

F & H CONSTRUCTION
4945 Waterloo Road (95215)
P.O. Box 55245
Stockton, California 95205

SUBCONTRACT AGREEMENT

This Agreement made this 2nd day of **August 2011**, by and between **F & H CONSTRUCTION**, hereinafter called "Contractor" and «**Company**», hereinafter called "Subcontractor".

WITNESSETH

Contractor has entered into a written contract with _____, hereinafter called the "Owner" for construction dated _____, for the following project: _____, which contract, together with any addendum, supplements, amendments, changes, general or supplemental, conditions or additions thereto is hereinafter called the "PRIME CONTRACT" and, in accordance with all applicable plans and specifications dated _____ prepared by _____, and that all of said items referred to above are designated as the Contract Documents. The parties agree that this Agreement and the terms therein, represent the entire Agreement between the parties, and except as specifically included herein, the terms and conditions of this Agreement are not to be considered modified by the Subcontractor's bid or the Contractor's acceptance thereof.

1. Subcontractor certifies that it is fully familiar with all of the terms of the Contract Documents, including the plans and specifications, general and supplemental conditions insofar as they relate in any way to the work to be performed hereunder and the physical conditions of the job site and the conditions under which the work is to be performed. Subcontractor certifies that it has made all investigation essential to a full understanding of the difficulties that may be encountered in performing the work and that said Subcontractor enters into this Agreement based upon its own investigation of all such matters, and is not relying on any opinions or representations of Contractor. Subcontractor will assume full and complete responsibility for all conditions relating to the work, the site and its surroundings and all risks in connection therewith. This Agreement represents the entire Agreement. The Contract Documents are incorporated into this Agreement by reference. Subcontractor and its Subcontractors and material suppliers will be and are bound by the Contract Documents insofar as they relate in any way, directly or indirectly, to the work covered by this Agreement. Subcontractor acknowledges that the Prime Contract in its entirety, including all plans, drawings, specifications, general and special conditions, provisions, manuals, supplements, schedules, addenda amendments, change orders and extra work orders issued and to be issued, are hereby incorporated herein as though fully set forth at length. Subcontractor shall be bound by said documents and by any interpretations, rulings, or decisions there under, including denials of change order requests, by Owner or its representative to same extent as Contractor, and Subcontractor shall comply strictly therewith. Subcontractor assumes to Contractor all liabilities, responsibilities, duties and obligations assumed by Contractor towards Owner under the Prime Contract and the Contract Documents with respect to the work to be done hereunder, in addition to all other responsibilities, duties and obligations of Subcontractor. All rights and remedies reserved to Owner under the Prime Contract and the Contract Documents shall be available to and possessed by Contractor in all dealings with Subcontractor.

2. Work to be performed:

Subcontractor shall perform fully the work disclosed below at the price or prices set forth via this Agreement, and said work shall be commenced at the time and place to be designated by Contractor subject to progress schedules designated by Contractor or any revisions thereof. Subcontractor shall furnish all materials, labor, supervision, tools, appliances, permits and certificates necessary to construct and complete, in a workmanlike manner and in strict accordance with product manufacturer's instructions and with all of the Contract Documents as defined above, the following work (hereinafter, the "Work"):

INCLUSIONS: SUBCONTRACTOR AGREES TO FURNISH ALL LABOR AND MATERIALS NECESSARY TO COMPLETE ITS ENTIRE SCOPE OF WORK PURSUANT TO THE PROJECT SPECIFICATIONS BELOW:

«InclusionTitle»

- «Inc1»
- «Inc2»

- «Inc3»
- «Inc4»
- «Inc5»
- «Inc6»
- «Inc7»
- «Inc8»
- «Inc9»
- «Inc10»
- «Inc11»
- «Inc12»
- «Inc13»
- «Inc14»
- «Inc15»
- «Inc16»
- «Inc17»
- «Inc18»
- «Inc19»
- «Inc20»

EXCLUSIONS:

- «Exc1»
- «Exc2»
- «Exc3»
- «Exc4»
- «Exc5»
- «Exc6»
- «Exc7»
- «Exc8»
- «Exc9»
- «Exc10»
- «Exc11»
- «Exc12»
- «Exc13»
- «Exc14»
- «Exc15»
- «Exc16»
- «Exc17»
- «Exc18»
- «Exc19»
- «Exc20»

CLARIFICATIONS:

- «Clar1»
- «Clar2»
- «Clar3»
- «clar4»
- «Clar5»
- «Clar6»
- «Clar7»
- «Clar8»

GRAND TOTAL «ContAmt» (Inclusive of all labor, materials, and sales tax)

3. Contract Price: **«ContAmt»**

In exchange for the strict performance of the Work, Contractor agrees to pay Subcontractor the sum of ****«WrittenAmt»****, subject to additions and deductions for changes in the Work as may be directed in writing by Contractor. Contractor shall make all such payment(s) in accordance with the payment schedule set forth herein below. The Contract Price includes state of Hawaii gross income tax. Subcontractor shall furnish the Contractor with a current Tax Clearance Certificate for the Project from the State of Hawaii prior to final payment for the Subcontract Work.

4. Payment Schedule:

Subcontractor agrees to deliver to Contractor a written Application of Progress Payments by the 20th day of each calendar month, except for the final Application which shall be delivered to the Contractor on completion and acceptance of the Subcontractor's Work as set forth below. Said Application for Progress Payment shall be made on a Subcontractor Progress Payment Request Statement and said Subcontractor Progress Payment Request Statement shall be in a form as set forth herein in Exhibit "A" and shall be accompanied by Subcontractor's Statement as set forth herein in Exhibit "B". In the event Subcontractor fails to submit a properly completed written Application of Progress Payment by the 20th day of the calendar month, Contractor will not process Subcontractor's Application of Progress Payment until the 20th day of the subsequent calendar month. Contractor agrees to pay Subcontractor in monthly Progress Payments from Progress Payments received by Contractor from Owner, an amount equal to 90% percent of labor and materials as shown on approved schedule of values and which have been put in place to the extent that the payment received by Contractor from Owner includes payment for the Work performed by Subcontractor. Subcontractor hereby acknowledges that the requirements of Contractor's payment application to Owner and the timing of Owner's payments to Contractor are dictated by the Prime Contract. Subcontractor agrees that its provision of all items applicable to its Work necessary for inclusion in Contractor's payment applications to the Owner is a condition of Subcontractor's right to receive payment. Subcontractor agrees to be bound by the provisions of the general Contract Documents insofar as they relate to the timing of payment from Owner to Contractor and agrees that Contractor may have an additional 10 days after receipt from Owner within which to make payment to Subcontractor. Subcontractor acknowledges Owner's and Contractor's right to withhold 150% of amounts subject to good faith dispute until such disputes are resolved. Final payment will be made to Subcontractor 10 days (private works); 7 days (public works) after the entire work required by the Prime Contract has been fully completed in accordance with the Contract Documents and has been delivered to and accepted by Owner, Architect and Contractor, and Subcontractor has delivered evidence satisfactory to Contractor that all indebtedness related to its work has been satisfied. Subcontractor again acknowledges its obligation to provide items necessary for application for final payment, acknowledges the payment schedule called for in the Prime Contract, and agrees to be so bound. Subcontractor again recognizes the right of Owner and Contractor to withhold 150% of amounts disputed in good faith from Subcontractor pending resolution of such disputes including unsatisfied warranty obligations. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claim for labor, materials and from its Subcontractors performing work or furnishing materials under this Agreement, all in form satisfactory to Contractor and it is agreed that no payments hereunder shall be made, except at Contractor's option until and unless such documents have been furnished. Said Releases are attached hereto and marked Exhibits "C", "D", "E", and "F". Contractor, at its option, may make any payment due hereunder by check made payable jointly to Subcontractor and any of Subcontractor's suppliers and materialmen who have performed work or furnished materials under this Agreement. Any payment made hereunder prior to completion and acceptance of the Work as referred to above, shall not be construed as evidence of acceptance or acknowledgment of completion of any part of any Subcontractor's Work. All payments to Subcontractor are subject to further conditions shown in this Agreement. Subcontractor acknowledges and agrees that any and all payments to Subcontractor are subject to the condition that Contractor is paid by the Owner. Subcontractor agrees that payment by the Owner to the Contractor is a condition precedent to receipt of payment by the Subcontractor, and understands that in the event of Owner insolvency or other inability to pay, Subcontractor will only be paid in the event the Contractor is able to recover payment from the Owner.

5. Time is of the essence of this Agreement and of the Prime Contract. Subcontractor agrees to prosecute the work in strict conformance with the Project Schedule. Subcontractor agrees to commence the Work promptly as directed by Contractor. Subcontractor shall conform to Contractor's progress schedule and all revisions made thereto. Subcontractor shall prosecute its Work in a prompt and diligent manner in accordance with Contractor's progress schedule without delaying or hindering Contractor's Work or the work of any other contractor and/or subcontractor. Subcontractor shall coordinate the Work with that of all other contractors and subcontractors and of Contractor in a manner that will facilitate the efficient and timely completion of the entire work. In the event that Subcontractor fails to maintain its part of Contractor's schedule, it shall, without additional compensation, accelerate the Work as Contractor may direct until Subcontractor's Work is in accord with such schedule. No claims for additional compensation or damages for delays, whether caused in whole or in part by any conduct on the part of the Contractor, including but not limited to, conduct amounting to a breach of this Agreement or delays by others, other Subcontractors or Owners shall be recoverable from Contractor and the sole remedy of Subcontractor shall be a request for extension of time as set forth below provided, however, that in the event Contractor obtains additional compensation from Owner on account of such delays, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor as Contractor determines is equitable. Contractor shall have sole discretion in determining what is equitable, and Contractor's findings shall not be challenged or disturbed absent a finding that Contractor acted so unreasonably as to abuse its discretion. In the event that Contractor prosecutes a claim against Owner for additional compensation for any delays, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorney's fees to the extent that said claim is made by Contractor at the request of Subcontractor.

If Contractor presents a claim against Owner for delay or for compensation for changes, and Subcontractor seeks compensation from Contractor for any portion of such claim, in addition to cooperating as set forth above, Subcontractor shall:

- a) provide Contractor with sufficient substantiation of Subcontractor's claim to enable Contractor to make a good faith determination of the validity of Subcontractor's claim 10 (ten) days prior to the deadline for submission of claims established in the Contract Documents, and
- b) provide verification of Subcontractor's claim in the same manner as required by Contractor by the Contract Documents or law.

Failure of Subcontractor to comply with these requirements will entitle Contractor to omit Subcontractor's claim for Contractor's claim against Owner and will constitute a waiver by Subcontractor of its claim against Contractor, Contractor's Surety and/or Owner for any compensation for delay or extra work attributable in whole or in part to the Owner or its agents. If Contractor includes Subcontractor's claim in any claim presented against Owner and if as a result of that inclusion Contractor is assessed any damages, penalties, or fines for presentation of a false claim, Subcontractor agrees to fully indemnify Contractor for all such damages, penalties, or fines and for all attorney fees and costs incurred in contesting those damages, penalties or fines, so long as imposition of such damages, penalties, or fines does not arise from Contractor's sole negligence or willful misconduct.

Should Subcontractor be delayed in the completion of the Work by the act, neglect or default of Owner, Architect or Contractor or by strikes and/or lockouts or casualty for which Subcontractor is not responsible, then the time herein fixed for the completion of the work shall be extended for the number of days that Subcontractor has thus been delayed, but only in the event that Subcontractor makes a claim therefore in writing to Contractor within 48 hours of the commencement of such delay and said claim in regard to strikes, lockouts or casualty is approved by Owner and a like time is granted to Contractor. Failure to provide written notice of a delay shall be deemed a waiver of any claim for additional time for completion of the work.

6. Subcontractor shall prepare and obtain approval as required by the Contract Documents of all shop drawings, details, materials, methods and samples.

7. Subcontractor shall make any and all changes in the Work in accordance with any change orders issued by Owner or Owner's representative and if necessary, the contract price and the time for Subcontractor's performance shall be adjusted by appropriate additions or deductions and Subcontractor shall supply Contractor with all documentation necessary to substantiate the amount of the addition to or deduction from the price and time. If Contractor and Subcontractor cannot agree on the amount of said additions or deletions, Subcontractor shall nevertheless timely perform the Work as changed by contractor's written direction. If the parties cannot resolve the amount of the change order, either as an addition or a deduction, it shall be submitted to arbitration as set forth hereafter. In addition, if a dispute arises between Contractor and Subcontractor about whether particular work is a change in the Work described above, Subcontractor shall timely perform the disputed Work and shall give written notice of a claim for additional compensation for the work within ten (10) days after such work is performed. Failure to give such written notice during said period constitutes an agreement that said work was within the scope of work as defined above. The disputes referred to above shall be subject to arbitration as set forth in Paragraph 18 where either party has the right to demand arbitration. In the event Subcontractor performs work prior to issuance of an Owner-approved change order authorizing the performance of said work, Subcontractor shall waive any entitlement to payment from Contractor for the unauthorized work.

8. Subcontractor shall, if required by Contractor, supply to Contractor a payment bond and performance bond in an amount equal to 100% of the contract price which bond shall be executed by a corporate surety acceptable to Contractor and in a form satisfactory to Contractor. Contractor shall pay the premium on said bonds unless otherwise proved in the Contract Documents. If, during the course of the work, Contractor should become concerned regarding Subcontractor's solvency and ability to continue with the work, Contractor shall be entitled to demand proof of Subcontractor's financial capacity to continue with the work and to take other steps to ensure the work is not compromised by financial insolvency on the part of the Subcontractor, including (a) demanding that all payments to subsubcontractors and suppliers be made by joint check issued to the Subcontractor and its subsubcontractors and/or suppliers; (b) making direct payments to subsubcontractors and suppliers; (c) demanding updated certificates of insurance; (d) demanding satisfactory security to be provided within five (5) days of Contractor's written request to the Subcontractor at its last known address, and such other steps as are reasonable and/or necessary under the circumstances. In the event Contractor determines Subcontractor lacks the financial capacity to continue with the work, and Subcontractor fails to furnish adequate security for its continued performance, Contractor can terminate Subcontractor from the job, and it is jointly understood and agreed that in addition to any claims for damages caused by said failed performance, Contractor will have the right to withhold from payment to the Subcontractor, such sums as will be needed to complete the Subcontractor's work with a replacement, financially solvent subcontractor.

It is agreed that Contractor shall have the right to terminate this Subcontract in the event the Subcontractor makes an assignment for the benefit of creditors or becomes involved in bankruptcy proceedings, whether initiated by the Subcontractor or others. In that event, the rights of the parties shall be the same as if the Subcontractor had failed to perform the Subcontract, in whole or in part.

9. If Subcontractor should default in performance of its Work or should otherwise commit any act which causes delay to the Prime Contract work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages sustained by Contractor or for which Contractor may be liable to Owner or any other party because of Subcontractor's default.

10. Subcontractor shall not assign the Work of this subcontract Agreement without the prior written consents of the Contractor and the Owner nor shall Subcontractor subcontract the whole of this Agreement without the prior written consent of the Contractor and the Owner nor shall Subcontractor further subcontract any portion of this Agreement without prior written consent of the Contractor and the Owner. Any or all consent required in this paragraph may be withheld for any reason and shall be at the sole discretion of the Contractor and/or the Owner.

11. Contractor reserves the right to retain out of the monies due or to become due to the Subcontractor an amount sufficient to indemnify Contractor against loss by reason of lien or claim against Subcontractor including reasonable costs of litigation thereunder, if it is established that Contractor might be held directly or indirectly liable for such lien or claim. Said right of retainage shall last until such lien or claim liability ceases to exist. If Subcontractor or any of Subcontractor's employees, sub-subcontractors, material men, suppliers, union or governmental agencies acting for Subcontractor's employees or other claimants against Subcontractor present Contractor with any claim for alleged non-payment, record a lien, or serve a stop notice against this project or any other project as to which Subcontractor has contracted with Contractor, or files any claim against any of Contractor's bonds, Contractor may withhold 125% of the alleged amount of such claim(s) from payments to Subcontractor under this Agreement until such time as Subcontractor has (1) satisfied such claim(s) or (2) provided Contractor, and any Owners against whom such claim is made, with sufficient bonds or other assurances against loss as a result of such claim(s).

12. Subcontractor shall secure and protect the Work done hereunder, shall bear the risk of loss or damage to that Work and assume full liability for the condition thereof until final acceptance by Architect, Owner and Contractor. Subcontractor further agrees to provide protection as is necessary to protect the Work and the workmen of Contractors, Owners and other Subcontractors from its operations.

Subcontractor shall be liable for any loss or damage to any Work and place or to any equipment and materials on the job site caused by Subcontractor, Subcontractor's agents, employees and/or guests. Subcontractor is responsible for clean up of its area of work. Backcharge to Subcontractor for clean-up will be substantiated by payroll records and purchase orders.

13. To the fullest extent permitted by law, Subcontractor shall indemnify, defend (at Subcontractor's sole cost and expense and with legal counsel reasonable approved by Contractor), protect and hold harmless Contractor, all subsidiaries, divisions and affiliated companies of Contractor, its partners, and all of such parties representatives, partners, members, designees, officers, directors, shareholders, employees, agents, successors and assigns, and any lender of Contractor with an interest in the Project (individually, an "Indemnified Party," collectively, the "Indemnified Parties"), from and against any and all claims (as more particularly set forth below), demands, obligations, damages, actions, causes of action, suits, losses, judgments, settlements, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs, and all other professional, expert or consultants' fees and costs incurred as a result of such claims or in enforcing this indemnity provision) of every kind and nature whatsoever (individually, a "Claim," collectively, "Claims") which may arise from or in any manner relate (directly or indirectly) to any work performed or services provided under this Agreement (including, without limitation, defects in workmanship or materials and/or design defects) or Subcontractor's presence or activities conducted on the Project (including, without limitation, the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of the [individually, a "Subcontractor Party"; collectively, "Subcontractor Parties"]) regardless of any fault, active or passive negligence, breach of warranty or contract, or strict liability of an Indemnified Party, including, without limitation, the following types of claims by others, including Owner against the Indemnified Parties:

- a) Property damage, including, without limitation, damage to both real and/or personal property including the project itself, costs to repair defects in property, diminution in property value, loss of use, loss of economic value, consequential losses of every kind, and any other damages associated with damage to, destruction of, defects in, or loss of use of real or personal property caused or alleged to be caused in whole or in part by any act, omission to act or breach of contractual duty by Subcontractor or any Subcontractor Party.
- b) Personal injury, including, but not limited to, without limitation, bodily injury, emotional injury, sickness or disease or death to persons including, without limitation, loss of use and enjoyment, emotional injury to, sickness or disease or death of persons including, without limitation, agents, guests or invitees of a property Owner, Subcontractor, Subcontractor party, or any other party caused or alleged to be caused in whole or in part by any act, omission to act or breach of contractual duty by Subcontractor or any Subcontractor party.
- c) Penalties and/or response costs imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance, or statute, caused by the act or omission to act of Subcontractor or any Subcontractor Party. Any violation or infraction by Subcontractor of any law, order, citation, rule, regulation, standard, ordinance, or statute in any way relating to the occupational health or safety of employees, including, without limitation, the use of Contractor's, Owner's or any other party's equipment, as well as Subcontractor's failure to comply with the SWPP Plan for the Project.
- d) Infringement of any patent rights which may be brought against Contractor arising out of or connected with the Work.
- e) Claims and liens for labor performed or materials used or furnished to be used on the Project, including incidental or consequential damages resulting to Contractor (or the owner of the Project if other than Contractor) from such Claims or liens.
- f) Failure of Subcontractor to comply with the provisions of Paragraph 14.

The indemnification provisions of a) through f) above shall extend to Claims occurring after this Agreement is terminated as well as while it is in force. Such indemnity provisions apply regardless of any active and/or passive negligent act or omission of Indemnified Parties. Subcontractor, however, shall not be obligated under this Agreement to indemnify Claims arising from their sole negligence or

willful misconduct of Indemnified Parties or independent contractors who are directly responsible to Contractor, or for defects in design furnished by such persons.

13.1 The indemnification provisions of (a) through (f) above and elsewhere in this Agreement apply regardless of whether this Agreement is executed after Subcontractor begins the Work, and shall extend to Claims arising after this Agreement is terminated, including a dispute as to the termination of Subcontractor. The indemnity provisions apply to any acts or omissions, willful misconduct or negligent acts, whether active or passive on part of Subcontractor or any Party, regardless of fault or negligence. Subcontractor's obligation to indemnify, defend and hold Contractor and Owner harmless shall apply with full force and effect regardless of any act or omission to act, or active or passive negligence by any Indemnified Party regardless of any concurrent negligence, whether active or passive, by any Indemnified Party. Notwithstanding any provision of law that would otherwise limit Subcontractor's liability, Subcontractor shall be strictly liable under this indemnification provision for damage or injury resulting from any defects in the Work regardless of fault. Subcontractor shall not be obligated under this Agreement to indemnify any Indemnified Party for Claims arising from the sole negligence or willful misconduct of an Indemnified Party or otherwise in contravention of Hawaii law, Haw. Rev. Stat. § 431:10-222. Nothing in Hawaii's insurance code shall lessen Subcontractor's obligation to defend, and Subcontractor's obligations to defend and indemnify Owner are in addition to any liability Subcontractor may have to Contractor and/or Owner for a breach by Subcontractor of any of the provisions of this Agreement. Nothing in Subcontractor's indemnity obligations shall be construed to negate, abridge or otherwise reduce any of Contractor's and/or Owner's other rights of indemnity which would otherwise exist.

Subcontractor agrees to assume the same indemnification and defense obligations to Owner as has Contractor. Subcontractor's obligation to defend Contractor is deemed a separate obligation arising immediately upon demand by an Indemnified Party.

Evidence of insurance procured by Subcontractor shall be deemed admissible in any legal proceeding and/or arbitration for any purpose, including evidence that the parties expressly bargained for a commercially reasonable risk allocation. The indemnification obligations of Subcontractor under this Section and elsewhere in this Agreement shall not be limited by the amounts or type of insurance (or the deductibles or self-insured retention amounts of such insurance) which Subcontractor is required to carry under this Agreement. The right to indemnification by Subcontractor under this Section shall be in addition to Contractor and/or Owner's separate rights under the insurance to be provided by Subcontractor under this Agreement.

It is the intention of the parties hereto that Subcontractor provides total indemnity to Contractor and Owner as provided herein. In the event of any action or proceeding, including, without limitation, litigation, arising out of subcontractor's activities in connection with this Agreement, Subcontractor shall not enter into any settlement (total or partial) with respect to such action or proceeding without the express prior written consent of Contractor. Any such attempt to enter into a settlement without the required consent shall conclusively establish that the settlement is not in "good faith," within the meaning of Haw. Rev. Stat. § 663-15.5. Any such attempted settlement shall not prohibit Contractor from proceeding against the Subcontractor for contractual and/or equitable indemnity. Should Subcontractor attempt to settle any action or proceeding in violation of this provision, such attempt shall constitute a breach of this provision and shall provide a separate legal basis for which Contractor and/or Owner may seek recovery available at law or in equity.

Subcontractor's duty to defend the Indemnified Parties is entirely separate from, independent of and free-standing from Subcontractor's duty to indemnify the Indemnified Parties, including, without limitation, the defense of the Indemnified Parties against Claims for which the Indemnified Parties (or any of them) may be strictly liable and applies whether the issue of Subcontractor's liability, breach of this Agreement or other obligation or fault has been determined and whether the Indemnified Parties (or any of them) have paid any sums or incurred any detriment, arising out of or resulting directly or indirectly from Subcontractor's performance of the Work. Such defense obligation shall arise immediately upon written notice of Claim being provided to Subcontractor, and includes, without limitation, the obligation to defend Contractor and Owner with respect to any alternative dispute resolution proceeding authorized under this Agreement as well as matters related to the investigation and resolution of claims, including, without limitation, Claims brought pursuant to state by owner, successive owners, or Claims arising out of Owner's warranty rights. It is the parties' intention that the Indemnified Parties (or any of them) shall be entitled to obtain summary adjudication of Subcontractor's duty to defend and/or duty to indemnify the Indemnified Parties at any time Payment by any Indemnified Party is not a condition precedent to enforcing such Indemnified Party's rights to indemnification and/or defense under this Agreement.

14. Subcontractor, at its expense, shall procure, carry and maintain on all operations hereunder insurance from companies approved by Contractor as follows:

- a) Worker's Compensation and Employer's Liability Insurance shall have limits not less than \$1,000,000.00 for each occurrence. Subcontractor must also submit the Waiver Transfer Rights of Recovery Against Others Endorsement.
- b) Subcontractor shall carry Commercial General Liability Insurance covering all operations by or on behalf of Subcontractor with limits not less than \$1,000,000.00 per occurrence; \$2,000,000.00 General Aggregate; and \$2,000,000.00 Products Liability Insurance. Subcontractor must provide insurance for bodily injury, property damage, personal and advertising injury for the limits above stated including coverage for:
 1. Premises and operation.
 2. Products and completed operations.

3. Contractual Liability insuring the obligations assumed by Subcontractor in this Agreement.
4. Broad Form Property Damage (including completed operation).
5. Explosion, collapse and underground hazards.

Except with respect to Bodily Injury and Property Damage included within the Products and Completed Operations Hazards, the aggregate limit, where applicable, shall apply separately to Subcontractor's work under this Agreement. Contractor, Owner, It's Engineers, Directors, Employees and Consulting Engineers must be named as an Additional Insured under said policy on the CG 20 10 11 85 form or equivalent. The policy shall stipulate that the insurance afforded the additional insured shall apply as a primary insurance and that any other insurance carried by Contractor or Owner will be excess only and will not contribute with this insurance. Subcontractor must also submit the Waiver Transfer Rights of Recovery Against Others Endorsement.

- c) Subcontractor shall carry Automobile Liability Insurance covering bodily injuries (including death) with limits not less than \$1,000,000.00 per accident.
- d) General Liability and Automobile Insurance coverage may be provided either in a primary policy, or in a combination of primary and umbrella or excess policies. Subcontractor agrees to satisfy all deductibles or self insured retentions. The General Liability coverage and additional primary insured endorsement shall be maintained throughout the project and for one year after the Project's notice of completion or for such longer period as may be required of Contractor under the general contract documents.
- e) Insurance requirements to be met as called for in the General Conditions and Specifications of the bid documents as listed above. Subcontractor shall furnish Contractor certificates from approved insurance company evidencing that all foregoing insurance is in force and will not be canceled without 30 days prior written notice to Contractor. Contractor may withhold payments otherwise due to Subcontractor until such certificates have been furnished to Contractor or after receipt of notice of intent to cancel any policy until withdrawal of said notice or reinstatement of any canceled policy.

15. It is further mutually agreed between the parties hereto that no payment made under this Agreement, except the final payment, shall be conclusive evidence of the performance of this Agreement, either in whole or in part and that no payment shall be construed to be an acceptance of defective work or improper material. In addition, all materials, work or workmanship which in the opinion of Owner or the Architect do not conform with the requirements of the Subcontract, or are not equal to approved samples, or are in any way unsatisfactory or unsuited to the purpose for which they are intended, or, through the negligence of Subcontractor, its own subcontractors or their respective employees or agents, become damaged after they are in place, shall, as directed by Owner or the Architect, be promptly corrected, removed or replaced with approved materials and work by Subcontractor. The expense of correcting or removal and replacement, as the case may be, and the cost of delays and of making good other work affected by such removal and replacement, shall be borne by Subcontractor and no extension of time will be allowed for the correcting of faulty work. If Subcontractor does not correct or remove and replace such unsatisfactory, unsuited or damaged materials, work or workmanship, within the time fixed by written notice, Contractor may do so and sell all removed materials at public or private sale. All expenses of refinishing and of removal, restoration and sale shall be charged to Subcontractor and, after making allowance for the proceeds of any such sale, may be deducted from any amounts remaining due to Subcontractor under this Agreement.

16. If the Subcontractor fails or neglects to carry out the work in accordance with the Contract Documents and this Agreement and fails within 48 hours after being notified to commence and continue correction of such default or neglect with diligence and promptness, Contractor, without prejudice to any other rights or remedies he may have, shall have the right to any or all the following remedies:

- a) Supply such number of workers and quantity of materials, equipment and other facilities as Contractor deems necessary and charge the cost hereof to Subcontractor who shall be liable for the payment of same including reasonable overhead, profit and attorney's fees incurred as a result of Subcontractor's failure to perform.
- b) Contract with one or more additional contractors to perform such part of Subcontractor's work as Contractor shall determine, will provide the most expeditious completion of the total Work and charge the cost thereof to Subcontractor.
- c) Withhold payment of any monies due Subcontractor pending corrective action by said Subcontractor to the satisfaction of Contractor.
- d) Terminate the Agreement and finish Subcontractor's work by whatever method Contractor may deem expedient. If the unpaid balance of the Contract price exceeds the expense of finishing Subcontractor's Work, such excess shall be paid to Subcontractor, but if such expense exceeds such unpaid balance, Subcontractor shall pay the difference to the Contractor.

17. Subcontractor shall comply with all laws, ordinances, rules, regulations, codes and orders of public authorities bearing on the performance of the work on this Subcontractor. Subcontractor shall secure and pay for permits, governmental fees, licenses and inspections necessary for proper execution and completion of its Work. Subcontractor shall comply with Federal, State and local tax laws, Social Security Acts, Unemployment Compensation Acts and Worker's or Workman Compensation Acts insofar as applicable to the performance of this Agreement. In the event of any change in law, regulation, rule, code, or sub-code being introduced, amended or repealed in whole or in part after the execution of this Agreement, as well as the imposition of any resulting import (including any royalty,

tax, excise, levy, fee, rate, charge or cost levied or charged or imposed) which was not in force as at the date of execution of this Agreement will be borne exclusively by Subcontractor.

18. Right to Occupy: Whenever it may be useful or necessary to Contractor to do so, Contractor shall be permitted to occupy and/or use any portion of the Subcontractor's Work which has been either partially or fully completed by the Subcontractor before final inspection and acceptance thereof by the Owner, but such use and/or occupation shall not relieve the Subcontractor of its guarantee of said work and materials nor of its obligation to make good at its own expense any defect in materials nor of its obligation to make good at its own expense any defect in materials or workmanship which may occur or develop prior to the Contractor's release from responsibility to the Owner. Provided, however, the Subcontractor shall not be responsible for the maintenance of such portion of the Subcontract Work as may be used and/or occupied by the Contractor, nor for any damage thereto that is due or caused by the sole negligence of the Contractor during such period of use.

19. Collective Bargaining Agreements. Employment of labor by the Subcontractor shall be effected under conditions that are satisfactory to the Contractor. The Subcontractor shall remove or cause to be removed from the Project any employee or employees who are considered unsatisfactory by the Contractor. It is understood that to the extent the Contractor enters into any labor agreements with labor unions, Subcontractor agrees to comply with each and all of the terms and conditions of such agreements applicable to the Subcontract work. Subcontractor shall require its subsubcontractors and/or assignees to agree in writing to comply with any such agreement or agreements applicable to the Subcontract work on the Project.

20. NPDES: Subcontractor agrees and assures that it shall observe and comply with any laws, rules, procedures or requirements pursuant to any National Pollutant Discharge Elimination System (NPDES) Pollutant Control Notes applicable to the Project. If required the Subcontractor shall comply with the Contractor's Best Management Plan (BMP) for the Project, incorporated by reference in the Contract Documents.

21. Arbitration:

Any dispute arising between the parties relating to cost (additive or deductive) or time involved in a change order or any dispute relating to the determination of whether work is within the scope of this Subcontract Agreement shall be determined as follows:

If in the judgment of Contractor, the dispute involves a decision, directive, or conduct of Owner, then on Contractor's demand, Subcontractor agrees to participate in the dispute resolution, mediation, arbitration or litigation procedures required of Contractor by the Contract Documents and to be bound by the results of that procedure. Otherwise, the parties agree to submit all disputes of under \$250,000 to arbitration by the offices of Dispute Prevention Resolution, Inc., pursuant to its governing Arbitration rules. The parties agree that any arbitration of disputes between the parties, shall be conducted by an arbitrator with experience in construction law, the arbitrator's award shall be in accordance with Hawaii law, and the award shall apply and enforce the terms of this Subcontract. An arbitrator's failure to conduct arbitration and issue an award that complies with the terms of this Agreement, shall be deemed an award that exceeds the authority of the arbitration provisions in this Agreement. Subject to these conditions, Judgment on the award rendered shall be final and may be entered in any court having jurisdiction over the award. The award's determination of whether neither or either party prevailed as to costs or attorney fees shall be conclusive and preclude either party from contending otherwise in any subsequent action, including any action against a party's surety.

22. Any notices hereunder shall be in writing and shall be served at the address set forth below by personal service or registered or certified mail. If service is to be registered or certified mail, postage pre-paid directed to the below address as shown in this Subcontract or as changed by notice in writing to the other party, such service shall be complete upon receipt of said document.

23. Should there be picketing on Contractor's jobsite and the Contractor establishes a dual gate system for Subcontractor purposes, it shall be the obligation of Subcontractor to continue proper performance of its Work without interruption or delay of its Work or other Contractors, material men and suppliers work. In the event Subcontractor refuses to perform its Work, Contractor shall give Subcontractor a written notice with 48 hours to perform its Work and if Subcontractor refuses to perform its Work, Contractor, at its option, shall be able to place Subcontractor in Breach of Subcontract Agreement and neither Contractor nor Owner shall have any further obligation to Subcontractor. If Subcontractor refuses or fails to perform its Work after said 48 hours written notice and Contractor arranges to have Subcontractor's work performed by others, then Subcontractor shall be obligated to pay Contractor all costs to complete said Subcontractor's Work, including but not necessarily limited to material, equipment, labor, other Subcontractor costs, attorney's fees, consequential damages, etc. to complete said Work.

24. Confidentiality Agreement:

Subcontractor agrees that the Work to be accomplished is confidential and neither a description of the Work nor the content of this agreement shall be released or disclosed to any third persons or any members of the media, including, but not limited to, television, radio, newspapers, magazines, trade publications, and the Internet. Subcontractor agrees to make its employees aware of this provision and to bind any lower tier contractors or suppliers to this same provision.

25. This document contains all covenants, stipulations and provisions agreed upon by the parties and supersedes and nullifies all prior negotiations, proposals and/or stipulations. There are no prior or contemporaneous agreements not included or provided for herein.

The parties shall not be bound by or liable for any statement, representation, promise or agreement not set forth herein. Changes, amendments, or modifications of the items herein shall not be valid unless reduced in writing and signed by both parties hereto.

Attached hereto are additional terms and conditions as set forth in additional pages, addendum and exhibits which are included herein and by this reference are made a part of this Subcontract as though set forth therein.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE STATE OF HAWAII CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THE BOARD WHOSE ADDRESS IS:

**STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
CONTRACTORS LICENSE BOARD
335 Merchant Street
P.O. Box 3469
Honolulu, Hawaii 96813**

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first above written.

«Company»
SUBCONTRACTOR'S LICENSE
NUMBER: «ContLicNo» EXPIRES: «ContLicExp»

F & H CONSTRUCTION
CONTRACTOR'S LICENSE
NUMBER: **15580**

By: _____

By: _____
Stephen Seibly, Secretary-Treasurer

Title: _____

Date: _____

Date: _____

Address: _____

City, State, Zip: _____

Telephone: _____

_____ Corporation _____ Sole Proprietorship _____ Partnership

Federal Identification Number or Social Security Number

FED # _____ - _____ SS # _____

HAWAII STATE GENERAL EXCISE TAX # _____