



SUBCONTRACT AGREEMENT

Subcontract Location: «JobCity», «JobState» Subcontract No.: «SL»
For: «Scopeofwork» Subcontract Date «StartDate»

Between CLARK CONTRACTORS, LLC (also referred to as "Contractor") and:

«FirmName» «udaddtinfo»

Attn: «ContactFName» «ContactLName» Phone: «Phone»

E-Mail Address: «EMail» Fax: «Fax»

Address: «MailAddress», «MailCity», «MailState» «MailZip»

Amount: **Zero Dollars and No/100**

\$«TotalSubcontr Contractor's License No. «udLicenseRequirements» Federal ID No. «TaxId»
act» «udLicense»

CLARK CONTRACTORS, LLC on «udContractDate» either entered into Contract or plans to enter into a contract (hereinafter "Contract") with:

«Customer»

«CustAddress»

«CustCity», «CustState» «CustZIP» (hereinafter "Owner")

Wherein said CLARK CONTRACTORS, LLC agreed to fully and faithfully perform all the labor and furnish all the material for the complete construction of:

«ProjectDescription»

«JobAddress»

«JobCity», «JobState» «JobZip»

in accordance with plans, drawings, specifications, and addenda in the Contract prepared by «ArchEngName» (hereinafter "Architect") and requires Substantial Completion of the Entire Project on or before See Exhibit "B", which requires the Subcontractor to complete the Work, herein defined, in accordance with the Project Schedule attached hereto as Exhibit "B" and the scheduling requirements contained in Article 2 of this Subcontract Agreement ("Subcontract").

CLARK CONTRACTORS, LLC hereby subcontracts to the Subcontractor the furnishing of all labor, material, insurance, taxes, equipment, scaffolding, hoisting, hoisting equipment, supervision, permits, fees, etc., required for the following portion or subdivision of the completion of said Project, hereinafter referred to as the "Work," to-wit:

For All «Scopeofwork» in accordance with the Contract Documents defined in Exhibit "D".

I. SUBCONTRACT AMOUNT:

1. Total Contract Amount	\$	<u>«TotalSubcontract»</u>
2. Performance & Payment Bonds	\$	<u>See Exhibit "A"</u>
TOTAL SUBCONTRACT AMOUNT	\$	<u>«TotalSubcontract»</u>

II. RETAINAGE:

1. Retainage shall be «SubRetainage»% percent in accordance with Article 7.1 of this Subcontract.

III. REFER TO EXHIBIT "A" FOR THE FOLLOWING:

1. Schedule of Values Recap.
2. Specifications.
3. Scope of Work.
4. Exclusions.
5. Alternates.
6. Allowances.
7. Unit Prices.
8. Special Terms and Conditions.

IV. NOTES:

1. "Scope of Work" is hereby made a part of this Subcontract Agreement as Exhibit "A".
2. CLARK Contractors, LLC Schedule dated «udscheduledate» is hereby made a part of this Subcontract Agreement as Exhibit "B".
3. Sample Insurance Certificate is hereby made a part of this Subcontract Agreement as Exhibit "C". All cost associated with meeting this certificate is to be included in this Subcontractors bid. No change orders will be issued for additional cost related to insurance.
4. "List of Contract Documents" is hereby made a part of this Subcontract Agreement as Exhibit "D".
5. This Subcontractor will provide sufficient manpower to meet the Project Schedule, including any overtime required to maintain the schedule, at no additional charge unless the necessity for overtime is caused by others failing to maintain their schedule through no fault of this Subcontractor or circumstances beyond control (such as "acts of God").
6. This Subcontractor shall comply with the requirements of the Bidding Requirements and Conditions of the Contract and Division 1 – General Requirements as contained in the Specifications.

CLARK Project Manager:	« <u>ProjectManager</u> »	Office Phone:	« <u>PMPhone</u> »
E-Mail Address:	« <u>PMEmail</u> »	Office Fax:	« <u>PMFax</u> »
CLARK Project Superintendent:	« <u>SuperFName</u> » « <u>SuperLName</u> »	Job Phone:	« <u>SuperCell</u> »
E-Mail Address:	« <u>SuperEmail</u> »	Job Fax:	TBD
For truck material delivery address, use:	« <u>ShipAddress</u> »		
(This is not a mailing address)	« <u>ShipCity</u> », « <u>ShipState</u> », « <u>ShipZip</u> »		

IN CONSIDERATION WHEREOF, it is agreed, by and between said CLARK CONTRACTORS, LLC and Subcontractor, that Subcontractor will fully and faithfully perform all labor and furnish all material aforesaid necessary to be used in the completion of the above-mentioned Work at Subcontractor's cost and expense, in accordance with, and reasonably inferable from, the plans, drawings, specifications and addenda aforesaid listed in Exhibit "D" as prepared by Architect and in accordance with the Contract between CLARK CONTRACTORS, LLC and the Owner. Subcontractor shall be bound to Contractor by the terms of the Contract Documents, herein defined, and assume toward Contractor all of the obligations and responsibilities of Contractor toward the Owner with respect to the Work.

ARTICLE 1 CONTRACT DOCUMENTS

1.1 **CONTRACT DOCUMENTS:** The "Contract Documents" consist of this Subcontract, Exhibits to this Subcontract, the Contract, Conditions of the Contract (General, Supplementary and other Conditions), including but not limited to all drawings, plans, specifications and addenda to each, issued prior to the execution of either, respectively, and all modifications issued subsequent to the execution of either, respectively, all of which are hereby incorporated herein for all purposes by this reference and made a part of this Subcontract. A list of the items comprising the Contract Documents as of the date of the execution of this Subcontract is attached hereto as Exhibit "D". Within a reasonable time, after written request received from the Subcontractor, the Contractor shall make available for inspection and copying, at the Subcontractor's expense, all Contract Documents.

1.2 **ASSIGNMENT TO OWNER:** If required by the Contract Documents, Subcontractor agrees that the Work and this Subcontract may be assigned by Contractor to the Owner according to the terms of the Contract Documents.

1.3 **GENERAL AND SUPPLEMENTARY CONDITIONS:** The Subcontractor shall comply with the requirements of the General Conditions, Supplementary General Conditions, and Division 1 - "General Requirements" as contained in the Specifications.

1.4 Any preprinted terms or conditions contained in proposals, quotations, bids, etc. are hereby null and void, unless repeated in this Subcontract Agreement.

1.5 Exclusions or qualifications contained in proposals, quotations, bids, etc. are hereby null and void, unless repeated in this Subcontract Agreement or any properly executed change order.

ARTICLE 2 SUBMITTALS, WORK SCHEDULE, COMMENCEMENT, AND COMPLETION

2.1 **SUBMITTAL REQUIREMENTS:** Submittals, in accordance with specifications, are to be provided in the following quantities as soon as possible.

Product Data	<u>«ProductData»</u>	Shop Drawings	<u>«Shop»</u>
Samples	<u>«Samples»</u>	Other	<u>«Other»</u>

If submittals cannot be provided within 15 days of the Subcontract Date, please advise immediately. Subcontractor's field personnel shall maintain an up-to-date set of as-built documents, incorporating all contractual revisions and field changes to their work. All closeout documents, in accordance with specifications, are to be kept up to date as required and provided upon completion of the Work authorized herein. Submittals, closeout documents, and communications regarding same should be directed to:

Name:	<u>«PAFName» «PALName» «PAEmail»</u>	Telephone:	<u>«PACell»</u>
Address	<u>«PAMailAddress», «PAMailCity», «PAMailState» «PAMailZIP»</u>		

2.1.1 **VISUAL INSPECTION:** Subcontractor acknowledges that it has visited the Project site and visually inspected the general and local conditions, including but not limited to the availability of skilled labor, which could affect the Work. Any failure of the Subcontractor to reasonably ascertain from a visual inspection of the site the general and local conditions which could affect the Work will not relieve the Subcontractor from its responsibility to properly complete the Work without additional expense to the Contractor.

2.1.2 **APPROVAL OF SUBMITTALS:** Subcontractor acknowledges that it has reviewed the Contract Documents, including but not limited to the plans, specifications, and addenda. The approval of any Subcontractor's submittal shall not be deemed to authorize deviations, substitutions, or changes in the requirements of the Contract Documents, unless approved pursuant to Article 12.

2.1.3 **DESIGN ERRORS OR OMISSIONS:** Any design errors or omissions noted by the Subcontractor shall be reported promptly to the Contractor in writing and in no event after the time required in the Contract Documents.

2.2.1 **WORK SCHEDULE:** The Subcontractor shall commence the Work under this Subcontract as directed by CLARK CONTRACTORS, LLC. Routing of all materials to be subject to designation and control of CLARK CONTRACTORS, LLC. It will be the responsibility of the Subcontractor to check with the Project Superintendent for scheduling, delivery of material, and time for work to start at the job sites for all items covered by this Subcontract. Time is of the essence for the performance of this Subcontract. Subcontractor shall cooperate in scheduling and performing the Work to avoid conflicts or interference in the Subcontractor's Work and the work of others.

2.2.2 **WEEKLY MEETINGS:** Subcontractor must have a representative at the weekly jobsite meetings beginning two (2) weeks before the Subcontractor's start date and thereafter until the Work is completed. Subcontractor's representative at the weekly jobsite meetings must have the authority to make commitments on behalf of this Subcontractor. Failure of Subcontractor to attend these meetings will not relieve Subcontractor of the responsibility to perform the Work or otherwise comply with instructions given out during the meeting.

2.2.3 **DAILY DIARY:** Subcontractor must turn in to the Project Superintendent (daily) a copy of the daily diary, which must include manpower quantities, work activities, and potential problems.

2.2.4 **MATERIAL EXPEDITING SCHEDULE:** Subcontractor must submit a completed material expediting schedule which will show product, contact person, phone number, fabrication time, and proposed delivery date to be reviewed by the Project Superintendent. The material expediting schedule must be at the jobsite office within 15 days of contract award. (See attached form.)

2.2.5 **TIMELY PERFORMANCE:** Each Subcontractor must complete the Work in accordance with the Contract Documents and the latest revisions of the CLARK Project Schedule in a manner not to delay other contractors or subcontractors. This Subcontractor will provide sufficient manpower to meet the Project Schedule, including any overtime required to maintain the schedule, at no additional charge.

2.2.6 **BEHIND SCHEDULE:** Should the Work fall behind schedule, Subcontractor shall provide a written plan of action with means by which Subcontractor intends to regain compliance with the schedule. Subcontractor shall work overtime, weekends, bring in additional personnel, or provide any other measures necessary to comply with the schedule without additional expense to Contractor.

2.2.7 **PERMITS, LICENSES, ETC.:** The Subcontractor shall, without additional charge to CLARK CONTRACTORS, LLC, obtain and pay for all necessary permits and licenses pertaining to the Work and shall comply with all federal, state, and municipal laws, ordinances, rules, and regulations, whether provided for by the said plans, drawings, specifications, and addenda, or not so provided for, without additional charge or expense to CLARK CONTRACTORS, LLC, and shall be responsible for any and all corrections of any violations thereof to the Work included in this Subcontract, and **the Subcontractor shall indemnify and hold harmless CLARK CONTRACTORS, LLC from and against any and all loss, expense, damage, or injury caused or occasioned, directly or indirectly, by its failure to comply with the provisions of the said laws, ordinances, rules, regulations and requirements, and furnish to CLARK CONTRACTORS, LLC upon demand an affidavit showing such compliance on its part.**

2.2.8 **SITE MAINTENANCE:** Subcontractor shall provide sufficient, safe, and proper facilities at all times for the inspection by Owner, Architect or CLARK CONTRACTORS, LLC of the Work in the field, at shops or at any other place where materials required hereunder are in course of preparation, manufacture, treatments, or storage, and he shall, within twenty-four (24) hours after receiving written notice from CLARK CONTRACTORS, LLC to that effect, proceed to remove from the site all materials condemned by Architect, whether worked or unworked, and to take down all portions of the work which Architect or CLARK CONTRACTORS, LLC shall upon written notice condemn as unsound or improper, or as in any way failing to conform to the plans, drawings, specifications, and addenda and shall make good all work in other lines damaged by such removal. In the event that all or any portion of the Work as condemned shall be of such nature, or the time available should be so limited, that in the judgment of Architect or CLARK CONTRACTORS, LLC it would not be expedient to order the same replaced or corrected, CLARK CONTRACTORS, LLC at its option may deduct from the payments due or to become due to Subcontractor such amount or amounts as, in the opinion of Architect, shall represent the difference between the fair and reasonable value of the work so condemned and its value had it been executed in conformity with the plans, drawings, specifications and addenda.

2.2.9 **CLEANUP:** Subcontractor shall clean from the Project site daily all debris resulting from Subcontractor's operations as it accumulates. If this condition is not complied with after twenty-four (24) hours' written notice given by CLARK CONTRACTORS, LLC, removal will be accomplished by CLARK CONTRACTORS, LLC and the cost charged to Subcontractor. In addition to each Subcontractor's daily cleanup responsibilities, once a week there will be an overall job cleanup. Each Subcontractor will supply one or more men for the weekly overall job clean-up, dependent on their crew sizes at the time. CLARK CONTRACTORS, LLC will supervise the weekly overall job cleanup.

ARTICLE 3 CODES, LAWS & REGULATIONS

3.1 **GENERAL:** Subcontractor shall comply with all federal, state, and municipal laws, codes, regulations, and ordinances in effect and as enforced where the Work is to be performed, including but not limited to OSHA regulations, safety, working hours, noise, traffic, pollution control, etc. Subcontractor shall provide all adequate notices to authorities regarding the Work and obtain and pay for all permits, fees, licenses, assessments, inspections, and taxes necessary to complete the Work in accordance with the Contract Documents. Any deviation, conflict, or discrepancy between Contract Documents and such laws, rules, regulations, ordinances, or codes shall be brought to the immediate attention of the Contractor in writing.

3.2 **EMPLOYMENT TAXES:** Subcontractor accepts exclusive liability for all taxes and contributions required of Subcontractor, including federal withholding taxes, taxes under the Federal Social Security Act, and any unemployment compensation law or similar law of any state, with respect to the employees of Subcontractor taking part in the performance of the Work hereunder, and shall, if requested, furnish Contractor with suitable written evidence that Subcontractor has discharged such liability. If Subcontractor fails to furnish such evidence, Contractor may (at its option and without any obligation to do so) pay or reserve for payment said taxes and contributions and deduct the amount so paid or reserved from payments due or to become due Subcontractor or require Subcontractor or its surety, if any, to reimburse Contractor for such expenditures.

3.3 **SALES TAXES:** Subcontractor shall pay all sales or use taxes and all other federal, state, or local taxes and any penalties or additional charges of any nature in connection therewith applicable in any way to the Work, regardless of the person upon whom such tax is levied. In the event Subcontractor does not make such payment, Contractor (at Contractor's option and without any obligation to do so) may make the payment and deduct the amounts thereof from any sums due or to become due Subcontractor or require Subcontractor or its surety, if any, to reimburse Contractor for such expenditures.

3.4 **TAXES:** The Subcontract amount stated herein includes any and all federal, state, or municipal taxes now levied or in force, or imposed during the life of this Subcontract on any and all tangible personal property sold or transferred to CLARK CONTRACTORS, LLC or the Owner under this Subcontract, and the Subcontractor agrees to pay such tax or taxes on such property, the cost of which shall be considered included in the Subcontract amount mentioned herein. The Subcontractor agrees to pay, and hereby accepts exclusive liability for, any tax, assessment, or contribution for unemployment insurance or Social Security and income tax levied by the federal or any state government on the salaries or wages of all persons employed directly or indirectly by the Subcontractor, and the Subcontractor hereby agrees to comply with all the rules, regulations, and requirements of the federal, state, or municipal authority having jurisdiction thereof in order to relieve CLARK CONTRACTORS, LLC of liability.

ARTICLE 4 BONDS

4.1 **PERFORMANCE AND PAYMENT BONDS:** Bonds for maintenance, guarantee of workmanship and material, and to insure prompt and faithful performance of the obligations of the Subcontractor, including all warranties and obligations, shall be furnished by Subcontractor as specified or required by CLARK CONTRACTORS, LLC.

A. None Required

4.2 **CONTENTS OF BONDS:** All performance bonds and payment bonds shall incorporate this Subcontract by reference and shall provide that the surety waives consent to all changes, modifications, and amendments to this Subcontract. Any such changes, modifications, or amendments which decrease the Subcontract amount shall not in any way alter the amount of the performance bond and payment bond. Any changes, amendments, or modifications which increase the Subcontract amount shall be supported by an increase in the amount of the performance bond and the payment bond to the extent necessary to equal 100 percent of the Subcontract amount as increased.

ARTICLE 5 INSURANCE, INDEMNITY, AND ATTORNEYS' FEES

5.1.1 **INSURANCE REQUIREMENTS:** Subcontractor further agrees to comply with the more stringent of the project specific insurance requirements or the following minimum insurance requirements, use an insurance company satisfactory to CLARK CONTRACTORS, LLC (A. M. Best, A Minus VII or better), and furnish a certificate of insurance in duplicate immediately, and the endorsement naming CLARK CONTRACTORS, LLC and the Owner as an additional insured, covered as fully as the primary insured under Subcontractor's general liability, automobile liability, and excess liability policy. Should the subcontractor's actual coverage limits exceed those of the project specific insurance requirements or the minimum insurance requirements of CLARK CONTRACTORS, LLC shown in this Agreement or its Exhibits, the subcontractors coverage shall not be limited to the lesser project specific insurance requirements, any minimum limits set forth in this Agreement, or those amounts listed in the Sample Certificate, Exhibit "C". Subcontractor agrees to maintain coverages below for a period of five years or the statute of repose in the state the work is performed, whichever is longer.

A. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY – *Requirements listed on Sample Certificate, Exhibit "C".*

1. Minimum Employers' Liability Limits of:
\$500,000 E.L. Each Accident
\$500,000 E.L. Disease Each Employee
\$500,000 E.L. Disease – Policy Limit
2. Where permitted by law, coverage shall contain a waiver of subrogation in favor of CLARK Contractors, LLC and the Owner.

B. GENERAL LIABILITY - *Requirements listed on Sample Certificate, Exhibit "C".*

1. Minimum Limits of Liability (but show Maximum Limit Carried on Certificate):
\$1,000,000 Each Occurrence
\$100,000 Damage to Rented Premises
\$10,000 Medical Expense
\$1,000,000 Personal & Advertising Injury
\$2,000,000 General Aggregate
\$2,000,000 Products-Completed Operations Aggregate
2. Commercial general liability coverage shall include contractual liability assumed and shall not contain any separate exclusionary endorsements amending the definition of "insured contract" in the ISO document CG0001 (10/01) or later form. Form CG2139 is not acceptable as endorsement.
3. CLARK Contractors, LLC and Owner shall be named as additional insureds on a primary and non-contributory basis. Additional Insured status must apply to both "ongoing & completed operations coverage" and a copy of Additional Insured Endorsement CG 2010 (10/01) and CG 2038 (12/19) and CG 2037 (10/01) shall be attached to certificate of insurance (or state applicable ISO forms if these forms do not comply in your state). Attachment of policy form pages is not an acceptable alternative to the endorsement.
4. Commercial general liability coverage shall include coverage for "XCU" (explosion, collapse, and underground hazards) as provided in the ISO document CG0001. The coverage shall not contain any endorsements restricting or deleting any portion of the coverage.
5. Commercial general liability coverage shall include the "general aggregate per project".
6. Coverage shall contain a waiver of subrogation in favor of CLARK CONTRACTORS, LLC, and the Owner.
7. Products & completed operations coverage shall be maintained for a minimum of 5 years after completion of work.

C. AUTOMOBILE LIABILITY - *Requirements listed on Sample Certificate, Exhibit "C".*

1. Minimum Limits of Liability (but show Maximum Limit Carried on Certificate):
\$1,000,000 Combined Single Limit

2. CLARK CONTRACTORS, LLC and Owner shall be named as an additional insured. Endorsements shall be attached to certificate of insurance.
 3. Coverage shall contain a waiver of subrogation in favor of CLARK CONTRACTORS, LLC, and the Owner.
- D. **UMBRELLA/EXCESS LIABILITY** - *Requirements listed on Sample Certificate, Exhibit "C".*
1. Minimum Limit of Liability (but show Maximum Limit Carried on Certificate):
 \$1,000,000 Each Occurrence
 \$1,000,000 Aggregate
 2. CLARK CONTRACTORS, LLC and Owner shall be named as an additional insured. Endorsements shall be attached to certificate of insurance.
 3. Coverage shall contain a waiver of subrogation in favor of CLARK CONTRACTORS, LLC, and the Owner.
 4. Coverage shall Follow Form over underlying GL, Auto & WC policies.

E. **PROFESSIONAL LIABILITY INSURANCE [IF APPLICABLE]** - **«udProfessionalLiability»**

Requirements listed on Sample Certificate, Exhibit "C" and tables below.

Professional Liability insurance is required to be obtained by the Subcontractor for its acts or those for whom the Subcontractor is legally liable. Subcontractor shall maintain, at its own expense, a professional liability policy with a limit of liability not less than the amount shown in the applicable line of the tables below. Such insurance shall cover professional liability of the Subcontractor and indemnify the Contractor and Owner for any claims or damages arising out of the actual or alleged negligent acts, errors, or omissions in the rendering of or failure to render professional services. Insurance shall include a waiver of subrogation (endorsements shall be attached to certificate of insurance) by Subcontractor's insurer in favor of CLARK CONTRACTORS, LLC and Owner and meet the limits of liability indicated below:

The following Trades are Required to Provide Professional Liability Coverage (limits per table below):			
Building Concrete	Drywall	Electrical	Elevators
Fire Alarm	Fire Protection	Geopiers	HVAC
Pre-engineered Metal Bldg.	Roof Davits	Shoring	Skylights/Curtainwall
Steel Supplier	Structure Bracing	Structural Precast	

Subcontract / Work Order Value	Minimum Professional Liability Coverage
Less than \$2,000,000	\$1,000,000 per claim / \$1,000,000 aggregate
\$2,000,000 - \$3,000,000	\$2,000,000 per claim / \$2,000,000 aggregate
\$3,000,000 - \$5,000,000	\$2,000,000 per claim / \$5,000,000 aggregate
\$5,000,000 or more	\$2,000,000 per claim / \$10,000,000 aggregate

F. **POLLUTION INSURANCE [IF APPLICABLE]** - **«udPollution»**

Requirements listed on Sample Certificate, Exhibit "C" and table below.

Pollution insurance is required to be obtained by the Subcontractor. The Subcontractor shall maintain, at its own expense, a pollution liability policy with a limit of liability of \$1,000,000 per occurrence/\$1,000,000 aggregate. Such insurance shall cover all pollution legal liability of the Subcontractor and indemnify CLARK CONTRACTORS, LLC and Owner for any claims or damages arising out of a pollution event. CLARK CONTRACTORS, LLC and Owner shall be named as an additional insured. Insurance shall include a waiver of subrogation by Subcontractor's insurer in favor of CLARK CONTRACTORS, LLC and Owner. Endorsements for additional insured and waiver of subrogation shall be attached to certificate of insurance.

Coverage under Sections E. & F. may be procured through a Combined Professional Liability and Pollution Liability insurance policy.

The following Trades are Required to Provide Pollution Liability Coverage:	
Abatement	Exterior Wall Tile
Masonry	Roofers
EIFS	Wall Panels/Siding
Waterproofing	Ext. Glass and Glazing

- G. CLARK CONTRACTORS, LLC and Owner **MUST** be named on the certificate as Additional Insured under Subcontractor's General Liability and Automobile Liability. A copy of the Additional Insured Endorsements CG 2010 (10/01) **and** CG 2038 (12/19) **and** CG 2037 (10/01) (10/01) shall be attached to the certificate of insurance (or state applicable ISO forms if these forms do not comply in your state). Attachment of policy form pages is not an acceptable alternative to the endorsement.
- H. It will be the responsibility of the Subcontractor to maintain an equipment floater policy. CLARK CONTRACTORS, LLC does not have insurance coverage on the Subcontractor's equipment.

I. Evidence of workers compensation in the form of a certificate from a temporary labor agency will not be accepted.

5.1.2 The Subcontractor shall maintain in effect all insurance coverage required under this Subcontract at the Subcontractor's sole expense and with insurance companies mutually agreeable to the Contractor and Subcontractor. All insurance policies shall contain the provision that the coverages afforded thereunder shall not be canceled until at least thirty (30) calendar days' prior written notice has been given to the Contractor but in no event shall the notice be less than the number of days required by the Contract Documents for the Contractor to give notice to the Owner of any changes in coverage. If the Subcontractor's insurance carrier(s) will not endorse policies to provide thirty (30) day notice of cancellation to CLARK CONTRACTORS, LLC, the Subcontractor and its Insurance Agent of Record agree to notify CLARK CONTRACTORS, LLC within two days of receipt of such cancellation notice from the insurance carrier. In the event coverage is not renewed or canceled for non-payment of premium the Subcontractor and its Insurance Agent of Record agree to notify Clark in writing within two (2) days of receipt of such notice from the insurance carrier.

5.1.3 **NO IMPLIED WAIVER:** Any waiver of the subcontractor's obligation to furnish such certificate or maintain such evidence must be by written change order and signed by a Managing Member (Officer) of CLARK CONTRACTORS, LLC. Failure of CLARK CONTRACTORS, LLC to demand such certificate or other evidence of full compliance with these insurance requirements or failure of CLARK CONTRACTORS, LLC to identify a deficiency from evidence that is provided shall not be construed as a waiver of the subcontractors obligations to furnish and maintain such insurance, or as a waiver to the enforcement of any of the provisions at a later date.

5.2.1 INDEMNIFY, DEFEND, AND HOLD HARMLESS: Subcontractor shall defend, indemnify, and hold harmless Clark Contractors, LLC, the Owner, and their respective employees, members, owners, officers, and agents, from all claims, expenses (including attorney's fees), costs, damages, demands, actions, or liability for damage or destruction of property and for injury or death of persons arising from or related to the Subcontractor's performance of the Work and this Subcontract, but only to the extent of the Subcontractor's negligence or fault. Subcontractor's indemnity liability under this provision is not limited by the insurance requirements of this Subcontract or any provision of a workers' compensation statute. Notwithstanding the above, the Subcontractor shall defend, indemnify, and hold harmless Clark Contractors, LLC, the Owner, and their respective employees, members, owners, officers, and agents (the "Indemnitees") from and against all claims, expenses (including attorney's fees), costs, damages, demands, actions or liability arising from or related to the bodily injury or death of an employee of the Subcontractor, its agents, or Subcontractor's subcontractors of any tier.

5.2.2 It is the intention of the Subcontractor to defend and indemnify CLARK CONTRACTORS, LLC even in the event that any such claims, expenses, costs, damages, demands, actions, or liability arises in whole or in part from breach of contract, breach of warranties, express or implied, defects in material, products, workmanship or design or condition of property or premises.

5.2.3 Subcontractor shall also indemnify CLARK CONTRACTORS, LLC for any and all expenses incurred by CLARK CONTRACTORS, LLC for fines, penalties and corrective measures that result from acts by Subcontractor, its agents, employees, and assignees, in failing to comply with all safety rules, and regulations, including but not limited to Occupational Safety and Health Administration (OSHA) requirements and standards.

5.3 **ATTORNEYS' FEES:** Should CLARK CONTRACTORS, LLC employ an attorney to enforce any of the provisions hereof, or protect its interest in any matter arising under this Subcontract, or to collect damages for the breach of this Subcontract, or to prosecute or defend any suit resulting from this Subcontract, or to recover on the surety bond given by Subcontractor under this Subcontract, then Subcontractor and its surety, jointly and severally, agree to pay CLARK CONTRACTORS, LLC all reasonable costs, charges, expenses and attorney fees expended or incurred in connection therewith. Included within this indemnity provided in this Article 5, **the Subcontractor shall indemnify CLARK CONTRACTORS, LLC for all premiums, costs, fees, including attorneys' fees, incurred by CLARK CONTRACTORS, LLC to remove liens filed against the Project by subcontractors, suppliers, or otherwise as a result of nonpayment by the Subcontractor.**

ARTICLE 6 WARRANTY AND DEFECTIVE WORK

6.1 **WARRANTY:** The Subcontractor warrants all Work against defects in material or workmanship for the greater of (a) one (1) year from the date evidenced by the Certificate of Substantial Completion or (b) the period of time required in the Contract Documents.

6.2 **PERFORMANCE WARRANTY:** Subcontractor warrants that the Work shall be performed strictly in accordance with this Subcontract, the plans, specifications, addenda, manufacturer's recommendations and all other Contract Documents, and all Work shall be executed in a workmanlike manner by skilled and reputable workmen.

6.3 **SUBCONTRACT PERFORMANCE:** The Subcontractor shall use its best care, skill, and diligence in supervising and directing the Work. The Subcontractor shall have responsibility and control over performance of the Work, including construction methods, techniques, and means for coordinating and completing the various portions of the Work, unless the Subcontract gives other specific instructions concerning these matters.

6.4 **CONTRACTOR'S EQUIPMENT:** The Subcontractor, its agents, employees, subcontractors, or suppliers shall not use the Contractor's equipment, except upon receipt of express written permission of the Contractor's Project Superintendent and then only in accordance with the Contractor's terms and conditions for such use.

6.5 **DEFECTIVE WORK:** Subcontractor shall correct in a timely fashion any Work rejected by the Contractor or Owner or Architect for failing to comply with the Contract Documents, whether observed prior to the commencement of the warranty period(s) or during the warranty period(s) established by the Contract Documents. The Subcontractor shall make corrections at its own cost and time and bear the expense of additional services for any nonconforming Work for which it is responsible.

ARTICLE 7 PAYMENT

7.1 **PAYMENTS:** In consideration of the faithful performance by the Subcontractor of all the covenants and conditions, to be paid as the work progresses, on requests to be made of the proportionate amount of materials delivered and accepted and work properly done by Subcontractor, such payments to be ~~!Undefined Bookmark, SUBRETAIN%~~ of the amount of such request to be made within seven (7) days after the like amount of each request is received from the Owner by CLARK CONTRACTORS, LLC and in proportion to the amount of such request, the remaining SubRetainage% to be paid after that part of the Work and material herein provided for is finally completed to the satisfaction of the Owner and the Architect and has been paid for by the Owner to CLARK CONTRACTORS, LLC, and after all waivers of lien, submittals, closeout documents, and communications have been submitted to CLARK CONTRACTORS, LLC. Notwithstanding anything in this Subcontract to the contrary, all progress payments and the final payment under this Subcontract are contingent upon Owner's acceptance of all Work performed and upon Contractor's receipt of payment from Owner for Work performed by the Subcontractor.

7.2 **WAIVERS OF LIEN:** Subcontractor shall submit a complete list of suppliers and/or subcontractors who will be providing material and/or labor for the operation of this Subcontract and shall include in their schedule of values for each payment request a complete list of all subcontractors, suppliers and other third party obligations, amount owed each supplier and/or subcontractor, and waivers of lien and surety bond claims for the current and previous month from each supplier and/or subcontractor. The payment request form, monthly partial and final lien and surety bond claim release forms to be used are included with these documents. Subcontractor agrees to provide other such lien releases, sworn statements, etc. as may be requested by the Owner or the Owner's Lender.

7.3 **PAYMENT REQUESTS:** The Subcontractor's original payment request shall be in CLARK CONTRACTORS, LLC Corporate Office, Post Office Box 17361, Little Rock, Arkansas 72222 on or before the 20th day of the month. CLARK CONTRACTORS, LLC will accept payment requests electronically only if the notary seal is clearly visible in the electronic copy. Payment requests shall be submitted in accordance with the sample form attached. The Subcontractor must submit a monthly payment request with their schedule of values broken down as to divisions of work on the payment request form, and shall include in their schedule of values a complete list of all subcontractors, suppliers and other third party obligations, amount owed each supplier and/or subcontractor, and waivers of lien and surety bond claims for the current and previous month from each supplier and/or subcontractor. CLARK CONTRACTORS, LLC shall have the right to approve or disapprove the breakdown and detail of Subcontractor's payment request. Forms not filled out properly will be returned. Requests received after the cut off date will be held until the following month. No payments will be made until signed Subcontract, request forms, waivers, hazard communication information, performance and payment bonds, if applicable, and insurance certificates are received by CLARK CONTRACTORS, LLC. Payment of any payment request shall not be considered a waiver by Contractor or imply acceptance of the Work.

7.4 **JOINT CHECKS:** CLARK CONTRACTORS, LLC reserves the right to write joint checks to the Subcontractor and its suppliers, subcontractors, etc., if in the sole discretion of CLARK CONTRACTORS, LLC it is necessary to insure payment to those parties or if those parties have issued a notice of nonpayment, a lien, or an intent to lien.

7.5 **RIGHT TO WITHHOLD PAYMENT:** Contractor, without waiver or limitation of any rights or remedies of Contractor, shall be entitled to deduct from any amounts due or owed by Contractor to Subcontractor, in connection with this Subcontract, any and all amounts owed by Subcontractor to Contractor or Owner in connection with this Subcontract including, but not limited to, disputed payment applications or amounts, back charges, payments to sub-subcontractors, payments to providers of material, liquidated damages assessed by the Owner, rework or repairs caused by Subcontractor, or other similar items.

ARTICLE 8 FINAL PAYMENT

8.1 **FINAL PAYMENT:**

- (A) Subcontractor shall submit the final payment request for the original Subcontract amount, plus any approved change orders.
- (B) Subcontractor shall submit a separate payment request for retainage to the Corporate Office in Little Rock, Arkansas. Payment requests for retainage will not be accepted on the same payment request form with any other payment request.
- (C) The request for retainage shall contain a complete list of all third party obligations; amount owed each supplier and/or subcontractor, and final waivers of lien from each supplier and/or subcontractor.
- (D) The request for retainage shall contain a sworn statement that Subcontractor has no other outstanding claims for labor or materials furnished to the Project (other than retainage), and, upon receipt of final payment and retainage, Subcontractor waives all claims for payment against CLARK CONTRACTORS, LLC and the Owner.

8.2 **CLOSEOUT REQUIREMENTS:** All closeout requirements, per specifications, must be received as soon as possible after completion of this Subcontract, but no later than 30 days after the substantial completion date for the Project. (Closeout documents must be received prior to release of final payment.)

ARTICLE 9
STORAGE AND EQUIPMENT

9.1 **STORED MATERIALS:** Billing for materials is allowed only when submitted in accordance with the Contract Documents and when the material is stored in a bonded warehouse or on the jobsite. The Subcontractor is cautioned not to bring large amounts of materials on the jobsite without prior approval from the Project Superintendent. Stored material on jobsite refers to long lead-time items only. No "storage" will be paid for materials that can be purchased "off-the-shelf" or otherwise readily obtainable. CLARK CONTRACTORS, LLC is not responsible for theft or damage to any material stored off-site. The Subcontractor must submit pictures of all materials stored off-site, clearly marked for this Project, and proof of insurance on the materials stored off-site.

ARTICLE 10
SAFETY

10.1 **SAFETY REPRESENTATIVE:** The Subcontractor is required to designate an individual at the site in the employ of the Subcontractor who shall act as the Subcontractor's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Subcontractor in writing to the Contractor, the designated safety representative shall be the Subcontractor's Project Superintendent. The Safety Representative shall identify each Competent Person for specific work activities as required by OSHA.

10.2 **PREVENTION OF ACCIDENTS:** Prevention of accidents at the site is the responsibility of the Subcontractor and all other subcontractors, persons, and entities at the site, including the Contractor. Establishment of a safety program by the Contractor shall not relieve the Subcontractor or other parties of their safety responsibilities. The Subcontractor shall establish its own safety program implementing safety measures, policies, and standards conforming to those required or recommended by the governmental and quasi-governmental authorities having jurisdiction and by the Contractor and Owner, including, but not limited to, requirements imposed by the Contract Documents. The Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project and shall stop any part of the Work which the Contractor deems unsafe until corrective measures satisfactory to the Contractor shall have been taken. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility.

10.3 **SAFETY REPORT:** Subcontractor shall submit to the Contractor weekly written reports, including but not limited to weekly safety inspections, equipment inspections, weekly safety meeting notes, and any accident reports, on a form acceptable to Contractor.

10.4 **HAZARDOUS SUBSTANCES:** In the event Subcontractor encounters asbestos, lead, polychlorinated biphenyl (PCB), or other hazardous substances at the site which potentially are harmful to persons or property, Subcontractor shall take all steps required by the Contract Documents and by law to protect persons and property from injury or damage, including stopping the Work in the affected areas, and promptly advising the Contractor in writing of the conditions encountered at the site. Should the Subcontractor be required to stop work in any area of the Project as a result of hazardous substances located at the site, then the Subcontractor shall not resume its Work in the affected area until (a) the hazardous substances have been removed or made harmless; (b) the Contractor and Subcontractor agree in writing to commence work in all or a portion of the area; (c) the Owner orders the Work to proceed in the affected area, and the parties agree; or (d) the dispute is resolved as provided for in this Subcontract. The Subcontractor shall not be required to perform work in areas containing asbestos, lead, PCBs, or any other hazardous substances defined by the Contract Documents, without the Subcontractor's consent.

ARTICLE 11
CLAIMS

11.1 **WRITTEN CLAIM:** The Subcontractor agrees to make all claims against the Contractor for which the Owner is or may be liable in the same manner and within time allowed for the Contractor to make claims against the Owner after the event giving rise to the claim and in sufficient time for the Contractor to make such claims against the Owner. Such claims shall be made in writing and comply with this paragraph to be valid.

11.2 **NOTICE:** The Subcontractor shall give the Contractor written notice of all claims not included in the foregoing paragraph within fourteen (14) calendar days after the date when the Subcontractor knew, or should have known, of the facts giving rise to the event for which claim is made; otherwise, such claims shall not be valid.

11.3 **CLAIM DEFINITION:** A claim is a demand or assertion by the Contractor or the Subcontractor seeking an adjustment in the Subcontract amount and/or time for performance of the Work, an adjustment or interpretation of the Subcontract terms, or other relief arising under or relating to this Subcontract, including the resolution of any matters in dispute between the Contractor and Subcontractor in connection with the Project.

11.4 The Subcontractor shall carry on the Work and maintain the Schedule of Work pending final resolution of a claim, unless the Subcontractor has been terminated or the Work suspended as provided for in the Contract with the Owner, or the parties otherwise agree in writing to a partial or total suspension of the Work. If the Subcontractor is continuing to perform in accordance with this Subcontract, Contractor shall continue to make payments as required by the Subcontract.

11.5 **RESOLUTION BY CHANGE ORDER:** Whenever the Subcontractor submits a claim for adjustment under any clause of the Subcontract, such claim shall include all types of adjustments in the total amounts to which the clause entitles the Subcontractor, including but not limited to adjustments arising out of delays or disruptions or both caused by such change. Except as the parties may otherwise expressly agree, the Subcontractor shall be deemed to have waived (i) any adjustments to which it otherwise might be entitled under the clause where such claim fails to request such adjustments, and (ii) any increase in the amount of equitable adjustments additional to those requested in the claims. Execution of any related change order forecloses, settles, and releases Contractor from any other claims or liability for additional time or adjustment of the subcontract amount for all matters included in the timely written claim.

ARTICLE 12 CHANGES

12.1 **CHANGES:** Subcontractor shall perform any and all changes from the original plans and specifications without nullifying the Subcontract when specifically ordered to do so in writing by the Contractor. Subcontractor, prior to commencement, shall submit to Contractor within 14 days after request written copies of the cost or credit proposal, with sufficient breakdowns and documentation, for such work in a manner consistent with the Contract Documents. Breakdowns and documentation to include, but not be limited to, quantities, man hours, labor rates, labor burden rates, material unit prices, sales tax and equipment for each line item of work, overhead & profit, copies of change order requests and/or quotations from subcontractors and suppliers with equivalent breakdowns and documentation, and any other evidence required by the Owner, Architect or CLARK CONTRACTORS, LLC.

12.2.1 **FIELD WORK AUTHORIZATION OR FIELD PURCHASE ORDER:** The Contractor may order work not a part of the scope of this Subcontract, including the purchase of materials and the furnishing of labor. In such a case the extra work will be invoiced and paid as a separate work item. Authorizations for "extra work" shall not be used to circumvent the intent or scope of the Work of this Subcontract. Only signed CLARK Work Authorization Forms or CLARK Field Purchase Orders can authorize changes to the Work.

12.2.2 **PRIOR APPROVAL:** There will be no consideration given by the Contractor for requests for payments in excess of the Subcontract amount, unless specifically authorized, in writing, and approved by the Project Manager before the extra work is done. Any liens instituted as a result of an unauthorized claim will be the sole responsibility of the Subcontractor to release before any scheduled monthly pay requests are paid or retainage is released.

12.3 **INCIDENTAL CHANGES:** The Contractor may direct the Subcontractor to perform incidental changes in the Work which do not involve adjustments in the Subcontract price or Subcontract time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. The Contractor shall initiate an incidental change in the Work by issuing a written order to the Subcontractor. Such written orders shall be carried out promptly and are binding on the parties.

ARTICLE 13 REMEDIES

13.1 **REMEDIES:** If the Subcontractor refuses or fails: (i) to correct any Work rejected by the Contractor, Architect or Owner; (ii) to supply enough properly skilled workers, proper materials, or maintain the Schedule of Work; or (iii) to make prompt payment to workers, subcontractors, or suppliers, or disregards law, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Subcontract, the Subcontractor may be deemed in default of this Subcontract. If the Subcontractor fails within seventy-two (72) hours after written notification to commence and continue satisfactory correction of such default with diligence and promptness, then the Contractor, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

- (i) supply such number of workers and quantity of materials, equipment, and other facilities as the Contractor deems necessary for the satisfactory correction of such default, which the Subcontractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to the Subcontractor, who shall be liable for the payment of same, including reasonable overhead, profit, and attorneys' fees;
- (ii) contract with one or more additional contractors, to perform such part of the Work as the Contractor shall determine will provide the most expeditious correction of the default and charge the cost thereof to the Subcontractor;
- (iii) withhold payment, in the amount deemed necessary by the Contractor to protect the Contractor, of moneys due the Subcontractor in accordance with this Subcontract; and
- (iv) in the event of an emergency affecting the safety of persons or property, the Contractor may proceed to commence and continue satisfactory correction of such default, without first giving seventy-two (72) hours' written notice to the Subcontractor, but shall thereafter give prompt written notice of such action to the Subcontractor.
- (v) in the event the Subcontractor fails to provide manpower to the project or completely abandons the project for a period of seventy-two (72) hours, the Contractor may proceed to commence and continue satisfactory correction of such default, without first giving seventy-two (72) hours' written notice to the Subcontractor, but shall thereafter give prompt written notice of such action to the Subcontractor.

13.2 **TERMINATION OF SUBCONTRACTOR:** If the Subcontractor fails to commence and satisfactorily continue to cure correction of a default after seventy-two (72) hours' written notification issued under the above paragraph, then the Contractor may, in lieu of or in addition to the remedies set forth in this numbered paragraph, issue a written notice of termination to the Subcontractor and terminate this Subcontract.

13.3.1 **CONTRACTOR'S RIGHTS TO PERFORM:** The Contractor also may furnish materials and equipment and/or employ such workers or subcontractors as the Contractor deems necessary to maintain the orderly progress of the Work.

13.3.2 All costs incurred by the Contractor in performing the Work, including reasonable overhead, profit, and attorneys' fees, shall be deducted from any monies due or to become due the Subcontractor under this Subcontract. The Subcontractor shall be liable for the payment of any amount by which such expense exceeds the unpaid balance of the Subcontract amount. If the unpaid balance of the Subcontract amount exceeds the expense of finishing the Work, such excess shall be paid to the Subcontractor.

13.3.3 If the Contractor performs the Work under this Article, or subcontracts such work to be so performed, the Contractor and/or the persons to whom the Work has been subcontracted shall have the right to take and use any materials, implements, equipment, appliances or tools furnished by, belonging or delivered to the Subcontractor and located at the Project for the purpose of completing any remaining Work. Immediately upon completion of the Work, any remaining materials, implements, equipment, appliances or tools not consumed or incorporated in performance of the Work, and furnished by, belonging to, or delivered to the Project by or on 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.

13.4 **LIQUIDATED DAMAGES:** If the Contract Documents provide for liquidated damages for delay beyond the completion date set forth in the Contract Documents, and such damages are assessed by the Owner against the Contractor, then the Contractor, in its discretion, may assess and apportion such damages against the Subcontractor in proportion to its share of the responsibility for such delay and damage, but no more. The amount of such assessment against the Subcontractor, if any, shall not exceed the Subcontractor's proportionate share of the responsibility for such delay and damage and shall never exceed the amount assessed against the Contractor by the Owner. Nothing in this paragraph shall limit the Contractor's right to actual damages sustained by the Contractor as a result of Subcontractor's delay.

13.5 **BACK CHARGES BY SUBCONTRACTOR:** Charges from Subcontractor to CLARK CONTRACTORS, LLC or any subcontractor on this Project will not be honored or paid by CLARK CONTRACTORS, LLC unless charges are authorized and approved in writing by an authorized representative of CLARK CONTRACTORS, LLC.

13.6 **LABOR STRIKES OR WORK STOPAGES:** Subcontractor shall at all times supply a sufficient number of skilled workers to perform the work covered by this subcontract with promptness and diligence. Should any workers performing work covered by this Subcontract engage in a strike or other work stoppage or cease to work due to picketing or a labor dispute of any kind, CLARK CONTRACTORS, LLC may, at its option and without prejudice to any other remedies it may have, after seventy-two (72) hours written notice to Subcontractor, provide any such labor and deduct the cost thereof from any monies then due or thereafter to become due Subcontractor.

ARTICLE 14 MISCELLANEOUS

14.1 **GOVERNING LAW AND CONSENT TO JURISDICTION AND VENUE:** The Subcontractor hereby submits to and consents to personal jurisdiction within the State of Arkansas should a dispute arise out of this Subcontract. Subcontractor agrees that Little Rock, Pulaski County, Arkansas shall be the exclusive venue for litigation. The Subcontractor specifically agrees that this Subcontract shall be interpreted and construed according to Arkansas law, including its conflicts of law rules, and that all disputes arising out of the Subcontract shall be governed by Arkansas law.

14.2 **FURTHER ASSISTANCE:** The Subcontractor agrees that from time to time hereafter, upon request of CLARK CONTRACTORS, LLC, Subcontractor will execute, acknowledge, and deliver such other instruments and documents and take such further action as may be reasonably necessary to carry out the intent of this Subcontract.

14.3 **MODIFICATION:** No provision contained herein may be modified, amended, or waived, except by written change order signed by both parties.

14.4 **HEADINGS AND CAPTIONS:** Subject headings and captions are included for convenience purposes only and shall not affect the interpretation of this agreement.

14.5 **NOTICE:** All notices, consent, requests, demands, and other communications permitted or required hereunder shall be in writing and either (i) delivered in person; (ii) sent by express mail or other overnight delivery service providing receipt of delivery; (iii) mailed by certified mail, postage prepaid, return receipt requested; or (iv) sent by telecopy or other facsimile transmission (except for payment requests) as follows:

If to CLARK CONTRACTORS, LLC addressed or delivered in person to:

William E. Clark, Managing Member
CLARK CONTRACTORS, LLC
11101 Anderson Drive, Suite 100
Little Rock, Arkansas 72212
Facsimile Number: (501) 868-3104

If to Subcontractor, addressed or delivered in person to:

«FirmName» «udaddtinfo»

(name)

«MailAddress»

(street address)

«MailCity», «MailState» «MailZip»

«FirmFax»

(facsimile number)

or to such other address as either party may designate by written notice. Email does not constitute written notice under this Subcontract.

14.6 **SEVERABILITY:** If any portion of this Subcontract is held invalid, illegal, or unenforceable, such determination shall not impair the enforceability of the remaining terms and provisions herein.

14.7 **NO ASSIGNMENT BY SUBCONTRACTOR:** It is agreed that no part of this Subcontract will be assigned or delegated by Subcontractor without written approval of CLARK CONTRACTORS, LLC.

14.8 **REMOVAL OF LIENS:** Subcontractor agrees to hold CLARK CONTRACTORS, LLC harmless from the filing of any liens arising out of the operation of this Subcontract. Should any such lien be filed, Subcontractor will immediately cause same to be removed in any manner provided by the laws of the state where the Project is located.

14.9 WAIVER: No waiver of a breach or violation of any provision of this Subcontract shall operate or be construed as a waiver of any subsequent breach or limit or restrict any right or remedy otherwise available.

14.10 RIGHTS AND REMEDIES CUMULATIVE: The rights and remedies expressed herein are cumulative and not exclusive of any rights and remedies otherwise available.

14.11 ENTIRE AGREEMENT: This document (together with the plans, drawings, specifications, addenda, schedules, and exhibits attached hereto or referred to herein) constitutes the entire agreement of the parties and supersedes any and all other prior agreements, oral or written, with respect to the subject matter contained herein. There are no representations, warranties, covenants, or agreements between the parties hereto with respect to this transaction, except those expressly set forth herein.

14.12 INCORPORATION BY REFERENCE: All schedules, exhibits, drawings, specifications, addenda, and documents referred to in this Subcontract shall be deemed incorporated herein by any reference thereto as if fully set out.

14.13 AUTHORITY: Each individual signing this Subcontract in a representative capacity acknowledges and represents that he/she is duly authorized to execute this Subcontract in such capacity in the name of, and on behalf of, the designated corporation, partnership, trust, or other entity.

14.14 RIGHT OF OFFSET: CLARK CONTRACTORS, LLC has the right to offset against amounts otherwise owed by CLARK CONTRACTORS, LLC to the Subcontractor pursuant to this Subcontract against other amounts which Subcontractor may owe to CLARK CONTRACTORS, LLC pursuant to this Subcontract or any other obligations owed by Subcontractor to CLARK CONTRACTORS, LLC, whether related to this Subcontract, other subcontracts, or based upon common law rights and obligations.

14.15 CONFIDENTIALITY. The Subcontractor shall not publish, permit to be published, or distribute for public consumption or otherwise, any information, oral or written concerning the Work, the Contractor, the Contract Documents, contract performance, or any other matter relating to the Contractor without the prior written consent of the Contractor, except to its attorneys, counsel, representatives and other advisors and Subcontractors, all of which the Subcontractor shall ensure are subject to this same confidentiality restriction.

ARTICLE 15

TERMINATION FOR CONVENIENCE

15.1 In addition to other rights the Contractor may have at law or under this Subcontract with respect to cancellation or termination, the Contractor may terminate performance or Work under this Subcontract in whole or, from time to time, in part, if the Contractor determines that a termination is appropriate for its convenience or Contractor fails to enter into the Contract with the Owner. The Contractor shall terminate by delivering to the Subcontractor a written Notice of Termination for Convenience specifying the extent of termination and the effective date.

15.2 After receipt of a Notice of Termination, and except as directed by the Contractor, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Clause:

15.2.1 Stop work as specified in the Notice of Termination;

15.2.2 Place no further subcontracts or orders (referred to as subcontracts in this paragraph) for materials, services, or facilities, except as necessary to complete the continued portion of the Contract;

15.2.3 Terminate all subcontracts to the extent they relate to the Work terminated;

15.2.4 Assign to the Contractor, as directed by the Contractor, all right, title, and interest of the Subcontractor under the subcontracts terminated, in which case the Owner shall have the right to settle or to pay any termination settlement proposal arising out of those terminations;

15.2.5 With approval or ratification to the extent required by the Contractor, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this paragraph;

15.2.6 As directed by the Contractor, transfer title and deliver to the Contractor (a) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) the completed or partially completed plans, drawings, information and other property that if the Subcontract had been completed, would be required to be furnished to the Contractor;

15.2.7 Complete performance of the work not terminated;

15.2.8 Take any action that may be necessary, or that the Contractor may direct, for the protection and preservation of the property related to this Subcontract that is in the possession of the Subcontractor and in which the Contractor has or may acquire an interest; and

15.2.9 Use its best efforts to sell, as directed or authorized by the Contractor, any property of the types referred to in Clause 15.2.6 of this Subparagraph; provided, however, that the Subcontractor (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved by, the Contractor. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Contractor under this Contract, credited to the price or cost of the Work, or paid in any other manner directed by the Contractor.

15.3 The Contractor and Subcontractor may agree upon the whole or any part of the amount to be paid because of termination. The amount shall not exceed the original Subcontract Sum (as adjusted by Change Orders previously made) reduced by the amount of payments previously made and by the price of work not terminated and not then completed (as measured by the then current schedule of values).

15.4 If the Contractor and Subcontractor fail to agree on the whole amount, the Contractor shall pay and the Subcontractor shall accept as full satisfaction amounts determined as follows, but without duplication of any amounts agreed upon in the above paragraph.

15.4.1 For Subcontract Work performed and not paid for before the effective date of termination, the value of said Work so long as that amount is not in dispute, as depicted in the then current schedule of values, and the actual reasonable costs of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of this Contract; and

15.4.2 The actual reasonable costs of settlement of the work terminated, including accounting, legal, clerical, other expenses necessary for the preparation of termination settlement proposals and supporting data, storage, transportation and other costs necessary for the preservation, protection or disposition of termination inventory; but not including anticipated profits on any work not performed and unabsorbed overhead allocated to any work not performed.

15.5 Except for normal spoilage, and except to the extent that the Contractor expressly assumed the risk of loss, the Contractor shall exclude from the amounts payable to the Subcontractor, the fair value, as determined by the Contractor, of property that is destroyed, lost, stolen or damaged so as to become undeliverable to the Contractor.

15.6 In arriving at the amount due the Subcontractor, there shall be deducted:

15.6.1 All unliquidated advance or other payments to the Subcontractor under the terminated portion of this Contract;

15.6.2 Any Claim which the Contractor has against the Subcontractor under this Contract; and

15.6.3 The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Subcontractor or sold under the provisions of the Paragraph and not recovered by or credited to the Contractor.

15.7 If the termination is partial, the Subcontractor may file a proposal with the Contractor for an adjustment of the prices(s) of the continued portion of the Contract. The Contractor may make any adjustment agreed upon. Any proposal by the Subcontractor for an adjustment under this Paragraph shall be requested within thirty (30) days from the effective date of termination unless extended in writing by the Contractor.

15.8 The Contractor may, under the terms and conditions prescribed herein, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the Contract, if the Contractor believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.

15.9 The Subcontractor shall maintain all records and documents to the terminated portion of this Subcontract for three (3) years after final settlement. This includes all books and other evidence bearing on the Subcontractor's costs and expenses under this Contract. The Subcontractor shall make these records and documents available to the Contractor in accordance with the audit and access to records provisions of this Contract.

EXECUTION OF THIS DOCUMENT INDICATES THAT BOTH PARTIES HAVE REVIEWED AND UNDERSTAND ALL PAGES (as enumerated at the bottom of this page) OF THIS SUBCONTRACT AGREEMENT AND EXHIBITS TO THIS SUBCONTRACT AGREEMENT.

Dated this _____ Day of _____ 20____ At _____ Little Rock, Arkansas

«FirmName» «udaddtlnfo» _____ CLARK CONTRACTORS, LLC

By: _____ By: _____

Printed Name: _____ William E. Clark / Managing Member

Printed Title: _____
Authorized Representative Authorized Representative

ADDRESS CORRESPONDENCE TO CLARK CONTRACTORS, LLC, P.O. BOX 17361, LITTLE ROCK, ARKANSAS 72222-7361