



**DEANGELIS DIAMOND CONSTRUCTION, LLC**  
**SHORT FORM SUBCONTRACTOR AGREEMENT**

Made as of: \_\_\_\_\_, 20\_\_

<b>By and Between the Contractor:</b> DeAngelis Diamond Construction, LLC 6635 Willow Park Drive Naples, Florida 34109	<b>and the Subcontractor:</b> XXX XXX XXX
<b>For the Project Name/Project Number:</b> XXX XXX <b>Project Location:</b> XXX XXX	<b>Architect/Design Professional:</b> XXX XXX
<b>With the Owner:</b> XXX XXX	<b>Project is enrolled in CCIP:</b> YES <input type="checkbox"/> No <input type="checkbox"/> <b>Project is enrolled in OCIP:</b> YES <input type="checkbox"/> No <input type="checkbox"/>  All Certificates of Insurance required by Article 10 must be sent to: <a href="mailto:insurance@deangelisdiamond.com">insurance@deangelisdiamond.com</a>
<b>EXHIBITS &amp; ATTACHMENTS</b> <b>Subcontract Terms &amp; Conditions (Form 10-2019SUBFL-SF)</b> <b>Exhibit A: Scope of Work</b> <b>Exhibit B: Drawing Log</b> <b>Exhibit C: Overall Project Schedule</b> <b>Exhibit D: Intentionally Omitted</b> <b>Exhibit E: Lien Waivers</b> <b>Exhibit F: Site Utilization Plan</b>	<b>ADDITIONAL EXHIBITS &amp; ATTACHMENTS</b>  <b>Exhibit P – DeAngelis Diamond Early Payment Option</b> <b>Exhibit S – DDC Safety Program</b>
<p>“Subcontract Sum” is _____ Dollars (\$_____)</p> <p>“Retainage” means Ten Percent (10%)</p> <p>“Work” means TRADE and all work described in Article 1 in Subcontract Terms &amp; Conditions and the attached Exhibit A.</p> <p>“State” means the state in which the Project is located.</p>	

This Subcontract, including the terms and conditions set forth below and all other exhibits and attachments constitutes the entire agreement and all prior or contemporaneous negotiations, agreements, written or oral, between the parties regarding the subject matter are superseded by the Subcontract. This Subcontract may not be modified except by a written document signed by an authorized representative of each party. The parties, for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of all of the terms and conditions herein contained.

**SUBCONTRACTOR**

**DEANGELIS DIAMOND CONSTRUCTION, LLC**

\_\_\_\_\_  
**Name:** Insert Name  
**Title:** Insert Title

\_\_\_\_\_  
**Name:** Insert Name  
**Title:** Insert Title



**1. THE WORK:** The Contract Documents consist of (1) this Subcontract Agreement, including all exhibits and attachments hereto ("Subcontract"); (2) the Prime Contract, and the other contract documents enumerated therein, including, but not limited to, all applicable drawings, plans and specifications for the Project; (3) modifications and change orders to the Prime Contract, whether before or after the execution of this Agreement; and (4) modifications and change orders to this Subcontract ("Contract Documents"). Subcontractor agrees to furnish all labor and material, obtain all necessary permits and perform all work necessary or reasonably inferable from the Contract Documents to fully complete the work described in Exhibit A to this Subcontract; all in strict compliance with the requirements, terms and conditions set forth in the Contract Documents, industry standards and all applicable codes (hereinafter the "Work"). Notwithstanding anything herein to the contrary, Subcontractor's proposal is not a Contract Document and is not part of this Subcontract. The Subcontractor shall assume toward the Contractor all obligations and responsibilities which Contractor has assumed to the Owner pursuant to the Contract Documents. Subcontractor shall require any Sub-Subcontractors or Material Suppliers performing portions of the Work of this Agreement to assume these same obligations for the portions of the Work assumed by those Sub-Subcontractors or Material Suppliers. By executing this Subcontract, Subcontractor confirms that it has been provided the opportunity to review the Contract Documents prior to the execution, and has either reviewed and accepted the obligations set forth in the Contract Documents or has declined such opportunity and accepted such obligations by declination and, accordingly, waives any and all claims, rights and defenses that Subcontractor has not reviewed or was not provided with an opportunity to review the Contract Documents or lacks knowledge of any of the terms or conditions contained therein. In the event of a conflict in the Contract Documents, the provision imposing the greater duty or obligation on the Subcontractor shall govern. Furthermore, in the event of a conflict between the terms and conditions contained in Exhibit A of this Subcontract and those that appear elsewhere in this Subcontract, those that appear elsewhere in this Subcontract shall govern, except as to specific trade scope items, in which event, Exhibit A shall govern. All Work shall be in a good workmanlike manner and shall be to the full satisfaction of the Contractor, the Owner and the Architect. Subcontractor shall comply with all applicable OSHA requirements and any and all other applicable environmental, health and safety requirements and abide by and enforce Contractor's safety program set forth in Exhibit S.

**2. TIME:** Subcontractor shall start the Work upon notice to proceed or as otherwise directed by the Contractor and shall execute the Work in accordance with the Contractor's construction schedule. Subcontractor shall promptly and diligently prosecute its Work in accordance with the Contractor's schedule, as such schedule may be revised at the sole discretion of Contractor, and at all times, Subcontractor shall have sufficient materials, personnel and equipment at the Project so as to cause no delay to the Work, or the work of the Contractor or other subcontractors. Subcontractor agrees that time is of the essence in its performance of the obligations under this Subcontract. Accordingly, Subcontractor shall be liable for any and all costs, losses, liabilities and damages arising out of or occurring in connection with the Subcontractor's failure to diligently commence or prosecute the Work or any breach of this Subcontract.

Should the Subcontractor be delayed, disrupted, hindered, obstructed or interfered with by any act or omission of the Contractor, the Owner or by any other subcontractor on the Project, and such delay is not due in whole or in part to any fault, act or omission of the Subcontractor or those under the control of Subcontractor, then the time for completion of the Work may be extended for a period equivalent to the time lost by reason of such causes, as determined by the Contractor and approved by the Owner, and provided that the Subcontractor has complied with the notice requirements of this Agreement. Such extension of time shall be the Subcontractor's sole and exclusive remedy for any delay and the Subcontractor shall have no claim for damages against the Contractor for any delay. Written notice of each claim for an extension of time shall be submitted to the Contractor within five (5) days of the occurrence of the event which causes such delay or such shorter time as necessary to allow Contractor to timely submit such claim to the Owner in accordance with the terms and conditions of the Contract Documents, or such claims shall be deemed waived by Subcontractor. Such written notice is a condition precedent to Subcontractor's right to obtain an extension of time.

**3. SUBCONTRACT SUM:** Contractor agrees to pay the Subcontract Sum to the Subcontractor for proper performance of the Work.

**4. PAYMENT:** On the 20<sup>th</sup> day of each month, Subcontractor shall submit to the Contractor a detailed application for payment for Contractor's review and acceptance by means of the Textura Construction Payment Management System, as outlined in Article 12 of this Subcontract ("Textura"). Such payment application shall specifically itemize all sales tax included in such application, and shall, include without limitation, receipts, vouchers, payment slips, and all other documentation as required by the Contractor showing the proportionate value

of the Work performed and/or installed through the last day of the month for which payment is requested and progress and final lien releases on the form attached as Exhibit E to this Agreement executed by Subcontractor and each of Subcontractor's Sub-Subcontractors or material suppliers that provided labor or materials for the period covered by the current pay application. Within five (5) days after the Contractor's receipt of good funds from Owner or such longer period as permitted by applicable law and provided the Subcontractor's rate of progress and general performance are satisfactory and Subcontractor satisfies any and all conditions precedent to payments set forth in this Subcontract and the Contract Documents, Contractor shall pay Subcontractor the value of the Work properly performed during the applicable payment period less Retainage unless applicable law prohibits the foregoing amount of Retainage, in which case, the Contractor shall withhold the maximum amount of retainage permitted by law. Notwithstanding the foregoing, final payment by Contractor to the Subcontractor shall be due within thirty (30) days after the following express conditions precedent have been fulfilled: (1) final payment has been properly invoiced by Subcontractor according to the requirements of this Agreement; (2) the Subcontractor's Work is fully performed and complete in strict accordance with the requirements of the Contract Documents; (3) the Architect has issued a certificate for payment covering the Subcontractor's Work; (4) the Contractor has received final payment from the Owner, including all retention; (5) Subcontractor has provided a full and final unconditional lien release executed by Subcontractor and each of its sub-subcontractor and supplier on the form attached to this Subcontract; (6) Subcontractor provides as-built and record drawings including all field changes, if required by Owner or Contractor; and (7) all back charges or deducts have been applied. To the fullest extent permitted by law, receipt of progress and/or final payments by Contractor from the Owner shall be, in each instance (including, without limitation, payment for scope changes), a condition precedent to Subcontractor's rights to receive payment.

As further conditions precedent to any payment to Subcontractor, Subcontractor shall submit to Contractor executed releases of lien by Subcontractor and Subcontractor's sub-subcontractors and suppliers through the date of the Application for Payment in forms attached as Exhibit E and any other documents required by Contractor, Owner, Architect or the Contract Documents. Prior to submission of the first requisition for payment, Subcontractor will deliver to Contractor, for review and approval, a breakdown of the Subcontract Sum showing a Schedule of Values for the various portions of the Work, in such a form and detail required by Contractor. Once accepted, this Schedule of Values will be used as a basis for payment of Subcontractor's monthly requisition, subject to Subcontractor's obligations to adjust, revise or provide a further detailed breakdown of the Schedule of Values as directed by Contractor at any time.

**5. PROGRESS OF WORK:** If Subcontractor at any time defaults in any of its obligations under this Subcontract, refuses or neglects to supply a sufficient number of properly skilled workers or material, fails in any respect to prosecute the Work promptly or diligently, or fails to maintain Contractor's schedule or fails in the Contractor's opinion in the performance, or observance of any terms, conditions, obligations or covenants of this Subcontract, Contractor, after delivering forty-eight (48) hours written notice to the Subcontractor (whether by hand delivery, Federal Express, certified mail return receipt requested, or confirmed email), and in addition to any other rights and remedies provided by this Subcontract, the Contract Documents or at law, shall have the right, but not the obligation, to: (a) perform and furnish such labor or materials for all or any portion of the Work and to deduct all such corrective costs, expenses, losses, delay damages and any other damages provided for in this Subcontract from the Subcontract Sum any amount due or to become due to the Subcontractor under this Subcontract; (b) terminate the Subcontractor's employment for all or any portion of the Work rights under the Contract Documents for some or all of the remaining Work; and/or (c) and enter upon the premises and take possession, for the purpose of completing all or any portion of the Work, of all materials, tools, equipment and other items, all of which the Subcontractor hereby authorizes Contractor to employ and/or communicate with any person or persons in connection with the completion of the Work and/or to provide all the labor, services, materials, equipment and other required items. If any of the above action is taken by Contractor, the Subcontractor shall not be entitled to receive any further payment under this Agreement until the Work is completed to the satisfaction of and accepted by Contractor, Owner and the Architect, at which time, if the unpaid balance of the amount to be paid under this Agreement shall exceed the cost and expense incurred by Contractor in completing the Work, such excess shall be paid by Contractor to the Subcontractor; but if such cost and expense shall exceed such unpaid balance, then the Subcontractor shall pay the difference to Contractor. Such costs and expenses incurred by the Contractor for completion or remediation of Subcontractor's Work as herein provided shall include labor, materials, amounts paid to other contractors, delay damages, and any expense, costs or other damages incurred because of such default, termination or failure to perform, including but not limited to overhead, profit, additional general conditions, attorneys' fees (including, but not limited to, costs of Contractor's in-house counsel in defending claims arising from such default and in seeking recovery of all such cost and expense from the Subcontractor and/or its surety), and architectural fees. Should Contractor take action under the provisions of this paragraph, and should it subsequently



be determined that such action, including a termination by the terms of this Section, was improper, such termination shall be treated as a termination for convenience. As to any claims which arise out of Subcontractor's performance of the Work which is also caused by the acts or omissions of any third-party, Subcontractor's liability hereunder shall be joint and several.

Provided Subcontractor has been paid in accordance with the terms and conditions of this Subcontract, Subcontractor shall defend, indemnify and hold harmless Contractor, Owner, and any applicable sureties and any other indemnitee required in Article 11 of this Subcontract from and against any laborer's, materialmen's or other similar lien or bond claim or other claim for non-payment filed, asserted or threatened to be filed or asserted by Subcontractor or any of its sub-subcontractors, materialmen or suppliers of any tier in connection with the Work. In the event that such lien or bond claim or other claim for non-payment is threatened or filed, Subcontractor shall, upon forty-eight (48) hours' written notice, cause such claim to be paid, released or discharged, or file a bond in the case of a lien to secure discharge of such lien. If Subcontractor fails to resolve any such claim or provide a bond sufficient to fully protect the Owner and Contractor against any claim of lien, Contractor may retain out of any payment then or thereafter due to Subcontractor an amount sufficient to completely indemnify the Owner and Contractor against such labor, invoice, bill, lien or claim without any determination as to the validity of any such claim or lien. If within forty-eight (48) hours after notice to Subcontractor, the Subcontractor has failed to resolve a claim, and fails to provide a bond against such claim, then the Contractor, in its sole discretion, has the absolute right but not the obligation to make direct payment or joint check payment to any of the Subcontractor's lower-tier subcontractors, materialmen, laborers, suppliers and/or lienors and automatically deduct such payment amounts from the Subcontract Sum. Subcontractor hereby agrees to cooperate as necessary to facilitate such direct or joint check payments and will promptly execute any and all documents reasonably requested by the Contractor for that purpose. If such amounts exceed the unpaid balance of the Subcontract Sum, the Subcontractor shall promptly pay all monies that the Contractor has paid in discharging any such claim or lien including, but not limited to, any attorney fees, bond or other premiums and costs.

In the event Subcontractor employs independent contractors, as well as payroll labor, to discharge its obligations hereunder, Subcontractor acknowledges and understands that it does so at its own risk and that federal, state and/or local agencies may dispute the independent contractor status and assess penalties, fines, and costs should there be a determination to reclassify such workers. In that event, Subcontractor agrees that it will defend, indemnify, and hold Contractor and Owner harmless from any fines, costs, damages, penalties, attorneys' fees and causes of action, including, without limitation, personal injury or property damage, arising out of or relating in any way to such a determination.

**6. CHANGES OR ALTERATIONS:** Contractor reserves the right, without invalidating this Subcontract, to make changes in the Work, including additions, deletions or other revisions to the Work, as it deems necessary, upon written order to the Subcontractor. All changes shall be stipulated in a written order signed by Contractor prior to the commencement of the work. Should the Subcontractor proceed with any additional work without a written order from Contractor, Subcontractor does so at its own risk and expense. Subcontractor shall provide Contractor with written notice of any circumstance, occurrence or direction given by Contractor which Subcontractor believes to be a change, addition and/or omission or which may otherwise serve as the basis for a request for an increase in Subcontract Sum or extension of Subcontract Time within five (5) days of the receipt of the direction, or the occurrence of the event or circumstance giving rise to such request. If Subcontractor fails to provide written notice within such time period, such request for an increase in Subcontract Sum or extension of Subcontract Time shall be deemed waived. If the parties are unable to agree as to the adjustment of Subcontract Sum or Time, Subcontractor shall not delay or suspend work in any way but promptly proceed with the work under the written order of Contractor, and the determination of the adjustment of the Subcontract Sum and/or Time shall be resolved pursuant to the dispute resolution procedures set forth in this Subcontract. For all changes in the Work requiring an increase in the Subcontract Sum, charges for profit and overhead will not exceed 10 % for self-performance of the Work and 5% for subcontracted Work. All requests for increase in Subcontract Sum or extension of Subcontract Time by the Subcontractor require an itemized breakdown of all costs, including, but not limited to, labor, materials, equipment, overhead and profit, a critical path schedule analysis demonstrating entitlement to the number of days requested, and any other supporting documentation required by Contractor and/or Owner. For any such requests, the Subcontractor shall assist Contractor and provide all information and documentation required by the Prime Contract for Contractor to pursue such request with Owner. Subcontractor agrees that any such request shall be deemed waived and forfeited if Subcontractor fails to provide information and documentation as required by this Article. Subcontractor agrees that Contractor shall not be obligated to make payment to Subcontractor for any change order or modification unless and until Contractor receives payment from the Owner for same, a receipt of which is an express condition precedent to Contractor's obligation to make any such payment to



Subcontractor. Contractor's superintendent and other field personnel are not authorized to approve any increase in the Subcontract Sum or extension of the Subcontract Time resulting from a change to or extra work under this Subcontract. Contractor's superintendents and field personnel can verify the amount of time and materials Subcontractor devotes to work, for which the Subcontractor claims it is entitled to additional compensation, but such verification shall not constitute agreement that the work in question is extra work entitling Subcontractor to an extension of time or additional compensation. Only Contractor's project manager is authorized to approve changes (increases or decreases) to the Subcontract Sum or an extension of the Subcontract Time.

7. **ASSIGNMENT:** Subcontractor agrees that it will not assign this Subcontract, or any of the monies due it, or to become due hereunder, nor sublet any portion of the work, without first obtaining written consent of the Contractor, which may be withheld in the sole and absolute discretion of Contractor. Contractor may assign this Subcontract at any time without Subcontractor's consent.

8. **WARRANTY:** The Subcontractor hereby guarantees the Work to the full extent provided in the Contract Documents. The Subcontractor shall remove, replace and/or repair at its own expense and at the convenience of the Owner any faulty, defective or improper Work, materials or equipment existing or discovered within one (1) year from the date of the acceptance of the Project as a whole by the Architect and the Owner or for such longer period as may be provided in the Contract Documents. Without limiting the generality of the foregoing, the Subcontractor warrants to the Owner, the Architect and Contractor, and each of them, that all materials and equipment furnished under this Subcontract will be of first class quality and new, unless otherwise required or permitted by the other Contract Documents, that the Work performed pursuant to this Subcontract will be free from defects and that the Work will strictly conform with the requirements of the Contract Documents. Work not conforming to such requirements, including substitutions not properly approved and authorized, shall be considered defective. All warranties contained in the Contract Documents shall be in addition to and not in limitation of all other warranties or remedies pursuant to applicable law. Failure of Subcontractor to honor and satisfy the foregoing and any other warranties or guarantees required of the Subcontractor under the Contract Documents, shall constitute a default by Subcontractor.

9. **INDEMNIFICATION:** To the fullest extent permitted by law, Subcontractor shall indemnify, defend, and hold the Contractor, Owner, architect, and their respective members, managers, shareholders, directors, officers, agents, and employees (collectively, the "Indemnified Parties") harmless from any and all claims, costs, expenses, damages, suits, fines, penalties and/or liabilities (including attorneys' fees and costs and attorneys' fees incurred to enforce Subcontractor's obligations set forth in this Article) caused by, resulting from, arising out of or occurring in connection with: (1) the execution of the Work, or in preparation for the Work, or any extension, modification or amendment to the Work by change order or otherwise; (2) any breach or default by Subcontractor in the performance of its obligations under the Subcontract; or (3) any actions or suits concerning any of the foregoing in which any of the Indemnified Parties are made a defendant, provided, however, Subcontractor's duties set forth in this Article shall not arise if such damages are caused by or resulting from the gross sole negligence, or the willful, wanton or intentional misconduct of Indemnified Parties. Any claim for indemnification for claims, costs, expenses, damages, suits, fines, penalties and/or liabilities caused in whole or in part by any act, omission or default by an Indemnified Parties shall be limited to the amount of Subcontractor's insurance required under this Subcontract or \$2,000,000 per occurrence, whichever is greater. The parties acknowledge and agree that the amount of the indemnity required hereunder bears a reasonable commercial relationship to this Subcontract. The parties are familiar with the terms and requirements of Fla. Stat. §725.06 and intend that this Article 7 comply with said statute. To the extent necessary, this Article 7 shall be modified to comply with the terms, provisions and requirements of Fla. Stat. §725.06, as it may be amended from time to time. The duty of indemnification and to defend shall continue beyond and survive the date of completion of the Project and the expiration or earlier termination of this Subcontract until any and all claims are fully and finally barred by the greater of any and all applicable statute of limitation or statute of repose.

In claims against any of the Indemnified Parties by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligations of Subcontractor shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts. Under no circumstances shall the insurance requirements and limits set forth in this Subcontract be construed to limit Subcontractor's indemnification obligations or other liability hereunder.

10. **INSURANCE:** Before the earlier of commencement of the Work, entering the Project site (at any time), or five (5) days after executing the Subcontract, Subcontractor shall provide evidence in the form of a certificate of



insurance acceptable to Contractor that Subcontractor has obtained the insurance required by this Article. Subcontractor shall thereafter carry commercial general liability insurance on ISO form CG 00 01 10 01 (or a substitute form providing equivalent coverage) and the Subcontractor shall provide Contractor with a Certificate of Insurance and Additional Insured Endorsement on ISO form CG 20 10 11 85 (or a substitute form providing equivalent coverage) or on the combination of ISO forms CG 20 10 10 01 and CG 20 37 10 01 (or substitute forms providing equivalent coverage) naming Contractor and the Owner as Additional Insureds thereunder. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded to Owner and Contractor. The coverage name the Contractor, Owner, and any other interested parties as designated by the Owner, as Additional Insureds, shall not be less than the following (unless a greater amount is required in the Prime Contract):

**COMMERCIAL GENERAL LIABILITY (“CGL”)**

Bodily Injury & Property Damage	\$1,000,000 per occurrence
General Aggregate other than Products/CO	\$2,000,000 per project
Products and Completed Operations	\$2,000,000 Aggregate

**AUTOMOBILE LIABILITY**

\$1,000,000 combined single limit per accident

**EMPLOYER’S LIABILITY/ WORKERS COMPENSATION**

\$1,000,000 each accident or statutory limits  
\$1,000,000 disease per employee or statutory limits  
\$1,000,000 disease policy aggregate or statutory limits

Such Insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contractor (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the Commercial General Liability form arising from pollution, explosion, collapse, underground property damage or work performed by subcontractors. Subcontractor’s policies required by the Contract Documents shall contain no exclusions or limitations with respect to the Subcontractor’s scope of work and/or type of structure being constructed, including, without limitation, exclusions for condominium, residential, lead, asbestos, EIFS or specified drywall, or the method of insuring the project including the implementation of a controlled insurance program (wrap up). All coverage shall be placed with an insurance company duly admitted in the State where the Project is located and shall be reasonably acceptable to Contractor. All Subcontractor insurance carriers must maintain an A.M. Best rating of “A-“ or better. Coverage shall be afforded to the Additional Insureds whether or not a claim is in litigation. The insurance coverage required hereunder shall be of sufficient type, scope, and duration to ensure coverage for Contractor and/or Owner for liability related to any manifestation date within the applicable statutes of limitation and/or repose which pertain to any and all work performed by or on behalf of Contractor or Owner in relation to the Project. Subcontractor shall be responsible for any deductible amount under the property insurance or any other policy maintained by the Owner or Contractor arising out of a claim relating to or occurring in connection with Subcontractor’s acts, omissions, negligence, breach or willful misconduct. Each Certificate of Insurance shall provide that the insurer must give Contractor at least 30 days’ prior written notice of cancellation or termination of the coverage.

Subcontractor shall provide professional liability insurance coverage not less than \$2,000,000/\$2,000,000 per aggregate if the Work (including the scope of any of its subcontractors or subconsultants) includes fire alarm design, mechanical work, plumbing work, fire sprinkler work or any professional service. Subcontractor must maintain policies written on a claims made basis for a minimum of two (2) years after substantial completion of the Project and have a retroactive date prior to the effective date of this Subcontract. Subcontractor shall provide pollution liability insurance coverage of \$2,000,000 each occurrence/\$2,000,000 per aggregate if the Work includes excavation, remediation, transporting or disposing of hazardous materials or any other pollution services. Contractor, Owner and any other parties as designated by the Owner or the Contractor shall be named as additional insureds.

**11. TERMINATION FOR CONVENIENCE:** Contractor shall have the right for any reason or for no reason, and at any time, by written notice to Subcontractor, to terminate this Subcontract for convenience. In the event of any such termination for convenience, Subcontractor shall be paid an amount equal to the lesser of the actual cost of the Work completed prior to termination or that portion of the total Subcontract Amount attributable to percentage complete of the Work based upon the most updated schedule of values and, to the fullest extent permitted by law, only to the extent that Contractor is compensated by the Owner, and Subcontractor shall not be entitled to any other payment or damages.

**12. TEXTURA.** Subcontractor shall submit all pay applications for this Project through Textura. Subcontractors must open and maintain a Textura account for billing purposes until completion of this Project. The cost to use Textura is 0.22% of the Subcontract Sum (this is the cost of Subcontractor's proposal multiplied by 0.0022), with a maximum fee of \$3,750.00. Subcontractor acknowledges and agrees that this fee for Textura has been included in the Subcontract Sum. On or around the 10th day of each month, Subcontractor will be notified electronically by Contractor that the current draw period is open and accessible for the submission of Subcontractor's pay application and all supporting documentation for that pay period. Once the pay application is approved, Subcontractor will be notified electronically by Contractor when funding for the applicable draw period has been received from Owner. An electronic payment will be issued to the Subcontractor through Textura in accordance with the terms and conditions of the Subcontract. Textura shall be interpreted to be in harmony with the other terms and conditions of this Subcontract Agreement, and not in lieu of such provisions, terms or conditions. Subcontractor shall promptly execute all documents necessary to register, enroll and use Textura. Subcontractor shall be solely responsible for all fees and costs associated with Textura as outlined in this Section and agrees to timely pay all such fees as charged by Textura. Subcontractor shall ensure that it and anyone that is providing labor, services or materials under Subcontractor complies with the use of Textura. Select Subcontractors may participate in the DeAngelis Diamond Early Payment Option through Textura Subcontractor Direct Financing ("SDF") in accordance with Exhibit P.

**13. SITE:** The Subcontractor shall continuously clean up and remove from the job site all debris caused by the execution of the work or the furnishing of material or supplies, including the path to and from Contractor's dumpster area. Upon Subcontractor's failure to adequately clean the job site and/or remove debris, Contractor may do so upon 24-hour notice, and charge the costs thereof to the Subcontractor.

**14. DAILY REPORTS.** Subcontractor shall complete the Daily Report in the form set forth in Contractor's Procore site on a daily basis. At a minimum, the Daily Report shall contain the following information: the date, description of manpower, Work locations, progress of the Work, deliveries and any problem situations or delays. Subcontractor shall complete and submit each Daily Report by 5 p.m. on the work day covered in the Daily Report.

**15. LAWS, PERMITS, FEES AND NOTICES:** The Subcontractor shall give notices and comply with all laws, ordinances, rules, regulations and orders of public authorities bearing on performance of the work of this Subcontract. The Subcontractor shall secure and pay, at its sole cost and expense, for any and all permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Subcontractor's work, the furnishing of which is required of the Contractor by the Prime Contract. The Subcontractor shall comply with all Federal, state and local tax law, social security acts, unemployment compensation acts and worker's or workmen's compensation acts, Subcontract Documents, plans and specifications, manufacturer's recommendations, industry standards and all codes, insofar as applicable to the performance of this Contract. Subcontractor shall pay all sales and other taxes upon the material and labor furnished under this Subcontract as may be required by the federal, state and/or local governments where the Work is performed.

**16. DISPUTE RESOLUTION AND PARTICIPATION AGREEMENT:** The Subcontractor acknowledges and agrees that any controversy or claim arising out of or relating to this Subcontract, or the breach thereof, shall be settled under the laws of the State of Florida, and venue and jurisdiction for any such controversy shall lie exclusively in the courts having jurisdiction over Collier County, Florida, regardless of where the work described in this Subcontract is performed. The parties recognize that disputes arising out of this Subcontract, including, without limitation, claims for an adjustment to Subcontract Sum or Subcontract Time, may occur, and it is preferable for the parties to reach an amicable resolution without the need to resort to formal dispute resolution proceedings. Accordingly, the parties agree to participate in non-binding mediation conducted by a third-party mediator mutually agreed to by the parties, as a condition precedent to the institution of legal or equitable proceedings by either party unless the Contractor waives this condition precedent. The procedure for requesting mediation begins once one party delivers written notice to the other requesting mediation and specifying the dispute to be mediated. Within thirty (30) days following the receipt of such notice, responsible persons selected by each party shall meet in a good faith effort to resolve the dispute. The holding of such a responsible persons' meeting shall be a condition precedent to mediation. In the event the dispute remains unresolved after mediation then such dispute shall be resolved, at the Contractor's sole discretion, by either (1) arbitration administered by the American Arbitration Association under the rules pertinent to construction disputes then applicable, or (2) in litigation. Mediation shall be a condition precedent to litigation or arbitration, unless delay would irrevocably prejudice Contractor or Subcontractor, in which event the litigation or arbitration, may be commenced but shall be stayed pending mediation under this provision. All costs, fees and expenses in resolving disputes under this Subcontract including reasonable attorneys' fees and cost for services rendered in



arbitration, litigation, mediation or on appeal including services rendered prior to the filing of any arbitration, litigation or mediation, shall be charged to and paid for by Subcontractor. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. During the pendency of any dispute, including mediation, arbitration or litigation, Subcontractor shall continue with the diligent performance of the Work pursuant to this Subcontract and follow and abide by directions and instructions issued by Contractor. Failure to so proceed shall constitute a material breach of the Subcontract, regardless of the ultimate decision on the dispute.