

**MASTER SUBCONTRACT AGREEMENT**  
**MA--2014**

This Master Subcontract is effective the 22<sup>nd</sup> Day of January, 2014, by and between ROBERT T. PIZZANO GENERAL CONTRACTORS, Inc. hereinafter referred to as "Contractor" and \_\_\_\_\_, hereinafter referred to as "Subcontractor."

Subcontractor acknowledges that Contractor may issue Subcontract Addendum in connection with construction projects to which Subcontractor has agreed to perform work for Contractor. This Master Subcontract shall govern and supersede any and all inconsistent terms and conditions appearing on any document issued by Contractor or Subcontractor.

**SECTION 1**  
**DESCRIPTION OF WORK**

**1.01.** Contractor hereby engages Subcontractor and Subcontractor hereby agrees:

**A.** To provide all of the labor, equipment, tools, scaffolding, materials, supplies, services and supervision necessary to perform and complete all of the construction work described in the Subcontract Addendum and all other work that may be required by Owner or Contractor from time to time (hereinafter referred to as the "Work") in a timely manner, time being of the essence for the performance of Subcontractor's Work;

**B.** To perform all of the Work in accordance with all applicable laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements, in a first class workmanlike manner, in accordance with the best modern methods, and to the complete satisfaction of Contractor and Owner;

**C.** To provide all facilities, permits, supervision, labor, services, materials, tools, shop drawings, plans, equipment, supplies and all things; reasonably necessary for or incidental to the performance of the Work;

**D.** To remove all of its tools, equipment, supplies, and surplus materials upon completion of the work;

**E.** To clean, remove and repair any damage, soiling, staining, or dirt caused by the Work and occurring in parts of the Work on a regular or daily basis as necessary on the job; and

**F.** To perform such cleaning as shall be necessary to leave the Project "broom clean" on a daily basis.

**1.02** Subcontractor shall perform all of the Work as shown and described in, and in strict accordance with (a) such general and specific conditions, plans, blueprints, and specifications including, but not limited to those listed in the Subcontract Addendum; (b) the terms and provisions of the general contract between Owner and Contractor which is incorporated herein by reference; (c) such shop drawings and plans as Owner or Contractor may require; (d) the Project Schedule including all subsequent modifications by Contractor; and (e) such additional written conditions, addenda and schedules as may be issued by Contractor. All such Contract Documents are available for examination by Subcontractor. The Subcontract Addendum shall be deemed to include and incorporate all of the foregoing documents as well as the terms and conditions hereof.

**1.03** To the extent the Contract Documents reveal any ambiguity or error relative to the scope of work of Subcontractor, Subcontractor shall specify in writing to Contractor each such ambiguity, or error, prior to the commencement of its work. Should Subcontractor fail to so comply, it proceeds at its own risk and will be solely liable for any and all costs incurred by it or any other person on account of its failure to comply herewith.

**1.04** Subcontractor agrees that to the extent that Contractor may be obligated or responsible to Owner, or that Owner may have rights and

remedies against Contractor by reason of its general contract or other agreement, Subcontractor shall assume the same obligations and responsibilities to Owner and Contractor, and they shall have the same rights and remedies against Subcontractor. Subcontractor agrees to be bound to Contractor to the same extent as Contractor is bound to Owner by the final decision of any court or arbitration panel, whether or not Subcontractor is a named party in any such proceedings.

**1.05** Subcontractor represents and acknowledges that it has independently and carefully examined, investigated, evaluated and understands (a) this Agreement and all documents comprising this Agreement; (b) the nature, locality and site of the Work; and (c) the conditions and difficulties under which the Work must be performed. Subcontractor therefore acknowledges that it enters into this Agreement solely in reliance upon his own examinations, investigations, evaluations and understandings, and has not relied upon any representations, whether oral or written, of Owner, Contractor, or any person who is not an employee, representative or agent of Subcontractor.

**1.06** Subcontractor hereby assumes the entire responsibility and liability for all Work, supervision, labor and materials provided hereunder, whether or not erected in place, and for all plant, scaffolding, tools, equipment, supplies and other things provided by Subcontractor until final acceptance of the entirety of the Work by the Owner. In the event of any loss, damage or destruction thereof from any cause, Subcontractor shall be liable therefore, and shall repair, rebuild, and make good said loss, damage or destruction at Subcontractor's cost, subject only to the extent that any net proceeds are payable under any builder's risk property insurance that may be maintained by Owner or Contractor, if any.

**SECTION 2**  
**PRICE AND PAYMENT**

**2.01** The sum to be paid by Contractor to the Subcontractor for the satisfactory performance and completion of the Work and all of his duties, obligations and responsibilities under this Agreement shall be subject to additions and deductions as herein provided. The Price shall be deemed to include all freight charges, transportation costs, and Federal, State and Local taxes based on labor, services, materials, equipment or goods provided by Subcontractor.

**2.02** Contractor shall pay Subcontractor the Price in accordance with the terms and conditions set forth in the Subcontract Addendum. If not stated in the Subcontract Addendum, subject to the terms and conditions hereof, Contractor agrees to pay Subcontractor for the satisfactory completion of Subcontractor's work, monthly payments of Ninety (90%) Percent for the work performed for which all necessary approvals have been obtained. Subject to the conditions herein, payments will be due on or about the 30<sup>th</sup> of the month following the month in which payment is received by Contractor from the Owner. Subcontractor's payment requests shall be submitted on forms acceptable to Contractor and in accordance with any approved schedule of values with such additional detail or substantiation as may be requested by Contractor. As an express condition precedent to payment, Subcontractor shall provide monthly completed lien and claim waivers and affidavits on its behalf as well as its sub-subcontractors and suppliers on such forms acceptable to Contractor in an amount equal to One Hundred (100%) Percent of all prior partial payments paid to Subcontractor. Under no circumstances shall Subcontractor be paid unless Owner has accepted the Work, or the portion thereof for which Subcontractor seeks payment as satisfactory, and unless Owner has paid Contractor therefor, which payment shall be an express condition precedent to any obligation of Contractor to pay for

work, including changes and extra work hereunder.

**2.03** Subcontractor agrees that if and when requested by Contractor, it shall furnish such information, evidence and substantiation as Contractor may require concerning (a) the nature and extent of all obligations and liabilities incurred by Subcontractor for or in connection with the work; (b) all payments made by the Subcontractor thereon; and (c) all amounts thereof remaining unpaid, to whom those unpaid amounts are due, and the reasons for Subcontractor's nonpayment of those amounts.

**2.04** If (a) any claim or lien is made or filed with or against Contractor, the Owner or the Premises by any person claiming that the Subcontractor, or any subcontractor or other person under it, has failed to make payment for any labor, services, material, equipment, taxes, or other items or obligations furnished or incurred for or in connection with the Work; (b) at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, Contractor or the Owner might become liable and which is chargeable to the Subcontractor; (c) the Subcontractor, or any subcontractor or other person under it, delays or causes damage to the Work or to any other work on the Premises; (d) the Subcontractor fails to perform or is otherwise in default under any of the terms or provisions of this Agreement; (e) Contractor has a reasonable doubt that the Subcontract work can be completed for the remaining balance then unpaid; (f) the Owner withholds payment or otherwise asserts any claim or backcharge against Contractor which, in whole or in part, may be the responsibility of Subcontractor; or (g) the Subcontractor fails to repair or otherwise cure any defective part of the Work immediately upon either oral or written notice from Contractor or Owner, then Contractor shall have the right to backcharge or to retain from any payment then due or thereafter to become due under this Agreement, or any other contracted arrangement between the parties, an amount which it deems sufficient: (1) to satisfy, discharge by payment or bond, or otherwise defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon; (2) to make good or discharge any such debt, nonpayment, delay, damage, failure, or default; and (3) to compensate Contractor and the Owner for and indemnify them against any and all losses, liability, damages, costs, and expenses, including legal fees, and disbursements, which may be sustained or incurred by either or both of them in connection therewith. Contractor shall have the right to apply and charge against the Subcontractor so much of the amount retained as may be required for the foregoing purposes. If the amount retained is insufficient therefor, the Subcontractor shall be liable for the difference and pay the same to Contractor upon demand.

**2.05** No payment (final or otherwise) made under or in connection with this Agreement shall be construed to be either (a) evidence of the performance of the work or the performance of this Agreement, in whole or in part; (b) an acceptance of defective, faulty, or improper work or materials; or (c) a release of the Subcontractor from any of its obligations under this Agreement. Entrance and use by the owner shall not constitute acceptance of the Work or any part thereof. Final payment shall not be made to Subcontractor until such time as the Subcontractor's work has been approved by the Owner, Owner's representatives and Contractor; Subcontractor has furnished to Contractor all written materials that pertain to Subcontractor's work, including as-built drawings, plans, operations and maintenance manuals, warranties, etc.; Subcontractor has furnished to Contractor and Owner a final Waiver of Lien and Release of all claims of any nature arising out of the Subcontract Addendum and this Master Subcontract; Subcontractor has complied with all requirements of the Purchase Order and this Master Subcontract; Subcontractor has furnished Contractor satisfactory evidence that Subcontractor has paid all of its obligations and those claiming through Subcontractor have waived their lien and/or bond claims; and, Contractor has received payment from the Owner, said payment being a condition precedent to any payment by Contractor to Subcontractor.

### **SECTION 3** **CHANGES AND CLAIMS**

**3.01** Contractor may, at any time, unilaterally or by agreement with Subcontractor, and without notice to any sureties, make changes in the Work. Any unilateral order, or agreement, under this Paragraph 3.01 shall be in writing, unless an emergency requires Subcontractor to proceed without a written order. Subcontractor shall perform the Work as changed without delay and in accordance with Contractor's direction.

**3.02** Subcontractor shall submit in writing to Contractor, along with substantiating evidence deemed satisfactory by Contractor, any claims for adjustment in the Subcontract Price, schedule or other provisions of the Subcontract claimed by Subcontractor for changes directed by Owner, or for damages for which the Owner is liable, or as a result of deficiencies or discrepancies in the Contract Documents ("Owner Claims"), at least five (5) business days prior to the time specified in the Contract Documents, otherwise such claims are waived. Contractor shall process said Owner Claims according to the provisions of the Contract Documents either directly or authorize Subcontractor to present to Owner, in Contractor's name, if permitted. If such dispute is prosecuted or defended by Contractor, Subcontractor agrees to furnish all documents, statements, witnesses, and other information required, and to pay for all costs, including attorneys' fees, incurred in connection therewith. Subcontract adjustments shall be made only to the extent that Contractor receives relief from or must grant relief to Owner and then only based on Subcontractor's allocable share of such relief. Subcontractor's allocable share shall be determined by Contractor, after allowance of Contractor's normal overhead, profit and other interest in any recovery, by making a reasonable apportionment, if applicable, among Subcontractor, Contractor and other subcontractors or persons with interests in the adjustment. In no event shall the Contractor become or be liable to the Subcontractor on account of any such Owner Claims in excess of the amount actually received by Contractor from Owner on account of such claim. It is expressly acknowledged that receipt of payment by Contractor from Owner on account of any such Subcontractor's Owner Claims is an express condition precedent to any obligation of Contractor to pay such claims. This paragraph will also cover other equitable adjustments or other relief allowed by the Contract Documents.

**3.03** For changes ordered by Contractor independent of Owner or the Contract Documents, Subcontractor shall be entitled to an equitable adjustment of the Subcontract Price or Project Schedule, or both, to the extent that impact can be substantiated to the Contractor's satisfaction. Subcontractors entitlement to an equitable adjustment is conditioned upon Subcontractor providing Contractor with written notice of its claim within ten (10) days of the circumstances giving rise to its claim, otherwise any such claim shall be waived.

**3.04** Pending resolution of any claim, dispute or other controversy, nothing shall excuse Subcontractor from proceeding with prosecution of the Work.

**3.05** Subcontractor shall not be entitled to receive any compensation for extra work or materials or for changes of any kind regardless of whether the same was ordered by Contractor or any of its representatives unless a change order therefore has been issued in writing by Contractor. If extra work is ordered by Contractor and Subcontractor performs such work without a written order, Subcontractor shall be deemed to have waived any claim for compensation for such extra or change order of work.

**3.06** If requested by Contractor, Subcontractor shall within seven (7) calendars days submit a reasonable price quotation for proposed changes. If Subcontractor does not and Contractor is required to submit a price

quotation to Owner which includes a Subcontract change, Contractor shall use its best estimate of the proposed change as it affects Subcontractor in its quotation to Owner, which estimate shall be the maximum equitable adjustment due to Subcontractor.

#### **SECTION 4** **TIME TO COMPLETE THE WORK**

**4.01** Subcontractor shall commence the Work as soon as notified by Contractor and shall thereafter furnish, at all times, sufficient skilled and unskilled workers, equipment, supplies, materials and services to perform and complete the several portions and whole of the Work on or before the times set forth in and in accordance with Construction Schedule or Contractor directive.

**4.02** Subcontractor shall, if so directed by Contractor in writing, work overtime and, provided Subcontractor is not in default under this Agreement, the Price shall be increased by the actual additional wages paid by Subcontractor, if any, at such rates as Contractor has previously approved in writing and other direct levies on such additional wages if required to be paid by Subcontractor. If, however, the progress of the Work or any other part of the construction Work at the Premises is delayed by any fault, neglect, act, or failure to act of the Subcontractor, then Subcontractor shall (a) work such overtime at its own cost and expense as may be necessary or as Contractor may require to make up for time lost and to avoid delaying the completion of the Work and other construction work at the Premises; and (b) be liable to Contractor and Owner for all additional cost, expense, consequential damage, liability or liquidated damages incurred or caused by such delay, including attorneys' fees.

**4.03** If the Subcontractor is delayed in commencing, prosecuting or completing the Work by reason of fire, explosion, acts of God, acts of the public enemy, war, civil disturbance, act of any government (de jure or de facto) or any agency or official thereof, unusually severe weather, quarantine or restriction, epidemic, or catastrophe, then Subcontractor's sole remedy shall be an extension of time to complete the Work for a period equivalent to the time lost by reason of any and all of the aforesaid, provided such extension is approved by Owner. However, Subcontractor shall not be entitled to any extension of time unless a claim therefor is made in writing to Contractor within forty-eight (48) hours after the commencement of such claimed delay and Contractor and Owner shall approve such extension.

**4.04** The Subcontractor's date of Commencement is the date from which the Contract Time is measured; it shall be the date stated in the Subcontract Addendum, unless a different date is stated or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.

**4.05** Time is of the essence in connection with the performance of all Subcontractor's obligations.

#### **SECTION 5** **OTHER OBLIGATIONS**

**5.01** Subcontractor is an independent contractor and shall neither represent itself to be, nor be construed as an employee, representative, agent, partner or joint venture of Contractor.

**5.02** (a) Subcontractor shall defend, indemnify and save harmless Contractor and Owner from any and all claims and liabilities for, among other things, property damage, including loss of use, bodily injury, personal injury, including death, and attorney's fees arising out of or resulting from or in connection with the performance or failure of

performance of Subcontractor's Work. Said indemnification shall be insured without interruption by an insurance carrier rated "A minus" (A-) or better by A.M. Best for limits of not less than those required by the Owner Contract Documents or those listed on SCHEDULE "A", whichever is greater, and shall include: vehicular insurance for all vehicles used by Subcontractors, its employees, agents, subcontractor's and suppliers on the Project in limits of not less than those required by Contractor; Statutory Workmen's Compensation and Employer's Liability Insurance; and Commercial General Liability, "occurrence" form, including coverage for explosion, collapse and underground perils insurance. General Liability (both primary and umbrella policies) Insurance coverage must include contractual liability, completed operations and broad form property damage. In any and all claims against Contractor or any of its agents or employees arising in connection with any employee of Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone who's acts Subcontractor may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation, on the amount or type of damages, compensation or benefits payable by or for Subcontractor under Worker's Compensation Acts, Disability Benefit Acts, or other employee benefit acts. Subcontractor's obligations of indemnity herein shall continue in full force and effect not withstanding the termination of the Subcontract Addendum or this Master Subcontract.

(b) The Owner, Contractor and their respective directors, officers, agents and employees must be named as additional insured's under the general (primary and umbrella) and automobile liability policies for ongoing and completed operations. An Additional Insurance Endorsement providing for coverage of claims which "arise out of" the Subcontractor's work shall be utilized. However, any such endorsement providing the more limited wording, such as "caused by", "resulting from" or "with respect to" will not be acceptable unless such wording is reviewed and approved by Contractor. Such policies must be endorsed to state that with respect to these additional insureds, coverage provided under such policies shall be considered primary, not contributing with or in excess of any similar coverage otherwise available to such additional insureds. All policies obtained by Subcontractor must be endorsed to waive all rights of subrogation against the Owner, Contractor and their respective directors, officers, agents, employees, parent or subsidiary or affiliate companies or corporations.

(c) Policies shall not be cancelled or allowed to lapse without thirty (30) days prior written notice and substitution of new policies being issued in compliance with this provision before lapse or cancellation of existing policies.

(d) Subcontractor's Certificates of Insurance shall be furnished prior to the commencement of Work and shall be a further condition precedent to any payment hereunder.

**5.03** Subcontractor shall pay all employee benefits and all payroll, sales, use, property and income taxes (including penalties and interest) that may be assessed or assessable against it in connection with Subcontractor's performance of the Work. Contractor and Owner shall have no obligation to pay such benefits or taxes on behalf of Subcontractor.

**5.04** Subcontractor shall keep the Project free and clear of all waste materials, packaging materials and other rubbish accumulated in connection with Subcontractor's performance of the Work, and shall deposit the same in dumpster furnished and removed by Subcontractor, or remove the same from site on a daily basis, unless other arrangements have been made with Contractor or Owner. For each occasion Contractor is required to clean-up for Subcontractor, a minimum charge of \$200.00 shall be assessed against the Subcontractor.

**5.05** In the event Contractor shall so request, Subcontractor shall furnish

Contractor performance and payment bonds in such amounts, form, and from a surety as Contractor may, in its sole discretion, deem appropriate, not to exceed the amount of Subcontractor's contract.

**5.06** Subcontractor shall maintain good order and behavior among its employees while on the Project. Upon Owner's or Contractor's written direction, Subcontractor shall remove or dismiss any of its employees creating a disturbance or otherwise unacceptable to Owner or Contractor.

**5.07** No construction equipment may be brought onto the Project or set up on the Project without Contractor's authorization and in accordance with such conditions as Contractor may specify.

**5.08** Subcontractor shall comply with Contractor's reasonable requests and directions in order to facilitate the efficient coordination of the Work with any other work the Owner or Contractor may cause to be performed on the Project.

**5.09** In the event Contractor or Owner determines any portion of the Work or materials are unsound, defective, improper, or in any way fail to conform to this Agreement, Subcontractor shall, at its sole cost and expense, remove such Work or materials from the Premises and replace the same with proper and satisfactory Work and materials.

**5.10** To the fullest extent permitted by law, Subcontractor hereby waives and releases all liens or right of liens now existing or that may hereafter arise for any and all work or labor performed or material furnished under this Subcontract, upon said Project, or monies due or to become due to Contractor, and agrees to furnish a good and sufficient waiver of lien in proper form for filing from every person or entity furnishing labor or materials for this Project under Subcontractor. Subcontractor, at its sole cost and expense, shall within five (5) days of demand by Contractor cause any lien filed by any lower tier Subcontractor, materialman or vendor to be discharged by posting a bond with the appropriate authority.

**5.11** Subcontractor agrees that it will furnish Contractor with a list of subcontractors/suppliers to be used during this Project. Subcontractor further agrees to provide Contractor Release of Liens and insurance certificates for such policies deemed acceptable by Contractor in its discretion, from its subcontractors/suppliers prior to any payment to Subcontractor. Subcontractor also agrees it will furnish any Release of Liens required by the Owner.

## **SECTION 6**

### **WARRANTIES AND INDEMNIFICATION**

**6.01** In addition to such other warranties as Owner may require of Contractor or Subcontractor, Subcontractor warrants that all labor and services have been performed in a workmanlike manner, and in accordance with the best modern methods and practice, all applicable manufacturer's instructions and standards, and the requirements of all applicable building, fire and safety codes. Subcontractor further warrants that all materials installed as a part of the Work are new and conform to the requirements specified in this Agreement.

**6.02** In the event the Work is found to be defective, Subcontractor shall, at Contractor's direction, immediately remove all defective Work and either replace or repair the defective Work without cost to Contractor or Owner. Subcontractor shall pay (a) for all damage to the Premises; (b) for all damage that Owner or Contractor may sustain resulting from defects in the Work; (c) all cost and expense necessary to correct, remove, replace and/or repair the Project or any other property which may be damaged as a result of defects in the work; and (d) all damages, losses, costs and expenses (including attorney's fees) that Contractor may incur in enforcing Subcontractor's warranty.

**6.03** Subcontractor hereby warrants good title to all materials, supplies and equipment to be installed or incorporated in the Project pursuant to this Subcontract, and agrees to deliver possession of the premises together with all improvements thereon free and clear of any claims, liens, charges or encumbrances.

**6.04** Subcontractor shall indemnify, defend and hold Contractor and Owner harmless against all actions, claims, costs, damages (including attorney's fees), expenses, liabilities and obligations that are in any way caused by, the result of, or associated with Subcontractor's performance of or failure to perform the Work or any obligation under this Agreement.

## **SECTION 7**

### **DEFAULT AND REMEDIES**

**7.01** Subcontractor shall be in default hereunder in the event of the occurrence of any one of the following:

**A.** If in Contractor's sole opinion, Subcontractor fails to provide sufficient skilled or unskilled workers, equipment, tools, supplies, services, supervision, or materials of proper quality and quantity in order to perform the Work safely, properly, promptly, timely and diligently;

**B.** If Subcontractor fails in any other way to perform the Work properly, promptly and diligently;

**C.** If Subcontractor stops, delays or otherwise interferes with or damages the Work or any other construction work of Contractor or other contractors or subcontractors at the Premises;

**D.** If in the course of performing the Work Subcontractor damages the Owner's property, Contractor's property or any other work that may be in progress at the Premises;

**E.** If Subcontractor fails to perform and abide by any of the terms, provisions and conditions of this Agreement; or

**F.** If a proceeding is commenced under any bankruptcy, insolvency or debtor relief law of the United States or of any State by or against Subcontractor.

**7.02** In the event of a default by Subcontractor as defined in Section 7.01 of this Agreement, Contractor shall have the immediate right to exercise at any time, any or all of the following remedies:

**A.** To perform and furnish, through itself or through others, all the labor, equipment, tools, supplies, services, materials or other Subcontractor obligation under this Agreement as necessary or advisable in Contractor's discretion, to charge the cost thereof to Subcontractor, and to deduct the cost thereof from any monies due or to become due to the Subcontractor under this Agreement; or any other agreement between Subcontractor and Contractor;

**B.** To terminate the employment of Subcontractor for all or any portion of the Work;

**C.** To enter the Premises and take possession, for the purpose of completing the Work, of all materials, equipment, tools, and other items thereon, and to employ any person or persons to complete the Work, all without obligation or liability to Subcontractor, but at Subcontractor's cost and expense; and

**D.** To charge Subcontractor with such attorney's fees, charges, costs, expenses and other damages or losses (including lost profits) as Contractor shall incur or sustain in enforcing its rights hereunder or as a result of Subcontractor's default.

**E.** In addition to those sums identified in paragraph 7.02.D., Contractor shall be entitled to a markup of 10% of all such sums to cover administrative costs.

**7.03** In the event of a default by Subcontractor, Subcontractor shall not be entitled to receive any further payment under this Agreement until the Work shall be wholly and satisfactorily completed as required by this Agreement.

**7.04** The foregoing remedies shall be cumulative and in addition to all the other remedies available to Contractor and/or the Owner in the event of Subcontractor's default.

**7.05** If the Owner terminates any portion of the prime agreement with Contractor which includes all or any portion of the Work to be performed by Subcontractor, then the Subcontract Addendum shall be similarly terminated and Subcontractor shall be entitled to such relief as may be granted to Contractor on Subcontractor's behalf consistent with the terms and conditions of this Master Subcontract.

**7.06** In the event of termination for default or any other reason whatsoever, the provisions of this Master Subcontract concerning the Subcontractor's liability, indemnity and insurance obligations shall remain in full force and effect in accordance with this Agreement.

**7.07 Arbitration / Litigation.** Any controversy or claim arising out of or relating to this Agreement shall be instituted (whether litigation or arbitration) in the State in which the Project is located. Contractor, in its sole discretion, may require any claim or controversy be submitted to arbitration in accordance with the rules of the American Arbitration Association, and judgment on the award rendered in such arbitration may be entered in any Court having jurisdiction thereof.

**A.** The parties agree that as an express condition precedent to the Subcontractor's right to institute any judicial proceeding or file a Demand for Arbitration (if directed by Contractor), the Subcontractor is required to present in writing evidence of such claim or dispute to the Contractor, including legally sufficient evidence regarding liability, causation and damages, to enable the Contractor to render a decision with respect to such claim or dispute.

**B.** No judicial proceeding or Demand for Arbitration (if directed by Contractor) of any such claim or dispute by Subcontractor may be made until the earlier of; (1) the date on which Contractor has issued its written decision regarding the substance of Subcontractor's claim; or (2) the sixtieth (60) day after Subcontractor has presented its evidence to Contractor.

**C.** In the event disputes between Contractor and Subcontractor involve, in whole or in part, disputes between Contractor and Owner, in the sole discretion of Contractor, any disputes between Contractor and Subcontractor shall be stayed pending the conclusion of any dispute resolution proceeding between Contractor and Owner.

**D.** Unless otherwise directed by Contractor or agreed in writing, Subcontractor shall diligently continue with Subcontractor's Work in accordance with the schedule during any dispute resolution proceeding. Contractor shall continue to make all non-disputed payments otherwise due under this Agreement.

## **SECTION 8** **MISCELLANEOUS**

**8.01 Entire Agreement.** This Agreement is the final, complete, and exclusive statement of the mutual understanding of the parties and it supersedes all previous written and oral representations, agreements and communications relating to the subject matter of this Agreement. To the extent that Contractor's representatives may have made oral or written statements about the goods or services to be provided under this Agreement, such statements do not constitute warranties, shall not be relied upon by Subcontractor, are not binding upon Contractor, and are not part of this Agreement. This Agreement may be changed or modified

only in writing and signed by the parties. This provision is not subject to waiver.

**8.02 Definitions.** As used in this Agreement, (a) the term "person" shall include an individual, corporation, partnership, association and organization; (b) the term "Subcontractor" shall include Subcontractor's officers, directors, agents, servants, representatives, employees, subcontractors, materialmen or vendors; and (c) the term "Owner" shall include any architect, engineer, representative of or other person hired by the Owner.

**8.03 Notices.** All notices required or permitted hereunder shall be given in writing and shall be deemed to have been given upon delivery in person, or upon the third day after mailing by first class, certified or registered mail with postage prepaid. For the purpose hereof, the addresses of parties hereto (until written notice or a change thereof shall have been given in the manner provided herein) shall be as set forth on the Subcontract Addendum.

**8.04 Governing Law.** It is agreed that the laws of the jurisdiction where the Project is located shall govern without reference to the place of execution.

**8.05 Waiver of Breach.** The failure or delay by Contractor or Owner at any time to require performance of any provision or to avail itself of any remedy in this Agreement shall in no way affect its right thereafter to enforce the same provision or remedy, nor shall the waiver by Contractor of any default or breach of any provision hereof be taken or held to be a waiver of any succeeding default or breach of such provision, or as a waiver of the default or provision itself.

**8.06 No Assignment.** Unless consented to by Contractor in writing, neither this agreement nor the Work shall be assigned, or subcontracted by Subcontractor in whole or in part. Any such assignment subletting or subcontracting without Contractor's prior written consent shall be null and void, and Contractor may withhold or condition its consent in its sole discretion. Contractor's consent to an assignment or subcontract shall not relieve or release Subcontractor from its obligations under this Agreement.

**8.07 Termination for Convenience.** Contractor shall have the right to terminate this Agreement or any Subcontract Addendum for its own convenience by giving notice of termination effective immediately upon providing said notice to Subcontractor. In the event of Termination for Convenience, the Subcontractor shall be paid the lesser of: (1) the actual cost for work and labor in place, plus ten percent (10%); (2) a pro rata percentage of the Subcontract Price equal to the percentage of completion of the Subcontractor's work as determined by Contractor; or (3) the amount received by Contractor from Owner for Subcontractor's Work. The Subcontractor's remedy under this paragraph shall be exclusive and no circumstances shall Subcontractor be entitled to any anticipated profits on any Project. Any unjustified termination of Subcontractor for cause shall be considered a termination for convenience.

**8.08 Restrictions.** The Subcontractor shall not deal with or furnish work in any capacity, directly or indirectly, for the Owner of the Project, or for any other contractors or subcontractors performing work at the Project, at any time during the term of the Project and for a period of eighteen (18) months following the project completion date, without the express written approval of the Contractor. In addition to any remedy available to Contractor under the law or this Subcontract, including recovery of its attorney's fees, Subcontractor agrees to pay Contractor all profits generated from any work undertaken in violation of this restriction, or twenty percent (20%) of the total contract value for any such work, whichever amount shall be greater.

**8.09 Safety.** The Contractor makes no representation with respect to the physical conditions or safety of the Project Site. The Subcontractor shall, at its own expense, preserve and protect from injury its employees engaged in the performance of the Work and all property and persons which may be affected by its operations in performing the Work. The prevention of accidents to workers engaged in the Work and others affected by the Work is the responsibility of the Subcontractor and Subcontractor shall comply with all federal, state, labor and local laws, regulations and codes concerning safety as shall be applicable to the Work and to the safety standards established by Contractor during the progress of the Work. Subcontractor shall indemnify, defend, and hold harmless Contractor, Owner and their respective officers, directors, agents and employees from any costs, expenses or liability (including attorneys' fees, fines or penalties) resulting from failure of Subcontractor to comply with the aforesaid laws, regulations and codes.

**8.10 Presumption Arising from Authorship.** Both parties have had the opportunity to review this Master Subcontract with counsel and negotiate prior to execution. Therefore, there will be no presumption for or against either of the parties arising out of the drafting of this Master Subcontract.

**8.11 Equal Opportunity.**

a. In connection with the performance of work under this Subcontract, Subcontractor agrees not to discriminate against any employee or applicant for employment because of race, religion, sex, color or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and a selection for training, including apprenticeship. Subcontractor agrees to post hereafter, in conspicuous places, available for employees and applicants for employment, notices, prepared by Subcontractor, and approved by the government when required, setting forth the provisions of this paragraph 8.11.

b. Subcontractor shall permit access to its books, records, and accounts by representatives of ROBERT T. PIZZANO GENERAL CONTRACTORS, INC. or Owner for purposes of investigation to ascertain compliance with the provisions of this Agreement.

c. In the event of Subcontractor's noncompliance with the Equal Opportunity Provisions of this Master Subcontract, this Master Subcontract may be terminated for default.

d. Subcontractor shall include the provisions of this paragraph 8.11. in every lower-tier subcontract and purchase order. The requirements of this paragraph 8.11. shall be in addition to any Equal Opportunity Provisions of the Contract Documents.

**8.12 Information Required by Owner.** In addition to the information to be provided by Subcontractor pursuant to other provisions of this Subcontract, Subcontractor hereby agrees to provide, at no additional cost to ROBERT T. PIZZANO GENERAL CONTRACTORS, INC., and in a prompt and timely fashion so as not to disrupt the performance of this Subcontract or the contract between ROBERT T. PIZZANO GENERAL CONTRACTORS, INC. and Owner, any and all additional information relating to this Subcontract which is required either by the Contract Documents or by law.

**8.13 Severability and Waiver.** The partial or complete validity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Subcontract, or to exercise

any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

**8.14 Patents and Royalties.** Except as otherwise provided by the Contract Documents, Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented materials in the work. Subcontractor shall defend all suits or claims for infringement of any patent rights that may be brought against ROBERT T. PIZZANO GENERAL CONTRACTORS, INC. or Owner arising out of the Work, and shall be liable to ROBERT T. PIZZANO GENERAL CONTRACTORS, INC. and Owner for all loss, including all costs, expenses and attorneys' fees, on account thereof.

**8.15 Interpretation of Contract Documents.**

a. It is the intention of the parties that all the terms of this Subcontract are to be considered as complementary. However, in the event that such an interpretation is not possible, the order of precedence of the documents forming this Subcontract shall be (1) modifications of any documents forming part of this Subcontract; (2) this Subcontract, unless the Contract Documents impose a higher standard or greater requirement on Subcontractor, in which case the Contract Documents shall control; (3) the Contract Documents, unless the provisions of (2) apply.

b. In the event of a conflict between or among modifications, the later in date shall prevail; in the event of a conflict between or among the terms of this Subcontract, the higher standard or greater requirement for Subcontractor shall prevail; and in the event of a conflict between or among the terms of the Contract Documents, the higher standard or greater requirement for Subcontractor shall prevail.

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have hereunto executed this Master Subcontract, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Robert T. Pizzano General Contractors, Inc.**

\_\_\_\_\_

\_\_\_\_\_

Witness

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

Title:

Date:

\_\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_

Witness

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

Title:

Date:

**SCHEDULE "A"**

1. Worker's Compensation Employer's Liability	<b>STATUTORY AMOUNTS</b> \$ 1,000,000.00 Bodily Injury Each Accident \$ 1,000,000.00 Bodily Injury by Disease \$ 1,000,000.00 Bodily Injury Each Employee
2. Commercial General Liability	<b>BODILY INJURY &amp; PROPERTY DAMAGE- COMBINED</b> \$ 1,000,000.00 Each Occurrence \$ 2,000,000.00 Aggregate
Including: Premises / Operations Independent Contractors Products & Completed Operations Broad Form Property Damage Contractual Liability Explosion & Collapse Hazard Underground Hazard Personal Injury with Employment Exclusion Deleted Fire Damage (\$50,000.00)	
3. Commercial Automobile Liability	<b>BODILY INJURY &amp; PROPERTY DAMAGE- - COMBINED</b> \$ 1,000,000.00 Each Occurrence
Including: Owned, Hired, and Non-Owned Vehicles and Other Mobile Equipment	
4. Excess Liability	<b>BODILY &amp; PROPERTY DAMAGE – COMBINED</b> \$ 3,000,000.00 Each Occurrence \$ 3,000,000.00 Aggregate
Umbrella Form or Other than Umbrella	

Contractor, Owner and/or their assigns shall be identified as additional insureds on all Subcontractor policies other than worker's compensation with respect to liability arising out of the named insured's operations concerning the Project and shall be extended to include the additional insureds as insureds for completed operations coverage. Such additional insured coverage shall be primary and non-contributory and shall not be modified or terminated without thirty (30) days advance written notice to Contractor by Subcontractor.

All rights of subrogation shall be waived by Subcontractor's insurers with respect to claims against the Contractor, Owner, their directors, officers, agents, employees, and any parent, subsidiary or affiliated entity.

