

I-595 Corridor Roadway Improvements Project

Subcontract Agreement

U.S. Dept. of Transportation Federal Highway Administration (FHWA) – Contract Provisions Form 1273

THIS AGREEMENT, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between DRAGADOS USA, INC., whose address is 500 Fifth Avenue, 38th Floor, New York, NY 10110 (hereinafter called "Contractor") and \_\_\_\_\_, whose address is \_\_\_\_\_ (hereinafter called "Subcontractor").

For and in consideration of the covenants hereinafter described, to be performed by Contractor and Subcontractor, each in favor of the other, Contractor and Subcontractor represent, warrant and agree as follows:

ARTICLE I: DESCRIPTION OF WORK.

- 1.1 The work to be performed by Subcontractor is as follows: \_\_\_\_\_  
\_\_\_\_\_ -as more particularly described in the attached EXHIBIT "A" Scope of Work- pp. ( ) (the "Work") for: the I-595 Corridor Roadway Improvements Project, located in Broward County, Florida (the "Project").
- 1.2 The Contract documents for this Subcontract consist of this Agreement and any exhibits attached hereto, the ENGINEERING, PROCUREMENT AND CONSTRUCTION CONTRACT for the Project ("EPC Contract") between I 595 EXPRESS, LLC, as Concessionaire, and Contractor, including all exhibits thereto, terms and conditions thereof, general, supplementary and other conditions, drawings, specifications, all addenda issued prior to execution of the EPC Agreement, and all modifications issued subsequent thereto (hereinafter collectively referred to as the "Contract Documents" and are incorporated by reference and identified on the attached EXHIBIT "A" . U.S. Dept. of Transportation Federal Highway Administration (FHWA) – Contract Provisions Form 1273 incorporated by reference and identified on the attached EXHIBIT "B". These documents form the Subcontract and are a part of this Agreement as if set forth herein. With respect to its Work, Subcontractor agrees to be bound to Contractor by all items of agreement between Contractor and the Concessionaire in the Contract Documents and to assume towards Contractor all obligations and responsibilities that Contractor by those instruments assumes toward the Concessionaire. Subcontractor acknowledges it has reviewed and inspected the Contract Documents. Notwithstanding the incorporation of the Agreement between Concessionaire and Contractor in this Subcontract, no provision of the Contract Documents shall be interpreted so as to create any conflict, inconsistency or ambiguity in the contingent payment provisions in this Agreement and in the event there should be any such conflict or inconsistency, the contingent payment provisions of this Agreement shall take precedence and control.
- 1.3 The term "Concessionaire" as used in this Agreement shall refer to the Concessionaire identified in the Contract Documents.
- 1.4 The term "Owner" as used in this Agreement shall refer to Florida Department of Transportation (FDOT), as identified in the Contract Documents.
- 1.5 The term "Engineer" as used in this Agreement shall refer to the Engineer and/or other design professional(s) identified in the Contract Documents and the Engineer (or other applicable design professional) of Record for this Project and the Engineer's consultant(s) charged with the responsibility for the design of the Work hereunder.
- 1.6 The terms and provision of this Agreement regarding the Work to be performed by Subcontractor shall be in addition to and not in substitution for any of the terms and provisions of the Contract Documents and any Subcontract documents.

ARTICLE II: TIME OF COMPLETION.

- 2.1 Subcontractor shall complete the Work in sequence as directed and required by Contractor and as required to maintain Contractor's progress schedule and any modifications thereof made from time to time by Contractor. Time is of the essence of this Agreement.
- 2.2 Should Subcontractor in any way cause delay to the progress of the Work so as to cause any damage to Contractor or any damages for which Contractor shall become liable, Subcontractor shall compensate Contractor for any and all such damages.

- 2.3 Contractor, if it deems necessary, may direct Subcontractor to work overtime and if so instructed, Subcontractor will work said overtime and, provided that Subcontractor is not in default in any of the provisions herein, Contractor shall pay Subcontractor for the actual additional wages paid at rates which have been approved by Contractor, plus taxes imposed by law on such additional wages, plus worker's compensation, levies and liability insurance on such additional wages when required to be paid by Subcontractor. If, however, Subcontractor delays the progress of the Work, Subcontractor shall, at its own cost and expense, work such overtime as may be necessary to avoid delay in the completion of the improvements, without any charge or fee for overtime to Contractor. Contractor shall only be liable for overtime when the same is ordered by it in writing, and not otherwise. Subcontractor will be required to make up work days lost due to rain on weekends, on a for day basis, at no additional charge to Contractor.
- 2.4 It is understood that the time to complete the Work may be reasonably adjusted from time to time as Contractor determines to be appropriate.

ARTICLE III: CONTRACT CONSIDERATION (CONTRACT SUM).

- 3.1 The sum to be paid by Contractor to Subcontractor for the Work included in this Contract shall be \_\_\_\_\_ in current funds, subject to additions or deductions as herein provided; which sum shall include all permits, fees, inspection costs and/or taxes required by any division of the Federal, State or local government. The Contract Consideration is payable at Contractor's principal office. Receipt of payment by Contractor from the Concessionaire is a condition precedent to the right of Subcontractor to receive payments under this Contract and therefore no funds will be owed to Subcontractor unless and until Contractor is paid by the Concessionaire for Subcontractor's Work. Receipt of payment from the Concessionaire shall also be deemed a condition precedent to any claim for payment by Subcontractor against the surety on any bond provided by Contractor.
- 3.2 The Contract Consideration stated herein to be paid to Subcontractor by Contractor is based upon labor performed, materials furnished or services rendered, including, but not limited to, sales taxes, use taxes and personal property taxes levied or assessed against Contractor or Subcontractor arising out of either the acquisition by Contractor for the furnishing or installing by Subcontractor or by any of its sub-subcontractors of materials, equipment, or any other kind of personal property, or the furnishing of labor and/or services in connection with the Work. Where the law requires any such tax to be stated and charged separately, the total of all items included within the Work and the added tax shall not exceed the Contract Consideration stated herein.

ARTICLE IV: MONTHLY ESTIMATE.

- 4.1 On or before the 20th day of each month Subcontractor shall submit to Contractor, in the form required by Contractor a written requisition for payment showing the proportionate value of the Work installed as forecast through the 25th day of that month, from which shall be deducted: (i) a reserve of seven percent (7%); (ii) all previous payments; and (iii) all other charges for materials, equipment or services furnished by Contractor to Subcontractor. The requisition, as approved by Contractor, shall be processed for payment. Payment shall be made to Subcontractor, upon receipt of payment by the Contractor from the Concessionaire as provided herein, at Contractor's principal office.
- 4.2 Subcontractor specifically agrees that a major consideration in the award of this Subcontract to it by Contractor is Subcontractor's agreement to look to Contractor for payment only after the Concessionaire has paid Contractor for the Work performed by Subcontractor and that receipt of payment by Contractor from the Concessionaire is and shall be a condition precedent to the right of Subcontractor to receive payment under this Agreement. Subcontractor further agrees that this, its agreement concerning payment, shall relieve any Surety of Contractor from its obligation, if any, to Subcontractor to the extent that the Concessionaire has failed to pay Contractor. Contractor shall pay Subcontractor within XXX working days after payment is received from the Concessionaire.
- 4.3 Subcontractor shall submit, prior to its first requisition for payment, a detailed and complete schedule of values, broken down by items of work, acceptable to Contractor showing the subdivisions of its Contract Consideration into its various parts to be used only as a basis of checking Subcontractor's monthly requisitions.
- 4.4 At the time of each payment, Subcontractor shall submit to Contractor Partial Waivers and Releases of Lien, executed in a form acceptable to Contractor, by each of Subcontractors' sub-subcontractors and material suppliers (including all "lienors" as defined in Chapter 713, Florida Statutes) evidencing payment for all labor, services and materials furnished through the

date of the requisition for such payment. Besides of that, The Subcontractor shall submit to Contractor certified payroll reports, executed in a form acceptable to Contractor, by each of Subcontractors' sub-subcontractors and material suppliers. Submission of required Waivers, Releases of Lien and certified payroll report shall be a condition precedent to Subcontractor's right to receive any interim or final payment under this Agreement.

- 4.5 Contractor reserves the right to advance the dates of any payment (including the final payment) under this Agreement, if, in its sole judgment, it becomes desirable to do so. Contractor shall only be required to recognize monies for materials stored on site included within any monthly requisition when such amount is approved by Contractor, Concessionaire and Concessionaire's Lender, which approval of any or all such parties may be conditioned upon their sole discretion and determination as to amount and manner of security and protection of such materials. Payment for stockpiled materials shall only be considered by Contractor if the Subcontractor has obtained Contractor's written approval prior to stockpiling such materials. Moreover, any such materials must be stored and identified for the Project, in a location and manner acceptable to Contractor, in close proximity to the Project to allow for inspection and verification of the materials at least 10 days in advance of the written request for said payment. The Subcontractor shall provide the Contractor copies of the original invoices from the supplier for the actual cost of such materials as a condition precedent to consideration by Contractor for advance payment of any stockpiled materials. Should advance payment(s) for stockpiled material be made to the Subcontractors for stockpiled materials, the materials shall immediately become the sole property of the Contractor, but the risk of loss for such materials shall remain with the Subcontractor until they are incorporated into the Project and accepted by Contractor.

ARTICLE V: FINAL PAYMENT.

- 5.1 Final payment shall be made within 60 days after the completion of the Work covered by this Agreement, satisfaction of all conditions to payment, including, without limitation, receipt of payment by Contractor from the Concessionaire, and acceptance of the Work by Contractor, Concessionaire and the Engineer, provided all Plans and Specifications have been returned to Contractor by Subcontractor and also provided Subcontractor has furnished Contractor with Final Waivers and Releases of Lien, executed in a form acceptable to Contractor, from all of Subcontractors' sub-subcontractors and material suppliers (including all lienors as defined in Chapter 713, Florida Statutes) and has given to Concessionaire and Contractor satisfactory evidence that the premises are free from all liens or other claims chargeable to the premises or Subcontractor, as well as final as-built surveys, drawings, warranties, operation manuals and instructions.
- 5.2 Prior to final payment, Subcontractor shall execute and deliver to Concessionaire and Contractor a Consent of Surety and a General Release in a form satisfactory to Contractor, holding Concessionaire and Contractor free and harmless from all claims arising out of or in connection with this Agreement and shall execute and deliver a final Release of Lien and affidavit establishing the status of payment of all sub-subcontractors and material suppliers to Subcontractor. As is the case with progress payments, receipt of payment by Contractor from the Concessionaire is a condition precedent to the right of Subcontractor to receive final payment under this Subcontract and therefore, no funds will be owed to Subcontractor, by Contractor or Contractor's surety, if any, unless and until Contractor is paid by the Concessionaire for Subcontractor's Work.
- 5.3 As an additional condition to final payment, Subcontractor shall provide the Contractor all material certifications, certified payroll reports and test reports as required by the Contract Documents.

ARTICLE VI: PAYMENTS WITHHELD.

- 6.1 If at any time there shall be evidence of any lien or claim for which Concessionaire or Contractor might become liable, and which is chargeable to Subcontractor and/or when damage shall be caused by Subcontractor to other work, Contractor shall have the right to retain out of any payment then due or thereafter to become due, an amount sufficient in Contractor's reasonable judgment to completely indemnify the Concessionaire and itself for any loss or damage, including legal fees and disbursements, which either may sustain in discharging such lien or claim or in repairing such damaged work. Should there prove to be any such claim after payments are made, Subcontractor and Subcontractor's surety, jointly and severally shall refund to Concessionaire and/or Contractor all monies that Concessionaire or Contractor, as the case may be, shall pay in discharging such lien or claim against such premises and all expenses incurred in connection therewith, including attorney fees.

ARTICLE VII: PAYMENTS NON-ACCEPTANCE.

- 7.1 No payment made under this Agreement shall be conclusive evidence of the performance of this Agreement, either wholly or in part, and no payment including final payment shall be construed to be an acceptance of defective work or improper materials, nor shall entrance and use by the Concessionaire or Contractor constitute acceptance of the Work hereunder or any part thereof.

ARTICLE VIII: EXTENSION OF TIME.

- 8.1 Subcontractor shall not be entitled to any claim for damages on account of hindrances or delays from any cause whatsoever, but should Subcontractor be delayed in the prosecution or completion of the Work by, among other things, the act, neglect or default of Contractor or of any person employed by Contractor upon the Work, or site conditions, subsurface conditions, permitting conditions, or by any damage caused by fire or other casualty in no way caused by or resulting from default or collusion on the part of Subcontractor, then the time herein fixed for the completion of the Work shall be extended, provided Contractor also receives a corresponding time extension from Concessionaire, for a period equivalent to the time lost by reason of any or all such occurrence, which extended period shall be determined and fixed by Contractor, but no such allowance shall be made unless: a) Subcontractor notifies Contractor, in writing, immediately upon becoming aware of the events which may lead to such delay, and b) a claim therefore (which shall include a detailed explanation, satisfactory to Contractor, setting forth, in detail, the basis for the claim and the calculation of the requested extension) is presented in writing to Contractor within forty-eight hours of the commencement of such delay. Such extensions of time shall be Subcontractor's sole and exclusive remedy for any such occurrence and Contractor shall be released and discharged of and from any claims which Subcontractor may have on account of any cause of delay, whether or not specifically stated herein. The foregoing limitations of liability to time extensions also apply where delay is caused by the Concessionaire, the Owner, the Engineer or other consultants and/or Lender. In no event if any of the above occurs shall Subcontractor be entitled to any additional compensation for delays attributable to breach of contract or tort, including claims for delay, acceleration, time impact, extended general conditions, extended field or home office overhead, loss of profits, loss of use, equipment rental and the like against Contractor. Should Subcontractor ever be entitled to any damages for delays hereunder or under any other provisions of this Agreement or operation of law, any recovery from Contractor shall be limited to a proportionate share of Contractor's recovery against the Concessionaire and Subcontractor must bear its share of any costs and fees incurred in making the recovery. In the event Contractor has provided a payment bond, all terms of this paragraph shall apply to claims made against the bond and/or Surety.

- 8.2 Subcontractor shall inform the Contractor in writing of any errors, omissions, differing site conditions or other conditions which may cause delay or have monetary impact to the progress of the Work. Failure by the Subcontractor to provide written notification and submit any claim to the Contractor as required in Section 8.1 shall constitute a full, complete, absolute and irrevocable waiver by the Subcontractor of any right to additional compensation or a time extension for such claim

ARTICLE IX: CONTRACT DOCUMENTS: SCOPE OF OBLIGATIONS.

- 9.1 Subcontractor assumes for the portion of the Work covered by this Agreement, all obligations incident thereto in the Contract Documents made a part hereof including all warranties, statutory and otherwise. These documents are available at all reasonable times at the office of Contractor for examination by Subcontractor.

ARTICLE X: DIMENSIONS.

- 10.1 Subcontractor shall verify all dimensions given on the Plans and in the Specifications for accuracy and shall take such measurements as will insure the proper matching and fitting of the Work covered by this Agreement with contiguous work.
- 10.2 Subcontractor shall not take advantage of any error or omission discovered in the Contract Documents, but immediately notify the Contractor in writing of such discovery.

ARTICLE XI: SHOP DRAWINGS.

- 11.1 Subcontractor shall prepare and submit to Contractor such shop drawings as may be necessary to completely describe the details and construction of the Work. Approval of shop drawings by Contractor will not relieve Subcontractor of its obligation to perform the Work in strict accordance with the Plans and/or Specifications or for the proper matching and fitting of the Work with contiguous work. The time requirements for shop drawing submittals shall be coordinated by

Subcontractors with Contractor so that sufficient time is allowed for review and comment without delay to the commencement or progress of the Work. All differences and discrepancies between Subcontractor's shop drawing and the Contract Documents shall be clearly highlighted, noted in writing and called to Contractor's attention.

ARTICLE XII: CONTIGUOUS WORK - SUBSTRATE.

- 12.1.1 Should the proper and accurate performance of the Work included in this Agreement depend upon the proper and accurate performance of other work not included in this Agreement, Subcontractor shall use all necessary means to discover any defects in such other work, including substrate and contiguous work, and shall report any such defects in writing to Contractor before proceeding with the Work, and shall allow Contractor a reasonable time to remedy such defects. Should Subcontractor proceed with its Work under this Agreement and fail to notify Contractor of any defects as required hereunder, Subcontractor shall be considered to have accepted the substrate and/or contiguous work as being fit and proper.
- 12.1.2 Subcontractor's Work hereunder shall include all cutting and patching of substrate or contiguous work necessary for the proper performance of Subcontractor's Work.

ARTICLE XIII: INTERPRETATION OF PLANS AND SPECIFICATIONS.

- 13.1 The Work included in this Agreement is to be done under the direction and to the satisfaction of Contractor and the Engineer and the decision of the Engineer as to the true construction and meaning of the Plans and Specifications shall be final and binding. Contractor will furnish to Subcontractor such additional information and Plans as may be prepared by the Engineer to further describe the Work to be performed by Subcontractor and Subcontractor shall conform to and abide by same insofar as they are consistent with the purpose and intent of the Plans and Specifications referred to in Article I.

ARTICLE XIV: CHANGE ORDERS, ADDITIONS AND DEDUCTIONS.

- 14.1 Contractor reserves the right, from time to time, whether the Work or any part thereof shall or shall not have been completed, to make changes, additions and/or omissions in the Work as it may deem necessary, upon written order to Subcontractor. No such changes, however, shall be made in the Work, except upon the written order of Contractor. When a change order is issued, the value of the Work to be added or omitted shall be stated in said order, and the amount added to or deducted from the Contract Consideration. Should the parties hereto be unable to agree as to the value of such work to be added or omitted, Subcontractor shall proceed under the written order of Contractor, from which order the stated value of the Work shall be omitted, and the determination of the value of the Work shall be referred to the Engineer whose decision shall be binding upon both parties hereto.
- 14.2 Subcontractor shall not be entitled to receive, and shall not claim, compensation for any extra Work unless Contractor issues a written change order for such work to Subcontractor, as no claims shall be recognized based upon any verbal orders.
- 14.3 If Subcontractor intends to make a claim for an increase in the Contract Consideration, Subcontractor shall give the Contractor written notice thereof within the time specified for such claims in the Contract Documents, but in no event later than 48 hours after the beginning of the occurrence of the event giving rise to such claim. Subcontractor's failure to provide timely notice as specified herein shall constitute a waiver of Subcontractor's claim.
- 14.4 No change order will be issued for additional work of any kind unless approved by the Concessionaire prior to its issuance. In the event a controversy occurs between the Concessionaire and Contractor concerning Change Orders, no compensation for these items shall be due Subcontractor from Contractor until payment for them is received by Contractor, it being understood that receipt of payment by Contractor from the Concessionaire is a condition precedent to the right of Subcontractor to receive payment from Contractor for the Change Order.

ARTICLE XV: INSPECTION.

- 15.1 Subcontractor shall provide sufficient, safe, and proper facilities at all times for the inspection of the Work by Contractor, in the field, at shops, or at any other place where materials required thereunder are in the course of preparation, manufacture, treatment, or storage. Subcontractor shall, immediately upon receiving notice from Contractor to that effect, proceed to take down all portions of the Work, and remove from the premises all material, whether worked or unworked, which Contractor

shall condemn as unsound or improper, or as in any way failing to conform to the Plans and Specifications and Subcontractor at its own cost and expense shall make good all Work damaged or destroyed thereby and replace all materials removed with proper materials. The Engineer's determination that Work fails to conform to the Plans and Specifications or otherwise fails to meet the requirements of the Contract Documents shall be binding and final.

ARTICLE XVI: FAILURE TO PROSECUTE.

16.1 Should Subcontractor at any time: (i) refuse or neglect to supply a sufficiency of skilled workers or materials of the proper quality and quantity, or (ii) fail in any respect to prosecute the Work with promptness and diligence, or (iii) cause by any action or omission the stoppage or delay of or interference with the work of Contractor or of any other subcontractors on the improvements or (iv) fail to make prompt payment for all labor, materials, equipment or supplies furnished by or through Subcontractor, or (v) fail in the performance of any of the agreements to be performed by Subcontractor, or (vi) become bankrupt or insolvent or go into liquidation either voluntarily or under an order of a court of competent jurisdiction, or (vii) make a general assignment for the benefit of creditors or otherwise acknowledge insolvency, Contractor shall be at liberty, after 24 hours written notice to Subcontractor, to provide through itself or others, any such labor or materials, and to deduct the cost thereof from any money due or thereafter to become due to Subcontractor under this Agreement. Contractor shall also be at liberty to terminate the employment of Subcontractor for the said Work and to enter on the premises and take possession, for the purpose of completing the Work included in this Agreement, of all materials, tools, equipment, scaffolding and appliances thereon, and to employ any other person or persons to finish the Work, and to provide materials therefore. Subcontractor hereby assigns, transfers and sets over to Contractor all and every of the said materials, tools and appliances.

16.2 In case of such termination of the employment of Subcontractor, Subcontractor shall not be entitled to receive any further payment under this Agreement until the Work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under this Agreement shall exceed the expense incurred by Contractor in finishing the Work, such excess shall be paid by Contractor and Subcontractor's surety, jointly and severally, to Subcontractor; but if such expense shall exceed such unpaid balance, then Subcontractor shall pay the difference to Contractor. The expense incurred by Contractor shall include the cost of furnishing materials and of finishing the Work; damage incurred through the default of Subcontractor, including a reasonable attorney's fee to counsel for Contractor; and court costs, if any, incurred by Contractor. The right to employ persons to complete the Work of Subcontractor includes the right to make payments to and/or employ all sub-subcontractors and material suppliers with whom Subcontractor has agreements for the Work, including payments which may be necessary in order to release materials previously manufactured and/or fabricated for incorporation in the Work and not yet delivered to the Job, all at Contractor's election. Whenever Subcontractor shall have defaulted hereunder, Contractor shall have the rights and benefits of Subcontractor under any sub-subcontracts and/or material purchase orders issued by Subcontractor hereunder, and the forgoing extends to all warranties and guarantees of sub-subcontractors and material suppliers to Subcontractor. Contractor's right to deal with sub-subcontractors and material suppliers to Subcontractor is with impunity. A termination under this Article that is determined to be unjustified shall be considered a termination for convenience under Article XXIV of this Agreement.

ARTICLE XVII: LOSS OR DAMAGE TO WORK.

17.1 Contractor shall not be responsible for loss or damage to the Work included in this Agreement, until after final acceptance of the Work, nor shall it be responsible for loss or damage to equipment, materials, tools, or appliances of Subcontractor used or to be used in its construction however caused.

ARTICLE XVIII: CLEANING.

18.1 Subcontractor shall, on a daily basis or as otherwise directed by Contractor, clean and remove from its own Work, contiguous work and adjoining property any dirt, droppings, spillage, debris, garbage and/or overspray, which was caused by the execution of the Work included in this Agreement; and Subcontractor shall clean up and remove from the premises all debris caused by the execution of the Work included in this Agreement. Should Subcontractor fail to remove its debris, Contractor may remove it and charge the cost to Subcontractor.

ARTICLE XIX: COMPLIANCE WITH THE LAW AND PERMITS.

19.1 Subcontractor shall obtain and pay for all necessary permits and licenses pertaining to the Work and shall comply with all federal, state, municipal and local laws, ordinances, codes, rules, regulations, standards, orders, notices and requirements, including but not limited to those relating to safety, discrimination in employment, fair employment practices or equal employment opportunity, environmental regulation and whether or not provided for by the Plans, Specifications, General Conditions, or other Contract Documents, without additional charge or expense to Contractor and shall also be responsible for and correct, at its own cost and expense, any violations thereof resulting from or in connection with the performance of its Work. Subcontractor shall at any time upon demand furnish such proof as Contractor may require showing such compliance and the correction of such violations. Subcontractor agrees to save harmless and indemnify Contractor from and against any and all loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, costs and expenses, including legal fees and disbursements, caused or occasioned directly or indirectly by Subcontractor's failure to comply with any of said laws, ordinances, rules, regulations, standards, orders, notices or requirements or to correct such violations resulting from or in connection with the performance of the Work.

ARTICLE XX: LABOR TO BE EMPLOYED.

20.1 Subcontractor shall not employ workers or means which may cause strikes, work stoppage or any disturbances by workers employed by Contractor, Concessionaire, or Subcontractors in any Work which is the subject of this Agreement or related to or in connection with the Project. Subcontractor agrees that all disputes as to jurisdiction of trades arising on the Job shall be adjusted in accordance with any plan for the settlement of jurisdictional disputes which may be in effect either nationally or in the locality in which the Work is being done, provided that this Agreement shall not be in violation or conflict with any provisions of law applicable to the settlement of such disputes. Should Subcontractor fail to carry out these provisions, Contractor shall be at liberty, after three days' written notice mailed or delivered to the last known address of Subcontractor, to terminate this Agreement or any part thereof and Contractor may, for the purpose of completing the Work, enter upon the premises and take possession, in the same manner and upon the same conditions as are described in Article XVI.

20.2 Subcontractor shall assign a fulltime on-site supervisor to the Project who is able to read, write and speak English in order to communicate with Contractor's personnel and the supervisory personnel of other trades.

20.3 Subcontractor shall not assign to or retain at the Project any supervisor or worker or sub-subcontractor deemed objectionable by Contractor. Subcontractor shall remove and replace any supervisor or worker deemed objectionable by Contractor promptly upon Contractor's request.

ARTICLE XXI: PATENTS.

21.1 Subcontractor hereby agrees to indemnify, protect and hold harmless Contractor from loss or damage and to reimburse Contractor for any expenses, including legal fees and disbursements which Contractor may incur on account of infringement or alleged infringement of any patents or patent rights by reason of the Work or materials used by Subcontractor.

ARTICLE XXII: MECHANICS LIENS OR CLAIMS.

22.1 Should anyone claiming by, through or under Subcontractor, file any mechanics, materialmen or laborers' lien, Subcontractor, at its expense, shall within five (5) days from the date of recording thereof, cause such claim of lien to be transferred to cash or surety bond or be released and discharged of record. Should anyone claiming by, through or under Subcontractor, file or make any claim against any payment bond furnished by Contractor, Subcontractor, at its expense, shall within five (5) days from the date it receives notice of such claim, deliver to Contractor a cash or surety bond in an amount calculated following the provisions of Fla. Stat. § 713.24, as security pending release or discharge of the claim against the Contractor's bond. While any such lien is of record, or claim against Contractor's payment bond pending, Contractor, at its discretion, may withhold payment of any monies owing to Subcontractor. Subcontractor hereby agrees to defend, indemnify and hold Contractor and Concessionaire harmless of and from all claims, actions and liens of Subcontractor's, sub-subcontractors and material suppliers (including all lienors as defined in Chapter 713, Florida Statutes) in any matter arising out of or pertaining to the Work under this Agreement. Subcontractor's indemnification shall extend to all costs and fees (including attorneys fees) incurred by Contractor as a result of any claim of lien or any claim asserted against Contractor's payment bond. Concessionaire

ARTICLE XXIII: ASSIGNMENT OR TRANSFER.

- 23.1 This Agreement, and the right to receive payments hereunder, is only assignable by Subcontractor with the prior written consent of Contractor, which consent Contractor may arbitrarily withhold in its sole discretion. Any approved assignment shall be subject to all rights of Contractor reserved hereunder, which rights of Contractor shall always have first priority. This Agreement is not assignable by Contractor without the prior written consent of Subcontractor, except for any assignments made by Contractor to Concessionaire or Concessionaire's Lender, which latter assignments are hereby consented to and approved by Subcontractor, who shall perform all Work hereunder for such successor to Contractor upon being furnished with a signed copy of any instrument of assignment. This provision does not supersede any prior provisions herein granting any rights to Concessionaire which are operative without necessity for specific assignment.
- 23.2 Any assignment made by a party in violation of the terms thereof shall be a default by the assigning party.

ARTICLE XXIV: TERMINATION FOR CONVENIENCE.

- 24.1 Contractor shall have the right at any time by written notice to Subcontractor, to terminate this Agreement without cause and require Subcontractor to cease work hereunder, in which case, provided Subcontractor is not then in default, Contractor shall indemnify Subcontractor against any damage directly resulting from such termination. In the event of such a termination for convenience, Subcontractor shall be entitled to payment pursuant to the terms of this Subcontract for all Work performed as of the date of termination, together with reasonable costs of demobilization and such other reasonable costs as may be encountered by Subcontractor and directly attributable to such termination. However, Subcontractor shall only be entitled to profit on that portion of the Work actually performed and approved for payment to the date of termination together with retainages held upon payments made prior thereto. Subcontractor waives any claim for loss of anticipated profits in the event Contractor exercises this clause.

ARTICLE XXV: GUARANTEES AND WARRANTIES

- 25.1 Subcontractor hereby warrants and guarantees the Work to the full extent provided in the Plans, Specifications, General Conditions, Special conditions and other Contract Documents.
- 25.2 Without limiting the foregoing or any other liability or obligation with respect to the Work, the warranties applicable to the Work shall be no less than the warranties applicable to the Work pursuant to the EPC Contract. Notwithstanding the foregoing, Subcontractor shall remove, replace and/or repair at its own expense and at the convenience of Contractor and the Concessionaire any faulty, defective or improper Work, materials or equipment discovered within one (1) year from the date of the acceptance of the Project as a whole by the Engineer and the Concessionaire or within such longer period as may be provided in the Plans, Specifications, General Conditions, Special Conditions or other Contract Documents.
- 25.3 Without limiting the generality of the foregoing, Subcontractor warrants to the Owner, Concessionaire and Contractor, and each of them, that all materials and equipment furnished under this Agreement will be of first class quality and new, unless otherwise required or permitted by the Contract Documents, that the Work performed pursuant to this Agreement will be free from defects and that the Work will strictly conform with the requirements of the Contract Documents. Work not conforming to such requirements, including substitutions not properly approved and authorized, shall be considered defective. Subcontractor shall remove, replace and repair all defective Work and shall be responsible for the removal, replacement and repair of any work or property of others damaged as a result of Subcontractor's defective Work or the removal, replacement or repair thereof. All warranties contained in this Agreement and in the Contract Documents shall be in addition to and not in limitation of all other warranties or remedies required and/or arising pursuant to applicable law.
- 25.4 Performance of the aforementioned warranty and guarantee obligations shall be deemed to be a material component of Subcontractor's contractual obligations to perform the Work.

ARTICLE XXVI: ACCIDENT PREVENTION.

- 26.1.1 Subcontractor agrees that the prevention of accidents and injuries to workers engaged in the Work under this Agreement is the responsibility of Subcontractor. Subcontractor agrees to comply with all laws, regulations and codes concerning safety as shall be applicable to the Work and to the safety standards established during the progress of the Work by Contractor. When so ordered, Subcontractor agrees to stop any part of the Work, which Contractor deems unsafe until corrective measures satisfactory to Contractor have been taken, and further agrees to make no claim for damages growing out of such stoppages.



Should Subcontractor neglect to adopt such corrective measures, Contractor may perform them and deduct the cost from payments due or to become due Subcontractor. Failure on the part of Contractor to stop unsafe practices shall, in no way, relieve Subcontractor of its responsibilities.

ARTICLE XXVII: SAFETY

27.1.1 Subcontractor shall be required to comply with all OSHA Federal, State, Local and Contractor's safety requirements, as well as Contractor's Safety Program for the Project, including, without limitation, drug testing policies. In addition, Subcontractor is hereby advised of the following minimum safety rules which will be enforced on this Project for all workers and visitors: Hard hats to be worn at all times, hard sole shoes to be worn at all times, long pants and shirts with sleeves required, no shorts, cutoffs or tank tops. To the extent that Subcontractor violates any safety requirements set forth in this Agreement, then notwithstanding any other provisions of this Subcontract, Contractor may require Subcontractor to stop work immediately and remove its workers from the jobsite. Subcontractor agrees that to the extent Subcontractor's performance is delayed due to such action, Subcontractor will be solely liable for any damages incurred by such delay and shall otherwise use all reasonable efforts to make up time and cure such delay. Upon receipt of this Subcontract, Subcontractor agrees to immediately forward to the Contractor's jobsite Superintendent and to the Subcontractor's on-site supervisor, a copy of all Material Safety Data Sheets. Subcontractor shall submit one (1) copy of its written company Safety Policy at time of shop drawing submittal. Subcontractor is required to keep a second copy on site with its Material Safety Data Sheets (MSDS) at all times for their own use. If Subcontractor does not have a company Safety Policy or if Subcontractor does have a Safety Policy and it is in any way less stringent than the Safety Program of the Contractor, Subcontractor will be required to sign Contractor's Safety Program form stating that Subcontractor will adopt and implement the Contractor's Safety Program. Subcontractor is required to have at least one (1) First Aid Kit on site. All scaffolding, lifts and working platforms as required for the completion of this Subcontractor's Scope of Work installed and operated in accordance with OSHA requirements. Applicable safety rules as herein referenced and as otherwise provided by Contractor will also apply. It is understood and agreed, that in the event that Contractor receives a fine from OSHA, or any other jurisdictional authority, due to negligence or acts of this Subcontractor; then the cost of any such fine will be deducted from the payment to the Subcontractor. Proper erection and maintenance of safety barricades around all equipment (crane, pumps, etc.) or other potential hazards in accordance with OSHA and other governmental authorities having jurisdiction over this site are the responsibility of this Subcontractor. All other safety requirements including maintenance of Material Safety Data Sheets are also the responsibility of this Subcontractor. Subcontractor is fully responsible for compliance with all provisions of the Florida Trench Safety Act.

ARTICLE XXVIII: INSURANCE.

- 28.1 A Contractor Controlled Insurance Program (CCIP) has been procured by the Contractor for the Project. The Insurance requirements are outlined in the CCIP Addendum and Forms A, B, C which must be completed, signed and attached to this contract. The CCIP terms and conditions shall be incorporated into and become an integral part of all contracts with Contractor.
- 28.2 Participation in the CCIP by Subcontractors and lower-tier Subcontractors is mandatory, except for the following excluded parties; suppliers and/or material dealers who do not provide or subcontract labor to the project, vendors, guard services, janitorial services, haulers, truckers (including trucking to and from the project, including within the project limits, where delivery is the only scope of work performed), and owner/operators whose employee's perform no on-site work or are engaged solely in the loading, unloading, stocking, testing or hauling of equipment, supplies or materials. Contractor may, at its discretion, exclude or include subcontractors or lower-tier subcontractor from the CCIP. Such persons shall be required to provide the insurance as outlined in Section 28.3 at their own expense and shall promptly furnish the Contractor with certificates of insurance evidencing that the required insurance is in force prior to commencement of the Work.
- 28.3 Excluded Subcontractors and lower-tier Subcontractors, prior to commencing the Work, shall procure and maintain, at its own expense, until completion and final acceptance of the Work, at least the following insurance from insurance companies admitted or approved in the State of Florida with an A.M. Best Rating of A XV. Subcontractor's compliance with this Article shall be a condition precedent to receipt of any payment under this Agreement.

**28.3.1 Workers' Compensation and Employer's Liability Insurance**

Coverage A - Statutory Benefits

Liability imposed by the Workers' Compensation and/or Occupational Disease statute of Florida and any other state or governmental authority having jurisdiction related to the work performed on the Project.

Coverage B - Employer's Liability

- (1) \$1,000,000 Bodily Injury by Accident – Each Accident
- (2) \$1,000,000 Each Employee Bodily Injury by Disease
- (3) \$1,000,000 Policy Limit Bodily Injury by Disease

Coverages shall include:

- (1) Waiver of Subrogation

**28.3.2 Commercial General Liability Insurance**

- (1) \$2,000,000 Each Occurrence
- (2) \$2,000,000 Personal Injury/Advertising Injury
- (3) \$2,000,000 General Aggregate
- (4) \$2,000,000 Products/Completed Operations Aggregate

Coverages shall include:

- (1) Occurrence Form
- (2) Premises Operations Explosion, Collapse and Underground
- (3) Products and Completed Operations Hazard (5 Years Post Completion of the Work)
- (4) Contractual Liability Coverage
- (5) Broad Form Property Damage Liability Coverage
- (6) Independent Contractors Coverage
- (7) Personal Injury Coverage with Contractual and Fellow Employees Exclusion deleted.
- (8) General Aggregate Limits Per Project Endorsement
- (9) Waiver of Subrogation
- (10) Additional Insured as required by contract as per CG 20 10 11/85 or it's equivalent and on a primary and non-contributory basis.

**28.3.3 Automobile Liability Insurance**

- (1) \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage (Each Accident)

Coverages shall include:

- (1) Comprehensive Form
- (2) Any Auto
- (3) Waiver of Subrogation

**28.3.4 Excess Liability Insurance**

- (1) \$3,000,000 Each Occurrence
- (2) \$3,000,000 General Aggregate
- (3) \$3,000,000 Products/Completed Operations Aggregate

Coverages shall include:

- (1) Follow Form

28.4 To the extent the Subcontractor's Work requires the stamp or seal of a professional engineer (P.E.) or the submission of calculations or drawings of a design professional, Subcontractor shall procure and maintain at its own expense professional liability insurance with a minimum limit of \$2,000,000\_\_\_\_\_ with a maximum deductible or \$250,000\_\_\_\_\_. The Contractor reserves the right to require higher limits if the value of the Subcontractor's Work exceeds more than \$\_\_\_\_\_.

28.5 All subcontractors using a crane will be required to supply Contractor with an updated crane certification and adhere to OSHA Standard # 1926.550. In addition, a crane liability insurance certificate (coverage \$1,000,000 per occurrence) shall be

provided to Contractor in writing prior to crane arriving on the job site. Subcontractor shall furnish certificates of insurance within five (5) days after the execution of the Subcontract to Contractor, which shall state applicable deductibles, if any, and a declaration stating if the policy excludes punitive damages, is on a claims made basis, or where limits are materially impaired by prior claims.

- 28.6 All Subcontractors utilizing testing companies or surveying companies shall obtain or require such testing companies or surveying companies to obtain Errors and Omissions liability coverage in the above stated amounts. Certificates of Insurance are to be provided prior to commencement of the Work.
- 28.7 Before commencing the Work, Subcontractor shall furnish a certificate, satisfactory to Contractor from each insurance company, showing that the above insurance is in force, stating policy numbers, dates of expiration, and limits of liability thereunder, providing that the insurance will not be canceled or changed until the expiration of at least sixty (60) days after written notice of such cancellation or change has been mailed to and received by Contractor, and naming Contractor, the Concessionaire and other entities as may be reasonably requested as an additional insured(s) under these policies of insurance. In addition, the Subcontractor shall deliver to the Contractor a true and correct copy of an endorsement or other similar document from each applicable insurance company, evidencing the addition of Contractor, Concessionaire and other entities as may be reasonably requested, as additional insureds for ongoing and completed operations under all applicable policies. It is expressly agreed and understood by and between Subcontractor and Contractor that the insurance afforded the additional insureds shall be primary insurance and that any other insurance carried by Contractor shall be excess of all other insurance carried by Subcontractor and shall not contribute with Subcontractor's insurance. Subcontractor further agrees to provide endorsements on its insurance policies which shall state the foregoing; however, Subcontractor's failure to provide such endorsement shall not affect Subcontractor's agreement hereunder.
- 28.8 If Subcontractor fails to procure and maintain such insurance, Contractor shall have the right, but not the obligation, to procure and maintain the said insurance for and in the name of Subcontractor and Subcontractor shall pay the cost thereof and shall furnish all necessary information to make effective and maintain such insurance or at Contractor's opinion, Contractor may offset the cost incurred by Contractor against amounts otherwise payable to Subcontractor hereunder.

#### ARTICLE XXIX: BOND.

- 29.1 The Subcontractor shall furnish, at no additional cost to the Contractor, a bond or bonds guaranteeing faithful performance of this Agreement and payment of Subcontractor's obligations for labor, services, equipment and materials arising hereunder, as stipulated in bidding requirements or specifically required in the Contract Documents. Contractor shall be a named Oblige under said bonds. The form and contents of such bonds and the surety thereon shall be satisfactory to Contractor and the surety shall have a minimum rating by Best of "A" and a financial strength of at least "VIII". The payment bond or payment provisions of a combined payment and performance bond shall comply with the requirements for statutory bonds under Florida Statutes sections 713.23 and 255.05 (for public construction).
- 29.2 In no event shall Subcontractor commence work hereunder until said bond(s) has been furnished to Contractor, and if such bond(s) is not furnished within ten (10) days of the date of the Agreement to Contractor, Contractor shall have the right to cancel this contract without any obligation or liability of any nature to Subcontractor. Should Subcontractor have commenced any work hereunder, whether with or without Contractor's consent, nothing hereby shall be construed as constituting a waiver of Contractor's right hereunder to cancel the Subcontract without any obligation or liability if Subcontractor fails to furnish the bond(s), such commencement of work to be at the sole risk and loss to Subcontractor for Subcontractor's subsequent noncompliance with obligations hereof.
- 29.3 Any assignment by Contractor of his interest hereunder shall automatically transfer Contractor's interest in the bond(s) without requirement of separate assignment and any rights enforceable hereunder by Concessionaire and/or Contractor shall give them rights under the bond(s) whether or not both of them are named as obligees, the term "Concessionaire" including Concessionaire's Lender. In case of any inconsistency between the terms of this Subcontract and any payment of performance bonds furnished by Subcontractor, the terms of this Subcontract shall prevail.

#### ARTICLE XXX: USE OF CONTRACTOR'S TOOLS AND EQUIPMENT.

- 30.1 Whenever Subcontractor in performance of its Work needs or requires the use of any tools, equipment, scaffolding or cranes belonging to Contractor or furnished at the job site by Contractor, when approved by Contractor from time to time, Subcontractor may use the same and shall be liable to Contractor for, and shall pay to Contractor forthwith, a sum established by Contractor representing the fair value or rent for the use of the same. If such payment is not promptly made to Contractor, then Contractor may deduct an amount for use or rent from the next payment, if any, which it may owe to Subcontractor. Contractor's charge for use or rent of the foregoing shall be made at rates for the same prevailing in the industry. By using said equipment Subcontractor validates that the equipment is in sound working order and that Subcontractor is familiar with the usage of the equipment and will properly and safely supervise the equipment's usage by his employees. Subcontractor assumes the entire risk in using the equipment and shall hold Contractor harmless in any and all actions.

ARTICLE XXXI: DISPUTE RESOLUTION PROCESS.

- 31.1 All claims, disputes or other matters in question arising out of or relating to this Subcontract, or the breach thereof, shall be resolved in the same manner and under the same procedure as provided in the Contract Documents with respect to disputes between the Concessionaire and Contractor. Alternatively, and at the sole discretion of Contractor, all claims, disputes or other matters in question arising out of or relating to this Subcontract, or the breach thereof, shall be resolved by binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then in effect at a hearing locale in Miami-Dade County, Florida. The award rendered by the arbitrators in any such arbitration shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
- 31.2 Contractor shall have the right to join Subcontractor as a party in any dispute resolution procedure (including, without limitation, binding arbitration) between the Concessionaire and Contractor, and/or between Contractor and any other Subcontractor(s), together with such other subcontractors or parties as may be appropriate, where in the judgment of Contractor the issues in dispute are related to the Work or performance of Subcontractor.

ARTICLE XXXII: INDEMNIFICATION.

- 32.1 Subcontractor hereby agrees to indemnify, defend and hold harmless Contractor, Concessionaire and their respective officers, representatives, employees and agents from any claim, liability, damage, loss, injury, expense, penalty, fine, judgment or cost (including, but not limited to reasonable attorney's fees in arbitration, court proceedings or appeal) to the extent caused the breach, default, negligence, recklessness, or intentional wrongful misconduct of Subcontractor and or any of Subcontractor's sub-subcontractors or suppliers of any tier, or their respective employees or representatives, in the performance of this Subcontract, whether or not caused in part by any act, omission or default of Contractor or any other party indemnified hereunder. Nothing herein shall be deemed or interpreted as requiring indemnity in violation of Florida Statutes § 725.06
- 32.2 In the event that any claim, liability, damage, loss, injury, expense, penalty, fine, judgment or cost subject to Subcontractor's obligation of defense and indemnification arises or is made, asserted or threatened, Contractor shall have the right to withhold from any payments due or to become due to Subcontractor an amount sufficient in Contractor's judgment to protect and indemnify Contractor and the other indemnified parties from and against any such claim, loss, cost, expense, liability, damage, penalty, fine or injury, including legal fees and disbursements, or Contractor in its discretion may require the Subcontractor to furnish a surety bond satisfactory to Contractor guaranteeing such protection, which bond shall be furnished by the Subcontractor within five (5) days after written demand has been made therefor.
- 32.3 In addition to Contractor and the Concessionaire, the Indemnified Parties throughout this Agreement shall include any of their respective officers, agents, servants, or employees, and affiliates, parents and subsidiaries.
- 32.4 In furtherance to but not in limitation of the indemnity provisions in this Agreement, Subcontractor hereby expressly and specifically agrees that its obligation to indemnify, defend and save harmless as provided in this Agreement shall not in any way be affected or diminished by any statutory or constitutional immunity it enjoys from suits by its own employees or from limitations of liability or recovery under worker's compensation laws.
- 32.5 In the event the Work hereunder is performed in connection with a construction contract for a public agency or in connection with a public agency's job, Subcontractor shall indemnify and hold harmless Contractor, their officers and employees, from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Subcontractor and persons employed or utilized by Subcontractor in performance of this Agreement.

ARTICLE XXXIII: SECURITY INTEREST

- 33.1 This Agreement also constitutes a Security Agreement and Financing Statement. The collateral hereunder shall include all materials, products and equipment in Subcontractor's possession or control for which payment has been made by Contractor, wherever such materials, products and equipment are located and including such materials, products and equipment stored off the site of the Project. 1
- 33.2 Subcontractor agrees to execute such financing statements and to take whatever other actions are requested by Contractor to further grant, to perfect and to continue Contractor's security interest in the collateral.

ARTICLE XXXIV: MISCELLANEOUS PROVISIONS.

- 34.1 The miscellaneous provisions set forth and contained in an Addendum, if any, to this Agreement, are expressly made a part hereof.
- 34.2 Between the parties hereto, the provisions of this Agreement shall be controlling when in conflict with any other contract documents.
- 34.3 This Agreement shall be binding upon Contractor and Subcontractor and their respective heirs, legal representatives, successors and assigns, as the case may be.
- 34.4 In the event of a default by Subcontractor under this Agreement, Contractor shall have the right to offset against any amount otherwise due or to become due Subcontractor under any other agreement between Subcontractor and Contractor (or any of Contractor's affiliated entities) an amount sufficient to protect Contractor from any loss hereunder. In the event of a default by Subcontractor under any other agreement between Contractor and Subcontractor, Contractor shall have the right to offset against any amount otherwise due or to become due Subcontractor under this Agreement an amount sufficient to protect Contractor or Contractor's surety from loss under such other agreement.
- 34.5 In any action arising out of this Agreement the prevailing party shall be entitled to recover from the other party attorney's fees and costs incurred in arbitration and in legal proceedings, including appeals.
- 34.6 This Agreement contains every obligation and understanding between the parties relating to the subject matter hereof, merges all prior discussions, negotiations and agreements, if any, between them, and neither party shall be bound by any representation, warranty, covenant, or other understanding unless it is in writing and duly executed by the parties hereto.
- 34.7 This Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of The State of Florida and venue of any action arising out of or pertaining to this Agreement shall lie exclusively in Miami-Dade County, Florida.
- 34.8 It is the intention of the parties that each provision of this Agreement shall be enforced according to its terms and that no provision shall be construed in a manner which renders it invalid or unenforceable. However, if any provision of this Agreement is determined to be invalid or unenforceable, such provision, or unenforceable part thereof, shall be severed from this Agreement and the remaining provisions shall remain intact and shall constitute the Agreement between the parties without regard to the invalidated provision.
- 34.9 It is the intention of the parties that this agreement shall be enforced according to its terms, that neither party shall be considered the drafter of the Agreement for purposes of interpretation and enforcement and that no provision of this Agreement shall be construed more harshly against either party as the drafter of the Agreement.
- 34.10 For the avoidance of any doubt, and not to the exclusion of any other requirements in the Contract Documents, the Subcontractor shall participate in the On the Job Training Requirements (OJT) and shall comply with all FDOT and FHWA, Equal Opportunity Employment (EEO) and Disadvantaged Business Enterprises (DBE) requirements, and with Contractor's approved Quality Control Program and Erosion Control and Stormwater Pollution Prevention Plan, as set forth in the Contract Documents.
- 34.11 Subcontractor agrees to perform a "commercially useful function" as defined in 49 CFR § 26.55, in connection with the work covered by this subcontract. In doing so, Subcontractor agrees that it will be responsible for and will actually perform,

manage and supervise the work covered by this subcontract and agrees that it will not sub-subcontract a significantly greater portion of the work than would be expected on the basis of normal industry practices. Subcontractor certifies that it has adequate resources to perform the work covered by this subcontract. Subcontractor agrees to prepare and submit all sub-tier subcontracts and material contracts to Contractor for approval. Contractor reserves the right to review and reject any and all sub-subcontracts, equipment leases and/or use of other Contractor's personnel entered into between Subcontractor and third parties that do not conform or comply with the provisions of this section, the terms of the EPC Contract, the Contract Documents or the requirements of the Owner. Neither the approval of nor the failure on the part of Contractor to reject such arrangements shall relieve the Subcontractor of any of its obligations under this agreement. In the event it is determined that the Subcontractor fails to perform a "commercially useful function," due in whole to the actions of the Subcontractor, Contractor shall have the right to terminate the subcontract, without penalty or liability, and Contractor may recover from Subcontractor any damages Contractor may suffer as a result of Subcontractor's failure to perform a "commercially useful function."

IN WITNESS WHEREOF, Contractor and Subcontractor have executed this Agreement the day and year aforesaid.

DRAGADOS-USA, INC.  
Contractor

Kailas Contractors  
Subcontractor

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

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

Print: Rafael Molina

Print: \_\_\_\_\_

Title: Deputy Project Manager

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

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

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

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

Print: Juan Miguel Perez

Title: Project Manager

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

Subcontract No.

C

Initials:  
Subcontractor \_\_\_\_\_  
Contractor \_\_\_\_\_

