



Re:

Attn: Ph: Fax: Cell:

Enclosed are three (3) copies of your subcontract agreement for the above referenced project. It is very important to not make any marks on the contracts. Please call to discuss any questions or concerns. Please execute three copies and return to our office within seven (7) calendar days. We will countersign the subcontract and return one (1) original to you for your files.

Teal Construction Company requires that all subcontractors provide indicated insurance coverage and an insurance certificate which reflects Worker's Compensation, General Liability, Auto Insurance and Excess Liability Umbrella before you begin any work related to this contract; refer to and provide all coverages and certificates per Exhibit "L".

**THIS CONTRACT IS ISSUED FOR YOU TO SIGN AND RETURN, BUT NO WORK CAN START UNTIL YOU RECEIVE THIS CONTRACT RETURNED SIGNED BY TEAL. SUBMIT YOUR INSURANCE CERTIFICATE AND ENDORSEMENTS WITH YOU EXECUTED SUBCONTRACT AGREEMENT. YOU WILL NOT BE ALLOWED TO BEGIN WORK ON THE PROJECT UNTIL WE HAVE RECEIVED YOUR ORIGINAL INSURANCE CERTIFICATE AND ENDOREMENTS. CONFORMING TO THE REQUIREMENTS OF THE SUBCONTRACT, SUBCONTRACTOR COMPANY SAFETY POLICY, A SITE SPECIFIC SAFETY PLAN AND SAFETY DATA SHEETS FOR ALL SUBCONTRACTOR FURNISHED MATERIALS IN A THREE RING BINDER.**

If you do not have a written company safety policy, we strongly encourage you to get one in place, as you will not be allowed on-site without it. For a guideline/template, go to <http://www.tdi.texas.gov/oshcon/index.html> and click on Safety Policy (29 CFR 1910 and 1926). This will open a MS Word file that you can type on and modify for your use to satisfy the requirement for your to furnish your company safety policy. In addition to this you need to include a site specific safety plan that list specific actions and planning for this project. Put this site specific safety plan in the front of your company safety policy. Ideally, your three ring safety binder includes:

1. Bright end & front folder labeling this binder with
  - a. Company Name
  - b. Safety / SDS Binder
2. Tabbed Sections
  - a. Site specific safety plan
  - b. Company safety policy
  - c. SDS sheets

Please review the exhibit package and forward all requested information to ensure prompt execution of payments. **Items B, I, J, L, N, O and P of the exhibit package and a schedule of values MUST be submitted within two (2) weeks and prior to any payment being processed.** If requested, Financial Information concerning funding of this project, may be available upon your request.

Again, please do not mark on the contract as that will invalidate this contract offer. Please understand that time is of essence; return of the signed contracts are due no later than .

Very truly,

Teal Construction Company

cc: File No. & Supt. File



**2.8 Existing Conditions:** Field verification of all existing conditions is subcontractor's responsibility. Subcontractor is to inspect prior work before start of subcontractors work. Once subcontractor starts work he has accepted prior work.

**2.9 Protection and Barricades:** This subcontract to take every precaution necessary and required to protect the finish work of other trades from damage as a result of your construction operations. Furnish all required barricading and flagging of hazardous conditions as a result of this subcontractor's ongoing and/or incomplete construction operations.

**2.10 Permits:** All permits (except Contractor's main building permit), licenses, tap fees, easements and inspection fees necessary for the prosecution of the Work shall be procured and paid for by Subcontractor.

**2.11 Taxes:** Subcontractor will pay all social security and other taxes imposed upon it as an employer in connection with the performance of this agreement. Subcontractor shall also pay all local, state and federal taxes in connection with its Work.

### **3. Schedule of Work:**

**3.1** Work to be performed as directed by Project Superintendent. This Subcontractor's work to begin as scheduled by the project Superintendent and/or per the Contractor's current construction schedule.

**3.2 Time is of the essence of this agreement.** Subcontractor shall commence, diligently and continuously perform and complete the Work as directed by Contractor, and in accordance with Contractor's schedule (Exhibit "K") and the subsequent updated progress/revised schedules. 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, 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, all without additional cost to Contractor. Contractor may require Subcontractor to prosecute the Work in preference to other parts of the Work, such part or parts of the Work as Contractor may specify. Subcontractor shall provide all schedule data and updates required by the Prime Contract or Contractor. Subcontractor shall be responsible for all liquidated damages assessed to Contractor as a result of Subcontractor's delay, if any, in performance, along with all other damages, if any, sustained by Contractor. Subcontractor shall complete all punchlist work within 14 calendar days of the issuance of a punch list. Should Subcontractor fail to do so, Contractor may proceed to perform the work at Subcontractor's expense.

### **4. Payments:**

**4.1** All pay applications are to be emailed to [accountspayable@tealcon.com](mailto:accountspayable@tealcon.com) and cc'd to (Project Manager) (Project manager Email). Contractor shall pay Subcontractor for the complete and timely performance of the Work the sum of (\$) ("Subcontract Sum"). Within 20 days following its execution of this agreement and before submitting its first application for payment, Subcontractor shall furnish Contractor a schedule of values, accurately distributing the Subcontract Sum among each part of the Work. Once approved by Contractor, this schedule of values shall be used for preparing and reviewing periodic applications for payment. As a condition precedent to Contractor's payment obligations hereunder, Subcontractor shall submit monthly payment applications on or before the 25th day of the month for work then completed to date, including materials stored on the Project site in a manner acceptable to Contractor, on the form attached as Exhibit "B," along with a completed schedule of values, a second tier progress release and lien waiver (Exhibit "C"), and a third tier progress release and lien waiver (Exhibit "D") for each supplier or subcontractor of Subcontractor through the last day of the month for the period of the application for payment. The period covered by each application for payment shall be one calendar month ending on the last day of the month. Payment applications received after the 25th day of the month will be considered as the next succeeding month's business. Payment to Subcontractor shall not constitute acceptance of subcontractor's Work or a waiver of deficiencies, if any, therein. Correct defective or rejected work to be fullest extent of Owner's acceptance.

**4.2 Stored Materials:** Subcontractor may be paid for materials stored on the jobsite, in a bonded warehouse, or at the Subcontractor's facilities, only if first approved by Contractor, and then only to the extent provided for and in accordance with the terms of the Prime Contract. In such cases, Subcontractor shall furnish insurance acceptable to Contractor and Owner for the materials. Contractor and Owner shall be named as loss payees on the insurance policy. Subcontractor shall furnish detailed inventory, including invoices, for all stored materials for which Subcontractor has requested payment. Payments for stored materials shall not include any profit or overhead.

**4.3 Payment Date:** Provided there has been no breach or default by Subcontractor under this agreement, Contractor shall issue payment on the latter of the following dates: (A) on or before the 25th day of the following month; (B) within seven days of receipt of like payment from Owner; or (C) within seven days of Subcontractor curing any breach of this agreement, including but not limited to failure to invoice in accordance with the terms of this agreement.

**4.4 Retainage:** Contractor shall retain % of the amount of each monthly application for payment that is approved for payment, which sum shall be accumulated and not be released to Subcontractor until thirty (31) days after completion of the Project and acceptance of the Project by Owner.

**4.5 Joint Checks:** Contractor reserves the right, but shall have no obligation, to issue joint checks to Subcontractor's subcontractors and suppliers. Joint check agreements, if any, shall be on the form included as Exhibit "E." In addition, Subcontractor may request the issuance of joint checks by completing a request for joint checks (Exhibit "F"), and by appending the same to Subcontractor's application for payment.

**4.6 Final Payment:** Contractor shall make Final Payment to Subcontractor after the Work is complete and accepted by Owner, 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 shall have first furnished Contractor with a first tier

final release (Exhibit "G") and satisfactory evidence that all labor and material accounts incurred by Subcontractor in connection with the Work have been paid in full, including without limitation a second tier final release (Exhibit "H") for each supplier or subcontractor of Subcontractor. "In-place" or "as-built" drawings and specifications are to be prepared and submitted to Contractor before final payment is requested, as a condition precedent to final payment.

**4.7 Notwithstanding the foregoing, Contractor shall not be obligated to pay Subcontractor, unless and until funds are received by Contractor in full, less any applicable retainage, for the work and materials for which Subcontractor has submitted a payment application. Owner's payment to Contractor shall be a condition precedent to Contractor's obligation to pay the Subcontractor. This paragraph shall not be construed merely 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 claims, change orders, retainage or final payment, if any. Contractor shall not be obligated to pay retainage to Subcontractor until Contractor has received payment of Contractor's retainage in full. Subcontractor acknowledges he has satisfied himself as to the Project Owners - Owner ability to fund the total amount of the contract.**

**4.8 Reason for Withholding Payment:** Payments otherwise due may be withheld by Contractor on account of (A) defective work not remedied, (B) claims filed, evidence indicating probability of filing of claims, or failure of Subcontractor to timely make payments to its subcontractors or for material or labor, or (C) Contractor's reasonable doubt that the Work can be timely completed for the balance then unpaid in accordance with Contractor's schedule.

**4.9 Warranty:** Subcontractor shall, before requesting final Payment, provide warranties required by the Prime Contract. In addition, Subcontractor warrants to the Owner and Contractor that materials and equipment furnished hereunder 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. Subcontractor shall, at its own expense, 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. If required by Contractor, Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**4.10 Offset:** Contractor may offset against any sums due Subcontractor hereunder (or any other agreement regardless of whether related to the Project) the amount of any liquidated or unliquidated obligations of Subcontractor to Contractor, whether arising out of this agreement (or any other agreement regardless of whether related to the Project). All debts owed by Subcontractor to Contractor, whether arising hereunder or otherwise, shall bear interest at the rate of 10% per annum.

## **5. Terms and Conditions:**

**5.1 IF THIS AGREEMENT IS NOT SIGNED AND EXECUTED WITHIN SEVEN (7) DAYS AFTER RECEIVING THIS SUBCONTRACT AGREEMENT, THEN IT IS THE RIGHT OF THE GENERAL CONTRACTOR (TEAL CONSTRUCTION) TO VOID THIS AGREEMENT. RETURN OF SIGNED CONTRACT DUE NO LATER THAN.**

**5.2 This Subcontract takes precedence over all subcontract proposals or prior conversation.**

**5.3 Prime Contract:** The Prime Contract (including the Contract Documents incorporated therein) is incorporated herein. Subcontractor is bound to Contractor by the terms of the Prime Contract, and owes Contractor the obligations and responsibilities, which Contractor, by the Prime Contract, owes Owner. In the event of a discrepancy between the Prime Contract and this agreement, the more stringent requirement shall apply.

**5.4 Supervision:** Subcontractor shall supervise and perform the Work, using the Subcontractor's best skill and attention, in a workmanlike manner and in accordance with the best construction practices. Subcontractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of its Work with that of Owner, Contractor or other subcontractors. Subcontractor shall timely pay all of its bills relating to or arising out of the Project. Subcontractor shall ensure that the Project and the land upon which it is situated shall remain free from liens arising from Subcontractor's Work. If Subcontractor should fail to take such steps to remove a lien (through payment or otherwise) or bond around a lien within 10 days following notification of same, Contractor may take such action as it deems necessary to do so, at Subcontractor's cost.

**5.5 Clean Up:** Subcontractor will maintain a neat and orderly working area and will not permit trash and debris to accumulate, and will collect, haul away and properly dispose of all trash and debris caused by its operations daily. If Subcontractor fails to comply, Contractor may, upon 24 hours notice to Subcontractor, proceed with the cleanup work at Subcontractor's cost and expense.

**5.6 Safety:** Subcontractor shall give all notices and comply with all laws, ordinances, rules, and regulations relating to the Work. Subcontractor shall also comply with work rules imposed by Contractor or Owner, including but not limited to use of space, staging areas and temporary facilities, drug screening of workers and specialized safety training. Subcontractor accepts full responsibility for workplace safety and safe workplace incidents, and shall employ good safety practices and safety meetings on at least a weekly basis. Subcontractor shall be responsible for the safety of its employees, its work area, and others in or in reasonable proximity to its work area, including ingress and egress to and from the work area. Subcontractor shall educate Subcontractor's employees concerning workplace safety practices, and monitor and supervise its employees' safety practices. Subcontractor shall promptly furnish Contractor with a list of emergency numbers (on the form marked Exhibit "I").

**5.7 Safety Plan:** Subcontractor shall supply and maintain a project specific safety plan, in Contractor's job office or designated location at the job site, in a three ring binder and along with a divider for Material Safety Data Sheets for all materials and products utilized at the job site. This binder should be labeled on binder end and cover clearly identified with Subcontractor company name and in full compliance with OSHA requirements. Subcontractor's safety plan and MSDS binder shall be at the job site prior to starting work at the job site and at all times that work is performed by Subcontractor at the job site.

**5.8 Submittals and Shop Drawings:** Subcontractor shall furnish all shop drawings and submittal data as required by the contract documents. If required by the contract documents, all required shop drawing must be sealed by a registered engineer, in the state where the project is located. Submittal data shall include, but not limited to, each specified material, component and system for the scope of work covered in the contract. Subcontractor is required to provide the following when applicable: schedules related to procurement and performance, coordination drawings, a minimum of four samples for specified products and colors, a minimum of four-color charts, supply and construct mock-ups as well as any additional items required by the contract documents pertaining to the scope of this contract. All items to be provided in the form and quantity required by the Prime Contract Documents and to be delivered within 10 days of the execution of this contract and at the Subcontractors expense. If your submittals and shop drawings require more than 10 days to prepare and submit, then you must coordinate with Teal and obtain Teal's written agreement before executing this contract. Time is of essence, all submittals must be submitted for review as required by the time that is necessary for procurement, manufacturing and to be shipped to the site per subcontract scope of work to be completed as scheduled herein. The Prime Contract Documents will define the time allowed for the design team review, normally this will be two weeks, plus the total Teal processing time of 5 days to return to Subcontractor. The Subcontractor is responsible for thoroughness, correctness and completeness of the submittal; should the submittal be rejected, and resubmittal be required, the Subcontractor is responsible to complete the re-submittal process as required to complete the work as scheduled. The cost to expedite any part of this process will solely be the responsibility of Subcontractor. Required field produced mock-ups shall be coordinated with other trades as necessary and constructed in a timely fashion for approval as to not cause any delays to the published construction schedule. Subcontractor shall email electronic files in PDF format for all submittals / shop drawings and submit up to eight (8), unless otherwise noted, complete prints sets of all shop drawings and required submittals to Teal's project management team for processing and review by the Owner and Owner representatives. When a project has an owner provided internet cloud-based submittal exchange system, use the system as directed. All products submitted must originate from the contract document specified list of acceptable products / systems or as defined by this contract. The related specification section must be included with all submittals. Submittals shall be submitted in full for each product included in a particular-specification section and as one submittal package per section. Each specification section submittal must have a stamp or cover sheet from the subcontractor in front of their supplier's front sheet identifying the section number and name. This stamp or cover sheet should indicate the sub's review comments and approval notations, name of reviewer and date. Every product or system incorporated into this project must be submitted for review for contract compliance. Submittals are not contract documents. The review of shop drawings and submittal data, by the Owner, Contractor, Architect, Engineer or other consultants, does not relieve Subcontractor from their responsibility for errors and omissions in designs for which the Subcontractor is responsible for and compliance with all requirements of the contract documents, plans, dimensions and or specifications. The Subcontractor's responsibilities include the complete coordination with the work of other trades for the safe and successful completion of the work. Reviews of shop drawings / submittals does not consider the means, methods, techniques, sequences and operations of construction, safety, precautions, or programs incidental hereto which are the sole responsibility of the Subcontractor. Corrections or review comments made on the shop drawings / submittals do not relieve the contractor from compliance with requirements of the plans and specifications. Approval of a specific item shall not include approval of an assembly of which the item is component. Subcontractor is responsible for dimensions to be confirmed and correlated at the project site and information that pertains solely to the fabrication processes or the sequences and procedures of Subcontractor's construction work. Subcontractor is solely responsible for correctness of, confirming and correlating dimensions, details, clearances, tolerances, quantities and safety during fabrications and erection. Subcontractor should notify the Contractor at once if discrepancies arise and if assistance is required for coordination with other trades.

**5.9 Substitutions:** Any request for product or system substitution, if allowed by the prime contract, must be submitted separately and timely. Subcontractor is responsible for all preparation and processing work for the substitution. Subcontractor must provide all cross referenced documentation to prove the equality or betterment of the substituted product. Subcontractor is responsible for any related cost for the substitution. Subcontractor is responsible for complete coordination of the substitution with other related project work. Substitutions are not allowed to delay the work as required by contract and schedule.

**5.10 Vendor List:** Subcontractor shall submit a list of suppliers and subcontractors (on the form marked Exhibit "J"), if any, which it intends to use for the completion of its work under this Contract with Subcontractor's first Application for Payment and each Application for Payment thereafter. Subcontractor shall promptly advise Contractor of any changes to this list. Submitted suppliers and/or subcontractors shall be creditworthy and fully capable of timely and sufficient performance. If in the sole judgment of Contractor, one or more of the submitted suppliers and/or subcontractors is unacceptable to Contractor, Subcontractor shall procure replacement suppliers and/or subcontractors that are acceptable to Contractor. Subcontractor shall also replace any of its employees with whom Contractor has an objection.

**5.11 Independent Contractor:** It is understood that Subcontractor is an independent contractor and that Contractor shall have no right to direct the operations or employees of Subcontractor. Subcontractor agrees to maintain a familiarity with conditions existing over the entire premises on which the Work is located so that it will be aware of dangerous conditions,

whether obvious or hidden, and Subcontractor agrees to warn its employees, subcontractors and suppliers of unsafe conditions on the premises.

**5.12 Waiver of 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, 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 effect.

**5.13 Assignment:** Subcontractor shall not assign, broker, convey, sublet or otherwise transfer this agreement or any part thereof, or its interest in proceeds therefrom, including accounts receivable, without written consent in of Contractor. Any such action in violation of this provision shall be void, a material breach and grounds for termination for cause.

**5.14 Entire Agreement:** This agreement may be modified, if at all, only in writing signed by all parties, and represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. There are no third party beneficiaries to this agreement, express or implied.

## **6. Changes in the Work:**

**6.1** Contractor may request or direct changes in the Work. Should Contractor, at any time during the progress of the Work, request a proposal for such a change, Subcontractor shall within a reasonable time thereafter submit an itemized estimate reflecting proposed changes to the Contract Sum and time for performance for such changes, specifying direct labor man-hours and costs, material and equipment costs, applicable labor markups for employee labor burdens and benefits, and overhead and profit. The allowed mark-up on subcontractor's increased direct cost for changes is limited to the amount allowed in the Prime Contract, if stated therein; if not stated, the maximum allowed is 10%. Contractor may also order Subcontractor to proceed with changes for which a final price and/or time have not been determined (otherwise known as a construction change directive), provided such order is issued in writing and signed by an officer or project manager of Contractor. In the event agreement cannot be reached on an adjustment to the Contract Sum for a change order or construction change directive, increases in the Subcontract Sum shall not exceed Subcontractor's actual direct costs plus 10% markup for overhead and profit. No changes (including without limitation alterations, substitutions, additions or deletions) will be effective unless made by a written change order signed by an officer or project manager of Contractor and Subcontractor or construction change directive signed by an officer or project manager of Contractor. Project superintendents for Teal are not authorized to issue verbal or written change orders or construction change directives.

**6.2 Claims:** A claim includes any request for additional compensation or time. All claims which Subcontractor has or wishes to assert against Contractor must be presented in writing to Contractor not later than ten (10) 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. Notwithstanding anything to the contrary herein, extensions of time shall be the exclusive remedy for 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.

## **7. Indemnification:**

**INDEMNITY FOR PERSONAL INJURY AND PROPERTY DAMAGE TO THE FULLEST EXTENT PERMITTED BY LAW AND TO THE FULLEST EXTENT OF THE INDEMNITY PROVIDED TO OWNER UNDER THE PRIME CONTRACT, AND IN PARTICULAR, CH. 151 OF THE TEXAS INSURANCE CODE, AND AS LIMITED THEREBY, IF APPLICABLE, SUBCONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE GENERAL CONTRACTOR, AND THE PARTIES REQUIRED TO BE INDEMNIFIED BY CONTRACTOR IN THE PRIME CONTRACT (TOGETHER, "INDEMNITEES"), FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DEMANDS, SUITS, CAUSES OF ACTION, AND DAMAGES, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES, FOR BODILY INJURY OR DEATH OF ANY EMPLOYEE OF SUBCONTRACTOR, ITS AGENTS, OR ITS SUBCONTRACTORS OF EVERY TIER, EVEN IF THE BODILY INJURY OR DEATH IS CAUSED BY OR ALLEGED TO HAVE BEEN CAUSED BY THE NEGLIGENCE, FAULT OR STRICT LIABILITY OF ANY INDEMNITEE.**

**For all claims not addressed in the above paragraph, TO THE FULLEST EXTENT PERMITTED BY LAW, SUBcontractor shall indemnify, defend and hold harmless THE INDEMNITEES FROM and against all claims, losses, expenses, costs, demands, suits, causes of action, and damages, including without limitation, attorneys' fees and expenses, of any nature whatsoever arising out of or related to this Agreement or the Work to be performed under this Agreement, but only to the extent of the negligence or other fault of SUBcontractor, its agents, representatives, employees or subcontractors of any tier.**

**SUBCONTRACTOR SHALL OBTAIN INSURANCE SUFFICIENT TO COVER ITS INDEMNITY OBLIGATIONS IN THIS ARTICLE. BUT THE COVERAGE OF ANY INSURANCE POLICY REQUIRED HEREIN OR ACTUALLY CARRIED BY SUBCONTRACTOR SHALL NOT LIMIT THE EXTENT OF SUBCONTRACTOR'S LIABILITY UNDER THE FOREGOING INDEMNITY**

## **8. Insurance and Bonds:**

**8.1** Subcontractor (and its subcontractors, if any) shall maintain in effect, from the date that Work commences under this agreement through the warranty period for specific coverage limits, policy endorsements, provisions, certificate and insurance requirements (Exhibit "L"). Subcontractor is required to provide a minimum of five (5) years of completed operations liability insurance coverage and indemnification in the amounts listed in Exhibit "L". Said coverage shall be procured from insurers acceptable to Contractor, and having a Bests rating of A, unless otherwise agreed in writing. Until a properly completed and executed certificate of insurance is furnished to Contractor, Subcontractor may not enter the jobsite premises to perform any portion of the Work. Subcontractor shall furnish Contractor with a certified copy of all such insurance policies upon request. Failure to furnish such a policy or certificate or to meet all insurance requirements, cancellation either by the insured or the insurer of any portion of the required insurance, or the lapse or suspension of the required insurance shall be considered a material breach of this agreement, entitling Contractor to prohibit Subcontractor from entering the work premises, in addition to whatever other remedies Contractor may elect to exercise. If Subcontractor or its subcontractors do not acquire acceptable insurance, Contractor may procure the required insurance coverages and charge the expense for such coverages to Subcontractor. Subcontractor's obligation to furnish insurance is an additional and separate obligation from Subcontractor's indemnification and/or defense obligations herein, and shall not be interpreted as merely supporting the indemnity and/or defense obligations.

**8.2** Waiver of Subrogation: Subcontractor and Contractor waive all subrogation rights against (1) each other and all their subcontractors, agents and employees, and (2) Owner, Architect, separate contractors and any of their subcontractors, agents and employees, to the extent that any loss is covered and paid by insurance. Subcontractor shall require similar waivers in favor of the other parties enumerated herein, from those for whom Subcontractor is responsible.

**8.3** Builders Risk: Subcontractor's 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 will be available for Subcontractor's inspection at Contractor's home 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.

**8.4** Bonds: If required below, Subcontractor shall promptly furnish payment and performance bonds on forms acceptable to Contractor and with a corporate surety approved by Contractor, each having a penal sum equal to the Subcontract Sum, as the same may be revised from time to time in accordance with the terms of this agreement. The bonds shall list Contractor as obligee, and if requested by Contractor shall also include Owner as a co-obligee by virtue of a dual obligee rider.

**8.5** Payment and Performance Bond required:

## **9. Non Conforming Work, Termination or Suspension of Subcontract:**

**9.1** Nonconforming Work: Subcontractor shall perform the Work subject to the approval of Teal Construction, the Architect, and any Owner's designated representatives. Teal Construction, Owner and Owner's representatives have the right to inspect the material and workmanship used by Subcontractor for full compliance with the Contract Documents. **If**, in the opinion of Teal Construction, Owner or Owner's representatives, any portion of Subcontractor's Work: a) does not conform to the Contract Documents; or b) does not comply with applicable regulations, laws and codes; or c) does not meet standards of good workmanship acceptable to Teal Construction or Owner or Owner's representatives, **then** the Subcontractor, at its own expense, shall immediately remove all nonconforming material and shall reconstruct all improperly performed Work.

**9.2** Supplementation: Contractor may, after twenty-four (24) hours written notice to Subcontractor, at his last know address, provide any such labor and materials, and deduct the cost thereof from any money then due or there after to become due Subcontractor. To correct nonconforming work or due to subcontractors failure to supply adequate supervision and manpower to maintain schedule.

**9.3** Termination for Cause: Following 48 hours written notice to Subcontractor, at his last known address, Contractor may at its option terminate the employment of Subcontractor under this agreement for cause if: (A) Subcontractor fails to: (i) supply a sufficient number of skilled workmen or a sufficient quantity of materials of proper quality; (ii) prosecute the Work covered by this agreement with the promptness and diligence required by Contractor; (iii) perform work of the quality required by the Prime Contract; (iv) make timely payments to its subcontractors, laborers, materialmen and suppliers; (v) provide within 10 days of Contractor's request, satisfactory assurance of future performance, following Subcontractor becoming a debtor in bankruptcy, or making a general assignment for the benefit of creditors, or becoming the subject of a receivership or (vi) perform any of the covenants in this agreement; or (B) any workmen performing the Work covered by this agreement engage in a strike or other work stoppage, or cease to work due to picketing or other such activity. In which event, Contractor shall have the right to enter upon the premises and take possession, for the purpose of completing the Work hereunder, of all the materials, tools, and equipment thereon, and to finish the Work and provide the materials therefore, either with its own employees or other subcontractors.

**9.4** Contractor right to proceed with work and expenses and related cost: Regardless, whether Contractor elects to terminate this agreement or pursue other rights, it is agreed that pending receipt of satisfactory assurance of performance. Contractor shall be entitled to proceed with the Work with its own forces or with other subcontractors on a time and materials or other appropriate basis, the cost of which will be backcharged to Subcontractor. In the event of termination or supplementation, 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 Work exceed the unpaid balance of the Subcontract Sum, 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 of which it has taken possession to secure the payment thereof. Subcontractor will reimburse Contractor to the extent that Contractor's expense, including attorneys fees, in completing the Work and proceeding under this article exceeds the unpaid balance of the Subcontract Sum. If Contractor's expense is less than such amount, then Subcontractor shall receive as its entire and sole compensation, its actual, 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 Subcontract Sum less Contractor's costs. Subcontractor hereby waives all claims against Contractor for consequential damages, profit and overhead on unperformed work, rent on equipment or other damages related to any proceeding which Contractor institutes under this article.

**9.5 Termination for Convenience:** Contractor may, at its option, terminate for convenience the Work in whole or 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 Work on the date and to the extent specified in the notice and place no further orders or subcontracts pertaining to same, other than as may be required for completion of such portion of the Work that is not terminated; (b) promptly obtain cancellation upon terms satisfactory to Contractor on all purchase orders, subcontracts rentals, or any other agreements existing for the performance of the terminated work or assign those agreements to Contractor as directed; (c) assist 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 agreement; and (d) complete performance of the Work which is not terminated. Upon any such termination for convenience, Contractor shall have no liability for consequential damages, including loss of anticipated profits or overhead on unperformed work. As its sole right and remedy, Subcontractor shall be paid the following: (a) all amounts due and not previously paid to Subcontractor for the Work completed in accordance with this agreement 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 Work under subcontracts or purchase orders; and (c) reasonable costs incurred in demobilization and the disposition of residual material, plant and equipment. In the event any termination of the Subcontractor for cause 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 paragraph. Subcontractor's warranty, indemnity and arbitration obligations shall survive termination of this agreement, whether in whole or in part, or for cause or convenience.

#### **10. Dispute Resolution:**

**10.1** This agreement shall be governed by the laws of the State of Texas. All disputes arising out of or relating to the Work and/or this agreement shall be resolved by litigation or binding arbitration at the sole discretion of Teal in Houston, Texas, in accordance with the Construction Industry Arbitration Rules then obtaining, of the American Arbitration Association. Subcontractor agrees to pay all of Contractor's attorney's fees, expert witness fees and all other arbitration and litigation costs, if Contractor is the prevailing party. Notwithstanding the foregoing arbitration agreement, Subcontractor agrees, at Contractor's sole option, to participate in and be joined as a party to any other arbitration proceeding or lawsuit to which Contractor is a party, wherever located and administered under any applicable rules or organizations, if any party thereto alleges that Subcontractor is a necessary party thereto or is responsible in whole or in part for any alleged damage or relief sought.

**10.2** Provided, however, and notwithstanding the foregoing, in any arbitration or litigation in any venue between Contractor and Owner which involves Subcontractor's work or performance hereunder, or any alleged breach, failure to perform, tort, error or omission of any kind, directly or indirectly, Subcontractor consents to jurisdiction and being joined and made a party thereto, in which case the prime contract dispute resolution provisions applicable therein shall control. If arbitration between Contractor and Subcontractor has already commenced, said arbitration shall be abated in favor of having the dispute resolved instead in the arbitration or litigation with Contractor and Owner.

**10.3 Notwithstanding any provisions in the Subcontract to the contrary, this Amendment shall control and supersedes all conflicting provisions in the event of litigation or arbitration between Contractor and Owner involving Subcontractor's work, directly or indirectly. The dispute resolution provisions in the prime Contract Documents signed by Owner and Contractor also will control the resolution of any disputes between Contractor and Subcontractor. Subcontractor agrees to be a party in any mediation, litigation or arbitration in which Contractor is a party relating to this Project or otherwise relating to Subcontractor's performance or failure to perform, directly or indirectly, and waives all venue, dilatory, and jurisdictional defenses which would prevent or excuse Subcontractor from being made a party to such proceedings. To the extent that Contractor waives trial by jury, Subcontractor also waives trial by jury. Subcontractor assumes toward Contractor all obligations which Contractor has undertaken to Owner and others in the prime Contract Documents, to the extent applicable to Subcontractor's portion of the Work, including, but not limited to, indemnity, insurance, and warranty, and Subcontractor will likewise bind all Sub-subcontractors of Subcontractor, if any, to these same provisions and obligations. Contractor has made the prime Contract Documents available to Subcontractor for a thorough review. Subcontractor accepts this Amendment as a material term of the Subcontract and has priced the Subcontract accordingly. The prime Contract Documents are incorporated herein by reference and are made a part of this Subcontract.**

**THIS AGREEMENT CONTAINS INDEMNIFICATION  
AND ALTERNATE DISPUTE RESOLUTION PROCEDURES:  
READ IT CAREFULLY BEFORE SIGNING**

SUBCONTRACTOR:

CONTRACTOR:

**Teal Construction Company**

By: \_\_\_\_\_  
Printed Name

By: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

TEAL PROJECT TEAM CONTACT NAME AND EMAIL:

(Project Manager)

(Project Manager Email)

(Project Coordinator)

(Project Coordinator Email)

accountspayable@tealcon.com (Accounting Email)

(Superintendent)

(Superinteendent Email)