

S.W. FUNK INDUSTRIAL CONTRACTORS, INC.
MASTER SUBCONTRACT AGREEMENT

THIS SUBCONTRACT AGREEMENT is made as of the _____ day of _____, _____ by and between S.W. Funk Industrial Contractors, Inc., a Virginia corporation, 1710 West Hundred Road, Chester, Virginia 23836 ("Contractor"); and

Subcontractor Name
a _____
Type of Entity

Address
_____, _____, _____ ("Subcontractor").
City State Zip

RECITALS:

A. Contractor from time to time will enter into contracts ["Contract(s)"] with Owners, Builders or other prime contractors (collectively, "Client") for work on certain projects, and Contractor may from time to time subcontract certain work specified in the Contract(s) to Subcontractor.

B. Contractor may engage Subcontractor to perform work by submitting Purchase Orders to Subcontractor, which Purchase Orders will identify the Contract(s) that describe the project ("Project") on which Contractor requests Subcontractor to perform the work identified in the Purchase Order ("Subcontract Work").

C. The parties desire to set forth the general terms and conditions on which Subcontractor will perform all Subcontract Work under Purchase Orders issued by Contractor.

D. The parties acknowledge that the Subcontract Work is based on the design documents listed in the Purchase Order (together, the "Subcontract Documents") and Subcontractor shall be required to provide all items of work necessary to deliver a complete and functional system consistent with the intent expressed by the design documents and which will conform to the requirements of the prime contract between Contractor and Client ("Construction Documents") which are incorporated into the Subcontract Documents

AGREEMENT:

1. Subcontract Work

(a) Subcontractor shall perform all work and shall furnish all supervision, labor, materials, plant, scaffolding, tools, equipment, supplies and all other things necessary for the construction and completion of the Subcontract Work, in strict accordance and full compliance with the terms of the Subcontract Documents and this Subcontract and to the satisfaction of Contractor and, where applicable, the Architect and Client. The Subcontract Work is not limited by any titles on the drawings or headings in the specifications, it being the intention of the parties that all work customarily performed with the Subcontract Work shall be performed by Subcontractor, including any and all items and services consistent with, contemplated by, and reasonably inferable from, the Subcontract Documents and reasonably necessary to provide a complete and fully functioning scope of work, whether or not such items and services are specifically mentioned therein, unless specifically excluded in the applicable Purchase Order.

(b) In respect of the Subcontract Work, Subcontractor shall, except as otherwise provided herein, have all rights, which Contractor has under the Construction Documents toward the Client. Subcontractor shall assume all obligations, risks and responsibilities, which Contractor has assumed towards the Client in accordance with the Construction Documents.

2. Complete Agreement

This Subcontract contains the entire agreement between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties or other matters, oral or written, shall be deemed to bind the parties hereto unless in writing and signed by the parties.

3. Performance and Payment Bonds

(a) If required by Contractor or the Construction Documents, immediately upon receipt of this Subcontract, Subcontractor shall at its expense furnish to Contractor a performance bond and a payment bond in the forms attached hereto as **Exhibit A** from a surety acceptable to Contractor, each in the full amount of this Subcontract as set forth in Article 9 below.

(b) The payment of any incremental increase in the cost of bonds arising as a result of changes in the Subcontract Work shall be the responsibility of Subcontractor and may be included as a part of Subcontractor's price quotation for proposed changes pursuant to Article 9.

4. Payment

(a) Contractor shall pay Subcontractor for performance of the work, subject to additions and deductions by change order or other Subcontract provisions, the amount set forth on the applicable Purchase Order.

(b) If Contractor is entitled to receive partial payments under the Construction Documents, Contractor shall make partial payments to Subcontractor in accordance with this Section, corresponding to requests for payment submitted by Subcontractor. So long as a request for payment is received by the 15th day of a month, Contractor will include the Subcontract Work included in the next request for payment that Contractor submits to the Architect or Client.

(c) Partial payments shall be due Subcontractor in an amount not less than ninety percent (90%) of the Subcontract Work in place, which Subcontract Work has been approved by Contractor and, if applicable, Architect and/or Client and for which payment has been made to Contractor by the Client. If the Construction Documents allow Contractor partial payments for on-site stored materials, partial payments shall also be due Subcontractor an amount not less than ninety percent (90%) of the cost of the materials stored on-site which have been approved by Contractor and if applicable, Architect, and/or Client and for which payment has been made to Contractor by Client. If the Construction Documents allow partial payment for materials stored off-site, such payments shall be made to Subcontractor in the amounts and under the standards set forth in the Construction Documents for off-site stored materials which have been approved by Contractor and, if applicable, Architect and/or Client but only after Contractor's receipt of payment therefor from Client.

(d) Partial payments shall be due on or about the tenth (10th) day following receipt of payment from the Client by Contractor as long as Subcontractor is in compliance with the terms of this Subcontract. No partial payment made under this Subcontract shall be considered an acceptance of the work, in whole or in part. Subcontractor shall not include in any request for payment amounts that Subcontractor does not intend to pay to Subcontractor's lower-tier subcontractors for any reason. Subcontractor shall make payment to its subcontractors and material suppliers no later than ten (10) days after Subcontractor's receipt of funds from Contractor.

(e) Subcontractor shall ensure that all lower-tier subcontractors and employees, at all times, are timely paid all amounts due in connection with the performance of this Subcontract in accordance with the provisions of this Article 4. After the first partial payment hereunder, Contractor shall have the right to withhold any subsequent partial payments until Subcontractor submits evidence satisfactory to Contractor that all amounts owed in connection with performance of this Subcontract have been paid.

(f) In the event Contractor pays or indemnifies any person in accordance with this Subcontract, Subcontractor shall immediately reimburse Contractor for the full amount thereof.

(g) All material and work incorporated into the Project or for which partial payment has been made shall become the property of Contractor, or, if the Construction Documents so provide, the property of the Client; however, this provision shall not relieve Subcontractor from the sole responsibility and liability for all work and materials upon which payments have been made until final acceptance of the Subcontract Work by Contractor and, if applicable, Architect and/or Client.

(h) Final payment, subject to withholdings permitted hereunder, shall not be due until after the last of the following to occur: (1) the Subcontractor Work has been completed and approved by Contractor and, if applicable, Architect and/or Client; (2) the entire Project is complete; (3) all final payment prerequisites under the Construction Documents have been satisfied; (4) satisfactory proof of payment of all amounts owed by Subcontractor in connection with this Subcontract has been provided; and (5) Contractor has been paid in full for the entire Project. It is the intent of the parties that payment in full to the Contractor is a condition precedent to the final payment being due to Subcontractor. Notwithstanding the foregoing, to the extent Contractor and, if applicable, Architect and/or Client determine that the Subcontract Work is complete, Subcontractor has complied with each and every provision of this Subcontract and Subcontractor has presented evidence satisfactory to Contractor and Architect and/or Client that there are no claims, liens, stop notices or other legal processes relating to the Subcontract Work, Owner may elect to release any retention held by Owner applicable to the Subcontract Work. Such release of retention shall not effect in any manner Subcontractor's obligations under this Subcontract, including, but not limited to, warranty obligations.

(i) Subcontractor shall cooperate fully with Contractor in securing payment to Contractor by Client, including, but not limited to, providing such supporting documentation as Architect, Client or Contractor may require.

(j) If at any time, all monies due Contractor from the Client are not paid, Contractor shall, in its sole discretion, apportion the nonpayment equitably between Contractor and all subcontractors and reduce the payments otherwise due Subcontractor accordingly.

(k) Neither partial nor final payment shall constitute or imply acceptance of the Subcontract Work.

(l) In the event of nonpayment by Contractor for reasons other than the

fault of Subcontractor, Subcontractor shall nevertheless be entitled to payment, but Subcontractor and Contractor hereby expressly agree to delay payment to Subcontractor until payment by Client of such amounts. Subcontractor and Contractor hereby acknowledge that the foregoing provision is reasonable.

5. Subcontractor's Investigations and Representations

(a) Subcontractor represents and warrants that (1) it is fully qualified to perform this Subcontract and is experienced in the type of work required by this Subcontract; (2) it is fully capable and experienced in design-build contracting and understands the increased and inherent risks associated therewith; (3) it has, by its own independent investigation, ascertained the nature and scope of the Subcontract Work, the conditions involved in performing the Subcontract Work, and the obligations of this Subcontract and the Subcontract Documents and is fully aware of all the obligations, risks, responsibilities, difficulties, and limitations to which the Subcontract Work is subject; and (4) it has verified all information furnished by Contractor or others satisfying itself as to the correctness and accuracy of that information. Any failure by Subcontractor to investigate independently and become fully informed will not relieve Subcontractor from its responsibilities hereunder. Subcontractor acknowledges and agrees that Contractor does not warrant the accuracy or reliability of any soils reports, boring logs or reports concerning site conditions.

(b) Subcontractor acknowledges that in order for Contractor to coordinate and manage the work required by the Construction Documents, it is necessary for Contractor to allocate site access and access to work areas, utilities, storage space and other characteristics of the Project site and Project Work (collectively "Site Resources") and certain trades may be given preference, at the discretion of Contractor to Site Resources in order to maintain the optimum project schedules as determined by Contractor. Accordingly, so long as Contractor acts in good faith in allocating Site Resources, Subcontractor waives any and all claims for damages, extensions of time or increases in cost as a result of any delay, disruption, interference, obstruction, hindrance, suspension, acceleration, constructive acceleration, out-of-sequence work, changes or other causes arising from Contractor's allocation of Site Resources.

6. Subcontractor's Liability and Indemnification

(a) Subcontractor hereby assumes the entire responsibility and liability for all work, supervision, labor and materials provided hereunder, whether or not erected in place and for all plant, scaffolding, tools, equipment, supplies and other things provided by Subcontractor until final acceptance of the Subcontract Work by Contractor, and, if applicable, Architect and/or Client. In the event of any loss, damage or destruction thereof from any cause, Subcontractor shall be liable therefor, and shall repair, rebuild and make good said loss, damage or destruction at

Subcontractor's cost (except to the extent proceeds of insurance are available to Subcontractor on account thereof).

(b) Subcontractor shall be liable to Contractor for all costs Contractor incurs as a result of Subcontractor's failure to perform this Subcontract in accordance with its terms. Subcontractor's failure to perform shall include the failure of its lower-tier subcontractors to perform. Subcontractor's liability shall include, but not be limited to, (1) damages and other delay costs payable by Contractor to Client (including, but not limited to, liquidated damages set forth in the Construction Documents); (2) Contractor's increased costs of performance, such as extended overhead and increased performance costs resulting from Subcontractor-caused delays or improper Subcontractor work (including, but not limited to, the costs incurred in accelerating other work); (3) warranty and rework costs; (4) liability to third parties; (5) excess re-procurement costs; (6) consultants' fees and (7) attorneys' fees and related costs.

(c) To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Contractor and Client, along with the consultants, agents and employees of any of them, from and against claims, damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Subcontractor, the Subcontractor's subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder and, if requested by Contractor, will defend any such suits at the sole cost and expense of Subcontractor. Such obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article 6(c). In claims against any person or entity indemnified under this Article 6(c) by an employee of Subcontractor, Subcontractor's subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article 6(c) shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

(d) Subcontractor shall indemnify and hold harmless Contractor, its officers, agents, employees, and indemnities from and against all claims, notices, orders, losses, suits, damages (legal and otherwise) and liabilities incurred by, or asserted against, Contractor which in any way arise out of, or related to, defective Subcontract Work, Subcontract Work that does not adhere to this agreement, any inaccuracy or violation of any certification provided by Subcontractor, the Subcontractor's failure to comply with this agreement, any death, personal injury, damage or loss to property wholly or in part by any act or omission of the Subcontractor, its agents, employees, or subcontractors arising out of, or related to, the Subcontract Work. Subcontractor shall

reimburse Contractor for all expenses reasonably incurred in connection with investigating or defending any claim, notice, order, suite, loss, damage, liability or resulting action.

(e) Subcontractor's assumption of liability is independent from, and not limited in any manner by, the insurance coverage provided by Subcontractor or others pursuant to the provisions of Article 7, or otherwise.

(f) If Subcontractor is comprised of more than one person or entity, each person or entity shall be jointly and severally liable for all of the obligations and liabilities of Subcontractor hereunder from time to time, including, without limitation, all change orders executed in connection herewith.

7. Insurance

(a) At Subcontractor's sole cost and expense, Subcontractor shall maintain in full force and effect the minimum insurance as set forth on Exhibit B during the life of the Subcontract including the warranty/guarantee periods. Subcontractor is responsible for ensuring its sub-subcontractors and suppliers maintain insurance sufficient to protect Owner, Contractor and Subcontractor from damages resulting from their operations. Subcontractor shall be responsible for determining if additional insurance is needed and such additional insurance shall be obtained by Subcontractor at its own expense. The issuance or maintaining of insurance of any type by Subcontractor or Contractor shall not be deemed or construed to release, limit, waive or discharge Subcontractor from any and all of the obligations and risks imposed by the Subcontract upon Subcontractor, including any liability in excess of the insurance coverages required herein. Neither shall any forbearance nor omission by Contractor to require proof of insurance from Subcontractor before permitting Subcontractor to proceed or continue with the Work, be deemed a waiver of Contractor's rights or Subcontractor's obligations regarding the provisions of insurance under this Subcontract. Certificates of Insurance, which comply with the requirements of the Subcontract Documents and are acceptable to Contractor, shall be delivered to Contractor prior to Subcontractor commencing any Work hereunder.

(b) Commercial General Liability Insurance and other liability insurance shall be maintained on an occurrence basis and may be arranged under a single policy for the full limits required or by a combination of underlying policies. All explosion, collapse or underground (XCU) exclusions shall be deleted. The Commercial General Liability policy and Excess or Umbrella policies shall include personal injury and advertising liability coverage, contractual liability coverage and completed operations coverage and shall remain in force for a period of 5 years from the date of final completion. Such insurance shall afford Contractor the right to approve the attorney assigned by the insurance company to defend any legal action against the Named Insured and the Additional

Insureds and that Subcontractor shall indemnify the Additional Insureds.

(c) Before starting the Work, Subcontractor shall deliver to Contractor an original certificate which shows that the insurance set forth above is in effect, which provides for no less than 30 days prior written notice to Contractor from the insurer of material changes, cancellation or non-renewal, and verifies compliance with the Subcontractor's insurance requirements and terms as set forth in these paragraphs A through E. The policies of insurance shall contain a provision expressly extending the coverage thereof to contractual liabilities assumed by Subcontractor under the Subcontract, including, but not limited to, Subcontractor's indemnity and other obligations set forth in the Paragraph above entitled "Subcontractor's Liability and Indemnification", and shall name Contractor, its parent, subsidiaries, divisions, and affiliated companies and its and their officers, directors, employees, agents, heirs, assigns, successors in interest, and representatives, and Owner as additional insureds (the "Additional Insureds"), with the exception of Worker's Compensation where said parties shall by endorsement, be named as alternate employers. The obligation to name the Indemnitees as Additional Insureds on the Subcontractor's insurance policies shall remain during the term of this Subcontract, and for a period of 5 years after Project completion. The original certificate shall be delivered to Contractor's Representative at the job site. At Contractor's request, duplicate certificates shall be mailed to such other locations Contractor may specify. Subcontractor shall submit certified copies of the policies should Contractor request them. The insurance set forth on Exhibit B shall be occurrence policies, shall contain cross-liability endorsements allowing suit by one insured against another as if separate insureds, and shall be primary to any insurance carried by Contractor or Owner which shall be excess or secondary but noncontributing insurance. Subcontractor represents that the aggregate limits stated above have not, as of the date of this Subcontract, been depleted or reduced from occurrences or claims unrelated to this Subcontract. Each policy of insurance obtained by Subcontractor shall provide that the insurer shall defend any suit against the Additional Insureds, even if such suit is frivolous or fraudulent. All renewal and/or replacement insurance shall comply with all the terms and conditions set forth in the Subcontract and the other Subcontract Documents. Insurance certificates for renewal and/or replacement insurance must comply with all requirements set forth in the Subcontract and the other Subcontract Documents and must be delivered to Contractor's job site representative and mailed as provided above, prior to expiration of the previous policy(ies).

(d) With respect to any insurance Subcontractor may maintain, including but not limited to that set forth herein, Subcontractor warrants that Subcontractor has the right to waive any and all rights of subrogation which Subcontractor's insurance carriers might have or claim against Contractor or Owner, their agents, servants, employees, officers, heirs, assigns, successors in interest and representatives in connection with the Work. Subcontractor hereby waives all such present and future rights of subrogation and agrees to defend and indemnify Contractor or Owner, their agents, servants, employees, officers and representatives in connection with the Work from all such subrogation claims. The Subcontractor shall require of its sub-subcontractors similar waivers as

provided in this paragraph and in subparagraph (iii) of paragraph E below. Subcontractor's and its sub-subcontractors' policies shall provide such waivers by endorsement or otherwise, and shall incorporate such waivers on all certificates of insurance. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly and whether or not the person or entity had an insurable interest in the property damaged or person injured.

(e) (i) Subcontractor shall procure, carry and maintain on all its operations hereunder the policies of insurance in the amounts specified in the Subcontract or in the other Subcontract Documents. The policies of insurance shall be in such form and shall be issued by such company or companies properly licensed and admitted to do business in the state where the Work is to be performed and as may be satisfactory to Contractor. All insurance companies providing any of the insurance coverages specified in this Subcontract shall have a minimum BEST rating of A-, X. This BEST rating shall be stated on the Certificate of Insurance. In the event Subcontractor shall fail to properly provide such requested insurance, or fails to provide the certificates as set forth herein or otherwise fails to comply with the terms and conditions set forth in these paragraphs A through E, Contractor may purchase such coverage and charge the expense thereof to Subcontractor, or terminate the Subcontract for default pursuant to Article 17 below and reprocure the Work from another subcontractor and all Contractor's costs and expenses incurred thereby shall be paid by Subcontractor. However, the failure of the Contractor to exercise this right does not relieve the Subcontractor of the obligations imposed by this Article 13 nor does it create any right in Subcontractor or waive any of the Contractor's rights. Subcontractor shall defend, indemnify and hold the Indemnitees hereunder harmless from and against any and all Claims arising out of or in connection with failure of Subcontractor to comply with the provisions of these paragraphs A through E. Any deductibles applicable to said insurance policies are payable by Subcontractor.

(ii) Subcontractor assumes the responsibility to verify whether Builder's Risk Insurance coverage is provided. Subcontractor shall procure and maintain equipment and property insurance if not so provided by Contractor or Owner for risks covered by a standard Builder's All-Risk policy and including work stored off-site or in transit. Subcontractor warrants that the cost of any such insurance is included in the Subcontract Price payable hereunder to the extent such insurance is not provided by Contractor or Owner.

(iii) Subcontractor hereby waives all rights against Contractor and the Owner, separate contractors and all other subcontractors for loss or damage to the extent the same is or would be covered by Builders All-Risk or any other property or equipment insurance, except such rights as they may have to the proceeds of such insurance. All Work covered by the Subcontract done at the site or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of Subcontractor exclusively until the completed Work is accepted by Contractor.

(f) Provisions substantially similar to this Article 7 shall be incorporated into

each subsubcontract entered by Subcontractor in connection with the Project.

8. Time of Performance

(a) Subcontractor will proceed with the Subcontract Work in a prompt and diligent manner and in accordance with Contractor's schedules as reasonably amended from time to time. Subcontractor shall be liable to Contractor for failure to adhere to Contractor's schedules, including amendments, even if such schedules differ from schedules set forth in the Contract Documents or the time of completion called for by the Contract Documents. **TIME IS OF THE ESSENCE.**

(b) In the event Subcontractor fails to adhere to the Contractor's schedules, Contractor may elect, at its discretion, to supplement Subcontractor's workforce and charge the costs of such supplementation to Subcontractor.

(c) If requested by Contractor, Subcontractor shall submit detailed schedules for performance of the Subcontract Work within the overall time frames and sequences set forth by Contractor, in a form acceptable to Contractor, which shall comply with all scheduling requirements of the Subcontract Documents and of subparagraph (a) above. Contractor may from time to time, at its sole discretion, direct Subcontractor to make reasonable modifications and revisions in such schedules, and Subcontractor shall not be entitled to make a claim for an increase in price or time on account thereof.

(d) Subcontractor will coordinate its work with the work of Contractor, Builder, other subcontractors of Contractor and Builder and Owner's other contractors, if any, so no delays or interference will occur in completion of any part of the entire project.

(e) Subcontractor shall be entitled to additional compensation for compliance with schedule amendments or damages for delay only to the extent Contractor receives funds on account thereof as an adjustment increasing the construction price set forth in the Contract(s).

9. Changes

(a) Contractor may, at any time, unilaterally or by agreement with Subcontractor, without notice to the sureties, make changes in the Subcontract Work ("Contractor Changes"). Any unilateral order or agreement under this Article 9 (a) shall be in writing. Subcontractor shall perform the Subcontract Work as changed without delay.

(b) Subcontractor shall submit to Contractor any requests or claims for

adjustment in the price, schedule or other provisions of the Subcontract for changes directed by the Client or for circumstances otherwise permitted by the Subcontract Documents ("Owner Changes"). Said requests or claims shall be submitted in writing by Subcontractor in time to allow Contractor to comply with the applicable provisions of the Construction Documents. Contractor shall process said requests or claims in the manner provided by, and according to, the provisions of the Construction Documents so as to protect the interests of Subcontractor and others, including Contractor. Subcontract adjustments shall be made only to the extent that a Change Order is executed pursuant to the terms of the Subcontract Documents. Further, each Subcontract adjustment shall be equal only to Subcontractor's allocable share of any adjustment in the construction price [as defined in the Contract(s)]. Subcontractor's allocable share shall be determined by Contractor, after allowance of Contractor's normal overhead and profit on any recovery and Contractor's expense of recovery, by making a reasonable apportionment, if applicable, between Subcontractor, Contractor and other subcontractors or persons with interests in the adjustment. In the event Subcontractor and Contractor do not agree on any adjustments in price or schedule for changes made, it shall be Subcontractor's duty to perform such change. Any dispute regarding such adjustment shall be resolved pursuant to section 11 below.

(c) Payment on account of pending changes made by Owner shall be made only if Contractor receives such payment from Client for Subcontractor's changed work. Each payment to Subcontractor on account of pending change orders shall be equal to Subcontractor's allocable share of Contractor's payment from Client for the pending change as determined by Contractor. Amounts paid on account of pending changes are provisional and not an admission of liability and shall be repaid to Contractor on demand whenever Contractor determines there has been an overpayment.

(d) For changes ordered by Contractor independent of the Client, Subcontractor shall be entitled to equitable adjustment in the Subcontract price. If Subcontractor considers any action or inaction by Contractor, other than a formal change order, to be a change, it shall so notify Contractor within three (3) days of said action or inaction and seek a confirmation from Contractor. Failure to comply with said confirmation procedure shall constitute a waiver of the right to compensation for the action or inaction.

(e) Subcontractor shall, within seven (7) days of a Contractor request, submit a reasonable price quotation for proposed changes. If Subcontractor does not, Contractor shall use its best estimate of the proposed change as it affects the Subcontract, which estimate shall be the maximum equitable adjustment due to Subcontractor.

(f) To the extent the Construction Documents contain items of work not shown on the Subcontract Documents or prior versions of the Construction Documents, Subcontractor shall not be entitled to a Change Order if such items of work were

foreseeable as being reasonably necessary to deliver a full, complete and functioning system consistent with the intent of the Design Documents.

10. Subcontractor's Failure to Perform

If, in the opinion of Contractor, Subcontractor shall at any time (1) refuse or fail to provide sufficient properly skilled workers, adequate supervision, or material of the proper quality (2) fail in any material respect to prosecute the Subcontract Work according to Contractor's current schedule (3) cause, by any action or omission, the stoppage or delay of, or interference with, the work of Contractor or of any other contractor or subcontractor (4) fail to comply with any provision of this Subcontract or the Construction Documents (5) make a general assignment for the benefit of its creditors (6) have a receiver appointed or (7) become insolvent, then, after serving three (3) days' written notice, unless the condition specified in such notice shall have been eliminated within such three (3) days, Contractor, at its option, without voiding the other provisions of this Subcontract and without notice to the sureties, may (i) take such steps as are necessary to overcome the condition, in which case Subcontractor shall be liable to Contractor for the costs thereof (ii) terminate for default Subcontractor's performance of all or a part of the Subcontract Work, or (iii) obtain specific performance or interlocutory mandatory injunctive relief requiring performance of Subcontractor's obligations hereunder, it being agreed by Subcontractor that such relief may be necessary to avoid irreparable harm to Contractor, and/or Client. In case of termination for default, Subcontractor shall not be entitled to receive any further payment until the Subcontract Work shall be fully completed and accepted by Contractor and if applicable, Architect and/or Client and payment in full made by Client to Contractor.

Nothing herein shall bar withholdings by Contractor permitted by other provisions of this Subcontract.

11. Settlement of Disputes

(a) Notice of Claim. In the event of any dispute involving the work performed or to be performed, Contractor shall issue a decision, which shall be followed by Subcontractor, without interruption, deficiency or delay. If Subcontractor does not agree with such decision, Subcontractor may make a claim by giving written notice to Contractor and the matter shall be resolved as set forth in Article 11(b), 11(c) or 11(d), as applicable. If the Subcontractor prevails, Subcontractor's sole remedy shall be an equitable adjustment determined as provided in Article 11(b), 11(c) or 11(d) as applicable. In addition to the notice required by Article 9(d) or the Construction Documents, notification of any claim for the equitable adjustment must be asserted in writing not later than five (5) days after Subcontractor's becomes aware of the basis for a claim (or earlier if required by the Construction Documents), and if Article 11(b) or 11(c) is applicable, within sufficient time to allow Contractor to give notice to Client

under the applicable Contract Documents.

(b) Subcontract Documents and/or Client Disputes. In case of any dispute between Contractor and Subcontractor in any way relating to, or arising from, any act or omission of Client or any act or omission for which Client may be responsible under the terms of the Subcontract Documents, Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to Client, by the terms of the Subcontract Documents, and by any and all preliminary and final decisions or determinations made hereunder by the party, board or court so authorized in the Subcontract Documents or by law, whether or not Subcontractor is a party to such proceedings. Subcontractor hereby agrees to submit to the jurisdiction of any tribunal to which Contractor has submitted in connection with the Subcontract Work. In case of such dispute, Subcontractor will comply with all provisions of the Subcontract Documents allowing a reasonable time for Contractor to analyze and forward to Client, any required communications or documentation. Contractor will, at its option, (1) present to Client, in Contractor's name (for presentation to , or (2) authorize Subcontractor to present to Client, in Contractor's name , all of Subcontractor's claims and answer Client's claims involving Subcontract Work, whenever Contractor is permitted to do so by the terms of the Subcontract Documents. Contractor will further invoke on behalf of Subcontractor, or allow Subcontractor to invoke, those provisions in the Subcontract Documents for determining disputes. Nothing herein shall require Contractor to certify a claim when it cannot do so in good faith. If such a dispute involving Client is prosecuted or defended by Contractor , Subcontractor, at its own expense, agrees to furnish all documents, statements, witnesses and other information required by Contractor and to pay or reimburse Contractor on demand for all costs incurred by Contractor in connection with the dispute including attorneys' fees. The Subcontract price shall be adjusted by Subcontractor's allocable share determined in accordance with Article 9(b) hereof.

(d) Subcontract and/or Contractor Disputes. A dispute between Contractor and Subcontractor in any way relating to, or arising from, any act or omission of Contractor or any act or omission for which Contractor may be responsible, which is not covered by the provisions of Article 11(b) or 11(c) above, shall be decided by arbitration conducted pursuant to the Construction Industry Arbitration Rules of the AAA. All proceedings shall be instituted in Richmond, Virginia. The foregoing agreement to arbitrate shall be specifically enforceable in any court of competent jurisdiction. Upon its request, Contractor shall be entitled to consolidation or joinder of any arbitration-involving Subcontractor with related arbitrations involving other parties. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction. If Contractor notifies Subcontractor that Contractor contends any arbitration or litigation brought under this Article 11(d) involves a controversy within the scope of Article 11(b) or 11(c), the arbitration or litigation shall be stayed until the proceedings under Article

11(b) or 11(c) are completed and it is determined thereunder that the controversy does not fall within Article 11(b) or 11(c).

12. Warranty

Subcontractor warrants the Subcontract Work to Contractor on the same terms, and for the same period, as Contractor warrants the work to Client, under the Construction Documents; and, with respect to the Subcontract Work, Subcontractor shall assume all warranty obligations and responsibilities of Contractor under the Construction Documents.

13. Liens

(a) In the event that liens are filed by anyone in relation to the labor and/or material furnished pursuant to this Subcontract, Subcontractor agrees to have the same discharged, by posting a bond with the appropriate authorities, or otherwise, within five (5) days' of its receipt of notice of the filing of the lien. In the event such lien is not so discharged, Contractor may discharge the lien itself holding Subcontractor responsible for all costs and obligations incurred.

(b) Subcontractor shall, as a condition precedent for receipt of partial payment other than the initial request, furnish claim releases and lien waivers with respect to all Subcontract Work performed and materials supplied through the date of the immediately preceding request for partial payment in the form required by Contractor.

(c) Prior to final payment, as a condition precedent thereto, Subcontractor shall provide to Contractor a release (in the form required by Contractor) of its liens and claims and all liens and claims of all persons furnishing labor and/or materials for the performance of this Subcontract, and satisfactory evidence that there are no other liens or claims whatsoever relating to the Subcontract Work.

14. Inspection and Acceptance

(a) Subcontractor shall provide appropriate facilities at all reasonable times for inspection by Contractor and, if applicable,, Architect and/or Client of the Subcontract Work, whether at the Project site or any other place where the Subcontract Work may be in preparation, manufacture, storage or installation. Subcontractor shall promptly replace or correct any Subcontract Work that Contractor and, if applicable, Architect, and/or Client shall reject as failing to conform to the requirements of this Subcontract. If Subcontractor does not do so within a reasonable time, Contractor shall have the right to do so and Subcontractor shall be liable to Contractor for the cost thereof.

(b) Subcontractor's remedy for wrongful rejection of Subcontract Work

pursuant to Article 14(a) shall be limited to Contractor's remedy under the Subcontract Documents if rejection is by or on behalf of Client. Contractor shall be liable for any increased direct costs caused by its wrongful rejection of work if the Client was not involved in said rejection.

(c) The Subcontract Work shall be accepted according to the terms of the Contract Documents. However, unless otherwise agreed in writing, occupancy and use by the Client or Contractor, shall not constitute acceptance of the Subcontract Work.

15. Ambiguities, Inconsistencies and Omissions

Subcontractor has reviewed the Construction Documents in preparation for execution of this Subcontract. Subcontractor understands and acknowledges that the Construction Documents existing on the date hereof may not be complete; however, Subcontractor is responsible for all work reasonably consistent with the intent of the Construction Documents necessary to produce a complete and fully functional scope of work. Therefore, any error, ambiguity, inconsistency or omission in the Construction Documents of which Subcontractor had, or should have had, knowledge (or which are consistent with the intent of the scope of work provided in the Construction Documents and the applicable Subcontract Documents as necessary to produce a full, complete and functional scope of work) shall not be a basis for any increase in the amount payable under this Subcontract or time required to perform the Subcontract Work. Should errors, ambiguities, inconsistencies or omissions appear in the Construction Documents of which Subcontractor did not have, nor should have had, knowledge before execution of this Subcontract, it shall be the duty of Subcontractor to notify Contractor in writing within three (3) days of the discovery thereof. Upon receipt of said notice, Contractor shall instruct Subcontractor as to the measures to be taken and Subcontractor shall comply with Contractor's instructions.

16. Termination for Convenience

Contractor shall have the right to terminate for convenience Subcontractor's performance of all or a part of the Subcontract Work by providing Subcontractor with a written notice of termination for convenience, to be effective upon receipt by Subcontractor. If there has been a termination of Contractor's contract with Client, Subcontractor shall be paid the amount due from Client for the Subcontract Work, as provided in the Contract(s), after payment therefor Client to Contractor. If the Contract(s) has not been terminated for convenience, Subcontractor shall be paid the reasonable value of Subcontract Work performed by Subcontractor prior to termination plus reasonable direct closeout costs, but in no event shall Subcontractor be entitled to unabsorbed overhead or anticipatory profit. If no Subcontract Work has been performed by Subcontractor at the time of termination, Subcontractor shall be paid the sum of one hundred dollars (\$100.00) for its undertaking an obligation to perform.

17. Approvals

(a) Subcontractor warrants and agrees that all requisite approvals from the Client as to its eligibility to serve as a subcontractor and the approvals of all materials and performance of the Subcontract Work as required by the Construction Documents are obtainable.

(b) Subcontractor shall deliver to Contractor copies of shop drawings, cuts, samples, material lists and other submissions required by Contractor or the Construction Documents within sufficient time so as not to delay performance of the Project or within sufficient time for Contractor to submit the same within the time stated in the Construction Documents, whichever is earlier. Submissions shall be in strict accordance with the Construction Documents, provided; however, if Subcontractor wishes to propose a deviation from the Construction Documents, such deviation shall be clearly identified on the submission and accompanied by a letter describing such deviation in detail and the effect, if any, on Subcontractor's work and time of performance. Requested deviations will be allowed only when specific written approval referencing the deviation is given to Subcontractor. No general approval granted by Contractor, Architect, or Client shall relieve Subcontractor from complying with the Construction Documents.

(c) Contractor's review of shop drawings, cuts, samples, material lists and other submissions shall not be construed as a complete check or approval nor shall it relieve the Subcontractor from responsibility for errors of any sort therein, or from the necessity of furnishing Subcontract Work required by the

Construction Documents which may have been omitted from the shop drawings, cuts, samples, material lists or other submissions.

18. Cleanup

Subcontractor shall clean all areas of the Project site in which it is working and remove all debris resulting from the Subcontract Work in a manner that will not impede either the progress of the Project or of other trades.

19. Assignment and Subcontracting

(a) Subcontractor shall not assign or transfer this Subcontract, in whole or in part, without the prior written consent of Subcontractor's surety and Contractor, which consent may be granted or withheld in Contractor's sole discretion. Contractor shall not unreasonably withhold its consent to the assignment of funds due hereunder.

(b) Subcontractor, by execution of this Subcontract, contingently

assigns to Contractor all Subcontractor's subcontracts. The assignment of each of Subcontractor's subcontracts shall take effect only upon Subcontractor's termination for default under Article 10(a) and Contractor's affirmative acceptance of the assignment of the specific subcontract by written notice to Subcontractor and Subcontractor's subcontractor. Contractor shall have no liability to any of Subcontractor's subcontractors unless and until Contractor affirmatively accepts the assignment as provided above. Subcontractor shall include a consent to such assignment in Subcontractor's subcontracts.

20. Intellectual Property and Royalties

Except as otherwise provided by the Construction Documents, Subcontractor shall pay all royalties and license fees, which may be due with respect to the Subcontract Work. Subcontractor shall pay the cost to defend all suits or claims for infringement of any intellectual property rights that may be brought against Contractor, Architect, or Client arising out of the Subcontract Work. Contractor, at Contractor's option, may designate counsel to defend and Subcontractor shall be liable to Contractor, Architect, or Client for all loss, including all costs and expenses, on account thereof, including attorneys' fees.

21. Taxes and Permits

(a) Except as otherwise provided by the Construction Documents, Subcontractor agrees to pay, comply with and hold Contractor harmless against the payment of all federal, state and local contributions, taxes, duties or premiums arising out of the performance of this Subcontract and all sales, use or

other duties or taxes of whatever nature levied or assessed against Client, Architect, Contractor or Subcontractor arising out of this Subcontract, including any interest or penalties. Subcontractor waives any and all claims for additional compensation because of any new duties or taxes or any increase in the aforementioned duties or taxes unless payment therefor is specifically provided for in the Construction Documents.

(b) Subcontractor shall obtain and pay for all permits, licenses, fees and certificates of inspection necessary for the prosecution and completion of the Subcontract Work. Subcontractor shall arrange for all necessary inspections and approvals by public officials.

22. Laws, Regulations and Ordinances

(a) Subcontractor shall be bound by and at its own cost, shall comply with all federal, state and local laws, codes, ordinances and regulations applicable to this Subcontract and the performance of the Subcontract Work whether by reason of

general law or by reason of provisions in the Contract Documents. Subcontractor and all lower-tier subcontractors shall be duly licensed to operate under the law of the applicable jurisdictions. Subcontractor and all lower-tier subcontractors shall be responsible for compliance with all OSHA regulations, including, without limitation, creation and maintenance of their own OSHA-approved safety programs.

(b) Subcontractor shall be liable to Contractor, Architect, and Client for all loss, cost and expense attributable to any acts of commission or omission by Subcontractor, its employees and agents, and lower-tier subcontractors resulting from failure to comply with any federal, state or local laws, codes, ordinances or regulations including, but not limited to, any fines, penalties or corrective measures.

(c) Unless otherwise provided in the Construction Documents, the terms and conditions of this Subcontract shall be interpreted in accordance with the laws of the jurisdiction where the Project is located.

23. Information Required by Builder or Owner

In addition to the information to be provided by Subcontractor pursuant to other provisions of this Subcontract, Subcontractor hereby agrees to provide, at no additional cost to Contractor and in a prompt and timely fashion so as not to disrupt the performance of this Subcontract, the Subcontract Documents or the Contract(s), any and all additional information relating to this Subcontract that is required either by the Construction Documents or by law.

24. Privity

(a) Until Subcontractor's obligations under this Subcontract are completely fulfilled, Subcontractor agrees not to perform any work directly for Client or deal directly with the Client's representatives in connection with the Project, unless otherwise authorized in writing by Contractor. All work for this Project performed by Subcontractor shall be processed and handled exclusively by Contractor.

(b) Client shall not be in privity of contract with Subcontractor and shall not be liable to Subcontractor under this Subcontract or any of the Construction Documents except for the payments of amounts due to Subcontractor under this Subcontract in the event that Client exercises their respective rights under an assignment of this Subcontract. Subcontractor is not a third-party beneficiary of any of the Contract Documents or any other agreement relating to the Project.

25. Notices

Any and all notices or other communications required or permitted to be given

under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or mailed by first class registered mail, return receipt requested, or via overnight delivery addressed to the parties at the addresses set forth in the first paragraph of this Agreement.

26. Severability

The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. If any provision is invalid, in whole or in part, the provision shall be considered reformed to reflect the intent thereof to the greatest extent possible consistent with law.

27. Interpretation of Contract Documents

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

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

28. Additional Provisions

See **Exhibit C** for additional conditions of this Subcontract.

(a) Purchase Order may contain those provisions of the Construction Documents that the Owner requires be specifically set forth in a Subcontract. The failure to list a provision of the Construction Documents in a Purchase Order shall in no way be construed to mean that such provision is inapplicable to Subcontractor; Subcontractor acknowledges and agrees that Subcontractor shall be bound by, and shall comply with, all provisions of the Construction Documents which may in any way be applicable to the Subcontract Work.

29. Final Agreement

(a) This Master Subcontract Agreement supersedes any and all prior such agreements.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have hereunto executed this Subcontract, on the day and year above written.

CONTRACTOR: S.W. FUNK INDUSTRIAL CONTRACTORS, INC.

By: _____

Name: _____

Title: _____

Date: _____

SUBCONTRACTOR: _____

By: _____

Name: _____

Title: _____

Date: _____

LIST OF EXHIBITS:

EXHIBIT A	BOND FORMS
EXHIBIT B	INSURANCE REQUIREMENTS
EXHIBIT C	ADDITIONAL CONDITIONS

EXHIBIT A
To Master Subcontract Agreement
BOND FORMS

(Attach bond forms. If no bond required, indicate "None")

_____ Bond Forms Attached

_____ NONE

EXHIBIT B
To Master Subcontract Agreement
INSURANCE REQUIREMENTS

1) Commercial General Liability (CGL).

- A) CGL with limits of insurance not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.
- B) If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall separately to each project.
- C) CGL coverage shall be written on ISO occurrence form CG 00 01 1093 or a substitute form providing equivalent coverage shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.
- D) Name of Company shall be included as insured on the CGL, using ISO additional Insured Endorsement CG 20 10 11 85 or an endorsement providing equivalent coverage to the additional insured. This insurance for the additional insured shall be as broad as the coverage provided for the named insured subcontractor. It shall apply as Primary Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.
- E) Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the work.

2) Automobile Liability

- A) Business Auto Liability with limits of at least \$1,000,000 each accident.
- B) Business Auto coverage must include a liability arising out of all owned, leased, hired and non-owned automobiles.

3) Commercial Umbrella

- A) Umbrella limits must be at least \$1,000,000
- B) Umbrella coverage must include as insureds all entities that are additional insureds on the CGL.
- C) Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Auto Liability and Employers Liability coverages maintained by the Subcontractor.

4) Workman's Compensation and Employers Liability

- A) Employers Liability Insurance limits of at least \$1,000,000 each accident for bodily injury by accident and \$100,00 each employee for injury by disease.
- B) Where applicable, U.S. Longshore and Harborworkers Compensation Act Endorsement shall be attached to the policy.
- C) Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.

Waiver of Subrogation

Subcontractor waives all rights against S.W. Funk Industrial Contractors, General Contractor, Owner, and Architect and their agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability, or worker's compensation and employers liability insurance maintained per requirements stated above.

Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor's Commercial General Liability Policy.

The Subcontractors' insurer/insurers shall maintain a rating of A minus or better as set by A.M. Best and Company.

Additional Limits

Specific projects may require additional coverage limits and those will be specified in purchase orders issued for those particular projects.

EXHIBIT C
To Master Subcontract Agreement

ADDITIONAL CONDITIONS

(Insert additional conditions to Subcontract Agreement here. If no additional conditions, indicate "NONE")
