



SUBCONTRACT
"An Equal Opportunity Employer"

THIS AGREEMENT* made this [redacted] day of [redacted], 20 [redacted], by and between [redacted]

, hereinafter called the Subcontractor, and BURKE CONSTRUCTION GROUP, INC., (NV State Contractors License No. 0022189, AB Unlimited)
3365 Wynn Road, Suite A, Las Vegas, Nevada 89102, (702) 367-1040, hereinafter called the Contractor.

WHEREAS, as the Contractor has entered into a Contract dated the [redacted] day of [redacted], 20 [redacted], with [redacted]
(hereinafter called the Owner), for the construction of [redacted]
(hereinafter called the Project), located at [redacted]

NOW THEREFORE, it is agreed as follows:

WITNESSETH:

Section 1. Contract Documents. The term "Prime Contract" as used herein refers to all the General and Special Conditions, Drawings, Specifications, Addenda, Amendments, Modifications and all other documents forming or by reference made a part of the Contract between the Contractor and Owner. All of the aforesaid shall be considered a part of this Subcontract by reference thereto and the Subcontractor agrees to be bound to the Contractor and Owner by the terms and provisions thereof, so far as they apply to the Work hereinafter described.

Section 2. The Work. The Subcontractor agrees to furnish all supervision, labor, tools, equipment, materials and supplies necessary to perform, and to perform the following described Work (hereinafter called the "Work"):

SPECIAL REFERENCE IS MADE TO THE FOLLOWING:

- 1. Complete Design Drawings as listed on Exhibit "A" dated [redacted] attached.
2. Project Manual, [redacted] dated [redacted], Addenda #1 dated [redacted], Addenda #2 dated [redacted]
3. Burke Construction Group Submittal Schedule dated [redacted].
4. Burke Construction Group Construction Schedule dated [redacted].
5. The Supplier shall provide insurance certificates listing Burke Construction Group, Inc. and Owner as "Additional Insured". Please reference Section 10. 'Insurance' for the specific requirements. Insurance must be an A.M. Best's rating of A-VII or better.
6. All applicable permits and insurance certificates must be submitted to Burke Construction Group prior to start of work.
7. Respective trade clean-up is mandatory.
8. All taxes, freight costs and miscellaneous fees are included unless specifically excluded.
9. Hoisting and unloading of own materials, equipment, supplies and incidentals is included.
10. No company advertising of any kind will be allowed without written approval from Burke Construction Group, Inc.
11. Submittals and shop drawings are due complete by [redacted] - in sets of six (6).
12. When the Supplier does not install all material furnished under this Subcontract, such material as is not installed to be delivered F.O.B.
13. Any additional work over and above the original scope of work, which is undertaken on a time and material basis, must be authorized with a "Notice To Proceed" issued by Burke Construction Group's Project Manager. It is the Subcontractor's responsibility to ensure all time and material records are verified and signed off by the Project Superintendent on a daily basis.

SCOPE OF WORK INCLUDES BUT IS NOT LIMITED TO:

Without limiting any provision of this agreement, Subcontractor includes:

- 1. Provide [redacted] work as outlined on attached (Exhibit "B") dated [redacted] which forms an integral part of this Subcontract.
2. All correspondence pertaining to this project will be directed to Burke Construction Group, Inc. and MUST be identified as [redacted].

Section 3. Payment. (a) The Contractor agrees to pay the Subcontractor for the performance of this Subcontract, as specified, herein, the sum of ***\$ [redacted].00***
*** [redacted] DOLLARS AND 00/100***

(hereinafter called the Subcontract Price) subject to additions and deductions for changes agreed upon or determined, as hereinafter provided. The Subcontract price includes all applicable taxes, including but not limited to sales, use, franchise, excise and other taxes. The Subcontract price also includes the cost of delivery and handling of materials, equipment and supplies. Partial payments will be made to the Subcontractor each month in an amount equal to 90 per cent of the value, computed on the basis of the prices set forth above, of the quantity, as estimated by the Architect, Engineer or Contractor, of the Work performed hereunder, less the aggregate of previous payments, but it is a condition precedent that such partial payments shall not become due to the Subcontractor until 10 (ten) days after the Contractor receives payment for such Work from the Owner.

(b) If at any time prior to final payment hereunder the Owner reduces the amount of retainage withheld from the Contractor, the Contractor may, at its sole discretion, reduce accordingly the retained percentage withheld from the Subcontractor.

(c) The Contractor may deduct from any amounts due to the Subcontractor any sum or sums owed by the Subcontractor to the Contractor, and in the event of any breach by the Subcontractor of any provision or obligation of this Subcontract, or in the event of the assertion by other parties of any claim or lien against the Contractor or the premises arising out of the Subcontractor's performance of the Subcontract, the Contractor shall have the right to retain from any payments due or to become due to the Subcontractor, an amount reasonably necessary to protect the Contractor from any and all loss, damage or expense there from, until the situation has been satisfactorily remedied or adjusted by the Subcontractor.

(d) Right to Pay by Joint Check to Subcontractor and Supplier. General Contractor reserves the right at any time and from time to time to pay directly for any material, equipment, or other services supplied to the project as part of this Subcontract by check (a "Joint Check") to the order of (i) the Subcontractor, and (ii) any and all suppliers of material, equipment, or other services to the project (each a "Supplier" and collectively, the "Suppliers").

(e) No Payment Guarantee to Supplier. Subcontractor acknowledges and agrees that issuance of Joint Checks shall not be deemed or construed as creating: (i) privity of contract by and between General Contractor and any Supplier; (ii) a relation of guarantor and/or surety between General Contractor and Supplier; or (iii) any other obligation or liability to the Supplier from General Contractor other than as maker of the Joint Check.

(f) Right to Place Restrictive Endorsement on Joint Checks. General Contractor reserves the right to place a restrictive endorsement on any Joint Check reflecting any or all of the provisions of paragraph (e) above.
Section 4. Bonding. If requested by Contractor, the Subcontractor shall furnish a 100% Performance and a 100% Payment Bond in an amount equal to the full Subcontract Price. Such bonds shall be on a form furnished by and with a surety satisfactory to the Contractor. Premium for such bonds shall be paid by the Subcontractor unless otherwise agreed upon in writing by the parties hereto.

Section 5. Changes. (a) The Contractor may at any time by written order of Contractor's authorized representative and without notice to the Subcontractor's sureties, make changes in, additions to and omissions from the Work to be performed under this Subcontract, and the Subcontractor shall promptly proceed with the performance of this Subcontract as so changed. Any increase or decrease in the Subcontract Price resulting from such changes shall be agreed upon in writing by the parties hereto. Any claim for adjustment of the Subcontract Price under this Section must be made in writing within 48 hours from the date such changes are ordered or else is waived.

The Subcontract Price shall be equitably adjusted on account of any such changes, subject to any applicable provisions of the Prime Contract. The Subcontractor shall be limited to (unless subject to lower or higher provisions of the Prime Contract between Owner and Contractor) a maximum combined mark-up on Overhead and Profit, above actual costs, of 10%. Costs shall be limited to actual dollars incurred by the Subcontractor due to changes in the Work. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Contractor and/or Owner has been unjustly enriched by any alteration or addition to the Work, shall be the basis for any claim for additional consideration or an extension of the Contract Time.

(b) Change Proposals.

At any time and from time to time prior to Final Completion, General Contractor may request changes in the Work, in which event the Contractor may, in its sole discretion, deliver Notice to Subcontractor requesting a Change Proposal (a "Request for Proposal"). A Request for Proposal shall set out, in reasonable detail, the changes in the Work requested by the Contractor. Subcontractor shall, within seven (7) calendar days of its receipt of a Request for Proposal, issue a written proposal setting forth, in detail, the net effect that such change will have on the Contract Price and Contract Time, if any (a "Change Proposal"). Contractor may also issue a Change Proposal if Contractor reasonably believes that a change in the Work is necessary or desirable because of a change in the laws, the discovery of unforeseen conditions at the Site. If Subcontractor refuses or fails to timely provide a Change Proposal, or if Contractor and Subcontractor are unable to agree in writing upon the terms of the Change Proposal, then Contractor may do any of the following: (1) issue a Construction Change Directive or (2) engage other Subcontractors and/or laborers to perform the requested change in the Work, and such hiring shall not affect this Agreement in any manner.

(c) Change Procedure. Subcontractor shall notify Contractor by means of a Change Proposal, as soon as reasonably possible, but in no event later than five (5) calendar days after any event or occurrence that Subcontractor believes may require a change in the Contract Price or the Contract Time (including, without limitation, Subcontractor's receipt of a request from any Sub-tier Subcontractor or Vendor for additional cost or time with respect to any portion of the Work), by delivering a written Change Proposal to Contractor. If Subcontractor fails to provide Contractor with a Change Proposal within five (5) calendar days after Subcontractor's receipt of a request from any Sub-tier Subcontractor or Vendor for additional cost or time, and such request for change is ultimately deemed approved pursuant to the NRS, then all additional costs requested by such Sub-tier Subcontractor or Vendor and deemed approved under the NRS (or the amount required to recover the extra time requested by such Sub-tier Subcontractor or Vendor and deemed approved under the NRS) shall be deemed rejected and no compensation what so ever will be due from Contractor. (i) Contractor shall review each Change Proposal and provide written approval or disapproval (with reasons for such disapproval) thereof to Subcontractor within thirty (30) calendar days after the Contractor receipt thereof; provided, however, that if the Contractor fails to approve a Change Proposal within said thirty (30)-calendar day period, Contractor shall be deemed to have disapproved such Change Proposal and, with respect to any Change Proposal based on a Sub-tier Subcontractor's or Vendor's request for additional cost or time, Subcontractor shall promptly notify such Subcontractor or Vendor of such disapproval in accordance with subsection. (ii) If a Change Proposal relates to a request that Subcontractor received from a Sub-tier Subcontractor or Vendor for additional cost or extension of time, and Contractor does not approve, in writing, such Change Proposal within the thirty (30) calendar day period set forth above, then Subcontractor shall deliver, as soon as reasonably possible, but in no event later than the thirtieth (30th) calendar day following Contractor's receipt of the applicable request for change from a Sub-tier Subcontractor or Vendor, written notice to the applicable Sub-tier Subcontractor or Vendor rejecting such Sub-tier Subcontractor's or Vendor's request for change together with reasons why the request is unreasonable. If Subcontractor fails to reject a Sub-tier Subcontractor's or Vendor's request for change in accordance with the preceding sentence, then any additional amounts requested by the applicable Sub-tier Subcontractor or Vendor and deemed approved under the NRS (or the amount required to recover the extra time requested by such Sub-tier Subcontractor or Vendor and deemed approved under the NRS) shall be deemed rejected and no compensation what so ever will be due from Contractor.

(d) Construction Change Directive.

For purposes of this Agreement, a "Construction Change Directive" means a written order initiated, prepared and signed by Owner's Representative and/or Contractor and given to the Subcontractor directing a change in the Work and stating a proposed basis for adjustments, if any, in the Contract Price and/or the Contract Time due to such change. Contractor may, by delivery of a Construction Change Directive to Subcontractor, order a change in the Work without invalidating or breaching the Contract or Contract Documents. Upon receipt of a Construction Change Directive, Subcontractor shall promptly proceed with the change in the Work involved. If Subcontractor disagrees with the terms of the Construction Change Directive and the parties are unable, within a reasonable amount of time, to reach an agreement, the dispute shall be resolved in accordance with the procedures set forth in the prime contract.

(e) Calculation of Change.

The actual amount of the increase or decrease in the Contract Price and/or the Contract Time resulting from a change approved by written Change Order shall be determined by one or more of the following methods, at the Contractor's discretion: (i) if possible, mutual acceptance of a lump sum proposal properly itemized and supported by sufficient substantiating data to permit evaluation and audit by the Contractor; (ii) unit prices stated in the Contract Documents, the contract, or subsequently agreed upon by the parties; and/or (iii) the actual cost to Subcontractor and any Sub-tier Subcontractors, which cost must be properly itemized and supported by sufficient substantiating data to permit evaluation and audit by the Contractor.

(f) Time extensions in change order: No time extension shall be granted to the subcontractor because a change order has been issued unless it is expressly stated therein.

(g) Claims for amounts outside of change order: no claim shall be made for delay or additional costs based on the number, nature or extent of the changes made or the time for processing the changes.

(h) Disputed work and daily reports for disputed and extra work notice: if the subcontractor is of the opinion (1) that any work ordered to be done as subcontract work is extra work not subcontract work, or (2) that any determination or order of the contractor violates the terms and provisions of this subcontract, the subcontractor must, within one day of learning of the same and before proceeding with such work or complying with such determination or order, notify the contractor in writing of the reasons why, and request and receive a final determination thereon.

(i) Additional notice: if the contractor determines that the work in question is subcontract work and not extra work or that the determination or order complained about is proper, the contractor will notify the subcontractor to proceed and the subcontractor must immediately comply. But, in order to reserve any right to claim compensation for such work or damages resulting from such compliance, the subcontractor must, within three days of receiving notice of the contractor's determination and direction, notify the contractor in writing that the work is being performed or that the determination and direction is being complied with under protest.

(j) Performance of disputed or extra work: while the subcontractor is performing disputed work or complying with a determination or order under protest in accordance with this article, the subcontractor shall furnish the contractor daily copies of written statements signed by the subcontractor's representative at the site that show: (1) The name and number of each worker employed on such work or engages in complying with such determination or order, the number of hours employed thereon, and the character of the work each is doing. (2) The nature and quantity of any materials, plants and equipment furnished or used in connection with the performance of such work or compliance with such determination or order, and from whom they were purchased or rented.

(k) The General Contractor, without invalidating this Subcontract or any bonds or security furnished hereunder, and without notice to the sureties, if any, may, at any time after the execution of this Subcontract, reduce or omit the Subcontractor's scope of Work. General Contractor shall order such reductions or omissions by giving written notice to the Subcontractor not later than five (5) days prior to when the Work that has been reduced or omitted was scheduled to begin. When Work is omitted or reduced, in whole or in part, the General Contractor shall pay, subject to the provisions of this Subcontract, for all Work actually performed. Subcontractor is not entitled to compensation or damages for any losses, including loss of profit or overhead relating to the reduced or omitted Work.

Section 6. Prosecution of Work. (a) The Subcontractor shall furnish all labor, supervision, tools, equipment, materials and supplies necessary for the performance of this Subcontract in a proper, efficient and workmanlike manner. The Subcontractor shall prosecute the Work undertaken in a prompt and diligent manner whenever such Work, or any part of it, becomes available, or at such other time or times as the Contractor may direct, and so as to promote the general progress of the entire construction, and shall not, by delay or otherwise, interfere with or hinder the work of the Contractor or any other Subcontractor. Any materials that are to be furnished by the Subcontractor hereunder shall be furnished in sufficient time to enable the Subcontractor to perform and complete its Work within the time or times provided for herein. The Subcontractor agrees to reimburse the Contractor for any and all liquidated and/or actual damages that may be assessed against and/or collected from the Contractor which are attributable to or caused by the Subcontractor's failure to perform the Work required by this Subcontract within the time fixed or in the manner provided for herein, and in addition thereto, agrees to pay to the Contractor such other or additional damages as the Contractor may sustain by reason of such delay by the Subcontractor. The payment of such damages shall not release the Subcontractor from its obligation to otherwise fully perform this Subcontract. Upon written request by the Contractor, the Subcontractor shall furnish to the Contractor such evidence as the Contractor may require relating to the Subcontractor's ability to fully perform this Subcontract in the manner and within the time specified herein.

(b) In the event the Subcontractor fails to comply or becomes disabled from complying with the provisions herein as to character or time of performance, and the failure is not corrected to the satisfaction of the Contractor and/or Owner within 24 hours after request is made by the Contractor to the Subcontractor, the Contractor, by Subcontract or otherwise, may, without prejudice to any other right or remedy, take over and complete the performance of this Subcontract at the expense of the Subcontractor or without taking over the Work, may furnish the necessary materials and/or employ the workmen necessary to remedy the situation at the expense of the Subcontractor. If the Contractor takes over the Work pursuant to this paragraph, it is specifically agreed that the Contractor may take possession of the premises and of all materials, tools, and equipment of the Subcontractor at the site for the purpose of completing the Work covered by this Subcontract.

(c) It is agreed that the Subcontractor shall be considered as disabled from so complying wherever a petition of Bankruptcy or for the appointment of a receiver is filed by or against it.

(d) The Subcontractor shall keep on the site during the progress of the Work, a competent superintendent who shall be the authorized representative of the Subcontractor. Directions and communications to it from the Contractor in connection with the Work, shall be treated as directions and communications to the Subcontractor.

(e) Clean up of equipment, materials and/or matter of any kind which is a result of work performed in connection with this Subcontract agreement shall be performed by the Subcontractor at the direction of the Contractor. Failure to comply is hereby agreed to result in Contractor performing clean up with all costs borne by Subcontractor.

(f) All materials furnished by Subcontractor shall be new, of suitable grade or quality for the purpose intended, and shall carry the manufacturer's full warranty. Where a brand name for materials is specified, no substitution shall be permitted. The risk of loss for all materials shall remain with Subcontractor until inspection and approval by Contractor.

(g) The Subcontractor is required to coordinate all respective work with the various other trades on the project and is specifically responsible for their own respective layout of their work. It is specifically agreed to, that the Subcontractor shall attend and participate in all weekly Subcontractor coordination meetings, any pre-construction coordination meetings, periodic Quality Control verification walks and other trade specific safety and coordination meetings as requested by Burke Construction Group throughout the course of the project. It is also specifically agreed that any requests for information or clarifications required by the subcontractor will be provided to the General Contractor with in one business day of identification in writing with complete information including reference to the drawings, specifications and other correspondence so that these items can be formally investigated and responded to in writing. Verbal requests for information requiring the response from the Design Consultant, Owner or Governing Jurisdiction will not be acceptable. Untimely, excessive or frivolous due to lack of thorough investigation by the Subcontractor; Requests for Information or clarifications will not entitle the Subcontractor to a time extension or claim for delay on the project.

Section 7. Delays. (a) Should the subcontractor be obstructed or delayed in the commencement, prosecution or completion of the Work, without fault on its part, by reason of: failure to act, direction, order, neglect, delay or default of the Owner, the Architect/Engineer, General Contractor, or any Other Contractor or subcontractor employed upon the Project; by changes in the Work; fire, lightning, earthquake, enemy action, act of God or similar catastrophe; or by Government restrictions in respect to materials or labor; shall be entitled to an extension of time to perform the Work which shall be equal to the time lost by reason of any or all of the cause aforesaid. Subcontractor expressly agrees not to make, and hereby waives, any claim for damages, including those resulting from increased labor or material costs, on account of any delay, obstruction or hindrance for any cause whatsoever, whether or not foreseeable and whether or not anticipated including but not limited to the afore described causes, and agrees that the sole right and remedy therefore, shall be an extension of time, provided the requisite condition as to written claim has been met, except to the extent that the Prime Contract entitles the Contractor to compensation for such delays and then only to the extent of any amounts that the Contractor may, on behalf of the Subcontractor, recover from the Owner for such disputes. Subcontractor agrees that any labor unrest, by reason of strikes, picketing, bannering, handbilling, and/or boycotts by any individual, group or organization directed at or in any way pertaining to Subcontractor, or because of disputes of any nature between the Subcontractor and any individual, group or organization shall not constitute an "act of God or similar catastrophe" as used herein or a defense of commercial impracticability.

(b) No allowance for an extension of time, for any cause whatever, shall be claimed by, or made to, the Subcontractor unless the Subcontractor shall have made written request upon the Contractor for such extension with 48 hours after the cause of such extension occurred, or if the Prime Contract provides for a shorter period, within sufficient time to permit the Contractor to give notice to the Owner within the time allowed by the Prime Contract for such notice.

(c) No allowance of an extension of time shall be made to the Subcontractor for delay by the Subcontractor in providing: complete shop drawings; complete, compliant and accurate submittal(s) packages; failure to submit in a timely fashion any critical requests for information that may cause delays in the progress of the work; or in securing approvals required by the Architect, Engineer, Governmental Agencies or General Contractor in accordance with the specifications and requirements of the Project or Permitting Agency that could hinder the timely completion of the Project. Failure to comply with this requirement entitles the General Contractor to have the right to receive from the Subcontractor five hundred dollars (\$500.00) per day for each day of such delay and also the right to collect any costs resulting in project delays requiring acceleration of other trades or general conditions related to the lost time.

Section 8. Labor. (a) The Subcontractor, in connection with all Work covered by this Subcontract, shall comply with and be bound by any labor agreements executed by the Contractor or on Contractor's behalf. Failure at any time to comply with any of the provisions of such agreements will, at the option of the Contractor, be cause for immediate termination of this Subcontract, for default and the Contractor shall have all of the rights contained in Section 6 with regard to such termination.

(b) If, in the sole judgment of Contractor, Subcontractor: (i) fails to supply a sufficient number of qualified supervisors or workers, or materials, supplies, equipment and tools for a period of two (2) consecutive days to perform the Work defined in this Subcontract; and/or (ii) interferes with or disrupts, or threatens to interfere or disrupt operations of Contractor, Owner, or any other subcontractor, worker, supplier, vendor, or other person at any location where Work covered by this Subcontract is or will occur, due to any labor unrest by reason of strikes, picketing, bannering, handbilling, and/or boycotts directed at or in any way pertaining to Subcontractor, or because of disputes of any nature between the Subcontractor and any individual, group or organization, then any such event shall immediately and with no further action or notice constitute a default and breach by Subcontractor and Contractor may terminate the Subcontract for said default and proceed in accordance with Section 6 hereof.

(c) Should there be any labor unrest by reason of strikes, picketing, bannering, handbilling, and/or boycotts by any individual, group or organization directed at or in any way pertaining to Subcontractor, or because of disputes of any nature between the Subcontractor and any individual, group or organization, that interferes with or disrupts or threatens to interfere or disrupt operations of Contractor, Owner, or any other subcontractor, worker, supplier, vendor or other person on any location where Work covered by this Subcontract is or will occur, Subcontractor shall upon request of Contractor or Owner undertake at Subcontractor's own cost and expense any and all reasonable efforts to resolve or minimize said labor unrest, including but not limited to: (i) working with Contractor to ensure that Subcontractor's supervisors, employees, vendors and suppliers properly utilize any established reserve gate system that may be instituted; (ii), providing security personnel acceptable to Contractor or Owner at job sites where Work is performed; (iii) providing transportation in and out of any job site where Work is performed for Subcontractor's workers, suppliers and vendors so as to minimize the chances of any physical or other altercations with third parties; (iv) scheduling the performance of Work to occur at times that would minimize the impact of any labor unrest regardless of whether overtime is incurred; (v) sharing all information relevant to any labor unrest to agents of the Contractor or Owner, law enforcement personnel, government agency personnel and/or courts of competent jurisdiction; and (vi) making Subcontractor's supervisors and, to the extent allowed by law, employees available for interviews and the giving of testimony to agents of the Contractor or Owner, law enforcement personnel, government agency personnel and/or courts of competent jurisdiction. The failure to undertake said reasonable efforts shall constitute a default and breach by Subcontractor and Contractor may terminate the Subcontract for said default and proceed in accordance with Section 6 hereof.

(d) On applicable Contracts, the Subcontractor agrees to comply with all of the attached "Required Contract Provisions" including "Equal Employment Opportunity Responsibilities" and the "Predetermined Minimum Wage Rates."

Section 9. Approvals. All drawings of the Subcontractor shall be submitted for approval of the Architect or Engineer through the Contractor and all other communications between the Subcontractor and the Architect, Engineer or Owner with respect to the Work shall be transmitted through the Contractor.

Section 10. Insurance. (a) **Subcontracting Liability Insurance.** The Subcontractor shall maintain such insurance as will protect the Owner, Burke Construction Group, Inc. (BURKE), and the Subcontractor from claims set forth below which may arise out of or result from the Subcontractor's operations under the contract and for which the Owner, BURKE, or the Subcontractor may be legally liable, whether such operations are those of the Subcontractor, any Sub tier Subcontractor or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, as follows:

(1) **Professional Liability.** To the extent Subcontractor provides professional engineering and design services, Subcontractor shall file with BURKE, certificates of Errors and Omissions Insurance having minimum limits of Two Million Dollars (\$2,000,000) for each occurrence and in the aggregate. Such certificates shall bear the endorsement "Not to be cancelled without thirty (30) days prior notice to the Owner and Burke by the insurer." Upon request, the Subcontractor shall deliver the insurance policies to BURKE for review. If the terms of coverage (other than limits as set forth above) of such policies are unacceptable to BURKE, Subcontractor shall review its coverage or obtain additional coverage as reasonably requested by BURKE. When the entire Work has been determined complete by the Subcontractor and accepted by BURKE, Subcontractor agrees to furnish evidence of such insurance coverage for two (2) successive twelve (12) month periods by the insurance carrier then writing professional liability coverage for the Subcontractor.

(2) **Workers' Compensation Insurance.** Worker's Compensation Insurance insuring the Subcontractor's full liability under the Workers' Compensation and Occupational Disease laws for the state where the Work is performed, and Employer's Liability coverage with not less than a \$1,000,000 limit, covering:

(A) Claims under workers' compensation, disability benefit acts, and other similar employee benefit acts which are applicable to the Work to be performed; and

(B) Claims for damages because of bodily injury, occupational sickness or disease, or death of employees.

(3) **Commercial General Liability Insurance.** Commercial General Liability Insurance with coverage on an "occurrence" basis. CGL coverage shall be written on ISO Occurrence form or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury. Contractor, Owner and all other parties required of the Contractor, shall be included as insureds on the CGL, using ISO Additional Insured Endorsement CG 2010 (11/85 Edition) or an endorsement providing equivalent coverage to the additional insureds.

(A) **Claims Covered.** Such insurance shall insure Subcontractor for Work performed under the Contract against:

(i) Claims for damages because of bodily injury, personal injury, sickness or disease, or death of any person other than his employees; and

(ii) Claims for damages because of injury to or destruction of tangible property (including loss of use resulting therefrom), other than injury to the smallest identifiable part of the Work that causes the bodily injury or property damage loss.

(B) **Endorsements or Modifications.** The Policy for such insurance shall contain the following coverages, endorsements or modifications:

(i) Completed Operations Coverage. With respect to completed operations liability, when the entire Work has been determined complete by the Subcontractor and accepted by BURKE, Subcontractor agrees to furnish evidence of equivalent continuing coverage for the next two (2) successive twelve (12) month periods.

(ii) Subcontractor's Protective Liability to cover Subcontractor's liability arising out of Work performed by its Sub tier Subcontractors;

(iii) Blanket Contractual Liability including liability arising out of the indemnification agreement set forth herein in the contract;

(iv) Personal Injury Liability with employee and contractual exclusions deleted;

(v) Broad Form Property Damage extended to apply to Completed Operations;

(vi) All exclusions related to loss by explosion, collapse or underground damage (X, C, U) shall be deleted; and,

(vii) The Combined Single Limit of liability for Bodily Injury, Personal Injury, Death and Property Damage, except automobile, shall not be less than: \$1,000,000 each occurrence for bodily injury and property damage, \$1,000,000 each incident for personal and advertising injury, \$2,000,000 products-completed operations aggregate, and \$2,000,000 general aggregate. The general aggregate limit is to apply separately to each project. (These limits may be met by a combination of primary coverage and umbrella coverage, as reasonably approved by BURKE).

(viii) Any subsidence/earthwork movement exclusion must be eliminated and proof of coverage is required thirty (30) days prior to commencement of work.

(4) **Commercial Automobile Liability.** Subcontractor shall carry insurance to insure it for operations of all owned, hired, and non-owned vehicles with limits for each accident of not less than \$1,000,000 Combined Single Limit with respect to Bodily Injury, Death and Property Damage.

(5) **Policy Requirements.**

(A) The insurance required of the Subcontractor shall be issued by an insurer or insurers lawfully authorized to do business in the jurisdiction in which the Project is located, and maintaining a Best's rating of at least A-VII, or as otherwise approved by BURKE.

(B) The insurance required of the Subcontractor shall be written for not less than any limits of liability required by law.

(C) Insurance coverage required under Section a.3, a.4 and a.5 shall name Owner and BURKE and its designees as additional insureds with respect to the operations of Subcontractor and its Sub tier Subcontractors, and shall be endorsed to be primary, non-contributory, and not excess of any other insurance.

(D) Policies required under Sections a.1, a.2, a.3 and a.4 shall contain the following words verbatim: "Owner and BURKE are interested in the maintenance of this insurance and it is agreed that this insurance will not be cancelled, materially changed or not renewed without at least thirty (30) days' advance written notice to Owner and BURKE at 3365 Wynn Road, Las Vegas, NV, 89102, Attention: Office Manager, by Certified Mail, Return Receipt Requested" Copy to BURKE Representative on site.

(E) Certificates of insurance evidencing the coverages required under Section a.1, a.2, a.3 and a.4, and otherwise acceptable to BURKE, shall be filed with BURKE prior to commencement of the Work. These Certificates shall contain a provision that coverages afforded under the policies will not be cancelled, materially changed or not renewed without at least thirty (30) days' advance written notice to Owner and to BURKE at 3365 Wynn Road, Las Vegas, NV, 89102, Attention: Office Manager, by Certified Mail, Return Receipt Requested Copy to BURKE Representative on site.

(6) **Property Insurance.**

(A) The Owner shall purchase and maintain all-risk property insurance at 100% replacement cost upon the entire Work at the site and portions of the Work stored off the site with the Owner/BURKE's approval, and contingent transit coverage for portions of the Work in transit. This insurance shall include the interests of the Owner, BURKE, the Subcontractor and the Sub tier Subcontractors in the Work and shall insure against all risk of physical damage subject to standard exclusions. Losses not covered by Owner's insurance or Subcontractor's insurance shall be borne pursuant to the provisions of the contract. If the Subcontractor is damaged by failure of the Owner to purchase or maintain such insurance and to so notify the Subcontractor, the Owner shall bear all reasonable costs properly attributable thereto. Owner will maintain a \$5,000 deductible limit under the Builders' Risk Insurance provided by Owner and losses within the deductible amount will be paid by the Subcontractor or the responsible Sub tier Subcontractor. If not covered under the Builders' Risk insurance or otherwise provided in the Contract Documents, the Subcontractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit.

(B) Should BURKE elect to provide any materials, furniture, fixtures and/or equipment to be installed by the Subcontractor, its Sub tier Subcontractors or Sub-sub tier contractors, the cost of which is not included in the Subcontract Amount, the value of such materials, furniture, fixtures and/or equipment will be included in the amount of Builders' Risk limit liability as shown on the policy to be purchased and maintained by the Owner.

(C) Any loss insured under Section a.6.A is to be adjusted with the Owner and made payable to the Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause. The Subcontractor shall pay each Sub tier Subcontractor a just share of any insurance moneys received by the Subcontractor, and by appropriate agreement, written where legally required to validity, shall require each Sub tier Subcontractor to make payments to its Sub-sub tier contractors in similar manner.

(D) The Owner, BURKE and Subcontractor waive all rights against each other and the Sub tier Subcontractors, agents and employees each of the other for damages caused by fire or other perils to the extent covered by insurance obtained or required to be obtained pursuant to the provisions of Section 10(a),6, except for such rights as they may have to the proceeds of such insurance by Owner as trustee, and except as to deductibles provided for elsewhere in this Exhibit or the Contract.

(7) **Subcontractor's Equipment Insurance.** Subcontractor acknowledges and agrees that the property insurance to be carried by Owner pursuant to the provisions of Section a.5 hereof shall not be required to cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring and other similar items commonly referred to as construction equipment, which may be on the site and the capital value of which is not included in the Work. The Subcontractor shall purchase and maintain such insurance so as to cover the loss or damage to such construction equipment. Any such policy obtained by the Subcontractor shall include a waiver of subrogation in accordance with the requirements of Section a.5.D thereof.

(8) **Waiver of Subrogation -** Subcontractor waives all rights against Contractor, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance maintained per requirements stated above.

(9) **Sub tier Subcontractor's Insurance.**

(A) **Forms of Insurance.** The following insurance is required of all Sub tier and Sub-Sub tier contractors:

(i) **Professional Liability.** Same limits and terms as referenced in Section a.1 above, except the limits of such insurance shall not be less than \$1,000,000 for each occurrence and in the aggregate. This section shall only apply to Sub tier Subcontractors providing professional engineering or design services.

(ii) **Worker's Compensation Insurance.** Same limits and terms as referenced in Section a.2 above.

(iii) **Commercial General Liability Insurance.** Same limits and terms as referenced in Section a.3 above, except that completed operations coverage shall only be maintained one (1) year after final completion of the Work, and the limits of such insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 aggregate, or \$1,000,000 per project per occurrence and aggregate.

(iv) **Commercial Automobile Liability.** Same limits and terms as set forth in Section a.4 above.

(B) **Policy Requirements.** Terms referenced in Sections a.5.A and a.5.B above shall apply to all sub Subcontractors of any tier.

(C) **Certificate of Insurance.** Certificates of insurance shall be filed with the Subcontractor prior to commencement of the Work.

(D) **Waiver of Liability.** Neither the Subcontractor nor the Owner or BURKE shall be responsible in any manner for, and the Sub tier Subcontractor and Sub tier contractors shall assure and indemnify Subcontractor Owner and BURKE against, any loss or damage to any property, equipment, tools or materials and supplies of its employees of any Sub-sub tier contractor or for any property, equipment, tools and supplies of its employees of any Sub-sub tier contractor.

Section 11A. Indemnification. To the fullest extent permitted by law and regardless of whether or not caused in part by Owner and Contractor, Subcontractor shall indemnify, defend (at Subcontractor's sole cost and expense and with legal counsel approved by Contractor, which approval shall not be unreasonably withheld), protect and hold harmless Owner and Contractor, all subsidiaries, divisions and affiliated companies of Owner and Contractor, and all their representatives, partners, designees, officers, directors, shareholders, employees, consultants, agents, successors and assigns (collectively, the "Indemnified Parties"), for, from and against any and all claims (including, without limitation, claims for bodily injury, death, damage to property and/or patent infringement), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs

and expenses (including, without limitation, actual attorney's fees, disbursements and court costs, and all other professional, expert or consultants' fees and costs and Owner and Contractor's general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise from or in any manner relate (directly or indirectly) to any Work performed or services provided under this Subcontract (including, without limitation, defects in workmanship or materials and/or design defects (if the design originated with Subcontractor) or Subcontractor's presence or activities conducted on the Project (including, without limitation, the negligent and/or willful acts, errors and/or omissions of Subcontractor, its principals, officers, agents, employees, vendors, suppliers, consultants, sub consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them) regardless of any active or passive negligence or strict liability of an Indemnified Party. Subcontractor understands and acknowledges that the indemnification obligation hereunder is intended to constitute a specific indemnity provision under Nevada law and extends to and includes Claims arising from the active or passive negligence of Indemnified Parties. Notwithstanding the foregoing, nothing herein shall be construed to require Subcontractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. This indemnification shall survive completion of the Work and termination of this Subcontract. Moreover, should Owner or Contractor be forced to institute a proceeding to establish said duty to indemnify, Owner or Contractor shall also be entitled to recover its actual attorneys' fees and costs incurred in establishing said duty.

Section 11B. Duty to Defend. The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of Subcontractor. Such defense obligation shall arise immediately upon presentation of a Claim by any party and written notice of such Claim being provided to Subcontractor. Payment by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party shall not be a condition precedent to enforcing such Indemnified Party's rights to indemnification hereunder. Subcontractor's indemnification obligation hereunder shall survive the expiration or earlier termination of this Subcontract until such time as action against the Indemnified Parties for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations and/or repose. Subcontractor's liability for indemnification hereunder is in addition to any liability Subcontractor may have to Owner and Contractor for a breach by Subcontractor of any of the provisions of this Subcontract. Under no circumstances shall the insurance requirements and limits set forth in this Subcontract be construed to limit Subcontractor's indemnification obligation or other liability hereunder. Moreover, should Owner or Contractor be forced to institute a proceeding to establish said duty to defend, Owner or Contractor shall also be entitled to recover its actual attorneys' fees and costs incurred in establishing said duty.

Section 12. Warranty/Guaranty Subcontractor warrants and guarantees that the Work, and all equipment, materials and workmanship incorporated therein, strictly comply with the Contract Documents, are of good and workmanlike quality, and shall be free from defects for the period of [one (1) year] or until Contractor is released from liability to Owner for Subcontractor's Work, whichever is longer. Defective or nonconforming equipment, materials and/or workmanship shall, at Contractor's option and within (48) hours of written notice to Subcontractor thereof, be promptly repaired or replaced by Subcontractor at Subcontractor's expense. The cost to repair or replace any adjacent work or materials disturbed or damaged during, or as a result of, any such corrective work shall also be the responsibility of Subcontractor. In the event that Subcontractor fails, neglects, or refuses to correct any defective equipment, materials or workmanship within (48) hours after written demand from Contractor, Contractor may cause such defective equipment, materials or workmanship to be repaired or replaced. Subcontractor shall immediately reimburse Contractor for the cost of such repair or replacement. This warranty is cumulative and in addition to any other warranty required by law and any other remedy provided to Contractor or Owner by this Agreement.

Section 13. Liens and Claims. Subcontractor shall, as and when requested, furnish evidence satisfactory to the Contractor and Owner that Claims for labor and material furnished the Subcontractor in connection with performance of this Subcontract have been paid, including claims for union health, welfare and pension fund payments and for payroll taxes. Such evidence shall be furnished in such form and manner as requested by Contractor, and all statements relative thereto shall, if called for by Contractor, be made by sworn affidavit. Subcontractor shall furnish to Contractor releases of bond rights and lien rights by persons who have furnished labor, material or other things in the performance of this Subcontract, it being agreed that payment of money otherwise due Subcontractor need not be made by Contractor until such releases are furnished. Subcontractor shall deliver its work free from all claims, encumbrances or liens. Failure to deliver work free from all claims, liens and encumbrances shall result in the Contractor deducting amount as deemed necessary from the Subcontractors' pay request to cover said claim, lien or encumbrance.

Section 14. Possession Prior to Completion. Whenever it may be useful or necessary for the Contractor to do so, the Contractor shall be permitted to occupy and/or use any portion of the Work which has been either partially or fully completed by the Subcontractor before final inspection and acceptance thereof by the Owner, but such use and/or occupation shall not relieve the Subcontractor of its warranty and guarantee with respect to said Work, nor of its obligation to make good at its own expense any defect in materials and/or workmanship which may occur or develop prior to Contractor's release from responsibility to the Owner.

Section 15. Other Contracts. It is understood and agreed that the Work provided for in this Subcontract constitutes only a part of the work being performed for the Owner by the Contractor and other Subcontractors. The Subcontractor, therefore, agrees to perform the Work called for in this Subcontract in such a manner that it will not injure, damage or delay any other work performed by the Contractor or any other Subcontractor or supplier, and further agrees to pay or reimburse the Contractor for any additional costs, damage or delay that may be caused to such other work of the Contractor, Subcontractors or suppliers, by the Subcontractor or by its agent or employees.

Section 16. Independent Contractor. The Subcontractor specifically agrees that it is now or prior to the start of the Work, an independent Contractor.

Section 17. Compliance with Law. The Subcontractor agrees to fully comply with all Federal, State and local laws, ordinances and regulations.

Section 18. Safety. The Subcontractor shall take all reasonable safety precautions pertaining to its Work and the conduct thereof. Without limiting the generality of the foregoing, it shall comply with all applicable laws, ordinances, rules, regulations and orders issued by a public authority, whether Federal, State, local or otherwise, including, but not limited to, the Federal Occupational Safety and Health Act, and, in addition, the safety measures called for by the Contractor. Subcontractor violations of safety provisions as described above will result in fines and/or termination by the General Contractor and Subcontractor hereby specifically agrees to same.

Section 19. Protection of Work. The Subcontractor specifically agrees that it is responsible for the protection of its Work until final completion and acceptance thereof by the Owner and that it will make good or replace, at no expense to the Contractor or the Owner, any damage to its Work which occurs prior to said final acceptance.

Section 20. Disputes. (a) In case of any disputes between the Subcontractor and the Contractor, Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to Owner both by the terms of the Prime Contract, and by any and all decisions or determinations made there under by the party or board so authorized in the Prime Contract including termination provisions. It is agreed that in the event the Prime Contract contains a provision, hereinafter called "Disputes" clause, whereby claims may be resolved under an administrative procedure or by arbitration, then as to any claims of Subcontractor for or on account of acts or omissions of the Owner or his Engineer which are not disposed of by agreement, the Contractor agrees to present to the Owner, in Contractor's name, all of Subcontractor's claims for additional monetary compensation or time extension and to further invoke, on behalf of the Subcontractor, those provisions in the Prime Contract for determining disputes. Contractor shall have the option to present such claims upon Subcontractor's behalf, in advance of and even without Subcontractor's written request. Subcontractor shall have full responsibility for preparation and presentation of such claims and shall bear all expenses thereof, including attorney's fees. Subcontractor agrees to be bound by the procedure and final determinations as specified in any such Disputes clause, and agrees that it will not take, or will suspend, any other action or actions with respect to any such claims and will pursue no independent litigation with respect thereto, pending final determination under such Disputes clause. Subcontractor shall not be entitled to receive any greater amount from Contractor than Contractor is entitled to and actually does receive from the Owner on account of Subcontractor's Work, less any markups or costs incurred by the Contractor and to which Contractor is otherwise entitled, and Subcontractor agrees that it will accept such amount, if any, received by Contractor from Owner as full satisfaction and discharge of all claims for or on account of acts or omissions of the Owner or his Engineer.

Subcontractor understands that it is agreeing to binding arbitration if binding arbitration is required by the Prime Contract and that subcontractor is therefore waiving substantial rights under Nevada law including the right to a jury trial.

(b) Subcontractor shall be bound by Contractor's determination, made in good faith, as to apportionment of any amounts received from Owner for claimants, including Contractor and other Subcontractors whose work is affected by any act or omission of the Owner or his Engineer.

(c) Should a dispute as to the proper interpretation of this Subcontract, or work or material performed or furnished hereunder arise which concerns the parties hereto only, or Subcontractor and other Subcontractors or suppliers, but not the Owner or his Engineer, the same shall be decided by Contractor whose decision thereon shall be final and conclusive.

(d) The Subcontractor shall proceed diligently with the Work, pending final determination pursuant to any Disputes clause or pursuant to any other action taken with respect to a claim or claims.

(e) Right of Setoff. To the extent permitted by applicable law, Burke Construction Group reserves the right to setoff all Subcontractor's subcontracts with Burke Construction Group. Subcontractor authorizes Burke Construction Group, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such subcontracts.

Section 21. Attorney's Fee. In the event either party institutes suit in a court of law against the other party, or against the surety of such party, in connection with any dispute or matter arising under this Subcontract, the prevailing party shall be entitled to recover a reasonable attorney's fee in addition to any other relief granted by the Court.

Section 22. Taxes. Subcontractor shall pay all taxes, licenses and fees of every nature which may be imposed or charged by any governmental authority upon the labor, material or other things used in the performance of the Work or upon the transaction between Contractor and Subcontractor.

Section 23. Contractor's Equipment. In the event that Subcontractor by rental, loan or otherwise makes use of any of Contractor's equipment, scaffolding or other appliances, Subcontractor agrees to accept such "as is" and that such use shall be at the sole risk of Subcontractor, and Subcontractor agrees to hold harmless and indemnify Contractor against all claims of every nature arising from its use thereof.

Section 24. Furnished Material. In the event that the Contractor or Owner, or their suppliers or Subcontractors, elect to furnish material to the Subcontractor for use in connection with this Subcontract, then the cost of handling, storing and installation of such material shall be considered as included in the Subcontract Price. The Subcontractor shall be and become responsible for all such materials upon delivery to it, whether delivered F.O.B. point of origin or F.O.B. job-site (except that any transportation charges paid by the Subcontractor in the event of delivery F.O.B. port of origin, shall be reimbursed to Subcontractor) and shall pay all demurrage and storage charges which accrue after delivery. Furnished material lost or damaged after delivery, from any cause whatsoever, shall be replaced by or at the expense of the Subcontractor. Subcontractor shall, within forty-eight (48) hours after delivery of furnished material, inspect the same and immediately report, in writing, to the Contractor any shortages, damages or defects therein which are reasonably observable by proper inspection. Failure to inspect and report as specified shall be treated as unqualified acceptance by Subcontractor of the material involved.

Section 25. Equal Opportunity. If the Prime Contract contains any provision which prohibits discrimination on the basis of race, color, religion, sex or national origin, hereinafter referred to as Equal Opportunity, or if any law, regulation or order has any application thereto and is applicable to this Subcontract, then Subcontractor hereby agrees to comply with such provision, law, regulation or order. In the event that any such provision, law, regulation or order requires the physical attachment of specific wording to this Subcontract, then

such attachments shall be furnished by the Contractor and shall be considered a part of this Subcontract by reference thereto or shall be physically attached thereto as called for by the Contractor.

Section 26. Architect-Engineer. The words "Architect and/or Engineer" as used herein refer to the person(s) appointed by the Owner to supervise the work of the Contractor on behalf of the Owner.

Section 27. Assignment. The Subcontractor shall not, in whole or in part, assign or sublet this Subcontract or the proceeds thereof without the written consent of the Contractor. Any such purported assignment without the written consent of the Contractor shall be void and of no force or effect.

Section 28. Specific Provisions. Any reference herein or attachments hereto of specific provisions of the Prime Contract is for the purposes of emphasis and convenience in describing the obligations assumed by Subcontractor, or to comply with applicable laws or regulations. Such reference or attachment shall not be deemed to limit the obligations of the Subcontractor to perform all Work and to furnish all material as called for by the entire Subcontract.

Section 29. Prior Understanding or Representations. The Contractor assumes no responsibility for any understanding or representations made by any of its officers or agents prior to the execution of this Subcontract, unless such understanding or representations by the Contractor are expressly stated in the Subcontract. There is no consent (implied or otherwise) by the Contractor to accept any terms, conditions and/or representations presented via a Subcontractor proposal. The only terms, conditions and/or representations deemed binding shall be those expressly stated in a fully executed Subcontract Agreement.

Section 30. Termination for Convenience. (a) Right to Terminate for Convenience. The Contractor shall have the right to terminate for convenience, at any time, and with or without cause, Subcontractor's performance of all or part of the Subcontract or Subcontract Work, as defined in Section 2 "The Work".

(b) Notice to Subcontractor. The Contractor shall provide Subcontractor with written notice of the termination two (2) calendar days in advance of the effective date of the termination. The two (2) day period shall begin to run upon receipt of the termination for convenience notice by the Subcontractor.

(c) Subcontractor's Obligations. Upon receipt of the written notice of termination, the Subcontractor shall:

(i) Stop all work if its performance of all the Subcontract or Subcontract Work has been terminated, or stop work on the part of the Subcontract Work that has been terminated if its performance of only part of the Subcontract Work has been terminated;

(ii) Enter into no further sub-subcontracts or place any orders for supplies, materials, or facilities, except as necessary to complete any portion of the Subcontract Work not terminated for convenience,

(iii) Terminate all sub-subcontracts or orders to the extent related to the terminated Subcontract Work;

(iv) Transfer title and deliver to the Contractor any fabricated or un-fabricated parts, work in progress, completed work, supplies, and other materials produced or acquired for the Subcontract

or Subcontract Work terminated and the completed or partially completed plans, drawings, information, and other property that, if the Subcontract had been completed, the Subcontractor would be required to furnish to the Contractor;

(v) Complete non-terminated portions of the Subcontract Work if the Subcontractor's performance of only a part of the Subcontract Work has been terminated;

(vi) Use its best efforts to sell, as directed by the Contractor, any materials of the types referred to in paragraph (iv) above; provided, however, that the Subcontractor is not required to extend credit to any purchaser of this material and may acquire the material under the conditions prescribed by, and at prices approved by, the Contractor. The proceeds from the sale of such material shall be applied to reduce any payments due from the Contractor under this Subcontract, and credited to the Subcontract Price, or paid in any other manner directed by the Contractor;

(vii) Submit within 60 days of the effective date of termination, to the Contractor a written termination claim, along with all documentation required to support the claim; and

(viii) Take any other action toward termination as directed by the Contractor.

(d) Compensation. If the Contractor's contract has not been terminated, the Contractor shall pay the Subcontractor as follows:

(i) The direct costs of the work performed by Subcontractor prior to termination;

(ii) Overhead, general, and administrative expenses (including those for any sub-contracts) in an amount equal to (4%) of direct costs; and

(iii) 5% profit of the total of the amounts allowed in paragraphs d (i) and (ii) above. If however, it appears that the Subcontractor would have sustained a loss on the entire Subcontract had it been completed, no profit shall be compensated by the Contractor, and the amounts paid for the termination shall be reduced by the indicated rate of loss.

(e) Items Not Compensated. The Subcontractor shall not be compensated for:

(i) Any accounting, legal, clerical, or other expenses incurred by the Subcontractor in the preparation of the Subcontractor's termination claim; and

(ii) Unabsorbed overhead and anticipated lost profits.

(f) Permitted Deductions. The Contractor shall be entitled to deduct from any payment due the Subcontractor (i) any advance payment it has made to the Subcontractor for work not yet performed under the terms of the Subcontract and (ii) the amount of any claim that the Contractor has against the Subcontractor.

(g) Consideration. If no work has been performed by the Subcontractor at the time of termination, Subcontractor shall be paid the sum of \$75.00 for its undertaking an obligation to perform.

(h) Settlement and Release of Any and All Claims. The settlement of termination costs pursuant to Paragraph d of this Section shall constitute a settlement and release of any and all claims, known and unknown by the Subcontractor, arising prior to termination.

Section 31. OSHA. The obligations of the Subcontractor shall include any claims arising out of any violations, or any violation of the William Steiger Occupational Safety and Health Act of 1970 and Rules and Regulations promulgated there under.

Section 32. Time. Time is of the essence of this Contract. It shall be the Subcontractor's obligations to perform to Contractor's Construction Schedule, subject to Contractor's modification and Section 6 of this Contract - Prosecution of Work. It is expressly understood that the Subcontractor is aware that the Construction Schedule is, and will be, continuous and changing dependent upon current field conditions and that the Subcontractor is fully aware of same, and that the Subcontractor expressly warrants that it will properly man the project as dictated by the Contractor to accommodate the Construction Schedule. The Subcontractor is also aware that the Construction Schedule will be updated by either the Contractor's office and/or field and will at times be done both verbally and in written form.

Section 33. Captions. The Captions at the beginning of each Section of this Subcontract are for convenience only and are to be given no weight in construing the provisions of this Subcontract.

Section 34. Additional Provisions. See enclosed Additional Provisions sheet.

Section 35. Communication: The Subcontractor is expressly prohibited from making contact through either verbal or written communication with the Owner or Owner's representative or Architect or Architect's representative. Furthermore, should the Owner, Owner's representative, Architect or Architects' representative contact the Subcontractor, the Subcontractor will immediately inform the Owner of this specific clause in this Agreement and cease any further communication at that point in time. Subsequently, the Subcontractor will immediately inform the Contractor of such event. Strict adherence to this clause is mandatory and failure to abide by these provisions will result in immediate termination of this Subcontract Agreement.

Section 36. Return of Subcontract. Failure to execute and return this Subcontract Agreement within 5 calendar days from date of Agreement, will result in the Subcontractor proceeding with respective work at Subcontractor's own risk, but under the express terms of this agreement. Furthermore, Subcontractor will be due no payments for work completed until this agreement has been executed by both parties as it is originally drafted.

IN WITNESS WHEREOF, the parties hereto have executed this Subcontract by their proper officers or duly authorized agents.

Burke Construction Group, Inc.

[Subcontractor]

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

NV State Contractor's License No.: **0022189**

NV State Contractor's License No.: _____

License Limit: \$ **AB-Unlimited**

License Limit: \$ _____