

National Modular Company, INC.
SUBCONTRACTOR APPLICATION

DATE: _____ TAX ID # / SS #: _____

NAME:
dba (if applicable): _____
ADDRESS: _____
CITY: _____ ST _____ ZIP _____
PHONE: () _____ HOME: () _____ FAX: () _____
E-MAIL: _____
YEARS IN BUSINESS: _____ YEARS AT THIS ADDRESS: _____
DRIVERS LICENSE NUMBER: _____ ST: _____
SOCIAL SECURITY NUMBER OR TAX I.D. NUMBER: _____

BANK REFERENCE:
ACCOUNT #: _____ OFFICER: _____

INSURANCE COVERAGE

GENERAL LIABILITY: _____ LIMITS: _____
WORKERS COMPENSATION: _____ LIMITS: _____ AUTOMOBILE:
LIMITS: _____

**CERTIFICATIES OF INSURANCE OR APPROPRIATE WAIVERS
MUST BE ON FILE IN THIS OFFICE PRIOR TO ANY WORK STARTING.**

LIST LEAD SUPERVISORY PERSONNEL YOU WILL ASSIGN TO OUR JOB SITE.

<u>NAME</u>	<u>PAGER#</u>	<u>VEHICLE MAKE & LICENSE</u>
_____	_____	_____
_____	_____	_____

TRADE CREDIT REFERENCES - MINIMUM 3 - ALL MUST BE IN LOCAL AREA

NAME_ CONTACT _____
ADDRESS _____ PHONE _____
CITY_ ZIP_ FAX _____
ANNUAL PURCHASE _____
NAME_ CONTACT _____
ADDRESS _____ PHONE _____
CITY_ ZIP_ FAX _____
ANNUAL PURCHASE _____
NAME_ CONTACT _____
ADDRESS _____ PHONE _____
CITY_ ZIP_ FAX _____
ANNUAL PURCHASE _____

**BUSINESS REFERENCES - MINIMUM 3 JOBS IN LOCAL AREA WITHIN
PAST 6 MONTHS:**

NAME_____ CONTACT _____
ADDRESS _____ PHONE _____
CITY_ ZIP_ FAX _____
NAME_____ CONTACT _____
ADDRESS _____ PHONE _____
CITY_ ZIP_ FAX _____ NAME_____ CONTACT _____
ADDRESS _____ PHONE _____
CITY_ ZIP_ FAX _____

.....

By signing this application, I certify all of the information is true and correct.

CONTRACTOR / OWNER DATE

THE National Modular Company, INC.

SUBCONTRACTOR POLICIES

WORK HOURS:

Standard field operations for subcontractors are 8:00 am to 5:00 pm, Monday through Friday. However, there can be changes due to work conditions, such as emergency repairs. If a subcontractor would like to work on a project outside of these hours or days, it is permissible as long as they have prior permission from the project superintendent and the client.

DRUG AND ALCOHOL ABUSE POLICY:

It has always been the policy of National Modular Company Company, Inc. (the “Company” or “NMC”) to promote excellence in the products and services offered to the industry. This policy requires that our personnel, equipment, subcontractors, and operating practices be consistent with high standards of health and safety. The abuse of drugs or alcohol by Company subcontractors and their employees is not in keeping with the Company’s objectives. With this in mind, the Company enforces the following policy:

STATEMENT OF PURPOSE AND SCOPE:

The purpose of this policy is as follows:

1. To establish and maintain a safe, healthy workplace for all workers.
2. To reduce the number or accidental injuries to persons or property.
3. To safeguard the reputation of the Company, its subcontractors and workers.
4. To reduce absenteeism and tardiness and, thereby, improve productivity.
5. To comply with the Texas Workers’ Compensation Act.

POLICY CONCERNING DRUGS AND ALCOHOL:

The Company strictly prohibits the use, possession, sale, transfer, purchase, or being under the influence of, any drugs or alcohol by employees, subcontractors or their employees at any time on Company premises or while on Company business.

Subcontractors or their employees shall not report for duty or be on Company property or projects while under the influence of drugs or alcohol, or have in their possession while on Company property or projects, any drugs or alcohol.

No prescribed drug will be brought on Company premises or job site by any person other than the one to whom it is prescribed. Such drugs will be used only in the manner, combination, and quantity prescribed.

The Company strictly prohibits the off-duty use of any drugs or alcohol that results in excessive absenteeism or tardiness, or which may result in accidents or poor workmanship.

DEFINITIONS:

The following definitions apply to this policy:

1. “ALCOHOL” is any beverage that may be legally sold and consumed and has an alcohol content more than three percent (3%) by volume.
2. “DRUG” means any substance that can alter a person’s mood, perception, pain level, judgment, motor skills, or memory. Drug includes alcoholic beverages as well as inhalants and illegal drugs.
3. “PRESCRIBED DRUG” is any substance prescribed by a licensed medical practitioner.
4. “ILLEGAL DRUG” is any drug or controlled substance whose use, possession, sale transfer, or purchase is illegal.

CONSEQUENCES OF VIOLATIONS:

Any subcontractor or their employees found to be in violation of this Drug and Alcohol Abuse policy, may be subject to the following actions:

1. Immediate termination of all current and future work with the contractor.
2. Permanent barring from all worksites and NMC premises.

The subcontractor is responsible for their employees’ conduct at all times and is required to enforce this policy.

SAFETY PRECAUTIONS:

1. All subcontractors and their employees shall, at a minimum, comply with all applicable laws, codes, rules, regulations and requirements pertaining to the performance of its work, including the Federal Occupational Safety And Health Act (OSHA).
2. Prior to performing any work activities, the subcontractor shall evaluate the safety of the work in place and the working conditions in the area in which its employees and the subcontractors will work. The subcontractor will notify the Company verbally AND in writing of any unsafe work conditions or defective work in place.
3. It shall be the subcontractor’s responsibility to furnish and pay for special tools, equipment, and personal protection equipment necessary to comply with OSHA standards or other government regulations that pertain to the work.
4. All subcontractors are required to comply with the NMC, Inc.’s Subcontractor Safety Agreement.

INAPPROPRIATE CONDUCT:

Any subcontractor or their employees that see any misconduct, which may be detrimental to the contractor or themselves, should report that occurrence to that project superintendent immediately. Failure to do so may result in suspension of current or future work.

CLOTHING:

All subcontractors and their employees are required to wear appropriate clothing at all times while on the contractor's project. No bare back, tank tops, mesh shirts, or any article of clothing that displays lewd or vulgar illustrations or language will be permitted. If possible, uniforms are preferred.

ETHICS:

NMC expects Subcontractor and its employees to avoid situations where personal interests could conflict, or appear to conflict, with duties and responsibilities or the interests of NMC. When faced with an actual or potential conflict of interest, Subcontractors should consult with NMC and inform NMC of any such conflict. Subcontractor will ensure that its employees are not involved in any decision or operation related to a conflict.

NMC is committed to protecting its revenue, property, information, and other assets from any attempt, either by the public, subcontractors, agents, or its own employees, to gain financial or other benefit by deceit. It is NMC's intent to fully investigate any suspected acts of fraud, misappropriation, or other similar irregularity.

If Subcontractor has knowledge of an occurrence of fraud, or has reason to suspect that a fraud has occurred, it must immediately notify NMC. NMC will pursue every reasonable effort, including court-ordered restitution, to obtain recovery of NMC's losses from the offender, or other appropriate sources.

Unlawful or unethical behavior is not tolerated, including soliciting, accepting, or paying bribes or other illicit payments for any purpose. Situations must be avoided where judgment might be influenced by, or appears to be influenced by, such unlawful or unethical behavior. Payment or acceptance of any "kickbacks" from a Subcontractor or other external party is prohibited.

NMC does not allow the acceptance or giving of gifts, favors, personal advantages, services payments, loans, or benefits of any kind, other than those of nominal value that can be made as a generally accepted business practice. If there is any doubt in specific cases, written approval from NMC should be requested.

Subcontractor's and NMC's books and records must reflect in reasonable detail, its transactions in a timely, fair and accurate manner to, among other things, permit the preparation of accurate financial statements in accordance with generally accepted accounting principles and maintain recorded accountability for assets and liabilities. The accuracy of asset and liability records must be maintained by comparing the records to the existing assets and liabilities at reasonable intervals, and taking appropriate action with respect to any differences.

All business transactions that NMC and Subcontractor participate in must be properly authorized, properly recorded, and supported by accurate documentation in reasonable detail. Subcontractor is

expected to develop and enforce with its staff, policies and/or practices that are consistent with generally accepted business ethics principles and their associated requirements.

BACKGROUND SCREENING:

Pursuant to Section 145 of the Texas Civil Practices and Remedies Code and according to its terms, at its sole cost, all Subcontractors shall perform background screenings of all of its officers, employees, or prospective employees.

I have read the Subcontractor's Policy of The NMC Company, Inc., and any questions I may have had were answered to my satisfaction. I understand that abiding by its provisions is a condition of my association with The NMC Company, Inc. I further acknowledge my understanding that the Company may add to or change these policies from time to time and that I will be appropriately informed.

SUBCONTRACTOR: _____ DATE: _____

SUBCONTRACTOR'S PRINTED NAME: _____

NMC COMPANY, INC. SUBCONTRACTOR SAFETY AGREEMENT

1. It is the subcontractor's responsibility to ensure that all its employees, including lower-tier subcontractors, are provided a safe and healthful work environment. The subcontractor will take all reasonable safety precautions in the performance of the work to protect its employees and other persons at the jobsite. The subcontractor and its employees will, at a minimum, comply with all applicable laws, codes, rules, regulations, and requirements pertaining to the performance of its work, including the Federal Occupational Safety and Health Act (OSHA).

2. Subcontractor agrees that, prior to performing any work activities, it will evaluate the safety of the work in place and the working conditions in the area in which its employees and subcontractors will work and will notify the NMC Company in writing of any unsafe conditions or defective work in place. Failure of subcontractor to notify the NMC Company of any unsafe conditions or defective work prior to beginning work shall establish subcontractor's acceptance of the work in place and safety of the working conditions related to its work.

3. The subcontractor should establish its own safety program implementing safety measures, policies, and standards conforming to those required or recommended by governmental agencies such as OSHA that have jurisdiction over the subcontractor.

4. The subcontractor is expected to enforce its own safety program for the scope of work in progress. In no way would the NMC Company release the subcontractor of their responsibilities concerning safety issues on the jobsite. It would be the subcontractor's responsibility to furnish and pay for special tools, equipment, and personal protective equipment necessary to comply with OSHA standards or other agency regulations that pertain to the work.

5. The subcontractor shall immediately stop any part of the work deemed to be unsafe by any entity/government agency until corrective measures have been taken.

6. The subcontractor acknowledges that to the extent that any entity/government agency identifies any safety defect or safety failure, such information or direction will not constitute interference by such entity/government agency with subcontractor's means and methods of providing and enforcing safe working practices for subcontractor's work.

I have read the NMC Company Subcontract Safety Agreement, and any questions I may have had were answered to my satisfaction. My employees and I will comply with the applicable safety rules and regulations that pertain to my trade.

SUBCONTRACTOR: _____

DATE:

SUBCONTRACTOR'S PRINTED NAME:

COMPANY NAME: _____

SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement (herein referred to as "Agreement"), made this day of _____, 20__ ("Effective date") by and between NMC Company, Inc., (hereinafter referred to as "NMC"), and _____, (hereinafter referred to as "Subcontractor").

**I.
SUBCONTRACT**

Subcontractor agrees to perform all services generally performed by the Subcontractor in Subcontractor's line of business, including, but not limited to, the following:

1. _____
2. _____
3. _____

Subcontractor further agrees to furnish all materials and perform all work described herein, all in accordance with the terms, conditions and specifications of the General Contract, Accepted Proposal or this Agreement.

**II.
CONDITIONS TO AGREEMENT**

NMC's obligation to retain the services of Subcontractor is conditioned upon the following: (a) Subcontractor is a legally formed and currently existing legal entity; (b) Subcontractor is duly licensed and in good standing in all required jurisdictions and with all appropriate and required licensing agencies as of the Effective Date; (c) there exists no other condition or circumstance that materially affects or impairs Subcontractor's qualification or ability to provide the services under this Agreement; and (d) Subcontractor has fully complied with the obligations regarding insurance coverage set forth in this Agreement.

**III.
DEFINITIONS**

1. "General Contract" - The Contract between NMC as prime contractor and the owner or owner's representatives.

2. "Accepted Proposal" - The NMC proposal as to the work to be done and the amount that the work will cost that has been agreed to by the owner or owner's representative.
3. "Allied Operations" - Operations by NMC and all other subcontractors that are being performed at the specific job site.
4. "Services" - The work to be performed by Subcontractor as set forth in one or multiple Statements of Work.
5. "Deliverables" - All Documentation and other materials developed for or provided to NMC Company, Inc. by Subcontractor through the performance of Services under this Agreement and any Statement of Work issued hereunder.

IV.
PRECEDENCE OF DOCUMENTS

In the event of a conflict between this Agreement and any other document, this Agreement will control, except for provisions in those other documents, which by their express terms, are intended to supersede the corresponding provision in this Agreement

V.
INDEPENDENT SUBCONTRACTOR STATUS

NMC and the Subcontractor intend that an independent contractor relationship will be created by this Agreement. Subject to the terms of this Agreement, Subcontractor shall have complete discretion in the methods and techniques used in rendering services to NMC, provided that no means or methods used by Subcontractor to provide the services shall be in violation of any applicable statute or regulation. NMC shall, however, be entitled to exercise general power of supervision and control over the results of the services performed by Subcontractor to assure satisfactory performance, including the right to inspect, the right to stop performance of the services, the right to make suggestions or recommendations as to the details of the Services, and the right to propose modifications to the Services.

Subcontractor is not an agent or employee of NMC for any purpose, and the employees of Subcontractor are not entitled to any of the benefits that NMC provides for NMC's employees. Nothing contained in this Agreement shall be construed to create an exclusive relationship between NMC and Subcontractor. Subcontractor retains the right to perform work for others during the term of this Agreement. NMC retains the right to cause work of the same or a different kind to be performed by its own personnel or other Subcontractor during the term of this Agreement

VI.
ASSIGNMENT AND REMOVAL OF PERSONNEL

NMC may request that Subcontractor remove, or cause to be removed, any of Subcontractor's personnel from the premises of NMC for any reason, and Subcontractor shall immediately comply. NMC may interview personnel Contractor assigns to perform Services for NMC. If NMC reasonably determines that such personnel are not appropriate for the services assigned based on his or her specific or general skills, background and/or experience, Subcontractor shall use its best efforts to assign other qualified personnel. If qualified personnel are not reasonably available, NMC shall have the right to immediately terminate the Agreement. Further, NMC may require

that Subcontractor's personnel travel to other cities in order to perform the services to the extent set forth in the Statement of Work. In such event, Subcontractor shall provide personnel who can undertake such travel without restrictions, and Contractor shall be responsible

for taking care of any issues related to the travel restrictions, financially or otherwise, that may arise with respect to Subcontractor's personnel.

VII.
CERTIFICATION AND TRAINING

Subcontractor shall be responsible for any and all costs and training associated with obtaining and maintaining adequate certification and skills required for its personnel to perform the services.

VIII.
RECORDS

Subcontractor shall maintain complete and accurate books of account and records relating to the performance of the services and work performed and in support of all charges. Subcontractor shall preserve such records for the later of (a) two (2) years after completion of the Services, (b) while any dispute between the parties as to the services remains unresolved, or (c) for such longer period of time as may be required by applicable law. All such records shall be open for review or audit by NMC or by an accounting firm or third party selected and paid by NMC at reasonable times and on reasonable notice. Such records shall include payroll records, job cards, attendance cards and job summaries. In addition, NMC shall have the right, upon request, to review and audit documents relating to the general financial health of Subcontractor, including without limitation, income statements, balance sheets, statements of cash flow, and other such financial documents.

IX.
COMMENCEMENT DATE

Subcontractor agrees to start performance of the work awarded them within a reasonable length of time after notification by NMC. Subcontractor agrees to use due diligence in the completion of such work, and to complete such work in accordance with the program of Allied Operations of NMC and other Subcontractors, if any. Subcontractor has sole control of the manner and means of performing the work specified in the General Contract or Accepted Proposal and shall complete it according to its own means and methods of work.

X.
FAILURE OF PERFORMANCE

If the Subcontractor, at any time, fails in the performance of the terms, stipulations and agreements of the General Contract, Accepted Proposal, this Subcontractor's Agreement, or fails to use due diligence in the work awarded them, so as to interfere with or in any way impede Allied Operations of NMC, and other Subcontractors, this will constitute a failure of performance. Failure of performance will rest solely in the judgment of NMC. NMC will provide notice to anyone representing the Subcontractor at the job site or Subcontractor's place of business. Such notice will state the nature of the violation of the Agreement or contracts. If the failure is continuing for two (2) days after notice to the Subcontractor, NMC may proceed thereupon to complete the work under the terms of the General Contract, Accepted Proposal, or Subcontractor Agreement at the cost and

expense of Subcontractor. NMC may re-sublet the work, and any monies due the Subcontractor on that project will be held until the Subcontractor's

portion of the project has been completed by NMC, or a new Subcontractor. These monies will be paid to NMC or the new Subcontractor for the work done.

In addition to any material failure of Subcontractor to carry out its obligations under this Agreement, the following events shall constitute a breach by Subcontractor under this Agreement: (a) if NMC determines in its sole discretion that the Services or any Deliverables are not of sufficient quality; (b) if Subcontractor breaches any of the terms hereof; (c) if NMC determines in its sole discretion that there is a substantial adverse change in the business or financial condition of Subcontractor, including without limitation, the filing by Subcontractor of a voluntary petition in bankruptcy or the filing against Subcontractor of an involuntary petition in bankruptcy; or (d) if NMC determines in its sole discretion that Subcontractor has failed to make adequate plans to eliminate foreseeable risks to its ongoing performance of this Agreement.

Subcontractor further agrees that if Subcontractor should delay the material progress of the work so as to create any damage or cost overage for which NMC shall become liable, then the Subcontractor shall indemnify NMC for the amount of any damages so caused.

XI. REMEDIES

Upon Subcontractor's breach of this Agreement, NMC shall, at its option, be entitled to one or more of the following remedies: (a) Subcontractor will provide NMC with reasonable remedial services upon demand of NMC and (b) set-off against any amounts owed to or held by Subcontractor, any costs incurred in NMC's exercise of its rights under this Agreement prior to or as a result of Subcontractor's breach. The remedies reserved in this Agreement shall be cumulative and in addition to any other or further remedies provided by law or equity and may be exercised separately or concurrently without waiver of any other remedies. Resort to any remedy by NMC as provided in this Agreement or otherwise, shall not be deemed an election of remedies or a waiver of any breach or remedies

XII. TERMINATION

Termination of Agreement. NMC may terminate this Agreement with or without cause upon written notice to Subcontractor. Notwithstanding the termination of this Agreement, the rights granted under herein shall continue in effect in accordance with their terms.

Obligations of Subcontractor Upon Termination of Agreement. Upon receipt of notice of such termination, Subcontractor shall, unless otherwise directed by NMC, promptly terminate all services in progress, inform NMC of the extent to which performance has been completed through such date, and collect and deliver to NMC whatever Work Product, Deliverables, and other materials produced in the performance of the Services in whatever form as then exists in a manner prescribed by NMC.

XIII.
NEGATION OF JOINT VENTURE OR PARTNERSHIP

In entering into and complying with Agreement, Subcontractor is at all times performing as an independent contractor. Nothing in this Agreement shall constitute or be construed as a creation of a partnership or joint venture between Subcontractor and NMC, or their successors or assigns. Furthermore, nothing in this Agreement shall create an employee/employer relationship between NMC and any of Subcontractor's employees.

XIV.
CONSIDERATION

NMC shall pay the Subcontractor for performance of the work described within the General Contract, Accepted Proposal or Subcontractor's Agreement, subject to additions and deductions agreed upon in writing by the Subcontractor and NMC.

XV.
TERMS OF PAYMENT

Subcontractor will be paid weekly. On certain jobs at NMC's discretion payments will consist of ninety percent (90%) of all labor and materials which have been performed by the Subcontractor on the job site and for which payment has been made by Owner to NMC. NMC shall retain the remaining ten (10%) percent until thirty (30) days after work has been fully completed and delivered and accepted by the Owner. This provision is limited to the work done by the Subcontractor. All weekly draws or invoices are to be turned in to NMC's office by 5:00 p.m. each Wednesday and payment will be made on Friday of the following week. Invoices are to be on printed letterhead, handwritten will not be accepted. Invoices are to be dropped off in person to the NMC Receptionist or faxed, mailed or emailed to the NMC Accounting Department. Invoices submitted by any other means will not be accepted.

All monthly draws will be turned in no later than the 25th day of each month and payable by the 10th day of the following month. Payment will only be approved for the percentage of work completed on the turn in date. All Subcontractor's draws are subject to the fund availability.

Subcontractor agrees that all invoices for work performed shall be submitted within thirty (30) days of the completion of the work. Subcontractor agrees and acknowledges that invoices submitted by subcontractor after thirty days from completion of the work will not be paid, unless otherwise agreed by contractor.

If NMC disputes, in good faith, any amount claimed by Subcontractor as payable to Subcontractor by NMC pursuant to this Agreement, NMC shall pay Subcontractor the undisputed portion and shall give Subcontractor notice of the disputed amount, specifying the basis of the dispute in reasonable detail. Upon resolution of such dispute, any portion of the disputed amount determined to have been payable shall be disbursed to Subcontractor. During the pendency of any dispute, Subcontractor is expressly obligated to continue performing its obligations pursuant to this Agreement.

XVI.
PURCHASE ORDER NUMBERS

In order for the Subcontractor to be paid, it is mandatory for all invoices to have a purchase order number written or typed on each invoice. Failure to get a purchase order number before starting the job or failure to write the purchase order number on your invoice will mean a delay of payment or non-payment. Work and material must be complete and inspected by the Superintendent prior to the Subcontractor's invoice being sent to NMC's office.

XVII.
INDEMNIFICATION

Subcontractor shall indemnify, hold harmless, and defend NMC from and against any and all costs, expenses (including reasonable counsel fees), liabilities, losses, damages, suits, actions, fines, penalties, claims, or demands of any kind and asserted by or on behalf of any person or governmental authority, arising out of or in any way connected with the Subcontractor's work, and NMC shall not be liable to Subcontractor on account of (1) any failure by Subcontractor to perform any of the agreements, terms, covenants, or conditions of the General Contract, Accepted Proposal, or this Subcontractor Agreement required to be performed by Subcontractor, (2) any failure by Subcontractor to comply with any statutes, ordinances, regulations, or orders of any governmental authority, or (3) any accident, death or personal injury, or damage to or loss or theft of property, which shall occur performing under the General Contract, Accepted Proposal, or the Subcontractor's Agreement regardless of whether such liability, claims, demands, damages, and costs were caused in whole or part by NMC or the concurrent negligence of NMC or any other person or entity.

XVIII.
WARRANTY

Subcontractor warrants all work performed by Subcontractor for a minimum of one (1) year from date of completion of the work. Subcontractor shall satisfactorily remedy any and all deficiencies or problems within three (3) days of written notice from NMC.

Subcontractor makes the following representations and warranties for the benefit of NMC, as a present and ongoing affirmation of facts in existence at all times when this Agreement issued hereunder is in effect:

- a) That it is a duly formed and validly existing entity organized under the laws of the state identified at the outset of this Agreement and that it is vested with all the requisite authority to enter into and perform its obligations under this Agreement.
- b) That the services shall be completed in a workmanlike and professional manner by personnel having a level of skill and training commensurate with their responsibilities.
- c) That it has the requisite financial strength, procedures, equipment, processes (including computer information systems), and facilities to provide and perform

all of the services to be provided and performed under this Agreement, in strict conformity with the terms and conditions hereof.

XIX. **INSURANCE**

Subcontractor shall provide and furnish all insurance coverage relating to Subcontractor's portion of the General Contract/Accepted Proposal. This coverage shall include, but is not limited, to worker's compensation, general liability, and automobile insurance. Evidence of such insurance coverage is to be furnished to NMC when an application is submitted by a Subcontractor and thereafter, once a year.

Prior to commencement of the Subcontract Work, Subcontractor shall deliver to Contractor (i) the insurance certificates specified in Exhibit 1 attached hereto and incorporated herein. If Subcontractor subcontracts any Subcontract Work to a third party, Subcontractor shall also require that such third party procure and maintain the insurance policies meeting the requirements set forth herein, including, without limitation, the naming of Contractor and other designated entities as additional insured's including products/completed operations on all policies, except worker's compensation. Subcontractor waives, and shall require all subcontractors to waive, all rights against Contractor and Owner, their officers, directors, shareholders, employees, agents, surety and all parties whom Contractor is required to insure pursuant to the terms of the Contract Documents, for recovery of damage to the extent these damages are covered by the worker's compensation and employer's liability, or commercial general liability insurance, obtained by the Subcontractor pursuant to the terms of the Agreement or of the Contract Documents. Subcontractor waives, and shall require all sub-contractors to waive, all rights against Contractor and Owner, their officers, directors, shareholders, employees, agents, surety and all parties whom Contractor is required to insure pursuant to the terms of the Contract Documents, for recovery of damage to the extent the damages are covered by the worker's compensation and employer's liability, automobile liability insurance, or commercial general liability insurance.

An approved waiver for the absence of worker's compensation insurance must be on file with NMC. Subcontractor agrees to waive all right of subrogation as against NMC and will indemnify NMC for same.

Subcontractor shall immediately inform NMC of any claim threatened or initiated against Subcontractor or initiated by Subcontractor or any employee or subcontractor of Subcontractor related in any way to the performance of the services, including, but not limited to, any claim for compensation for injury to persons or property.

XX. **TAXES**

Any sales or value added tax properly imposed by any jurisdiction in connection with the services, including any deliverables or other tangible personal property provided by Subcontractor as part of the Services, shall be the responsibility of Subcontractor, and the

amount of such taxes shall be deemed to be included in the stated cost of the services. Any such taxes shall be remitted to the applicable authorities by Subcontractor as and when due. If the applicable law requires that such taxes be remitted to the taxing authority by NMC, then NMC shall be entitled to withhold the amount of any such taxes so due from sums owed to Subcontractor hereunder.

XXI.
BOUND TO OWNER

Subcontractor shall be bound to NMC in the same manner as NMC is bound to the Owner to the extent of the portion of the work covered under the General Contract/Accepted Proposal.

XXII.
POLICIES

Subcontractor shall abide by all NMC policies, including those set out in this agreement as well as those included in the attached , **NMC COMPANY, INC.SUBCONTRACTOR POLICIES** and **NMC COMPANY, INC. SUBCONTRACTOR SAFETY AGREEMENT.**

XXIII.
WAIVERS

Subcontractor must sign a lien waiver in order to receive payment for work that has been completed.

Also, the waiver by either party of any breach or violation of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation hereof. The failure of either party to act in a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches, unless such waiver shall be in writing and signed by the party against whom enforcement is sought

XXIV.
NOTICE

Any legal notices permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or mailed by certified or registered mail, postage paid, to the other party at the address set forth below or to such other persons and address as either party may designate in writing:

If to Contractor:

Attention: _____

If to NMC: NMC Company, Inc.

14955 Bulverde Road
San Antonio, Texas 78247
Attention: James Gregory or Darren NMC

XXV.
GOVERNING LAW

It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas. The venue for any litigation arising out of this agreement or related to the work performed by the subcontractor shall be Bexar County, Texas.

XXVI.
COMPLIANCE WITH LAWS AND POLICIES

Subcontractor agrees to comply with all applicable federal, state and local laws, statutes, executive orders, rules, regulations, and ordinances in its performance of the Services provided for under this Agreement and the conduct of its business. Subcontractor shall establish appropriate procedures and controls so that the Services will not be performed using any alien who is not legally eligible for such employment under applicable immigration laws. Subcontractor acknowledges and agrees that it shall be responsible for complying with the Immigration Reform and Control Act with respect to its employees. If NMC becomes aware of any information, which, based upon a reasonable interpretation of such events or information, supports the conclusion that Contractor may be out of compliance with applicable immigration laws, Subcontractor shall, at the option of NMC: (a) provide written certification that Subcontractor is in compliance with all applicable immigration laws; and/or (b) upon prior notice, allow for an independent auditor, selected and paid for by NMC, to conduct a full review and/or audit of records relating to the Immigration Reform and Control Act. If the audit discloses one or more failures of Subcontractor's compliance with the Immigration Reform and Control Act, Subcontractor agrees to assume responsibility for all costs associated with the audit. Furthermore, such disclosure, or Subcontractor's failure to otherwise adhere to the terms of this provision may, at NMC sole discretion, be deemed a material breach and be grounds for immediate termination of this Agreement and any Statement of Work. Subcontractor agrees to indemnify and hold NMC harmless from and against any and all claims, demands, and actions and any liabilities, damages, or expenses resulting there from, including court costs and reasonable attorney fees, arising out of or relating to noncompliance with this provision by Subcontractor, its permitted subcontractor, or its respective agents or representatives.

Subcontractor's employees and agents shall comply with all laws and policies of NMC while on the premises of NMC. Subcontractor shall provide its employees and agents with adequate orientation (subject to NMC's review and approval) to introduce its employees and agents to the role and function of Subcontractor and its employees and agents assigned to perform the Services, and to explain applicable policies, rules, laws and regulations. Such policies may include, without limitation, a requirement that Subcontractor, its employees, and/or any approved subcontractors, execute and deliver to NMC, written documentation confirming that Subcontractor and/or its employees and/or any approved subcontractors have complied with all applicable policies of NMC, and that Subcontractor is fulfilling its legal obligations with respect to its employees and approved subcontractors.

XXVII.
LEGAL ACTION

If any legal action is instituted to enforce this Agreement, or any part of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs from the other party.

Subject to either party's right to seek injunctive relief, in the event of a dispute arising from this Agreement, the parties shall endeavor in good faith to settle the dispute through negotiation. If the dispute cannot be resolved through negotiation, or another mutually agreeable dispute resolution mechanism, the parties shall submit the dispute to non-binding mediation. If mediation fails to resolve the dispute, the parties agree to submit the matter in dispute to binding arbitration. Written notice of the intent to submit a matter to arbitration shall be given by the party requesting same. The arbitration proceedings shall be conducted in accordance with the rules promulgated by the American Arbitration Association or, if the parties so agree, the relevant rules of another arbitration entity or organization agreed upon by the parties. In any case, regardless of any rules of the selected arbitration organization to the contrary, only one (1) arbitrator shall be used to decide the outcome of the arbitration. Such arbitration shall be held in San Antonio, Texas, or if the parties agree upon another location, that other location. The prevailing party shall be entitled to an award of attorneys' fees. The arbitration shall be governed by Texas law and judgment upon the arbitrator's award may be entered in any court having jurisdiction over such matter.

XXVIII.
ENTIRE AGREEMENT

This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of the Services by Subcontractor for NMC and contains all the covenants and agreements between the parties with respect to the rendering of such Services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged.

XXIX.
MODIFICATION AGREEMENT

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing, signed by each party or an authorized representative of each party.

XXX.
SECTION HEADINGS

The titles to the sections of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

XXXI.
SEVERABILITY

If any of the provisions of this Agreement shall be held to be invalid, void or unenforceable, the remaining provisions hereof shall in no way be affected or impaired, and such remaining provisions shall remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

In witness whereof, the Parties hereto have duly executed this Agreement on the date indicated in the first paragraph.

SUBCONTRACTOR:

By: _____

Its: _____

NMC COMPANY, INC.

By: _____

Its: _____

Subcontractor Insurance Requirement Policy

It is an absolute requirement that each subcontractor have general liability insurance before that subcontractor performs any work on one of our jobs.

That general liability insurance must meet our limit requirements and we must have a certificate of insurance issued to us by the subcontractor's broker or agent that not only identifies us as a **certificate holder** but also names NMC Company, Inc. as an **Additional Insured** for premises operations and products/completed operations coverage under the subcontractor's General Liability policy.

The MINIMUM limits of coverage for each subcontractor under the General Liability polity are as follows:

\$500,000	Each Occurrence – Bodily Injury and Property Damage
\$500,000	General Aggregate for all Coverage
\$500,000	Products and Completed Operations Aggregate

Higher risk operations subcontractors should have greater limits. These operations include, but are not limited to, ROOFING, ELEVATOR, HVAC, PLUMBING, ELECTRICAL, EXCAVATION, HAZARDOUS MATERIAL. The limits for higher risk operations will be determined as they present themselves. Suggested limits could vary and possibly match our own General Liability policy limits, which are:

\$1,000,000	Each Occurrence – Bodily Injury and Property Damage
\$2,000,000	General Aggregate for all Coverage
\$2,000,000	Products and Completed Operations Aggregate

ASBESTOS REMOVAL & LEAD PAINT ABATEMENT:

General liability insurance must meet our limit requirements and we must have a certificate of insurance issued to us by the subcontractor's broker or agent that not only identifies us as a certificate holder with the following statement “ **Asbestos removal work is included under the General Liability Coverage**” but also names NMC Company, Inc. as an Additional Insured under the subcontractor's General Liability policy.

The MINIMUM limits of coverage for Asbestos Removal and Lead Paint Abatement Subcontractors under the General Liability polity are as follows:

\$1,000,000	Each Occurrence – Bodily Injury and Property Damage
\$2,000,000	General Aggregate for all Coverage
\$2,000,000	Products and Completed Operations Aggregate

Statutory Worker's Compensation and Employer's Liability Insurance, with a Waiver of Subrogation affording coverage under the Worker's compensation laws of the state in which the work will be performed, with Employer's Liability Insurance having limits of \$500,000 for injury by accident and \$500,000 for injury by disease.

Automobile Liability Insurance, naming Contractor as an Additional Insured, with a Waiver of Subrogation on Subcontractor's Automobile Liability Insurance, at no less than \$500,000 per occurrence Combine Single Limit for injury or property damage.

Any checks in payment to a subcontractor who fails to meet our General Liability insurance requirements, will be withheld until we are provided with a proper certificate of insurance.

Contact information for subcontractor's insurance broker or agent:

Mailing Address	NMC Company, Inc. 14955 Bulverde Road San Antonio, Texas 78247 Attn: Acct Payable, Subcontractor Compliance
Voice Telephone	(210) 490-2777 Ann Walleck – Ext 301 – email awalleck@NMCinc.com Jennifer Mendoza – Ext 306 – email jmendoza@NMCinc.com Dwayne McElroy – Ext 304 – email dmcelroy@NMCinc.com
Fax (Accounting)	(210) 892-2770 Attn: Acct Payable, Subcontractor Compliance