

**SUBCONTRACT**



Venture One Construction, Inc.  
3883 Virginia Avenue  
Cincinnati, OH 45227  
Contract No: [XXXXXXX]  
(513) 527-4055 / (513) 527-4066 (fax)  
Project No: [XXXXXXX]

This Subcontract made and entered into by and between Venture One Construction, Inc., doing business in Hamilton County, Cincinnati, OH, hereinafter referred to as "Contractor" and

**[Subcontractor Name]**  
**[Subcontractor Contact]**  
**[Subcontractor Address]**  
**[Subcontractor Phone/Vendor Fax]**  
hereinafter referred to as "Subcontractor"

WITNESSETH: That, for the considerations herein contained, the Contractor and Subcontractor covenant and agree as follows:  
ORIENTATION: The Subcontractor agrees to furnish all material and perform all work as described in Description of Work hereof for

**[Owner's Name]**  
**[Owner's Address]**

hereinafter called the "Owner" for the construction of

**[Project Name]**  
**[Project Address]**

hereinafter called the "Project" according to drawings and specifications prepared by

**[Architect Name]**  
**[Architect Address]**

hereinafter called the "Architect" as listed below:

**CONTRACT DOCUMENTS & GENERAL REQUIREMENTS:**

- A. This Subcontract
- B. Exhibits
  - Exhibit "A" to the Subcontract "Pay Application Requirements" attached hereto.
  - Exhibit "B" to the Subcontract "Invoice Form and Schedule of Values" attached hereto.
  - Exhibit "C" to the Subcontract "Sworn Statement for Subcontractor" attached hereto.
  - Exhibit "D" to the Subcontract "Subcontractors Partial Waiver of Lien" attached hereto.
  - Exhibits "E-1" and "E-2" to the Subcontract "Partial and Final Material Supplier Waivers" attached hereto.
  - Exhibits "F-1" and "F-2" to the Subcontract "Subcontractors Conditional and Unconditional Final Waivers" attached hereto.
  - Exhibit "G" to the Subcontract "Guaranty / Warranty Form" dated attached hereto.
  - Exhibit "H" to the Subcontract "Minimum Insurance Requirements" attached hereto.
  - Exhibit "I" to the Subcontract "Project Schedule" dated [**Schedule Date**] and any subsequent updates to this schedule, which may be issued during construction to reflect current progress.
  - Exhibit "J" to the Subcontract "Request for Change Order" attached hereto.

C. Each Subcontractor is required to have a qualified supervisor present at all weekly project meetings on the jobsite while working on this project and starting one week before his work commences; any default in this regard will be fined against the contract at \$100 per occurrence: Progress Meetings will be held on [**Progress Meeting Day**].

Furnishing all labor, services, daily materials, installations, cartage, hoisting, supplies, insurance, equipment, scaffolding, tools, and other facilities of every kind and description required for the complete, prompt and efficient performance of all the work hereinafter specified as provided for in the Contract Documents. The work to be performed by the Subcontractor shall be in strict conformance with the general, supplemental and special conditions, plans, drawings, specifications, addenda, bulletins change orders, modifications made hereinafter, and all other Contract Documents, all of which form a part of this Contract and will be hereinafter referred to as the "Contract Documents". Subcontractor certifies that he is familiar with all of the terms of the Contract Documents, the location(s) of the job site, and the conditions under which the work is to be performed and that he enters into this agreement based upon his investigation of all such matters and is not relying on any opinions or representations of

Contractor. Insofar as the provisions of the Contract Documents do not conflict with specific provisions contained herein, they, and each of them, are hereby incorporated into this Subcontractor as fully as if completely rewritten herein. The Subcontractor agrees to be bound to the Contractor by all of the terms of the Contract Documents applicable to this Subcontract, and to assume toward Contractor with respect to work and operations of Subcontractor on the construction job all of the obligations and responsibilities that Contractor by Contract Documents assumes toward Owner. Performance of the work and material shall be satisfactory to the Contractor, the Owner, and its Architect and Engineers. The Work to be performed by Subcontractor is not necessarily included in one particular portion of the plans and specifications. Subcontractor will perform all of the work that falls within the general area of this Subcontract, regardless of the fact that the work to be performed may be scattered throughout the plans and specifications, and Contract Documents, as well as all incidental work reasonably necessary to complete this Subcontract, unless otherwise expressly assigned to others.

**GENERAL REQUIREMENTS:**

1. All excess materials and garbage to be cleaned up each night into provided dumpster. Chemicals to be stored and disposed of legally and in compliance with Contractor's Storm Water Pollution Protection Plan.
2. All work and materials must comply with Owner and Contractor's Storm Water Pollution Protection Plan.
3. Hard hats to be worn at all times while on site, safety visibility vest required at all times for spotters, spotters required when equipment is in use, harnesses are required in all equipment per OSHA guidelines. All work to be performed per State, local and national building codes.
4. Name badges for each employee may be required, if so name badges are to be worn at all times, no access into building will be permitted without proper identification. Name badges, if required, will be issued from Contractor; no substitutions will be accepted. Replacement badges will be \$150 each.
5. Contractor and/or Owner may require a list of all employees who will be working on this project along with verification of I-9 forms for each employee. If this is a requirement, all subcontractors must comply and this requirement cannot be negotiated. Verification and compliance forms need to be completed and submitted to Contractor prior to commencement of work.
6. All lifts to have white non-marring tires
7. An onsite Foreman for Subcontractor is to be present at all times when crews are on site and be the single contact for all coordination and scheduling. Provide name and contact number for the Foreman upon return of this Subcontract. All foremen to speak fluent English. Name \_\_\_\_\_ Phone \_\_\_\_\_
8. Registration, license or any other fees for the town/city/state of project location shall be included in this Subcontract, if so required. Subcontractor License No. \_\_\_\_\_
9. All work to be completed on or before the scheduled completion dates provided at the start of and during the project. No changes will be permitted without written authorization from Contractor.
10. Material storage and setup is to be determined prior to commencement of the Work with the agreement of Contractor and Owner.
11. The complete set of drawings and specifications and Contract Documents are included in this Subcontractor's scope of work. Subcontractor acknowledges it has had the opportunity to review the most recent version of the drawings and specifications and Contract Documents.
12. No change order work or additional work will be performed without the written approval from Contractor per this Subcontract and the Owner's Contract Documents. No field approvals will be accepted or acknowledged as binding cost additions. No field personnel have authority to approve any extra work. All work performed without written authorization per this Subcontract will be at this Subcontractor's expense.
13. All materials and equipment must be installed per plans and specifications and the Contract Documents. No changes or deviation to the plans and/or specifications and/or the Contract Documents will be accepted unless approved in writing by Contractor.
14. Any work performed by Subcontractor on a time and material basis must be supported by daily time cards approved by the Contractor's Superintendent and receipts for all materials provided.

**SCOPE OF WORK:**

**[Specific Scope of Work for Each Trade Inserted Here]**

The design and intent of this subcontract is that the subcontractor furnish a complete, code worthy, quality project, per the plans and specifications, at no other cost above the subcontract, unless a plan change would require a change in the work. Subcontractor must be present at all weekly progress meeting during his time on-site and 1 week prior to his work starting. Subcontractor shall provide one foreman on site the entire duration of the work as a point of contact for Venture One Construction, Inc., and such foreman shall be present at all weekly safety and progress meetings during his time at the site. Upon award of contract, Subcontractor shall provide to Venture One Construction, Inc. written confirmation of delivery dates of all items to the jobsite, from the suppliers, in accord with the project schedule. All work and material deliveries shall be coordinated with Venture One Construction minimum 48 hours in advance. When work is underground, Subcontractor is responsible for subsurface conditions,

including location of underground utilities and any repairs in case of damage. Subcontractor agrees to make all reasonable efforts to coordinate its part of the work with and cooperate with other trades, therefore scheduling and maintaining the progress of work so that any party does not experience delays. Subcontractor shall provide all company safety, Haz-Com, and MSDS data sheets and program information as necessary for job site records. Subcontractor shall confine all work and material storage to barricaded construction areas unless previously approved by the job site superintendent, the owner/architect, and the local jurisdiction. Asphalt areas in the area of the site shall be protected and cleaned and shall not be used for storage or construction vehicles. Subcontractor shall also be responsible for protecting all work, tools, materials, and equipment of others and of all existing conditions on site, and any damages caused by negligence in such shall be back charged to the Subcontractor's contract. Any areas on or in the vicinity of the site, which are damaged or disturbed by Subcontractor, shall be cleaned or repaired as necessary by Subcontractor to avoid potential back charges. Subcontractor shall ensure that all workers abide by company safety policies and the Venture One Construction, Inc. safety policy, including the use at all times of hard hats, work boots, and sleeved shirts. Subcontractor will comply with all of Venture One Construction safety guidelines and OSHA 1926 Regulations. Subcontractor shall be responsible for all permitting and inspections as required by local authorities and must adhere to the corresponding codes. Subcontractor is responsible for familiarizing himself with the site and noting all existing site conditions that would affect the work in his contract prior to start of the project. In the case of any discrepancy between the local codes and the Contract Documents, the Subcontractor shall immediately bring this to the attention of Venture One and shall be responsible for meeting all local codes. Subcontractor shall provide all inspections, testing, permits, and certifications per plans, specs, and local authorities. Subcontractor shall provide all cutting, patching, sleeves, escutcheon plates, and sealing or fire caulking as required for described work. Minimum of seven (7) copies of all submittals and shop drawings and (4) copies of operation and maintenance manuals, closeout information, as-builts, and warranties shall be submitted per schedule of Venture One Construction, Inc., unless more are required by specifications. Subcontractor shall furnish and install any access panels required for this scope of work. Subcontractor shall provide any system operations training required per specifications to owner prior to turnover. Subcontractor shall provide any joist reinforcement required for overhead lines per plans and specifications. Subcontractor recognizes that time is of the essence to complete the work. Weather delays are to be determined by Venture One Construction's site personnel and Project Manager; no other weather delays will be considered. Weekend work will be required to make up for weather delays and / or Subcontractor delays in completing the work herein. Subcontractor specifically acknowledges that liquidated damages are attached to the general contract with the Owner and that this project is fast track; any delays to project schedule caused by Subcontractor that result in liquidated or other damages to the General Contractor will result in the corresponding deductions from subcontract amount.

**PER PLANS & SPECS - "This contract specifically includes, but is not limited to, all work associated with specification sections of General Conditions and Division [Section(s) of Plans and Specs Covered by Contract]."**

PRICE: Contractor agrees to pay the Subcontractor for the performance of his work, the sum of «conamount»

**ContractItems:**

[Area of Work]	[Cost Code]	[Contract Amount]
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Sales Tax:	Sales Tax is included in this Subcontract.
Retainage:	Retainage will be withheld from this Subcontract at rate of 10%

**General Conditions:**

ARTICLE 1 BOND

1.1 BOND REQUIRED, AS PER ARTICLE 6, [Subcontractor Bond Y/N] at this time.

ARTICLE 2 PAYMENTS

2.1 Progress payments will be monthly payments of ninety percent (90%) of the value of the work performed in any preceding month, in accordance with estimates prepared by the Subcontractor and approved by the Contractor and the Owner or his Agent. Payments made on account of materials not incorporated in the work, but delivered and suitably stored at the site, or at some other location agreed upon in writing, shall be in accordance with the terms and conditions of the Contract Documents. Subcontractors will provide monthly completed lien waivers and supplier affidavit forms, in a form satisfactory to the Owner and Contractor for itself, lower tier Subcontractors and material suppliers. Progress payments to the Subcontractor shall be made only upon receipt by the Contractor of payment from the Owner. No compensation for these items shall be due to the Subcontractor until payment for these items is received by the Contractor, regardless of the fact that payment is delayed due to the Contractor negotiating with the Owner. Contractor will use good faith efforts to cause Owner to pay Subcontractor progress payments. IT IS SPECIFICALLY UNDERSTOOD AND AGREED, HOWEVER, THAT THE SUBCONTRACTOR BEARS THE RISK OF NONPAYMENT BY THE OWNER TO THE CONTRACTOR. Approval of the Subcontractor's monthly

estimate, in whole or in part, and, receipt of payment from Owner for the work reflected therein shall be a condition precedent which must occur before the Contractor will be obligated to pay the Subcontractor. Approval and payment of Subcontractor's monthly estimate is specifically agreed not to constitute or imply acceptance by the Contractor or Owner of any portion of the Subcontractor's Work. Subcontractor's monthly estimate of completed work is due on or before the 25th of the month with payments made 30-45 days after the month invoiced for and if all other terms and conditions of this Subcontract are satisfied.

2.2 PAYMENTS IN TRUST. Subcontractor expresses that it is its present intent to, and warrants that it will, (a) accept all funds paid pursuant to this contract "IN TRUST" for the benefit of its suppliers/sub-tier subcontractors [hereinafter "Vendor(s)"] on this project in accordance with the terms and conditions of their contracts, (b) set aside sufficient funds from the proceeds received under this contract to pay each of its Vendors in accordance with the terms and conditions of the Vendor's contracts, and (c) not disburse funds to itself or for its benefit until all outstanding invoices are paid or, in the event there is a dispute with a supplier/sub-tier subcontractor, the amounts owed pursuant to the invoices assuming there was no dispute are reserved, and there are sufficient funds reserved to pay all invoices due and payable prior to the next scheduled payment request of the Subcontractor. Contractor advises that this statement of intent is incorporated into each payment request submitted to Contractor the same as if it were fully and completely restated in the payment request.

2.3 In the event the Subcontractor does not submit to the Contractor such monthly estimates by the 25th of the month, unless the Contract Documents provide otherwise, then the Contractor may at his option include in his monthly estimate to the Owner for Work performed during the preceding month such amount as he may deem proper for the Work for the Subcontractor for the preceding month and the Subcontractor agrees to accept such approved portion thereof in lieu of monthly payment based upon the Subcontractor's estimate. In the event Subcontractor submits such monthly estimate to Contractor within the time described above, the Contractor may at his discretion modify Subcontractor's estimate in accordance with Contractor's own estimate of the Subcontractor's work performed during the preceding month, and the Subcontractor agrees to accept Contractor's estimate thereof in lieu of monthly payments based on the Subcontractor's estimate.

2.4 Without in any way limiting the foregoing, if Contractor believes that Subcontractor's ability to pay its vendors is impaired, Contractor, at its election and in its sole discretion may: (a) withhold further payment under this Agreement until Contractor has received satisfactory evidence that adequate provisions have been made for the payment of Vendors or (b) issue joint checks payable to Subcontractor and Vendor. Further, in the event any Vendor asserts a claim against Contractor or against the Project, Contractor regardless of whether claim arises under this subcontract or any other subcontract, may satisfy such claim by making payment thereon and offset such payment amounts due Subcontractor hereunder.

2.5 Final payments less retention shall be paid to the Subcontractor upon approval by the Owner and the Contractor of the Subcontractor's Work, and upon payment, less retention, having been received by the Contractor from the Owner for all of the Subcontractor's Work and satisfactory evidence having been received by the Contractor that all labor, including customary fringe benefits and payments due under collective bargaining agreements, and all Vendors have been paid to date and are waiving their lien rights upon the final payment of a specific balance due. The retention due Subcontractor shall be paid 35 days after the final completion of its work; however, the final payment from Owner shall be a condition precedent which must occur before the Contractor will be obligated to pay final payment less retention to the Subcontractor.

2.6 The Contractor may deduct from any amounts due or to become due to the Subcontractor any sum or sums owing by the Subcontractor to the Contractor; and in the event of any breach by the Subcontractor of any provision or obligation of the Subcontractor, or in the event of the assertion by other parties of any claim or lien against the Owner, the Contractor, Contractor's Surety, or the premises upon which the Work was performed, which claim or lien arises out of the Subcontractor's performance of this Agreement, the Contractor shall have the right, but is not required, to retain out of any payments due or to become due to the Subcontractor an amount sufficient to completely protect the Contractor from any and all loss, damage or expense there from, until the claim or lien has been adjusted by the Subcontractor to the satisfaction of the Contractor. This paragraph shall be applicable even though the Subcontractor has posted a fully guaranteed payment and performance bond.

### ARTICLE 3 PROSECUTION OF THE WORK

3.1 Subcontractor shall perform its work in a workmanlike manner and insure that the work of its Vendors is timely completed in accordance with the Contract Documents. Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of its work in a form acceptable to Contractor. If the Subcontractor fails to provide the scheduling information, as requested, the Contractor may estimate such scheduling information as it may deem proper for the work of Subcontractor, and the Subcontractor agrees to accept such estimate. The Contractor shall not be bound to use Subcontractor's scheduling information, but may rely upon the same. Subcontractor shall conform to the Contractor's progress schedule and all revisions or changes made thereto. Subcontractor acknowledges that revisions may be made in such schedule and agrees to make no claim for acceleration or delay by reason of such revision as long as contractor has not acted in an arbitrary or capricious manner in making the revisions.

3.2 The Subcontractor shall prosecute Subcontractor's Work in a prompt and diligent manner in accordance with the Contractor's scheduling information without delaying or hindering the Work of the Contractor or any other subcontractors. If work of others is delayed or hindered by Subcontractor, the Subcontractor will cause such damage to be corrected to the satisfaction of and without cost to the Contractor and Owner. In the event Subcontractor fails to maintain his part of the Contractor's schedule, he shall, without additional compensation, accelerate the Work as Contractor may direct until Subcontractor's Work is in accordance with Contractor's schedule. Contractor shall have complete control of the premises on which the Work is to be performed and shall have the right to decide the time and order in which the various portions of the Work shall be installed and the relative priority of the Work of Subcontractor and the other subcontractor(s), and, in general, all other matters pertaining to the timely and orderly conduct of the Work of the Subcontractor on the premises. In the event of delay, interference or disruption to Subcontractor's Work, or in the event Subcontractor claims its operations were accelerated, re-sequenced, impacted, or made less efficient or more expensive by the acts, neglect or default of Owner, Architect, Engineer, Contractor, or other subcontractor(s), or should Subcontractor be delayed waiting for materials, if required by this Subcontract to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible,

or by the combined action of the workmen, in no way caused by or resulting from fault or collusion on the part of Subcontractor, or in the event of a lockout by Contractor, Subcontractor's sole remedy shall be an extension of the time for the completion of Subcontractor's work equal to the number of days that Subcontractor was delayed, Subcontractor shall have no right to compensation or damages (including, without limitation, consequential damages) of any kind for said delays, interference, disruptions, accelerations, re-sequencings, impacts or inefficiencies, but no allowance or extension shall be made unless a claim therefore is presented in writing to Contractor within forty-eight (48) hours of the time of the commencement of such delay, and under no circumstances should the time of completion be extended to a date which will prevent Contractor from completing the entire Project within the time allowed Contractor by Owner for such completion.

3.2.1 DAMAGES. The Subcontractor will be responsible for its pro rata share, with and among other subcontractors, of any costs, expenses, or damages incurred by Contractor as a result of Subcontractor's failure or partial failure of performance hereunder, including but not limited to liquidated damages under the General Contract, if any, which General Contract is herein incorporated by reference with respect to all provisions for damages due to delay or to liquidated damages. Subcontractor acknowledges the opportunity to examine all such General Contract Documents at the Contractor's office before execution of this Agreement. Subcontractor will also be liable to Contractor for all costs and damages incurred by Contractor due to the failure by Subcontractor to keep the progress of his work equal to that of the Contractor's Progress Schedule. Any damages to the Contractor for delay caused by the Subcontractor shall be deducted by the Contractor from the agreed price for said work as damages and not as a penalty, subject, however, to the option of the Contractor to terminate the Subcontractor for default as herein elsewhere provided.

The Subcontractor will promptly submit, at its cost, shop drawings, samples, tests, field dimensions, determination of labor requirements and ordering of materials as required to meet the Schedule of Work. Before proceeding with its work, Subcontractor is to check all necessary measurements and the correctness of contiguous work installed or to be installed by other trades, and failure on his part to detect or report discrepancies, which a reasonable subcontractor in Subcontractor's trade should have detected, will relieve Contractor of any and all claims by subcontractor to recover cost, expense or damage resulting therefrom. Review of shop drawings, samples, tests, field dimensions, determination of labor requirements and ordering of materials by Contractor or Architect will not relieve Subcontractor of his obligation to perform the work in strict accordance with the drawings and specifications. Subcontractor shall notify Contractor when portions of his Work are ready for inspection.

3.4 The Subcontractor will furnish to the Contractor daily progress reports and photos on the work of the Subcontractor, including information on the status of materials and equipment which may be in the course of preparation or manufacture. Said reports shall be in a format acceptable to Contractor.

3.5 The Subcontractor shall cooperate with the Contractor, other prime contractors (if any) and other subcontractors whose work may interfere with the Subcontractor's Work and participate in the preparation of coordinated drawings and work schedules in areas of congestion, specifically noting and advising the Contractor of any interference by other prime contractors or other subcontractors.

3.6 CLEAN-UP. The Subcontractor will keep the project clean at all times of debris arising out of the performance of the Subcontract. If the Subcontractor fails to commence to comply with this paragraph after receipt of written notice of non-compliance from the Contractor, the Contractor may perform the necessary clean-up and deduct the cost of such performance from any amount due to the Subcontractor. Such charges shall be limited to the cost of cleaning up the Subcontractor's debris and the Subcontractor shall not be responsible for unclean conditions caused by other prime contractors or subcontractors. Subcontractor may be required to participate in a composite cleaning crew (based on manpower of Subcontractor's working the site) if and as directed by Contractor Superintendent for clean-up of "common trash" (i.e. lunch wrappers, drink containers, etc.).

3.7 SECURITY. The Subcontractor is responsible for security of his equipment, tools, and materials on site until installation and acceptance of the Work.

3.8 SAFETY. The Subcontractor shall maintain a safe working environment at all times and comply with O.S.H.A. regulations. Subcontractor shall cooperate with Contractor's Superintendent or safety personnel and follow any recommendations issued by Contractor's Superintendent or safety personnel.

3.8.1 Should the Subcontractor encounter asbestos, polychlorinated biphenyl (PCB) or other hazardous substances at the site which potentially are harmful to persons or property, then the Subcontractor shall take all steps required by the Subcontract Documents and by law to protect persons and property from injury or damage, including stopping the Subcontract Work in the affected areas and promptly advising the Contractor in writing of the conditions encountered at the site. Should the Subcontractor be required to stop work in any area of the Project, as a result of hazardous substances located at the site, then the Subcontractor shall not resume its Subcontract Work in the affected area until (a) the hazardous substances have been removed or made harmless, (b) the Contractor and Subcontractor agree in writing to commence the work in all or a portion of the area, (c) the Owner orders the work to proceed in the affected area and the parties agree, or (d) the matter is resolved through arbitration as provided for in this Subcontract Agreement. The Subcontractor shall not be required to perform work in areas containing asbestos, PCBs, or any other hazardous substances defined by the Subcontract Documents, without the Subcontractor's consent and proper protection of personnel as provided by O.S.H.A. and appropriate Federal, State and Local authorities.

3.8.1.2 The Subcontractor shall be responsible for initiating, maintaining and supervising all necessary safety requirements in connection with the Work. The Subcontractor shall assume responsibility for full and violation free compliance with all provisions of OSHA 29 CFR, 1926 standards as well as any other applicable government or other agency requirements pertaining to the Work and shall cooperate in correcting any deficiencies found by the Contractor. Employee safety is the responsibility of the Subcontractor. Subcontractor's failure to comply to any of the above may result in the termination of this subcontract. All cost and damages incurred in so doing will be assessed against the Subcontractor including but not limited to correcting safety deficiencies and/or OSHA violation fines. Subcontractors shall also adhere to all provisions of the Contractor's Employee Health & Safety program and be subject by safety inspections by the Contractor.

3.8.1.3 The Subcontractor shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to all employees on the Work and all other persons who may be affected thereby/ all the Work

and the materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Owner, Contractor or any of his Subcontractors or Sub-subcontractors/ and other property at the site or adjacent thereto.

3.8.1.4 The Subcontractor shall furnish, erect and maintain, as required by existing conditions and progress of the Work, but not limited to protective equipment and systems, warning / barricade system, etc. and all necessary safeguard for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Owners and users of adjacent utilities.

3.8.1.5 In accordance with OSHA 29 CFR 1926, all employees must be properly trained and must have a "Competent Person" as defined in the appropriate OSHA 29 CFR 1926 standard on site at all times during performance of the work.

3.8.1.6 The Subcontractor shall attend all jobsite safety meetings and shall conduct their own jobsite safety audits to detect and correct unsafe acts at least weekly. The Subcontractor shall also hold a pre-work jobsite meeting with all employees on site to review and sign off on the Contractor's "Contractor's Safety Booklet". The signed copy shall be returned to the Contractor's site Superintendent.

3.8.1.7 The Subcontractor shall furnish the Contractor's site Superintendent with a copy of the Subcontractor's Health & Safety Program, Hazard Communication Program and all applicable Material Safety Data Sheets prior to start of work.

3.8.1.8 The Subcontractor shall furnish a person(s) on site who can effectively communicate with and/or translate the English spoken language to those workers who can not speak in and/or understand the English language.

3.8.1.9 The Subcontractor shall supply Contractor with all necessary information regarding any and all OSHA settlement agreements which require safety provisions that are above and/or beyond the normal OSHA CFR 29 1926 safety standards such as but not limited to the following example: [Steel erector to provide fall protection at 6' instead of 25' as stated in the applicable OSHA standard(s)]. Subcontractor is to provide written proof of the implementation and enforcement of the settlement agreement and/or lack thereof if it does not apply in particular areas of the country.

3.9 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances stored, used or consumed in the performance of the Subcontract Work shall be submitted to the Contractor by the Subcontractor. MSD sheets obtained by the Contractor from other subcontractors or sources shall be made available to the Subcontractor by the Contractor.

3.10 The Subcontractor shall give adequate notices pertaining to the Work of the Subcontractor to proper authorities and secure and pay for all necessary licenses and permits to perform Subcontractor's Work, the furnishing of which is required by the Contract Documents.

3.11 The Subcontractor shall comply with all Federal, State and Local Laws, Social Security Laws and Unemployment Compensation Laws, Workers Compensation Laws and Safety Laws insofar as applicable to the performance of this Agreement. He shall pay all taxes applicable to the performance of Subcontractor's Work. He shall also maintain his own safety program for compliance with such laws.

3.12 The Subcontractor will not assign this subcontract nor subcontract the whole or any part of the Work to be performed hereunder without prior written consent of the Contractor, with the exception of those other subcontractors listed by the Subcontractor and furnished to the Contractor at the time this Agreement is executed.

3.13 OBLIGATIONS DERIVATIVE. The Subcontractor binds itself to the Contractor under this Agreement in the same manner as the Contractor is bound to the Owner under the General Contract Documents.

3.14 RESPONSIBILITIES. The Subcontractor shall furnish all of the labor, materials, equipment, sales tax and other taxes, and services, including, but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of the Subcontractor's Work. Subcontractor is responsible for ensuring that his workmanship and material are in compliance with all local, state and/or federal codes. The Subcontractor further assures Contractor that he has reviewed the plans and specifications and found them to be in compliance with said codes. The Subcontractor shall be responsible for taking field dimensions, providing tests, ordering of materials and all other actions as required to meet the Schedule of Work. Subcontractor shall check all General Contract Documents and notify Contractor of any conflicts prior to performing work. Subcontractor shall be responsible for extra costs of conflicts if advance written notice is not provided to and approved by the Contractor in writing before the work is installed. Subcontractor shall cooperate with the Contractor and other subcontractors in the preparation of coordinated drawings and in areas of congestion.

3.15 LABOR RELATIONS. Employment of labor by Subcontractor shall be effected under conditions which are satisfactory to Contractor. Subcontractor shall keep a representative at the job site during all times when Subcontractor's work is in progress, and such representatives shall be authorized to represent Subcontractor as to all phases of the work. Prior to commencement of the work, Subcontractor shall notify Contractor who Subcontractor's representative is to be, and in the event of any changes of representatives, Subcontractor shall notify Contractor who the new representative is to be prior to such change becoming effective.

3.15.1 Immediately upon execution of the Subcontract, Subcontractor shall provide a list indicating name, address, telephone number, and contract person of each supplier/sub-tier subcontractor (Vendor) that Subcontractor intends to utilize to complete Work.

3.15.2 This obligation is deemed to be a continuing obligation throughout the term of the project. Subcontractor acknowledges that Contractor has entered into labor agreements covering work at his construction job sites with the following labor unions:  
N/A

3.15.3 Subcontractor agrees to comply with all of the terms and conditions of those labor agreements including trust fund payments into the respective trust funds set forth in the labor agreement, set forth above insofar as Subcontractor may lawfully do so, and in particular agree to comply with the terms and provisions of said agreements setting forth the jurisdiction and the scope of work claimed by each and the procedure contained therein for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve the jurisdictional dispute, Subcontractor agrees, at his own cost and expense, upon request of Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

3.15.4 Should there be picketing on the Contractor's jobsite, and the Contractor establishes a reserved gate for the Subcontractor's purposes, it shall be the obligation of the Subcontractor to continue the proper performance of his work without interruption or delay.

3.15.5 Subcontractor further promises and agrees that he will bind and require all of his subcontractors and their subcontractors performing jobsite work of the type covered by any of the labor agreements specified above to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to him.

3.15.6 Subcontractor will indemnify and hold harmless Contractor from and against any liability, loss, damage, cost, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorneys fees and any other costs which may be incurred by the Contractor resulting from Subcontractor's failure to fulfill the covenants set forth in this paragraph.

#### ARTICLE 4 CHANGES IN THE WORK

4.1 CHANGES. When the Contractor so orders in writing the Subcontractor, without nullifying this Subcontract, shall make any and all changes in Work which are within the general scope of this Subcontract. Adjustments in the contract price or contract time, if any, resulting from such changes shall be set forth in a Subcontract Change Order. No such adjustment shall be made for any such changes performed by the Subcontractor that have not been so ordered by the Contractor, in writing, by an authorized officer. For this purpose neither the Contractor's Superintendent nor the Project Manager are authorized officers.

4.2 Under no conditions shall Subcontractor make any changes, either as additions or deductions, without the written order of the Contractor and Contractor shall not pay any extra charges made by the Subcontractor that have not been agreed upon in advance writing by Contractor; and, in no event, shall Contractor make payment for such charges unless and until the Contractor itself receives payment from Owner. Subcontractor shall submit immediately to the Contractor detailed written copies (acceptable to Contractor) of his firm's cost or credit proposal for changes in the work which shall include a maximum of seven percent (7%) overhead and profit. Disputed work shall be performed as ordered in writing by the Contractor and the proper cost or credit breakdown therefore shall be submitted without delay by Subcontractor to Contractor. In the event that any Change Order is issued which requires the Contractor to purchase labor to complete any portion of work of said Subcontractor or purchase material directly from a supplier to the Subcontractor, then, (the sub-tier notwithstanding) the Contractor shall deduct five percent (5%) of the purchase price or \$50 minimum, whichever is greater, for administering the Change Order.

4.3 Subcontractor shall give notice of claim relating to any work for which extra compensation is asserted prior to the performance of such work or Subcontractor shall be deemed to have abandoned any claim therefore. Subcontractor will make claims for extra compensation and for extension of time to the Contractor promptly in accordance with this article and in sufficient time to allow the Contractor a reasonable amount of time in which to meet any and all conditions in the Contractor's Contract with the Owner, to submit claims to the Owner or Architect.

4.4 If extra work was ordered by the Contractor and Subcontractor performed the same but did not receive a written order therefore, the Subcontractor shall be deemed to have waived any claim for extra compensation therefore, regardless of any written or verbal protests or claims by the Subcontractor. The Subcontractor shall be responsible for any costs incurred by the Contractor for changes of any kind made by the Subcontractor that increases the cost of the work for either the Contractor or other subcontractors when Subcontractor proceeds with such changes without a written order therefore.

4.5 No change, alteration or modification in or deviations from this Agreement or the plans or specifications, whether made in the manner herein provided or not, shall release or exonerate, in whole or in part any surety on any bond given in connection with this Agreement and neither Owner nor Contractor shall be under any obligation to notify the surety or sureties of any such change.

4.6 In the event Contractor prosecutes a claim against Owner for additional compensation for extra work, delay or any other kind of claim relating to Subcontractor's scope of Work, Subcontractor shall cooperate fully with Contractor in the prosecution thereof, and shall pay costs and expenses incurred in connection therewith, including actual attorneys fees and experts fees, to the extent that said claim is made by Contractor at the request of Subcontractor. In the event Subcontractor resists or declines to accept any claim, offset, or demand for credit asserted by Owner against Contractor which relates to Subcontractor's Scope of Work, Subcontractor shall cooperate fully with Contractor in the defense thereof, and shall pay costs and expenses incurred in connection therewith, including actual attorneys fees and experts fees, to the extent that said defense is made by Contractor at the request of Subcontractor. Contractor shall have the right to offset or deduct from any amount owing to Subcontractor, the cost Contractor has incurred, or reasonably anticipates shall incur, in prosecuting a claim against Owner on behalf of Subcontractor, or in defending a claim asserted by Owner against Contractor which relates to Subcontractor's Scope of Work. This paragraph shall impose no obligation on Contractor to prosecute claims against Owner on behalf of Subcontractor or defend against claims asserted by Owner against Contractor relating to Subcontractor's Scope of Work.

#### ARTICLE 5 INSURANCE AND INDEMNITY

5.1 Prior to the start of the Subcontractor's Work, the Subcontractor shall procure for the Subcontractor's Work, and maintain in force through the duration of the project, Workers Compensation Insurance, Employers Liability Insurance, Automobile Liability, Comprehensive General Liability Insurance and any other insurance required by the Owner or the law.

5.2 The Subcontractor insurance, as required by Paragraph 5.1, shall be written for not less than limits of liability and other conditions as described in Exhibit "H". The Contractor, Owner, Engineer and Architect shall be named as additional insurers on each of these policies except for Workers Compensation. This insurance shall include contractual liability insurance covering the Subcontractor's obligations.

5.3 Comprehensive General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy, provided such arrangement is agreeable to the Owner and complies with the requirements of the Contract Documents. Venture One Construction, Inc. will be provided with an additional insured endorsement for the Comprehensive General Liability policy of the Subcontractor.

5.4.1 The Subcontractor shall maintain in effect all insurance coverage required under this Agreement at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor. All insurance policies shall contain a provision that the

coverages afforded thereunder shall not be canceled or not renewed, nor restrictive modifications added, until at least thirty (30) days prior written notice has been given to the Contractor

5.4.2 Certificates of Insurance, or certified copies of policies acceptable to the Contractor shall be filed with the Contractor prior to the commencement of the Subcontractor's Work. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, the Contractor may purchase such coverage and charge the expense thereof to the Subcontractor, or terminate this Agreement.

5.4.3 Upon written request of the Subcontractor, the Contractor shall provide the Subcontractor with either (1) a copy of the Builders Risk policy of insurance, (2) a Certificate of Insurance identifying coverage, or (3) any other property insurance in force for the Project and procured by the Contractor. The Subcontractor shall satisfy itself as to the existence and extent of such insurance prior to commencement of the Subcontractor's Work. If the Owner or Contractor has not purchased Builders Risk insurance for the full insurable value of the Subcontractor's Work less the applicable deductible, then Subcontractor may procure such insurance as will protect the interests of the Subcontractor, its subcontractors and their subcontractors, in the Work, and, by appropriate Subcontract Change Order, the cost of such additional insurance shall be reimbursed to the Subcontractor. If not covered under the Builders Risk policy of insurance or any property or equipment insurance required by the Contract Documents, the Subcontractor shall procure and maintain at the Subcontractor's own expense property and equipment insurance for portions of the Subcontractor's Work stored off the site or in transit and for Subcontractor's tools and equipment located on the site.

## 5.5 INDEMNITY

To the fullest extent permitted by law, the subcontractor shall protect, indemnify and hold harmless (at the Subcontractor's sole expense) Venture One Construction, Inc. against any loss or damage suffered by any one arising through the negligence of the subcontractor, or those employed by him or his agent or servants; he shall bear any expense which Venture One Construction, Inc. may have by reason thereof, or on account of being charged therewith.

5.5.1 All work covered by this Subcontractor done at the site of construction or in preparing or delivering materials or equipment or any or all of them to the site, shall be the risk of the Subcontractor exclusively. With the exception that this Article 5.5 shall in no event be construed to require indemnification by Subcontractors to a greater extent than permitted under the public policy of the State where the work is performed, Subcontractor shall indemnify and save harmless Contractor and Owner, including their officers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, penalties, costs, expenses, actual attorneys fees, judgments, losses or liability, in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or in any way connected with or incidental to, the performance of the Work under this Subcontract for, but not limited to: a) Personal injury, including, but not limited to bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Contractor, Owner or any other Subcontractor, or any person, which injury, death or damage arises out of, or is in any way connected with or incidental to, the performance of work under this Subcontract, or caused or alleged to be caused, in whole or in part, by a negligent act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable regardless of whether such injury, death or damage is caused by a party indemnified hereunder.

5.5.2 Other damages of any kind of anyone including, without limitation, economic loss, property damage, and loss of use, which damage arises out of, or is in any way connected with or incidental to the performance of work under this Subcontract, or caused or alleged to be caused, in whole or in part, by a negligent act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor, or anyone for whose acts Subcontractor may be liable regardless of whether such damage is caused by a party indemnified hereunder.

5.5.3 Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute caused by the action or inaction of Subcontractor.

5.5.4 Infringement of any patent rights which may be brought against the Contractor or Owner arising out of Subcontractor's work.

5.5.5 Claims and/or liens for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages resulting to Contractor or Owner from such claims or liens.

5.5.6 Subcontractor's failure to fulfill the covenants set forth in Article 3.15, Labor Relations.

5.5.7 Failure of Subcontractor to comply with the provisions of Article 5.2, Insurance.

5.5.8 Any violation or infraction by Subcontractor of any law, order, citation, rule, regulation, standard, ordinance or statute, in any way relating to the occupational health or safety of employees, including but not limited to the use of Contractors or others equipment, hoist, elevators, or scaffolds.

5.5.9 Claims arising by reason of any obligation or indemnity which Contractor has to Owner.

5.5.10 Claims incurred in connection with any of the terms or provisions of the Subcontractor performance bonds, labor bonds, material bonds, labor, materials, second tier Subcontractors or equipment furnished hereunder, or liens or stop notice claims for labor, materials, second tier Subcontractors, bonds or equipment, or bonds given in release of such claims.

5.5.11 The Subcontractor agrees, at its own cost, expenses and risk to defend the Contractor and Owner against any claims as defined in Article 5.5 that may be brought or instituted by third persons, including, but not limited to, government agencies or employees of Subcontractor. In the event Subcontractor fails to do so, the Contractor, in addition to any other legal right it may have, may defend the same and all costs and expenses incidental to the defense thereof, including, but not limited to, actual attorneys fees and expert costs, or settlement of any such claim or liability, or payment of any judgment, cost, attorneys fees, expert fees, and expenses incidental thereto, or said amount as Contractor in its discretion deems necessary to defend and resolve such claims or liability, shall be deducted from the amount due Subcontractor hereunder and withheld by Contractor. If Contractor is not withholding sufficient moneys to compensate it for the above, then Subcontractor agrees to forthwith pay such excess to Contractor. Contractor expressly reserves the right to select the attorney to be retained by Subcontractor to defend against claims as defined in Article 5.5.



5.5.12 It is expressly acknowledged and agreed that each of the foregoing indemnities are independent, that each shall be given effect, and that each shall apply to any acts or omissions, misconduct or negligent conduct, whether active or passive, on the part of Contractor, Owner or Subcontractor, or its agents, subcontractors, employees; except that such indemnity and hold harmless agreements shall not be applicable to injury, death, or damaged property or any damage arising from the sole negligence or willful misconduct by Contractor, his agents or servants, or subcontractors who are directly responsible to Contractor, excluding Subcontractor herein.

5.5.13 In any and all claims against the Contractor or any of his agents or employees by any employee of the Subcontractor, anyone directly or indirectly employed by him or anyone for whose acts he may be liable, the indemnification obligation under Article 5.5 shall not be limited any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under Workers Compensation acts, disability benefit acts or other employee benefit acts.

#### 5.6 Special Conditions:

**WAIVER OF RIGHTS.** The Contractor and Subcontractor waive all rights against each other and the Owner, the Engineer, the Architect, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builders Risk or any other property or equipment insurance except such rights as they may have to the proceeds of such insurance, provided, however, that such waiver shall not extend to the acts of the Engineer or Architect, if any.

#### ARTICLE 6 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

A performance Bond and a Labor and Material Bond from an authorized and licensed Surety Company whose financial ability and form is satisfactory to the Contractor shall be furnished in the full amount of this Agreement, if required by the Contractor. This obligation shall continue throughout this agreement and may be required at any time during the performance of Subcontractor's Work.

#### ARTICLE 7 WARRANTY

Subcontractor warrants to Owner, Architect and Contractor that all materials and equipment furnished shall be new unless otherwise specified and that all work under this Subcontract shall be of good quality, free from faults and defects and in strict conformance with the Contract Documents. All work not strictly conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Subcontractor agrees to promptly make good without cost to Owner or Contractor any and all defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period so established in the Contract Documents, and if no such period be stipulated in the Contract Documents, then such guarantee or warranty shall be for a period of one year from the date of completion and acceptance of the project by Owner. The warranty provided in this Article 7 shall be an addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

#### ARTICLE 8 CONTRACTORS' OBLIGATIONS

8.1 Insofar as the provisions of the Contract Documents do not conflict with the specific provisions contained herein, the Contractor agrees to be bound to the Subcontractor by all the obligations that the Owner assumes to the Contractor under the Contract Documents and by all provisions thereof affording remedies and redress to the Contractor from the Owner insofar as applicable to this Agreement. Contractor shall have all the defenses against such claims that the Owner would have against the Contractor and, with respect to time limits, Subcontractor must comply with all procedural requirements such as to give the Contractor a reasonable amount of time in which to comply with those procedural time requirements in its dealing with the Owner.

8.2 Upon request, the Contractor will give the Subcontractor written authorization to obtain directly from the Architect/Engineer or Owner's authorized agent, evidence of amount and percentages of completion certified on his account.

8.3 The Contractor shall not issue or give any instruction, order or directions directly to employees or workmen of the Subcontractor other than to the persons designated as the authorized representative(s) of the Subcontractor. Subcontractor shall keep a representative on the job site during all times when Subcontractor's Work is in progress, and such representatives shall be authorized to represent Subcontractor as to all phases of the work. Prior to the commencement of the work, Subcontractor shall notify Contractor who Subcontractor's representative is to be, and in the event of any change of representative, Subcontractor shall notify Contractor who the new representative is to be prior to such change becoming effective.

#### ARTICLE 9. FAILURE OF PERFORMANCE.

9.1. **TERMINATION FOR DEFAULT.** If subcontractor at any time fails to supply a sufficient number of workers and/or a sufficient quantity of materials of the proper quality or fails to properly and diligently prosecute the work covered by this Agreement, or fails in the performance of any of the obligations herein contained, or fails to make prompt payment to Subcontractor's workers, subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or is otherwise guilty of a material breach of a provision of this Agreement, Contractor may, in such event at Contractor's option, after forty-eight (48) hours written notice to Subcontractor, without prejudice to any rights and remedies, provide any such labor and materials and deduct the cost thereof from any money then due or thereafter to become due Subcontractor, or in any of such events Contractor may terminate the employment of Subcontractor for the work under this Agreement and shall have the right to enter upon the premises and take possession, for the purpose of completing the work hereunder, of all materials, tools and equipment thereon and to finish the work and provide the materials therefor, either with his own employees or those of other Subcontractors. Subcontractor specifically agrees that, should Subcontractor cause any stoppage, delay or interference with the work of Contractor or other subcontractors, any such action shall constitute a material breach by Subcontractor of this Agreement and Contractor shall have the right to termination as well as all other rights and remedies provided in this Agreement and by governing law. In the event of termination of Subcontractors' employment, Subcontractor shall not be entitled to receive any further payments under the Subcontract until the work is completed, but shall nevertheless remain liable for any damages which Contractor incurs, including reasonable attorneys' fees, penalties, increase cost and loss of profits. If the expenses incurred by Contractor in completing this work shall exceed the unpaid balance of the Agreement, Subcontractor shall pay the difference to Contractor, along with any other damages incurred by Contractor as a result of Subcontractor's default. Contractor shall have a

lien upon, and the Subcontractor does hereby grant a security interest in all materials, tools and appliances taken possession of to secure the payment of such difference. The Contractor may exercise the right of recoupment or offset against any sums due or to become due the Subcontractor under this Agreement or any other agreement or contract between Contractor and Subcontractor. If the unpaid balance of the Subcontract sum exceeds the cost of finishing the work, such excess shall be paid to the Subcontractor upon completion and acceptance of the work. The extent of the Subcontractor's liability shall be determined by the amount of damages suffered by the Contractor without limitation. In the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice.

9.2. **TERMINATION FOR CONVENIENCE.** Contractor may at any time and for any reason terminate Subcontractor's services and work at Contractor's convenience. Cancellation shall be by service of written notice to Subcontractor's place of business. After notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the work and placing orders for materials, facilities and supplies in connection with the performance of this Agreement, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders of contracts upon terms satisfactory to Contractor, or at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such work as may be necessary to preserve and protect the work already in progress and to protect material and equipment on the job site or in transit thereto.

Upon such termination, Subcontractor shall be entitled to payment in accordance with Article 2 only as follows:

(a) the actual cost of the work completed in conformity with this Agreement; plus (b) such other costs actually incurred by Subcontractor as are approved by Owner; plus (c) ten (10%) percent of the cost of the work referred to in subparagraph (a) above for overhead and profit. As used in this paragraph, "costs" shall be defined as those reimbursable costs under the latest edition of AIA Document 111. There shall be deducted from such sums as provided in this paragraph the amount of any payments made to Subcontractor to the date of the termination of this Agreement. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages in the event of such termination and payment.

9.3. **GROUNDS FOR WITHHOLDING PAYMENT.** Contractor may withhold or on account of subsequently discovered evidence, nullify the whole or part of any payment to the extent necessary to protect Contractor from loss, including cost and attorneys' fees, on account of (1) defective work not remedied; (2) claims filed, or reasonable evidence indicating a probability of filing of claim, against Owner or Contractor due to actions or inactions of Subcontractor; (3) failure of Subcontractor to make payments properly to his subcontractors or for material, labor or fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (5) damage to another subcontractor; (6) penalties assessed against Contractor or Subcontractor for failure of Subcontractor to comply with state, federal, or local laws and regulations; (7) Subcontractor's default under any other agreement or contract between Contractor and Subcontractor; or (8) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Agreement. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Subcontractor.

9.4. **BANKRUPTCY.**

9.5. **TERMINATION ABSENT CURE.** Subcontractor specifically agrees that, should Subcontractor become insolvent, commit any act of bankruptcy or voluntarily or involuntarily engage in a reorganization or arrangement proceeding under the bankruptcy laws of the United States or applicable state statute(s), any such action shall constitute a material breach by Subcontractor of this Agreement and Contractor shall have the right to termination as well as all other rights and remedies provided in this Agreement and by governing law. Upon the appointment of a trustee for the Subcontractor, the Subcontractor becoming a debtor-in-possession, or upon the Subcontractor making an assignment for the benefit of creditors, the Contractor may terminate this Agreement upon giving forty-eight (48) hours written notice by certified mail, to the Subcontractor and its surety, if any, unless the Subcontractor, the surety or the trustee:

- (a) promptly cures all defaults;
- (b) provides adequate assurance of future performance;
- (c) compensates Contractor for actual pecuniary loss resulting from such default; and
- (d) assumes the obligation of Subcontractor within the statutory time limits.

9.6. **INTERIM REMEDIES.** If Subcontractor is not performing in accordance with the schedule of work at the time of entering an Order for Relief, or at any subsequent time, Contractor, while waiting decision of Subcontractor or its trustee to reject or to accept this Agreement and provide adequate assurance of its ability to perform thereunder, may avail itself of such remedies under this Agreement as are reasonably necessary to maintain the schedule of work.

Contractor may offset against any sums due or to become due Subcontractor all cost incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and actual attorneys' fees incurred as a result of Subcontractor's nonperformance. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the contract price.

**ARTICLE 10 DISPUTE RESOLUTION.**

10.1 **INITIAL DISPUTE RESOLUTION.** If a dispute arises out of or relates to this Subcontract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties shall first try in good faith to settle the dispute by mediation by a mediator acceptable to both parties. Either party to this Subcontract may initiate mediation by written notice to the other party.

A request for mediation by the Subcontractor must be made within 60 days following the event giving rise to such mediation unless otherwise waived by Contractor. The location of the mediation proceedings shall be in Cincinnati, Hamilton County, Ohio, unless otherwise agreed by both parties.

10.2 **AGREEMENT TO ARBITRATE.** If, for any reason, mediation is unsuccessful the parties hereto are required to submit the controversy to binding arbitration for the matter. Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration by an arbitrator acceptable to both parties, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This arbitration is final and binding on all parties and will be utilized in any claim or controversy which arises under this Subcontract. Either party to this Subcontract may initiate arbitration in the event mediation is unsuccessful by written notice to the other party either by certified mail or hand delivery.

The location of the arbitration proceedings shall be in Cincinnati, Hamilton County, Ohio, unless otherwise agreed by both parties.

10.3 All claims, disputes and other matters in question arising out of, or relating to, this Subcontract, or the breach thereof, except for claims which have been waived by the making or acceptance of final payment, shall be decided by mediation or arbitration. Notwithstanding other provisions in this Subcontract, or choice of law provisions to the contrary, the agreement to arbitrate shall be governed by the Federal Arbitration Act, 9 U.S.C. 1 et seq., which shall not be superseded or supplemented by any other arbitration act, statute or regulation.

10.4 In the event the Contractor and Subcontractor determine that all or a portion of any claim, dispute or other matter in question between them is the responsibility in whole or in part of a person or entity who is under no obligation to arbitrate said claim, dispute or matter with Contractor and Subcontractor in the same proceeding, then the Contractor and Subcontractor agree to delay or stay in arbitration between them pending the determination, in a separate proceeding, of the responsibility and liability of said person or entity for the claim, dispute or matter involved. The Subcontractor agrees that any arbitration instituted under this section may, at the Contractor's election, be consolidated with any other arbitration proceeding involving a common question of fact or law between the Contractor and any other prime contractor or subcontractor performing work in connection with the Subcontract.

10.5 Notice of the demand for arbitration shall be filed in writing by certified mail or hand delivery with the other party to this Subcontract. The demand for arbitration shall be made as required in the Subcontract Documents or within a reasonable time after written notice of the claim, dispute or other matter in question has been given, but in no event shall it be made when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitation.

10.6 The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with the Federal Arbitration Act in any court having jurisdiction.

10.7 The Subcontractor shall carry on the Subcontract Work and maintain the Schedule of Work pending final resolution of a claim including mediation or arbitration, unless the Subcontract has been terminated or the Subcontract Work suspended as provided for in the Subcontract, or the parties otherwise agree in writing to a partial or total suspension of the Subcontract Work. If the Subcontractor is continuing to perform in accordance with the Subcontract, the Contractor shall continue to make payments as required by the Subcontract, except for those payments related to the matter in dispute.

10.8 To the extent not prohibited by their contracts with others, the claims and disputes of the Owner, Contractor, Subcontractor and others involved with the Project, concerning a common question of fact or law, shall be heard by the same arbitrator(s) in a single proceeding.

10.9 ATTORNEYS FEES. Should either party employ an attorney to institute an action to enforce any of the provisions hereof, to protect its interest in any matter arising under this Agreement, or to collect damages for the breach of the Agreement or to recover on a surety bond given by a party under this Agreement, the prevailing party shall be entitled to recover reasonable attorneys fees, costs, charges, and expenses expended or incurred herein.

10.10 NO WAIVER. This Article 10 shall not be deemed a limitation of rights or remedies which the Contractor may have under Ohio law, under state mechanics' lien laws, or under applicable performance or payment bonds unless such rights or remedies are expressly waived by the Contractor.

#### ARTICLE 11 MISCELLANEOUS PROVISIONS

11.1 LAW AND EFFECT. This Agreement shall be governed by the law in effect in the State of which the work is being performed.

11.2 Temporary offices or sheds within or adjacent to the buildings shall be constructed of fire resistant materials or protected with fire resistant sheeting or paint. Materials and layout must be approved by Contractor prior to installation.

11.3 Contractor may be required by law to be licensed and regulated by the Contractors' State License Board. Copies of any applicable license that the Contractor may be required to have are available upon written request.

11.5 INCONSISTENCIES AND OMISSIONS. Should inconsistencies or omissions appear in the Contract Documents, it shall be the duty of the Subcontractor to so notify the Contractor in writing within three (3) working days of the Subcontractor's discovery thereof. Upon receipt of said notice, the Contractor shall instruct the Subcontractor as to the measures to be taken to rectify such inconsistency or omission and the Subcontractor shall comply with the Contractor's instructions.

11.6 SEVERABILITY AND WAIVER. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

11.7 NO ASSIGNMENT. The Subcontractor shall not assign the Work of this Subcontract without the written consent of the Contractor, nor subcontract the whole or any part of the Subcontract without the written consent of the Contractor.

11.8 PATENTS. Except as otherwise provided by the Contract Documents, the Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented materials in the Subcontractor's Work. The Subcontractor shall defend all suits for claims for infringement of any patent rights arising out of the Subcontractor's Work, which may be brought against the Contractor or Owner, and shall be liable to the Contractor and Owner for all loss, including all cost, expenses, and attorneys fees.

11.9 Subcontractor represents that it is in compliance with all applicable federal and/or state rules and regulations pertaining to the employment of immigrant and/or foreign workers, including, but not limited to, the verification of employment eligibility, and Subcontractor further agrees that it will not employ and/or use workers on the Project that are not legally entitled to work in the United States. In the event Subcontractor is found to be in violation of the above requirements, Subcontractor agrees to defend and indemnify Contractor for any resulting impacts, damages, costs or expenses, including reasonable attorney fees, incurred as the result of such violation.

As a Subcontractor I am a true independent contractor and do in fact provide similar services to other contractors. Being fully aware of the risks, conditions and hazards of the work for which I as Subcontractor have been contracted, I HEREBY AGREE TO WAIVE, RELEASE AND DISCHARGE any and all claim for damages, death, personal injury or property damage, which I may have or which may hereafter accrue to me as a result of my work as Subcontractor to Venture One Construction, Inc.

**SIGNATURES**

The parties hereto have executed this Subcontract this date of **[Subcontract Date]**

**[Subcontractor Name]  
SUBCONTRACTOR**

**Venture One Construction, Inc.  
CONTRACTOR**

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

By: \_\_\_\_\_  
George J. Kovach III, President

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

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

**By signature above Subcontractor hereby agrees that no changes or alterations have been made to this contract from its original transferred state.**