

Miller Pipeline - Subcontract Agreement, Long Form

Miller Pipeline Job No _____

MPC Representative _____ Title _____

Subcontract Date:

Day ____

Month _____

Year _____

Facility/ Property Owner _____

Project Name _____

Project Location _____

Subcontractor _____

Subcontractor's Representative _____ Title _____

Subcontractor's Address

Subcontractor to provide Performance Bond No Yes

Bond Reimbursement Percent (written) _____ percent (number) _____ %

Retainage Withholding Percent(written) _____ percent(number) _____ %

Liquidated Damages Daily Rate \$ _____

Fixed Price \$ _____ (for lump sum contracts only, for unit price or T&M contracts use pricing schedule pg 3)

Fixed Price Written Out _____ Dollars

Progress payment application no later than the _____ day of each payment period for the Work performed up to and including the _____ day of the payment period indicating work completed

Scope of Work

Pricing Schedule

Progress Schedule



Miller Pipeline

RE: Subcontract Agreement for

Dear

Please find enclosed a copy of our Subcontract Agreement for work to be performed on the above referenced project. Please sign the agreements and return to my attention along with your Certificate of Insurance naming Miller Pipeline LLC as Additional Insured. Work cannot begin until the insurance has been received. An executed copy will be sent for your records.

Miller Pipeline looks forward to the opportunity of working with you. If you have any questions, please do not hesitate to contact us.

Respectfully submitted,

Contract Administrator

Enclosure

SUBCONTRACT AGREEMENT

This Subcontract Agreement ("**Agreement**") is made this ____ day of _____, _____, by and between _____ ("**Subcontractor**"), whose address is:

and **MIILLER PIPELINE, LLC**, an Indiana LLC ("**Contractor**"), whose address is 8850 Crawfordsville Road, P.O. Box 34141, Indianapolis, Indiana 46234.

WHEREAS, Subcontractor wishes to perform work and/or furnish materials in the construction of the project of Contractor (the "**Project**"), on property that is owned by Owner (the "**Site**"). The Project and the Site are identified on Schedule A attached to this Agreement.

NOW THEREFORE, in consideration of the mutual promises herein contained the parties agree as follows:

1. **Work**. In accordance with the terms and conditions contained in this Agreement, the Owner-Contractor agreement, any special conditions, general conditions, specifications, drawings, addenda, change orders, amendments and any pending and exercised alternates, Subcontractor will perform and furnish its best skill and judgment, and will furnish all materials, labor, equipment, supplies and tools for, the work described on Schedule B to this Agreement (the "**Work**"). The Work will be performed in accordance with plans, specifications, drawings and schedules for the Work, and any supplemental terms and conditions to this Agreement, all of which are, or will be, on file at the office of the Contractor (collectively called the "**Contract Documents**") and incorporated into the Agreement by this reference as if fully set forth. Contractor will have the right at any time to supplement the plans and specifications for the Work with additional or replacement drawings and schedules and upon so doing such drawings and schedules will immediately become part of the Contract Documents. The Contract Documents, including any time schedules, may be amended and/or supplemented from time to time by giving Subcontractor written notice thereof. In the event of a conflict between this Agreement and the Contract Documents, this Agreement shall govern.

The Subcontractor shall provide the Contractor a list of its proposed subcontractors and suppliers, and shall be responsible for taking field dimensions, providing tests, obtaining required permits related to the Work and affidavits, ordering of materials and all other actions as required to meet the Progress Schedule (hereafter defined).

2. **Contract Price/Subcontract Amount.**

2.1 **Subcontract Amount.** As full compensation for performance of this Agreement, Contractor agrees to pay Subcontractor in current funds for the satisfactory performance of the Work subject to all applicable provisions of this Agreement:

- (a) the fixed-price of _____ Dollars (\$ _____) subject to additions and deductions as provided for in the Contract Documents; and/or
- (b) unit prices in accordance with the attached schedule of Unit Prices and estimated quantities, which is incorporated by reference and identified as Schedule C; and/or
- (c) time and material rates and prices in accordance with the attached Schedule of Labor and Material Costs which is incorporated by reference and identified as Schedule C.

The fixed-price, unit prices and/or time and material rates and prices are referred to as the “**Subcontract Amount**,” subject to the terms and conditions contained herein. The Subcontract Amount includes all freight, permits, sales and other taxes, and any other applicable costs required to provide the Work.

2.2 **Changes in the Subcontract Amount.**

- (a) **Subcontract Change Orders.** When the Contractor orders changes in writing, the Subcontractor, without nullifying this Agreement, shall make any and all changes in the Work which are within the general scope of this Agreement. Any adjustment in the Subcontract Amount or Progress Schedule shall be authorized by a Subcontract Change Order. No adjustments shall be made for any changes performed by the Subcontractor that have not been ordered by the Contractor. A Subcontract Change Order is a written instrument prepared by the Contractor and signed by the Subcontractor stating their agreement upon the change in the Subcontract Work.
- (b) **Construction Change Directive.** To the extent that the Contract Documents provide for Construction Change Directives in the absence of agreement on the terms of a Subcontract Change Order, the Subcontractor shall promptly comply with the Construction Change Directive and be entitled to apply for interim payment if the Contract Documents so provide.
- (c) **Adjustments in Subcontract Amount.** If a Subcontract Change Order requires an adjustment in the Subcontract Amount, the adjustment shall be established by one of the following methods:
 - (i) mutual acceptance of an itemized lump sum;

- (ii) unit prices as indicated in the Contract Documents or as subsequently agreed to by the parties; or
 - (iii) costs determined in a manner acceptable to the parties and a mutually-acceptable fixed or percentage fee; or
 - (iv) another method provided in the Contract Documents.
- (d) **Substantiation of Adjustment.** The Subcontractor shall maintain for the Contractor's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Subcontract Change Order:
- (i) labor costs, including Social Security, health, welfare, retirement and other fringe benefits as normally required, and state workers' compensation insurance;
 - (ii) costs of materials, supplies and equipment, whether incorporated in the Work or consumed, including transportation costs;
 - (iii) costs of renting machinery and equipment other than hand tools;
 - (iv) costs of bond and insurance premiums, permit fees and taxes attributable to the change; and
 - (v) costs of additional supervision and field office personnel services necessitated by the change.

3. **Payment Schedule.**

3.1 **Application for Payment.** The Subcontractor's applications for payment shall be itemized and supported by substantiating data as required by the Contract Documents. The Subcontractor's application shall be notarized if required and if allowed under the Contract Documents may include properly authorized Subcontract Construction Change Directives. The Subcontractor's progress payment application for the Work performed in the preceding payment period shall be submitted for approval of the Contractor. The Contractor shall incorporate the approved amount of the Subcontractor's progress payment application into the Contractor's payment application to the Owner for the same period and submit it to the Owner in a timely fashion. The Contractor shall immediately notify the Subcontractor of any changes in the amount requested on behalf of the Subcontractor.

3.3 **Retainage.** The rate of retainage shall be _____ percent (_____ %) which is equal to the percentage retained from the Contractor's payment by the Owner for the Work. If the Work is satisfactory and the Contract Documents provide for reduction of retainage at a specified percentage of completion, the Subcontractor's retainage shall also be reduced when the Work has attained the same percentage of completion and the Contractor's retainage for the Work has been so reduced by the Owner.

3.4 **Time of Application.** The Subcontractor shall submit progress payment applications to the Contractor no later than the _____ day of each payment period for the Work performed up to and including the _____ day of the payment period indicating work completed.

3.5 **Time of Payment.** Receipt of payment by the Contractor from the Owner for the Work is a condition precedent to payment by the Contractor to the Subcontractor.

3.6 **Partial Lien Waivers and Affidavits.** As a prerequisite for payments, the Subcontractor shall provide to the Contractor, partial lien or claim waivers in the amount of the application for payment and affidavits covering its subcontractors and suppliers for completed Work. Such waivers may be conditional upon payment. In no event shall Contractor require the Subcontractor to provide an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

3.7 **Payment Use Restrictions.** Payments received by the Subcontractor shall be used to satisfy the indebtedness owed by the Subcontractor to any person furnishing labor or materials, or both, for use in performing the Work through the most current period applicable to progress payments received from the Contractor before it is used for any other purpose. This provision shall bear on this Agreement only, and is not for the benefit of third parties. Moreover, it shall not be construed by the parties to this Agreement or third parties to require that dedicated sums of money or payments be deposited in separate accounts, or that there be other restrictions on commingling of funds. Neither shall these mutual covenants be construed to create any fiduciary duty on the Subcontractor or Contractor, nor create any tort cause of action or liability for breach of trust, punitive damages, or other equitable remedy or liability for alleged breach.

3.8 **Payment Use Verification.** If the Contractor has reason to believe that the Subcontractor is not complying with the payment terms of this Agreement, the Contractor shall have the right to contact the Subcontractor's subcontractors and suppliers to ascertain whether they are being paid by the Subcontractor in accordance with this Agreement.

3.9 **Subcontractor Payment Failure.** Upon payment by the Contractor, the Subcontractor shall promptly pay its subcontractors and suppliers the amounts to which they are entitled. In the event the Contractor has reason to believe that labor, material or other obligations incurred in the performance of the Work are not being paid, the Contractor may give written notice of a potential claim or lien to the Subcontractor and may take any steps deemed necessary to assure that progress payments are utilized to pay such obligations, including but not limited to the issuance of joint checks. If upon receipt of notice, the Subcontractor does not (a) supply evidence to the satisfaction of the Contractor that the moneys owing have been paid; or (b) post a bond indemnifying the Owner, the Contractor, the Contractor's surety, if any, and the premises from a claim or lien, the Contractor shall have the right to withhold from any payments due or to become due to the Subcontractor a reasonable amount to protect the Contractor from any and all loss, damage or expense including attorneys' fees that may arise out of or relate to any such claim or lien.

3.10 **Payment Not Acceptance/Payments Withheld.** Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Work, or waiver of any rights of Contractor

under this Agreement and will not relieve Subcontractor of any of its obligations hereunder. Notwithstanding any other provisions of this Agreement, Contractor will not be obligated to make any payment to Subcontractor if and as long as any one or more of the following conditions exist:

- (a) Subcontractor has failed to perform any of its obligations hereunder or otherwise is in default under this Agreement.
- (b) Subcontractor has failed to furnish to Contractor invoices and signed receipts and vouchers and lien releases or waivers in the form and manner satisfactory to Contractor.
- (c) Any part of a payment requested is attributable to Work that is defective or not performed in accordance with the Agreement and the Contract Documents; provided, however, if severable, payment will be made as to that part of the Work that appears to be properly performed after due allowance for the cost of correcting the defective part of the Work and the part which was not performed in accordance with this Agreement, as estimated by Contractor.
- (d) Subcontractor has failed to make payment promptly to any lien claimants.
- (e) Contractor determines in its good faith judgment that the portion of the Subcontract Amount then remaining unpaid will not be sufficient to complete the Work and correct deficiencies in the Work. In such case, no additional payments will be due Subcontractor hereunder unless and until Subcontractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the Subcontract Amount then remaining unpaid is determined by Contractor to be sufficient to so complete and correct the Work.
- (f) Subcontractor has failed to procure, maintain or pay for Required Insurance (as defined in Section 7).

4. **Contract Time/Progress Schedule.** Time is of the essence for both parties. Subcontractor and Contractor mutually agree to see to the performance of their respective obligations so that the entire Project may be completed in accordance with the Contract Documents and particularly the Progress Schedule ("**Progress Schedule**") as set forth in Schedule D attached hereto.

Subcontractor will commence the Work immediately upon notification to do so from Contractor and will proceed with the Work during Contractor's normal business hours (unless other arrangements have been made) and every part thereof until completion in a prompt, diligent and workmanlike manner, in strict accordance with the Contract Documents and the Progress Schedule and in such time so as not to delay the other trades.

Should any persons performing the Work engage in a strike or work stoppage, or cease to work due to picketing or a labor dispute of any kind, Contractor may, at its option and without prejudice to any other remedies it may have, after 48 hours written notice to Subcontractor, provide through whatever means Contractor determines is reasonable any such Work and deduct the cost thereof incurred by

Contractor from any monies then due or thereafter to become due Subcontractor. Further, Contractor may at its option, without prejudice to any other remedies it may have, terminate its relationship with Subcontractor for the Work and will have the right to enter upon the Site and take possession, for the purpose of completing the Work, of Subcontractor's materials, tools and equipment thereon and to finish the Work, either with its own employees or other Subcontractors, and in case of such termination of the relationship by Contractor, Subcontractor will not be entitled to receive further payments under the Agreement or otherwise but will nevertheless remain liable for any damages that Contractor incurs. If the expenses incurred by Contractor in completing the Work exceed the unpaid balance of the Subcontract Amount, Subcontractor will pay the difference to Contractor together with any other damages incurred by Contractor as the result of Subcontractor's default. Contractor will have a lien upon all materials, tools and equipment taken possession of, to secure such payment.

5. **Familiarity with the Site.** Subcontractor will be responsible for inspecting the Site, reading all of the Contract Documents and comparing the Site against the Contract Documents. Subcontractor's commencement of the Work is an acknowledgment by Subcontractor that the Site is safe and ready for the Work to commence and proceed in a good and workmanlike manner and in compliance with all Laws (as hereinafter defined) bearing on the Work. It is understood by the parties that Subcontractor is best able to evaluate the cost of the Work and that in arriving at the Subcontract Amount, it has considered and assumed the risk that unforeseen conditions or events may be encountered causing additional difficulty and expense not anticipated at the time of execution of this Agreement. Subcontractor further represents that it is fully familiar with the requirements of any governmental authority having jurisdiction over the Work and is prepared to and will comply with all such requirements without additional compensation. No estimate or bids of Subcontractor preceding this Agreement and no verbal agreement or conversation with any representative of Contractor, either before or after execution of this Agreement, will affect or modify any of the terms or provisions contained in this Agreement or the Contract Documents.
6. **Protection of Work.** Subcontractor will supervise, administer and protect the Work against loss or damage from any cause and be responsible for all parts of the Work, temporary or permanent, finished or not, until inspected and accepted by Contractor. Subcontractor will take reasonable precautions and maintain reasonable safeguards to protect against loss or damage to persons or property owing to weather conditions and arising out of its activities at or about the Site including, but not limited to, bracing and reinforcing where necessary and providing for guards, locks, fences, signs, barricades, lights and such other warning and security devices where appropriate. Subcontractor will bear and be liable for, and Contractor will not be responsible for, any loss or damage to the Work and any material, equipment or other thing employed in the Work or placed at the Site including, but not limited to, loss or damage due to theft, trespass or vandalism before inspection and acceptance of the Work by Contractor.
7. **Insurance.** The following coverage, terms and limits are minimum requirements (the "Required Insurance"):
 - 7.1 **Commercial General Liability:**
 - (a) For all Work performed by Subcontractor, the following limits will apply:

\$1,000,000 each occurrence limit, \$1,000,000 personal and advertising injury limit, \$2,000,000 general aggregate limit, \$2,000,000 products-completed operations aggregate limit or equivalent approved by Contractor, or current limit carried, whichever is greater;

- (b) Occurrence Form only ("Claims Made" forms are not acceptable), with a provision that defense costs are paid in addition to and do not deplete any policy limits. If defense costs deplete policy limits, then the limits required above are increased by \$1,000,000 in each category and may be satisfied with an umbrella or excess liability policy;
- (c) No exclusions for bodily injury and property damage, products liability/completed operations coverage (including any product manufactured or assembled), premises operations, blanket contractual liability (for this Agreement), broad form property damage, personal and advertising injury, independent Subcontractor's liability, mobile equipment, elevators, damage from explosion, collapse and underground hazards ("XCU") cross-liability, cross suits or severability of interest clauses are acceptable;
- (d) At no expense to Contractor, Additional Insured Endorsement approved by Contractor naming Miller Pipeline LLC, and the Owner of the Site if other than Contractor, their respective officers, directors, partners, members and employees, as additional insureds. Additional insured status will continue to apply to "bodily injury" and to "property damage" occurring after all Work on the Site of the covered operations to be performed by or on behalf of the additional insureds has been completed and will continue after that portion of "your work" out of which the injury or damage arises has been put to its intended use;
- (e) The insurance afforded by the policy for the benefit of the additional insureds will be primary and no contribution shall be permitted from any insurance or self insurance maintained by the additional insureds;
- (f) An endorsement to the policy issued by the insurer affording 30 days prior notice to Contractor in the event of cancellation (10 days notice for non-payment of premium), non-renewal, modification or reduction in coverage;
- (g) A deductible or self-insured retention of not more than \$25,000 as to Subcontractor (unless approved in writing by Contractor);
- (h) If insurable by law, no exclusionary language or limitations relating to punitive or exemplary damages, fines or penalties unless agreed in writing by Contractor; exclusionary language or limitations relating to residential, condominiums, multi-family or multi-unit dwellings; exclusionary language or limitations relating to soils or earth movement unless agreed in writing by Contractor; exclusionary language or limitations that are applicable to any additional insured that are not applicable to the named insured;

7.2 **Automobile Liability:**

- (a) Limits of either (i) \$1,000,000 combined single limit for bodily injury or property damage; or (ii) \$100,000 bodily injury per person/\$300,000 bodily injury per accident/\$100,000 property damage;
- (b) Such coverage may be in the form of either: (i) Personal liability policy for vehicles owned by Subcontractor plus evidence of hired and non-owned liability coverage under a separate policy; or (ii) Commercial auto liability policy with any of the following covered vehicles combinations: Any auto; or Owned, hired, and non-owned; or Scheduled, hired and non-owned autos;
- (c) If a commercial automobile policy is provided, then an endorsement affording 30 days notice of cancellation (10 days for non-payment of premium) shall be given to Contractor;

7.3 **Workers' Compensation / Employer's Liability:**

- (a) Workers' compensation benefits as required by statute;
- (b) Employer's Liability with limits of no less than:

Bodily injury by accident	\$1,000,000 each accident
Bodily injury by disease	\$1,000,000 each employee
Bodily injury by disease	\$1,000,000 policy limit
- (c) Waiver of subrogation for Contractor and the Contractor of the Site if other than Contractor (in each case to the full extent permitted by law);
- (d) If leased employees are used, issuance of an Alternate Employer's Endorsement; and
- (e) 30 days notice of cancellation to Contractor (10 days if cancellation for non-payment of premium).

7.4 **Subcontract Bonds**

- (a) The Subcontractor shall shall not furnish to the Contractor, as the named Obligee, appropriate surety bonds to secure the faithful performance of the Work and to satisfy all Subcontractor payment obligations related to Work.
- (b) If a performance or payment bond, or both, are required of the Subcontractor under this Agreement, the bonds shall be in a form and by a surety mutually agreeable to the Contractor and Subcontractor, and in the full amount of the Subcontract Amount, unless otherwise specified.

(c) The Subcontractor shall be reimbursed, without retainage, for the cost of any required performance or payment bonds simultaneously with the first progress payment. The reimbursement amount for the subcontractor bonds shall not exceed _____ percent (___%) of the Subcontract Amount, which sum is included in the Subcontract Amount.

(d) In the event the Subcontractor shall fail to promptly provide any required bonds, the Contractor may terminate this Agreement and enter into a subcontract for the balance of the Work with any subcontractor. All Contractor costs and expenses incurred by the Contractor as a result of said termination shall be paid by the Subcontractor.

7.5 **Provisions applicable to all coverages:**

(a) Unless otherwise approved in writing by Contractor, none of the provisions contained in Section 7.1, 7.2 or 7.3 above may be changed.

(b) Insurance carriers must have a "Best's Rating" and a "Financial Size Category" acceptable to Contractor. Insurance carriers must be admitted in the state in which the Work is being performed, unless approved in writing by Contractor.

(c) The Required Insurance will cover Subcontractor, its authorized representatives, employees, agents and any other person (including its authorized representatives, employees and agents) performing any work under any contract or agreement with Subcontractor.

(d) Subcontractor will cause each subcontractor retained by Subcontractor to purchase, obtain and maintain the Required Insurance prior to commencing any portion of the Work. Upon request of Contractor, Subcontractor will provide Contractor with copies of certificates of insurance evidencing the Required Insurance for each subcontractor. Subcontractor will also obtain from each such subcontractor a written indemnification in form and substance identical to the indemnity set forth in Section 8 except that such indemnity will be from such subcontractor for the benefit of Contractor (and the Contractor of the Site if other than Contractor) and all of the other parties that are indemnified in that Section.

(e) Subcontractor for itself and on behalf of its insurers, to the full extent permitted by law without voiding the insurance required under this Agreement, hereby waives and releases the additional insureds from liability for loss, damage or loss of property at the Project, which loss or damage is covered by such insurance, to the extent such damages are covered by Subcontractor's policies of insurance or are required to be covered by the Required Insurance. This provision is intended to waive fully for the benefit of Contractor and the other additional insureds any rights and/or Claims which might give rise to a right of subrogation in favor of any insurance carrier issuing the Required Insurance or any other insurance (including any first party coverage) maintained by Subcontractor. Subcontractor will obtain a waiver of any subrogation right that its insurers may acquire against the additional insureds by virtue of payment of any such loss covered by such insurance.

- (f) The project/job description and/or description of operations on all certificates, endorsements and other insurance documentation will read "All Work Performed For The Additional Insureds."
- (g) Concurrently with the execution of the Agreement, Subcontractor will file with Contractor original certificates of insurance and endorsements showing the Required Insurance to be in force. Certificates of insurance alone, without the requisite endorsements, are not acceptable to satisfy the provisions of the Required Insurance. Upon the request of Contractor, Subcontractor will provide Contractor with certified copies of all policies as well as any subsequent policies and endorsements that Subcontractor is required to procure and maintain. Upon the request of Contractor, renewal certificates and endorsements for commercial general liability will be provided to Contractor, at no expense to Contractor, prior to expiration of such insurance, for a period of 1 year after the latter of the completion of the Work. Such continuing insurance will comply with the requirements set forth in this Section 7. **SUBCONTRACTOR WILL NOT COMMENCE OR BE PAID FOR ANY WORK (INCLUDING FINAL PAYMENTS) UNLESS AND UNTIL INSURANCE DOCUMENTATION PROPERLY COMPLETED AND EXECUTED HAS BEEN DELIVERED TO AND APPROVED BY CONTRACTOR.**
- (h) All insurance documentation evidencing the Required Insurance will be sent to:
- Miller Pipeline, LLC
Attn: Contracts Administration
8850 Crawfordsville Rd.
Indianapolis, IN 46234
- (i) If Subcontractor fails to procure, maintain or pay for the Required Insurance, Contractor at its sole discretion may define other financial risk transfer mechanisms or secure the same or similar insurance coverage, in which event Subcontractor will pay the cost thereof and will furnish upon demand, all information that may be required. Contractor will have the right to backcharge Subcontractor for such costs. The failure of Contractor to demand certificates of insurance and endorsements evidencing the Required Insurance or to identify any deficiency in Subcontractor's coverage based upon the evidence of insurance provided by Subcontractor will not be construed as a waiver by Contractor of Subcontractor's obligation to procure, maintain and pay for the Required Insurance. Notwithstanding any provision to the contrary contained herein, any waiver of the Required Insurance, including, without limitation, the amount or extent of coverage, may only be obtained by the prior written consent of Contractor.
- (j) The insurance requirements set forth herein will in no way limit Subcontractor's liability arising out of the work performed under the Agreement or related activities (including liability under the indemnification provisions set forth in Section 8 or under any other provisions of the Contract Documents or at law). The inclusions, coverage and limits set forth herein are minimum inclusions, coverage and limits. The required minimum policy

limits set forth in this Section 8 will not be construed as a limitation of Contractor's rights under any policy with higher limits, and no policy maintained by Subcontractor will be endorsed to include such a limitation. Nothing contained herein will be construed as limiting the type, quality or quantity of insurance coverage that Subcontractor should maintain. Subcontractor will be responsible for determining appropriate inclusions, coverage and limits which may be in excess of the minimum requirements set forth herein.

- (k) The failure of Subcontractor to fully and strictly comply at all times with the insurance requirements set forth herein will be deemed a material breach of the Agreement.
- (l) Subcontractor will immediately notify (or cause its insurers or insurance broker to notify) Contractor of receipt by Subcontractor of any notice of cancellation or rescission received from an insurance carrier referring to or relating to a policy which names Subcontractor, its parent, subsidiary or affiliated companies or their officers, directors or employees as additional insureds or which may otherwise impact the ability of Subcontractor to fully perform its obligations hereunder (including, without limitation, the indemnity obligations of Subcontractor set forth in Section 8).
- (m) To the full extent permitted by law and the applicable policies, if Subcontractor is out of business or otherwise unavailable at the time a Claim is presented to Contractor, Subcontractor hereby assigns to Contractor all of its right, title and interest (but not any liabilities or obligations) under any applicable policies of insurance.
- (n) The Required Insurance set forth in this Section 7 is independent from all other obligations of Subcontractor under this Agreement, including, without limitation, all indemnification provisions, and will apply whether or not required by any other provision of this Agreement and regardless of the enforceability of any other provision in this Agreement.

8. **Indemnity and Release.** Subcontractor recognizes that accidents and other problems may occur while its Work is performed on the Site. Subcontractor also recognizes that because of such problems, Claims may be made against Contractor or others. Because Subcontractor and Contractor intend that Subcontractor will be solely responsible for the supervision of its Work and all consequences of the Work, Subcontractor agrees to the fullest extent permitted by law to indemnify, defend, protect and hold the Indemnified Parties (as hereinafter defined) harmless from any and all Claims. The Indemnified Parties are Contractor, the Owner of the Site if other than Contractor, all subsidiaries, divisions, partners, parent and affiliated companies of Contractor, and all such parties' representatives, partners, designees, officers, directors, shareholders, employees, agents, successors and assigns, and any lender of Contractor with a security or collateral interest in the Project (hereafter referred to individually as an "**Indemnified Party**"; and collectively as the "**Indemnified Parties**"). This means that Subcontractor will pay any attorneys' fees and expenses that the Indemnified Parties pay to defend themselves from any Claims, and that Subcontractor will also pay, on the Indemnified Parties' behalf, any judgment rendered against the Indemnified Parties. **SUBCONTRACTOR UNDERSTANDS AND ACKNOWLEDGES THAT THE INDEMNIFICATION AND DEFENSE OBLIGATIONS UNDER THIS AGREEMENT**

EXTEND TO AND INCLUDE CLAIMS ARISING FROM THE ACTIVE OR PASSIVE NEGLIGENCE OR STRICT LIABILITY OF THE INDEMNIFIED PARTIES BUT DO NOT INCLUDE CLAIMS THAT ARE FINALLY DETERMINED TO RESULT FROM THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTY.

As used in this Agreement, a "Claim" or "Claims," as the case may be, means any and all claims (including without limitation, claims for bodily injury, financial loss, death, damage to property, and claims in contract, tort, or both), arbitrations, demands, causes of action, lawsuits, liabilities, litigation, losses, obligations, damages, actions, fines, penalties, costs and expenses or other proceeding by which one party either seeks to enforce its rights under this Agreement or seek a declaration of any rights or obligations under this Agreement (including but not limited to attorneys' fees, court costs and all other professional, expert or consultants' fees and costs), arising from or directly or indirectly related to the Work.

A Claim that results in any manner from the Work (including but not limited to defects in workmanship, materials and/or design defects, if the design was that of Subcontractor or its agents), or from the presence of an employee, subcontractor, supplier or other worker or representative of Subcontractor on the Site, or from activities conducted by or on behalf of Subcontractor on the Project (including but not limited to the negligent and/or willful acts, errors and/or omissions of Subcontractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors or anyone employed directly or indirectly by any of them or for whose acts they may be liable), arises from Subcontractor's work.

The duty to defend under this Section 8 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Subcontractor or any Indemnified Party. The duty to defend arises immediately upon presentation of a Claim by any party and written notice of such Claim being provided to Subcontractor. Subcontractor's obligation to indemnify and defend under this Section 8 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the Indemnified Party or Indemnified Parties for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations. Subcontractor's liability for indemnification under this Section 8 is in addition to any liability Subcontractor may have to any Indemnified Party for breach by Subcontractor of any of the provisions of this Agreement.

If the provisions of this Section 8 violate the statutory or common law of the applicable state or governing authority, this Section 8 will not be stricken or found to be void in its entirety. Rather, Subcontractor's indemnification obligations will apply to the fullest extent permitted by applicable law. Therefore, for example only, should applicable state law only permit indemnification for comparative negligence, then this Section 8 will mandate that Subcontractor defend, hold harmless and indemnify the Indemnified Parties for all damages arising from Subcontractor's negligence.

In any instance whereby Contractor is entitled, under the terms of this Agreement, to be indemnified by or recover any moneys from Subcontractor, or Contractor is required to enforce any term or condition of this Agreement, Contractor shall be entitled, in addition, to recover from Subcontractor (i) interest on any sums due from Subcontractor at the rate of ten percent (10%) per annum to accrue

from the date due until paid, notwithstanding any dispute or uncertainty concerning the means or standards by which the amount of monetary recovery is to be ascertained, (ii) reasonable attorney fees incurred by Contractor for all investigation, negotiation, litigation, arbitration and other such services commonly performed by attorneys, and (iii) all court costs, fees paid to experts or consultants, arbitration fees and like expenses

9. **Compliance with Laws.** Subcontractor will carefully check the drawings, plans and specifications for conformity with all local, state and federal laws, codes, rules, and regulations bearing on the Work (hereinafter collectively called "**Law**") before commencing the Work. Unless Contractor otherwise agrees in writing, before commencement of the Work, Subcontractor will obtain at its sole cost and expense all permits necessary for the Work. Subcontractor will comply with product manufacturer's specifications and will give all notices and comply with all Law bearing on the Work, including by way of enumeration and not limitation, safety and health rules and regulations established by or pursuant to the Federal Occupational Safety and Health Act of 1970, and Subcontractor at all times will furnish to its agents and employees a safe place of employment. If Subcontractor observes any violation of Law, it will immediately report such violation to Contractor in writing. Subcontractor will be responsible for any fines, charges or penalties related to the Work, including, without limitation, fines, charges and/or penalties related to the operation of equipment, the Subcontractor's performance of the Work, the handling of materials or any other function that is in violation of the Law. All workmanship and materials will conform to Law and, if the Subcontractor performs or permits the performance of any Work not in compliance with Law, it will immediately cause such Work to be redone and bear all costs in connection therewith. The Work, as performed, will meet with the approval of, and pass any inspection of, any governmental authority having jurisdiction thereof. If the Work is being constructed under specifications of the Federal Housing Administration or the Veterans Administration, the Work will meet the requirements of these governmental agencies. No Work will be deemed complete until final inspection is made and approval is received from every governmental authority whose approval is required.

The Occupational Safety and Health Administration ("**OSHA**") has promulgated regulations ("**Regulations**") which are entitled the OSHA Hazard Communication Standard. Among other things, the Regulations require all contractors and subcontractors to exchange Material Safety Data Sheets ("**MSDS**") and share information about precautionary measures necessary to protect all workers on a building project.

Subcontractor agrees as follows:

- (i) Subcontractor will fully comply with the Regulations and will cooperate with Contractor and all subcontractors of Contractor in order to assure compliance with the Regulations.
- (ii) Subcontractor hereby accepts full responsibility and liability for the training of its employees as to all precautionary measures necessary to protect such employees during both routine and emergency situations on the Site.
- (iii) Subcontractor will indemnify, defend and hold Contractor harmless of and from all Claims, damages, liabilities, and causes of action that arise from the failure of Subcontractor to comply with the Regulations, even.

- (iv) Subcontractor will assist Contractor in complying with the Regulations.
- (v) Subcontractor will not use any chemicals in its performance of the Work for Contractor or incorporate any chemicals into materials or products supplied to Contractor or to the Site unless Subcontractor has given Contractor prior written notice of the existence and the possible exposure to such chemical, has delivered an MSDS to Contractor, and has received a written consent of Contractor to use such chemicals.

10. **Termination of Agreement by Contractor for Convenience.** If conditions arise that in the opinion of Contractor make it inadvisable for Subcontractor to commence, perform or continue the Work, Contractor may terminate all or part of Subcontractor's right to perform the Work under this Agreement by 3 days written notice to Subcontractor. Upon receipt of such notice, unless directed otherwise, Subcontractor will immediately discontinue prosecution of the Work and the placing of orders for materials, equipment, machinery and supplies in connection therewith and will, if requested, make every reasonable effort to procure cancellation of all existing orders for contracts upon terms satisfactory to Contractor. Then, unless otherwise directed by Contractor, Subcontractor will only do such Work as may be necessary to preserve and protect that portion of the Work that has been incorporated into the Project and to protect materials, supplies and equipment at or about the Site or in transit thereto. On the date set for the termination, the obligations of the parties to continue performance under this Agreement will cease and Subcontractor will be entitled to receive: (a) compensation for the portion of the Work already performed and accepted by Contractor with the Subcontract Amount being prorated accordingly, (b) payment for materials for which it has made firm contracts, provided the materials are delivered to Contractor, and (c) payment for any other bona fide obligations assumed by Subcontractor in writing prior to the notice of termination, which obligations cannot with all reasonable effort be canceled, provided any benefits accruing from such obligations are assigned to Contractor. Payment to Subcontractor will be made in accordance with Section 3 hereof, with final payment being made only after expiration of the period allowed by Law for the filing of any claims to enforce mechanic's liens arising out of the Work. Notwithstanding any other provision to the contrary, neither the termination of this Agreement nor the termination of any of Subcontractor's rights hereunder will prejudice any Claim of either party arising prior to termination, or relieve either party from any liability arising prior to termination, nor will it affect Subcontractor's guarantee of the portion of the Work performed or relieve Subcontractor of its duty to correct any defective Work performed or to indemnify, defend and hold Contractor harmless in those instances required by this Agreement.

11. **Assignment.** Subcontractor shall not assign or subcontract this Agreement or any portion thereof or of any money due or which may become due hereunder without the prior written consent of Contractor. In addition to constituting a default under this Agreement, any assignment or attempted assignment made in violation of this Section 11 will be null and void and the assignee will acquire no rights hereunder. If Contractor consents to an assignment of or subcontract under this Agreement, the assignee or subcontractor will be bound by the terms of this Agreement, including specifically without limitation the insurance provisions contained herein. If an assignment or subcontract is made in breach of this Agreement, Subcontractor is liable to Contractor for all damages resulting therefrom. Notwithstanding anything to the contrary contained herein, Contractor may assign this Agreement without the consent of Subcontractor.

12. **Termination for Default.** In addition to the other remedies available under law: (a) if Subcontractor should fail or refuse, except in cases where extension of time is provided, to supply enough properly skilled workers or proper materials for the Work; or (b) if Subcontractor should fail to make payment to subcontractors for material or labor, or (c) if Subcontractor should fail to keep and comply with any of the terms and provisions of this Agreement or the Contract Documents, or (d) if Subcontractor should be adjudged bankrupt, file or suffer to be filed a petition for relief under the Bankruptcy Act, or make a general assignment for the benefit of the creditors; or (e) if a receiver should be appointed on account of Subcontractor's insolvency; then, in any such event, Contractor may without prejudice to any other right or remedy and after giving Subcontractor and its surety, if any, 3 days written notice, terminate its obligation to Subcontractor under this Agreement and take possession of the Site and all materials, tools and appliances thereon and complete (or cause to be completed) the Work by whatever method Contractor may deem expedient. In such case Subcontractor will not be entitled to receive any further payment until the Work is completed. Upon completion of the Work, Contractor will pay to Subcontractor an amount equal to (x) the unpaid portion of the Subcontract Amount attributable to the Work performed up to the termination less (y) the amount by which (i) the costs incurred by Contractor to complete the Work, including, without limitation, costs for architectural, managerial and administrative services and reasonable attorneys' fees, if legal counsel is employed, exceed (ii) the portion of the Subcontract Amount attributable to the balance of the Work yet to be performed at the time of termination. If the amount calculated under part (y) in the preceding sentence exceeds the amount owing under part (x), the Subcontractor will pay the difference to Contractor. If the amount in part (x) exceeds the amount in part (y), Contractor will pay the difference to Subcontractor; however, Contractor will have the right at its option to withhold such amount from Subcontractor until the expiration of one year from the date of the termination of this Agreement.

13. **Liquidated Damages.**

(a) The Subcontractor hereby acknowledges that the Contractor shall suffer significant loss, expense and damages in the event that the Work is not completed within the time allowed by this Agreement, but that the actual amount of such loss, expense and damages is not capable of being ascertained with certainty. Therefore, in recognition of such loss, expense and damages that shall be incurred due to delay, the Contractor and Subcontractor agree that Subcontractor shall be liable to Contractor for payment of liquidated damages in the amount of \$ _____ for each day that the Work is delayed beyond the time allotted by this Agreement as adjusted for time extensions provided by this Agreement. Said amount shall be deducted from any monies due or that may become due to the Subcontractor, and if said monies are insufficient to cover said damages, then the Subcontractor shall pay amount of the difference. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Subcontractor shall pay them to Contractor without limiting Contractor's right to terminate this agreement for default as provided elsewhere herein

(b) The Subcontractor recognizes that each and every one of the interim completion dates and times for each portion or phase of the Work is equally important as the completion date and time for the entire Project. Contractor and Subcontractor agree that in the event the Subcontractor fails to complete any portion or phase of the Work within the time allowed by this Agreement for such portion or phase of the Work, Contractor will incur damages as a result thereof. Contractor and Subcontractor agree that the amount of such damages is difficult to ascertain with any precision. Subcontractor shall

pay to Contractor, as liquidated damages, and not as a penalty, for late completion of any portion or phase of the Work, the amounts as set forth in Section 13(a).

14. **Clean Up.** Subcontractor will at all times keep the Site safe and free from the accumulation of waste materials or rubbish caused by its operations or related to the Work. Upon completion of the Work and each portion thereof, Subcontractor will remove all rubbish and waste produced by its operations or Work hereunder from the Site as well as all of its tools, equipment, machinery and surplus materials no longer needed and leave the Site in a "broom clean" or equivalent condition and safe for Subcontractor's employees and subsequent subcontractors to perform their work, unless otherwise specified in writing. If Subcontractor fails to clean up, Contractor may do so after written notice to Subcontractor and the cost thereof will be charged to Subcontractor.

15. **Liens.** To the fullest extent permitted by law, Subcontractor will at all times keep the Project, the Site and each part thereof free from any attachment, lien, claim of lien, or other encumbrance arising out of the Work and Subcontractor will indemnify, defend and hold Contractor harmless from and against all Claims, losses, demands, causes of action or expenses (including attorneys' fees and other costs of defense incurred by Contractor in defending against the foregoing or in enforcing this indemnity and defense obligation) of whatever nature, arising by reason of any such lien, claim of lien, attachment or encumbrance. If any Claim is filed to enforce any laborers, materialmen, mechanic's, or other similar lien arising out of or relating to the Work, Subcontractor will immediately cause such lien to be released and discharged and if Subcontractor fails to do so, then Contractor will have a right to pay all sums, including attorneys' fees and other costs and expenses incurred necessary to obtain such release and discharge, and hold Subcontractor liable for the amount thereof with the right to deduct all or a portion of such sum from accounts that may be due Subcontractor.

16. **Warranty and Guarantee.** Subcontractor warrants to Contractor that all materials, machinery and equipment furnished and incorporated pursuant to this Agreement shall be new unless otherwise specified, that the performance of the Work shall not limit, void or otherwise compromise or diminish any manufacturer warranty that is to be issued under the Agreement or the Contract Documents, and that all Work under this Agreement shall be and remain of good quality, free from faults, liens, security interests and defects, merchantable and fit for their particular purpose, and in strict conformance with the Contract Documents. All Work not conforming to these standards shall be considered defective. This warranty shall be in additions to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. Subcontractor agrees to indemnify and hold Contractor harmless from any losses, costs or other damages or expenses (including attorney and expert fees and expenses) resulting from any breach of the foregoing warranty. Nothing herein shall in any way limit the right of Contractor to assert claims for damages resulting from patent or latent defects in the Work for the period of limitations prescribed by law. Subcontractor shall bear all expenses incurred in connection with the inspection, removal, repair, correction, handling and transportation of defective or nonconforming Work or Work whose acceptance has been revoked. In addition, at Contractor's option, Subcontractor shall: (i) bear the costs of replacement materials, equipment and labor and all damages incurred by Contractor and (ii) pay Contractor for all expenses incurred in and delay caused by remedying defective or otherwise nonconforming Work. The provisions of this Paragraph shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents and shall survive the making and acceptance of final payment and/or termination of this Agreement.

Subcontractor shall, at its sole expense, promptly and properly repair, replace or otherwise correct any Work that is (i) rejected by Contractor or Owner, or (ii) known, observed or discovered at any time by Subcontractor, Contractor, Owner to be defective or failing to conform to the Contract Documents and shall pay Contractor for all costs and expenses incurred in any delay caused by remedying defective or otherwise nonconforming Work. Furthermore, if within one year after final completion and acceptance of the Project by Owner, or such longer period as established with respect to Subcontractor's obligations under the Contract Documents, the Work or any portion thereof is found to be not in accordance with the requirements of the Contract Documents, Subcontractor shall correct it promptly after receipt of written notice from Contractor to do so. The period within which Subcontractor shall be obligated to correct Work shall be extended with respect to portions of Work, including corrective work, first performed after final completion and acceptance of the Project. Subcontractor's obligations under this Paragraph shall survive completion and acceptance of the Work and Project and termination of this Agreement.

17. **Call Back Responsibility.** In connection with the performance of the Work by the Subcontractor, Subcontractor hereby agrees that:

- (a) It will within 48 hours from oral or written notice (Saturdays and Sundays excluded) correct any and all deficiencies of the Work.
- (b) The determination as to what constitutes a deficiency will be within the sole discretion of the Contractor, which judgment will be reasonably exercised.
- (c) Failure of the Subcontractor to make timely performance hereunder will constitute sufficient cause for the Contractor to cause the correction of such deficiencies to be performed by others. If the Contractor performs work under this Section, either directly or through other subcontractors shall have the right to take and use any materials, implements, equipment, appliances or tools furnished by, or belonging to the Subcontractor and located at the Project Site for the purpose of completing any deficiencies. Immediately upon the correction of the deficiencies, any remaining materials, implements, equipment, appliances or tools not consumed or incorporated in the correction of the deficiencies, and furnished by, belonging to, or delivered to the Project Site by or on the behalf of the Subcontractor, shall be returned to the Subcontractor in substantially the same condition as when they were taken, normal wear and tear excepted. Further, the cost of such work will be charged to the Subcontractor and such cost plus a sum equal to 15% thereof (which additional sum will represent an allowance for the administration by Contractor of such work) will be charged against the account of the Subcontractor. If the amount owing the Subcontractor under this Agreement at the time such work is performed by others is less than the sum charged against its account, the Subcontractor will remit the difference to the Contractor within five (5) days following Subcontractor's request therefor.

18. **Authorized Persons.** The President, CEO, Asst. Secretary, General Manager, and Regional Manager of Contractor, or their designated assigns, are persons with authority under this Agreement to: (a) execute change orders; (b) allow Subcontractor additional time for performance of the Work;

(c) modify, supplement or terminate this Agreement; or (d) do any other act that waives any right or privilege of Contractor under this Agreement or the Contract Documents. Any of the foregoing acts not properly authorized will not be binding upon Contractor.

19. **Entire Agreement.** This Agreement, together with the Contract Documents, constitute the entire Agreement between the parties. Neither this Agreement nor the Contract Documents may be amended or supplemented except by written instrument duly executed by both parties hereto.

20. **Successors and Assigns.** Subject to the provisions of Section 11 relating to assignment, this Agreement will be binding upon and inure to the benefit of the parties and their heirs, successors and assigns.

21. **Waiver.** No consent or waiver, express or implied, by either party to this Agreement relating to any breach or default by the other in the performance of any obligation hereunder will be deemed or construed to be a consent to or waiver of any other breach or default by such party. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default irrespective of how long such failure continues will not constitute a waiver of the rights of such party.

22. **Notice.** Unless otherwise provided herein, any notice provided for herein will be in writing and delivered to the parties (a) in person, (b) by facsimile transmission (with the original and a copy of the facsimile confirmation following in the United States mail), (c) by overnight delivery service, or (d) by certified mail, return receipt requested. If such notice is given in person or by facsimile transmission, notice will be deemed to have been received when delivered or transmitted. If such notice is given by overnight delivery service, notice will be deemed received the day after delivery to the overnight delivery service. If such notice is given by certified mail, notice will be deemed received 3 days after a certified letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail. Notice will go to the address first shown herein for the respective party to whom notice is given or to such other address as may be designated by either party by written notice given pursuant hereto.

23. **Time.** Time is of the essence of this Agreement and each provision herein contained.

24. **Words and Meanings.** Words used herein will include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter. The section headings used herein are for convenience only and will have no effect upon the construction or interpretation of any part of this document.

25. **Governing Law/Disputes/Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Indiana, including, without limitation, matters of construction, validity, enforcement, and interpretation. All claims, disputes and other matters in controversy arising out of or related to the Agreement, or the performance or breach thereof, may be decided by arbitration, at the sole option of Contractor. If Contractor elects arbitration, then it shall be mandatory upon Subcontractor. Such arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to modifications set forth herein, or, at Contractor's option, an arbitration tribunal other than

the American Arbitration Association may be selected to administer the arbitration. The arbitration award issued in such arbitration shall be final and binding on the parties, and may be submitted to a court of competent jurisdiction for entry as a judgment of such court as provided therein. In addition to the arbitration being subject to the Construction Industry Arbitration Rules of the American Arbitration Association then in effect, any arbitration proceedings, at Contractor's option, shall be subject to the statutory provisions of the Indiana Uniform Arbitration Act, as codified in Title 34 of the Indiana Code, §34-57-2-1, *et seq.* The arbitrators shall have all powers granted to arbitrators under that statute.

Should Contractor elect not to arbitrate for any action or proceeding involving any controversy, claim or dispute arising out of or in connection with the Agreement or the Work performed thereunder, Contractor and Subcontractor expressly and unconditionally (a) agree that the forum for any legal or equitable action or proceeding shall be, at Contractor's sole option, either in the Circuit or Superior Courts of the County where Contractor has a branch office in Indiana, the County where the Project is located, or in Hamilton or Marion County, Indiana, or in the United States District Court for the Southern District of Indiana, Indianapolis Division, and that such courts shall have sole and exclusive jurisdiction over the action or proceeding, unless agreed to otherwise, in writing, by Contractor; and (b) waive the right to a trial by jury in the action or proceeding. If arbitration is selected by Contractor, then venue for such arbitration proceedings shall be in Indianapolis, Marion County, Indiana, and any hearing or conference shall take place in that locale. The arbitration proceedings also shall be governed by the laws of the State of Indiana. Subcontractor consents to the choice of law, the choice of dispute resolution elected by Contractor, venue as provided herein, and to personal jurisdiction over it as provided herein, and waives any right to object to the exercise of personal jurisdiction by these tribunals or courts and to exclusive venue in these locales.

26. **Other Agreements.** Should there now or hereafter exist one or more other agreements between the parties, or with any affiliated corporation or company of either, concerning this or any other construction project, then a breach by Subcontractor under the terms of any such agreements, at the option of the Contractor, will be considered a breach of this Agreement and all such agreements. In such event Contractor or its affiliates may declare a default under any or all agreements so breached in accordance with their terms and may withhold money due or to become due under any such agreement and apply the same toward payment of any damages suffered.
27. **Independent Subcontractor.** Subcontractor will be an independent Subcontractor with respect to the Work, and neither Subcontractor nor anyone employed by Subcontractor will be deemed for any purpose to be the agent, employee, servant or representative of Contractor in the performance of the Work. Subcontractor acknowledges and agrees that Contractor will have no direction or control over the means, methods, procedures or manner of the Work performed by Subcontractor or any of its subcontractors, or any of their employees, vendors or suppliers.
28. **Severability of Agreement.** If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

29. **Confidentiality of Agreement.** The Subcontractor agrees that all terms and conditions contained herein or in any other document(s) referencing the Project shall remain confidential. Said terms shall not be disclosed without the express written consent of the Contractor, which may be reasonably withheld.

30. **List of Schedules.** Attached hereto and made a part hereof are the following schedules:

- Schedule A – The Project and the Site
- Schedule B – Scope of Work
- Schedule C – Price Schedule
- Schedule D – Progress Schedule

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

CONTRACTOR:

MILLER PIPELINE, LLC

By: _____

Print: _____

Title: _____

SUBCONTRACTOR:

By: _____

Print: _____

Title: _____

SCHEDULE A

The Project and the Site

OWNER: _____

OWNERS PROJECT NO/PROJECT NAME: _____

PROJECT LOCATION: _____

SCHEDULE B

The Scope of Work

SCHEDULE C

Price Schedule

SCHEDULE D

Progress Schedule

Partial Waiver of Lien and Release of Claims

State of _____

County of _____

WHEREAS, the undersigned company ("Subcontractor") provided labor and/or materials under its contract with Miller Pipeline, LLC ("Contractor") for the construction or repair of improvements upon real estate owned by _____ ("Owner") and located at _____ (the "Property") [legal description]; and

WHEREAS, a total of \$ _____ is due and payable to Subcontractor from Contractor for the time period ending on _____ (the "End Date").

NOW, THEREFORE, in consideration of \$ _____ paid this date, Subcontractor does hereby waive, release and relinquish any demand, claim cause of action, statutory or constitutional materialmen's or mechanic's lien or right to lien, or charge of any type or nature whatsoever, which Subcontractor has or may have for labor and/or materials supplied under its contract with Contractor or otherwise for the improvement of the Property through the End Date. Subcontractor warrants and represents that such payment is payment in full for all services, labor and materials supplied through the End Date, and that no other claims remain unpaid.

Further, Subcontractor warrants that all laborers, suppliers, and subcontractors providing labor or material by, through or under Subcontractor to the Property have been or will be, from the proceeds of this payment, paid in full before any other uses are made of these proceeds. Subcontractor acknowledges that Contractor's payment constitutes trust funds for the benefit of Subcontractor's laborers, suppliers and subcontractors. Subcontractor shall indemnify Contractor and the Property from any liens or claims by any laborer, supplier or subcontractor claiming by, through or under Subcontractor and will pay any attorneys' fees and expenses that the Contractor pays to defend itself from any claims.

Signed this _____ day of _____, _____.

[Typed Name of Subcontractor]

Address: _____

By: _____
Its: _____

The foregoing instrument was acknowledged and sworn to before me as being true and correct by _____ as _____ of Subcontractor for the reasons set forth herein.

My commission expires: _____

Notary Public for the State of _____

Final Waiver of Lien and Release of Claims

State of _____

County of _____

WHEREAS, the undersigned company ("Subcontractor") provided labor and/or materials under its contract with Miller Pipeline, LLC ("Contractor") for the construction or repair of improvements upon real estate owned by _____ ("Owner") and located at _____ ("Property") [legal description]; and

WHEREAS, a total of \$_____ is due and payable to Subcontractor from Contractor as payment in full for all labor and/or materials provided by Subcontractor under its contract with Contractor or otherwise for the improvement of the Property.

NOW, THEREFORE, in consideration of \$_____ paid this date, Subcontractor does hereby fully and finally waive, release and relinquish any demand, claim, cause of action, statutory or constitutional materialmen's or mechanic's lien or right to lien, or charge of any type or nature whatsoever, including any previously filed materialmen's or mechanic's lien, which Subcontractor has or may have for labor and/or materials supplied under its contract with Contractor or otherwise for the improvement of the Property, and hereby releases Contractor from any other obligations under the contract with Subcontractor. Subcontractor warrants and represents that such payment is payment in full for all services, labor and materials and that no other claims remain unpaid by Contractor.

Further, Subcontractor warrants that all laborers, suppliers, and subcontractors providing labor or material by, through or under Subcontractor to the Property have been or will be, from the proceeds of this payment, paid in full before any other uses are made of these proceeds, that such proceeds are trust funds, and that there are no chattel mortgage, conditional sale, retention of title agreement or other security agreement connected with or affecting the materials installed by Subcontractor at the Property or the proceeds of this payment. Subcontractor shall indemnify Contractor and the Property from any liens or claims by any laborer, supplier, subcontractor or lender claiming by, through or under Subcontractor, and will pay any attorneys' fees and expenses that the Contractor pays to defend itself from any claims..

Signed this ____ day of _____, 20__.

(Subcontractor]

Address: _____

By: _____

Its: _____

The foregoing instrument was acknowledged and sworn to before me as being true and correct by _____ as _____ of Subcontractor for the reasons set forth herein.

My commission expires: _____

Notary Public for the State of _____