

Master Subcontract Agreement

This **Master Subcontract Agreement** (the "AGREEMENT") is entered into this _____ day of _____, 2014 (the "Effective Date") by and between Michilli Inc., hereinafter called CONTRACTOR, whose address is 160 Varick Street, New York, NY 10013 and _____ hereinafter called SUBCONTRACTOR, whose address is _____, _____, _____.

1. PURPOSE, SCOPE AND APPLICABILITY.

1.1 CONTRACTOR and SUBCONTRACTOR enter into this AGREEMENT with the intent and understanding that it will serve as a master agreement for all projects for which CONTRACTOR may engage SUBCONTRACTOR. For each project on which CONTRACTOR actually engages SUBCONTRACTOR, a WORK AUTHORIZATION FORM detailing the scope of work, price, and schedule along with any other project specific information will be executed by both parties that incorporates this AGREEMENT by reference. The parties agree that this AGREEMENT, without further acknowledgement, signature, or agreement, will govern all projects for unless a separate project specific contract is issued by CONTRACTOR.

1.2 SUBCONTRACTOR shall be deemed to have accepted a WORK AUTHORIZATION incorporating the terms and conditions contained in this AGREEMENT in the following situations: (1) CONTRACTOR and SUBCONTRACTOR sign a WORK AUTHORIZATION for the work; or (2) SUBCONTRACTOR commences performance of the WORK (defined below) at the project without a signed WORK AUTHORIZATION. The terms and conditions of SUBCONTRACTOR's proposal shall not in any way modify, amend, add or subtract from the terms and conditions contained in this AGREEMENT or the WORK AUTHORIZATION FORM, and the terms and conditions contained in this AGREEMENT together with the WORK AUTHORIZATION FORM shall supersede and prevail over any additional or different terms and conditions contained in SUBCONTRACTOR's proposal.

1.3 The CONTRACT DOCUMENTS (defined below) for any project for which a WORK AUTHORIZATION relates are incorporated by reference in the WORK AUTHORIZATION governed by this Agreement without any further act or reference, and SUBCONTRACTOR acknowledges and agrees that the work performed by it will be performed in accordance with such CONTRACT DOCUMENTS. The CONTRACT DOCUMENTS include, but are not limited to the specifications, plans and other relevant documents for the project, including the contract between OWNER and CONTRACTOR (the "PRIME CONTRACT") and any other documents enumerated therein, including conditions of the contract (general, supplementary and other conditions), drawings, specifications, manuals, supplements, schedules, addenda, bulletins, RFI responses, and modifications issued subsequent to the execution of the PRIME CONTRACT, whether before or after the execution of this AGREEMENT (collectively, the "CONTRACT DOCUMENTS"). Where, in the CONTRACT DOCUMENTS, reference is made to CONTRACTOR, and the work or specifications therein pertains to SUBCONTRACTOR's trade, craft, or type of work, then such work or specifications shall be interpreted to apply to SUBCONTRACTOR instead of CONTRACTOR (hereinafter the "Work"). In addition to any other rights and remedies, and without limiting the same, CONTRACTOR shall have the same rights and privileges as against SUBCONTRACTOR herein as OWNER has against CONTRACTOR under the terms of the CONTRACT DOCUMENTS and any agreements between OWNER and CONTRACTOR. In the event of any actual conflict, inconsistency or ambiguity between the terms and provisions of the WORK AUTHORIZATION FORM, on the one hand, and this AGREEMENT or the CONTRACT DOCUMENTS, on the other hand, the WORK AUTHORIZATION FORM shall take precedence. However, wherever possible the documents will be construed to avoid such a conflict.

1.4 Anything mentioned in the specifications and not shown on the plans or drawings, or shown on the plans and drawings and not mentioned in the specifications, shall be deemed shown and mentioned in both. For purposes of the provision below, the "Project" refers to the project for which a WORK AUTHORIZATION has been issued and consists of the entire construction to be completed by CONTRACTOR, as well as all work to be performed by SUBCONTRACTOR. The term "day" shall mean calendar day unless otherwise specifically designated. The term "CONTRACT PRICE" shall mean the price for completion of all of SUBCONTRACTOR's work with regard to a particular project for which a WORK AUTHORIZATION has been issued.

1.5 Confidentiality Agreement. To the extent disclosed to SUBCONTRACTOR, CONTRACTOR'S bid or response to the OWNER'S RFP, as amended, is proprietary in nature, and shall be kept confidential by SUBCONTRACTOR, and not disclosed to any third party or firm, except as necessary for the performance of the Work by SUBCONTRACTOR under this Agreement. It shall be disclosed for no other purpose without the prior written consent of CONTRACTOR. This Confidentiality Agreement includes CONTRACTOR'S developments, confidential information, know how, discussions, production methods, estimating system, and historical cost data.

2. AGREEMENT PRICE.

2.1 CONTRACTOR will pay SUBCONTRACTOR for the satisfactory performance of the WORK listed in the WORK AUTHORIZATION FORM, those amounts set forth in the WORK AUTHORIZATION FORM for the specific items or tasks set forth therein.

2.2 CONTRACTOR agrees to pay SUBCONTRACTOR for said work subject to additions and deductions as herein provided, payable as work progresses, on estimates made and approved by CONTRACTOR and within ten (10) days after CONTRACTOR actually receives payment from OWNER in relation to SUBCONTRACTOR's Work. CONTRACTOR shall be entitled to withhold at its option ten percent (10%) of each estimate until final payment and may withhold any payment until SUBCONTRACTOR has furnished CONTRACTOR with suitable evidence (which may include affidavits) that SUBCONTRACTOR has paid in full all labor including union benefits, materials, supplies, taxes, withholding and other obligations in connection with the work included in this AGREEMENT, written acceptance by the OWNER, full payment therefore by OWNER, and receipt of Unconditional/Conditional Waivers and Releases.

2.3 CONTRACTOR may in addition without prejudice to any other rights and remedies withhold from any payment or retention up to 150% of the amount of any disputed item, including but not limited to, amounts CONTRACTOR believes may be necessary to withhold to protect CONTRACTOR from any potential claims involving SUBCONTRACTOR's Work, defense costs (including but not limited to attorneys' fees) of any claims relating to SUBCONTRACTOR'S work, SUBCONTRACTOR's deficient performance under this Agreement, breach of warranty or claims which may result from SUBCONTRACTOR failing to furnish appropriate waivers, releases, affidavits of compliance as called for in this AGREEMENT and certified payrolls under Section 3.7 for itself or any lower tier subcontractors or suppliers.

2.4 CONTRACTOR shall have the right, at its option, to pay directly to any person, firm, association or corporation any sum due or to become due from Subcontractor to such payee for performance or furnishing any work, labor, materials, supplies, tools, equipment, or other things used or intended for use in connection with the execution of the WORK AUTHORIZATION by SUBCONTRACTOR. All such payments made will be considered payment for SUBCONTRACTOR'S account and said amount may be deducted from any amounts due by CONTRACTOR to SUBCONTRACTOR.

2.5 Notwithstanding any other term of this AGREEMENT, CONTRACTOR shall be permitted a reasonable period of time to pursue remedies and collect from OWNER or other persons for progress payments, final payments or other payments on account of SUBCONTRACTOR's work or claims, before payment shall become due to SUBCONTRACTOR. What is a "reasonable time" shall be decided based upon all relevant circumstances, but shall in no event be less than the amount of time needed to pursue to conclusion (including collection) available remedies against OWNER, insurers, other subcontractors, or any other party responsible for payment.

2.6 Should one or more contracts now or hereafter exist between the parties hereto concerning one or more construction projects, then a breach by SUBCONTRACTOR of any contract may, at the option of the CONTRACTOR, be considered a breach of all contracts. In such event, CONTRACTOR may terminate any or all of the contracts so breached or may withhold monies due or to become due on such contracts and apply the monies withheld toward payment of any damages suffered on that or any other contract.

3. SUBCONTRACTOR'S OBLIGATIONS.

SUBCONTRACTOR acknowledges and agrees that:

3.1 Prior to the submission of a proposal or bid for any Project, (i) SUBCONTRACTOR shall read the CONTRACT DOCUMENTS and all plans and specifications and shall be familiar therewith; (ii) SUBCONTRACTOR agrees to comply with and perform all provisions thereof applicable to SUBCONTRACTOR's Work; (iii) SUBCONTRACTOR shall identify in writing to CONTRACTOR any conflicts, deficiencies, errors or incomplete information in the plans and specifications and site conditions that may affect SUBCONTRACTOR's price and WORK. If necessary, SUBCONTRACTOR shall request and perform a site visit to better understand the Work. By submitting its price for any specific project work, SUBCONTRACTOR waives its right or claim to additional compensation resulting from conflicts, deficiencies, errors or incomplete information in the plans and specifications or any site conditions unless SUBCONTRACTOR notifies CONTRACTOR in writing thereof prior to submitting its price.

3.2 SUBCONTRACTOR shall execute a WORK AUTHORIZATION prior to receiving payment for its Work. Execution of a WORK AUTHORIZATION by CONTRACTOR and SUBCONTRACTOR is a condition precedent to CONTRACTOR'S obligation to make any payment to SUBCONTRACTOR.

3.3 SUBCONTRACTOR is duly qualified, registered, organized and licensed to do business in the state and local jurisdiction in which the Work is being performed and shall conform in all respects to all federal, state and local laws and regulations, including any provisions and regulations of any general or local act or ordinance, or any local authority which may be applicable to the Work, and shall hold harmless, defend, and indemnify CONTRACTOR against all penalties by reason of nonobservance of any such laws and regulations.

3.4 Unless otherwise provided in a WORK AUTHORIZATION, SUBCONTRACTOR agrees to obtain and pay for all permits, licenses and official inspections made necessary by its Work.

3.5 SUBCONTRACTOR shall remove from the premises all rubbish and surplus material which may accumulate from the prosecution of said work on a daily basis without the need for further instruction by CONTRACTOR, and at CONTRACTOR's request. Should SUBCONTRACTOR fail to do so, CONTRACTOR may, at its option, remove same without further notice at SUBCONTRACTOR's expense.

3.6 SUBCONTRACTOR shall submit copies of submittal data as required in the CONTRACT DOCUMENTS. SUBCONTRACTOR shall refer to the applicable sections of the CONTRACT DOCUMENTS for requirements concerning submittals, including the number of submittals to be provided. Submittals shall reference the project title, number and applicable specification sections. All submittals must be submitted to CONTRACTOR within ten (10) working days of receipt of a WORK AUTHORIZATION FORM.

3.7 SUBCONTRACTOR shall comply with any applicable collective bargaining agreement, project labor agreement, or similar labor agreement, and any state or local prevailing wage laws. On all such projects, as a condition precedent to final payment, SUBCONTRACTOR agrees to provide an affidavit that complies with the terms of all local and state labor laws. SUBCONTRACTOR agrees to furnish certified payrolls promptly upon demand and further agrees to cooperate fully in any effort by CONTRACTOR to verify compliance with labor laws and regulations, including requirements under the Davis-Bacon Act or the State or Local Labor Code. Such cooperation shall include, without limitation, furnishing copies and originals of records and providing access to employees or witnesses for interviews and statements. SUBCONTRACTOR agrees that the amounts set forth as the Agreement Price shall be deemed to be full compensation for compliance with such laws, regulations, or requirements, including payment of all applicable wage rates, and that no additional compensation will be owed to SUBCONTRACTOR in the event that SUBCONTRACTOR is required thereunder to pay higher wages or incur additional costs that SUBCONTRACTOR contends that it did not anticipate.

3.8 SUBCONTRACTOR, as a part of the obligations assumed by it in this AGREEMENT, accepts exclusive liability for all taxes and contributions required of CONTRACTOR or SUBCONTRACTOR by any collective bargaining agreement, project labor agreement, or similar labor agreement, the Federal Social Security Act and the Unemployment Compensation Law or similar law in any state with respect to the employees of SUBCONTRACTOR in the performance of the work herein provided for. SUBCONTRACTOR agrees to hold harmless, defend and indemnify CONTRACTOR against all liability, penalties and damages with respect to said employees under said act or law.

3.9 SUBCONTRACTOR accepts exclusive liability for any and all sales tax or use tax which may be assessed against materials, equipment or labor used in this part of the work, regardless of whether the rates or application of such taxes may have changed since SUBCONTRACTOR submitted a bid.

3.10 SUBCONTRACTOR shall provide safe and sufficient facilities to OWNER, ENGINEER, CONTRACTOR, or their duly authorized representatives for inspection of the work by SUBCONTRACTOR.

3.11 SUBCONTRACTOR shall provide safe and sufficient facilities for SUBCONTRACTOR's own workmen, suppliers, and any other individuals for whom SUBCONTRACTOR is responsible.

3.12 SUBCONTRACTOR shall within twenty-four (24) hours after receiving written notice from CONTRACTOR proceed promptly to remove from the site all materials and Work which the Owner has condemned or failed to approve and shall promptly make good all such Work and all other Work damaged or destroyed in removing or making good said condemned Work.

3.13 SUBCONTRACTOR hereby represents and warrants that all materials provided by it pursuant to a WORK AUTHORIZATION, shall be new and free of all material defects in workmanship and design, and that all Work performed by SUBCONTRACTOR and its employees, subcontractors and agents will be performed in a professional and workmanlike manner.

Following the completion of the project on which SUBCONTRACTOR performed Work, or at any time CONTRACTOR so requests, SUBCONTRACTOR shall provide a written warrantee and guarantee for all Work done by it under this AGREEMENT that warrants against deficiencies and defects in materials and/or workmanship for the longer of the period of time of CONTRACTOR's warranty and guarantees to OWNER, one year after final completion and acceptance of the work and acceptance of final payment by the SUBCONTRACTOR. If any of the materials, products or Work of SUBCONTRACTOR are found to be defective and not in compliance with this warranty, SUBCONTRACTOR shall at its own expense, and in CONTRACTOR's sole discretion, repair or replace such non-conforming products, materials and Work. Such remedy for breach of warranty is not an exclusive remedy and does not limit SUBCONTRACTOR's liability for defective products and materials in any manner under any legal theory.

3.14 SUBCONTRACTOR shall at all times supply adequate tools, appliances and equipment, a sufficient number of properly skilled and licensed workers and a sufficient amount of materials and supplies of proper quality to efficiently and promptly prosecute said Work and shall promptly pay for all materials purchased and shall pay all workers each week and obtain and furnish CONTRACTOR weekly with two (2) copies of certified payroll upon request.

3.15 SUBCONTRACTOR shall personally supervise the Work or have a competent English speaking foreperson or superintendent satisfactory to CONTRACTOR on site at all times during SUBCONTRACTOR's performance of its Work with authority to act for and on behalf of SUBCONTRACTOR.

3.16 SUBCONTRACTOR shall accept all work by others that precedes its Work and which touches its Work prior to commencing its Work, and shall notify CONTRACTOR immediately if any such work is not satisfactory in any way for any reason. SUBCONTRACTOR's obligation stated herein shall be limited to visual inspection for patent defects to work that precedes its Work. Failure to notify CONTRACTOR of any patent deficiencies in such work shall constitute acceptance of that work by SUBCONTRACTOR. SUBCONTRACTOR shall secure and protect its Work and materials from damage or loss until final acceptance by OWNER.

3.17 SUBCONTRACTOR shall at all times comply with CONTRACTOR's safety program and shall make its employees, agents and subcontractors familiar with the form and content of CONTRACTOR's safety program prior to commencement of its work, and shall continue to keep its employees, agents and subcontractors familiar with and in compliance with CONTRACTOR's safety program throughout the course of each project undertaken pursuant to this AGREEMENT.

3.18 If SUBCONTRACTOR, its subcontractors, agents and employees, uses any toxic substances or hazardous materials that by law, regulation or common sense requires it to notify its employees, then SUBCONTRACTOR shall, prior to exposure of any employees on the site to such substance or materials, give written notice of the chemical composition thereof to CONTRACTOR in sufficient detail and time to permit compliance with laws and regulations addressing such substances and materials by CONTRACTOR, other subcontractors and employers on the site. SUBCONTRACTOR shall indemnify, defend and hold harmless CONTRACTOR, its directors, officers, executives, employees, agents, heirs, assigns, and other subcontractors against any claims, suits or actions that result from SUBCONTRACTOR's failure to provide the notice to CONTRACTOR as described in this subsection.

3.19 In the event of a dispute, SUBCONTRACTOR shall comply with CONTRACTOR's written directives and shall continue performance of its Work in accordance with Section 4.4 below.

3.20 SUBCONTRACTOR shall submit to CONTRACTOR a detailed schedule of the work to be performed within ten (10) days of receipt of a WORK AUTHORIZATION. Furthermore, SUBCONTRACTOR shall furnish to the CONTRACTOR periodic progress reports on the Work of the SUBCONTRACTOR whether being performed on-site or off-site including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

3.21 SUBCONTRACTOR shall take all necessary precautions to protect properly the Work of the Contractor, of other subcontractors, or separate contractors to the OWNER, or of the OWNERS'S own forces from damage by operation under this WORK AUTHORIZATION.

3.22 SUBCONTRACTOR shall have a continuing duty to provide and update its list of subcontractors and suppliers and amounts claimed due by them for labor, materials or equipment furnished to the project.

3.23 SUBCONTRACTOR shall provide a labor rate sheet for each trade and level of skill (apprentice, journeyman, master) used in the completion of the work including any differential rates for overtime, after hours and holiday time.

3.24 SUBCONTRACTOR shall furnish all closeout documentation include AS-BUILT drawing in a timely manner after the completion of the Work.

4. PERFORMANCE OF WORK.

4.1 Time is of the essence. SUBCONTRACTOR shall commence work promptly on notice by CONTRACTOR and shall prosecute the same diligently, continuously and at a speed that will not cause delay in the progress of CONTRACTOR's work or the work carried on by other subcontractors or OWNER. CONTRACTOR may require SUBCONTRACTOR to prosecute in preference to other parts of the Work such part or parts as CONTRACTOR may specify. CONTRACTOR does not warrant that the work will be available to be performed in any particular sequence or time frame. The AGREEMENT completion time shall be as set forth in the WORK AUTHORIZATION FORM, or if no time is specified therein, in CONTRACTOR's schedule for the project that is the subject of the WORK AUTHORIZATION FORM.

4.2 SUBCONTRACTOR at CONTRACTOR's request and at the time specified in such request shall submit to CONTRACTOR progress, procurement, and man-hour completion schedules, coordinated with the work of other contractors and satisfactory in form and content to CONTRACTOR and in compliance with the overall completion deadline of the project and upon CONTRACTOR's acceptance of the schedules shall prosecute the Work in accordance therewith.

4.3 SUBCONTRACTOR shall not deviate from the plans and specifications contained in the CONTRACT DOCUMENTS, except by written change order from CONTRACTOR. SUBCONTRACTOR shall be responsible for any damage, inconvenience, or increase in costs arising directly or indirectly by SUBCONTRACTOR's failure to observe such plans and specifications. Without novation of this AGREEMENT and any WORK AUTHORIZATION, CONTRACTOR shall have the right to make changes to the plans and specifications, and after providing notification to SUBCONTRACTOR of such changes, SUBCONTRACTOR's Work shall be governed by such changes. Allowance for extra work and deductions for omissions shall be by mutual agreement between CONTRACTOR and SUBCONTRACTOR or determined in accordance with procedures specified in the PRIME CONTRACT. No changes are to be made, however, except upon a prior written change order from CONTRACTOR and CONTRACTOR shall not be held liable to SUBCONTRACTOR for any extra labor, materials, or equipment furnished without such written change order. Unless otherwise agreed, CONTRACTOR and SUBCONTRACTOR will follow the change process contained in the Prime Contract.

4.4 In the event a dispute arises between SUBCONTRACTOR and CONTRACTOR, SUBCONTRACTOR expressly agrees that it will continue to perform its work regardless of the nature of the dispute. To the greatest extent permitted by law, SUBCONTRACTOR waives any right to rescind or to suspend performance or in any way reduce its workforce or delay the progress of the work.

5. DELAYS.

5.1 Any damages for delay caused by SUBCONTRACTOR shall be deducted by CONTRACTOR from the agreed price, subject to CONTRACTOR's right to terminate this AGREEMENT for default as provided in Section 10.

5.2 Except as provided in Sections 5.4 and 5.5, CONTRACTOR shall not be liable to SUBCONTRACTOR for delay to SUBCONTRACTOR's work by any act, neglect or default of CONTRACTOR, OWNER, its architects and/or engineers, or by reason of strikes, lockouts, or on account of any acts of God, or any other cause beyond CONTRACTOR's control; and SUBCONTRACTOR will cooperate with CONTRACTOR to enforce any just claim against OWNER, its architects and/or engineers for delay.

5.3 Should SUBCONTRACTOR be delayed in its work by CONTRACTOR, then CONTRACTOR shall owe SUBCONTRACTOR therefore only an extension of time for completion equal to the delay caused and then only if a written claim for delay is made to CONTRACTOR within forty-eight (48) hours from the time of the beginning of the delay. CONTRACTOR will be responsible to OWNER for any damages caused by CONTRACTOR-caused delays. Failure to provide timely and properly substantiated written notice shall be deemed a waiver by SUBCONTRACTOR of any claims at law or in equity.

5.4 In the event that CONTRACTOR in its sole discretion shall seek compensation from OWNER as a result of any delay that is not caused in whole or in part by SUBCONTRACTOR, SUBCONTRACTOR shall be entitled to an equitable portion of any amount recovered by CONTRACTOR less an equitable share of the cost of pursuing said claim. As used herein, an "equitable portion" means the percentage of recovery that is directly proportional to the actual damages suffered by SUBCONTRACTOR as a result of delay not caused in whole or in part by SUBCONTRACTOR or any person or entity whose work on a Project is conducted by or through SUBCONTRACTOR. This provision shall not be construed to require CONTRACTOR to pursue any claim against

OWNER or any other party. In the event that CONTRACTOR pursues claim for against the OWNER on behalf of SUBCONTRACTOR, SUBCONTRACTOR shall first provide a written claim and supporting documents to CONTRACTOR in time for CONTRACTOR to review such claim and present it to the OWNER according to the deadlines established for claims in the contract with the OWNER, and SUBCONTRACTOR shall certify such claim in writing under penalty of perjury that the facts contained in such claim are accurate and truthful. SUBCONTRACTOR shall, indemnify, defend and hold harmless CONTRACTOR from any and all liability and damages arising out of or related to SUBCONTRACTOR's claim that derive from submitting a false claim.

5.5 To the greatest extent permitted by law, the remedies set forth in this Section 5 shall constitute SUBCONTRACTOR's exclusive remedies for delay, disruption, inefficiency, trade stacking, loss of productivity, schedule compression, interference with performance acceleration or similar issues relating to schedule or timely performance ("DELAY AND DISRUPTION CLAIMS"), regardless of cause; notwithstanding the foregoing, however, to the extent that the contract between OWNER and CONTRACTOR expressly authorizes CONTRACTOR to recover from OWNER for DELAY AND DISRUPTION CLAIMS, then SUBCONTRACTOR shall have the same rights and ability, but only to the same extent and no greater, to recover from CONTRACTOR for such DELAY AND DISRUPTION CLAIMS.

6. INDEMNITY.

6.1 To the greatest extent permitted by law, SUBCONTRACTOR shall defend, indemnify and hold harmless CONTRACTOR, OWNER, and OWNER's architect and engineer, and any of their respective directors, officers, agents, employees, parents, affiliates, subsidiaries, partners, representatives, heirs, successors and assigns (collectively, the "Indemnitees") from and against all actions, penalties, assessments, fines, actions by governmental authorities, demands, liabilities, claims, damages, costs, losses and expenses, including but not limited to attorney's fees and costs, which arise out of or are in any way related (a) to this AGREEMENT; (b) SUBCONTRACTOR's Work; (c) to actual or alleged actions or omissions by SUBCONTRACTOR or any of its subcontractors, suppliers, vendors, employees, or persons for whom it is responsible, resulting in damage to persons or property (collectively referred to as "Liabilities").

6.1.1 Notwithstanding the foregoing, if any of the other SUBCONTRACT DOCUMENTS impose more stringent defense, indemnity, contribution or hold harmless obligations than those set forth herein, then the more stringent provisions shall apply, and SUBCONTRACTOR shall owe the same defense, indemnity, contribution, and hold harmless obligations to CONTRACTOR as CONTRACTOR owes to OWNER.

6.1.2 The obligations of this Section 6.1 shall apply notwithstanding the passive or active negligence or other fault of the Indemnitees; however, obligations specified above shall not extend to any claims, demands, damages, costs, or liabilities arising out of the sole negligence or willful misconduct of Indemnitees. The obligations of this Section 6 are in no way limited or relieved by SUBCONTRACTOR having obtained insurance, by the provisions of Section 7 or, to the extent permitted by law, by the provisions of any workers compensation law, regulation or arrangement.

6.2 CGL Claims Arising from SUBCONTRACTOR's Work. SUBCONTRACTOR acknowledges and agrees that the indemnity and duty to defend obligations contained in Section 6.1 obligates SUBCONTRACTOR to accept the tender of any claim from CONTRACTOR, OWNER or CONTRACTOR's other subcontractors, or each of these entities' insurance carriers, for any claims arising out of or related to SUBCONTRACTOR's Work during the course of a Project, and SUBCONTRACTOR agrees to defend such claims upon receipt of tender therefor until resolution thereof at SUBCONTRACTOR's expense.

6.3 The obligations of this Section 6.1 shall apply notwithstanding the termination or abandonment of the work, WORK AUTHORIZATION or AGREEMENT.

7. INSURANCE.

Before performing work or conducting any activities at the site of the Project, SUBCONTRACTOR shall comply with all of the insurance provisions set forth below. Commencing the Work constitutes an acknowledgment and representation by SUBCONTRACTOR that it is in compliance with this Section 7.

7.1 Commercial General Liability Insurance. SUBCONTRACTOR shall carry primary Commercial General Liability ("CGL") insurance covering all operations by or on behalf of SUBCONTRACTOR, any actions or omissions by SUBCONTRACTOR, and providing insurance for bodily injury and property damage liability for the limits of liability indicated below and including but not limited to coverage for: (a) premises and operations; (b) products and completed operations; (c)

contractual liability insuring tort obligations assumed by SUBCONTRACTOR in this AGREEMENT; (d) broad form property damage (including completed operations); (e) explosion, collapse and underground hazards (including subsidence and any other earth movement); (f) personal injury liability; (g) electronic data liability. CGL coverage cannot exclude injury to an employee via third party lawsuits under New York State Labor Laws 240 and 241. CGL cannot contain Residential Work exclusion (where applicable) nor any Height Exclusion/Limitation.

7.1.1 The limits of liability shall be not less than the amounts required of CONTRACTOR under the PRIME CONTRACT, but in no event less than: (a) \$1,000,000 each occurrence (combined single limit for bodily injury and property damage); (b) \$1,000,000 for personal injury liability; (c) \$2,000,000 aggregate for products-completed operations; (d) \$2,000,000 general aggregate. The general aggregate limit shall apply separately to SUBCONTRACTOR's Work under this AGREEMENT.

7.1.2 Umbrella Policy. An additional \$5,000,000 Excess Liability Insurance policy shall be maintained over the General Liability coverage and shall, at a minimum, include coverage for the exposures set forth in Section 7.1.

7.1.3 CONTRACTOR, its officers, directors and employees, and OWNER shall be named as additional insureds under the Commercial General Liability policy and Excess Liability policy and such insurance afforded the additional insureds shall apply as primary insurance. Any other insurance maintained by CONTRACTOR or OWNER shall not be called upon to contribute with this insurance. Coverage for CONTRACTOR, its officers, directors and employees and OWNER as additional insureds shall be provided by an endorsement providing coverage at least as broad as: (a) Additional Insured (Form B) endorsement form CG 2010 1185 (1985 version), or its equivalent; OR (b) A combination of Additional Insured endorsement forms ("i" and "ii"): (i) CG 2010 1093 (1993), or 2010 0397 (1997) or GC 2010 1001 (2001); AND (ii) Additional Insured endorsement CG 2037 1001 (2001 version). Additional insured endorsements provided by SUBCONTRACTOR for any project shall be as published by the Insurance Services Office ("ISO") and operative for three (3) years following Project completion without the need for a new AI endorsement.

7.1.4 Subcontractor on its own behalf and on behalf of its insurers and other providers of coverage, waives any and all rights of recovery and right to subrogation in connection with matters to which such insurance applies. General liability insurance shall be written on a form at least as broad as ISO occurrence form CG 0001. CONTRACTOR reserves the right, in its sole and subjective discretion, to reject an insurer and require SUBCONTRACTOR to obtain policies from another insurer. Third party/action over exclusions are not allowable.

7.2 Workers Compensation and Employer's Liability Insurance. Workers Compensation insurance shall be provided as required by any applicable law or regulation. Employer's Liability insurance shall be provided in amounts not less than: (a) \$1,000,000 each accident for bodily injury by accident; (b) \$1,000,000 policy limit for bodily injury by disease; (c) \$1,000,000 each employee for bodily injury by disease. If there is an exposure of injury to SUBCONTRACTOR's employees under the U.S. Longshoreman and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims. SUBCONTRACTOR, on its own behalf and on behalf of its insurers and other providers of coverage, waives any and all right of recovery and right to subrogation in connection with matters to which such insurance applies.

7.3 Claims Made/Risk Retention Group. SUBCONTRACTOR shall not provide general liability insurance under any Claims Made or Risk Retention Group General Liability form without the express prior written consent of CONTRACTOR.

7.4 Automobile Liability Insurance. SUBCONTRACTOR shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. Automobile Liability Insurance shall be provided pursuant to a coverage form at least as broad as ISO form CA 0001. Subcontractor on its own behalf and on behalf of its insurers and other providers of coverage, waives any and all rights of recovery and right to subrogation in connection with matters to which such insurance applies.

7.5 Evidence of Coverage, Certificates, and Insurers. SUBCONTRACTOR shall be responsible for any deductible amount or any loss arising out of coverage denials by its insurance carrier(s). The certificates of insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) day's prior written notice to CONTRACTOR. With respect to projects located in New York, Certificates of Insurance shall include the New York Addendum to Accord Form 855. SUBCONTRACTOR will also provide a copy of the declaration pages and endorsement forms. If requested, SUBCONTRACTOR will provide a complete copy of the policy.

7.5.1 Any acceptance of insurance certificates by CONTRACTOR shall in no way limit or relieve SUBCONTRACTOR of its duties and responsibilities under this AGREEMENT including the duty to indemnify and hold harmless

CONTRACTOR under other provisions hereof. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve SUBCONTRACTOR for liability in excess of such coverage nor shall it preclude CONTRACTOR from taking such other actions as is available to it under any other provision of this AGREEMENT or law. If higher limits or other forms of insurance are required in the PRIME CONTRACT, SUBCONTRACTOR will comply with such requirements.

7.5.2 SUBCONTRACTOR shall provide, as evidence of coverage, actual additional insured endorsements. SUBCONTRACTOR shall take such steps as are necessary to assure SUBCONTRACTOR's compliance with its obligations. CONTRACTOR reserves the right to demand production of certified copies of SUBCONTRACTOR's insurance policies. Should any insurance policy lapse or be canceled during the contract period, SUBCONTRACTOR shall, prior to the effective expiration or cancellation date, furnish CONTRACTOR with evidence of renewal or replacement of the policy. Failure to continuously satisfy insurance requirements as herein provided is a material breach of contract. In the event SUBCONTRACTOR fails to maintain any insurance coverage required, CONTRACTOR may, but is not required to, maintain such coverage and charge the expense to SUBCONTRACTOR or terminate this contract.

7.5.3 All insurance (including, but not limited to general liability, automobile liability, and workers' compensation and employer's liability insurance) shall be provided by a carrier with an A.M. Best's Rating of A- or better, financial capacity VII or greater; however, in CONTRACTOR's sole subjective discretion, CONTRACTOR may be willing to accept coverage from a carrier with an A.M. Best rating of A or better, financial capacity of XII or better. Additional insured endorsements shall be maintained and furnished to contractor for three years following completion of the Project.

7.5.4 SUBCONTRACTOR shall not provide any liability coverage under a "wasting" policy or other form of policy that reduces the amount of coverage, in whole or in part, by amounts expended on defense of claims.

7.5.6 CONTRACTOR reserves the right, in its sole and subjective discretion, to reject an insurer and require SUBCONTRACTOR to obtain policies from another insurer.

7.6 Hazardous Materials. If SUBCONTRACTOR and/or its subcontractors or suppliers, regardless of tier, perform remediation of toxic substances or hazardous materials or if their operations create an exposure to toxic substances hazardous materials as those terms are defined in federal, state or local law, or the CONTRACT DOCUMENTS, SUBCONTRACTOR and its subcontractors and suppliers must obtain a "Contractor's Pollution Liability" policy with limits not less than \$1,000,000 per occurrence and not less than \$2,000,000 aggregate for Bodily Injury, Personal Injury, and Property Damage, naming CONTRACTOR as an additional insured. If SUBCONTRACTOR or its subcontractors or suppliers haul hazardous material (including, without limitation, waste), the policy must extend pollution coverage to the transportation of toxic substances or hazardous materials or pollutants by waste hauling vehicles. If SUBCONTRACTOR is subject to the Motor Carrier Act of 1980, the Motor Carrier Act endorsement MCS-90 must be obtained and attached to the policy.

7.7 Professional Liability. If SUBCONTRACTOR performs Work that includes any construction management, design/build work or professional services shall obtain a Professional Liability Insurance Policy. Design/build Work includes, but is not limited to, design/build Work with respect to mechanical, electrical, structural, plumbing and fire sprinkler systems. Evidence of coverage in the form of a Certificate of Insurance shall be provided prior to the start of the project. SUBCONTRACTOR shall obtain coverage for a minimum of three years following completion of the project, either through continued purchase of policies for such years or through purchase of an extended reporting period. If OWNER or CONTRACTOR elects to purchase a project design policy, SUBCONTRACTOR's policy shall be endorsed to indicate that SUBCONTRACTOR's policy shall provide coverage once the project design policy has been exhausted.

7.8 Riggers Liability. Should SUBCONTRACTOR's work involve the moving, lifting, lowering, rigging or hoisting of property or equipment, SUBCONTRACTOR shall carry Rigger's Liability Insurance to insure against physical loss or damage to the property or equipment.

7.9 Protection of Work/Materials and Builders Risk Insurance. SUBCONTRACTOR shall obtain and maintain an installation floater form of policy; SUBCONTRACTOR shall pay for all deductibles and waives any right to reimbursement or subrogation with respect to such insurance.

7.10 Waiver of Subrogation. CONTRACTOR and SUBCONTRACTOR waive all rights against each other for loss or damage to the extent reimbursed by any property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance referred to in this Section 7 require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such

policies will cause them to be so endorsed or obtain such consent.

7.11 Work Near Railroads. If SUBCONTRACTOR (including any lower tier subcontractor or supplier) performs any work or conducts any operations within fifty feet of any railroad (including any light rail, subway system, fixed rail or other rail system), SUBCONTRACTOR shall obtain an endorsement of its Commercial General Liability Policy to delete any exclusion, including the "Contractual Liability" exclusion, for work performed within fifty feet of a railroad. A copy of such endorsement shall be provided to CONTRACTOR prior to any work or operations by SUBCONTRACTOR within fifty feet of any railroad

7.12 Requirements for SUBCONTRACTOR's Subcontractors, Vendors, Suppliers and Design Professionals. SUBCONTRACTOR shall ensure that all tiers of its subcontractors, vendors, suppliers and design professionals shall maintain insurance in like form and amounts contained in this Section 7, shall comply with the additional insured requirements as set forth above, and shall provide CONTRACTOR with evidence of insurance prior to commencing work. In the event that any of SUBCONTRACTOR's subcontractors, vendors, suppliers or design professionals do not have insurance coverage to coverage required in this AGREEMENT, SUBCONTRACTOR shall indemnify, defend and hold harmless CONTRACTOR for any losses, damages and penalties that may arise as a result of SUBCONTRACTOR's subcontractors, vendors, suppliers and design professionals.

8. LIENS. SUBCONTRACTOR shall at all times maintain the project in a good condition, free and clear of all claims, encumbrances or liens and shall hold harmless and indemnify CONTRACTOR and OWNER from all claims, encumbrances, and liens arising out of SUBCONTRACTOR's WORK, and SUBCONTRACTOR, at its own cost and expense (including attorneys' fees), shall defend all suits to establish such claims, and shall pay any such claim or lien so established. In the event that a lien or claim is made against the project or OWNER or CONTRACTOR, SUBCONTRACTOR agrees that within forty-eight (48) hours of written notice, to have such claim, lien or encumbrance removed from the job and to place with OWNER and CONTRACTOR adequate security to insure compliance with this provision.

9. BONDS. SUBCONTRACTOR, upon request, shall furnish to CONTRACTOR a performance bond and a labor and a materials payment bond in amount, form and substance and with a surety or sureties satisfactory to CONTRACTOR. CONTRACTOR will pay the cost of such bond up to two percent (2%) of the total AGREEMENT amount. In the event SUBCONTRACTOR is unable to obtain such bond(s) within ten days of demand, then at CONTRACTOR's sole election retainage may be increased by and additional five (5%) percent and may be held for a period of one year after final completion and acceptance of the Work.

10. TERMINATION.

10.1 Should SUBCONTRACTOR at any time breach this AGREEMENT or fail to prosecute the Work with promptness, diligence, professionalism, precaution and efficiency, or default in the performance of any of the requirements contained herein, CONTRACTOR may after forty-eight (48) hours written notice and time to cure, proceed as follows:

10.1.1 Provide such materials, supplies, equipment and labor as may be necessary to complete the Work, pay for same and deduct the amount so paid from any money then or thereafter due SUBCONTRACTOR;

10.1.2 Withhold payment of any sums due SUBCONTRACTOR related to or arising out of this AGREEMENT; or any WORK AUTHORIZATION and

10.1.3 Terminate this AGREEMENT and/or any WORK AUTHORIZATION FORMS, enter upon the premises and take possession of all the materials, supplies, tools, equipment and appliances of SUBCONTRACTOR and complete the Work or have same completed by others. In the event of such termination for default, CONTRACTOR will not be liable to SUBCONTRACTOR for any further payment until final payment is due and then only if and to the extent that the unpaid balance of the amount to be paid exceeds the expense of CONTRACTOR in finishing the Work.

10.1.4 SUBCONTRACTOR shall be responsible for, and CONTRACTOR shall be entitled to deduct from any amounts otherwise due SUBCONTRACTOR, an additional amount equivalent to fifteen percent (15%) of the sums incurred or paid by CONTRACTOR as a result of SUBCONTRACTOR's default, including without limitation, the costs to provide materials, supplies, labor and equipment, to pay SUBCONTRACTOR's creditors, and/or to complete SUBCONTRACTOR's Work. Such sum shall constitute reimbursement for overhead, general and administrative costs.

10.2 If the amount expended by CONTRACTOR under Section 10.1 exceeds the unpaid balance due to

permitted by law, SUBCONTRACTOR agrees to defend and indemnify and hold harmless CONTRACTOR, and any of its directors, partners, officers, employees, affiliates, subsidiaries, heirs, successors, and assigns, from any OSHA or other regulatory penalties, fines, sanctions, assessments, or claims, including any increased penalties, fines, sanctions, assessment, or claims that result from SUBCONTRACTOR's prior record or history, resulting from or related to SUBCONTRACTOR'S Work under this AGREEMENT. To the greatest extent permitted by law, the foregoing defense and indemnity obligation and hold harmless agreement shall apply notwithstanding negligence or fault on the part of the persons to be indemnified.

11.4 SUBCONTRACTOR, its subcontractors and suppliers will comply with all stop work orders for unsafe conditions.

11.5 SUBCONTRACTOR is responsible for all safety fines of its employees, officers, subcontractors and suppliers. For each minor safety violations, the first offense fine is \$100; second offense fine is \$500; third offense fine is \$1,000. For each major safety violations, the first offense fine is \$500; second offense fine is \$1,000; third offense fine is \$2,500. Fine amounts will be applied against any amount due the SUBCONTRACTOR.

12. CLAIMS.

12.1 If any dispute arises between CONTRACTOR and SUBCONTRACTOR involving performance of the Work or any alleged change in the Work, SUBCONTRACTOR shall timely perform the disputed Work and shall give written notice of a claim for additional compensation for the Work within ten (10) days after commencement of the disputed Work itemizing and substantiating the associated costs of such disputed work and any impacts to the project schedule. If such costs cannot be itemized or substantiated estimates may be provided at the time of notice to be supplemented by actual figures as when they become available. SUBCONTRACTOR's failure to give written notice within ten (10) days or to supplement such notice as applicable constitutes an agreement by SUBCONTRACTOR that it will receive no extra compensation for the disputed Work.

12.2 Notwithstanding the foregoing, if the CONTRACT DOCUMENTS contain notice provisions that are more stringent than those contained in this AGREEMENT, then SUBCONTRACTOR shall comply with the provisions of the CONTRACT DOCUMENTS and, in addition, shall give CONTRACTOR sufficient notice to comply with the provisions of the CONTRACT DOCUMENTS.

12.3 With regard to claims arising from differing conditions, changes directed by OWNER or others, or which otherwise are not solely the fault of CONTRACTOR, SUBCONTRACTOR's sole and exclusive remedy shall be a claim for that portion of the additional compensation received by CONTRACTOR from OWNER on account of such matters as is equitable under all of the circumstances. SUBCONTRACTOR agrees to be bound by OWNER's determination and by the determination in any proceeding in which OWNER is involved, regardless of whether SUBCONTRACTOR was a party to such proceeding. SUBCONTRACTOR and CONTRACTOR shall cooperate in the prosecution of such claims, and SUBCONTRACTOR shall pay a pro rata share of the costs and expenses incurred in connection therewith, to the extent that said claim is made by CONTRACTOR on behalf of SUBCONTRACTOR. Nothing herein shall require CONTRACTOR to pursue such a claim on behalf of SUBCONTRACTOR. Payment of any and all claims shall be subject to the terms of Section 2 of this AGREEMENT.

12.4 Failure to provide timely and properly substantiated written notice shall be deemed a waiver by SUBCONTRACTOR of any claims at law or in equity.

13. DISPUTE RESOLUTION.

13.1 Mediation. Except as provided in this Section 13, in the event of any dispute arising out of or related to this AGREEMENT, a subsequent WORK AUTHORIZATION or SUBCONTRACTOR's Work, CONTRACTOR and SUBCONTRACTOR hereby agree to resolve any such dispute first through internal mediation. Except with respect to delay claims covered under Section 5, SUBCONTRACTOR shall submit any dispute to CONTRACTOR in writing within a reasonable time after the facts giving rise to such dispute become known to SUBCONTRACTOR. Such "reasonable time" shall be the time sufficient for CONTRACTOR to respond to SUBCONTRACTOR's claim without prejudicing any of CONTRACTOR's rights in the Prime Contract or by law, including but not limited to the time to file a claim with the OWNER for any reason, including delays, acceleration and change of conditions, or Stop Notices, Mechanics Liens, Bond claims or other legal or equitable remedies. After receipt of a notice of dispute by SUBCONTRACTOR, CONTRACTOR and SUBCONTRACTOR shall meet and confer at the project level. If the dispute is not resolved at the project level, then SUBCONTRACTOR and CONTRACTOR shall meet and confer with upper level management for a resolution. If the parties agree, a single dispute resolution facilitator may be hired to assist in resolving the dispute. If the dispute is not resolved at the upper management level, CONTRACTOR and SUBCONTRACTOR may proceed with litigation as provided in this Section 13.

13.2 Arbitration. CONTRACTOR and SUBCONTRACTOR each acknowledge and agree that any dispute not resolved by mediation shall be resolved through litigation in the Supreme Court of the State of New York, New York County.

13.3 Exceptions. Notwithstanding the foregoing: (a) in the event of any disputes involving the SUBCONTRACTOR and OWNER, SUBCONTRACTOR agrees that the submission and resolution of any such disputes shall be in accordance with the dispute resolution procedures contained in the PRIME CONTRACT and any actions or proceedings commenced separately or prior involving SUBCONTRACTOR shall be stayed until the dispute resolution procedures contained in the PRIME CONTRACT shall have been complied with exhausted; (b) CONTRACTOR and SUBCONTRACTOR shall have the right to file any action for declaratory or injunctive relief in a court of law or take steps necessary to secure lien rights.

13.4 Choice of Law. This AGREEMENT and any disputes arising out of or related to it shall be governed by the laws of the State of New York, including its procedural laws, as such laws apply to contracts entered into in the State of New York by New York residents. As used herein, "laws" includes, but are not limited to, all laws, civil procedures, court rules, local and municipal codes, building and construction codes, common law, industry standards and any regulations enforcing such laws, rules, codes and standards.

14. LABOR RELATIONS. All laborers employed and materials, etc. furnished by SUBCONTRACTOR shall be of such type and character as to not cause any union or jurisdictional disputes at the project site. In the event that any union or jurisdictional dispute interferes with the progress of any Work, it shall constitute a material breach of contract on the part of the SUBCONTRACTOR and the CONTRACTOR shall be immediately entitled to hire another SUBCONTRACTOR to complete the Work and hold the SUBCONTRACTOR liable for any excess completion costs incurred on account thereof.

15. MISCELLANEOUS PROVISIONS.

15.1 Assignment. SUBCONTRACTOR shall not sublet, assign or transfer this AGREEMENT, or any part thereof, without the prior written consent of CONTRACTOR, which consent CONTRACTOR may withhold at its discretion. Any assignment in violation of this Section 15.1 is null and void. This Agreement shall inure to the benefit of any permitted assignees.

15.2 Notices. Unless otherwise directed by CONTRACTOR, all notices required under this AGREEMENT, any documents incorporated herein by reference, by law, or as necessary in the course of a project shall not be considered received by CONTRACTOR, unless such notices are in writing, signed and sent via certified mail to CONTRACTOR's mailing address to the attention of the Project Manager within the time periods specified for such notice.

15.3 Independent Contractors. CONTRACTOR and SUBCONTRACTOR are independent contractors and nothing contained in this Agreement shall be construed to mean or imply any other kind of relationship, including, but not limited to, any employment, joint venture, partnership or agency relationship.

15.4 Remedies and Waiver. Except as otherwise expressly provided in this AGREEMENT, all remedies contained in this AGREEMENT are cumulative and any one remedy is not intended to be in lieu of any other legal right or remedy afforded CONTRACTOR for any breach or default of this AGREEMENT. CONTRACTOR's failure to enforce in a timely manner any of the remedies contained in this AGREEMENT shall not act as a waiver to enforcement of any such remedies, or any other remedies, at a later date.

15.5 Enforceability. If any term of this AGREEMENT is held by a court of competent jurisdiction to be void or unenforceable, such term shall be interpreted within the bounds of the law and within its intended meaning, or stricken from the Agreement, and the remainder of the AGREEMENT's terms and conditions shall remain with their full force and effect.

15.6 Authority. Each party represents and warrants that the individual who signs this AGREEMENT is duly authorized to execute this AGREEMENT on behalf of such party. This AGREEMENT and any WORK AUTHORIZATION may be signed in counterparts, each of which is an original, and both of which taken together shall constitute the same instrument.

15.7 Complete Agreement. This AGREEMENT constitutes the entire agreement between the parties and supersedes and integrates all prior or contemporaneous written or oral communications between the parties regarding the subject matter herein. Any additions, amendments, modifications, deletions, additions or changes to this AGREEMENT shall be made in writing and shall not be binding unless the same are signed by a duly authorized representative of each party.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the Effective Date stated above.

SUBCONTRACTOR –

CONTRACTOR Michilli Inc.

Signature: _____

Signature:

Name/Title: _____

Name/Title: Angelo Michilli, President

Address: _____

Address: 160 Varick Street

City: _____ State ____ Zip: _____

City: New York, NY 10013

License no. (required): _____

Phone: _____ Fax: _____

Phone: (646) 613-9300 Fax: (646) 613-0006