"/> Primary Obligor is a publically traded company and will pay for the improvements out of operating cash flow. Public financial information on the Primary Obligor is available for review at: http://www. _____</p> <p>Name: _____</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
---	--