



MASTER SUBCONTRACT AGREEMENT # _____
REPRESENTATIONS, CERTIFICATIONS, TERMS, CONDITIONS, AND SIGNATURES

THIS MASTER AGREEMENT, by and between JAMAIL & SMITH CONSTRUCTION, "GENERAL CONTRACTOR" and

Legal Name of Subcontractor; _____

DBA Name of Subcontractor; _____

referred to herein as "SUBCONTRACTOR"

whose physical address is _____

whose mailing address is _____

Whose Phone Number is _____, whose Fax Number is _____, whose tax ID No/SSN is _____,

whose Company is owned by: ___ Individual, ___ Partnership, ___ Incorporated in the State of _____, Date of Incorporation _____,

whose Officer(s) or Owner(s) is/are _____,

Type of Work: (State Primary Specialties) Please List CSI Codes : _____

is entered into as of _____ (effective date).

1. DEFINITIONS:

In this Master Subcontract Agreement, the following terms shall have the following meanings:

- 1.1 "Master Subcontract Agreement" hereinafter referred to as "Master Agreement" "Subcontract" or "Agreement" means this Agreement, the terms and conditions of the Agreement, and all other parts, attachments, exhibits, and schedules which together comprise the Master Agreement documents.
1.2 "Williams & Thomas LP dba Jamail & Smith Construction acting by and through its General Partner Smith-Jamail LLC" hereinafter referred to as "Jamail & Smith Construction", "General Contractor", "Contractor" or unless stated otherwise means Jamail & Smith Construction acting on its own behalf.
1.3 "Subcontractor" means the person, entity or company that enters into this Master Agreement.
1.4 The "Prime Contract," "General Contract," or "Contract" shall mean that agreement between the Owner and the Contractor.
1.5 The "Owner" shall mean the client that Jamail & Smith Construction (Contractor) has a contract with to perform the construction or services that will be identified in the Special Condition and made a part of this agreement.
1.6 The term "Work" or "Sublet Work" hereinafter referred to as "Work" or "Sublet Work" means all work to be performed by the Subcontractor under this Master Agreement, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Subcontractor to fulfill the Subcontractor's obligations. The work may constitute the whole or a part of the subcontracted effort.
1.7 "Work Release" or "Subcontract" means a Jamail & Smith Construction generated document which formalizes the agreement relative to specific work and which shall be the only authorization for work under this Master Agreement.
1.8 The "Project" shall mean the location and or project work site specified in the Work Release. The Project is the total construction, in whole or part, which may include construction by Contractor, Owner or by separate subcontractors.
1.9 The "Drawings" are the graphic and pictorial portions of the Master Agreement Work Release Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
1.10 The "Specifications" or "Scope of Work" are that portion of the Master Agreement Work Release Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

2. SITE LOCATIONS:

Subcontractor shall be advised of the exact location of the Work at the time specific Work is authorized hereunder.

3. MASTER AGREEMENT:

This Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral, covers and includes all work and services performed and to be performed by Subcontractor under and in accordance with a written Work Release given by Jamail & Smith Construction to Subcontractor from time to time during the term of this Agreement; provided, however, that this Agreement does not obligate Jamail & Smith Construction to order or authorize such work or services, nor does it obligate Subcontractor to accept the same, it being the intent that this Agreement, together with any applicable Work Release, shall control and govern all work and services ordered or authorized by Jamail & Smith Construction and accepted by Subcontractor and shall, during the term thereof, define the rights and obligations of & Smith Construction and Subcontractor with respect thereto. By execution of this Master Agreement, Subcontractor agrees to be bound to the Contractor by the terms of the Prime Contract, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Prime Contract, assumes toward the Owner. This Agreement does not change or prejudice the rights of the Owner and Contractor as outlined in the Prime Contract with respect to the Work to be performed by the Subcontractor. The Subcontractor shall enter into similar agreements as this with its sub-subcontractors. Each Party to this Agreement acknowledges that it is familiar with the terms of the Prime Contract and agrees that the Prime Contract (including the contract documents incorporated therein) is incorporated herein in its entirety for all purposes as if copied at length and attached hereto. In the event of a discrepancy between the Prime Contract and this Agreement, the more stringent requirement shall apply. Copies of the Prime Contract conditions and terms are available for each Subcontractor. This Agreement and applicable work releases, if any, shall not be construed to create a contractual relationship of any kind (1) between the Owner and Subcontractor or Sub-subcontractor, (2) between the Owner and General Contractor or (3) between any persons or entities other than the General Contractor and Subcontractor. The General Contractor shall, however, be entitled to performance and enforcement of the obligations under the Prime Contract intended to facilitate performance of the Subcontractor duties under the Prime Contract.

JAMAIL & SMITH CONSTRUCTION MASTER SUBCONTRACT AGREEMENT

The Master Agreement documents constituting this Master Agreement are as follows:

1. This Master Agreement (10 pages)
2. Special Conditions, Inclusions and Exclusions <Exhibit A>
3. Payment Request Form (1 page) <Exhibit B> (paragraph 4)
4. Insurance Requirements (2 pages) <Exhibit C.1>
5. Standard Insurance Coverage Form (2 pages) <Exhibit C.2> (paragraph 11d)
6. Joint Check Agreement (3 pages) <Exhibit D>
7. Work Release (as issued on a per project basis) <Exhibit E>
8. Progress Schedule (as added for each Work Release) <Exhibit E>
9. Partial Release of Lien (1 page) <Exhibit F.1>
10. Full Release of Lien (1 page) <Exhibit F.2>
11. Affidavit and Bill of Sale for Stored Materials <Exhibit G>
12. Subcontractor Daily Report (as added per project) <Exhibit H> (paragraph 6e)
13. Pre-Qualification Form (4 pages) <Exhibit I>
14. Supplier Use Affidavit (as added per Work Release) <Exhibit J>
15. Prime Contract (as applicable to each Work Release) <Exhibit K>
16. If applicable, Addendum dated _____

4. PROGRESS PAYMENTS:

- A. In accordance with the terms of an issued Work Release and this Master Subcontract Agreement, Jamail & Smith Construction promises to pay Subcontractor for full, accurate and timely performance of all Work, in accordance herewith and as specified on the Work Release. Prior to submission of Subcontractor's first Monthly Payment Request, Contractor may require Subcontractor to submit, for Contractor's approval, a payment request breakdown form listing the major amounts of the Work Release and the dollar value of each. This form, if required, shall be completed by Subcontractor each month to show the proportionate amount of each element completed to date and submitted to Contractor attached to the Payment Request Form (Exhibit B).
- B. Unless otherwise provided in the Work Release, Subcontractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Subcontractor shall submit its monthly payment request on or before the 20th day of the month. Monthly Payment Requests shall include an invoice in the form provided herein as Exhibit B on the Subcontractor's letterhead, Partial Release of Lien Waiver (Exhibit F.1), and Affidavit and Bill of Sale for Stored materials (Exhibit G), if required. Invoices received after this date will be considered as the next succeeding month's business. **The Subcontractor will provide a breakdown of Labor and Materials. The Subcontractor will provide lien waivers (releases) from any and all subcontractors and suppliers to show evidence that all accounts pertaining to the Project have been paid in full. If such lien waivers (releases) are not provided, Subcontractor will accept joint checks payable to the subcontractor and any sub-subcontractors and/or suppliers who have performed work or provided materials for the Project in return for lien releases. All invoices submitted by the subcontractor shall be divided to show material and labor charges for the period invoiced.**
- C. Contractor shall retain not less than 10 % of the gross amount of each Monthly Payment Request or 10% of so much thereof as is approved for payment, whichever is less; such sum shall be accumulated and not be released to Subcontractor until thirty (30) days after completion of the Project.
- D. Provided there has been no breach or default under this Master Subcontract Agreement, Contractor shall make payment on the latter of the following dates:
1. On or before the 20th day of the following month:
 2. Within five days of receipt of like payment from Owner:
 3. Within five days of Subcontractor curing any breach of contract, including but not limited to having been notified of failure to perform pursuant to Article 17, notification of intent to file liens or other claims and or the filing of such liens or other claims by sub-subcontractors and suppliers of Subcontractor, failure to provide required insurance and bonds, and failure to invoice in accordance with the terms of this Agreement. Partial Lien Waivers (Exhibit F.1) from each Subcontractor's subcontractors and suppliers shall constitute satisfactory evidence that all accounts have been paid in full.
 4. Subcontractor agrees to submit all close-out documents to Contractor prior to invoicing 75% complete or as documents become available as to not hinder Contractor's close-out process. Contractor is not obligated to release retainage until Subcontractor has submitted all required close-out documentation pertaining to Subcontractor's scope of work; including all warranties, owner manuals, releases and any other documentation required to close out the project completely. If Subcontractor fails to supply sufficient documentation to allow the Contractor to close out the project with the Owner, Subcontractor shall be liable for all such damages associated with their failure to do so.

Notwithstanding the foregoing, Subcontractor agrees that Contractor shall never be obligated to pay Subcontractor under any circumstances, unless and until funds are received by Contractor in full, less any applicable retainage, covering the work and materials for which Subcontractor has submitted a payment request. Owner's payment to Contractor shall be a condition precedent to Contractor's obligation to pay the Subcontractor and Subcontractor's right to receive payment. This paragraph shall not be construed as a time of payment clause. Subcontractor hereby acknowledges that it is assuming the risk of non-payment by the Owner. This condition precedent also applies to Contractor's obligation to pay change orders, retainage or final payment, if any, and Contractor's exercise of a right of offset shall not be a breach of any payment provision hereof, and shall not be construed as being a violation of the Texas Trust Fund Statutes. Contractor shall never be obligated to pay retainage to Subcontractor until Contractor has received all of Contractor's retainage in full. This paragraph supersedes all other provisions of this Agreement, and any conflicting language shall be modified or deemed to be consistent herewith.

- E. Monthly progress payments to Subcontractor shall in no way imply approval of Subcontractor's Work.
- F. The Subcontractor may be paid for materials stored on the jobsite, in a bonded warehouse, or at the Subcontractor's facilities, provided such payments are in accordance with the terms of the Prime Contract. In such cases insurance shall be provided with Contractor and Owner's names on the policy. Subcontractor shall furnish detailed inventory, including invoices, for all stored materials which Subcontractor has requested payment (Exhibit G). Payment for stored materials shall not include any profit or overhead.
- G. Subcontractor acknowledges and agrees that its failure to make timely payments to its subcontractors, laborers, material, men and suppliers shall constitute a material breach of this Agreement. Subcontractor further acknowledges that the receipt of claims or liens by General Contractor or General Contractor's surety, or Owner from Suppliers and Sub-subcontractors causes unspecified administrative costs and reputation damages to General Contractor. Subcontractor agrees that it will take every measure necessary to eliminate Supplier and Sub-subcontractor claims, and as a liquidated damage, agrees to have its Subcontract or Work Release price reduced by \$100 for each claim or lien received by General Contractor, Owner, or General Contractor's Surety relating to Subcontractor's accounts.

JAMAIL & SMITH CONSTRUCTION MASTER SUBCONTRACT AGREEMENT _____

5. FINAL PAYMENT:

Contractor shall make Final Payment to Subcontractor after the Work is complete and accepted by Owner and Architect, or such others whose approval is required under the Prime Contract, providing like payment shall have been made by Owner to Contractor, and further providing that Subcontractor has furnished to Contractor applicable warranties, owner manuals and all other required close-out documentation and Subcontractor has furnished Contractor with a Final Lien Waiver (Exhibit F.2), satisfactory evidence that all labor and material accounts incurred by Subcontractor in connection with the Sublet Work have been paid in full. Final Lien Waivers and/or Supplier's Final Release Forms acceptable to Contractor from each of Subcontractor's Subcontractors and Suppliers shall constitute satisfactory evidence that all accounts have been paid in full. In addition to Subcontractor, each Owner and Officer of Subcontractor is jointly and severally responsible for the full payment of any Supplier or Subcontractor bills, liens, or claims arising from this agreement under the account of Subcontractor. See Articles 4, 7, 11, and 21 of this Agreement for requirements relating to request for Final Payment. The meaning of the provisions of the Prime Contract, as it may be determined by any final judgment or good faith settlement of litigation between Owner and Contractor, will control with respect to measurement, quantities and payment, including payment for extras, changes, and variations in Plans and site conditions.

6. PERFORMANCE:

- A. The Subcontractor shall supervise and direct the Work, using the Subcontractor's best skill and attention. The Subcontractor represents and warrants that it is fully qualified and experienced in every respect to perform the work and it is properly licensed, equipped, organized and financed to perform such work. The Subcontractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Master Agreement Work Release unless the documents give other specific instructions concerning these matters. The Subcontractor shall perform all Sublet Work covered by this Agreement in complete accordance with all applicable standards and recommended practices and in accordance with all tolerances set forth in those standards and specifications. Subcontractor further agrees to perform the Sublet Work in a safe, careful and workmanlike manner in accordance with the best construction practices and with this Agreement, and in strict accordance with the Prime Contract, and to assume and discharge all responsibilities which Contractor has assumed under the Prime Contract with respect to the Sublet Work, except as otherwise provided herein. Subcontractor agrees to procure materials and supplies in advance and to provide sufficient men, equipment and supervision to ensure that the Sublet Work will be prosecuted diligently and coordinated with other work at the site and completed within the time allotted and in accordance with the requirements of the Prime Contract. Subcontractor has satisfied itself, by its own investigation and research, regarding all the conditions affecting the Work to be done and materials to be furnished, and as to the meaning and intention of the Prime Contract. Prior to Subcontractor's use or installation of materials or equipment furnished by Contractor or Owner, Subcontractor shall conduct such inspections and/or tests as it may require to satisfy itself as to the quality and adequacy of the said material or equipment.
- B. The Subcontractor shall be responsible for unloading and hoisting all its materials, supplies, tools, and equipment in order to ensure timely completion of the Sublet Work, and in such manner as to not impede the Work or progress of any other contractor. Subcontractor shall execute a written agreement prior to use of Contractor's equipment with or without equipment operator.
- C. Subcontractor shall be responsible for maintaining, protecting and/or operating Sublet Work during emergency conditions, abnormal weather conditions and routine start-up operations.
- D. Subcontractor agrees to provide adequate manpower to coordinate and perform its Sublet work in accordance with that being done by other trades on the job and without additional cost to Contractor for variance in hours worked per day or per week. Contractor reserves the right to approve or disapprove Subcontractor's personnel during the course of the Sublet Work, and may require the replacement of any person deemed unsatisfactory.
- E. Subcontractor shall complete and submit to Contractor, on a daily basis, Subcontractor Daily Report (Exhibit H), which will be furnished to Subcontractor by Contractor.
- F. Contractor is dedicated to quality construction and Subcontractor agrees to perform the Sublet Work in a manner consistent with quality standards as set out in the Contract Documents. If Contractor issues Supplemental Quality Assurance/Quality Control Standards, Subcontractor shall perform the Sublet Work in compliance with such standards, but will not be required to modify work already completed in accordance with the modified standards.
- G. Subcontractor will maintain a neat working area and will not permit trash and debris to accumulate unreasonably, and will remove all trash and debris caused by its operations.
- H. Subcontractor further agrees to comply with work rules imposed by Contractor or by Owner under the Prime Contract, including but not limited to drug screening of workers and specialized safety training. Subcontractor agrees to actively support the Contractor's Safety Program by employing good safety practices, conducting weekly safety meetings, and further agrees to take corrective action immediately upon receipt of a Safety Citation from the Contractor. Subcontractor shall be responsible for the safety of its employees and of its work area, including ingress and egress to and from the work area. Questions regarding the application of work rules and safety standards will be directed to Contractor.

7. SUBMITTALS AND APPROVALS:

- A. Subcontractor shall carefully examine Specification requirements for approval material to be submitted such as shop drawings, data, schedules, samples, and other Documents as may be required. Then Subcontractor shall submit such material at its own expense and in such form as required by the Prime Contract in sufficient time to prevent any delay in the delivery of such materials and the installation thereof. If "in place" or "as-built" drawings are specified to be prepared, these shall be prepared and submitted to Contractor before Final Payment is requested.
- B. Subcontractor shall submit, as a minimum, one (1) set and eight (8) prints of all shop drawings for approval and one (1) set and five (5) prints of approved shop drawings for field use.
- C. Subcontractor shall submit a list of Suppliers and Sub-subcontractors, if any, which it intends to use for the completion of its work under this Contract within ten (10) days from the date Work Release for any particular sublet work is signed. Submitted Suppliers and/or Sub-subcontractors shall be creditworthy and fully capable of timely performance. If in the sole judgment of Contractor, that one or more of the submitted Suppliers and/or Sub-subcontractors is unacceptable, Contractor shall notify Subcontractor of its decision, and Subcontractor shall procure replacement Suppliers and/or Sub-subcontractors for Contractor's approval within ten (10) days from the date of Contractor's notice. Such approval shall not be unreasonably withheld.

8. COMMENCEMENT AND COMPLETION OF THE WORK:

- A. Time is of the essence of this Agreement. Subcontractor agrees to supply materials, labor and equipment as necessary to commence this Sublet Work when directed by Contractor. Subcontractor shall diligently pursue the completion of its Sublet Work, and coordinate its Sublet Work with that being done on the Project by Contractor and other trades so that its Sublet Work or the work of others shall not be delayed or impaired by any act or omission of an act by Subcontractor. Contractor shall have the right to decide the time or order in which the various portions of the Work shall be installed or the priority of the work of other subcontractors, and, in general, all matters representing the timely and orderly conduct of the work of Subcontractor on the premises.

JAMAIL & SMITH CONSTRUCTION MASTER SUBCONTRACT AGREEMENT

- B. Contractor may prepare a coordinated Progress Schedule in connection with each Work Release or series of Work Releases; and if it does so, Subcontractor is required to perform its work in accordance with such Schedule as it may be reasonably modified by Contractor as work progresses. Should Subcontractor, in the sole and exclusive opinion of Contractor, fail to maintain the progress of the Work, Contractor may direct Subcontractor to take such steps as Contractor deems necessary to improve the rate of progress of the Work, including requiring the Subcontractor to increase the number of shifts and/or overtime operations, days of work, or other remedies, and to submit for approval a schedule demonstrating the manner in which the required rate of progress will be regained, without additional cost to Contractor. Contractor may require Subcontractor to prosecute in preference to other parts of the Work, such part or parts of the Work as Contractor may specify. In the event Subcontractor is unable to maintain progress in accordance with the Schedule by reason of events for which extensions of time are permitted in the Prime Contract, Subcontractor's time for completion shall be extended for such amount of time as Contractor and Subcontractor agree to, provided, that a time extension in at least the same amount of time is given by Owner to Contractor, and further provided, that notification of delay is given as provided herein. This time extension shall be the sole remedy for such delays. Subcontractor shall not be entitled to recover damages from Contractor or Contractor's surety for any delays, which do not result from Contractor's performance of the Work, or for which Contractor is not fully compensated by Owner. Should Subcontractor cause any other delay to the work of Contractor, or Contractor's other subcontractors, Subcontractor shall be liable for all damages suffered by Contractor on account of such delay(s), including but not limited to any liquidated damages assessed by Owner, Contractor's extended home office overhead and project general conditions costs.
- C. Subcontractor shall provide all schedule data and shall provide all periodic schedule update data required by Prime Contract or by Contractor. Said schedule data shall be consistent with the Progress Schedule in Exhibit E or as attached to the Work Release, or as may be applicable.

9. CHANGES IN THE WORK:

Subject to the terms of the Prime Contract, Contractor shall have the right and power to request a change in the Sublet Work. Should Contractor, at any time during the progress of the Work, request any changes in the Scope of the Sublet Work in this Agreement, Subcontractor shall within a reasonable time thereafter submit an itemized estimate reflecting any cost changes required to make the changes. Such itemized estimate shall be furnished in sufficient detail that Contractor can distinguish the direct labor man-hours and labor costs, direct material, direct equipment, applicable labor markups for employee labor burdens and benefits, and allocation of home office overhead and a reasonable profit. All elements of potential cost are subject to negotiation, however; in the event agreement cannot be reached on estimated costs, Subcontractor reimbursement will be limited to actual direct costs plus 10% markup. It is distinctly understood and agreed, regardless from whom orders may be taken for changes in the Scope of the Work, that no such changes are to be made except by a written Subcontract or Work Release Change Order issued by an authorized signatory of Contractor and then only when such order sets forth the amount of any addition or deduction and is signed by both parties thereto. In addition to any General Contractor Officer of the Corporation, authorized signatories shall be stated on the assigned Work Release. If Subcontractor initiates a substitution, deviation or change which affects the Scope of Work or the Sublet Work or causes expense to Contractor, Subcontractor shall be liable for the expenses thereof. Notwithstanding anything herein to the contrary, Contractor may, pursuant to the requirements of the Prime Contract, order Subcontractor to proceed with changes for which final price and/or time have not been determined.

Subcontractor shall proceed with the Work in accordance with the directives of Contractor. In the absence of an agreement between Contractor and Subcontractor on the proper change to the amount or the time for performance of any Work Release because of a change in the Work, Subcontractor may treat the matter as a claim. In such event, the Subcontractor shall be entitled to recover only the amount by which its direct costs have been reasonably increased over the direct cost of performing the Work without the change in the Work, plus ten percent (10%) (5% on Sub-Subcontractor's work) of direct cost to cover supervision, field office and home office overhead, profit and all other costs. Direct costs shall be limited to lesser of actual or reasonable costs of the following:

1. Cost of Labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance;
2. Materials, supplies and equipment including cost of transportation, whether incorporated or consumed;
3. Rental cost of machinery and equipment, exclusive of hand tools, whether rented from the Subcontractor or others at rates that are no greater than market rates in the locale of the Work at the time of the Work. The rental value of the Subcontractor's own equipment shall not be more than local rental rates, which rates shall be further adjusted to reflect cost exclusive of overhead and profit;
4. Premiums for all bonds and insurance (Subcontractor only) permit fees and sales, use or similar taxes related to the Work;
5. Cost of Subcontractor' subcontractors for performing the Work for which claim is being made by Subcontractor. The amount allowable for Subcontractor's subcontractors shall be calculated using the same standards set out herein for direct Work by the Subcontractor; and
6. Subcontractor and each subcontractor to Subcontractor involved shall furnish evidence of costs such as copies of original invoices for materials, payroll vouchers for labor, etc., upon request by the Contractor. Any increase in the time for performance shall be limited to the amount of time by which activities critical to overall completion of the Project are delayed by the change in the Work. If it is reasonably possible to perform the change in the Work concurrently with Work that is critical to overall completion, no time extension shall be granted by reason of a change in the Work.

10. COMPLIANCE WITH LAWS:

- A. Subcontractor agrees to comply, at its sole expense, with all laws and regulations applicable to Subcontractor, Contractor, and/or the Work covered by the Prime Contract, including but not limited to the Occupational Safety and Health Act of 1970 as amended, including all applicable safety and health standards, including compliance with the Hazard Communication Standard 1926.59, and the revised Excavation Standard 1926.650 through 1926.652 and applicable Appendixes; the Resource Conservation and Recovery Act as amended; the Comprehensive Environmental Response; Compensation and Liability Act of 1980 as amended; the Emergency Planning and Community Right to Know Act as amended; the Toxic Substance and Control Act as amended; the Clean Water Act as amended; the Safe Drinking Water Act as amended; the Clean Air Act as amended; the Atomic Energy Act of 1954 as amended; the Fair Labor Standards Act of 1938 as amended; the Construction Safety Act (Public Law 91:54) as amended; the Immigration Reform Control Act of 1986 and the Civil Rights Act of 1964 as amended; including rules and regulations promulgated hereunder and including Executive Order 11246 as amended.
- B. Subcontractor agrees to inspections by the Contractor to determine compliance with safety, health, and environmental standards. Subcontractor acknowledges that Contractor's right to inspect or not to inspect shall not in any way relieve Subcontractor of its obligations.
- C. **Subcontractor agrees to indemnify, defend and hold harmless the Contractor from any and all liability and damages, fines, costs, and attorneys' fees incurred by Contractor on account of Subcontractor's failure to comply with all laws and governmental regulations applicable to the Work.** Subcontractor agrees not to remove guards of safety appliances, except on written authority of Contractor's Superintendent, and to replace such guards and appliances promptly. Failure to make such replacement will authorize Contractor to do such work and charge the costs thereof to Subcontractor.
- D. Subcontractor represents and warrants that the company has not been designated as an Extra-Hazardous Employer by the Texas Workers Compensation Commission and agrees to immediately notify the Contractor in writing if Subcontractor becomes so designated during the period of time that an Agreement exists with the Contractor. At Contractor's option, this Agreement may be terminated upon notification of Subcontractor being designated as an Extra-Hazardous employer.

JAMAIL & SMITH CONSTRUCTION MASTER SUBCONTRACT AGREEMENT

11. INDEMNIFICATION, INSURANCE AND BONDS:

- A. To the fullest extent permitted by law, Subcontractor agrees to indemnify, defend, and hold harmless the Owner, Contractor and corporations which directly or indirectly through one or more intermediaries control, or are controlled by, or are under common control with Contractor, and the directors, officers, agents, and employees of Owner, Contractor and of such corporation along with any other entity for whom indemnification by Contractor is required under the Prime Contract, against all liability and claims for death of or injury to any person, including but not limited to employees of Subcontractor or of any indemnitee, or property damage, including the loss of use of property, including expenses and attorneys fees related thereto, arising or alleged to arise out of or in any way to this Agreement or Subcontractor's performance of the Sublet Work or other activities of Subcontractor and its agents and employees on and around the premises on which the Work is to be performed, even if such claim or liability is caused in whole or in part by the negligence of any indemnitee, it being the express intent of the parties that the Subcontractor indemnify the Contractor even from the Owner's and Contractor's own negligence. Subcontractor also agrees to indemnify the Owner and Contractor and hold it harmless from all expenses, including attorney's fees caused by or related to any breach by Subcontractor of the covenants contained in this Agreement. Subcontractor shall be responsible for damage to or loss of the Sublet Work, whether completed or under construction, until responsibility for the Work has been accepted by the Owner, and Subcontractor agrees to indemnify Owner and Contractor against all expenses and costs caused by any such damage or loss from any cause, even if such damage or loss is caused in whole or in part by the negligence of any indemnitee. Subcontractor will also take precautions to protect other portions of the Work. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under the above paragraph, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.
- B. Subcontractor agrees that neither it nor its Subcontractors, Suppliers, Mechanics or anyone claiming under them, shall have any lien upon the Sublet Work, the Work, or the premises on which the Work is performed; and Subcontractor hereby waives on behalf of itself and its subcontractors, suppliers and mechanics and those claiming under them, all right to any such lien. Subcontractor agrees to indemnify Contractor and Owner against all lien claims and bond claims, including expenses, costs of bonds to remove liens, and attorney's fees related to such claims, which may be asserted by Mechanics, Material-men, Suppliers, Subcontractors of Subcontractor or anyone claiming under any one of them. Subcontractor also agrees that if liens are placed on the Work or the premises on which the Work is performed, it will immediately obtain such bond, which is necessary to remove such lien. If bond claims and/or lien claims are filed by any Sub-subcontractors, Material-men, Suppliers or Mechanics of Subcontractor, Contractor may suspend payments to Subcontractor and either hold money due to Subcontractor or make payments to the claimants and charge the payments against Subcontractor, without prejudice to the Payment (if required). It is the intent of the Parties that the Payment Bond be for the benefit of Contractor and Owner and not for the benefit of third parties except to the extent necessary to protect Contractor and Owner.
- C. Subcontractor's obligation to indemnify Contractor against any attorneys fees or other costs or expenses incurred by Contractor in connection with the defense of any claims or causes of action shall be construed as a separate item of indemnification that shall be an absolute obligation of Subcontractor even if such claims or causes of action are invalid or groundless, or arise from the negligence of Contractor.
- D. In addition to any other insurance which Subcontractor may be required or choose to carry, Subcontractor at its sole expense shall maintain in effect, from the date that work commences under this Agreement through the Warranty Period, the insurance coverage which is scheduled on the attached Insurance Requirements (Exhibit C. 1). Certificate(s) of Insurance stating the limits and coverage's required by Contractor shall be executed by Subcontractor's insurance carrier(s) and, when properly executed, shall become Exhibit C.2 to this Agreement. Until said Certificate(s) of Insurance is properly executed by insurance carrier(s) acceptable to Contractor, the Subcontractor may not enter the jobsite premises to perform any portion of this Sublet Work. By execution of this Agreement, Subcontractor acknowledges that failure to meet all insurance requirements, or cancellation either by the insured or the insurer of any portion of the insurance required to be carried by Subcontractor by this Agreement, or the lapse or suspension of the required insurance for any reason shall be considered a material breach of this Agreement by Subcontractor and Contractor shall be entitled to exercise the termination rights set forth in Article 17 and any other right contained in this Agreement and shall have the right to prohibit Subcontractor from entering the work premises.
- E. Subcontractor shall cause its subcontractors to procure insurance covering the above liabilities under policies in form, and amounts and with insurance companies acceptable to Contractor. Subcontractor will obtain said policies or certificates thereof and deliver them to Contractor. If Subcontractor or its subcontractors do not acquire acceptable insurance, Contractor may acquire the required insurance coverages and charge the expense for such coverages to Subcontractor.
- F. Subcontractor shall promptly obtain insurance for the Work as specified in this Subcontract Agreement. Subcontractor must use Contractor's standard insurance certificate form (Exhibit C.2). Subcontractor shall provide the required insurance certificate(s) to Contractor prior to commencing the Work and shall be liable to Contractor for the consequences of Subcontractor's delay in obtaining the required insurance policies and coverages. Subcontractor acknowledges that it may not enter the jobsite until Contractor receives and approves the specified insurance certificate(s). Each insurance certificate must state that the insurance carrier is required to give Contractor thirty (30) days prior written notice of cancellation or material change that reduces or restricts the coverages or liability limits of any insurance policy. Subcontractor's insurance certificate(s) shall also include the Project name in a conspicuous location. The insurance requirements described in this Agreement are not intended to and shall not in any way limit or qualify the liabilities and obligations Subcontractor assumes pursuant to this Agreement. The obligations described in the foregoing paragraphs Article 11.A through Article 11.F shall survive the termination or expiration of this Agreement.
- G. Subcontractor's materials and equipment that will become an integral part of the completed Project, either on the site or in the building, and completed portions of the Sublet Work, may be covered by a Builders Risk insurance policy containing certain deductibles and exclusions purchased and maintained either by Owner or Contractor. If so covered, Subcontractor shall be responsible for the deductible portion of each claim covered by the Builders Risk insurance policy. If such coverage is available, a copy of said Policy or a certificate would be available for Subcontractor's inspection at Contractor's home office or project office. It is Subcontractor's responsibility to evaluate the protection afforded by that Policy, if applicable, and to carry its own insurance against all losses not covered by said Policy. Furthermore, Subcontractor is responsible for maintaining, protecting and/or operating Sublet Work until work is complete and accepted by Owner; including taking precautions to protect the work from theft and vandalism. Builder's Risk insurance, if provided, will not provide coverage for tools, equipment or other items which Subcontractor uses in connection with the Work and which are not intended to become a permanent part of the Work.

JAMAIL & SMITH CONSTRUCTION MASTER SUBCONTRACT AGREEMENT

- H. Subcontractor may be required to provide a Payment Bond and a Performance Bond prescribed by and with Surety Company acceptable to the Contractor in the full amount of this Agreement for the faithful performance of this Agreement. Requirements for Performance & Payment Bonds will be stated on individual Work Releases. If Contractor requires bonds, Subcontractor shall pay the premium for bonds and the cost shall be included in Subcontract or Work Release Amount (Article 3). Any changes in the scope of Sublet Work that involve an increase of more than 10% in the original contract amount will require a rider from the Surety Company raising the penal amount of bond to agree with the revised contract amount.
- I. Subcontractor shall submit to Contractor, within twenty-four (24) hours, copies of all accident reports arising out of any injuries to its employees or those of any firm or individual to whom it may have sublet work, or any property damage arising or alleged to have arisen on account of any work done by Subcontractor under this Agreement. Subcontractor shall be responsible to investigate and report to Contractor any and all onsite accidents, citations, safety violations, injuries or incidents that occur while performing work. Subcontractor shall submit to Contractor, a written initial accident/incident report within 24 hours following such occurrence. In no event shall notification to Contractor be more than twenty-four (24) hours after such occurrence.

12. PATENTS:

Subcontractor agrees to indemnify, defend and hold harmless Owner and Contractor from any claims, demands, or damages of any nature on account of the alleged use of any patented invention, article or process in connection with its work under this Agreement, either in the course of construction or after completion of the Sublet Work, and Subcontractor further agrees to defend at its own expense, any suit for alleged infringements.

13. DEFECTIVE WORK AND CLAIMS:

Payments otherwise due may be withheld by Contractor on account of defective work not remedied, claims filed, evidence indicating probability of filing of claims, failure of Subcontractor to make payments properly to its Sub-subcontractors or to make payments for material or labor, or a reasonable doubt that the Sublet Work can be completed for the balance then unpaid. If the said causes are not removed within forty-eight (48) hours after Contractor's notice, Contractor may rectify the same at Subcontractor's expense. In the event there is a time sensitive situation and Subcontractor cannot be reached, Contractor may proceed with immediate action and back charge such charges not performed by Subcontractor and in Subcontractor's scope of work to the Subcontractor's work release. Contractor may offset against any sums due Subcontractor hereunder the amount of any liquidated or un-liquidated obligations of Subcontractor to Contractor, whether or not arising out of this Agreement. In the event, Contractor performs any of Subcontractor's work or pays for any of Subcontractor's supplies or equipment or labor, Contractor shall be entitled to recover these costs from Subcontractor (whether by deduction from payments of this or any other contract with Contractor), or otherwise. In any such case, Contractor will be entitled to its costs incurred plus a mark-up of 15% for Contractor's administrative overhead. Nothing contained herein shall limit Contractor's entitlement to other damages (including delay damages) which Subcontractor's action may have caused. Subcontractor agrees to be bound by all the provisions of the Prime Contract, including but not limited to provisions relating to quantities, measurement and payment, change orders, extra work, variations in Plans and/or site conditions, time extensions and claims. Contractor agrees that it will present to Owner any reasonable claim for payment, time extension or any other reasonable item which Subcontractor, in good faith chooses to submit, provided that Subcontractor agrees to prepare all notices in a proper manner sufficiently in advance of the time for notice to permit Contractor to submit the notice, and Subcontractor agrees to prepare the documentation, comply with all other requirements of the Prime Contract, and do all things necessary to enable Contractor to present Subcontractor's claim. Contractor agrees to cooperate with Subcontractor in presenting Subcontractor's claims, and Subcontractor agrees to cooperate with Contractor and all other subcontractors of Contractor in presenting all claims, to the extent that such cooperation is reasonable. Subcontractor may not recover more from Contractor than the amount Contractor recovers from Owner in its recovery on claims, all extra work and change orders must be authorized in writing and signed by Contractor. Subcontractor will furnish Contractor time sheets, invoices and other substantiating data necessary to satisfy the requirements of Contractor and the Owner. If any part of the Sublet work depends upon the work of the Contractor or of any other subcontractor, Subcontractor shall inspect such other work and promptly report to Contractor any defects or inadequate performance which adversely affects Subcontractor's work. If there appear to be any variations or discrepancies of dimensions, quantities, or other matters set forth in the Plans, Specifications and other portions of the Prime Contract, Subcontractor will promptly bring the matter to the attention of Contractor in writing. Subcontractor agrees to be bound by the terms of the Prime Contract with respect to such variations. All claims which Subcontractor has or wishes to assert against Contractor must be presented in writing to Contractor not later than ten (10) calendar days after Subcontractor is aware or should be aware that a claim will or does exist, or such longer time as may be provided by law, even though the exact nature of the claim and the amount of the claim may not be determinable at that time. The nature of the claim and the amount of the claim must be presented to Contractor in writing as soon thereafter as Subcontractor has or should have such information, and Subcontractor hereby waives all claims not presented as provided herein.

14. CLEANUP:

- A. Subcontractor acknowledges that the execution of the Sublet Work will result in an indeterminate amount of debris. Subcontractor agrees to retrieve, pick up and remove and place at a location designated by Contractor all such debris each day (or as otherwise required by Contractor) during the course of its work and on final completion of its work. If after twenty-four (24) hours' notice by Contractor's representative to Subcontractor's representative at the jobsite, Subcontractor has not diligently proceeded with the cleanup as outlined in this paragraph, then Contractor has the right to proceed with the cleanup work with its own labor at Subcontractor's expense.
- B. Notwithstanding anything to the contrary herein, Subcontractor shall retain title to and full legal responsibility for all such debris and to any substances described below brought to the Project location by or for the benefit of Subcontractor. Subcontractor shall not place, cause or permit to be placed or dispose (as defined by applicable environmental laws) of any of the following in Contractor's trash dumpster, trash trucks, or anywhere on and/or around the Project location: Hazardous Substances (hereinafter defined); commercial products or chemicals which are off specification, outdated, unused or banned, including the containers of same, liquids and sludges from septic tanks and food service grease traps; chemical-containing equipment removed from service, e.g., filters, cathode ray tubes, acetylene tanks, fluorescent light tubes, and/or all other substances which (i) the transporter which contracts with Contractor (if any) does not transport or allow to be transported under its agreement with Contractor; and/or (ii) the disposal facility(ies) which contracts with Contractor (if any) does not dispose of or allow to be disposed of under its agreement with Contractor. Copies of the relevant portions of such agreements are available for examination by Subcontractor upon request. Subcontractor shall, in compliance with all applicable laws, arrange directly (i) with third party transporter(s) for transportation from the Project location of all of the substances described in the preceding sentence and (ii) with third party disposal facility(ies) for disposal of all of the substances described in the preceding sentence. Contractor may at its option contract with a transporter(s) and/or a disposal facility(ies) to remove all debris not described in the second sentence of this paragraph at such intervals as Contractor shall determine necessary. "Hazardous Substances" shall mean all pollutants, contaminants, chemicals, wastes and any other carcinogenic, ignitable, corrosive, reactive, toxic, or otherwise hazardous substances or wastes subject to regulation, control, or regulation under applicable environmental laws. By way of example only, the term "Hazardous Substances" includes, but not limited to petroleum, urea formaldehyde, flammable, explosive, and radioactive materials, PCBs, pesticides, herbicides, asbestos, sludge, slag, acids, metals, solvents, and waste waters.

JAMAIL & SMITH CONSTRUCTION MASTER SUBCONTRACT AGREEMENT _____

15. PERMITS:

All permits (except Contractor's main building permit), licenses, tap fees and easements necessary for the prosecution of this Sublet Work shall be procured and paid for by Subcontractor. Subcontractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the Sublet Work as drawn and specified. If Subcontractor observes that Plans and Specifications are at variance therewith, it shall promptly notify Contractor in writing. If Subcontractor performs any work contrary to such laws, ordinances, rules and regulations without such notice to Contractor, Subcontractor shall bear all costs arising therefrom.

16. ARCHITECT AND/OR OWNER APPROVAL AND COMMUNICATION:

This Agreement and Subcontractor may be subject to approval by Architect and/or Owner. The Subcontractor will not have any direct communication with the Owner in connection with this Subcontract, except as otherwise provided in the Contract Documents or when direct communications have been authorized in writing by Contractor. All communication by Subcontractor to the Owner must be made through the Contractor. Contractor shall make reasonable efforts to represent Subcontractor's concerns to Owner. In the event Subcontractor makes direct contact with the Owner in connection with any Work Release, Contractor may terminate Subcontractor's Work Release per Article 17.

17. TERMINATION:

A. TERMINATION FOR DEFAULT:

Should Subcontractor at any time fail to supply a sufficient number of skilled workmen or a sufficient quantity of materials of proper quality, or fail in any respect to prosecute the Work covered by this Agreement with promptness and diligence, or fail to perform work of the quality required by the Prime Contract, or fail in the performance of any of the agreements herein contained, or should any workmen performing work covered by this Agreement engage in a strike or other work stoppage, or cease to work due to picketing or other such activity, Contractor may, in any of such events at its option, after forty-eight (48) hours notice to Subcontractor, provide any such labor and materials, and deduct the cost thereof from any money then due or there after to become due Subcontractor, or, in any of such events, Contractor, may, at its option, terminate the employment of Subcontractor for the Sublet Work under this Agreement, and shall have the right to enter upon the premises and to take possession, for the purpose of completing the Sublet Work hereunder, of all the materials, tools, and equipment thereon, and to finish the Sublet Work and provide the materials, therefore, either with its own employees or other subcontractors; and in case of such discontinuance of the employment by Contractor, Subcontractor shall not be entitled to receive any further payments under this Agreement or otherwise, but shall nevertheless remain liable for any damages which Contractor incurs. If the expenses incurred by Contractor in completing the Sublet Work shall exceed the unpaid balance. Subcontractor shall pay the difference to Contractor, along with any other damages incurred by Contractor as a result of Subcontractor's default. Contractor shall have a lien upon all materials, tools and equipment taken possession of to secure the payment thereof. Subcontractor shall be liable to Contractor for all costs and damages incurred by Contractor due to the failure of performance by Subcontractor, the failure of Subcontractor to keep the progress of its work up to that of Contractor or other trades, or the failure to execute its work as directed by Contractor, Subcontractor agrees to execute any assignments necessary to make available to Contractor and the Owner the rights of subcontractor under purchase orders and subcontracts. Contractor will credit Subcontractor's account with the value of the materials and suppliers so used but there will be no credit for rent on equipment. Subcontractor will reimburse Contractor in Harris County, Texas, to the extent that Contractor's expense, including attorneys fees, in completing the Sublet Work and proceeding under this Article exceeds the balance which would have become due to Subcontractor under this Agreement had Subcontractor completed the Sublet Work. If Contractor's expense is less than such amount, then Subcontractor shall receive as its entire and sole compensation its actual common, necessary and reasonable costs of performing the work to the date of termination, as determined by audit of subcontractor's records, plus a reasonable markup for overhead and profit, but in no event shall such amounts due hereunder exceed the total Subcontract Amount. Subcontractor hereby waives all claims against Contractor for profits, rent on equipment or other damages related to any proceeding which Contractor institutes under this Article. The Parties agree that the terms of this article shall be binding if Contractor in good faith has determined that Subcontractor's performance is inadequate and that the Owner or Contractor or other subcontractor may be damaged, or Contractor may be unable to perform its contractual obligations, unless Contractor proceeds under this Article. The Parties agree that such determinations are difficult to make and must be made under pressing circumstances, and agree to be bound in accordance with this Article in light of the circumstances confronting Contractor at the time such a decision is made.

B. TERMINATION FOR CONVENIENCE OF CONTRACTOR OR OWNER:

General Contractor may, at its option, terminate for convenience the Sublet Work in whole or, from time to time, in part, at any time by written notice to Subcontractor. Such notice shall specify the extent to which the performance of work is terminated and the effective date of such termination. Upon receipt of such notice Subcontractor shall:

- (a) immediately discontinue the Sublet Work on the date and to the extent specified in the notice and place no further orders or sub-subcontracts for materials, service, or facilities, other than as may be required for completion of such portion of the Sublet Work that is not terminated;
- (b) promptly obtain cancellation upon terms satisfactory to General Contractor on all purchase orders, sub-subcontracts, rentals, or any other agreements existing for the performance of the terminated work or assign those agreements to General Contractor as directed;
- (c) assist General Contractor in the maintenance, protection, and disposition of work in progress, plant, tools, equipment, property, and materials acquired by Subcontractor or furnished by Subcontractor under this contract; and
- (d) complete performance of the Sublet Work which is not terminated.

Upon any such termination, General Contractor shall have no liability for any damages, including loss of anticipated profits. As its sole right and remedy, Subcontractor shall be paid the following:

- (a) all amounts due and not previously paid to Subcontractor for Sublet Work completed in accordance with the Subcontract prior to such notice of termination, and for work thereafter completed as specified in such notice;
- (b) reasonable administrative costs of settling and paying claims arising out of the termination of Sublet Work under sub-subcontracts or purchase orders;
- (c) reasonable costs incurred in demobilization and the disposition of residual material, plant and equipment;

In the event any termination of the Subcontractor for default under the default termination article is later determined to have been improper, the termination shall automatically be deemed a termination for convenience and the Subcontractor shall be limited in its recovery strictly to the compensation provided for in this subsection. Subcontractor shall submit within 30 days after receipt of notice of termination, a proposal for an adjustment in compensation, including all incurred costs described herein. General Contractor shall review, analyze, and verify such proposal, and, if not satisfied, negotiate an equitable adjustment, and the Subcontract shall be amended in writing accordingly.

JAMAIL & SMITH CONSTRUCTION MASTER SUBCONTRACT AGREEMENT _____

18. LAYOUT RESPONSIBILITY:

Contractor shall establish principal axis lines and levels whereupon Subcontractor shall lay out and shall be strictly responsible for the accuracy of its work and for any loss or damage to other Subcontractors engaged in work on the site by reason of failure of Subcontractor to set out or perform its work correctly. Subcontractor shall exercise prudence so that actual final conditions and details shall result in alignment of finish surfaces that are within industry standard tolerances.

19. TAXES:

Subcontractor will pay all social security and other taxes imposed upon it as an employer in connection with the performance of this Agreement, and will furnish evidence, when required by Contractor, showing that all such payments required to be made have been paid. Subcontractor shall pay all local, state and federal taxes in connection with its Sublet Work. Subcontractor shall furnish a copy of Sales and Use Tax Permit if requested by Contractor.

20. ASSIGNMENT AND SUBLETTING:

Subcontractor cannot assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or its right, title or interest therein, or its power to execute the same or its interest in proceeds there from, without the consent in writing of Contractor. If Subcontractor does, with approval, sublet this Agreement or any part thereof, it shall require that its Subcontractor be bound to Subcontractor and to assume toward Subcontractor all of the obligations and responsibilities that Subcontractor has assumed toward Contractor. Approval of a sub-subcontractor will not imply that Contractor assumes any responsibility for such sub-subcontractor or that sub-subcontractor is relieved of any responsibility with respect to the Sublet Work. Subcontractor will not sublet any portion of the work to or enter into an agreement with an Employee Leasing Company without the Contractor's prior written approval.

21. GUARANTY/WARRANTY:

Subcontractor shall, subject to all parts of Article 11 and notwithstanding anything to the contrary in the other provisions of this Agreement, before requesting Progress Payment of seventy-five percent (75%) complete, provide Guaranties and any other documentation required by the Prime Contract. In addition to any specific Guaranty required by the Prime Contract, Subcontractor, in signing this Agreement, agrees at its own expense to replace or repair any faulty or defective material or workmanship within one year from Final Completion, as defined in the Prime Contract, or longer if required by Prime Contract. In addition, Subcontractor shall be responsible for and pay for replacement or repair of adjacent materials or work which may be damaged or other amounts for which Contractor may become liable due to the failure of Subcontractor's material or work and/or damage as a result of the replacement or repairs thereof. The Subcontractor warrants to the Owner and Contractor that materials and equipment furnished under the Work Release will be of good quality and new unless otherwise required or permitted by the Contract Documents; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Contractor the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Subcontractor's liability under this Article shall continue from the date of this Subcontract through the last day of the twelfth month following the date of acceptance by Owner of the Project. In addition, Subcontractor's liability for items, material, or workmanship which Subcontractor may have corrected, repaired, or replaced shall continue through the last day of the twelfth month following the date of acceptance by Owner of such corrected, repaired, or replaced items or workmanship.

22. DISPUTES:

- A. In the event of a dispute between Subcontractor and Contractor relating to this Agreement or any Work Release hereunder (or breach thereof) which involves corresponding rights or duties of Owner, then the dispute shall be decided in accordance with the Contract Documents. In such case, the Parties shall attempt to resolve their claims through direct negotiations between the appropriate representatives of each Party. Should negotiations become unsuccessful, Subcontractor and its sureties (if any) shall be bound to Contractor to the same extent that Contractor is bound to Owner by the terms of the Contract Documents and by any decisions or determinations made hereunder by an authorized person, board, court, or other tribunal. Contractor shall use its best efforts to afford Subcontractor a reasonable opportunity to provide information and testimony to the board, court, or tribunal. If the board, court, or tribunal will not allow Subcontractor to present evidence directly, then Subcontractor shall provide evidence to the Contractor and Contractor shall present this information to the board, court, or tribunal on behalf of Subcontractor. In all respects, Subcontractor shall cooperate with Contractor in this regard. Subcontractor will exhaust all remedies available under the Contract Documents through Contractor and in accordance with this paragraph prior to commencing any litigation, arbitration, or any other action against Contractor. Mediation of any dispute shall be held in Harris County, Texas, the county where the project is located, or such other convenient location that Contractor may select in its sole discretion.
- B. In the event any controversy or dispute arises between Subcontractor and Contractor relating to this Agreement or Work release hereunder (or a breach thereof), which dispute or controversy does not involve the correlative rights and duties of Owner, In such case, the Parties shall attempt to resolve their claims through direct negotiations between the appropriate representatives of each Party. Should negotiations become unsuccessful, Subcontractor shall request formal mediation of the dispute with Contractor and the parties shall attempt in good faith to mediate the dispute. Mediation of the dispute shall be a condition precedent to any further rights that the Subcontractor has to the resolution of this dispute.
- (i) If mediation is unsuccessful, then Subcontractor agrees that Contractor shall make the determination (in its sole discretion) as to whether the dispute shall be settled by binding arbitration in accordance with the Construction Industry Arbitration Rules (then applicable) of the American Arbitration Association (in which case Subcontractor agrees that it will submit its disputes to such arbitration and that such arbitration will be binding to the full extent enforceable under applicable arbitration statutes including the Federal Arbitration Act).
- (ii) In the event that Contractor determines that the dispute shall not be resolved through arbitration, then Subcontractor agrees that the disputes will be resolved by courts of competent jurisdiction in Harris County, Texas. Subcontractor agrees that it owes a duty to other subcontractors to perform its work properly and that other subcontractors owe Subcontractor a duty to perform their work properly. Subcontractor and Contractor agree that neither will make a claim against the other arising out of the improper performance of work by other subcontractors. Subcontractor agrees, if its work is impacted or affected by the actions (or omissions) of the work of another subcontractor(s) or supplier(s), that Subcontractor's sole remedy shall be directly through negotiation or, if necessary, through litigation or arbitration with such other subcontractor in accordance with the procedures described here. In such an event, Subcontractor shall consider this agreement to be an assignment by Contractor to Subcontractor of Contractor's rights against the other subcontractor(s) or supplier(s) such that Subcontractor can proceed directly against the parties who have caused the harm alleged by Subcontractor, and Subcontractor accepts such assignment and agrees to accept and be bound by the result of such disputes proceedings and shall not seek any further damages against Contractor as a result.

JAMAIL & SMITH CONSTRUCTION MASTER SUBCONTRACT AGREEMENT _____

23. BANKRUPTCY:

It is recognized that if Subcontractor is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate Subcontractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, or becoming aware of any such event, Contractor shall be entitled to request of Subcontractor or its successor in interest, assurance, satisfactory to Contractor, of future performance in accordance with this Agreement. Failure to provide such satisfactory assurance within ten (10) days of delivery of the request shall entitle Contractor to terminate this Agreement. If this Agreement is terminated pursuant to this Article 24, Subcontractor will reimburse Contractor in Harris County, Texas, to the extent that Contractor's expense, including attorneys fees, in completing the Sublet Work and proceeding under this Article, exceeds the balance which would have become due to Subcontractor under this Agreement had Subcontractor completed the Sublet Work, after deducting amounts previously paid to Subcontractor. If Contractor's expense is less than such amount, then Contractor will pay the difference to Subcontractor. Regardless, whether Contractor elects to terminate this Agreement or pursue other rights, it is agreed that in all events pending receipt of satisfactory assurance of performance, Contractor shall be entitled to proceed with the Sublet Work with its own forces or with other subcontractors on a time and materials or other appropriate basis, the cost of which will be back charged against the Subcontractor.

24. DIRECTION OF SUBLET WORK:

- A. Independent Contractor: Subcontractor shall perform the Sublet Work as an independent contractor with exclusive control of the manner and means of performing the Sublet Work in accordance with the requirements of this Master Subcontractor Agreement. Subcontractor has no authority to act or make any agreements or representation on behalf of General Contractor or Owner, and no contractual relationship exists between Subcontractor and Owner. No employee or agent engaged by Subcontractor shall be, or shall be deemed to be, an employee or agent of General Contractor or Owner. In the event General Contractor should, at the request of Subcontractor, furnish workers to Subcontractor for any purpose to work under the direction and supervision of Subcontractor, such employees of General Contractor shall be deemed to be the borrowed servants of Subcontractor and Subcontractor shall be responsible for their actions while so engaged.
- B. Superintendent: At all times during the performance of the Sublet Work, Subcontractor shall provide a competent resident superintendent, who is an employee of Subcontractor, and any necessary assistants, all satisfactory to General Contractor. General Contractor has the right to review the qualifications of the proposed superintendent, and to approve or disapprove the assignment. If all of Subcontractor's workers are not fluent in English, Subcontractor shall provide a superintendent who is fluent in English and in the language spoken by those workers. The superintendent shall not be replaced except with the consent of the General Contractor, unless he ceases to be in Subcontractor's employ. Subcontractor's superintendent shall represent Subcontractor, and (1) all directions given to superintendent shall be binding as if given to Subcontractor, and (2) all decisions made by the superintendent shall be binding as if made by Subcontractor.

25. AVAILABILITY OF RECORDS, ACCOUNTS AND AUDIT:

- 1) The Subcontractor shall make available to Contractor or its designee at its office at all reasonable times the materials described below for examination, audit, or reproduction, until (3) three years after completion and acceptance of the Project as a whole.
 - a. The Subcontractor shall maintain and the Contractor or representatives of the Contractor shall have the right to examine and audit books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all expenditures claimed to have been incurred or anticipated to be incurred in performing this Subcontract. This right of examination shall include inspection, at all reasonable times, of the Subcontractor's plants, or parts of them, engaged in performing the Subcontract and whatever applicable records are maintained.
 - b. Contractor or representatives of the Contractor shall have the right to examine and audit books, records, documents, and other data of the Subcontractor including computations and projections related to negotiating, pricing, or performing the Subcontract or modification.
 - c. Records pertaining to appeals under the Disputes Article or to litigation or the settlement of claims arising under or relating to the performance of this Subcontract shall be made available until disposition of such appeals, litigation, or claims.
 - d. Contractor shall have the right to inspect and audit such part of the records as relate to cost reimbursement or performance of labor provisions. Copies of documents and records supporting requests for payment or compliance with labor-related provisions shall be furnished to Contractor with such request or at such other times as General Contractor directs.
- 2) If this Contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three years after any resulting final termination settlement.
- 3) At Contractors request, Subcontractor shall produce a copy of its insurance policies for Contractors review and approval.

26. CONFIDENTIALITY:

Subcontractor shall not publicize, publish, or photograph the Project, the Sublet Work, or any part of this Subcontract, including bid or pricing information, except by written consent of General Contractor and in compliance with General Contractor's regulations for the Project. Subcontractor will maintain in confidence and not use or disclose any confidential proprietary information of General Contractor or Owner. Subcontractor will execute and, if requested, will cause its employees or agents to execute, such form of written secrecy agreement, further defining this confidentiality agreement, as is required of other participants in the Project. All plans, specifications data and other material relating to the Project shall be delivered to General Contractor, on request, when no longer required by Subcontractor for performance of the Sublet Work.

27. PRE-BID AGREEMENT:

If this Agreement is signed before Contractor is awarded the Prime Contract by the Owner, then it shall constitute a Pre-Bid Agreement, which cannot be canceled by either Party, and upon award to Contractor, shall become a binding Agreement. If no such award is made for which this Agreement was prepared, this Agreement shall have no further effect.

28. LAW GOVERNING:

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof shall be governed by the laws of the State of Texas, and any action commenced arising out of or relating to this Agreement shall be brought in a court of proper jurisdiction located in Harris County, Texas.

JAMAIL & SMITH CONSTRUCTION MASTER SUBCONTRACT AGREEMENT _____

29. EMPLOYEE BACKGROUND CHECK CONFIRMATION:

Subcontractor swears and affirms that Subcontractor has obtained, reviewed, and verified as required by Texas Education Code Section 22.0834 the national criminal history record information from a law enforcement or criminal justice agency for each employee of the Subcontractor and the national criminal history record information from the Texas Department of Safety for each employee of the Subcontractor who (a) have or will have continuing duties related to the contracted services, (b) have or will have direct contact with students. Subcontractor further swears and affirms no employees who meet the requirements of (a) or (b) above have been convicted of any offense identified in section 22.085 of the Texas Education Code. Subcontractor shall submit, to Contractor upon request, the names and records of all employees working onsite.

30. FUTURE RIGHTS:

Any waiver or failure to assert any right, which either Party has under this Agreement, shall not constitute a continuing waiver of future rights. Rights can be waived only if expressed in writing and signed by an officer of the waiving Party. If any provision of this Agreement is held invalid or unenforceable under any present or future laws, then the remainder of the Agreement shall remain in full force and effect. The foregoing constitutes the entire Master Agreement between the parties. Terms and/or conditions, whether expressed or implied, excepting those documents executed specifically as Amendments or Work Releases by an authorized representative of Jamail & Smith Construction of the same status as the representative who executed this Master Agreement, shall neither alter, add to nor subtract from the Terms and Conditions of this Master Agreement. Subcontractor promises to perform all work awarded and accepted hereunder in accordance with this Master Agreement and the Work Releases agreed to against this Master Agreement. Further, any and all modifications to this Master Agreement, in the form it is presented to Subcontractor, made by Subcontractor, shall be brought to the specific attention of General Contractor and expressly agreed to by General Contractor, as evidenced by the hand written initials of an authorized representative of the General Contractor, failing which such changes shall be void and unenforceable and the terms and the terms of the Master Agreement as originally proposed by General Contractor shall govern the agreement between General Contractor and Subcontractor.

Notice of Indemnification. Subcontractor and Contractor hereby acknowledge and agree that this Master Subcontract Agreement contains certain indemnification obligations and covenants.

SUBCONTRACTOR: _____

By: _____
Printed Name

Signature _____

Title: _____

Witness: _____

CONTRACTOR: Williams & Thomas LP dba Jamail & Smith Construction acting by and through its General Partner Smith-Jamail LLC

By: _____
Printed Name

Signature _____

Title: _____

Witness: _____