

## SUBCONTRACT

No. 195-03

THIS AGREEMENT, made this 18<sup>th</sup> day of **JULY 2011**, by and between **M NATAL CONTRACTOR, INC.**, hereafter called "Contractor", and

**GULF COAST ELECTRIC  
35131 GARDEN DRIVE  
SLIDELL, LA 70460**

hereafter called "Subcontractor",

WHEREAS, Contractor has entered into a contract (hereafter "Prime Contract"), with **ROSE KUHNAH UHALT** hereafter called "Owner", to perform certain labor and furnish certain materials for the completion of **SMOOTHIE KING #1061** as per drawings dated 4/27/11 by Smoothie King and drawings by MorphyMakofsky dated 5/4/11, all of which are made a part of said Contract and all of which are now made a part of this Subcontract; and said Contract, plans, specifications, addenda and other documents above set forth are hereafter referred to as the "Contract Documents"; and

WHEREAS, Contractor and Subcontractor desire to contract for a part of said Work:

NOW, THEREFORE, for and in consideration of the mutual and reciprocal obligations herein contained, Contractor and Subcontractor agree as follows:

1. The Subcontract consists of this Contract, the Prime Contract, the Contract Documents and any Modifications to the Prime Contract or this Contract issued after execution of this Contract and are fully a part of this Contract as if attached to this Contract or repeated herein.
2. The Contractor and Subcontractor shall be mutually bound by the terms of this Contract and, to the extent that provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under the Prime Contract, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under the Prime Contract, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor which the Owner, under the Prime Contract, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor which the Contractor, under the Prime Contract, has against the Owner, insofar as applicable to this Contract. Where a provision of the Prime Contract is inconsistent with a provision of this Contract, this Contract shall govern.
3. As a consequence of this Contract the Subcontractor may enter into agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, assuming toward each other all obligations and responsibilities which the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other which the Contractor and Subcontractor have by virtue of the provisions of this Contract.

4. (a) Subcontractor shall furnish and pay for all supervision, administration, labor, services, equipment, materials, supplies, and copies of Construction Documents and shall perform all of the work necessary or incidentally required for the completion of the following part of the work covered by the Contract Documents and specifically the plans, specifications, addendums and Fire Marshal letter:

**I. SCOPE OF WORK:**

**Electrical as per quote dated 5/20/11**

**II. General Scope of this Subcontract to include but not limited to the following:**

- A. Demolition is the subcontractor's responsibility if required for the subcontractor to achieve their scope of work. All noise, dust control and clean up of the demoed area must be done daily.**
- B. Fire stopping and fire dampers are the subcontractor's responsibility for any and all penetrations required by the subcontractor's scope of work using an acceptable listed UL application.**
- C. Clean up and debris removal- subcontractor to provide daily cleanup of own work areas into contractor supplied dumpster.**
- D. Complete submittals including product data. Submitted in ample time to allow for design team and Contractor review and not delay construction. Each different condition to be identified and manufacturer to confirm compatibility of system with surrounding material.**
- E. Subcontractor to protect all surrounding building elements as required to perform this scope without damage. Any work that would involve vibration or disruption to the existing building must be approved of 3 days prior to beginning work.**
- F. Subcontractor shall schedule all required inspections with governing authorities and have sole responsibility for the completed function of this work to gain final inspection approval of all governing authorities. Any additional work or processes required to gain such approval and acceptance is the responsibility of the Subcontractor.**
- G. All applicable permit and inspection cost by Subcontractor**
- H. One individual is to be designated on behalf of Subcontractor as the liaison between Subcontractor and M Natal. Lack of coordination due to internal coordination will be the responsibility of the Subcontractor.**
- I. Subcontractor has reviewed and fully understands the interface with this scope and other trades and will provide all materials, labor and equipment to complete the interface as called for in the Contract documents.**

- J. Unloading, hoisting, and setting in place of all materials and equipment included in this Subcontractor's scope.**
- K. Compliance with all national, state and local codes, laws and ordinances and obtaining and paying for all inspections and permits.**
- L. Delivery of materials to be scheduled in a manner which minimizes storage time.**
- M. The scopes outlined are intended to highlight components of a system. It is understood that incidental material, supplies, equipment, preparatory work, etc. are included.**
- N. Task lighting necessary to perform this scope of work to be provided by Subcontractor.**
- O. Subcontractors must include dust control, property protection, moisture control, temporary waterproofing etc. if necessary as a result of subcontractor's scope of work.**
- P. All subcontractors will be responsible to supply and maintain their own ice, drinking water, and cups and sanitary temporary toilets.**
- Q. Subcontractor to comply with all safety requirements of governing authorities and provide all necessary safety equipment**
- R. While Subcontractor's workers or it's Tier Subcontractor workers are on site, there must be a full time employee (employed by this Subcontractor) with full authorization to act upon behalf of the Subcontractors company designated as the liaison between M Natal and the Subcontractor. Lack of coordination due to internal coordination will be the responsibility of the subcontractor.**

(b) In those instances where the contract documents and/or this agreement requires the Subcontractor to provide design services in connection with the fabrication and installation of building systems and components, Subcontract agrees to assume full responsibility for any claims, damages or causes of action arising out of any error or omission in the performance of these design services. When specifically called for in the contract documents, this agreement or when required by law, Subcontractor will engage a professional architect or engineer who holds a current Louisiana license to perform the design service specified. Before performing any such services, Subcontractor and/or any such architect or engineer shall furnish Contractor an insurance certificate showing that they have currently in full force and effect professional liability insurance providing coverage for errors and omissions with minimum limits of liability of \$2,000,000.00. Subcontractor agrees to defend, indemnify and hold harmless Contractor from and against any and all claims, demands, causes of action and damages, including attorney's fees, arising in whole or part, out of alleged errors and omissions of Subcontract in the performance of any such design services. This insurance shall be maintained in force by subcontractor for a period of five (5) years after the date of Substantial Completion of the project or as otherwise agreed to in writing by M Natal and Subcontract/Consultant.

5. Each party represents and warrants that they have read the Subcontract and have been advised or have had a full and complete opportunity to consult with legal counsel and understand the legal effect of the covenants, obligations and representations of this Contract. Each party willingly assumes joint responsibility for the content of this Contract, agrees that the Contract will be interpreted as though each of them participated equally in its drafting and composition, and further agrees that this Contract will not be construed against the other party as the drafting party.

6. Subcontractor has familiarized itself, by careful examination or otherwise, with the nature and location of the work to be performed, the character and quality of the soil and subsurface conditions to be encountered and the general surroundings of the work, as well as the character and quantity of the materials needed preliminary to and during the prosecution of the work.

7. The work included in this Contract shall be performed under the direction of Architect or Owner's Representative, and their decisions as to the meaning and interpretation of the Contract Documents shall be final. Subcontractor's work shall conform to and abide by any additional specifications, drawings or explanations furnished by the Architect or Owner's Representative which details and illustrates the work to be performed.

8. The Subcontractor warrants to the Owner, Architect and Contractor that materials and equipment furnished under this Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the work of this Subcontractor will be free from defects and deficiencies and that the work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. Subcontractor is solely responsible for performance of all work called for in this Contract and in the Contract Documents as it pertains to Subcontractor's work. Contractor's observations and inspections of Subcontractor's work shall not act as a waiver and/or acceptance of any defective or non-conforming work, materials and equipment. Subcontractor agrees to waive and forever discharge Contractor from any claims arising out of Contractor's observations and inspections of the Subcontractor's work. Subcontractor will defend and indemnify Contractor from all claims for such defects in workmanship and materials, including but not limited to repair, rework or other damages resulting from the defects.

9. (a) Subcontractor shall commence its work as soon as the project construction reaches the stage when it is ready for such work, and shall promptly and efficiently carry out the work so as not to cause delay in the progress of Contractor's work or the work carried out by other Subcontractors. Subcontractor agrees to prosecute certain portions of the work in preference to others, if so ordered by Contractor.

(b) Subcontractor acknowledges that the schedule attached is a preliminary schedule intended to outline the overall work plan for the project and will be used to formulate and prepare the initial Project Schedule. The Subcontractor shall promptly assist the Contractor in scheduling the Subcontractor's work in order to achieve the intent of the project schedule, achieve the earliest possible completion date for the project, and avoid conflict, delay in or interference with the work of the Contractor, other Subcontractor's or the Owner's own forces. The Subcontractor and Contractor agree that any float in the schedule belongs to the project and it is a joint goal to commence work on scheduled activities on the "early start" dates included in the Project schedule. By cooperating with and assisting Contractor in scheduling the work, Subcontractor agrees and acknowledges that the Project Schedule and any updates are reasonable and that the

Project Schedule is deemed to be authored by and the work product of both Contractor and Subcontractor. Subcontractor's work shall be completed to the satisfaction of Contractor, Owner and Architect within the time constraints imposed by the Project Schedule. Should Subcontractor, at any time, refuse, fail or neglect to promptly and diligently carry out the work in accordance with the Project Schedule, including, without limitation, failure to supply a sufficient number of qualified workmen, Contractor, may after written notice to Subcontractor and at contractor's sole discretion, supplement the Subcontractor's work crews, including supervisory personnel, in an effort to accelerate the Work to comply with future milestone dates contained in the Project Schedule. By exercising this option, Contractor does not waive or prejudice any other remedy the Contractor may have, including without limitation, the right to terminate this Contract pursuant to Paragraph 14 or assess or collect damages from Subcontractor pursuant to Paragraph 9(c) herein. Subcontractor also acknowledges and agrees that the actual costs, expenses, labor burden, and overhead incurred by Contractor in supplementing the subcontractor's work crews will be deemed a valid backcharge against this Contract and Contractor shall have the absolute right to either deduct these charges from any amounts due and owing Subcontractor, reduce the Contract Sum and/or request immediate payment of such backcharge from Subcontractor. Subcontractor's surety agrees that the rights granted Contractor under this provision shall neither alter nor diminish the surety's obligations to Contractor under bonds relating to this Contract.

(c) Should Subcontractor, without justifiable cause, fail to complete all or part of its work by either the late finish dates on the Project Schedule and/or the Contract completion date, as may be extended by change order, or delay the Contractor in completing its work, Contractor may assess Subcontractor and/or Subcontractor shall pay Contractor any damages, either actual and/or liquidated, assessed against Contractor by Owner and any actual damages Contractor incurs, including, but not limited to, extended home and field office overhead, material and labor price escalations, acceleration costs, labor inefficiencies, claims by other Subcontractors, and other related costs and expenses which are attributable to Subcontractor's delay. This provision shall be self-executing and the mere failure to meet either a late finish date for any activity on the Project Schedule or the Contract completion date shall act to put Subcontractor in default of this Contract.

(d) Contractor shall not be liable to Subcontractor for any delay to Subcontractor's work resulting from any acts, omission, negligence, fault, or default of the Owner or the Architect, or by reason of fire or other casualty, or on account of riots, strikes or other combined action of the workmen or others, or on account of any acts of God or any other cause beyond Contractor's control; or on account of any circumstances caused or contributed to by Subcontractor.

(e) Should Contractor delay Subcontractor's work, Subcontractor shall only be entitled to an extension of time equal to the duration of any such delay, and then only if written notice of a claim for delay is made to Contractor within forty-eight (48) hours from the commencement of any such delay.

(f) Subcontractor must cooperate fully with other subcontractors and shall plan and conduct its work so as not to interfere with the operations of others. The Contractor shall not be responsible for any delays or interferences resulting from the acts or operations of other subcontractors or their subcontractors, suppliers and laborers. Contractor, at its sole discretion, on behalf of Subcontractor, may backcharge other subcontractors for additional costs, expenses and/or damages incurred by Subcontractor, which result from delays caused by the other subcontractor(s). Any such backcharges must be established to Contractor's satisfaction, by documentation from Subcontractor's Records, which clearly show the reasonableness and appropriateness of the backcharge.

(g) Subcontractor represents that it (1) is familiar with local weather conditions, including normal adverse weather; (2) has carefully reviewed the provisions of the Contract Documents on adverse weather, if any; and (3) has included in the Contract price the impact of such weather on its performance. Subcontractor agrees that normal adverse weather shall not be the basis for an extension of time. Subcontractor shall take all reasonable measures to counter normal adverse weather, including but not limited to, working overtime, increasing crew size and accelerating the work to assure adherence to the Project Schedule or as deemed necessary by Contractor.

(h) Federal contracts include a clause requiring Federal contractors and subcontractors (in an amount greater than \$1,000.00 on federal contracts) to use the E-Verify program to confirm employees' eligibility to work on those projects. If this is applicable to your subcontract, you agree to and certify that you will use this program as required by law and that failure to do so places you in default on this subcontract and you will defend and indemnify contractor from all liabilities there from.

**10.** (a) The Subcontractor may be ordered in writing by the Contractor, without invalidating this Contract, to make changes in the Work within the general scope of this Contract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Contract, the Contract Sum and the Contract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Contract Documents and this Contract.

(b) Subcontractor shall submit clarifications pertaining to the Contract Documents in the form of a REQUEST FOR INFORMATION (RFI) in the manner provided by the Contract Documents or as instructed by the Contractor. REQUEST FOR CHANGE(S) (RFC) shall be submitted on a RFC FORM and shall be referenced to the appropriate RFI response, if applicable.

(c) The Subcontractor shall make all claims for additional cost, extensions of time, damages for delays, or any other causes to the Contractor promptly in writing. A claim which will affect or become a part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made and then received by Contractor in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract but in no event later than 7 calendar days after the occurrence of the event or circumstance giving rise to the claim, cost or delay. Any such claim shall be received by the Contractor not less than two working days preceding the time by which the Contractor's claim must be made. All other claims require a written "Notice of Claim" to be received by contractor within 7 days of the time when the subcontractor first becomes aware of the event or circumstance giving rise to the claim including a detailed explanation of the issues and claims involved and an itemized listing of the amounts sought to be recovered. Failure of the Subcontractor to make such a timely claim shall act as a waiver of the claim since it may prevent the contractor and/or the Owner from mitigating the cost and expenses associated with the claim.

**11.** Subcontractor shall provide sufficient, safe and proper facilities at all times for the inspection of the work by Contractor, the Architect or their authorized representatives, and shall, within twenty-four (24) hours after receiving written notice from the Contractor to that effect, proceed to take down all portions of the work and remove from the grounds and buildings all material, whether installed or not installed, which Architect rejects as unsound or improper or which fails to conform in any way to the Contract Documents, and shall make good all such work

condemned and all other work damaged or destroyed in removing or making good such condemned work. However, Subcontractor shall not remove any other material from the building site without Contractor's written consent.

**12.** Subcontractor shall at all times supply adequate tools, appliances and equipment, a sufficient number of properly qualified workmen and sufficient amount of materials and supplies of proper quality to perform the work efficiently and promptly. Subcontractor shall also promptly pay for all materials purchased, pay all workmen each week, and at Contractor's request, shall obtain and furnish to Contractor, on a weekly basis, signed receipts from all workmen, showing the date of payment, the total amount paid, the number of hours charged and paid, the days on which said work was performed, the classification of the labor so paid, and the rate of wage per hour paid. If Contractor so requests, Subcontractor shall submit to Contractor each week a reasonable number of copies of the payroll records certified by Subcontractor.

**13.** (a) Subcontractor shall comply with all federal, state and municipal laws, codes, regulations and ordinances applicable to the Project and Subcontractor's work, including the payment of all fees, licenses, taxes, including sales and use taxes, and all taxes and contributions imposed or required by law for any employment insurance, pensions, old age retirement funds, or other employment benefits.

(b) Subcontractor is solely liable for all taxes and contributions required of the Contractor or Subcontractor by the Federal Social Security Act and the unemployment compensation law or any similar law of any state, in respect to the employees of Subcontractor in the performance of its work. If Subcontractor fails to pay such taxes or make such contributions, Contractor may, at its option, pay or reserve for payment such taxes and contributions and deduct the amount paid from any payments due or to become due Subcontractor. Subcontractor agrees to protect, hold harmless, defend and indemnify Contractor against any and all claims, damages, and liability arising out of this paragraph.

(c) Subcontractor shall secure and pay for any and all permits and licenses required for the performance of the work covered by this Contract.

**14.** (a) Should Subcontractor, at any time, refuse, fail or neglect to promptly and diligently carry out the work in accordance with the Contract Documents or otherwise to perform in accordance with this Contract, including failure to supply a sufficient number of properly qualified workmen or a sufficient quantity of materials of proper quality, Contractor may, at its option, after forty-eight (48) hours notice to Subcontractor with notice effective upon receipt, and without prejudice to any other remedy the Contractor may have, terminate this Subcontract and finish the Subcontractor's work by whatever method the Contractor deems expedient.

(b) Contractor shall have the right to take possession of all the materials, tools, appliances and equipment belonging to Subcontractor which are located at the site or are stored offsite and designated for use on this project. Subcontractor shall not be entitled to receive any further payment under this Subcontract until the Subcontract work is completed and payment has been received by the Contractor. Contractor is entitled to set off any damages, costs, expenses, attorney's fees, court costs, liquidated damages and other related expenses in any way arising out of the termination of this Subcontract or connected with the completion of the Subcontract work, against any payment due Subcontractor. If the unpaid balance of the Subcontract, after any such set off, exceeds the expense of finishing the Subcontractor's work, such excess shall be paid to Subcontractor, but if such expense exceeds such unpaid balance, the Subcontractor shall immediately pay the difference to Contractor. Subcontractor agrees to pay all reasonable

attorneys' fees, court costs, expert fees and related costs incurred by Contractor in collecting the amounts due it under this provision of the Contract.

(c) Upon termination of this Contract, any subcontracts or purchase orders of Subcontractor, at Contractor's sole option, may be assigned to Contractor subject to the provisions of the Prime Contract and to the prior rights of the surety, if any, obligated under bonds relating to this Contract.

**15.** (a) Subcontractor shall protect, defend, indemnify and hold harmless Contractor and any agents, affiliates, subsidiary and related companies, directors, officers, members, partners, joint venturers, subcontractors, or servants of Contractor or any other person or entity sharing equal, subordinate or superior status to the Contractor in performance of the Work from and against any and all claims, demands, losses, liabilities, costs, judgments, obligations and causes of action of every kind and character whatsoever related to or on account of bodily injury, death, property damage or loss by whomsoever made, without limit and without regard to the cause or causes thereof or the negligence of any party or parties, incident to or in connection with this subcontract, whether arising out of performance of work or services hereunder or otherwise. The obligation to defend under this paragraph shall be with competent defense counsel selected by or agreeable to the Contractor. Contractual liability coverage covering the indemnity obligations in this paragraph is required and evidence of the coverage must be shown on the insurance certificate required below.

(b) In claims against any person or entity indemnified under this paragraph 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 obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

(c) The insurance requirements listed below are minimum requirements applicable to routine operations. Additional coverage's or higher limits may be carried by Subcontractors at their discretion. Upon request, Subcontractor shall furnish to M Natal original or certified copies of insurance policies for inspection. Subcontractor shall maintain in full force and effect (1) employer's liability or workmen's compensation insurance to insure the liability of the parties hereto for injuries to, or death of, Subcontractor's employees; (2) public liability insurance covering accidents to persons and property occasioned by or arising out of Subcontractor's work; (3) insurance required by the law of the place where said work is to be done, including the risk in and about the building site, including all temporary material and structures used by Subcontractor. Subcontractor shall furnish evidence of these and other insurances as follows:

Worker's Compensation	Statutory Including coverage for claims under the U.S. Longshoreman's & Harborworkers Act and Jones Act, on Operations where such exposure exists
Employer's Liability	\$1,000,000/each accident \$1,000,000/disease-policy limit \$1,000,000/disease-each employee

General Liability (Broad Form)

Bodily Injury and Property Damage

Combined Single limit: \$1,000,000/occurrence  
\$2,000,000/project or location

Products/Completed Operation

\$1,000,000/Aggregate per project or location

Auto Liability

Bodily Injury and Property Damage

Combined Single Limit: \$1,000,000/occurrence

**The Commercial General Liability policy shall be on an occurrence basis. The General Aggregate shall be on a per project basis. The policy will name M Natal Contractor, Inc. as an additional insured and coverage as regards M Natal Contractor, Inc. and shall be primary. Subcontractor waives any rights of subrogation against Contractor.**

d) Products/Completed Operations Liability shall be maintained for a minimum period of two years after final payment and Subcontractor shall continue to provide evidence of such coverage to Contractor on an annual basis during the aforementioned period.

e) Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article shall contain a provision that coverages afforded under the policies will not be altered, canceled or allowed to expire until at least 30 days prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required herein.

f) The above Worker's Compensation insurance shall contain a waiver of subrogation in favor of Contractor, and all other entities required in the Contractor's Contract with the Owner. Employer Liability, General Liability, Auto Liability and any excess policies shall name Contractor, and all other entities required in the Contractor's Contract with the Owner, as additional insureds. The coverage shall be primary to the additional insured(s) and shall contain no special limitations on the scope of protection afforded to the Contractor. The Additional Insured coverage requirements under this contract shall not terminate with the completion of the work performed and shall remain in effect for as long as legal liability may attach due to Subcontractor's performance. Subcontractor shall also furnish Contractor with satisfactory evidence that all of said insurance has been obtained and paid for and will continue in force until the completion of said work, and if Subcontractor should sublet any of this work to a third party, Subcontractor shall see to it that such third party shall carry such insurance and furnish said evidence thereof. Subcontractor's obtaining of the insurance required by subparagraphs (c), (d) and (e) shall in no manner lessen Subcontractor's obligations as set forth in subparagraph (a) of this article, or in any of the other provisions of this Contract. Failure to comply with any of the subparagraphs of this article shall be sufficient grounds for Contractor to withhold payments for work performed under this Contract.

g) The above Commercial General Liability Insurance will include coverage for Explosion, Collapse and underground hazards where such exposure exists.

h) The above Auto Liability will include hired car and non-ownership coverage's with limits for bodily injury of not less than \$1,000,000.00 for one person and not less than \$1,000,000.00 for each occurrence and property damage limits of not less than \$50,000.00 each occurrence, or a combined single limit of not less than \$1,000,000.00 Uninsured/underinsured motorist coverage with limits of not less than \$100,000.00 is required of all independent hauling contractors who are without Worker's Compensation Insurance of their own.

i) In the event Subcontractor sublets the over-water towing of any material under this subcontract; subcontractor will insure the towing contractor has a minimum of \$5,000,000 Ocean Marine P & I coverage including Collision Towers and Cargo Legal Liability including delay or loss of business (a copy of the Cargo Legal Liability Endorsement shall be provided to Contractor prior to any hire). Contractor and Subcontractor shall be named as additional insureds and all rights of subrogation waived (a copy of these endorsements shall be provided). Any labor subcontractor hired by the towing contractor shall provide Workers Compensation including USL & H coverage and Employers Liability including Maritime Coverage of \$1,000,000. The policy shall waive all rights of subrogation against Contractor and provide an alternate employer endorsement.

**16.** The Contractor and Subcontractor waive all rights against (1) each other and any of their Subcontractors, Subsubcontractors agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate Contractors, and any of their Subcontractors, Sub-subcontractors, agents and employees for damages caused by fire or other perils to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**17.** Subcontractor agrees to defend, indemnify and hold harmless Contractor from any and all claims or suits for infringement of patents, or violation of patent rights by Subcontractor, and further agrees to pay all loss and expense incurred by Contractor by reason of any such claims or suits, including reasonable attorney's fees.

**18.** Subcontractor agrees to abide by Contractor's decision as to the allotment of all storage and working space at the building site or in the buildings thereon. Since space is very limited due to the nature and location of the project, material deliveries are to be scheduled for immediate implementation into the project or at such time as the Contractor requires.

**19.** Subcontractor shall daily clean up debris resulting from its work. Debris will be disposed of in the jobsite dumpster provided by the Contractor. If Subcontractor fails or refuses to carry out this function, Contractor, at its sole discretion, may perform the clean-up work on Subcontractor's behalf and backcharge Subcontractor the cost at a rate of \$40.00 per hour, plus applicable equipment charges.

**20.** As a condition for receiving any payments hereunder, the Subcontractor shall submit to the Contractor a schedule of values allocated to the various parts of the Work of the Contract, aggregating the Contract Sum, made out in such detail as the Contractor and Subcontractor may

agree upon or as required by the Owner, and supported by such evidence as the Contractor may direct. In applying for payment, the Subcontractor shall submit statements based upon this schedule. The cost breakdown shall reflect any sequencing, phasing and milestones associated with work to be performed.

21. (a) Contractor agrees to pay Subcontractor for said work the sum of **Seven thousand eight hundred twenty five dollars (\$7,825.00)** subject to additions and deductions as herein provided, and such sum shall be paid by Contractor to Subcontractor as the work progresses in monthly installments as follows:

**(b) On the twenty-fifth day of each month, Subcontractor shall present to Contractor a properly documented application for payment in the amount of ninety (90%) percent of the value of the work completed during the pay period. If the twenty-fifth of the month falls on a Saturday or Sunday, the payment application is to be received on the previous Thursday. Should the twenty fifth fall on a holiday, the payment application is to be received the day before. The work in progress may be projected forward though the last day of the month. All projections must be reasonable and are subject to review and approval by Contractor, Architect and Owner. Pending approval by the Owner and Contractor, payments will normally be made to Subcontract within seven (7) days of Contractor's receipt of payment from the Owner.**

(c) To avoid delay to your payment, you should insure that your application for payment with required duplicates are properly completed, has all required supporting data attached and is received by our job office by the appropriate day of the month. Any application which is received incomplete will be returned to be resubmitted within 24 hours or it will not be processed until the following pay period. All applications for payment shall be in accordance with the General Conditions. All Pay applications must reference M Natal's job number and subcontract number.

(d) The term "application for payment is properly completed shall include the following subcontractors certification statements, which must be clearly stated on each and every application for payment and signed by an authorized representative of the Subcontractor. Failure to comply fully with this requirement shall be sufficient grounds for M Natal to reject the application(s) for payment and to withhold payment(s) for work performed under this contract.

## **SUBCONTRACTOR'S CERTIFICATION STATEMENT AND WAIVER OF CLAIMS**

***SUBCONTRACT NUMBER*** \_\_\_\_\_

***APPLICATION FOR PAYMENT #*** \_\_\_\_\_ ***FOR THE AMOUNT***  
***OF*** \_\_\_\_\_

*The undersigned representative of Subcontractor recognizes (1) that Contractor will rely on the following certification as a basis for making the requested payment, and (2) that making a false certification in these circumstances can subject the person certifying to criminal penalties. In that light, the undersigned representative of Subcontractor certifies he (or she) is personally familiar with the project and its current status, and has checked the progress of the work, and the status of Subcontractor's account, to ensure that this certification is accurate. And Subcontractor, through its undersigned representative, certifies (a) that the Work covered by the Application for Payment has been completed in accordance with the Contract Documents; (b) that all materials shown as stored on site are, in fact, stored on site; and, (c) that Subcontractor has paid its subcontractors,*

*laborers and suppliers all amounts due them for work, labor, equipment and materials furnished to this Project which were included in previous Certificates for Payment.*

*Subcontractor, by executing this certification, also waives all claims, including, but not limited to, any statutory claims, liens and/or privileges which in any way arise out of work, labor, equipment and materials furnished by Subcontractor in connection with the Project up through the date of the previous Certificate of Payment, except those claims which were previously made in writing, remain unsettled and are specifically identified below:*

**SUBCONTRACTOR:** \_\_\_\_\_

**Unsettled Claims documented in writing:**      **Date:** \_\_\_\_\_  
**Subject:** \_\_\_\_\_

**Date:** \_\_\_\_\_      **Subject:** \_\_\_\_\_

**Date:** \_\_\_\_\_      **Subject:** \_\_\_\_\_

**Witnesses:** \_\_\_\_\_      **Date:** \_\_\_\_\_

\_\_\_\_\_      **By:** \_\_\_\_\_

**e) The executed Contract, Safety Policy, Equal Opportunity Supplement, Certificate of Insurance and Bond Form (if required) must be returned to the Contractor. Also insure that renewal insurance certificates are promptly provided. No payment will be made until all documents are properly completed and delivered to the Contractor.**

**f) Subcontractor's acceptance of interim or final payments hereunder shall constitute full and complete payment and settlement of all amounts due Subcontractor under this contract and a waiver of claims by Subcontractor except those claims previously made in writing and identified by Subcontractor as unsettled.**

**22.** A certificate of payment, a progress payment or partial or complete beneficial occupancy of the Project by Owner shall not constitute acceptance of Subcontractor's work which is not in accordance with the Contract Documents.

**23.** Contractor, at its sole discretion, has the right to object to any workmen and/or material men employed by Subcontractor and may order Subcontractor to replace such workmen and/or material men upon request.

**24.** (a) Subcontractor agrees to turn said work over to Contractor in good condition and free and clear from all claims, encumbrances, privileges and liens for labor, services, or materials, and to protect and save harmless Contractor and Owner from all claims, encumbrances, privileges and liens arising out of the performance of the Work and all maintenance required by the Contract Documents, and should Subcontractor, during the progress of said Work, or at any time thereafter, fail to pay for all labor, services and materials used or purchased for use in the prosecution of said Work, Contractor may, at its option, and without notice to Subcontractor, pay all such claims and backcharge the amounts thereof to Subcontractor. In the event suit is filed by any person, firm or corporation asserting a claim, privilege or lien for labor, services or materials used or purchased for use in the work covered by this Contract, Subcontractor will, at his own

cost and expense, including attorney's fees, defend, indemnify and hold harmless Contractor and pay any judgment rendered therein

(b) Subcontractor agrees to guarantee its work against all defects in materials or workmanship, as required by the Contract Documents.

**25.** (a) Subcontractor shall furnish a surety bond, if so required by Contractor at Contractor's expense, payable to Contractor in a sum equal to the subcontract amount and any adjustment thereto and in the form attached hereto, with surety satisfactory to Contractor, for the faithful performance of this Contract, and for the payment of all persons furnishing labor, services or materials used or purchased for use in the work covered by this contract.

(b) If the Subcontractor is unable to furnish a Performance and Payment Bond, if requested to do so, the Subcontractor at the request of the Contractor, shall consent to a joint check agreement with all major vendors and sub-subcontractors to ensure prompt payments. Refusal to enter into such agreement(s) is sufficient grounds for withholding payments to Subcontractor and/or terminating Contract. Subcontractor will be charged a reasonable fee for joint check invoice processing.

**26.** Subcontractor agrees and consents to join in with, assist, and defend Contractor in any arbitration or mediation asserted by Owner where the work performed or materials supplied by Subcontractor pursuant to this Contract is at issue in such arbitration or mediation. Subcontractor also agrees and consents to submit to arbitration any controversy or claim arising out of or related to the Contract, or the breach thereof, solely at the option of Contractor, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Any judgment upon the award rendered by the arbitrator or arbitrators in any such arbitration whether asserted by Owner, Contractor, or Subcontractor may be entered in any court having jurisdiction thereof. Further, this agreement to arbitrate shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

**27.** Subcontractor shall not sublet, assign or transfer this contract or any part thereof without Contractor's written consent.

**28.** a) Should Contractor employ an attorney to enforce any of the provisions hereof, or to protect its interest in any matter arising under this Contract, or to collect damages for the breach of this Contract, or to prosecute or defend any suit resulting from this Contract, or to recover on the surety bond given by Subcontractor under this Contract, Subcontractor and his surety, jointly and severally, agree to pay Contractor all reasonable costs, charges, expenses and attorney's fees expended or incurred therein.

b) Subcontractor further agrees that any arbitration or litigation arising out of this Contract shall be filed and venue is proper in St. Tammany Parish, State of Louisiana.

**29.** Subcontractor and M Natal hereby agree that M Natal be and hereby is designated as the statutory employer of Subcontractor's direct and statutory employees, pursuant to La.R.S.23:1061(A)(3). Subcontractor and M Natal further agree that the services required of Subcontractor and its direct and statutory employees pursuant to this Agreement, are an integral part of and essential to M Natal ability to generate goods, products and services.

**30.** (a) Attached to this Contract is an Equal Employment Opportunity Policy Statement, which is made an inherent part of this Contract. In addition, it is the policy of Contractor to assure

that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, handicapped or veteran status. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training. Reasonable accommodations will be provided whenever possible in an effort to advance handicapped individuals and veterans in employment related opportunities.

31. This Contract includes the following additional terms and conditions:

**1.) ALL APPLICATIONS FOR PAYMENT MUST BE RENDERED SHOWING COMPLETE SUBCONTRACT NUMBER.**

**2.) THE SIGNING OF THIS CONTRACT VOIDS ALL PREVIOUS AGREEMENTS, I.E., QUOTATIONS, SCOPE, COMPENSATION, TERMS, AND SCHEDULES.**

32. This Contract and the Contract Documents, insofar as they relate in any part or in any way to the Work undertaken herein, represents the entire and integrated agreement between the parties hereto, and supersedes prior negotiations, representations or agreements, either written or oral, and any additions or changes to this Contract shall be in writing.

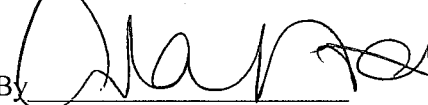
**33. By signing this Contract, Subcontractor certifies that it and its lower tier subcontractors possess a current contractor's license issued by the State of Louisiana if required by applicable law.**

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first above written.

In presence of

\_\_\_\_\_

**M NATAL CONTRACTOR, INC.:**

By 

**ANGELA FAYARD  
SECRETARY**

**GULF COAST ELECTRIC**

By \_\_\_\_\_