

**FLINTCO, LLC
SERVICES SUBCONTRACT AGREEMENT**

This Agreement is entered into this 29th day of January in the year 2018 by and between **FLINTCO, LLC**, 2179 Hillshire Circle, Memphis, TN 38133-6074, referred to in this Agreement as the **CONTRACTOR**, and the

SERVICES SUBCONTRACTOR: XXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXX XXXXXX, XX XXXXXX
(Name and Address)

PROJECT: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXX XXXXXXXXXXX, XX XXXXXX; Project Number XXXXXX
(Name and Address; Project Number)

OWNER: XXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXX XXXXXX, XX XXXXXX,
(Name and Address)

ARCHITECT/ENGINEER: XXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXX XXXXXX, XX XXXXXX
(Name and Address)

Notice to the parties shall be given at the above addresses.

1. SERVICES The Services Subcontractor shall perform the Services for the Project set forth in Exhibit A in accordance with applicable laws, regulations and professional standards.

2. TEAM RELATIONSHIP The Contractor and the Services Subcontractor agree to proceed with the performance of the Services required for the Project on a basis of mutual trust, good faith, and fair dealing, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient and economical manner. This Paragraph shall not be construed to create a fiduciary relationship between the Contractor and the Services Subcontractor.

3. EXTENT OF AGREEMENT This Agreement represents the entire and integrated agreement between the Contractor and the Services Subcontractor and supersedes all prior negotiations, representations and agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Contractor and Services Subcontractor and not for the benefit of any third party except to the extent expressly provided in this Agreement.

4. COMPENSATION As full compensation for the Services provided under this Agreement, Contractor shall compensate the Services Subcontractor on the following basis:

5. INSURANCE Before commencing the performance of its Services, and as a condition of payment, the Services Subcontractor shall purchase and maintain insurance that will protect it from the claims arising out of its operations under this Agreement, whether the operations are by the Services Subcontractor, or any of its consultants or subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The Services Subcontractor shall maintain at least the limits of liability in a company satisfactory to the Contractor as set forth in Exhibit B.

6. INDEMNITY To the fullest extent permitted by law, the Services Subcontractor shall defend, indemnify and hold harmless the Contractor to the same extent Contractor is obligated to defend, indemnify and hold harmless the Owner. In the absence of such Owner-required defense and indemnification, the Services Subcontractor shall defend, indemnify and hold harmless the Contractor, the Contractor's other subcontractors, the Architect/Engineer, the Owner and their agents, consultants, members and employees (the Indemnitees) from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, costs and expenses for bodily injury and property damage that may arise from the performance of the Services to the extent of the negligent acts or omissions by, or the fault of, the Services Subcontractor, its sub-subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts or omissions any of them may be liable. The Services Subcontractor agrees to purchase and maintain contractual liability insurance covering its obligations in this article. These obligations shall not be interpreted to reduce or negate any other rights or obligations of indemnity otherwise existing with regard as to any party or person described in this Article.

7. INFORMATION The Contractor shall provide the Services Subcontractor with the Project documents as listed in Exhibit D and/or other Project information requested in writing by the Services Subcontractor. The Contractor shall provide timely notice to the Services Subcontractor of changes made to the documents, plans or the Project.

8. ACCESS The Contractor shall provide the Services Subcontractor with reasonable access to the Project site so as to assist the Services Subcontractor in the performance of its Services.

9. REPRESENTATIVES Contractor's Representative is . Services Subcontractor's Representative is XXXXXXXXXXXXXXXXXXXX. Each Representative shall have authority to bind its respective party to all decisions and actions required under this Agreement.

10. TIME Time is of the essence for both parties. The Services Subcontractor shall provide all Services in conformance with the most

r e c e n t P r o j e c t s c h e d u l e .

11. DELAYS If the progress or completion of the Project is delayed by reason of any fault, neglect, error or omission of the Services Subcontractor, the Services Subcontractor shall compensate the Contractor for and indemnify it against all costs, expenses, liabilities or damages which may accrue as a result of such delay. In addition, the Services Subcontractor shall provide Services at its own cost, including overtime costs required to make up lost time in the schedule delays plus expenses as are necessary to make up for time lost by the Contractor because of such delay.

12. PAYMENTS The Services Subcontractor shall submit to Contractor monthly applications for payment for Services with sufficient supporting detail. Contractor shall pay approved amounts to Services Subcontractor within thirty (30) days of receipt of application of payment. Contractor shall have the right to withhold from any payment due or to become due an amount sufficient to protect Contractor from loss that may result from Services Subcontractor being in default of this Agreement. Payment of the amount withheld shall be made when the grounds for withholding have been removed.

13. SAFETY The Services Subcontractor has established and maintains written programs and procedures for the safety of its employees, consultants and contractors, and specifically disclaims any authority over or responsibility for the safety of personnel engaged in performance of the Services at the Project site except that of the Services Subcontractor's employees, consultants and contractors. While at the Project site, the Services Subcontractor's employees, consultants and contractors shall comply with all safety requirements and procedures of the Contractor. Each party to this Agreement shall indemnify the other party from and against fines or penalties imposed as a result of safety violations, but only to the extent that such fines or penalties are caused by its failure to comply with applicable safety requirements.

14. IMMIGRATION COMPLIANCE Services Subcontractor represents and warrants to the Contractor that the Services Subcontractor is in compliance with, and shall remain in compliance with, the provisions of the Immigration Reform and Control Act of 1986 (The "Act") and all other Federal, State, and/or local immigration statutes/ordinances, as applicable, including, but not limited to the provisions of the Act prohibiting hiring and continued employment of unauthorized aliens, requiring verification and record keeping with respect to identity and eligibility for employment and prohibiting discrimination on the basis of national origin, United States citizenship, or intending citizen status. The Services Subcontractor agrees to indemnify the Contractor and to hold the Contractor harmless from all liability, including liability for interest and penalties, the Contractor incurs with results from or is attributable to the Services Subcontractor's failure to comply with any provisions of the Act, and or applicable Federal, State, and/or local immigration statute/ordinance, including reimbursing the Contractor any monies expended by the Contractor in participating in or responding to any investigation/suit/civil or criminal immigration matter involving the Services Subcontractor. As it relates to immigration compliance, the Services Subcontractor shall be responsible for completing any and all required documentation in accordance with requirements put forth by the Owner, Contractor or applicable law.

15. WAIVER OF CONSEQUENTIAL DAMAGES To the extent the agreement between the Owner and the Contractor provides for a mutual waiver of consequential damages by the Owner and the Contractor, the Contractor and the Services Subcontractor waive claims against each other for any consequential damages that may arise out of or relate to this Agreement. Similarly, the Services Subcontractor shall obtain from its consultants and contractors mutual waivers of consequential damages that correspond to the Services Subcontractor's waiver of consequential damages herein. To the extent applicable, this mutual waiver applies to consequential damages due to termination by the Contractor or the Owner in accordance with this Agreement or the agreement between the Owner and the Contractor.

16. INITIAL DISPUTE RESOLUTION If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions between corporate officers of the Contractor and the Services Subcontractor. If the dispute cannot be resolved through direct discussions, the parties shall participate in mediation under the Construction Industry Mediation Rules of the American Arbitration Association before recourse to any other form of binding dispute resolution. The location of the mediation shall be the location of the Project. Once a party files a request for mediation with the other party and with the American Arbitration Association, the parties agree to commence such mediation within thirty (30) calendar days of filing of the request. Either party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person to the other party and the mediator. Engaging in mediation is a condition precedent to any other form of binding dispute resolution.

17. WORK CONTINUATION AND PAYMENT Unless otherwise agreed in writing, the Services Subcontractor shall continue the Services during any dispute resolution proceedings. As the Services Subcontractor continues to perform, the Contractor shall continue to make payments in accordance with this Agreement.

18. MULTIPARTY PROCEEDING To the extent permitted by Contract Documents, all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. To the extent disputes between the Contractor and the Services Subcontractor involve in whole or in part disputes between the Contractor and the Owner, disputes between the Services Subcontractor and the Contractor shall be decided by the same tribunal and in the same forum as disputes between the Contractor and the Owner.

19. DISPUTES BETWEEN CONTRACTOR AND SERVICES SUBCONTRACTOR In the event the provisions for resolution of disputes between the Contractor and the Owner contained in the Contract Documents do not permit consolidation or joinder with disputes of third parties, such as the Services Subcontractor, resolution of disputes between the Services Subcontractor and the Contractor involving in whole or in part disputes between the Contractor and the Owner shall be stayed pending conclusion of any dispute resolution proceeding between the Contractor and the Owner. At the conclusion of those proceedings, disputes between the Services Subcontractor and the Contractor, to the extent not resolved in the proceedings between Owner and Contractor, shall be submitted to mediation at the location

of the Project. Any disputes not resolved by mediation shall be decided by litigation at the location of the Project.

20. COST OF DISPUTE RESOLUTION The cost of any mediation proceeding shall be shared equally by the parties participating. The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by a dispute resolution procedure designated in the Contract Documents shall be entitled to recover from the other party those reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such dispute resolution process after direct discussions and mediation.

21. TERMINATION BY EITHER PARTY Either party may terminate this Agreement upon seven (7) days' written notice if the other party materially breaches its terms through no fault of the initiating party.

22. TERMINATION FOR CONTRACTOR'S CONVENIENCE Upon seven (7) days' written notice, the Contractor may, without cause, terminate this Agreement with the Services Subcontractor. If this Agreement is so terminated, the Services Subcontractor may recover from the Contractor to the extent that Owner pays the Contractor for the Services Subcontractor's Services.

23. JOINT DRAFTING The parties expressly agree this Agreement was subject to negotiation and Services Subcontractor had the opportunity to obtain the assistance of counsel in reviewing its terms prior to execution and this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

24. GOVERNING LAW The Agreement shall be governed by the law in effect at the location of the Project.

25. EXHIBITS The following Exhibits are attached to and are a part of this Agreement.

- Exhibit A:** Scope of Work
- Exhibit B:** Insurance Requirements
- Exhibit C:** Policies/Procedures Acknowledgement
- Exhibit D:** List of Drawings, Specifications and Addenda
- Exhibit E:** Schedule of Work
- Exhibit F:** Certification of Non-Segregated Facilities
- Exhibit G:** Not Used
- Exhibit H:** Not Used
- Exhibit I:** Not Used
- Exhibit K:** Not Used
- Exhibit X:** Not Used

XXXXXXXXXXXX

BY: _____

Print Name: _____

Print Title: _____

FLINTCO, LLC

BY: _____

Print Name: _____

Print Title: Authorized Representative

FLINTCO, LLC

INSURANCE REQUIREMENTS

The insurance requirements set out in this Exhibit are independent from all other obligations of the Services Subcontractor under this Services Subcontract and apply whether or not required by any other provision of this Services Subcontract.

Contractor utilizes myCOI Central, a software management system used to track certificates of insurance and to track and verify insurance coverage. Upon Service Subcontractor's receipt of this Agreement, Services Subcontractor will receive an email from RiskManagementFlintco@flintco.com. Services Subcontractor must follow the instructions contained in the email and complete the online registration. Upon completion of registration, Contractor will request proof of insurance directly from Service Subcontractor's insurance agent(s). In addition to the other terms and conditions contained herein, Services Subcontractor may not commence Work and no payments will be made, until Services Subcontractor is registered in myCOI Central and a compliant COI has been received.

Certificates of Insurance ("Certificates") are to show that the below required insurance coverages in companies with a minimum A.M. Best's Rating of A-, VIII or companies acceptable to Contractor are in force, and further provide that the insurance will not be canceled without at least thirty (30) days prior written notice.

If coverage limits specified by the Owner are required of Services Subcontractor and if greater than the coverage limits reflected on the Certificates provided to Contractor, Services Subcontractor shall immediately obtain the required higher coverage limits and furnish Contractor with replacement Certificates showing proper coverage limits and otherwise complying with this Exhibit B.

Services Subcontractor agrees to notify Contractor in writing, at least 30 days in advance, of any reduction by the insurers in required coverages or coverage limits, and in case of non-renewal, at least 30 days prior to expiration of the current policies. Services Subcontractor agrees to file new, complying Certificates showing proper renewal coverages and limits in force at least 30 days prior to expiration of the current policies.

(a) WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

- 1) Worker's Compensation and Occupational Disease Coverage in accordance with the laws of the State within whose jurisdiction the work is performed. In the event that the work of this contract falls within the purview of the United States Longshoreman's and Harbor Worker's Compensation Act, the Jones Act (Maritime Employers Liability) or the Federal Employer's Liability Act, the Services Subcontractor shall extend Worker's Compensation Insurance to provide and maintain in full force and effect during the period covered by this Services Subcontract, insurance against the liability imposed under the above-mentioned Acts as applicable and shall include borrowed servants/alternate employer endorsement. No alternative or benefit plan in lieu of statutory Worker's Compensation coverage will be acceptable even in those jurisdictions where permitted.
- 2) Employer's Liability Coverage with a minimum limit of: \$1,000,000 per accident.

Where permitted by law the Services Subcontractor waives subrogation against Welty/Flintco Joint Venture, Kilgore Flares Company, LLC, Kilgore Company and its related subsidiaries, Flintco, LLC, Welty Building Company, Ltd.

(b) COMMERCIAL GENERAL LIABILITY INSURANCE, on a coverage form at least equal to that provided under ISO CG 00 01, latest available edition, on an occurrence basis, without restricting endorsements that reduce coverage. Alternatively, the Services Subcontractor shall identify by certificate any Residential, Mold, EIFS, Silica or other major exclusions that impact the Services Subcontractor's ability to insure its risk. If the Project includes any Residential components or the proposed design includes EIFS systems, then the Services Subcontractor shall obtain appropriate endorsements acceptable to Flintco, LLC as a condition of this Services Subcontract.

The above coverage shall be written for not less than the following minimum limits:

\$1,000,000.00	GENERAL AGGREGATE
\$1,000,000.00	PRODUCTS-COMPLETED OPERATIONS AGGREGATE
\$1,000,000.00	PERSONAL & ADV. INJURY
\$1,000,000.00	EACH OCCURRENCE

Continuation of Coverage Services Subcontractor shall continue to carry Completed Operations Liability Insurance for the applicable Statute of Repose following Substantial Completion of the Work.

(c) AUTOMOBILE LIABILITY INSURANCE including the following coverages: Owned, Hired, and Non-Owned vehicles shall be written for not less than the following minimum limits: \$1,000,000.00 PER ACCIDENT

(d) UMBRELLA (EXCESS) LIABILITY INSURANCE with combined single limits for bodily injury and property damage of not less than \$5,000,000 EACH OCCURRENCE and \$5,000,000 AGGREGATE. Such coverage shall be in excess of all liability insurance required under the above Paragraphs a.2, b and c.

Welty/Flintco Joint Venture, Kilgore Flares Company, LLC, Kilgore Company and its related subsidiaries, Flintco, LLC, Welty Building Company, Ltd as well as any other parties listed as additional insureds in the Owner-Contractor Agreement shall be added as additional insureds under the Commercial General Liability insurance listed in (b) above. The coverage afforded the additional insureds must provide coverage at least equal to that of ISO form CG 20 10 for ongoing operations and CG 20 37 for completed operations. It is agreed by the parties that such coverage will be primary and non-contributory and any coverage carried by Contractor and/or Owner will be excess of Services Subcontractor's coverage. If required by the law of the state where the project is located, Contractor shall also be furnished a copy of the policy and the endorsement issued by the insurer adding Contractor and Owner and other required parties as additional insureds or other documents as necessary to lawfully effectuate such endorsement.

All insurance policies procured, paid for, and maintained by the Services Subcontractor for the work performed according to this Services Subcontract Agreement must contain a Waiver of Subrogation rights against that of the Owner, Flintco, LLC, its parent, owners, subsidiaries and affiliate companies, their agents, employees, directors, servants, and insurers. This Waiver of Subrogation is required not only with respect to property, liability, or other insurance required of Services Subcontractor in this article, but also with respect to any other property, liability, or other insurance the Services Subcontractor may have in force that may cover the work performed for this job.

Contractor shall have no duty to Services Subcontractor or to any of its insurers or their insurance agents to review any Certificates or copies of insurance furnished to Contractor or to determine whether the terms of each Certificate or policy of insurance comply with the insurance-related provisions of the Services Subcontract Documents. A failure of Contractor to detect that Services Subcontractor has not submitted Certificates, or proper Certificates, or is otherwise not in compliance with the insurance-related provisions of the Services Subcontract Documents shall not be considered a waiver or other impairment of any of Contractor's rights under such insurance-related provisions.

Number of Policies Commercial General Liability Insurance and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy. If the full required limits are arranged under a combination of Primary and Excess or Umbrella policies, all policies will be primary and non-contributory and any coverage carried by Contractor and/or Owner will be excess of Services Subcontractor's coverage.

If the Services Subcontractor fails to procure and maintain such insurance, in addition to the option of declaring Services Subcontractor in default for breach of a material provision of the Services Subcontract, Contractor shall have the right, but not the duty, to procure and maintain the same insurance, or other insurance that provides Contractor with equivalent protection, and Services Subcontractor shall furnish all necessary information to make effective and maintain such insurance. At the option of Contractor, the cost of said insurance purchased by Contractor shall be charged against and deducted from any monies then due or to become due to Services Subcontractor or Contractor shall notify Services Subcontractor of the cost thereof and Services Subcontractor shall promptly pay such cost.

(e) BUILDER'S RISK coverage including the interests of the Services Subcontractor will be provided by Contractor as identified in the Services Subcontract Documents. The Services Subcontractor is responsible for the deductible of \$25,000.

FLINTCO, LLC

POLICIES/PROCEDURES ACKNOWLEDGEMENT

The following Policies and Procedures are part of the Agreement by reference. (Obtain documents at www.flintco.com, Select Subcontractors tab and then click on Forms.)

- **Substance Free Workplace:** I acknowledge that I have obtained a copy of the FLINTCO, LLC policy statement regarding Substance Free Workplace and have read and understand my obligations under this policy.
- **Firearm, Weapons-Free Workplace Policy:** I acknowledge that I have obtained a copy the FLINTCO, LLC policy statement regarding Firearm, Weapons-Free Workplace and have read and understand my obligations under this policy.
- **Smoke-Free Workplace:** I acknowledge that I have obtained a copy of the FLINTCO, LLC policy statement regarding a Smoke-Free Workplace and have read and understand my obligations under this policy.
- **Safety Manual:** I acknowledge that I have obtained a copy of the FLINTCO, LLC Safety Manual and have read and understand my obligations regarding Job Site safety.

Services Subcontractor acknowledges obtaining a copy of and agrees to comply with Contractor policies and procedures related to Services Subcontractor performance on the jobsite._

Firm Company Name XXXXXXXXXXXX
Signature of Authorized Representative
Name of Authorized Representative (Print or Type)
Title of Authorized Representative

Return this signed form with your executed Services Subcontract.

FLINTCO, LLC

DRAWINGS, SPECIFICATIONS & ADDENDA

Specifications: XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Addenda: XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Drawings: XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

FLINTCO, LLC **SCHEDULE OF WORK**

THE CONSTRUCTION SCHEDULE WILL BE MAINTAINED AT THE PROJECT SITE AND WILL BE UPDATED AS WORK PROGRESSES.

SUBCONTRACTOR WILL GIVE INPUT REGARDING THE SCHEDULE AT REGULARLY SCHEDULED PROGRESS MEETINGS. THE SUBCONTRACTOR SHALL FOLLOW THE MOST CURRENT VERSION OF THE SCHEDULE MAINTAINED BY CONTRACTOR AND PERFORM THE SUBCONTRACT WORK ACCORDING TO THAT SCHEDULE.

CERTIFICATION OF NON-SEGREGATED FACILITIES

By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color or national origin, because of habit, local custom or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors or specific time period) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provision of Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirements for Certifications of Nonsegregated Facilities.

Notification of Nonsegregated Facilities, as required by the May 9, 1967, order on Elimination of Segregated Facilities, by the Secretary of Labor (32 Fed. Reg. 7439, May 19, 1967), must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontractor or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Note: The penalty for making false statement in offers is prescribed in 18 U.S.C. 1001.

Firm Company Name XXXXXXXXXXXX
Signature of Authorized Representative
Name of Authorized Representative (Print or Type)
Title of Authorized Representative

Date of Execution: _____