

**SUB CONTRACT AGREEMENT**

A Subcontract Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between AKM, L.L.C., VOLKS CONSTRUCTORS DIVISION (hereinafter referred to as the "**Contractor**"), with its principal place of business located at 17474 Old Jefferson Highway, Prairieville, Louisiana 70769, and \_\_\_\_\_ (hereafter referred to as the "**Subcontractor**"), with its principal place of business located at \_\_\_\_\_, for the following project:

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**TERMS OF THE AGREEMENT**

The Contractor and the Subcontractor hereby agree as set forth below:

**ARTICLE 1 SUBCONTRACT DOCUMENTS**

1.1 The Contract agreed to and entered into this day between the Contractor and the Subcontractor consists of:

- A. This Agreement,
- B. The Prime Contract, consisting of the Agreement between the Owner and the Contractor and all contract documents defined therein, including Conditions of the Contract, Drawings, Specifications, Addenda and/or Modifications (whether issued before or after the execution of this agreement), and any other Contract Documents. The Subcontractor shall be furnished copies of the Prime Contract upon written request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.
- C. Modifications to this Subcontract issued after execution of this Agreement.
- D. Other Documents, if any, forming part of the Subcontract Documents:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The above constitute the entire Contract between the Contractor and the Subcontractor, and hereinafter shall collectively be referred to as the "**Subcontract**." The Subcontract supersedes any prior negotiations, representations or agreements, whether written or oral. The Subcontract shall not be construed as a contractual relationship of any kind between the Owner and the Subcontractor, or between any persons or entities other than the Contractor and the Subcontractor.

1.2 The Contractor and Subcontractor shall be mutually bound by the terms of the Prime Contract to the extent that the provisions of the Prime Contract apply to the scope of work of the Subcontractor. The Subcontractor agrees to assume toward the Contractor all the obligations and responsibilities that the Contractor assumes under the Prime Contract toward the Owner, including compliance with all general and supplementary conditions and responsibilities of the Prime Contract, and the Contractor agrees to assume toward the Subcontractor all obligations and responsibilities that the Owner assumes under the Prime Contract toward the Contractor, unless any terms or conditions are substituted, amended, deleted, and/or added by this Agreement. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor which the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor which the Contractor, under such documents, has against the Owner, insofar as is applicable to this Subcontract.

1.3 Should any portion of the Prime Contract be inconsistent with the terms of this Agreement, this Agreement shall take precedence over, and govern, the contractual arrangement between the Contractor and the Subcontractor.

## ARTICLE 2      SCOPE OF WORK

2.1      The Subcontractor agrees to furnish all labor, materials, tools, supplies, equipment, facilities, supervision, administration, insurance, and any other items required to complete the performance, and acceptance thereof, of all Work defined in the Subcontract Documents.

2.2      All work shall be performed under the direction of the Contractor, and to the satisfaction of the Contractor and the Owner. The Subcontractor shall perform all work in a quality manner, utilizing the best possible materials, equipment, and workmanship. The Subcontractor agrees that the Contractor and/or the Owner have the authority to reject any Work by the Subcontractor that does not conform to the conditions and/or requirements set forth in the Prime Contract.

2.3      The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, except to the extent specifically indicated to be by others:

## ARTICLE 3      SCHEDULING AND EXECUTING THE WORK

3.1      The Subcontractor agrees that the performance of all work required by the Subcontract shall be completed within the time specified in the schedule of work per the Prime Contract.

3.2      The Subcontractor shall prepare and submit a detailed schedule for the completion of the Subcontract Work within the time frame required per the Contract Documents. The Subcontractor's schedule to be submitted to the Contractor for approval prior to the commencement of any work by the Subcontractor. Once the Subcontractor's schedule has been approved, the Contractor will incorporate it into the overall schedule (hereafter referred to as the "Schedule of Work"). Both the Contractor and the Subcontractor to be bound by the Schedule of Work. Any subsequent changes or revisions to the Schedule of Work shall be submitted to the Subcontractor within reasonable advance notice of the required performance.

3.3      The Contractor shall have the right to determine and, if necessary, to change the time, order, and/or priority in which the various portions of the Subcontractor Work shall be performed to insure the timely and orderly completion of the Schedule of Work.

3.4      The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work, so as to avoid any conflict, delay in, or interference with the Work of the Contractor, other subcontractors, or the Owner's own forces. The Subcontractor shall take necessary precautions to properly protect the Work of other subcontractors from damage caused by operations under this Subcontract. The Subcontractor shall cooperate with the Contractor, other subcontractors, and Owner's own forces when Work might interfere with the Subcontractor's Work.

3.5      The Subcontractor shall furnish the Contractor with periodic progress reports on the Work of this Subcontract, including information on the status of material and/or equipment deliveries. If, in the opinion of the Contractor, special measures are necessary to maintain proper progress of the Subcontractor's work schedule, the Subcontractor agrees to increase its work force, work premium time, and/or expedite deliveries as required, with no additional cost to the Contractor.

3.6      The Subcontractor shall promptly submit shop drawings, product data, samples, and/or any other submittal required by the Subcontract Documents in such a manner as to cause no delays in the work or activities of the Contractor or other subcontractors.

3.7      Should the Subcontractor's performance be interfered with, delayed, or suspended in any way for reasons beyond the Subcontractor's control, and without any fault or negligence on its part, the Subcontractor shall be entitled to an extension to the completion schedule, assuming the Subcontractor shall have notified the Contractor in writing of the delay within two (2) days of the occurrence of the event, and provided the extension request is approved by the Owner, except when the need for such time extension is due to acts or omissions of the Contractor.

ARTICLE 4      SUBCONTRACT AMOUNT

4.1      The Contractor agrees to pay the Subcontractor for the satisfactory performance of the Subcontract the Subcontract Amount of Dollars (\$) \_\_\_\_\_), subject to any additions and/or deletions as provided for in the Subcontract. Payment terms shall be per Article 5.

4.2      The Subcontractor Sum is based upon the following alternates, if any, which are described in the Subcontract and have been accepted by the Contractor and the Owner:

4.3      Unit prices, if any, are as follows:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ARTICLE 5      PAYMENT TERMS

5.1      General

5.1.1      Schedule of Values.

The Subcontractor shall submit a Schedule of Values to the Contractor for approval within fifteen (15) calendar days from the date of execution of the Subcontract. The schedule format shall be as required per the Prime Contract, or as directed by the Contractor. The schedule of values shall allocate the entire Subcontract Amount among the various portions of the Subcontractor's Work. It shall be prepared in such form, and supported by such data, so as to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

5.1.2      Application for Payment

The period covered by each application for payment shall be one (1) calendar month. The Subcontractor shall submit a monthly progress payment request to the Contractor for work performed during the current payment period. The request shall be submitted no later than the twenty-fifth (25th) calendar day of each month, and it shall cover all work performed through the end of the current payment period. Applications for payment shall indicate the percentage of completion of each portion of the Subcontractor's Work through the current payment period. The estimate by the Owner of the value of work performed by the Subcontractor during a payment period, or any deduction, offset, or counter claim against the requested amount, shall be binding on the Subcontractor with regards to computing the actual amount of progress payment the Subcontractor is entitled to receive for any given payment period.

5.1.3      Retainage

The rate of retainage withheld on progress payments to the Subcontractor shall be 10%, or as required per the Prime Contract.

5.1.4      Progress Payment

Progress payment to the Subcontractor shall include the amount approved by the Contractor for a given payment period, less retainage. Progress payment to be made no later than seven (7) calendar days after receipt by the Contractor of payment from the Owner for the Subcontractor's Work. Payment by the Owner to the Contractor for a particular payment period shall be a condition precedent to the Contractor's obligation to make payment to the Subcontractor, except when the Owner's refusal to make payment to the Contractor is due to the fault of the Contractor.

5.1.5 Stored Items

If approved in advance by the Owner, the Subcontractor's application for progress payment may include requisitions for material and/or equipment not yet incorporated into the Subcontractor's completed work, but which have been delivered and suitably stored at the job site, or at an acceptable location. Approval of any application for payment for such stored items will be pending the submittal by the Subcontractor of bills of sale and applicable insurance, or other such documents, satisfactory to the Owner and the Contractor to establish the Owner's title to such materials and/or equipment, or otherwise protect the Owner's and Contractor's interests therein, including transportation to the job site. Any risk of loss or damages to such items shall remain upon the Subcontractor (other than damage or loss insured under property insurance required by the Prime Contract) until such items are incorporated into the Project and approved for payment by the Owner. All payment to the Subcontractor for such items shall be subject to the retainage requirements outlined in Item 5.1.3. \_

5.1.6 Unit Price Work

When any Work is to be paid for at an agreed rate per unit of work in place, the Subcontractor agrees that the unit prices listed in Item 4.3 of this Agreement shall represent full payment for the work referenced therein. All payment to the Subcontractor for such items shall be subject to the retainage requirements outlined in Item 5.1.3.

5.1.7 Final Payment

The following conditions are precedent to the Contractor's obligation to make final payment to the Subcontractor:

- A. Final completion of the Subcontractor's Work in accordance with all requirements of the Subcontract,
- B. Approval and acceptance of the Subcontractor's Work by the Owner and the Contractor,
- C. Receipt of final payment by the Contractor from the Owner, except to the extent that the Owner's failure to make payment to the Contractor is due to the fault of the Contractor,
- D. Documentation of evidence of the fulfillment of all requirements of the Subcontract by the Subcontractor per the following:
  - 1. An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontractor's Work for which the Owner, his property, the Contractor, or the Contractor's surety might in any way be liable, and for which the Subcontractor has received payment from the Contractor, have been paid, or otherwise satisfied,
  - 2. Consent of surety to final payment (if required),
  - 3. Satisfaction of required closeout procedures,
  - 4. Releases in favor of the Owner, the Contractor, and its surety (if any) indicating full payment of all monies due, or to become due, relating to this Subcontract (see ATTACHMENT "A"), except for payment of those claims previously made in writing and identified by the Subcontractor as unsettled at the time of application for final payment, and
  - 5. Other data, if required by the Owner or Contractor (such as receipts, releases, and waivers of liens) to the extent and in such form as may be designated by the Owner or the Contractor.

The Subcontractor hereby acknowledges and agrees that the Contractor's surety (if any) is a third party beneficiary of afore stated "condition precedent" clauses with regard to both the progress payments, and the final payment.

Once the precedent conditions have been satisfactorily met, the Contractor will pay the Subcontractor within seven (7) calendar days after receipt of final payment from the Owner for the Subcontractor's work. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Amount if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's completed Work to the same percentage of retainage as that which is on the Contractor's Work at that time.

The Subcontractor's acceptance of the final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontractor's Work, except for those claims previously made in writing in accordance with this Subcontract and identified by the Subcontractor as unsettled at the time of application for final payment. Final payment shall in no way relieve the Subcontractor of its liability for the obligations assumed under this Subcontract.

#### 5.1.8 Withholding Payment

Any progress payment and/or the final payment may be subject to the Contractor withholding a reasonable amount necessary to fully protect and insure itself against any actual or potential liability or damage relating to a breach of the Subcontract by the Subcontractor. In such cases, the Contractor may require the Subcontractor to furnish an affidavit detailing each unpaid obligation directly, or indirectly, relating to that payment under the Subcontract. The affidavit shall include:

- A. The name of each party involved,
- B. The amount due, or to become due, each party involved,
- C. The due dates thereof, and
- D. The nature of any offset thereto.

#### 5.2 Special Conditions

##### 5.2.1 Payment Use

Payments received by the Subcontractor for Work properly performed by its sub subcontractors and/or suppliers shall be used by the Subcontractor for payment to those sub subcontractors and suppliers which have performed Work, or furnished materials or equipment, under contract with the Subcontractor for which payment was made to the Subcontractor by the Contractor. In the event the Contractor has reason to suspect that any labor, material, or other obligations incurred in the performance of the Subcontractor's Work are not being paid for by the Subcontractor, the Contractor shall give written notice of such claim to the Subcontractor. The Contractor may take any steps deemed necessary to insure that any progress payment shall be utilized to pay such obligations. The Contractor shall have the right to retain from any payments due, or to become due, the Subcontractor the amount necessary to protect the Contractor from any and all loss, damage, expense, and/or attorneys' fees resultant to any such claim until the claim has been satisfied by the Subcontractor.

##### 5.2.2 Payment Not Acceptance

It is understood that payment to the Subcontractor does not constitute or imply acceptance by the Contractor or Owner of any portion of the Subcontractor's Work. Acceptance by the Contractor or the Owner of any or all of the Subcontractor's Work shall not be construed as relieving the Subcontractor of its responsibility for the performance, workmanship, materials, etc. required by the Subcontract.

##### 5.2.3 Payment Indemnity

To the fullest extent permitted by law, the Subcontractor agrees to indemnify, defend, and hold harmless the Contractor, the Owner, and their agents or sureties against all claims for payment on the part of its sub subcontractors, suppliers, employees, employee unions, and/or pension plan administrators relating to the Project, but only to the extent that the Subcontractor shall have received payment from the Contractor on account of such claims. In the event any action is commenced against the Contractor, the Owner, or their agents or sureties by any of the Subcontractor's sub subcontractors, suppliers, employees, employee unions, and/or pension plan administrators,

the Subcontractor agrees to indemnify, defend, and hold harmless the Contractor, the Owner, and their agents and sureties against any and all damages incurred thereby, including monies paid by the Contractor, the Owner, and/or their agents or sureties to satisfy debts of the Subcontractor, together with all interest, attorneys' fees, costs and expenses of any litigation incidental thereto, including any attorneys' fees or costs incurred to enforce this indemnity obligation.

5.2.4 Lien Waivers and Affidavits

As a condition precedent for payment, the Owner and/or the Contractor may require the Subcontractor to provide, in a form satisfactory to the Owner and the Contractor, lien waivers and affidavits from the Subcontractor, and its sub subcontractors and suppliers for the completed Work stating the amounts received to date from the Contractor, the amount of the payment requested, and an itemization of the specific amounts to be paid to the Subcontractor's sub subcontractors and suppliers.

ARTICLE 6      CHANGES TO THE WORK

6.1      The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions, and/or other revisions, including those required by modifications to the Prime Contract issued subsequent to the execution of this Subcontract, the Subcontract Price and the Subcontract Time of Completion being adjusted accordingly. The Subcontractor shall submit promptly to the Contractor a written claim for adjustment to the Subcontract Price and/or Time of Completion for such revised Work in a manner consistent with the requirements of the Subcontract documents.

6.2      No alteration, addition, omission, or change shall be made in the Subcontract Work without a written change order or directive from the Contractor to proceed with such work. Any change or adjustment in the contract price and/or time of completion by virtue of a change order shall be specifically stated in the change order. Should the Subcontractor elect to proceed with the changes without written authorization from the Contractor, the Subcontractor will do so at its own risk and expense, without recourse against the Contractor or the Owner.

6.3      Prior to the issuance of any change order, the Contractor may require the Subcontractor to furnish a detailed itemization showing the cost and/or schedule impact of the proposed change order to the Subcontract. Should the Contractor and the Subcontractor be unable to agree on the cost, schedule change, and/or any other term in the change order, the Contractor may direct the Subcontractor in writing to perform the work with the understanding that the final adjustment in price and/or schedule shall be reserved until final completion of the Subcontractor's Work. The Contractor shall make payment to the Subcontractor for the amount the Contractor proposes as an appropriate and equitable adjustment to the Subcontract Price pending an agreement on the final adjustment for such changed work.

6.4      When unit prices are included in the Subcontract, all reasonable adjustments, whether increases or decreases, shall be made in accordance with said units. Unit prices shall include all general and administrative expenses, overhead, profit, supervision, extended performance cost factors, and all other direct and indirect expenses.

6.5      Should the Contractor elect to direct the Subcontractor to complete changed work on a time-and-materials basis, the Subcontractor shall prepare daily time-and-material sheets that shall be submitted to the Contractor on a daily basis for review and approval. All billing rates shall have been submitted to the Contractor for review and approval, and shall have been incorporated into the Subcontract prior to the commencement by the Subcontractor of any changed work on a time-and-materials basis.

6.6      The Subcontractor shall be bound to any determinations by the Owner or its representatives regarding change order work or any other work alleged to be outside the Scope of Work as defined in ARTICLE 2 herein. The Subcontractor shall be entitled to dispute the Owner's determination with regard to such changes in the same manner available to the Contractor under the Prime Contract, and the Contractor shall not waive or release any such rights without the prior written consent of the Subcontractor.

6.7 Payment and/or extension of the completion schedule by the Owner to the Contractor for any change order work, or any work alleged to be outside the Scope of Work defined in ARTICLE 2 herein, is an absolute condition precedent to any payment and/or extension of the completion schedule from the Contractor to the Subcontractor, except when such changes are the result of acts or omissions by the Contractor.

6.8 No change order shall vary, abrogate, avoid, or otherwise affect the terms, conditions, and/or provisions of the Subcontract except as specifically set forth and formally agreed upon in the change order.

6.9 Any failure by the Subcontractor to promptly commence performance of a change order when so directed in writing by the Contractor shall constitute a breach of the Subcontract.

6.10 If the Prime Contract requires liquidated, or other, damages for delay, and such damages are assessed against the Contractor, the Contractor may assess the same against the Subcontractor in proportion to the Subcontractor's share of the responsibility for such delay. It is further understood that whenever liquidated damages are assessed against the Contractor due to the fault of the Subcontractor, the liquidated damages are but one item of the potential actual damages that may have been incurred by the Contractor, and that the Contractor shall have the right to collect any additional actual direct and/or indirect damages incurred by the Contractor as a result of the Subcontractor's default.

#### ARTICLE 7 SUBCONTRACTOR OBLIGATIONS

7.1 The Subcontractor shall have a competent representative available at all times who shall have absolute authority to act in all respects on behalf of, and for, the Subcontractor.

7.2 The Subcontractor shall notify the Contractor when portions of the Subcontractor's Work are ready for inspection. The Subcontractor shall at all times furnish the Contractor adequate facilities for inspecting materials at the site, or any place where material or equipment may be stored per this Subcontract during the course of preparation, process, manufacture, or treatment. The Subcontractor shall furnish to the Contractor in such detail, and as often as required, full written reports of the progress of the Subcontractor's Work irrespective of the location of such work.

7.3 The Subcontractor shall maintain good housekeeping at all times while on the job site. This shall include keeping the premises and surrounding area free from any accumulation of waste material or rubbish caused by the Subcontractor's operations.

7.4 The Subcontractor shall take all necessary precautions to properly protect the Subcontractor's Work, and the work of others, from damage caused by the Subcontractor's operations.

7.5 The Subcontractor shall give sufficient notice, in writing, to all proper authorities, with copies furnished to the Contractor, as required for the performance of the Subcontractor's Work. The Subcontractor shall secure and pay for all permits, fees, licenses, assessments, inspections and taxes necessary to complete the Subcontractor's Work as required by the Subcontract.

7.6 The Subcontractor shall comply with all Federal, state, and local tax laws, social security acts, unemployment compensation acts, and workers' compensation acts insofar as is applicable to the performance of this Subcontract.

7.7 The Subcontractor is responsible for the quality control of all aspects of this Subcontract. It is the Subcontractor's responsibility to determine and fully comply with the Owner's acceptance criterion, and to supply in a timely manner all required submittal and/or documentation required per the Prime Contract, prior to the performance of any work, manufacturing, and/or delivery of material and/or equipment to the Project. All work performed, and material and/or equipment incorporated into the work, shall not be deemed as accepted by the Contractor until accepted by the Owner. The Subcontractor shall notify the Contractor when portions of the Subcontractor's Work are ready for inspection. In the event that portions of the Work are determined to be defective

or unsatisfactory, the Subcontractor shall promptly replace, repair, or restore the defective or unsatisfactory work at no expense to the Contractor. Inspection by the Contractor or Owner shall not relieve the Subcontractor of its contractual obligations.

7.8 Should the Subcontract include the installation by the Subcontractor of materials and/or equipment which is furnished by others, it shall be the responsibility of the Subcontractor to examine the items so provided, and to handle, store, and install the items in such a manner as to insure a satisfactory and proper installation. Costs for loss or damage to such items due to the acts or omissions of the Subcontractor shall be deducted from the amount due, or to become due, to the Subcontractor from the Contractor.

7.9 Any proposed substitutions of material and/or equipment specified by the Subcontract will require written prior approval by the Contractor.

7.10 The Subcontractor agrees to be bound by, and to comply with, all Federal, state, and local laws, ordinances, rules, and regulations (hereinafter collectively referred to as "laws") applicable to the Subcontractor's Work. The laws may include, but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, drug free workplace, safety and all other laws of which the Contractor must comply with in accordance with the Prime Contract. The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost, and/or expense attributable to any acts of commission or omission by the Subcontractor, its employees, and/or agents resulting from failure by the Subcontractor to fully comply with any laws, The Subcontractor liability shall include, but not be limited to, fines, penalties and/or corrective measures.

## ARTICLE 8      WARRANTY

8.1 The Subcontractor warrants to the Owner and the Contractor its work against all deficiencies and defects in materials, equipment, and/or workmanship as called for in the Subcontract. The Subcontractor's warranty excludes remedy for damages or defects caused by abuse, modifications not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or wear and tear under normal usage by the Owner. The Subcontractor agrees to satisfy such warranty obligations that appear within the guarantee or warranty period established by the Subcontract without cost to the Owner or the Contractor.

8.2 If a guarantee or warranty is required per the Prime Contract, the Subcontractor shall guarantee and warranty its work as described on the Prime Contract. If a guarantee or warranty is not specified in the Prime Contract, then the Subcontractor shall guarantee and warranty its work for the period of one (1) year from the date of completion of all its work, or date of acceptance by the Owner, whichever comes first. This warranty shall be in addition to, and not in limitation of, any other warranty or remedy required by law.

## ARTICLE 9      SAFETY

9.1 The Subcontractor shall take all necessary safety precautions with respect to performance of this Subcontract, and shall comply with all safety measures required by the Owner and the Prime Contract. The Subcontractor shall comply with all aspects of ATTACHMENT "B."

9.2 The Subcontractor is solely responsible for compliance with all applicable laws, safety rules, and regulations including, but not limited to, the "Federal Safety and Health Act of 1970," and addenda thereto, during the performance of this Subcontract.

9.3 The Subcontractor shall indemnify and hold harmless the Contractor against any fines, fees, or penalties imposed on the Contractor as a result of safety violations, but only to the extent that such fines, fees, or penalties are caused by the Subcontractor's failure to comply with applicable safety requirements.

9.4 The Subcontractor shall report all injuries to the Contractor immediately. A written report of each injury to be submitted by the Subcontractor to the Contractor within twenty four (24) hours after the occurrence.

## ARTICLE 10 CONTRACTOR'S RECOURSE AND REMEDIES

10.1 If the Subcontractor defaults or neglects to carry out the Work in accordance with this Subcontract and fails within three (3) working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with due diligence and promptness, the Contractor may, after three days (3) following receipt by the Subcontractor of an additional written notice, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

10.2 If the Subcontractor persistently or repeatedly fails or neglects to carry out the Work in accordance with the Subcontract and fails within seven (7) days after receipt of written notice to commence and continue correction of such default or neglect with due diligence and promptness, the Contractor may, after seven (7) days following receipt by the Subcontractor of an additional written notice and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Amount exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor. If the Contractor's termination of the Subcontract is determined, the Subcontractor shall be liable to the Contractor for all costs and expenses incurred by the Contractor, including attorney's fees, to collect such excess amount from the Subcontractor.

10.3 Should the Owner terminate its Prime Contract with the Contractor, or any part that includes the Subcontract Work, the Contractor shall so notify the Subcontractor in writing within three (3) working days after the termination. In the event such termination is for the convenience of the Owner, and not due to any act or omission of the Contractor, the Subcontractor shall incur no further obligations in connection with the work and shall stop work when such termination becomes effective. The Subcontractor shall also terminate any outstanding orders and/or sub subcontracts, and shall settle any liabilities and/or claims arising as a result of the terminations. The Owner or the Contractor may direct the Subcontractor to assign the Subcontractor's right, title, and/or interest under the terminated orders and/or sub subcontracts to the Contractor, the Owner, or the Owner's designee. The Subcontractor shall transfer the titles and deliver to the Contractor or the Owner all completed or partially completed work, materials, equipment, parts, fixtures, information, and/or contract rights the Subcontractor may have. Upon such termination, the Subcontractor shall be paid the amount paid by the Owner to the Contractor on account of the Subcontract Work, with the understanding that the Contractor's receipt of such payment from the Owner shall be a condition precedent to the Contractor's obligation to make such payment to the Subcontractor.

10.4 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay, or interrupt the Subcontract Work in whole or in part for such periods of time as the Contractor may determine necessary. In the event of a suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Amount and/or Time of Completion.

10.5 In the event of termination of the Prime Contract by the Owner, the Contractor may assign this Subcontract to the Owner, with the Owner's agreement, subject to the provisions of the Prime Contract and to the prior rights of the surety, if any, obligated under bonds relating to the Prime Contract. In such event, the Owner shall assume the Contractor's rights and obligations under the Subcontract Documents.

10.6 The Subcontractor shall not assign the Work of this Subcontract without written approval by the Contractor. Neither shall the Subcontractor subcontract the whole of this Subcontract without written consent by the Contractor. Nor shall the Subcontractor further subcontract portions of this Subcontract without written notification to the Contractor.

## ARTICLE 11 INSURANCE REQUIREMENTS

11.1 The Subcontractor shall purchase and maintain insurance coverage per the requirements outlined in ATTACHMENT "C." Such insurance shall be maintained without interruption from the date of commencement of the Subcontractor's Work until final payment is made to the Subcontractor. The insurance shall protect the Contractor and the Subcontractor from any claims which may arise out of, or result from, the Subcontractor's operations under the Prime Contract for which the Contractor may be liable.

11.2 Compliance by the Subcontractor with the insurance requirements shall not relieve the Subcontractor from liability under any portion of the Subcontract, or act as a limitation of the Subcontractor's liability.

11.3 Should the Subcontractor sublet or subcontract any part of this Subcontract, the Subcontractor shall require similar insurance from its sub subcontractors and/or suppliers relating to the work performed by such sub subcontractors and/or suppliers.

11.4 Any failure by the Subcontractor to maintain the insurance coverage required by this Subcontract shall constitute a material breach of the Subcontract, at which time the Contractor may purchase such coverage and charge all costs, incidental expenses, and/or resultant damages to the Subcontractor.

11.5 The subcontractor is required to keep a current insurance certificate on file with the Contractor, with annual renewals, during the entire tenure of this Master Subcontract Agreement.

## ARTICLE 12 INDEMNIFICATION

12.1 To the fullest extent allowed by law, the Subcontractor shall defend, indemnify, and hold harmless the Contractor and the Owner and their agents from and against any liability, claims, damages, losses and/or expenses, including attorney's fees incurred by the Contractor to enforce this provision, arising out of, or resulting from, the performance of the Subcontract Work, provided that such liability, claims, damages, losses and/or expenses are attributable to bodily injury, sickness, disease or death, or injury to, or destruction of, tangible property including loss of use resulting there from, but only to the extent caused in whole, or in part, by the acts or omissions of the Subcontractor, its sub subcontractor(s), anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such liability, claim, damage, loss or expense is caused in part by a party indemnified hereunder.

12.2 In any and all claims against the Owner, the Contractor (including affiliates, parent company, and/or subsidiaries) and /or other contractors, suppliers, or subcontractors, or any of their agents and/or employees, by any employees of the Subcontractor, anyone directly or indirectly employed by the Subcontractor, or anyone for whose acts the Subcontractor may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Subcontractor under any workers' compensation acts, disability benefits acts, or other employee benefit acts.

## ARTICLE 13 CLAIMS BY THE SUBCONTRACTOR

13.1 Any claim which the Subcontractor may have toward the Owner for additional compensation or damages must be submitted to the Contractor within three (3) working days of the beginning of the event for which such claim is being made, or as required per the conditions of the Prime Contract. Otherwise, such claims shall be deemed as waived by the Subcontractor.

13.2 The Subcontractor shall have no greater right of claim against the Contractor than the Contractor has against the Owner with respect to claims for which the Owner is responsible, and the Contractor shall not be liable to the Subcontractor for any amount greater than any sum actually collected from the Owner on behalf of the Subcontractor.

13.3 The Contractor may, upon the written request by the Subcontractor, appeal to the owner on behalf of the Subcontractor for any ruling or decision made by the Owner regarding any claim by the Subcontractor. The Subcontractor shall pay all legal costs attributable thereto and shall render all assistance requested by the Contractor. Should the Contractor determine to resolve the appeal, the Subcontractor shall be entitled to bring action against the Contractor to recover any difference between the amount received from the Owner by the Contractor on behalf of the Subcontractor and the amount which the Subcontractor could possibly have been entitled to from the Owner had the Contractor allowed the Subcontractor to proceed against the Owner by and through the Contractor. Alternatively, the Contractor may allow the Subcontractor, by and through the Contractor, to institute any action to recover damages by reason of any affirmative claim by the Subcontractor, or by reason of any deduction or refusal to pay by the Owner for any reason, involving the work or performance of the Subcontractor. In such event, the Subcontractor shall be responsible for prosecuting such claims. The Subcontractor shall be bound by the determination of the Owner, and shall be entitled only to the amount collected by the Contractor from the Owner on the Subcontractor's behalf.

13.4 Should the Subcontractor have a claim against the Contractor for which the Owner is not responsible, the Subcontractor shall give the Contractor a written notice of all such claims for additional compensation or damages within three (3) working days of the beginning of the event for which such claim is to be made. Otherwise, such claims shall be deemed as waived by the Subcontractor.

13.5 Any unresolved claim by the Subcontractor arising out of, or related to, this Subcontract shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by the Subcontractor. Any mediation shall be done in accordance with current Construction Industry Mediation Rules of the American Arbitration Association.

#### ARTICLE 14 SUBCONTRACT INTERPRETATION

14.1 Should inconsistencies and/or omissions appear in the Contract Documents, it shall be the responsibility of the Subcontractor to notify the Contractor in writing within seven (7) working days of the Subcontractor's discovery thereof.

14.2 This Subcontract to be governed by the laws of the state wherein the Work is being performed.

14.3 The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and/or effect of any other provision. The failure of either party hereto 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.

14.4 This Subcontract is solely for the benefit of the signatories hereto. This Subcontract shall neither confer any third party rights, nor shall the Contractor incur any third party liability or responsibility by virtue of this Subcontract. This Subcontract represents the entire agreement between the parties hereto, and it supersedes all prior negotiations, representations, and/or agreements, whether written or oral.

#### ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 The Subcontractor shall be responsible for, and shall pay, any and all taxes, contributions, and/or fees imposed directly or indirectly on account of its Work. At no time shall there be any increase or escalation in the Subcontract Amount resultant to any such charges. The Subcontractor shall, on demand, substantiate that all taxes and other such charges are being properly paid.

15.2 The Subcontractor shall not assign this Subcontract or any part or interest therein, or any money due or to become due, without written consent from the Contractor. If the Contractor consents to an assignment of the Subcontract, such assignment shall be subject to, and subordinated to, all labor preferences and other liabilities, actual or potential, as may be imposed on the Contractor due to any obligation or liability of the Subcontractor.

15.3 In the event any litigation arises between the Contractor and the Subcontractor over the provisions of the Subcontract, the Work, payment, or otherwise, the prevailing party shall be entitled to recover all costs and expenses incurred in such litigation including, but not limited to, court costs, attorney fees, and expert witness fees arising before, during, or after trial, including any costs, attorney fees, or expenses incurred in any appeal therefrom.

15.4 The Contractor shall have the right to terminate and cancel this Subcontract for any cause, or for convenience, and require the Subcontractor to stop all work immediately. Such termination must be in writing and may be done without the Subcontractor being at fault.

15.5 The Contractor, as principal employer, and the Subcontractor, as direct employer, mutually agree that it is their intention to recognize the Contractor as the statutory employer of the Subcontractor's employees, to include direct employees or statutory employees of the Subcontractor, while the Subcontractor's employees are providing work and/or services to the Contractor under this Subcontract.

15.6 The Subcontractor shall be responsible for any damages to, or loss of, its tools and/or equipment.

15.7 The Subcontractor shall not subcontract all, or substantially all, of its Work without having prior written approval by the Contractor, the Owner, and the bonding company (if applicable).

**The parties hereto have executed this Subcontract the day and year first written above:**

\_\_\_\_\_  
(Subcontractor)

**AKM, L.L.C., Volks Constructors Division**  
(Contractor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

Steve Munsell  
(Printed Name)

\_\_\_\_\_  
(Title)

Corporate Vice President  
(Title)

**ATTACHMENT "A"**

**RELEASE OF LIENS AND CLAIMS**

Reference is made to the SUBCONTRACTOR, together with all alterations and work orders thereunder (SUBCONTRACT), between the undersigned (SUBCONTRACTOR), and **AKM, L.L.C., Volks Constructors Division** (CONTRACTOR), and (OWNER),

(Subcontract Number and Title of Work).

In connection with said SUBCONTRACT, the SUBCONTRACTOR warrants that no amounts currently owed by it or by any of its sub subcontractors exceed the final payment to be due and owing to the SUBCONTRACTOR by the CONTRACTOR, and further that the final payment to be received from the CONTRACTOR will be applied to satisfy any remaining debts owed in connection with said SUBCONTRACT so that no such debt will become the basis for a lien against the CONTRACTOR and/or the OWNER. In consideration of the receipt by the SUBCONTRACTOR from the CONTRACTOR of the sum of \$ (Retention Amount) and valuable consideration, the SUBCONTRACTOR hereby waives, remise, releases, and forever discharges the CONTRACTOR and/or the OWNER and agrees to indemnify and hold harmless the CONTRACTOR and/or the OWNER against any liens, claims, demands, and causes of action whatsoever arising out of the SUBCONTRACT.

**IN WITNESS WHEREOF**, the SUBCONTRACTOR has executed this release.

(SUBCONTRACTOR)\_\_\_\_\_

(Signature)\_\_\_\_\_

(Printed Name) \_\_\_\_\_

(Title) \_\_\_\_\_

(Date) \_\_\_\_\_

SUBSCRIBED AND SWORN TO BEFORE ME, this the \_\_\_\_\_ day of \_\_\_\_\_,

(NOTARY PUBLIC)

## ATTACHMENT "B"

### DRUG, ALCOHOL, AND CONTRABAND POLICY

**AKM, L.L.C., Volks Constructors Division** has established this Drug, Alcohol, and Contraband Policy to assist us in providing a safe, healthy, and productive work environment for our employees, while maintaining the highest standards of quality of workmanship. This policy has been implemented in an effort to help protect the personnel and property of the Owner, the Contractor, and the Subcontractor.

The use, possession, concealment, transportation, promotion, or sale of any of the following items or substances by any employee of AKM, L.L.C., or by any employee of a subcontractor of AKM, L.L.C., is strictly prohibited on all company premises:

- \* Illegal drugs, controlled substances (including trace amounts), look-alike drugs, designer drugs, or any other substance (herein referred to as "drugs") that may have the effect on the human body of being a narcotic, depressant, stimulant, hallucinogen, or cannabinoid, unless prescribed by a licensed physician or dentist.
- \* Drug paraphernalia.
- \* Unauthorized alcoholic beverages.
- \* Firearms, weapons, ammunition, and/or explosives.
- \* Unauthorized prescription drugs.

Also prohibited is for any employee to have a detectable quantity of any drug in the employee's system while on company premises.

Any employee who is using prescription drugs under a doctor's orders should notify his or her supervisor of the identity and dosage of such prescription drugs prior to beginning his or her work. AKM, L.L.C. reserves the right to have the employee's treating physician, or the company physician, determine if the prescription drug or medication produces side effects which could be hazardous to the employee's work activity. Failure by the employee to inform the company that he or she is taking a prescription drug may result in disciplinary action, or termination.

"Company Premises" includes all locations wherein work is performed by AKM, L.L.C. and/or its subcontractors, or which are assigned to AKM, L.L.C. for its use by a client or another contractor, including parking lots and storage areas. It also includes aircraft, automobiles, trucks, and all other vehicles and equipment, whether company owned or leased.

**ATTACHMENT "C"**

**SUBCONTRACTOR INSURANCE REQUIREMENTS**

Minimum coverage and limits required by the Contractor of the Subcontractor are as follows:

I. **WORKERS COMPENSATION**

Full statutory coverage for the state in which the Work is performed, as well as EMPLOYERS LIABILITY limits of at least \$1,000,000 each accident, \$1,000,000 disease (each employee), and \$1,000,000 DISEASE POLICY LIMIT.

All coverage shall be placed on carriers admitted to do business in the state wherein the project is located, and who carry an AM Best Rating of A VI or better.

(Note: If the Subcontractor's Work will be near water, the Subcontractor's policy must provide coverage per the U. S. LONGSHOREMEN AND HARBOR WORKERS ACT. If the Subcontractor's Work involves vessels subjecting the Subcontractor's employees to the JONES ACT, the Subcontractor must include a minimum of \$1,000,000/\$1,000,000 coverage for the MARITIME EMPLOYERS LIABILITY.)

II. **GENERAL LIABILITY**

Commercial General Liability or Comprehensive General Liability with a minimum limit of \$1,000,000 Each Occurrence/\$1,000,000 Aggregate or \$1,000,000 Combined Single Limit of Liability. Coverage should include Premises/Operations, Contractual Liability, and Products/Completed Operations Liability. Coverage should be written on an Occurrence Basis. Any coverage which is shown on a "claims-made" form will not be accepted.

III. **COMMERCIAL AUTOMOBILE**

Minimum limits of \$500,000 Combined Single Limit with coverage provided for all owned, hired, and non-owned automobiles. If the Subcontractor owns no vehicles, coverage for hired automobiles and non-owned automobiles should be provided again at a minimum limit of \$500,000 Combined Single Limit.

The Subcontractor's certificate of insurance shall indicate that a Waiver of Subrogation is provided in favor of AKM, L.L.C. and VOLKS CONSTRUCTORS, as respects Items I., II., and III. above. The certificate shall also reflect that AKM, L.L.C. and VOLKS CONSTRUCTORS have been named as an Additional Insured as respects Items II. and III. above. A thirty (30) day Notice of Cancellation clause shall be included in the Subcontractor's certificate. AKM, L.L.C. and VOLKS CONSTRUCTORS shall be named as Alternate Employer as respects Item I. above.

**SUBCONTRACT CHANGE ORDER**

By, and with

**AKM, L.L.C., VOLKS CONSTRUCTORS DIVISION**

17474 Old Jefferson Highway

Prairieville, LA 70769

Phone: (225) 673-3236, Fax: (225) 673-5973

**Subcontractor:**

**Project:**

\_\_\_\_\_

**Owner:** \_\_\_\_\_

**Job No.:** \_\_\_\_\_

**Location:** \_\_\_\_\_

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

**Purchase Order No.:** \_\_\_\_\_

**Change Order No.:** \_\_\_\_\_

The terms and conditions of the **Subcontract Agreement**, dated \_\_\_\_\_, between AKM, L.L.C., Volks Constructors Division (**Contractor**) and the afore stated **Subcontractor**, are incorporated herein by reference and made a part thereof, and shall govern the **Work** described below:

The Scope of Work for the Subcontractor shall include, but not be limited to, the furnishing of all labor, materials, tools, supplies, equipment, facilities, administration, insurance, and any other items required to complete the performance, and acceptance thereof, of the following:

\_\_\_\_\_  
\_\_\_\_\_

The Subcontractor's Work shall be performed in accordance with the project drawings, specifications, and all other relevant contract documents, and it shall be completed in accordance with the Schedule of Work. Any approved modifications or exceptions to the Subcontract Agreement with regards to this Change Order are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The **Change Order Price** shall be \_\_\_\_\_ dollars (\$ \_\_\_\_\_).

The parties hereto have executed this Subcontract Change Order the day and year first written above:

**Subcontractor:** \_\_\_\_\_

**AKM, L.L.C., Volks Constructors Division**

**Signature:** \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_