



LCS CONSTRUCTORS, INC.

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MASTERCRAFT AGREEMENT TERMS & CONDITIONS

THIS AGREEMENT is made on *today's date* hereto by and between the Contractor, LCS CONSTRUCTORS, INC., ("Contractor") and *Name of Subcontractor* hereto as the Subcontractor ("Subcontractor").

WHEREAS, the Contractor and Subcontractor have reached an agreement pertaining to which the Subcontractor has agreed, and hereby does agree, to perform certain of the labor and to provide certain of the materials, which obligations are otherwise imposed upon the Contractor by the Contract Documents and which labor and materials are specifically set forth in the "Project Subcontract".

NOW, THEREFORE, the parties hereto have agreed and do hereby agree as follows:

1. LICENSE

Subcontractor shall possess a current, bonded, valid Contractor's license in accordance with the statutory requirements of the state or states in which the work is performed. Subcontractor shall promptly furnish a copy of all required licenses to the Contractor's office within **five (5)** days from the date of execution hereof.

2. GENERAL SCOPE.

The Subcontractor shall furnish, hereof, all plant, labor, and material and perform all work, in addition to the other obligations (the "Subcontract Work") set forth in the Project Subcontract. Such Subcontract Work shall be performed where applicable in precise accordance with the Project Subcontract and Contract Documents. IT IS UNDERSTOOD AND AGREED BY THE PARTIES HERETO THAT THE CONTRACTOR, BY THIS AGREEMENT, IS PASSING TO, AND SUBCONTRACTOR ASSUMES, ALL OBLIGATIONS AND REQUIREMENTS IMPOSED UPON THE CONTRACTOR BY VIRTUE OF THE CONTRACT, BUT ONLY WITH RESPECT TO THE SUBCONTRACT WORK; AND THE SUBCONTRACTOR, WITH RESPECT TO THE SUBCONTRACT WORK, IS BOUND TO THE CONTRACTOR BY THE TERMS AND REQUIREMENTS OF THE CONTRACT DOCUMENTS. The Subcontractor agrees, represents, warrants, and covenants that the Subcontract Work to be performed hereunder will be performed in a good and workmanlike manner, and in conformity with all applicable governmental regulations, and that the same will be performed to the satisfaction of the Contractor and, where the Contract Documents so state, the Owner or its authorized representative. In connection with the Subcontract Work and its obligations, the Subcontractor shall furnish all tools, equipment, scaffolding, hoisting, supplies, materials, incidentals, and any and all other such items necessary to accomplish the Subcontract Work, and shall do all cutting, blocking, patching, and cleaning that is required, unless specifically excluded in the Project Subcontract. All incidental labor, materials, and services as may be required to make the Subcontract Work complete and acceptable in every respect are contemplated by and included in the Project Subcontract. WITH RESPECT TO THE SUBCONTRACT WORK, THE SUBCONTRACTOR WARRANTS TO THE CONTRACTOR ALL THE WARRANTIES MADE BY THE CONTRACTOR TO THE OWNER IN THE CONTRACT DOCUMENTS.

3. BOND.

At the Contractor's request the Subcontractor shall furnish to the Contractor an acceptable 100% performance and payment bond issued by a surety company acceptable to the Contractor, which surety company shall have a current "Bests" rating of B or better, and this is documented to the satisfaction of the Contractor.

4. LIABILITY, INSURANCE AND TAXES.

(a) Subcontractor shall protect, fully indemnify, and save the Contractor and Owners harmless from any liability, claims suits, or actions and loss, cost, damage or expense, of any kind or character arising from, directly or indirectly, (X) the acts or omissions of the Subcontractor in connection with or arising out of the performance by the Subcontractor of the Subcontract Work, irrespective of whether Subcontractor shall be negligent or not (for the purposes of this Paragraph 4(a), the term "Subcontractor" shall include all agents, employees, independent contractors, lower-tier subcontractors, licenses, invitees, employed, utilized or licensed by Subcontractor and any others to the extent their access to project sites is gained through or as a result of Subcontractor); and (Y) the acts or omissions of the Contractor, its employees, agents, and independent contractors, including, without limitation, Contractor's negligence, save and except where such acts or omissions of Contractor constitute the sole and exclusive proximate cause of damage. Subcontractor shall additionally (and without limiting the generality of the foregoing) indemnify and save the Contractor and Owners harmless against loss, cost, damage, or expense, including attorney's fees, by reason of any liability imposed by law upon or claimed against the Contractor and/or Owners (i) because of bodily injuries including without limitation, death, sustained by any employee or agent of the Subcontractor, lower tier subcontractors, independent contractors, other workers at the projects, and any member of the public, or any other person, or (ii) on account of damage to or loss of property of the Subcontractor, lower tier subcontractors, independent contractors, other workers at the project sites, and any member of the public, or any other person, in both such cases, arising out of, or in connection with, the performance of the Subcontract Work by the Subcontractor.

(b) Subcontractor agrees to carry all Workers' Compensation insurance in accordance with the statutory requirements of the state or states in which the work is performed, including employer's liability insurance with a minimum liability limit of \$1,000,000 per accident. Subcontractor agrees to carry a Comprehensive General Liability insurance policy in a combined single limit amount of not less than \$1,000,000, which provides for coverage of (i) premises and operations (ii) products liability and completed operations; (iii) Contractual obligation, including but not limited to the indemnity agreement in paragraph 3 (a) above; (iv) Broad form property coverage; (v) any independent subcontractors performing work under this agreement, (vi) personal injury; and (vii) explosion, collapse and underground (if required by the Contract Documents). Subcontractor agrees to carry a policy of comprehensive automobile liability insurance with a limit of not less than \$1,000,000; and which includes coverage for owned vehicles, hired vehicles and non-owned vehicles. Contractor and/or its designees shall be named as additional insured parties on all policies of insurance required therein. Subcontractor shall promptly furnish certificates of insurance in duplicate to the Contractor's office, but in all events within **five (5)** days from the date of execution thereof. Such certificate of insurance shall state that such insurance coverage shall be non-cancelable except on 30 days prior written notice by the insurance carrier to Contractor. Subcontractor shall submit worker's compensation, public liability, property damage reports, as well as owned, non-owned, and hired vehicle accident reports, to its insurance carrier immediately after any accident and shall furnish immediately to the Contractor two copies of such reports. In addition to the foregoing, the Subcontractor shall comply with all insurance requirements set forth in the Contract Documents as being required of subcontractors performing work thereunder.

(c) Subcontractor shall properly report and pay all social security, state unemployment, welfare benefits, vacation pay, sales and use tax, licenses and fees, and all other Federal, State and Local taxes of every nature, applicable to the Subcontract Work. Subcontractor shall obtain and pay for all permits and licenses applicable to the Subcontract Work, pay any and all legal fees incurred in connection therewith, and comply with all applicable laws, rules, regulations, and ordinances of any kind or character. Subcontractor agrees to indemnify and hold Contractor harmless from any loss, cost or damage which Contractor may sustain or incur as a result of Subcontractor's failure to fulfill its commitments hereunder.

(d) Subcontractor agrees that Contractor shall have a lien upon all money of Subcontractor, or amounts, which Contractor may owe or may come to owe Subcontractor, to secure performance by Subcontractor of its obligations arising under this paragraph and under this Agreement. Contractor may offset against any amounts owed it by Subcontractor hereunder all such money or amounts.

5. SUBCONTRACTOR'S INVESTIGATION AND REPRESENTATIONS.

The Subcontractor represents and warrants that it is fully qualified and experienced to perform the Subcontract Work and acknowledges that, prior to the execution of this Mastercraft Agreement and all Project Subcontracts, it will by its own independent investigation:

(a) Carefully examine the Specifications affecting the Subcontract Work, and determine if there are no deficiencies, ambiguities, or errors therein regarding the same.

(b) Ascertain the general and local conditions involved in performing the Subcontract Work, including, without limitation, those bearing upon location of the surface and subsurface water, materials, or obstacles to be encountered, the character and extent of existing work within or adjacent thereto, other work materials, availability of utilities and access roads, the character of equipment and facilities needed for prosecution of work, uncertainties of weather or physical conditions at the site, and all other matters that can in any way affect the Subcontract Work or the cost thereof under the Project Subcontract;

(c) Examine the Contract Documents (including, without limitation, the Specifications) and is thoroughly familiar with all of the provisions and requirements therein concerning the Subcontract Work.

(d) Acquaint itself as to the plant, labor, and material required for the Subcontract Work and warrants that such plant, labor, and material are available to it.

(e) Carefully determine the quantity of the Subcontract Work and the cost of performing such work and carefully apply its own prices to its quantities; and

(f) Verify all information furnished by the Contractor or others and be satisfied with the correctness and accuracy of that information.

Any failure by the Subcontractor to acquaint itself with all of the information concerning the items listed above and any other items or conditions that would affect performance or cost will not relieve it from the responsibility for estimating properly the difficulty or cost of successfully performing the Subcontract Work.

6. TIME OF PERFORMANCE.

Time of performance is of the essence of the Project Subcontracts, and the Subcontractor shall perform all of the requirements hereof with all possible dispatch, but in all events within the time limits, if any, imposed in the Contract Documents, and shall execute all work in such a manner as not to delay any other contractor, subcontractor, or the Contractor in the performance of their duties with respect to the Project. The Contractor shall be the sole judge, in the exercise of its good faith business judgment, as to delays of the Subcontractor that delay other workers. The Subcontractor shall follow the progress of each project, be prepared to commence work within 24 hours after notification, keep up with the general progress of the whole work, and be responsible for all damages including, without limitation, incidental and consequential damages, caused by its delay, including liquidated damages, if any, assessed under the terms of the Contract Documents that are attributable to work under Project Subcontract.

7. CHANGES.

The Contractor may at any time, without notice to the sureties of Subcontractor, make changes in the work covered by the Project Subcontract by written agreement with the Subcontractor by specifying the extra work or changes to be made and the increase or decrease in price, if any. Such change orders must be executed by a Project Manager of Contractor or someone of comparable or greater corporate authority. In the event the parties are unable to agree upon the prices to be charged by the Subcontractor with respect to the requested changes, then, upon written orders from an executive officer of the Contractor, the Subcontractor shall proceed to perform the changes as requested by the Contractor and, in the connection therewith, shall file with the Contractor, within twenty-one (21) days from the date of such change order, its written itemized statement for the cost of performing such additional work; otherwise, any claim of the Subcontractor for such changed work shall be void, and the Subcontractor shall not be entitled to additional compensation therefore. Notwithstanding the foregoing, the instruction of the Contractor to go forward and perform the work (notwithstanding the fact that no agreement has been reached regarding such costs) shall not bind the Contractor as to the Subcontractor's statement for the cost of such disputed services. IN THE EVENT OF SUCH A DISAGREEMENT, UNDER NO CIRCUMSTANCES SHALL THE SUBCONTRACTOR PERFORM ANY SUCH EXTRA OR CHANGED WORK FOR WHICH IT SHALL SEEK ADDITIONAL COMPENSATION WITHOUT SUCH PRIOR WRITTEN DIRECTION BY AN EXECUTIVE OFFICER OF THE CONTRACTOR. Subject to the provisions of paragraph 8 (b), if the parties hereto are unable to resolve the controversy with respect to the amount to be charged for such changes, then each party shall retain its full legal rights with respect to such requested changes; in no event, however, shall the Subcontractor be entitled to receive for such change an amount in excess of the lesser of (I) a reasonable price therefore based upon the special circumstances of the Subcontractor, or (ii) a reasonable price therefore which would be charged by a qualified subcontractor performing similar services.

8. DISPUTES.

(a) If any controversy or dispute shall arise between the Contractor and the Subcontractor as to interpretation of the requirements of this Mastercraft Agreement, or of the Project Subcontract, or of the Contract Documents as imposed upon the Subcontractor, which the parties hereto do not promptly adjust and resolve, then upon written orders from an executive officer of the Contractor, the Subcontractor shall proceed so as not to delay the work and shall perform such disputed work as directed by the Contractor and, in connection therewith, shall file with the Contractor, within twenty-one (21) days from the date of such order, its written itemized statement for the cost of performing the disputed work; otherwise, any claim of the Subcontractor for such disputed work shall be void and the Subcontractor shall not be entitled to additional compensation therefor. Notwithstanding the foregoing, the instruction of the Contractor to go forward and perform the disputed work (notwithstanding the fact that no agreement has been reached regarding such costs) shall not bind the Contractor as to the Subcontractor's statement for the cost of such disputed services. UNDER NO CIRCUMSTANCES SHALL THE SUBCONTRACTOR PERFORM ANY EXTRA OR DISPUTED WORK FOR WHICH IT SHALL SEEK ADDITIONAL COMPENSATION WITHOUT SUCH PRIOR WRITTEN DIRECTION BY AN EXECUTIVE OFFICER OF THE CONTRACTOR. If the parties hereto are unable to resolve the controversy, then each party shall retain its full legal rights with respect thereto; in no event, however, shall the Subcontractor be entitled to receive for such disputed work, should it be determined to be extra, an amount in excess of the lesser of (I) a reasonable price therefore based upon the special circumstances of the Subcontractor, or (ii) a reasonable price therefore which would be charged by a qualified subcontractor performing similar services.

(b) Notwithstanding anything to the contrary contained herein, in all events, if the Contract Documents provide methods of resolving deficiencies, ambiguities, or errors in the Specifications or other contract Documents, or methods of resolving disputes regarding interpretation of any of the Contract Documents, the procedures therefore in the Contract Documents pertaining to work that is the subject of the Subcontract Work, if any, shall, if requested by the Contractor, be fully binding upon the Subcontractor, and Subcontractor shall be entitled to no additional compensation regardless of the outcome, unless the Contract Documents provide for such additional compensation therefore, and then the Subcontractor shall be entitled only to such amounts as shall be received by the Contractor. Similarly, any changes ordered by the Owner that affect the Subcontract Work shall be made as requested by the Owner and shall be handled in the manner provided therefore as set for in the Contract Documents; and Subcontractor shall be entitled to no additional compensation, regardless of the outcome, unless the Contract Documents provide for such additional compensation therefore, and then the Subcontractor shall be entitled only to such amounts as shall be received by the Contractor.

9. DAMAGE NOTIFICATION.

Notice of any damage or additional cost that the Subcontractor alleges the Contractor, other subcontractors, the Contractor's suppliers, or any other party have caused, or are causing, by their act or omission shall be filed in writing with the Contractor within seven (7) days from the commencement of such alleged damage or additional cost. The Subcontractor shall advise the Contractor's office in writing at two weeks intervals of the amount of any continuing damage or additional cost and shall file a full accounting within seven (7) days after the damage or increased cost ceases. No claims for such damage shall otherwise be valid unless the Subcontractor complies with all the requirements of this Paragraph 7. NO PROVISION HEREOF TO THE CONTRARY, HOWEVER, THE CONTRACTOR SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY DAMAGES OR ADDITIONAL COSTS CAUSED BY OTHER SUBCONTRACTORS, THE CONTRACTOR'S SUPPLIERS, OR ANY OTHER PARTY, BUT THE SUBCONTRACTOR SHALL BE LIABLE AND RESPONSIBLE THEREFORE.

10. DELAYS.

If the Subcontractor's performance of the Subcontract should be delayed by any acts of the Contractor, other subcontractors, the Contractor's suppliers, or any other persons, or delayed by any acts of causes that would entitle the Contractor to an extension of time under the Contract Documents, then the Subcontractor shall receive an equitable extension of time for the performance of the Project Subcontract, as reasonably determined by Contractor, but the

Subcontractor shall not be entitled to any increase in the Subcontract Price or to damages or additional compensation as a consequence of such delays, unless the Owner is liable to Contractor therefore and pays for such delays. The Contractor will pay the Subcontractor the amount allowed and paid by the Owner, if any, that is attributable to the Subcontractor's delay. Within five days after the commencement of any delay caused by the Contractor, other subcontractors, the Contractor's suppliers, or any other person, the Subcontractor shall notify the Contractor in writing stating full details of the cause of such alleged delay. The Subcontractor shall notify the Contractor in writing of any delays for which the Owner is responsible in sufficient time so that the Subcontractor's claim may be timely processed with the Owner administratively.

11. PATENTS.

The Subcontractor shall indemnify and save harmless the Contractor and Owner from any and all manner of claims or suits for infringements of patents or violations of patent rights, including all costs in connection with the same.

12. CLEAN UP AND DAMAGE TO WORK OF OTHERS.

(a) On a daily basis the Subcontractor shall at all times and at its sole expense; keep all projects broom clean as to its Subcontract Work; keep projects free from rubbish, debris, and waste and/or surplus materials resulting from its operations; and vacate projects in such a condition as to permit the next succeeding work to be commenced without further cleaning. At the completion of each project, the Subcontract Work shall be clean and in a condition acceptable to the Owner, or its representative, and the Contractor. If the Subcontractor fails to comply with these provisions, the Contractor shall have the right, itself or through others, to perform such cleaning and to charge the cost thereof to the Subcontractor, provided, however, that the Subcontractor is given a twenty-four hour written notice (unless the Owner shall impose a shorter notice period) or such delinquency.

(b) The Subcontractor shall not damage the work or property of others by its operations and shall indemnify and hold harmless the Contractor and any other person or party against any and all claims for damages caused by the Subcontractor to the work of, without limitation, the Contractor, any other subcontractor, the Owner, or any others.

13. TERMINATION FOR DEFAULT.

If the Subcontractor should at any time in the judgment of the Contractor: refuse or neglect to supply sufficient skilled workmen or material of proper quality, or become insolvent, or refuse to follow the Specifications or Contract Documents, or fail to pay for labor and materials for which it has received payment from the Contractor, or fail or refuse to perform the Subcontract Work in a good and workmanlike manner (and within the time constraints provided in the Project Subcontract and in the Contract Documents), or fail in any respect to prosecute diligently and faithfully the covenants and agreements on its part to be performed under the Project Subcontract and/or Contract Documents, then, in any of such cases, the Contractor shall have the right, in its sole discretion, upon written notice to the Subcontractor, or to anyone representing the Subcontractor's right to proceed, in whole or in part, pursuant to the terms hereof and/or to terminate this Mastercraft Agreement and /or Project Subcontract. In such event the Contractor may, in its sole discretion, finish the Subcontract Work by whatever method it may deem expedient, and the Subcontractor and its sureties shall be liable to the Contractor for any excess cost incurred in connection with finishing the Subcontract Work. In the event of such termination, the Contractor may, should it choose, take over any of the Subcontractor's outstanding subcontracts and purchase orders and take possession of all tools, equipment, scaffolding, materials, and supplies manufactured for said work for use in the completion of the Subcontract Work. The Contractor is given a lien on all such property to secure the performance hereof. If the Subcontractor should, in the judgment of the Contractor, neglect, fail, or refuse to perform any portion of the Subcontract Work that affects the even-flow progress of the Project or any work of an emergency nature, the Contractor has the right, after notice to the Subcontractor (if Contractor in its sole discretion decides circumstances permit), to perform such work without prejudice to any other remedy it may have and charge the costs thereof incurred by the Contractor to the Subcontractor's account. In all events, the Contractor shall have, in addition to the foregoing, any and all rights at law or equity as against the Subcontractor that may exist as a result of the Subcontractor's breach of any provision of this Mastercraft Agreement or Project Subcontract.

14. OVERTIME.

The Contractor shall pay no overtime unless the Project Manager of the Contractor specifically agrees the same to in writing before the work for which the overtime is requested is performed.

15. SUPERINTENDENCE AND COOPERATION.

Competent full-time personnel satisfactory to the Contractor shall represent the Subcontractor on all projects while its work is in progress. The Subcontractor shall cooperate to the fullest extent with the Contractor's superintendent in charge and shall immediately remove any workmen who are not satisfactory to the Contractor, Owner, or Owner's authorized representatives. All workmen of the Subcontractor are to work in harmony with those of the Contractor.

16. RESPONSIBILITY FOR WORK AND MATERIALS AND PERSONNEL.

When the Contractor furnishes any material, the material shall be used without waste and the Subcontractor shall pay for any material ruined or damaged for any reason, once such material has been delivered. Unless otherwise stated, when the Contractor or others furnish material, the same shall be delivered, at Contractor's option, F.O.B. Project or to a central point at the Project site, either of which shall constitute delivery. The Subcontractor shall promptly check quantities delivered and immediately report in writing all damages and shortages to Contractor; otherwise, all such items shall be deemed to be in satisfactory condition and in the quantities indicated on bills of lading, invoices, or other documents. The Subcontractor shall be responsible for and protect its work-in-place from the elements and other causes of damage until completion and final acceptance by the Contractor, the Owner, and the Owner's representative, if any, and the Subcontractor shall adequately store and protect its own materials and materials furnished to it by the Contractor and/or others. The Subcontractor shall provide whatever protection is necessary for the performance of the Subcontract Work.

The cost of all such protection shall be borne by the Subcontractor. CONTRACTOR SHALL NOT BE RESPONSIBLE FOR DAMAGES TO SUBCONTRACTOR'S WORK CAUSED BY OTHER SUBCONTRACTORS, THEFT, FIRE, DAMAGE, OR LOSS OF ANY KIND.

17. DEVIATIONS AND SUBSTITUTIONS BY SUBCONTRACTOR.

The Subcontractor shall not deviate from the Specifications, Project Subcontract and the Contract Documents without prior written consent of a division manager of the Contractor (or someone of comparable or greater corporate authority), AND NO CHANGES SHALL BE TAKEN UP WITH THE OWNER OR ITS AUTHORIZED REPRESENTATIVE, EXCEPT THROUGH THE CONTRACTOR. Any changes in plans or specifications, or substitutions of materials as an "equal," proposed by the Subcontractor that are approved by the Owner or its authorized representative and the Contractor shall be the Subcontractor's full responsibility. In selecting options or alternates, the Subcontractor shall indemnify and hold Contractor harmless from any claim for additional costs incurred by the Subcontractor and/or other subcontractors. Subcontractors shall not, without written approval from Contractor, employ second or third tier parties to perform any work.

18. LIENS AND CLAIMS-AFFIDAVIT AND WAIVER OF LIENS.

The Subcontractor shall pay all claimants for all costs and expenses resulting from the performance of Subcontract Work and for all labor and material used or reasonably required for use in the performance of Subcontract Work for which the Subcontractor is liable; and, further, the Subcontractor shall hold the Contractor harmless from all costs and damages claimed by lower-tier subcontractors, suppliers, and any other persons and from all liens and all claims of such persons, including, without limitation, persons furnishing material and/or labor in connection with the Project Subcontract. The Contractor may require of the Subcontractor satisfactory evidence as to the status of its accounts at any time, including a notarized statement setting forth the names of all subcontractors and suppliers, the amounts of each subcontract and purchase order, the amount paid, and the amounts due and payable.

19. ASSIGNMENTS OF SUBCONTRACT OR PROCEEDS.

This Mastercraft Agreement and the proceeds from all Project Subcontracts shall not be assigned without the prior written consent of the Contractor. The Subcontractor shall not re-let any work covered under Project Subcontracts without prior written approval by an executive officer of the Contractor.

20. INTERPRETATION OF CONTRACT DOCUMENTS.

THE PARTIES RECOGNIZE THAT THE OWNER OR ITS AUTHORIZED REPRESENTATIVE SHALL BE THE BINDING AND FINAL AUTHORITY ON THE INTERPRETATION OF THE SPECIFICATIONS, ANY INTERPRETATION THEREOF BY ANY EMPLOYEE OR AGENT OF THE CONTRACTOR IS THE MERE PERSONAL OPINION OF THE PARTY MAKING THE SAME. THE SUBCONTRACTOR SHALL BE BOUND BY ALL INTERPRETATIONS OF THE OWNER OR ITS AUTHORIZED REPRESENTATIVE THAT, BY THE CONTRACT DOCUMENTS, ARE BINDING ON THE CONTRACTOR.

21. SAMPLES, SHOP DRAWINGS, AND TESTS.

All samples required to be approved, shall be furnished and submitted by the Subcontractor in accordance with Specification requirements. Shop drawings, if required, shall be submitted by the Subcontractor in sufficient quantities (minimum 6 copies); and after approval, the Subcontractor shall furnish final copies for field use as may be requested by the Contractor. Any and all required certificates, tests, test reports, etc., shall be furnished by the Subcontractor upon request from the Contractor. Estimates (in triplicate), shop drawings, samples, etc., shall be submitted by the Subcontractor to the Contractor's local branch office or such other location as the Contractor may specify and within the time limits imposed by Contractor, but in all events subject to the provisions of Paragraph 6 hereof (minimum 6 copies).

22. ACCEPTANCE OF PRECEDING WORK.

The Subcontractor shall examine the work of others that may affect the Subcontract Work and shall notify the Contractor in writing, completely detailed and supported, of any claimed deficiencies therein before performing the Subcontract Work; otherwise, such other work shall be deemed acceptable to the Subcontractor.

23. STORAGE OF MATERIALS AND VEHICLE TRAFFIC.

The Subcontractor shall control the storage of its materials and the movement and parking of its vehicles and vehicles of its employees so as not to unreasonably interfere with the work of others; however, the Contractor does not guarantee that the storage of materials and movement and parking of vehicles by others will not cause some interference to the Subcontract Work.

24. INSPECTION.

THE SUBCONTRACTOR IS FULLY AWARE THAT THE SUBCONTRACT WORK WILL BE RIGIDLY INSPECTED BY REPRESENTATIVES OF THE OWNER TO ENSURE STRICT COMPLIANCE WITH THE SPECIFICATIONS AND THAT ALL OF THE SUBCONTRACT WORK MUST BE TO THE SATISFACTION OF THE CONTRACTOR, AND THE OWNER, OR IT'S AUTHORIZED REPRESENTATIVE. Failure of the Subcontract Work to so conform will entitle Contractor, in addition to any other remedies herein set forth or provided by law, to either terminate this Agreement or accept such work and recover in connection therewith damages.

25. PAYMENTS TO SUBCONTRACTOR.

(a) Notwithstanding any other provision of this Mastercraft Agreement, Project Subcontract or the Contract Documents, progress payments to the Subcontractor shall be made no more than one time each month (as indicated by the Contractor) within ten days after submittal, approval, and payment of the Contractor's monthly estimate by the Owner; and the Contractor or the Owner shall retain 10% of the amount due to the Subcontractor from progress payments under partial payment estimates for work performed by the Subcontractor until final completion, acceptance, and payment of

the Subcontractor's work by the Owner. Request for partial payment must be submitted to Contractor no later than the 25th day of the month and must be on the standard form therefore from time to time prepared or used by Contractor, and must be accompanied by a partial release of the Contractor, Owner and Project of such portion of all claims and liens arising by virtue of the Project Subcontract, and an affidavit by the Subcontractor that all labor, material and other bills have been paid, all subject to the satisfaction of the Contractor. Certified payroll reports must be submitted with each request for payment if required by Contractor, owner or if specified in the Contract documents.

(b) Request for final payment must be accompanied by as built drawings, warranties, operating manuals, a release of the Contractor, Owner and Project of all claims and liens arising by virtue of the Project Subcontract, and an affidavit by the Subcontractor that all labor, material and other bills have been paid, all subject to the satisfaction of the Contractor. Final payment by the Contractor shall not be construed as acceptance of defective work or improper materials or waiver of any breach of this Mastercraft Agreement and/or the Project Subcontract. Contractor hereby reserves any and all rights it may have at law or in equity with respect to this Subcontract and the matter covered hereby. No other provisions to the contrary withstanding, final payment shall be made within ten (10) days after all of the following conditions have been met; (i) Contractor has received payment from Owner, and (ii) the Subcontract Work has been fully and completely performed in accordance with this agreement; and (iii) all other requirements herein set forth are satisfied.

(c) On all final and partial payments Contractor shall have the right to insist, prior to payment, upon receipt from Subcontractor of (i) release of liens from all labor, materials, and other suppliers, executed by such parties; and (ii) delivery of all other paperwork and items required under the Project Subcontract to be delivered by Subcontractor (including, without limitation, certificates of insurance and bonds).

(d) If Contractor's payment is delayed due to Subcontractor's failure to submit certified payroll report, release of liens, as built drawings, warranties, operating manuals, or any other items required by this agreement or the contract documents, Contractor shall have the right to deduct interest for the delay period at Contractor's prevailing short term cost of funds, plus any penalties that may accrue upon Contractor until Subcontractor has fulfilled its obligation.

26. SAFETY POLICY FOR SUBCONTRACTORS.

Every Subcontractor shall comply with all applicable local, state and federal safety and health regulations as well as with Contractor's safety and health policies. As a Subcontractor, you are obligated to conduct all our operations within the guidelines of the Contractor's Safety Policy. Subcontractors shall be responsible for the safety of their own employees and tools. Subcontractors shall insure that the equipment used meets all safety standards required. An effective accident prevention program is to our mutual benefit through improved employee and public relations, and through increased efficiency and production. No accident prevention activity can be truly effective without the sincere cooperation of each Subcontractor performing work on the site. Your attention is directed specifically to the following general safety rules:

- 1) The Subcontractor shall actively promote safe working performance on the part of their employees. Site foremen shall participate in such activities as safety meetings, safety inspections and safety incentive programs. The Subcontractor shall submit their safety program to Contractor prior to commencement of work on site.
- 2) All Subcontractors shall hold "Tool Box" Safety Meetings with their workers at least once a week. Minutes of these meetings must be recorded and forwarded to Contractor's Job Foreman
- 3) All Subcontractors shall have an effective system of indoctrination and education of new and transferred employees to inform their employees of all the safety rules and procedures before that employee begins work on a Contractor's project. Subcontractors shall enforce adherence to safe work practices.
- 4) Each Subcontractor shall inform their employees of the location and use of emergency equipment, properly post emergency telephone numbers and inform their employees of project procedures for first aid and ambulance calls.
- 5) Good housekeeping shall be maintained at all times. Waste, debris, garbage shall be removed daily. All materials, tools and equipment shall be stored in a safe and orderly fashion. Special attention must be given to maintain clean walkways.
- 6) Subcontractors shall ensure that all employees are equipped with all personal protective equipment as required by local laws, regulations and codes or by Contractor's Safety Policy. Proper dress code shall also be enforced for all Subcontractors.
 - i) Hard hats must be worn at all times in designated areas at jobsites, without exception.
 - ii) Shoes will be worn that support the ankle and guard against puncture and toe wounds. (No tennis shoes are allowed.)
 - iii) Shirts are to be worn by all personnel on Contractor's jobsite. T-shirts shall not have any adverse or unprofessional slogans on them. (No loose or ragged clothing permitted.)
 - iv) Blue jeans or some type of heavy work coverall, in good condition, shall be worn to protect the legs. (No shorts or cut-offs permitted.)
 - v) Goggles or face shields are compulsory when drilling, burning, chipping, grinding, sawing, grouting and while otherwise required by your foreman. Welding helmets are mandatory for all arc welders. Respiratory equipment, earplugs and lifelines shall be worn as required.
 - vi) To eliminate distractions and help keep everyone alert to their surroundings radios and radio/tape headsets are not permitted on jobsite.

If Contractor notifies any Subcontractor of any non-compliance with the provisions of this program, the Subcontractor shall make all reasonable efforts to correct the unsafe conditions or acts. If a Subcontractor refuses to correct unsafe or unhealthy conditions or acts, Contractor shall take one or more of the following steps: (a) cease the operation or portion thereof, (b) stop payment for work being performed, (c) correct the situation using Contractor's labor force and back charge the Subcontractor for expenses incurred.

27. DRUG/ALCOHOL POLICY.

To help ensure a safe, healthy and productive working environment for the performance of the Subcontract Work, Contractor has adopted a policy to prohibit the use, possession or distribution or any prohibited substances and/or articles as defined below, by any employee, designee, agent or sub-tier contractor of the Subcontractor, while at the job site or at any premises owned, leased or otherwise controlled by the Contractor or Owner. Subcontractor acknowledges such policy, and hereby agrees that all Subcontractor's employees and possessions are subject to search while on the job site or other property of the Contractor or Owner, and that Subcontractor's employees may be required to submit to medical testing, including testing of urine or saliva to determine the presence of prohibited substances.

(a) Prohibited articles include illegal and unauthorized drugs, alcoholic beverages, drug paraphernalia, and firearms. Illegal drugs include marijuana, narcotics, and all other drugs not prescribed by a licensed physician for use by the person possessing them. Unauthorized drugs include excessive quantities of prescribed drugs that may adversely influence performance of behavior.

(b) If upon search or other inspection such prohibited items are found in the possession of Subcontractor's workers, designees, or agents, such person(s) shall be immediately removed from the job site, facility or workplace. Contractor at its sole discretion may refuse to readmit the person violating this provision and may demand that Subcontractor make necessary provisions and remedies at its own expense to eliminate the potential for a re-occurrence.

28. NOTICES.

All notices, requests, demands, and other communications permitted or required hereunder shall be in writing and shall be deemed to have been duly given if (a) delivered, (b) sent by Western Union Mailgram, or by other similar means, or (c) mailed by registered or certified United States Mail, postage prepaid, to either the Contractor or the Subcontractor at the address indicated on the signature page hereto, as such address may be from time to time modified by notice duly given.

29. BOTH PARTIES HAVE READ AND UNDERSTAND THIS MASTERCRAFT AGREEMENT DESCRIBED HEREIN. THIS DOCUMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDES ALL PRIOR PROPOSALS AND AGREEMENTS, WHETHER WRITTEN OR ORAL, EXCEPT REPRESENTATIONS OF SUBCONTRACTOR MADE PRIOR TO THE EXECUTION HEREOF, WHICH ARE HEREBY RESTATED. THE CONTRACTOR ASSUMES NO RESPONSIBILITY FOR ANY UNDERSTANDING OR REPRESENTATION MADE BY ANY OF ITS OFFICERS OR AGENTS OR BY ANY OTHER PERSON DURING OR PRIOR TO THE EXECUTION OF THIS SUBCONTRACT UNLESS SUCH UNDERSTANDING OR REPRESENTATION IS EXPRESSLY STATED HEREIN. NO PROVISIONS OF THIS MASTERCRAFT AGREEMENT MAY BE WAIVED OR CHANGED (except to the limited extent provided in Paragraphs 6 and 16 hereof) EXCEPT IN WRITING EXECUTED BY AN EXECUTIVE OFFICER OF THE CONTRACTOR. THIS SUBCONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OR STATES WHERE THE WORK IS PERFORMED.

30. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provisions shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement; the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

IN WITNESS WHEREOF, the parties have signed this Subcontract effective as of the *date of agreement*. THIS SUBCONTRACT MAY BE EXECUTED BY A DIVISION MANAGER OF THE CONTRACTOR (OR SOMEONE OF COMPARABLE AUTHORITY) IF, BUT ONLY IF, NO CHANGES OR ALTERATIONS ARE MADE IN THE TYPED OR PRINTED PROVISIONS HEREOF. IN ALL OTHER CASES, THIS SUBCONTRACT, IF CHANGES OR ALTERATIONS ARE MADE IN THE TYPED OR PRINTED PROVISIONS HEREOF, THEY MUST BE EXECUTED BY AN EXECUTIVE OFFICER OF THE CONTRACTOR.

X

X

Subcontractor Signature

Contractor Signature

By :

By :

Title :

Title : Senior Project Manager

Address : *Name of Subcontractor*
Address
City, State, Zip Code

Address : **LCS Constructors, Inc.**
15205 Alton Parkway
Irvine, CA 92618

Tel. :

Tel. : 949-870-4500

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