



**SUBCONTRACT BETWEEN NEW VISTA BUILDERS GROUP, LLC.  
AND SUBCONTRACTOR**

Subcontract Number: \_\_\_\_\_ Cost Code: 15000-0000  
(Subcontract Number must appear on all invoices and correspondence)

Contract Date: \_\_\_\_\_ Project Name: \_\_\_\_\_

Subcontract Amount:

New Vista Builders Group, LLC  
4906 N. Manhattan Ave.  
Tampa, FL 33614  
813/200-8340

Subcontractor:  
Physical Address: \_\_\_\_\_

Mailing Address: Same  
\_\_\_\_\_

Telephone:  
Telefacsimile:

SAMPLE

THIS AGREEMENT is made this \_\_\_ day of \_\_\_\_\_, by and between New Vista Builders Group, LLC, hereinafter called "NVBG," and \_\_\_\_\_, hereinafter called "Subcontractor".

WITNESSETH THAT:

WHEREAS NVBG has entered into a contract with \_\_\_\_\_, hereinafter called "Owner," dated \_\_\_\_\_ to perform certain work in accordance with the terms and provisions of said contract and of any and all signed agreements and documents, including plans, specifications, instructions to bidders, NVBG's bid, general conditions, special conditions, technical specifications, schedules, exhibits and supplements of every nature, all of which are made a part of and incorporated into the contract between NVBG and Owner, hereinafter collectively referred to as "Prime Contract"; and

WHEREAS Subcontractor desires to subcontract and perform certain items or portions of the work specified in the Prime Contract and NVBG is willing to sublet said items or portions of the work to Subcontractor at the prices and upon the terms and conditions hereinafter expressed;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein expressed, NVBG and Subcontractor do contract and agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

1.1 The term "Work" shall mean the work, labor, services, materials, and all items required to be done and furnished by Subcontractor under this Subcontract.

NVBG \_\_\_\_\_  
Subcontractor \_\_\_\_\_

- 1.2 The terms “Architect” or “Engineer” shall mean the architect or engineer or other representative of the Owner under whose supervision or inspection the Work is to be done as required by the terms and conditions of the Prime Contract.
- 1.3 The terms “Building” or “Structure” or “Project” shall also mean and include outside utilities, sidewalks, landscaping, roads, streets, and other subjects and objects of construction provided for in the Prime Contract.
- 1.4 The term “NVBG” shall include NVBG and its surety, if any, notwithstanding that specific reference to the surety may be contained in some provisions of this Subcontract and not in others.
- 1.5 The term “Subcontractor” shall include Subcontractor, its surety, if any, and all of its lower tier subcontractors and any other person or entity for whom it may be liable.

**ARTICLE 2**  
**THE WORK**

- 2.1 Subcontractor agrees to provide the Work required to complete and will complete in strict accordance with the Contract Documents the following described items of Work in connection with the construction of the Project, and will provide, perform, furnish, supply and pay for all temporary and permanent labor, materials, scaffolding, hoisting, equipment, machinery, tools, apparatus, transportation, fuel, light, energy, water, necessary layout, all other plant items, all required shop drawings, working drawings, all required samples, tests/inspections, and any other incidentals, and perform all work necessary to timely complete the items of Work described in Attachment “A” .
- 2.2 Subcontractor shall each day completely clean all Work and remove all contributing debris and material which may accumulate from the prosecution of the Work from the jobsite or to locations designated by NVBG. Fire exits, corridors and doorways shall be kept clear of debris and open to pedestrian and wheelchair traffic at all times, including nights and weekends. If Subcontractor fails, within twenty-four (24) hours receipt of written notice to Subcontractor’s field supervisor, to clean up or dispose of all trash and waste materials created by Subcontractor, NVBG shall have the right to perform such clean-up for Subcontractor, and Subcontractor shall pay to NVBG Forty Five (\$45.00) dollars per man hour plus transportation and dumping costs to perform the clean-up.
- 2.3 The Work shall be done in accordance with the Owner, Architect and/or Engineer’s directions, whose decision as to the meaning of the Contract Documents shall be final and binding on Subcontractor to the same extent as on NVBG.
- 2.4 The quantities defined in the Contract Documents are indefinite and approximate. Payment will be made according to the final amount of Work which the Engineer determines to have been accomplished and required, unless otherwise stated in the Contract Documents.
- 2.5 Subcontractor is bound to NVBG by the same terms and to the same extent as NVBG is bound to Owner regarding the Work and all general and special conditions of the Prime Contract, including guarantees, warranties and indemnity obligations. Subcontractor agrees to including in its agreement with all lower tier subcontractors and suppliers language which will bind all lower tier subcontractors and suppliers to the same terms and conditions as Subcontractor assumes to NVBG and Owner.
- 2.6 Any surveying, layout, shop drawings, or as-built drawings required for the performance of the Work that are not provided by Owner or Engineer shall be provided by Subcontractor as part of this Subcontract.

- 2.7 Subcontractor acknowledges its opportunity to inspect this Subcontract and the Contract Documents prior to submitting its bid or quote to NVBG. Furthermore, Subcontractor expressly acknowledges its opportunity to inspect the Contract Documents prior to the execution of this Subcontract.
- 2.8 Before undertaking each part of its work, Subcontractor shall carefully study and compare the Contract Documents which pertain to the Work and check and verify all pertinent figures and dimensions shown thereon and all applicable field measurements are correct. Subcontractor shall promptly report in writing to NVBG any conflict, error or discrepancy which Subcontractor may discover and shall obtain written interpretation or clarification from NVBG before proceeding with any Work affected thereby.
- 2.9 In the event Subcontractor shall have performed any of the Work prior to execution of this Subcontract, all of the rights and liabilities of the parties for the performance of such Work are expressly merged and included within and shall be governed by the terms of the Subcontract. All compensation due to Subcontractor for such work or services is expressly included in the Subcontract Sum set forth herein, and NVBG shall have no obligation or liability to Subcontractor for such work or services separate and apart from the terms of this Subcontract.

**ARTICLE 3**  
**CONTRACT DOCUMENTS**

- 3.1 The Contract Documents consist of the Prime Contract and all its general, supplementary and other conditions (except for those provisions for payment of the Work), the drawings, plans, specifications, all addenda issued prior to the execution of this Subcontract, and subsequent modifications. The Contract Documents are specifically incorporated into this Subcontract by reference, except for the payment provisions between Owner and NVBG, which are specifically excluded.
- 3.2 Except as modified by this Subcontract, the Work shall be performed and completed in strict accordance with the Contract Documents, including addenda thereto.
- 3.3 The Contract Documents shall be on file in the office of NVBG. Work shown on drawings but not specified, or specified but not shown on the drawings, shall be performed under this Subcontract, and the drawings and specifications shall be construed as supplementing each other.
- 3.4 Should the Contract Documents contain any inconsistencies or omissions, Subcontractor shall immediately upon discovery notify NVBG of such inconsistencies or omissions, and NVBG shall instruct Subcontractor to the procedures to be implemented. Subcontractor shall comply with such procedures provided by NVBG.
- 3.5 This Subcontract and the provisions of the Prime Contract and the Contract Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, any provision of this Subcontract irreconcilably conflicts with a provision of the Prime Contract or the Contract Documents, the provision imposing the greater duty or obligation on Subcontractor shall govern.
- 3.6 Should Owner not engage an Architect or Engineer on the Project, the parties' rights shall be determined without the necessity of any certificate, determination or other function to be performed by the Architect or Engineer under any Contract Document.

**ARTICLE 4**  
**SUBMITTALS**

- 4.1 The term “submittals” as used in this Subcontract shall include those shop drawings which are specially prepared by Subcontractor or any of its subcontractors, manufacturers, suppliers or distributors and which are required by the Contract Documents to be submitted to NVBG for submission to Owner or Architect, to illustrate some portion of Subcontractor’s Work, including showing in detail: (1) the proposed fabrication and assembly of structural elements and (2) the installation, including form, fit and attachment details of materials or equipment. The term shall also include shop schematics; fabrication drawings; diagrams; layouts; descriptive literature; illustrations; schedules; product, performance and test data; templates; tests; samples; together with any and all other materials or data related to the materials, methods and equipment used or proposed for use in the performance of this Subcontract. NVBG and Owner may duplicate, use and disclose in any manner and for any purpose any submittals under this Subcontract. Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which Subcontractor’s work will be judged.
- 4.2 Time is of the essence in the performance of this Subcontract. Subcontractor shall proceed at once to prepare the shop drawings and other required data and furnish same for approval by Owner prior to fabrication of any item to be furnished under this Subcontract. Submittal data shall be prompt and complete to ensure scheduled delivery of such equipment and/or materials, so as not to delay the progress of either Subcontractor’s Work or the remaining work required of NVBG pursuant to its Prime Contract. Adequate copies of such data shall be submitted, plus the number of copies desired by Subcontractor for its use. In the instance of specially prepared fabrication drawings, submittals shall consist of one reproducible drawing and at least four prints. Subcontractor agrees to keep NVBG fully informed regarding its delivery schedule and will immediately advise NVBG should any delay be anticipated. A complete, up-to-date procurement schedule will be submitted on forms acceptable to NVBG upon request. The procurement schedule and construction schedule shall be compatible.
- 4.3 As-built documents and data shall be maintained and recorded by Subcontractor as applicable to his Work and shall be reviewed and approved monthly by NVBG, concurrently with Subcontractor’s requests for progress payments. A weekly record of salient job matters shall be maintained and recorded by Subcontractor as applicable to his Work and shall be submitted weekly to NVBG for review and approval. Such review and approval shall be a condition precedent to any obligation of NVBG to make progress payments under this Subcontract.
- 4.4 Approval of any drawing or submittal shall not relieve Subcontractor of any duty and responsibility to perform the Work in the manner necessary to produce the results required in strict accordance with the Contract Documents. No portion of Subcontractor’s Work requiring submission of a shop drawing or other submittal shall be commenced until the submittal has been approved by Owner. Any work done by Subcontractor before Owner’s approval shall be at Subcontractor’s sole risk. All such portions of the Work shall be in accordance with approved submittals.
- 4.5 Subcontractor shall prepare, review, approve and submit to NVBG within fourteen (14) calendar days after the date of the Subcontract, twelve copies of all required submittals in sufficient form and in such sequence as to cause no delay, disruption or interference in Subcontractor’s work or in the work of NVBG, any other contractor, any subcontractors or Owner’s own forces. When required by the Contract Documents, Subcontractor shall also obtain Owner’s approval of all machinery and equipment to be incorporated into the Work by Subcontractor. When requesting approval, Subcontractor shall furnish to NVBG the name of the manufacturer, model number and other required information concerning the performance, capacity, nature and rating of the machinery and other equipment.
- 4.6 By providing submittals, Subcontractor represents that it has coordinated all such submittals, reviewed the

accuracy and completeness as well as compliance with this Subcontract and the Contract Documents, and determined and verified all materials, field measurements and field construction criteria related thereto, or will do so, and that it has checked and coordinated the information contained within such submittals with the requirements of Subcontractor's Work and of the Contract Documents. Submittals submitted to NVBG without evidence of such Subcontractor's approval may be returned for resubmission.

4.7 If any submittal contains any variation from the requirements of this Subcontract or the Contract Documents, Subcontractor shall describe such variations in writing separate from the submittal or on resubmitted submittals, to be furnished at the time of submission to NVBG. If Owner or its authorized representative approves any such variation, NVBG shall transmit an appropriate Change Order, except that if the variation is minor or does not involve equitable adjustment to the Subcontract Sum or extension of the time for the Subcontract's completion, a Change Order need not be issued. Subcontractor shall not be relieved of responsibility for any deviation from the requirements of this Subcontract or the Contract Documents by NVBG's forwarding of submittals to Owner or Owner's approval thereof. In addition, no transmittal or approval of any of the foregoing by NVBG or Owner shall under any circumstances: alter the requirements of this Subcontract for quality, quantity, finish, design and configuration; constitute acceptance of any method, material or equipment not ultimately acceptable to Owner; relieve Subcontractor from responsibility for any errors or omissions in such submittals; or relieve Subcontractor from responsibility for complying with the requirements of this Subcontract or Contract Documents except with respect to variations described and approved pursuant to this section.

4.8 Subcontractor shall bear all costs and expenses associated with the preparation and approval of all submittals together with field measuring, sampling and shipping or delivery connected with any of the foregoing. Subcontractor further agrees that the entire cost and expense of altering, reworking and refinishing any manufactured or fabricated items not conforming to approved submittals shall be borne by Subcontractor.

**SAMPLE**

**ARTICLE 5**  
**SUPERINTENDENCE**

5.1 Subcontractor shall provide adequate, competent and experienced full-time on-site supervision (satisfactory to NVBG) during the performance of the Work. Such supervision shall have the authority to carry out directions from NVBG relating to Subcontractor's Work or responsibilities.

5.2 Subcontractor shall provide technical services as required to affect the operation of equipment and/or material furnished under this Subcontract, including performance of specific testing, if any, and shall instruct Owner's personnel in the operation, maintenance and control of such equipment.

**ARTICLE 6**  
**REPRESENTATION BY SUBCONTRACTOR**

6.1 By virtue of this Subcontract, Subcontractor represents it is fully qualified to perform and experienced in the Work to be undertaken, and that it possesses necessary licenses and certifications, management and technical expertise, equipment and financial resources to proficiently perform the Work.

6.2 Further, Subcontractor represents that it has independently ascertained the Work required by this Subcontract; familiarized itself with the local conditions under which the Work is to be performed; familiarized itself with soil, subsurface or site conditions which may be involved directly or indirectly in the performance of the Work; correlated its observation with the requirements of the Contract Documents; and verified the correctness and accuracy of all information furnished by NVBG or others. Subcontractor's failure to independently investigate and become fully informed will not relieve Subcontractor from its

responsibilities hereunder.

- 6.3 Subcontractor warrants and agrees that it will and can obtain all requisite approvals from Owner as to its eligibility to perform the Work herein.

**ARTICLE 7**  
**MATERIALS AND WORKMANSHIP**

- 7.1 All Work shall be done to the final approval of NVBG and Owner, and their decision as to the performance of the Work in accordance with the Contract Documents and the true constructive meaning of the Contract Documents shall be final, subject to the limits stated in the Contract Documents.
- 7.2 Subcontractor shall provide safe and sufficient facilities at all times for inspection of the Work by NVBG and Owner, or their authorized representatives.
- 7.3 Should NVBG or Owner reject or fail to approve any Work and/or materials to be furnished under this Subcontract, Subcontractor shall within twenty-four (24) hours after receiving written notice from NVBG of such determination, proceed promptly to take down all portions of the Work and remove from the grounds and buildings all materials, whether worked or unworked, installed or uninstalled, which are subjected to rejection or disapproval, and shall promptly make good all such Work and all other work damaged or destroyed in removing or making good said rejected Work.
- 7.4 Subcontractor shall conform to and abide by any additional specifications, drawings or explanations furnished by the Engineer to illustrate the Work to be done, subject to the provisions of Article 10 regarding changes.
- 7.5 The term "substitution" shall mean any substitution for, modification of or deviation from, the requirements of this Subcontract, the Contract Documents or any approved submittals with respect to any materials, equipment and methods of construction or manufacture applicable to Subcontractor's Work hereunder.
- 7.6 Subcontractor shall make no substitutions without prior written approval of both NVBG and Architect. No approval will be given by NVBG unless applied for in writing by Subcontractor setting forth a full disclosure of the effect of the proposed substitution upon the work of NVBG, any other contractors, any subcontractors and Owner's own forces, and approval thereof is given by Owner.
- 7.7 If Subcontractor shall make any unauthorized change in its Work either through submittals or actual fieldwork, it shall be solely responsible for the aesthetics as well as the structural and functional adequacy and acceptance thereof by Owner. Any rejection by reason of aesthetics or any structural or functional inadequacies which may develop because of such change shall be remedied by Subcontractor at its sole cost and expense, in spite of any approvals given by Owner, unless such change is specifically approved and included in a Change Order.
- 7.8 All costs and expenses of any additional work and the redoing or repairing of any other work of Subcontractor, NVBG, any other contractor, any subcontractor or Owner's own forces, resulting from such substitution shall be borne by Subcontractor, and Subcontractor shall promptly reimburse NVBG for the entire cost and expense suffered or incurred by NVBG, and shall fully defend, indemnify and hold NVBG harmless from and against, any and all liability, claims, losses, penalties, costs, expenses, damages and causes of action suffered or incurred by NVBG, including NVBG's attorneys' fees and costs, resulting in any manner whatsoever, directly or indirectly, from the claims of any other contractors, subcontractors or Owner as a result of such substitution, approval thereof notwithstanding.

**ARTICLE 8**  
**PROGRESS AND COMPLETION**

- 8.1 NVBG shall coordinate all work, and unless otherwise expressed or provided, Subcontractor shall begin Work covered by this Subcontract immediately upon verbal or written notice by NVBG, and shall carry said Work efficiently and at a rate that will not cause delay in the progress of NVBG's Work or other branches of the work carried on by other subcontractors. Subcontractor shall cooperate with NVBG in the scheduling and performance of Subcontractor's Work so as to avoid delay, disruption or interference with the work of NVBG, any other contractors, any subcontractors or Owner's own forces.
- 8.2 Time is of the essence in the performance of this Subcontract. Subcontractor expressly agrees that it can and will complete the Work pursuant to the Project Schedule attached as Exhibit A. Subcontractor shall commence the Work when notified to do so by NVBG and shall diligently and continuously prosecute and complete the Work and coordinate the Work with the other work being performed on the Project, and in accordance with the Project Schedule as may be issued and updated from time to time. Subcontractor shall participate and cooperate in the development of Work-specific schedules and other efforts to achieve timely completion of the Work providing information for the scheduling of the times and sequence of operations required for its Work to meet the Project Schedule, shall continuously monitor the Project Schedule so as to be fully familiar with the timing, phasing and sequence of operations of the Work and of other work on the Project, and shall execute the Work in accordance with the requirements of the Project Schedule, including any revisions or updates thereto. Subcontractor shall give notice to NVBG of any delay in the commencement of the Work within twenty-four (24) hours of Subcontractor's discovery of such delay.
- 8.3 Subcontractor shall at all times supply and promptly pay for adequate tools, appliances, equipment, a sufficient number of properly skilled workmen, and a sufficient amount of materials and supplies of specified quality to efficiently and properly prosecute the Work in accordance with the Project Schedule, and any modifications thereto, in order to achieve a Project completion date established by NVBG with due consideration that other work is dependent upon the Work of this Subcontract for proper and timely completion.
- 8.4 Subcontractor is to employ workmen who will work in harmony with those employed by NVBG and other subcontractors. If, under NVBG's judgment, NVBG's or other subcontractors' work is stopped or materially delayed due to Subcontractor not having proper workmen, then NVBG shall have the right, in addition to any and all other rights provided in this Subcontract, , to employ such workmen to complete the requirements of this Subcontract after forty-eight (48) hours written notice to Subcontractor. The cost to complete the Work with NVBG's workmen will be charged to Subcontractor.
- 8.5 It is further agreed that contracts will be awarded and labor employed upon the job without discrimination as to whether the employees of NVBG or any subcontractor are members or are non-members of any labor organization. Subcontractor agrees that in the event of a work stoppage resulting from a labor dispute directed at Subcontractor, NVBG shall have the right to proceed as set forth herein, including employing such workmen as NVBG deems appropriate to complete the requirements of this Subcontract and the cost of so completing the Work shall be charged to Subcontractor.
- 8.6 If, in the opinion of NVBG, Subcontractor is delayed in the progress of the Subcontract Work, NVBG may, upon forty-eight (48) hours written notice, direct Subcontractor to take such steps as NVBG deems necessary to improve the rate of progress, including requiring Subcontractor to increase the labor force, number of shifts, overtime operations, days of work, amount of plant or other remedies, and to submit for approval a schedule demonstrating the method under which the required rate of progress will be regained,

NVBG\_\_\_\_\_

Subcontractor\_\_\_\_\_

without additional costs to NVBG. NVBG may, upon reasonable notice, require Subcontractor to prosecute the Work in a specific sequence as required by NVBG in order to maintain the Project Schedule. NVBG may employ such workmen and purchase and lease such material and equipment as NVBG deems necessary in order to regain the proper rate of progress with respect to the Work. All costs incurred by NVBG in so regaining the proper rate of progress of the Work shall be charged to Subcontractor.

- 8.7 In the event Subcontractor fails to meet the requirement of the Project Schedule and is unable to regain lost time, NVBG shall have the right to accelerate other trade work and any such additional costs shall be charged to Subcontractor.

**ARTICLE 9**  
**MUTUAL RESPONSIBILITY**

- 9.1 Within the performance of this Subcontract, Subcontractor is afforded all rights of NVBG under the Contract Documents (other than the payment provisions) and assumes all obligations, risks and responsibility provided to NVBG under the Contract Documents.
- 9.2 All Work performed under this Subcontract shall be administered exclusively by NVBG, and Subcontractor agrees not to perform any Work directly for Owner or any of its tenants, or directly deal with Owner's representatives in connection with the Project until the Project is fully completed, unless otherwise directed in writing by NVBG.
- 9.3 The quantity and scope of Work required herein is directed by the whole of the Contract Documents and Subcontractor acknowledges his obligation under this Subcontract to coordinate his Work with materials and/or equipment to be furnished by others to ensure a completely compatible system. Accordingly, Subcontractor shall review the fabrication drawings and the product data of all items requiring integration and compatibility with the Work required hereunder.
- 9.4 Subcontractor shall review the surfaces provided by others to which his Work is to be applied, and shall notify NVBG of any known defect or condition detrimental to proper procedures, prior to the commencement of his Work; otherwise, commencement of work will be deemed acceptance of the conditions of such surfaces by Subcontractor, and it shall be liable for all consequences resulting therefrom.
- 9.5 Subcontractor shall be liable for any damages to adjacent surfaces caused by his Work, either accidental or through negligence, including damages resulting from Subcontractor's cleaning of such surfaces.
- 9.6 Dewatering, hoisting, electrical power, sanitary facilities and temporary heat and/or ventilation as may be required or necessary to perform the Work is the sole responsibility of Subcontractor. Subcontractor agrees that it will consistently maintain proper housekeeping controls of construction debris and litter arising from its operations and shall clear daily all debris and foreign material resulting from its operations.
- 9.7 Storage areas for the use of Subcontractor shall be designated by NVBG and no material or equipment shall be stored by Subcontractor except in areas approved by NVBG. Subcontractor shall maintain such storage areas in an orderly and clean manner. Storage within the building is prohibited unless authorized in writing by NVBG.
- 9.8 Subcontractor will provide, maintain and remove from the Project site on completion of the Work all its temporary offices, structures for the use of its employees, sheds and storage facilities, together with all utilities, electric, gas, telephone and water.



- 9.9 Subcontractor shall provide and be responsible for layout, including the accuracy thereof, necessary for the performance of the Work under this Subcontract.
- 9.10 Subcontractor shall perform all cutting, fitting, patching, sleeving, grouting and sealing of its Work that may be required to fit it to, receive, or be received by the work of others as shown or reasonably implied by the Contract Documents; or as required, or reasonably implied by the rules and regulations, codes and requirements of regulatory agencies having jurisdiction over the Project; or as required or reasonably implied to achieve consistency and compatibility with the design of elements being penetrated.
- 9.11 Subcontractor shall pay to NVBG the reasonable value for the use of any of NVBG's equipment which it may permit Subcontractor to use.

**ARTICLE 10**  
**CHANGES**

- 10.1 In the event NVBG requests Subcontractor to review a proposed modification to the Project which may affect Subcontractor's Work, Subcontractor shall respond in writing within five (5) calendar days after receipt of such request, or other reasonable time limits as the parties may agree in writing, stating the effect of the proposed modification upon its performance, including details of cost and time. Subcontractor's failure to so respond shall be deemed acceptance of NVBG's determination as to the effect of the proposed modification or change, including NVBG's determination that no adjustment of the Subcontract Sum or time to complete is required.
- 10.2 NVBG may at any time, without notice to Subcontractor's surety, by written order designated or indicated to be a change order, make any change in the Work within the general scope of this Subcontract (a "Change Order"). Upon receipt of any Change Order, Subcontractor shall promptly proceed with the work involved, which shall be performed under the applicable terms and conditions of this Subcontract and the Contract Documents, except as may otherwise be specifically provided therein. Nothing contained herein shall excuse Subcontractor from proceeding promptly with the prosecution of the work as ordered in such Change Order, and failure or refusal to do so shall constitute a default of this Subcontract.
- 10.3 Additions to or changes in this Subcontract shall be made only upon written order from NVBG. A Change Order signed by Subcontractor shall be final and binding upon Subcontractor as a full and complete adjustment for the change(s) made, including the equitable adjustment to the Subcontract Sum and extension of the time for completion of the Subcontractor Work. Should the parties hereto be unable to agree as to the value of such work to be added or omitted, Subcontractor shall proceed under the written order of NVBG from which order the stated value of the work shall be omitted. The value of the work shall be determined in accordance with section 10.4.
- 10.4 A Construction Change Directive is a written order prepared by NVBG, Engineer and/or Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the sum or time, or both, of the Prime Contract or the Subcontract. In the event Subcontractor is required by NVBG to perform additional work pursuant to a Construction Change Directive for which the amount of compensation or additional time is not previously agreed upon, Subcontractor shall promptly proceed with the work and prepare and submit to NVBG a proposal describing the estimated quantities and costs involved. Subcontractor shall keep accurate, detailed and itemized records of the costs of any such change and shall report such costs to NVBG in the form and manner prescribed by NVBG. Subcontractor shall, if requested, furnish each day to NVBG, certified copies of all time sheets, receiving and inspection reports and all other basic documents required by NVBG to evidence the expenditures of Subcontractor as a result of such change. Subcontractor's application to NVBG for payment shall be accompanied by certified copies of all pertinent payrolls,

invoices and vouchers relating to the additional Work. NVBG's or Owner's receipt or acknowledgement of the Subcontractor's change order claims, or any other alleged claim, or any notice or report, including reports of cost and time, or any payments made, shall not be construed as NVBG's or Owner's acknowledgement or acceptance of the accuracy and validity of any portion thereof, until such time as a Change Order is fully executed.

- 10.5 Unless specifically stated otherwise in the Contract Documents, for any change, the increase in the Subcontract Sum will be the total of direct labor costs marked up at the rate of 28% for payroll burden, and direct labor and material costs marked up 5% for profit and overhead. Material costs subject to mark-up are defined as those items which become a permanent part of the Work. Direct labor costs subject to mark-up are defined as the wages of field personnel from foreman down required to put the Work in place. All other costs including bonds and insurance will be included in the allowable mark-ups shown above. Any reductions in the Subcontract Sum shall be calculated in the same manner.
- 10.6 Subcontractor shall provide to NVBG an itemization and sufficient documentation of labor and material to adequately support increases or reductions in the Subcontract Sum.
- 10.7 It is understood by Subcontractor that payment for the changed or extra work ordered or directed by Owner shall be made from funds received from Owner by NVBG with respect to the Work. The liability of NVBG's surety, if any, shall be subject to the same condition precedent.

**ARTICLE 11**  
**DELAYS**

- 11.1 No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work for any cause whatever, including those for which Owner or NVBG may be responsible, in whole or in part, shall relieve Subcontractor of its duty to perform or give rise to any rights, damages or additional compensation from NVBG. Subcontractor's sole remedy against NVBG for any interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work for any cause whatever, shall be the right to seek an extension to the time for the completion of the Work in accordance with section 11.3. This section applies to claims for early completion, as well as to claims for late completion. Notwithstanding anything in this section to the contrary, Subcontractor may be compensated for interruptions, interferences, inefficiencies, suspensions or delays not attributable to Subcontractor's fault or neglect only to the extent NVBG is able to recover and collect the same from Owner or others.
- 11.2 Subcontractor shall reimburse NVBG for the entire cost and expense suffered or incurred by NVBG resulting in any manner whatsoever, directly or indirectly, from any delays, interruptions and interferences caused by Subcontractor. This includes (but is not limited to) actual costs, home office and jobsite overhead, profit for the period of time of such delay, disruption or interference, and all damages suffered or incurred by NVBG, including NVBG's attorneys' fees and costs. Subcontractor shall further fully defend, indemnify and hold NVBG harmless from and against any and all liquidated and actual damages assessed by Owner against NVBG resulting in any manner whatsoever, directly or indirectly, from Subcontractor's delays, interruptions and interferences. . The fact that liquidated or other delay damages may have been specified by Owner in the Contract Documents shall not operate as a limitation on Subcontractor's liability to NVBG for delay damages. In the event any such damages are caused by Subcontractor and another person or entity, NVBG shall have the right to reasonably apportion such damages between the parties, and such apportionment shall be final and binding upon Subcontractor. Subcontractor further agrees that neither the payment of such damages nor any liability suffered or incurred for the payment of such damages shall release Subcontractor from its obligation to otherwise fully perform this Subcontract.

- 11.3 Should Subcontractor be delayed in the prosecution of the Work by any act, neglect or default of NVBG or Owner, or by any damage caused by fire, lightning, earthquake, hurricane, or any other cause for which Subcontractor is not responsible, either in whole or in part, then the time fixed for the completion of the Work pursuant to the terms of this Subcontract shall be extended for a period equivalent to the time lost by reason of the cause aforesaid. However, no time extension shall become operative unless a notice of claim therefore is presented in writing to NVBG within forty-eight (48) hours of the first occurrence of the delay and such claim is subsequently approved in writing by NVBG. Should NVBG refuse to approve such claim for extension of time, the matter will be referred to the Engineer for determination and his decision shall be final and binding upon the parties subject to the limits stated in the Contract Documents. Subcontractor agrees that such extension of time for completing the Work precludes, satisfies and cancels any and all other claims Subcontractor may have against NVBG on account of such delay. Permitting Subcontractor to continue after the time to complete the Work has expired shall not be construed as a waiver by NVBG of any claims for loss or damage for breach by Subcontractor of any of the provisions in this Subcontract.

**ARTICLE 12**  
**DEFAULT AND TERMINATION**

- 12.1 Should, in the opinion of NVBG, Subcontractor at any time:
- a) refuse or neglect to supply sufficient properly skilled workmen or materials or equipment of the proper quality and quantity;
  - b) fail to complete or diligently proceed with the Work required under this Subcontract within the time constraints stated herein;
  - c) cause by any action or omission the stoppage, delay or interference with NVBG, the Owner or other subcontractors' work;
  - d) fail to correct, repair or replace nonconforming, faulty or defective Work furnished under this Subcontract;
  - e) fail to correct, repair or replace any damage to Work caused by it or its failure to protect its Work or the work of others;
  - f) fail to provide safe and sufficient facilities, orderly premises and the clean-up of the Work required under this Subcontract;
  - g) fail to comply with any provision within this Subcontract;
  - h) fail to pay its lower-tier subcontractors, suppliers, materialmen or laborers; or
  - i) be adjudged bankrupt, or have made a general assignment for the benefit of its creditors, have a receiver appointed, or become insolvent or a debtor in reorganization proceedings;

then NVBG shall provide Subcontractor written notice that Subcontractor is in default of the Subcontract and that Subcontractor shall cure the default within seventy-two (72) hours of receipt of the written notice. If Subcontractor fails to cure the default within seventy-two (72) hours, NVBG shall have the right, without voiding other provisions of this Subcontract and without written notice to Subcontractor's surety, to take such steps as necessary to overcome the condition, including termination for default or self-performance of Subcontractor's obligations hereunder, it being agreed by Subcontractor that self-performance may be necessary to avoid irreparable harm to NVBG and Owner. In the event of termination for default, NVBG, at its option, may take over the Work required by this Subcontract, or any portion thereof, with all materials, tools and equipment of Subcontractor on the premises and assume the assignment of any or all Subcontractor's purchases and sub-subcontracts for the Work and complete the Subcontract, or any portion thereof, charging any costs incurred thereby to Subcontractor.

- 12.2 NVBG shall have the right to terminate this Subcontract, by written notice, without Subcontractor being at fault, for any cause or for its own or the Owner's convenience and require Subcontractor to immediately stop the Work. In addition, should NVBG wrongfully exercise its option set forth in section 12.1 above, such termination shall be considered a termination for convenience and shall be governed by this section. Under any termination for convenience, NVBG shall pay Subcontractor for the actual costs of the labor, material and equipment performed and/or furnished as part of the Work, plus a percentage for overhead and profit at the rate set forth in Section 10.5 herein. NVBG shall not be liable to Subcontractor for any other costs nor for prospective profits on Work not performed. However, if the reason for the termination is any action or default by Owner, or as a result of court order or public authority, then NVBG shall not be liable to Subcontractor for any sum greater than that which NVBG receives from Owner with respect to Subcontractor's Work less any costs incurred by NVBG. Subcontractor's remedy under this section shall be exclusive.
- 12.3 The remedies of NVBG provided for in this Article and in any part of the Contract Documents shall be cumulative, and not exclusive, of all other remedies which NVBG may have for breach of this Subcontract by Subcontractor, or as a result of Subcontractor's failure to perform any of the requirements of this Subcontract. Subcontractor and its surety shall be liable for losses, damages, and expenses, including attorneys' fees and costs, in the prosecution or defense of any action, arbitration, trial or appeal, enforcement of any judgment, bankruptcy or insolvency proceedings, or any subsequent proceedings or appeals from any order or judgment entered therein, incurred or resulting to NVBG arising out of any breach of this Subcontract.

**ARTICLE 13**  
**CLAIMS AND DISPUTES**

- 13.1 Subcontractor shall make all claims to NVBG for additional compensation or extension of time for which the Owner may be responsible in the manner provided for in the Contract Documents, if any, for claims by NVBG upon Owner. NVBG shall make such claims in sufficient time for NVBG to comply with the requirements of the Contract Documents for making such claims to Owner, but in no case more than seventy-two (72) hours. It is understood by Subcontractor that payment for the claim shall be made from funds received from Owner by NVBG with respect to such claim, less NVBG's cost associated with the claim. The liability of NVBG's surety, if any, shall be subject to the same condition precedent.
- 13.2 Except as otherwise provided for in this Subcontract, any dispute arising under this Subcontract which is not resolved shall be decided by NVBG, who shall reduce its decision to writing and furnish a copy thereof to Subcontractor. NVBG's decision shall be final and conclusive unless, within twenty (20) calendar days from the date of receipt of such decision, Subcontractor contests said decision in writing. Failure to contest NVBG's decision will be a waiver of all further claims. No claim, dispute or controversy between Owner and NVBG or between NVBG and Subcontractor shall be a basis to delay or suspend Subcontractor's Work or interfere with its progress or performance, unless directed otherwise by NVBG, and Subcontractor shall continue with all performance required by this Subcontract and shall proceed in accordance with all directives of NVBG. Failure to proceed shall constitute a default of this Subcontract, regardless of the ultimate decision on such claim, dispute or other controversy, and will be cause for termination of this Subcontract.
- 13.3 In the event Subcontractor is desirous of pursuing an appeal of an adverse final decision rendered by Owner that affects Subcontractor's interests, and provided NVBG's interests are unaffected, Subcontractor shall bear the full cost thereof and sole responsibility for prosecuting such appeal. Subcontractor shall continue to perform the Work and maintain the progress schedule, unless otherwise agreed to in writing by the

parties.

- 13.4 In the event the Contract Documents provide for arbitration or other non-judicial proceedings as the forum for the resolution of disputes, and a claim, dispute or other controversy exists between Owner and NVBG which may involve Subcontractor, Subcontractor hereby expressly agrees to be joined as an additional party in any and all such arbitration or other proceedings, or if a separate arbitration or other proceeding already exists or is separately initiated, Subcontractor expressly agrees to the consolidation of all such arbitration or other proceedings, it being the intent of NVBG to resolve all of the rights and obligations of all interested parties at one time in one forum rather than in multiple proceedings.
- 13.5 If any claim, dispute or other controversy involving Subcontractor is prosecuted or defended by NVBG and Subcontractor is not directly a party or litigant in such proceeding, Subcontractor shall have the full responsibility for the preparation of all of its claims and defenses to claims asserted against it and shall bear all costs and expenses associated therewith including all of its attorneys' fees and costs, and further, shall cooperate fully with NVBG and furnish all documents, statements, witnesses and other information required by NVBG for such purpose. Subcontractor shall promptly reimburse NVBG for the entire cost and expense suffered or incurred by NVBG including a proportionate share of NVBG's attorneys' fees and costs, to the extent of Subcontractor's interest or involvement in such claim, dispute or other controversy.
- 13.6 Any claim, dispute or other matter between NVBG and Subcontractor relating to this Subcontract shall be governed by the laws of the State of Florida. Exclusive venue for any action arising out of this Subcontract shall be Hillsborough County, Florida.

**ARTICLE 14**  
**REGULATORY COMPLIANCE**

- 14.1 Subcontractor's attention is directed to the compliance requirements of the Contract Documents. Subcontractor shall comply therewith as applicable. Specific reference is made, but not necessarily limited to:
- a) apprenticeship trainee requirements;
  - b) equal opportunity employment requirements;
  - c) special trade permits and connection permits or fees;
  - d) compliance with employee wage rate determinations required by governing authorities and specified within the Contract Documents;
  - e) insurance provisions; and
  - f) environmental controls.
- 14.2 Subcontractor shall comply with the requirements of the Project's governing building department, comply with all other local, statewide and national laws, codes, ordinances and regulations, save NVBG from all annoyances and fines arising out of the Work, give proper authorities all requisite notices relating to the Work, and procure and pay for all necessary official licenses, permits or fees which are required for Subcontractor to perform the Work.
- 14.3 Subcontractor shall comply with the Williams-Stegier Occupational Safety and Health Act of 1970, and the General Safety Rules and Regulations of the Construction Industry as currently required by the governing authorities having jurisdiction thereof, and such other labor laws as may be applicable, and report immediately to NVBG any injury to any employee of Subcontractor at the site of the Project.
- 14.4 Title 29, Code of Federal Regulation, Part 1926, Occupational Safety and Health Regulation for Construction including any subsequent revision and update, in its entirety, is binding on Subcontractor. In

addition to, and without diminishing any other requirement, Subcontractor shall take such actions as are necessary to ensure that all of its employees on the Project are issued and compelled to wear hard hats (marked with employee name and Subcontractor's logo), safety vests, safety boots, safety glasses and all other necessary or required equipment or clothing at all times.

- 14.5 Subcontractor agrees to comply with Chapter 442 of the Florida Statutes. Material Safety Data Sheets are required on toxic materials that Subcontractor is going to use on the Project. Subcontractor shall furnish all Material Safety Data Sheets to NVBG and identify specifically any toxic material thirty (30) calendar days prior to delivery. Subcontractor shall meet the obligations of Chapter 442 of the Florida Statutes to properly train and advise its employees, subcontractors, sub-subcontractors, agents and invitees. Failure by Subcontractor to comply with the preceding requirements shall constitute a material breach of this Subcontract, and any items or material delivered to the jobsite without complying with all of the foregoing shall be considered as non-conforming, and NVBG may reject and return it, or hold it at Subcontractor's expense.
- 14.6 In performing this Subcontract, Subcontractor agrees that it will not discriminate against any employee or applicant because of race, creed, color, sex or national origin.
- 14.7 Subcontractor accepts exclusive liability for all taxes, contributions, and penalties required or imposed by federal social security and federal unemployment compensation laws or similar federal or state laws relating to the employees of Subcontractor. Subcontractor accepts exclusive liability for sales or use taxes which may be assessed against equipment, materials and labor used in the Work or gross receipts taxes assessed with respect to the Work, whether against NVBG or Subcontractor, or both. If Subcontractor fails to pay the taxes and contributions, NVBG may at its option pay or reserve for payment said taxes and contributions and deduct such amounts from payment due or to become due Subcontractor. Subcontractor agrees to indemnify, provide a defense and hold harmless NVBG against all liability with respect to obligations arising under such acts or laws.
- 14.8 Subcontractor shall strictly comply with applicable laws, statutes, ordinances or other requirements of any governmental authority having jurisdiction over Owner, Engineer, NVBG, subcontractor, the Work or the Project, which are referenced or incorporated in or applicable to the Project, Contract Documents and the Work, including those regulations pertaining to wages, hours and other conditions of employment, labor policies, safety standards, building codes, the keeping of records, the making of reports and returns, the obtaining of licenses and permits, the payment of taxes, levies and assessments of every nature, environmental matters, land use and industrial hygiene. All such laws, statutes, ordinances, regulations and requirements are expressly incorporated into this Subcontract as if fully set forth herein.
- 14.9 In the event of Subcontractor's violation of any of the provisions of this Article, Subcontractor shall bear all costs resulting from such violation and shall indemnify and hold NVBG harmless from any damages (including attorneys' fees and costs), claims, and causes of action arising from such violation.

**ARTICLE 15**  
**INSURANCE AND BONDS**

- 15.1 Unless NVBG waives (refer to attachment "A" for waiver if applicable) this requirement in writing, Subcontractor shall provide, within five (5) calendar days of receiving this Subcontract, separate Payment

and Performance Bonds, each in the amount of one hundred percent (100%) of the Subcontract Sum (as adjusted from time to time as provided in this Subcontract), insuring the full and timely performance and satisfaction of all obligations of Subcontractor under the Contract Documents and the payment of all sums owed under the terms of or by reason of any breach of this Subcontract. By issuing the bonds, Subcontractor's surety agrees to be bound by the terms of this Subcontract to the same extent that such terms are binding on Subcontractor. The bonds shall incorporate the terms of the Contract Documents, shall be in a form reasonably acceptable to NVBG and shall be issued by a surety company duly licensed to issue such bonds in the state where the Project is located.

- 15.2 Commencement of Work by Subcontractor without having provided said bonds shall not be considered a waiver or release by NVBG of the requirement for bonds, and Subcontractor shall have proceeded with the Work at its own risk and shall not be entitled to payment hereunder until such bonds are delivered to NVBG.
- 15.3 Insurance policies issued for Subcontractor shall be endorsed to include the following:
- a) additional insured endorsements to include Owner, NVBG and its surety as additional insureds;
  - b) a thirty (30) day advance written notice in the event of cancellation, non-renewal or material change of any policy;
  - c) insurance overages must be issued by companies authorized to do business in the State where the Project is located and must be rated no less than "B" as to management and "Class VIII" as to financial strength by the latest edition of Best's Guide.
- 15.4 During the period that this Subcontract remains in force, Subcontractor shall procure and maintain insurance coverage in the following minimum types and amounts:
- a) Worker's Compensation and Employers Liability and where an exposure exists, U.S. Longshoremen and Harbor Workers, Jones Act. Policy limit must be per statutory limits;
  - b) Comprehensive General Liability, with a combine single limit per occurrence of at least \$1,000,000.00, including coverage for independent contractors;
  - c) Commercial Automobile Liability, including coverage for owned, non-owned and hired vehicles, with a combined single limit per occurrence of at least \$250,000.00;
  - d) Watercraft Hull and Protection and Indemnity Liability including coverage for owned, non-owned and hired crafts with a combined single limit per occurrence (for all forms of liability) of at least \$100,000.00;
  - e) Equipment Floater Insurance covering all of Subcontractor's equipment assigned to or at this Project site, including liabilities of at least \$100,000.00; and
  - f) Such greater, other or additional coverage as may be required by the forms of the Subcontract Documents or any governmental agency having jurisdiction over NVBG, Subcontractor or the Work.
- 15.5 Before commencing work, Subcontractor shall deliver to NVBG certificates of insurance showing policy limits, policy effective and expiration dates and listing NVBG and its surety as an additional insureds. Upon NVBG's request throughout the course of Subcontractor's performance, Subcontractor shall promptly furnish certified copies of such policies of insurance.
- 15.6 In the event any Work to be performed under this Subcontract is further sublet, Subcontractor will require its lower tier subcontractors to certify insurance coverage to NVBG with the same insurance coverage and limits describe above prior to commencement of any work.

- 15.7 If Subcontractor fails to timely procure and maintain the insurance and bonds required under this Subcontract, or fails to furnish such certificates of insurance, such failure shall constitute a material breach of the Subcontract and NVBG shall have the following options:
- a) terminate the subcontract under Article 12; or
  - b) the right, but not a duty, to procure and maintain the required insurance and bonds, in which event the cost thereof shall be for the account of Subcontractor, and NVBG shall have the right to deduct such cost from any amounts currently due from NVBG to Subcontractor or otherwise becoming due to Subcontractor.
- 15.8 NVBG, by requiring the minimum insurance coverage described herein, will not be deemed to limit any of the other obligations or liabilities of Subcontractor.
- 15.1 Deductibles, if any, will be satisfied by or chargeable to the account of Subcontractor.

**ARTICLE 16**  
**INDEMNITY**

- 16.1 Subcontractor and its surety, jointly and severally, agree to indemnify, defend and save harmless NVBG from any expense or expenses regarding any and all claims, demands, actions or causes of action pertaining to Subcontractor's alleged infringements of patents or violation of patent rights during the performance of this Subcontract.
- 16.2 To the fullest extent permitted by Florida law, Subcontractor shall indemnify and hold harmless NVBG, the Owner, their officers, employees, affiliate members, partners, directors, agents and servants (the "Indemnitees") from and against any and all claims, liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees at the pre-trial, trial and appellate levels, to the extent caused by, arising out of or resulting from the negligence, recklessness, or intentional wrongful misconduct of Subcontractor, its employees, persons/entities employed or utilized by Subcontractor in the performance of the Work and this Subcontract, or any other person or entity for whom Subcontractor may be liable. This obligation to indemnify and defend does not limit the duty of any insurance carrier for Subcontractor to defend or indemnify NVBG under any insurance policy, nor Subcontractor's liability to NVBG as a result of any default under or breach of this Subcontract. Subcontractor shall have no obligation to indemnify or hold harmless the Indemnitees for claims, liabilities, damages, losses and costs solely caused by, arising out of or resulting from the Indemnitees' negligence or willful, wanton, or intentional misconduct, or for statutory violations or punitive damages except and to the extent caused by, arising out of or resulting from Subcontractor's acts or omissions. Subcontractor's obligations under this Section shall be limited to One Million Dollars (\$1,000,000.00) per occurrence or the amount of insurance, whichever is greater. The parties specifically agree pursuant to Section 725.06, Florida Statutes, that this monetary limitation bears a reasonable commercial relationship to this Subcontract. The obligations in this Section shall survive termination of this Subcontract. The parties agree that this provision complies in all respects with Section 725.06, Florida Statutes. To the extent any portion of this Section is considered to be not in compliance with Section 725.06, Florida Statutes, or otherwise declared unenforceable or invalid, the remainder of this Section will continue to be valid and enforceable and Subcontractor will be held to the highest indemnity obligations allowed under Florida law and as otherwise set forth herein.
- 16.3 Subcontractor further agrees to undertake, at its own expense, the defense of any action which may be brought against NVBG or its surety claiming damages which are alleged to have arisen out of or in



connection with the performance of the Work.

- 16.4 Subcontractor's obligations to indemnify NVBG and its surety shall extend to their partners and affiliates, and to the directors, officers, agents, employees, and partners of any of them. Subcontractor shall maintain whatever security or insurance reasonably necessary to protect NVBG and its surety against loss or liability, including Subcontractor's ability to defend and indemnify.
- 16.5 Subcontractor and its surety, jointly and severally, agree that NVBG's "expense" or "expenses," as used in this Subcontract shall be deemed to include any and all reasonable expenses and costs incurred by NVBG and its surety in the resolution of claims, demands, actions or causes of action, including, but not limited to, attorneys' fees and costs.
- 16.6 NVBG may withhold any and all monies due or to become due to Subcontractor, sufficient to save itself and its surety harmless and indemnify against liability or damage, including attorneys' fees and costs, resulting from breach by Subcontractor and/or failure to fulfill the obligations of this Article 16

**ARTICLE 17**  
**ENCUMBRANCES**

- 17.1 Subcontractor shall turn the Work over to NVBG in good condition and free and clear of all claims, encumbrances, or other liens and shall protect and save harmless NVBG and Owner from all claims, encumbrances or liens growing out of the performance of this Subcontract. If any subcontractor, laborer, or supplier of Subcontractor, or any other person or entity directly or indirectly acting for or through Subcontractor, files a construction lien or claim against NVBG, its surety, if any, the Owner, the Project, the property or any part thereof or any improvements thereon, or against any monies due or to become due from Owner to NVBG or from NVBG to Subcontractor, Subcontractor shall satisfy, remove or discharge such lien or claim at its own cost and expense by payment, bond or otherwise, within fifteen (15) calendar days of the date of the assertion thereof. If Subcontractor fails or refuses to do so, NVBG shall have the right, in addition to any other rights and remedies provided by this Subcontract or by law, to satisfy, remove, or discharge the same by whatever means NVBG chooses, and Subcontractor shall promptly reimburse NVBG for the entire cost and expense suffered or incurred by NVBG in conjunction therewith and further, shall fully defend, indemnify and hold NVBG harmless from and against, any liability, claims, losses, penalties, costs, expenses, damages and causes of action suffered or incurred by NVBG, including its attorneys' fees and costs, resulting in any manner whatsoever, directly or indirectly, from the satisfaction, removal or discharge of such lien or claim. The provisions of this section shall not impose any duty or obligation upon NVBG to determine or adjust any disputes or claims between Subcontractor and any such claimant or to withhold any money for its protection.
- 17.2 Subcontractor shall, as often as requested by Owner or by NVBG, furnish sworn statements identifying all parties who furnish labor or materials to Subcontractor, with their names and addresses and amounts due or to become due each of them. At NVBG's discretion, similar statements may be required from any suppliers and lower tier subcontractors performing work for Subcontractor.
- 17.3 Subcontractor shall furnish NVBG, if requested, evidence of the payment of all bills and expenses incurred by Subcontractor for labor, services, equipment and materials used by Subcontractor, and liability incurred by Subcontractor in any way for the purpose of using the same on the Project, and written releases, in a form as provided by NVBG, from all persons, firms, or corporations that may have furnished to Subcontractor, any services, equipment and materials, whether on or for the Project, and written releases of lien from all persons, firms and corporations that may have in any way had any dealing and agreements in

connection with the Work.

- 17.4 Subcontractor agrees that payment due hereunder is not assignable and that no part of this Subcontract can be assigned, except with the written consent of NVBG.

**ARTICLE 18**  
**WARRANTIES AND GUARANTEES**

- 18.1 Subcontractor warrants to NVBG and Owner 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.
- 18.2 Subcontractor agrees to promptly make good, without cost to NVBG or Owner, any and all defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period(s) established in the Contract Documents, and if no such period(s) be stipulated in the Contract Documents, then such guarantee shall be for a period of one (1) year from the date of completion and acceptance of the Project by Owner. Subcontractor further agrees to execute any special guarantees as provided by the Contract Documents or required law. Subcontractor shall require similar guarantees from all vendors and lower tier subcontractors.
- 18.3 Subcontractor agrees that the warranty period of equipment utilized for completion of the Project shall not be affected and shall remain in effect for the entire warranty period from the date of Owner acceptance.
- 18.4 Subcontractor shall pay for all changes to the Work or NVBG's work resulting from defects in Subcontractor's workmanship or materials, as well as all expenses necessary to replace or repair either the Work or NVBG's work, including that damaged or disturbed by making replacements or repairs. This guarantee is in addition to all other guarantees, warranties and rights contained in the Contract Documents.

**ARTICLE 19**  
**PAYMENTS**

- 19.1 Subcontractor shall submit within ten (10) calendar days of the execution of this Subcontract and prior to any payment being made, a Schedule of Values with respective quantities illustrated, in accordance with the divisions of the Uniform Construction Index (UCI). Unless otherwise directed, each allocation to a work item shall include the proportionate share of overhead and profit. The schedule of values must be accepted by NVBG as to form and substance. Subcontractor shall show labor and material values independently.
- 19.2 It is expressly agreed that payment for the work performed or materials or equipment furnished shall be made from funds received from Owner by NVBG with respect to the Work. The making of all progress and final payments and the amount thereof are expressly subject to this condition precedent. Subcontractor states that it relies primarily on the credit and ability of Owner to pay and not upon NVBG's credit or ability, and further, expressly accepts the risk that it will not be paid for work performed by it in the event that NVBG, for whatever reason, is not paid by Owner for such work. The liability of NVBG's surety, if any, shall be subject to the same condition precedent.
- 19.3 NVBG agrees to pay Subcontractor for the Work the sum of \_\_\_\_\_ ("Subcontract Sum). The Subcontract Sum includes Subcontractor's performance of all Work as set forth in Section 2.1 herein, as well as all federal, state, county, municipal and other taxes imposed by law and based upon labor, services, materials, equipment or

other items acquired, performed, furnished or used for and in connection with the Work, including but not limited to sales, use and personal property taxes payable by or levied or assessed against NVBG or the Owner. The Subcontract Sum shall be paid by NVBG to Subcontractor as follows:

- a) As the Work progresses, an amount equal to ninety percent (90%) of the value of completed Work done from month to month, including the materials which are intended to be incorporated in the Project and which are properly stored on the site and meeting the requirements of the Contract Documents and certified by Engineer or Owner.
- b) NVBG will retain ten percent (10%) of each estimate until final payment is due under this Subcontract. NVBG may also withhold payment of any estimate until Subcontractor has furnished NVBG with evidence suitable to NVBG that it has paid in full for labor, materials and supplies used in the Work through the date of the estimate.
- c) Within three (3) working days of the 22<sup>nd</sup> day of each month, Subcontractor shall submit to NVBG an original written and itemized Application for Payment, in the form of AIA G702 and AIA G703, attached hereto as Exhibit "B," based upon the approved schedule of values and representing a true and accurate estimate of the portion of the Work completed as of the date indicated in the Application for Payment and, when permitted, an accurate inventory of materials and equipment suitably stored on the jobsite or other agreed upon location, reflecting the appropriate retainage and less previous payments. Each Application for Payment shall be certified by an officer or representative of Subcontractor in a manner acceptable to NVBG, notarized and supported by valid lien waivers as set forth elsewhere in this Subcontract or the Contract Documents, together with such additional documentation, invoices, vouchers, waivers, certifications and affidavits substantiating Subcontractor's right to payment as NVBG may request or the Contract Documents require. All Applications for Payment shall be subject to correction including revision to any prior or following Applications for Payment. Should any defective work, materials or equipment be discovered during the progress of construction, or should reasonable doubt arise as to whether certain work, materials or equipment is in accordance with this Subcontract or the Contract Documents, the value of such defective or questioned work, material or equipment shall not be included in any Applications for Payment, or if previously included and paid, shall be deducted by Subcontractor in its next Applications for Payment. It shall be Subcontractor's sole responsibility to submit each Application for Payment in the time and in the manner prescribed herein and on the form provided or approved by NVBG for such purpose, and in no instance shall NVBG be obligated to make any payment upon any Applications for Payment not complying herewith. Payment for undisputed amounts shown on Subcontractor's Application for Payment shall be made by NVBG to Subcontractor within 15 days from the date NVBG receives payment from Owner for Subcontractor's portion of the Work, subject to the provisions of Section 19.2, above.
- d) Provided further, that payment for stored materials shall be made as stipulated by the Contract Documents, and such requests for payments for stored materials shall be accompanied by vendor paid invoices, itemizing respective quantities and unit costs of such stored material, copies of cancelled checks made to vendor. At its option, NVBG may make payment for stored material by joint check to Subcontractor and vendor and require, as a condition precedent to payment for stored materials, proper insurance and a waiver of lien, effective as of the date of the payment. It is further understood and agreed that material stored on the site, for which payment is requested, shall be in the care and custody

NVBG\_\_\_\_\_

Subcontractor\_\_\_\_\_

of Subcontractor, and shall not be removed from the site without the written consent of NVBG. Payment for stored materials shall be made from funds received from Owner by NVBG with respect to the Work. The liability of NVBG's surety, if any, shall be subject to the same condition precedent. Should stored materials be required or requested to be stored off-site, subcontractor must provide insurance certificate(s) showing the specific materials/product being insured, stored location must be bonded and insured, acknowledging letter from insurance companies that materials are located with the insured location. No payment for stored materials will be made for any work that will be installed within the following 60 calendar days of the current payment period.

- e) The payment method described in Sections 19.1, 19.2, 19.3(a) through (d), 19.3(f) and 19.3 (g) shall be the method and manner of payment under this Subcontract. However, Subcontractor at its option may choose to request to receive payment from NVBG without satisfaction of the condition precedent of payment to NVBG from Owner. **Acceptance of this option is at the sole discretion of NVBG. Subcontractor's selection of one of these options does not guarantee NVBG's acceptance of it. NVBG shall in no way be obligated to accept or abide by a selection under this provision. Further, NVBG is under no obligation to make payments under this provision even if prior payments were made to this subcontractor under this agreement.** As consideration for this modified payment structure, Subcontractor agrees to relinquish to NVBG a corresponding reduction in payment. Subcontractor may select any of the following payment terms with its corresponding reduction in payment:

SAMPLE

- Payment by NVBG within 20 days from Subcontractor's submittal of all documents required under Section 19.3(c) – Subcontractor relinquishes to NVBG a 2% reduction in payment
- Payment by NVBG within 15 days from Subcontractor's submittal of all documents required under Section 19.3(c) – Subcontractor relinquishes to NVBG a 3% reduction in payment
- Payment by NVBG within 10 days from Subcontractor's submittal of all documents required under Section 19.3(c) – Subcontractor relinquishes to NVBG a 5% reduction in payment
- Payment by NVBG within 5 days from Subcontractor's submittal of all documents required under Section 19.3(c) – Subcontractor relinquishes to NVBG a 10% reduction in payment

**Should Subcontractor select any of the above early pay provisions, it will be Subcontractor's responsibility to make note of this request on the AIA invoice for every progress and final payment.**

Should a submitted application for payment for any corresponding month and/or pay period be rejected by NVBG, it is the Subcontractor's sole responsibility to resubmit to NVBG (as listed in Article 19.3(c)) a corrected original within the time listed above. Faxed or e-mailed copies will not be considered or accepted.

NVBG will only accept one application for payment per month and or pay period.

NVBG \_\_\_\_\_  
Subcontractor \_\_\_\_\_

Additional applications will be rejected, inclusive of retainage applications within the same month. No applications for payment for retainage will be accepted unless prior to submission for retainage, the Subcontractor has (1) completed the required punch list, (2) provided four original close out documents inclusive of reports, if applicable, (3) provided four original required warranties, including special manufacturers and or lower tier subcontractors warranties, (4) provided final lien waivers from all suppliers and/or lower tier subcontractors and (5) any other items required by NVBG pertaining to contract documents.

NVBG has the authority and right to change the payment provisions listed in Article 19.3(c), if required, to coincide with NVBG and Owner's Pay Application submission schedule.

Irrespective of the payment method selected above, if any, ten percent (10%) retainage shall be held by NVBG in accordance with Section 19.3(c), and payment of the retainage shall be made to Subcontractor once all conditions precedent to final payment are met, as described in detail in Section 19.3(f).

- f) Final payment will be made within twenty (20) days after the Work called for hereunder has been completed by Subcontractor to the satisfaction of Owner, Architect and NVBG, Subcontractor has submitted its final Application for Payment and all required as-built and closeout documents together with any required certificates of insurance for any insurance coverage required to be maintained after the date of final payment, and NVBG has received from Owner written acceptance thereof together with payment in full for the Work. Final payment is further subject to NVBG's determination that all of the terms, conditions, requirements and covenants of this Subcontract have been well and truly met and discharged by Subcontractor. It is expressly agreed that final payment to Subcontractor shall be made from funds received from Owner by NVBG with respect to the Work. The liability of NVBG's surety, if any, shall be subject to the same condition precedent.
- g) The acceptance of final payment made by NVBG to Subcontractor shall constitute a release by Subcontractor of any and all claims which have not been reserved in writing pursuant to the provisions of this Subcontract.

19.4 If at any time there shall be evidence of lien or claim for which, if established, NVBG or Owner might become liable, and which is chargeable to Subcontractor, or if Subcontractor shall incur any liability to NVBG, or NVBG shall have any claim or demand against Subcontractor of any kind or for any reason, whether or not reduced to judgment or award, NVBG shall have the right to retain out of any payment due, or to become due under this Subcontract or any other Subcontract between NVBG and the Subcontractor, an amount sufficient to indemnify NVBG and Owner against such lien or claim, or to compensate NVBG for and fully satisfy such liability, claim, or demand, and charge or deduct all costs of defense, or collection with respect thereto, including attorneys' fees and costs. Should any claim or lien develop after all payments are made, Subcontractor shall refund to NVBG all monies that the latter may be compelled to pay in discharging such claims or liens or costs incurred collecting said monies from Subcontractor.

19.5 No progress payment under this Subcontract shall be conclusive evidence of the performance of this Subcontract either in whole or in part, and no payment shall be construed to be acceptance of defective Work or improper materials. Subcontractor shall pay for all materials and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from

NVBG. Subcontractor shall accompany all Applications for Payment with its own lien waiver for the period of time covered by its current Application for Payment, and with lien waivers from all of its subcontractors, suppliers and others for the period of time covered by the previous Application for Payment and who may be entitled to assert a lien on the Project. All lien waivers shall be on a form provided or approved by NVBG. The Subcontractor is advised that no exceptions to this provision will be made, and any Applications for Payment not accompanied by proper lien waivers will be cause for not processing the Application for Payment and withholding payment. NVBG reserves the right, in its sole discretion to make any payment to Subcontractor hereunder through check(s) made payable to the joint order of Subcontractor and such lower-tier subcontractors, suppliers or others, and/or any of Subcontractor's other creditors having potential rights or claims against the Project or any proceeds.

- 19.6 Final payment is further subject to NVBG's prior receipt from Subcontractor of all as-built drawings, certifications, maintenance manuals, operating instructions, written guarantees and warranties and bonds relating to the Work, a final waiver of lien, complete releases and an affidavit certifying Subcontractor's payment in full all items relating to the Work.
- 19.7 All estimates and quantity calculations made by Owner or Engineer as to the weights, quantities and amount(s) of materials furnished and work performed by Subcontractor hereunder shall be final and binding upon Subcontractor and shall conclusively establish the amount(s) of materials furnished and work performed by the Subcontractor. It is understood and agreed that Subcontractor shall receive no compensation for any materials furnished or work performed by it which is not approved and accepted by Owner and Engineer, and will make no claim against NVBG or its surety, if any, for any compensation based upon any estimate or quantity calculations other than those made by Owner or Engineer; provided, however, if Subcontractor, pursuant to any written directive of NVBG, furnishes any additional material or performs any additional work not provided for in the Contract Documents, Subcontractor will be compensated in accordance with Article 10 herein.
- 19.8 Should Subcontractor enter into a factoring agreement, request that NVBG agree to a factoring arrangement, or otherwise assign its rights to payment under this Subcontract, the Subcontractor agrees to relinquish to NVBG as an administrative fee a total of five percent (5%) of the factored or assigned invoice. Further, should NVBG incur additional costs, including but not limited to attorneys' fees, then Subcontractor agrees to reimburse NVBG for such costs. Payment(s) to factoring company will be made as listed within Article 19 of this agreement. It will be the responsibility of this subcontractor to advise the factoring company of the payment provisions listed herein. Partial and final lien waivers will be required from both subcontractor and its factoring company as required herein.
- 19.9 NVBG may deduct from any amounts due or to become due to Subcontractor under this Subcontract or any other agreement between NVBG and Subcontractor any sums owed NVBG under this Subcontract or any other agreement between NVBG and Subcontractor.

**ARTICLE 20**  
**MISCELLANEOUS REQUIREMENTS AND SPECIAL PROVISIONS**

- 20.1 Materials delivered to the jobsite shall be received, unloaded and stored by the Subcontractor. All deliveries shall be coordinated with NVBG.

- 20.2 Where testing agency standards are referenced, all materials shall be tested and certified by an approved, independent testing company at Subcontractor’s sole cost and expense.
- 20.3 In the event Subcontractor wishes to contract with a lower tier subcontractor for any portion of the Work covered by this Subcontract, prior written approval of NVBG must be obtained.
- 20.4 The headings provided in this Subcontract are for ease of reference only. The headings form no part of the Subcontract between the parties and shall be given no weight in the interpretation or construction of this Subcontract.
- 20.5 Any invoice(s) and notice(s) required or permitted to be given hereunder shall be deemed effective if given by personal delivery, overnight courier, or by United States Certified Mail/Return Receipt Requested, to the appropriate address indicated below or such other address as a party may designate in writing from time to time. Unless the Prime Contract provides otherwise, any such notice shall be deemed effective when delivered or five (5) days after deposit into the United States Mail addressed to such addresses, whichever occurs earlier. Notice may be made by facsimile to the appropriate number indicated below; however, to be effective fax notice must be followed by one of the forgoing described methods.

Invoices and Notice to NVBG shall be delivered to: New Vista Builders Group, LLC.

4906 N. Manhattan Ave.

Tampa, FL 33614

(813) 354-4846

With a fax copy to:

Notice to Subcontractor shall be delivered to: \_\_\_\_\_

SAMPLE

With a fax copy to:

\_\_\_\_\_,  
( ) - \_\_\_\_\_

- 20.6 Should any provision of this Subcontract be determined by a court to be unenforceable, such determination shall not affect the validity and enforceability of any other section or part hereof.
- 20.7 The failure of NVBG to enforce at any time any one or more of the provisions of this Subcontract or the Contract Documents shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
- 20.8 This Subcontract and the Contract Documents constitutes the entire and integrated agreement between NVBG and Subcontractor, and supersedes all prior negotiations, representations, understandings and agreements, either written or oral. NVBG shall not be liable for any understandings or representations made by any of its representatives or agents prior to the execution of this Subcontract, unless such understandings or representations by NVBG are expressly stated in this Subcontract. This Subcontract may be amended only by written instrument signed by both NVBG and Subcontractor.
- 20.9 Nothing contained in this Subcontract shall be deemed to create any contractual or third party beneficiary relationship between any parties other than NVBG and Subcontractor.
- 20.10 NVBG and Subcontractor for themselves, their successors, executors, administrators and assigns, hereby agree to the full performance of the covenants of this Subcontract.

NVBG\_\_\_\_\_

Subcontractor\_\_\_\_\_



- 20.11 If this Subcontract is not duly and properly executed by Subcontractor and returned to NVBG within seven (7) calendar days of its date, it is deemed withdrawn by NVBG.
- 20.12 Subcontractor is responsible to review complete set of documents and coordinate with other trades prior to installation of this subcontractors work. NVBG will not be held responsible for any cost associated with the work installed that may need to be relocated, modified, corrected, adjusted or altered and for work scheduled to be installed in areas of other subcontractors installed work which may be in conflict with this subcontractors work.

**IN WITNESS WHEREOF**, the parties have executed this Subcontract as of the date first written above.

<u>New Vista Builders Group, LLC</u> (General Contractor)	(Subcontractor)
By:	By:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

SAMPLE

**WITNESSES**

(For NVBG)

(For Subcontractor)

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

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



**Attachment "A"**

- 1.) Provide Furnish and install all items required for complete and fully functional Heating Ventilation Air Conditioning systems per plans and specifications. Work includes but is not limited to; the furnishing of all tools, equipment, components, accessories, engineering, materials, submittals, warranties, duct support, selective demolition, ductwork, equipment, split systems, fans, exhaust, controls, air distribution, test and balance, etc, daily clean up, coordination with other trades, etc. as shown on the plans, specifications, alternates and addendums. All materials and labor to be warranted for a minimum of one (1) year or as required by contract documents from date of Owners acceptance. All required closeout documents must be submitted prior to invoicing for 90% of contract value. Ten (10%) retainage to be withheld until Owners final acceptance. All work is to be completed to the satisfaction of the Owner, Engineer or Architect and NVBG. Work will be performed within the contractual 180 calendar days and per the task defined within the project schedule (Exhibit A- to follow), with a tentative project commencement of approximately March 15, 2021. One electronic submittals along with three samples of items along with detailed schedule of values and returned executed subcontract agreement are required by 2/26/21.
- 2.) All required closeout documents must be submitted to NVBG prior to invoicing for 90% of contract amount.
- 3.) It is understood should Subcontractor not check any of the four (4) optional payment provisions listed on page 20 of 24, and then Subcontractor does not agree to a modified payment structure. Under such a circumstance, Subcontractor is in agreement to payment terms in accordance with sections 19.1, 19.2, 19.3(a) through (d), 19.3(f) and 19.3(g). Payment shall be made by NVBG to Subcontractor within 15 days from the date NVBG receives payment from Owner for Subcontractor's portion of the Work.
- 4.) Complete submittal package, (1) copies, due within **two weeks** of contract date, to include but not limited to items in specifications and drawings.
- 5.) Bond Requirements listed within this contract are waived. All other insurance requirements remain fully in-force.
- 6.) It is the sub-contractors responsibility to note on the AIA invoice that an early pay provision (Article 19.3e) is requested. Please note actual provision requested, (ex. 10% early pay).
- 7.) The following must be provided within **14 calendar days** of receipt of this subcontract agreement:
  - a. Fully executed Subcontract Agreement
  - b. Valid Insurance Certificate for Worker's Compensation & Commercial General Liability
  - c. Detailed Breakdown of schedule of values on AIA G703
  - d. Completed W-9
- 8.) Invoices must be submitted in original form, fax copies will only be considered for review and not for payment.

The above items of work are listed for the purpose of clarifying their inclusion in this Subcontract as they, for various reasons, may not have been included in the plans or technical specifications relating directly to this work. Likewise, they may have been included in the specifications but excluded by Subcontractor in his bid. Also, items may be listed for emphasis, as they may already be included in the specifications and plans but are sometimes unclear as to whether they are included in this Subcontract and are therefore being listed for clarification. In no way is this list to be representative of all work to be done by Subcontractor but rather is for the purposes of illustration and of clarifying certain items only. Subcontractor agrees that the drawings and specifications are intended to supplement one another, and any work or materials or equipment shown or mentioned in one and not in the other shall be furnished by Subcontractor without extra charge. The enumeration of said items in this Subcontract or in the Specifications shall not be construed to exclude other items.

Subcontractor agrees to furnish, without extra charge, all work, labor, materials and equipment not mentioned or



shown, but generally included under this class of Subcontract or fairly implied therein as necessary for the satisfactory completion of the Prime Contract, and also any work, labor, materials or equipment of the kind therein contracted for which may be required to conform the Work hereunder to comply with all laws, ordinances, orders, rules, regulations and requirements of all Federal, State, County and Municipal governments and appropriate departments, boards, and officers thereof and of the insurance organization having jurisdiction or any other body or entity exercising similar functions. Any specific reference in such regulation, rule, code or like enactment shall be interpreted to include all amendments, revisions or alterations implemented at any time before or during the performance of the Prime Contract or this Subcontract.

SAMPLE