



SUBCONTRACT AGREEMENT

ARTICLE 1 AGREEMENT

This Subcontract Agreement ("Agreement") is entered into this XX day of XXXXXXXX in the year XXXX by and between **CONTRACTOR**, referred to in this Agreement as the Contractor, and the

SUBCONTRACTOR **XXXXXXXXXX**
XXXXXXXXXX
XXXX, XX XXXXX

referred to in this Agreement as the Subcontractor for services in connection with this

PROJECT NAME **XXXXXXXXXX**

PROJECT NO. XXXXX

LOCATION XXXXXXXXXXXX
XXXX, XX XXXXX

whose
OWNER **XXXXXXXXXX**
is XXXXXXXXXXXX
XXXX, XX XXXXX

and whose

ARCHITECT/
ENGINEER is **XXXXXXXXXX**
XXXXXXXXXX
XXXX, XX XXXXX

NOTICE TO THE PARTIES SHALL BE GIVEN AT THESE ADDRESSES

Article 2. Safety

2.1 The Subcontractor shall perform the Subcontract Work in a safe, reasonable, and responsible manner. The Subcontractor shall take all reasonable measures to avoid injury, loss, or damage to persons or property including but not limited to:

- .1 Employees and other persons at or near the site;
- .2 Materials and equipment stored at the site or at off-site locations for use in performance of the Subcontract Work;
- .3 All property and structures located at or near the site and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Subcontract Work; and
- .4 Environmental conditions at or adjacent to the site.

2.2 The Subcontractor shall give all notices required by Laws (as defined in this Agreement) and the Subcontract Documents and comply with Laws concerning safety or established to prevent injury, loss or damage to persons or property, including, among others, the Occupational Safety and Health Act (OSHA), and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder.

2.3 The Subcontractor shall have a written site-specific Health Safety and Environmental Loss Prevention Plan ("Safety Plan") that conforms with applicable Laws. The Safety Plan shall always be available for review at the site. The Safety Plan shall be comprehensive, apply to Subcontractor's entire scope of work, and shall require the implementation of safety measures according to the best current industry practices pertaining to the Subcontract Work and the Project, including (but not limited to) establishing safety rules, fall protection requirements, warnings and notices, safety barriers, applicable permits and authorizations, proper notice procedures to protect persons and property at the site and adjacent to the site from injury, loss or damage, and written safety reports submitted to Contractor by Subcontractor at least monthly which reports shall describe any safety concerns identified by Subcontractor at the site. The Subcontractor shall comply with and enforce its Safety Plan. Subcontractor shall also comply with Contractor's Safety Manual as referenced in Exhibit C and any site-specific safety program(s) established by the Contractor. Establishment of a safety program by the Contractor shall not relieve the Subcontractor of its safety responsibilities. The Subcontractor shall be solely responsible for its own safety, its workers' safety and the safe performance of the Subcontract Work. If discrepancies occur between the Safety Plan and Contractor's Safety Manual, the more stringent approach will be adopted. The Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project. The Subcontractor shall actively participate in any site wide safety programs and training as required by the Contractor at no additional cost.

2.4 The Subcontractor shall give adequate written notice to the Contractor in advance of carrying out any of the Subcontract Work which involves explosive or other dangerous methods of construction or hazardous procedures, materials or equipment. In no event shall such written notice be given less than three (3) business days prior to commencement of such Subcontract Work. Additional risk assessment activities such as a safety plan, permit to work, or checklist may be required by the Contractor. The Subcontractor shall use properly-qualified individuals or entities to carry out the Subcontract Work in a safe and reasonable manner so as to protect persons and property at the site and adjacent to the site from injury, loss or damage.

2.5 The Subcontractor shall designate in writing an employee who shall be on-site full-time, who shall act as the Subcontractor's designated safety representative, and who shall have the responsibility for Subcontractor's compliance with Subcontractor's Safety Plan. The name of Subcontractor's safety representative shall be submitted by Subcontractor to the Contractor in writing not less than ten (10) calendar days prior to commencing Subcontract Work at the site. Subcontractor shall provide written notice to Contractor within three (3) calendar days in the event that Subcontractor changes the identity of its safety representative.

2.6 The Subcontractor has an affirmative duty not to overload the structures or conditions at the site and shall take reasonable precautions to prevent unsafe conditions or risks of personal injury or property damage. The Subcontractor shall have the right to request, in writing, from the Contractor loading information concerning the structures at the site and Contractor will obtain such information from the Architect/Engineer and provide it to Subcontractor in a written response. The Subcontractor will not load the structure until such response is received.

2.7 The Subcontractor shall provide safety instructions to its employees on the proper operation and maintenance of equipment/tools. The Subcontractor shall not bring on site equipment/tool that is not properly guarded, in good condition, or in compliance with all required safety standards. The Subcontractor shall immediately remove from the site any equipment/tool not in compliance with all safety standards. The Subcontractor is responsible for controlling access to equipment/tools to prevent use by unauthorized persons.

2.8 The Subcontractor shall notify the Contractor immediately in writing following any incident involving personal injury, property damage, or any incident or "near miss" that could have resulted in personal injury or property damage, whether or not an injury or damage was sustained. An immediate notification shall be issued by the Subcontractor to the Contractor, followed by a detailed written report of the incident which shall be furnished to the Contractor within twenty-four (24) hours. Subcontractors may be required to participate in further investigative activities.

2.9 The Subcontractor shall stop any part of the Subcontract Work that the Subcontractor or Contractor deems unsafe until corrective measures satisfactory to the Contractor are taken. The Subcontractor agrees that it shall not have nor make any claim for damages arising from such stoppages. Should the Subcontractor fail to take appropriate corrective measures in a timely manner, the Contractor may do so at the cost and expense of the Subcontractor and may deduct the cost and expense thereof from any payments due or to become due to the Subcontractor. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility for those practices. Subcontractor shall indemnify Contractor and Owner from and against fines or penalties imposed because of safety violations caused by Subcontractor's failure to comply with safety requirements imposed by this

Agreement and by Law.

2.10 The Subcontractor shall remove from the Project any person for whose acts Subcontractor is responsible who creates an unsafe condition, or who performs work in an unsafe manner on the Project, or who fails any drug and/or alcohol test given in connection with this Project, or who violates the Contractor's safety policies or procedures. The Subcontractor agrees not to assign that person to this Project or any of the Contractor's other projects for the period of time as reasonably requested by Contractor.

2.11 By executing this Agreement, Subcontractor acknowledges it has obtained a copy of all policies and procedures listed on Exhibit C, which are incorporated into this Agreement by reference, and agrees to be bound thereby.

2.12 Subcontractor shall incorporate the entirety of this Article 2 into any and all subcontracts it enters into relating to the Subcontract Work, and require any and all sub-subcontractors to be bound thereby and comply with the obligations contained therein.

Article 3. Scope of Subcontract Work

3.1 Subcontract Work The Contractor retains the Subcontractor as an independent contractor, to provide all labor, tools, materials, equipment and services necessary or incidental to complete the part of the work which the Contractor has contracted with the Owner to provide on the Project as set forth in Exhibit A to this Agreement, consistent with the Project Schedule and in strict accordance with and reasonably inferable from the Subcontract Documents (the "Subcontract Work").

3.2 Contractor's Work The Contractor's work is the construction and services required of the Contractor to fulfill its obligations pursuant to its agreement with the Owner ("the Work"). The Subcontract Work is a portion of the Work.

3.3 Subcontractor Qualifications The Subcontractor represents it is fully experienced and qualified to perform the Subcontract Work and it is properly equipped, organized, financed and, if necessary, licensed and/or certified to furnish and execute the Subcontract Work.

3.4 Subcontract Documents The Subcontract Documents include this Agreement, the exhibits to this Agreement, all documents identified on Exhibit D, the agreement between Owner and Contractor, including all exhibits, addenda, plans, drawings, specifications, special or supplementary conditions and other documents incorporated therein ("Prime Contract"), together with all authorized changes, additions and modifications to this Agreement or the Prime Contract. Subject to the terms of this Agreement, the Subcontractor assumes toward the Contractor all the same duties, obligations, and liabilities that the Contractor assumes toward the Owner and Architect/Engineer under the Prime Contract, including but not limited to the requirements set forth in Exhibit X, if attached. Notwithstanding anything in this Agreement to the contrary, in no event shall Subcontractor's proposal or bid be a part of this Agreement nor considered a Subcontract Document. This Agreement and the rest of the Subcontract Documents are intended to supplement and complement each other and shall, where possible, be so interpreted. However, if any provision of this Agreement irreconcilably conflicts with a provision of the Subcontract Documents, the provision granting greater rights or remedies to the Contractor or imposing the greater duty, standard or responsibility or obligation on the Subcontractor shall govern. Upon request, the Contractor shall make available to the Subcontractor copies of the Subcontract Documents, although Contractor may redact financial information in the Prime Contract.

3.5 Interpretations Should Subcontractor have questions regarding the interpretation of the drawings, specifications, or any other Subcontract Document relating to the design or technical aspects of the Project, Subcontractor shall make submission of all such questions to the Contractor within three (3) business days of the Subcontractor's recognition of the occurrence of the event forming the basis of the question. Such questions shall be submitted, if necessary, by the Contractor to the Architect/Engineer for its interpretation. If there is no Architect/Engineer for this Project, the Subcontractor will comply with the Contractor's decision.

Article 4. Subcontractor's Responsibilities

4.1 Responsibilities All of the Subcontract Work is the sole and absolute responsibility of the Subcontractor. The Subcontractor agrees to perform the Subcontract Work using its best skill and judgment under the general direction of the Contractor and subject to the final approval of the Contractor, Architect/Engineer and Owner, so the Contractor may fulfill its obligations to the Owner. The Subcontractor shall furnish all labor, materials, equipment, and services, including but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding (unless otherwise specified), as are necessary for the proper performance of the Subcontract Work. In addition to all warranties required by the Prime Contract, Subcontractor warrants that all Subcontract Work, including all materials and equipment, furnished under this Agreement shall be new, unless otherwise specified, of good quality, in conformance with the Subcontract Documents, and free from defective workmanship and materials. The Subcontractor shall be responsible for taking field dimensions, providing tests, obtaining required permits and affidavits, ordering of materials and all other actions as required to perform the Subcontract Work and meet the Project Schedule.

4.2 Errors, Inconsistencies and Omissions The Subcontractor shall make a careful analysis and comparison of the drawings, specifications, other Subcontract Documents and information furnished by the Contractor, Architect/Engineer or Owner relative to the Subcontract Work. The Subcontractor shall notify the Contractor in writing within three (3) business days of the Subcontractor's discovery of any errors, inconsistencies or omissions in the Subcontract Documents. The Contractor shall instruct the Subcontractor as to the measures to be taken when such instructions are received and the Subcontractor shall comply with the Contractor's instructions. Nothing in this Paragraph shall relieve the Subcontractor of responsibility for its own errors, inconsistencies and omissions.

4.3 Site Visit and Due Diligence The Subcontractor accepts responsibility for the inspection of conditions that could affect the Subcontract Work at the Project site, and based on that inspection, acknowledges its responsibility to satisfactorily perform the Subcontract Work without additional expense to the Contractor. The Subcontractor represents it has satisfied itself and has become fully acquainted with the nature and location of the Subcontract Work, the general and local conditions, particularly those bearing upon safety

precautions, permits, inspections, code compliance, transportation, disposal, handling and storage of materials, availability of labor, materials, water, electric power, utilities, roads, weather conditions, river stages or similar physical conditions, the conformation and condition of the ground, the soil structure and subsurface conditions, obstructions, actual levels, excavating, filling in, the character of equipment and facilities needed for the prosecution of the Subcontract Work, the probability of new tax levies or increases in taxes, tariffs, duties, costs of materials, wage rates, work rules and all other matters which in any way might affect the Subcontract Work, or its cost or time for performance. The Subcontractor enters into this Agreement on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of the Contractor, the Owner or any of their respective officers, agents or employees. The Subcontractor shall promptly report any discrepancies between its observations and the Subcontract Documents to the Contractor in writing.

4.4 Increased Costs and/or Time

- .1 If the Subcontractor fails to perform the reviews, comparisons and obligations required in Paragraphs 4.2 and 4.3, and as otherwise required by the Subcontract Documents, fails to timely notify Contractor of any errors, inconsistencies or omissions it discovers, or performs Subcontract Work knowing it to be, or reasonably should have known it to be, contrary to any Laws, the Subcontractor shall pay the costs and damages to the Contractor that would have been avoided if the Subcontractor had performed those obligations and timely notified the Contractor.
- .2 The Subcontractor may assert a claim as provided in Article 6 if the Contractor's clarifications or instructions in response to requests for information are believed to require additional time or cost.

4.5 Identification of Sub-subcontractors and Suppliers Prior to commencement of the Subcontract Work, the Subcontractor must provide to the Contractor, in writing, the names, addresses, and phone numbers of all sub-subcontractors, including but not limited to designers, engineers, consultants, and other vendors, (referred to as "Sub- subcontractor" or "Sub-subcontractors") and suppliers (referred to as "Supplier" or "Suppliers") that will be supplying labor, materials, services and/or equipment in relation to the Subcontract Work under this Agreement, including the names and contact information for each of their representatives. This same information must be provided prior to adding or changing any Sub-subcontractors or Suppliers during the course of the Project. Failure of the Subcontractor to provide, in writing, any of this information to the Contractor shall be grounds for the Contractor to withhold progress payments from the Subcontractor, which funds shall be released once Subcontractor has cured the failure.

4.6 Communications Unless otherwise provided in the Subcontract Documents and except for emergencies, the Subcontractor shall direct all communications involving the Owner or Architect/Engineer related to the Project to the Contractor.

4.7 Progress Reports The Subcontractor shall furnish periodic progress reports of the Subcontract Work as requested by the Contractor including the progress of delivery of materials or equipment to be provided under this Agreement that may be in the course of preparation or manufacture.

4.8 Deliveries Deliveries to the Project site must be pre-arranged with at least twenty-four (24) hours written notice, unless received by the Subcontractor.

4.9 Meetings Unless otherwise directed in writing by Contractor, the Subcontractor shall attend all kick-off meetings, Project meetings, emergency meetings, close-out meetings and Owner or Architect/Engineer walk-throughs. Failure to provide adequate representation at such meetings as directed by the Contractor shall be a breach of this Agreement.

4.10 Submittals The Subcontractor shall promptly submit for approval to the Contractor all shop drawings, samples, product data, manufacturers' literature and similar submittals required by the Subcontract Documents. The Subcontractor shall prepare and deliver its submittals to the Contractor in a manner consistent with the Project Schedule and in such time and sequence so as not to delay the Contractor or others in the performance of the Work. When its submittals are delivered to the Contractor, the Subcontractor shall advise the Contractor in writing of any deviations in the submittals from the requirements of the Subcontract Documents and shall expressly note such deviations in its submittals. In the absence of any such notifications, the Subcontractor shall warrant that its submittals are in conformance with the Subcontract Documents. The Subcontractor shall be responsible to the Contractor for the adequacy, accuracy, completeness and conformity of its submittals to the Subcontract Documents. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Subcontract Documents unless express written approval is obtained from the Contractor and the Owner authorizing such deviation, substitution or change. In the event the Subcontract Documents do not contain submittal requirements pertaining to the Subcontract Work, the Subcontractor agrees, upon request, to submit in a timely fashion to the Contractor, for approval, any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Contractor, the Owner or Architect/Engineer.

4.11 Deliverables Subcontractor shall provide Owner and Contractor the same ownership rights or licenses in any submittals, manuals or other deliverables prepared or submitted by Subcontractor for the Project ("Deliverables") as Contractor is required to provide Owner in the Prime Contract. If the Prime Contract is silent with respect to ownership of such Deliverables, Subcontractor grants Contractor an irrevocable, transferable, perpetual license to use the Deliverables prepared or submitted by Subcontractor to construct, start-up, commission, operate, maintain or modify the Project.

4.12 Royalties, Patents and Copyrights The Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems incorporated in the Subcontract Work. The Subcontractor shall defend, indemnify and hold the Contractor and the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of Subcontractor's selection of any patented or copyrighted materials, methods, or systems for the Subcontract Work, including those shown on approved submittals. However, if the Subcontractor has reason to believe that a particular design, process or product required by the Subcontract Documents is an infringement of a patent or copyright, the Subcontractor shall promptly furnish such information to the Contractor; failure to do so shall render Subcontractor liable to the Contractor and the Owner for any loss sustained as a result. If a court prohibits future use of any materials, methods, systems, products or services incorporated in the Subcontract Work

because of an infringement, then Subcontractor shall procure the rights to use said materials, methods, systems, products or services for Contractor and Owner from the complaining party, or, subject to Contractor, Owner and Architect/Engineer approval, replace said materials, methods, systems, products or services with non-infringing materials, methods, systems, products or services.

4.13 Design Delegation

- .1 If the Subcontract Documents require the Subcontractor to provide design services, including but not limited to engineering calculations, the Subcontractor shall provide the design services necessary to satisfactorily complete the Subcontract Work. Design services provided by the Subcontractor shall be procured from licensed engineers or design professionals (the "Designer") retained by the Subcontractor as permitted by the Law of the place where the Project is located. The Designer's signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by the Designer. Shop drawings and other submittals related to the Subcontract Work designed or certified by the Designer, if prepared by others, shall bear the Subcontractor's and the Designer's written approvals when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed by the Designer. The Subcontractor shall be responsible for coordinating its design with the Project design. The standard of care for all design services performed or furnished by Subcontractor under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.
- .2 If the Designer is an independent professional, the design services shall be procured pursuant to a separate agreement between the Subcontractor and the Designer. The Subcontractor-Designer agreement shall not provide for any limitation of liability that is greater or broader than the limitation of liability between Contractor and Owner in the Prime Contract, if any, or exclusion from participation in the multiparty proceedings requirement of Paragraph 12.3. If applicable, the Designer(s) is (are) The Subcontractor shall notify the Contractor in writing if it intends to change the Designer. The Subcontractor warrants the design furnished by the Designer will be in conformance with the information given and the design concept expressed in the Subcontract Documents.
- .3 The Subcontractor shall not be required to provide design services in violation of any Law.
- .4 **Design Documents** The Subcontractor shall provide all design documents, drawings, specifications, estimates, and schedules as required and further detailed in Exhibit A to this Agreement and the Subcontract Documents.
- .5 **Ownership of Design Documents** All documents prepared for or furnished to Contractor by Subcontractor as part of its design services (including but not limited to drawings, specifications and design submittals) are instruments of service. With respect to such instruments of service, Subcontractor shall provide Owner and Contractor the same ownership rights or licenses as Contractor is required to provide Owner in the Prime Contract. If the Prime Contract is silent with respect to ownership of such instruments of service, Subcontractor grants Contractor an irrevocable, transferable, perpetual license to use the drawings, specifications, design submittals and other documents prepared by Subcontractor or its Designer for the Project. This license is for the benefit of the Contractor, Owner and their assigns, and permits Contractor and Owner to retain other design professionals who may use the drawings, specifications and other documents. Subcontractor shall not be liable for injury from Contractor's reuse of the drawings, specifications, design submittals and other documents prepared by Subcontractor or its Designer pursuant to this Section 4.13 for the Project on a separate project in which the Subcontractor is not also involved.

4.14 Coordination The Subcontractor shall cooperate with the Contractor and other subcontractors whose work may affect the Subcontract Work, participate in the preparation of coordinated drawings, and specifically note and promptly advise the Contractor in writing of any such interference by other contractors or subcontractors.

4.15 Tests and Inspections The Subcontractor shall schedule all required tests, approvals and inspections of the Subcontract Work at appropriate times so as not to delay the progress of the Work. The Subcontractor shall give proper written notice to all required parties of such tests, approvals and inspections. The Subcontractor shall bear all expenses associated with tests, inspections and approvals required by the Subcontract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity approved by the Contractor and the Owner. Certificates of testing, approval or inspection required by the Subcontract Documents or the Law shall be secured by the Subcontractor and promptly delivered to the Contractor.

4.16 Cleanup The Subcontractor shall follow the Contractor's cleanup directions, and:

- .1 at all times keep the improvements, premises, adjacent property, roads and sidewalks free from debris and unsafe conditions resulting from the Subcontract Work; and
- .2 clean each work area prior to discontinuing Subcontract Work in the area.

The Subcontractor shall deposit only waste/rubbish from this Project that is non-toxic, non-hazardous and legally permissible for waste/rubbish containers in the waste/rubbish containers on site. Upon completion of the Subcontract Work, the Subcontractor shall remove from the Project and legally dispose of all temporary structures, debris and waste and clean all surfaces, fixtures, equipment and materials pertaining to or affected by the Subcontract Work. If the Subcontractor fails to commence compliance with cleanup duties within twenty-four (24) hours after notification from the Contractor of non-compliance, the Contractor may implement such cleanup measures as it deems necessary without further notice and deduct the cost from any amounts due or to become due the Subcontractor.

4.17 Hazardous Materials The Subcontractor shall at all times comply with all Laws relating to environmental protection, toxic wastes and hazardous substances, and shall be responsible for actions and inactions of Sub-subcontractors, Suppliers, and any other agents or independent contractors of the Subcontractor. The Subcontractor shall also have the same obligations to Contractor that the Contractor has to Owner under the Prime Contract with respect to any toxic wastes or hazardous substances. The Subcontractor shall be deemed to, and shall, have included in the Subcontract Price the containment, removal, disposal or neutralization of all toxic wastes and hazardous substances created, generated or transported to or from the Project site in conjunction with the Subcontract Work. The Subcontractor will be responsible for identifying toxic wastes and hazardous substances generated, released, caused by or resulting from the Subcontract

Work and notifying the Contractor of its presence in writing as soon as it is identified. The Subcontractor will dispose of all of the Subcontractor's toxic wastes and hazardous substances, including all containers, by removing the same from the Project site immediately in the manner required by Law. The terms "toxic wastes" and "hazardous substances" shall have the same meaning as defined under federal environmental Laws and regulations. At all times the Subcontractor shall defend, indemnify and hold harmless the Contractor and Owner from any and all expenses, costs, damages, suits, fines, assessments, penalties and/or causes of action, including attorney's fees through all investigations, negotiations, hearings or appeals, relating to or arising out of the Subcontractor's failure to strictly comply with the terms of this Paragraph.

4.18 Protection of Subcontract Work The Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of others from damage caused by the Subcontractor's operations. The Subcontractor is responsible for protection of its material, equipment and installation until the final acceptance by the Owner. Should the Subcontractor, its agents, servants or employees cause damage to the Work or property of the Owner, the Contractor or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor. After giving the Subcontractor three (3) calendar days' notice in writing and Subcontractor's subsequent failure to commence and continue satisfactory correction of the damage, the Contractor may remedy the damage and deduct its costs from any amounts due or to become due the Subcontractor, unless such costs are promptly paid by insurance applicable to damages to property.

4.19 Layout Responsibility and Levels. The Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontract Work and for any loss or damage to the Contractor or others by reason of the Subcontractor's failure to lay out or perform Subcontract Work correctly. The Subcontractor shall exercise prudence so the actual final conditions and details shall result in alignment of finished surfaces.

4.20 Materials or Equipment Furnished by Others If the Subcontract Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to exercise proper care in receiving, handling, storing and installing such items, unless otherwise provided in the Subcontract Documents. The Subcontractor shall examine the items provided and report to the Contractor in writing any items it discovers that do not conform to requirements of the Subcontract Documents. The Subcontractor shall not proceed to install nonconforming items without further instructions from the Contractor. Loss or damage due to acts or omissions of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor.

4.21 Substitutions No substitutions shall be made in the Subcontract Work unless permitted in the Subcontract Documents, and only upon the Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions.

4.22 Systems and Equipment Startup If required by the Subcontract Documents, with the assistance of the Owner's maintenance personnel and the Contractor, the Subcontractor shall direct the check-out and operation of systems and equipment for readiness, and assist in the initial startup and the testing of the Subcontract Work.

4.23 Use of Contractor's Equipment The Subcontractor, its agents, employees, Sub-subcontractors or Suppliers shall use the Contractor's equipment only with the express written permission of the Contractor's designated representative and in accordance with the Contractor's terms and conditions for such use. If the Subcontractor or any of its agents, employees, Sub-subcontractors or Suppliers utilize any of the Contractor's equipment, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Contractor, including equipment which is operated by an employee of the Contractor under the direction of the Subcontractor, the Subcontractor shall defend, indemnify and be liable to the Contractor as provided in Article 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Contractor's employees operating the Contractor's equipment under the direction of the Contractor.

4.24 Compliance with Laws

- .1** The Subcontractor agrees to be bound by, and at its own costs comply with, all federal, state and local laws, building codes, rules, regulations, orders and other lawful requirements applicable to the Subcontract Work, including but not limited to OSHA, as amended, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder, and all other laws with which the Contractor must comply (collectively referred to as "Law" or "Laws").
- .2** Where prescribed by Law pursuant to direct federal contracts or federally-financed or aided contracts, or otherwise required by Law, the Subcontractor agrees the following clauses found in the Subcontract Documents or in the Code of Federal Regulations (CFR) are incorporated in this Agreement and are binding on Subcontractor as if written herein word for word: the clauses entitled "Contract Work Hours and Safety Standards Act-Overtime Compensation"; "Apprentices and Trainees"; "Payrolls and Basic Records"; "Compliance with Copeland Act Requirements"; "Withholding"; "Subcontracts"; "Contract Termination-Department"; "Disputes Concerning Labor Standards"; "Compliance with Davis-Bacon and Related Act Requirements"; and "Certification of Eligibility".
- .3** The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts or omissions by the Subcontractor, its Sub-subcontractors at any tier, Suppliers at any tier, and its and their respective employees and agents resulting from the failure to comply with Laws, including, but not limited to, any fines, penalties or corrective measures.
- .4** Subcontractor represents and warrants to Contractor that Subcontractor is in compliance with all immigration and work authorization laws, as applicable, including but not limited to laws 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. Subcontractor agrees to defend, indemnify and hold harmless Contractor from all liability, including liability for interest and penalties, Contractor incurs which results from or is attributable to Subcontractor's failure to comply with any provisions of any

applicable Laws, including reimbursing Contractor for any moneys expended by Contractor to participate in or respond to any investigation, suit, civil or criminal immigration matter involving Subcontractor. As it relates to immigration compliance, Subcontractor shall be responsible for completing any and all required documentation in accordance with requirements set forth by the Owner, Contractor or applicable Law.

- .5 This Agreement is not intended to nor does it establish a partnership between the parties, nor make one party hereto a principal, a joint or single employer, fiduciary, agent or employee of the other. It does not authorize a party hereto to make or enter into any commitment for or on behalf of the other party. Subcontractor shall be solely responsible for its own employees, including without limitation the hiring, discipline and discharging of such employees, the assignment and scheduling of such employees' work, such employees' wages, benefits and other compensation, the direct supervision and the working conditions of such employees' work, and the specific manner and methods of such employees' work.

4.25 Confidentiality Subcontractor acknowledges and agrees that, during the course of performance of this Agreement, Subcontractor may possess or have access to Contractor's confidential information, including but not limited to any information (including any technical information, experience or data) regarding Contractor's plans, processes, products, costs, equipment, operations or customers (hereinafter referred to as "Contractor Confidential Information"). Subcontractor acknowledges and agrees that it shall not disclose any Contractor Confidential Information to any person or entity, except to the extent necessary to perform the Subcontract Work or fulfill Subcontractor's obligation under this Agreement. In such event, Contractor's Confidential Information shall only be used for purposes of completing the Subcontract Work or fulfilling Subcontractor's obligations under this Agreement, and any person or entity to whom such Contractor Confidential Information is provided shall be bound by the provisions of this Paragraph. Notwithstanding the foregoing, Subcontractor shall not be prevented from disclosing or using any information that Subcontractor can show has become a part of the public domain (other than by acts or omissions of Subcontractor), has been lawfully furnished or made known to Subcontractor by third parties (other than those acting directly or indirectly for Contractor) without restriction as to its use, or was in Subcontractor's possession at the time Subcontractor entered into this Agreement and was not acquired directly or indirectly from Contractor. In addition, to the extent the Prime Contract provides for the confidentiality of any of the Owner's proprietary or otherwise confidential information disclosed in connection with the performance of this Agreement, the Subcontractor is equally bound by the Owner's confidentiality requirements. Subcontractor also agrees not to publish the existence of this Agreement or use its work on this Project in any publicity, advertising or social media, without Contractor's advance, written approval.

4.26 Labor Harmony and Relations

- .1 The Subcontractor shall be responsible for all losses and damages as a result of delay or extra work resulting from any labor difficulties caused by the Subcontractor's workforce, including but not limited to strikes, picketing or other union or labor-related activity impacting the Subcontract Work or the work of others.
- .2 If the Subcontractor becomes involved in any labor difficulties which materially impede or delay Subcontract Work, the Contractor may, without prejudice to any other right or remedy, terminate this Agreement with the Subcontractor for default, giving the Subcontractor twenty-four (24) hours written notice of its intention to do so, and may thereupon take control of the Subcontract Work covered by this Agreement and may take possession of all materials and equipment thereon, and complete the Subcontract Work, in which case the Subcontractor shall not be entitled to receive any further payments until the Subcontract Work is completed. In such event, no sum shall be deemed due or to become due except as is provided in Paragraph 11.1.3.
- .3 Additional conditions, obligations and requirements relative to labor relations on the Project are attached as Exhibit E.

4.27 Permits, Fees, Licenses and Taxes The Subcontractor shall give timely notices to authorities pertaining to the Subcontract Work, and shall be responsible for all permits, fees, licenses, assessments, inspections, testing and taxes necessary to complete the Subcontract Work in accordance with the Subcontract Documents. The Subcontract Price includes all applicable sales, excise, transportation, unemployment compensation, social security, and any other taxes or tariffs presently existing or subsequently imposed and levied, and the Subcontractor agrees to pay all of the above and to conform to all Laws in connection with such taxes. The Subcontractor further agrees to withhold taxes from the wages and salaries of all employees of the Subcontractor and pay the same in accordance with the Laws and regulations pertaining thereto. The Subcontract Price includes federal, state and municipal taxes now levied or in force or hereafter imposed on any and all tangible personal property sold or transferred to the Contractor under this Agreement and the Subcontractor agrees to pay such tax or taxes on such property, the cost of which is included in the Subcontract Price. Subcontractor's sole remedy and recovery for additional costs resulting from taxes or tariffs enacted after the date of this Agreement shall be limited to the proportional amounts Contractor recovers from Owner for such costs.

4.28 Assignment of Subcontract Work The Subcontractor shall not assign the whole or any part of this Agreement or the Subcontract Work without prior written approval of the Contractor.

4.29 Use of Artificial Intelligence Subcontractor shall promptly notify Contractor in writing if Subcontractor intends to use generative artificial intelligence ("Generative AI") to perform any portion of the Subcontract Work. To the extent Subcontractor uses Generative AI in connection with the Subcontract Work, Subcontractor represents and warrants that it will be used solely as a tool to assist human personnel and not as a substitute for appropriate professional judgment or human oversight. Subcontractor further warrants that all outputs generated through the use of Generative AI will be reviewed, verified, and approved by qualified individuals to ensure compliance with the requirements of the Subcontract Documents and all applicable Laws, regulations, and industry standards. Subcontractor's use of Generative AI or other artificial intelligence tools shall not relieve Subcontractor of any of its obligations under this Agreement. If the terms of the Prime Contract prohibit Generative AI, those terms shall control.

Article 5. Contractor's Responsibilities

5.1 Information and Services Provided by Contractor Upon Subcontractor's written request, and only to the extent the Contractor has obtained any information and services identified below from the Owner that may impact the Subcontract Work, the Contractor shall provide same to the Subcontractor. The Subcontractor shall be entitled to rely on such information and services to the same extent as the Contractor is entitled to rely on such information and services under the Prime Contract. However, the Contractor does not warrant the accuracy or completeness of such information or services.

- .1 All necessary information describing the physical characteristics of the Project site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations.
- .2 Necessary approvals, site plan review, rezoning easements and assessments, necessary permits, fees and charges required for the construction, use, occupancy or renovations of permanent structures, including legal and other services required therefore.
- .3 Such information as the Contractor has obtained relative to the Owner's financial ability to pay for the Work.
- .4 Contract Documents issued by the Owner and the Architect/Engineer.

Article 6. Project Time and Claims

6.1 Project Schedule Development The Contractor frequently uses Critical Path Method scheduling to plan the Work. The Contractor requires input from those responsible for the work to develop and update the Project Schedule throughout the entire Project. Prior to the Subcontractor starting Subcontract Work and as requested by the Contractor, the Subcontractor shall provide detailed information regarding how the Subcontractor plans to perform the Subcontract Work. This information includes but is not limited to activities, durations, relationships, costs, crew sizing, labor hours, equipment and/or material quantities associated with each schedule activity. The Subcontractor has reviewed the most updated Project Schedule as of the date of this Agreement and incorporated all costs associated therewith in its Subcontract Price. The Subcontractor shall continuously monitor the Project Schedule, including any revisions thereto, and other work on the Project, and shall execute the Subcontract Work in accordance with the requirements of the Project Schedule, as revised and updated by Contractor.

6.2 Project Schedule Updates Updated Project Schedules will be made available to the Subcontractor throughout the life of the Project. The Subcontractor shall provide detailed information regarding updates to the Subcontract Work and as requested by the Contractor. This information includes but is not limited to updated actual start dates, actual finish dates, any revised planned start dates and planned finish dates, installed quantities/percent complete information, and changes to activity scope, sequence, duration or resources. The Subcontractor will be responsible to review each Project Schedule and provide written notification of any impacts to the Subcontract Work in accordance with Section 6.6. Failure to provide written notification in accordance with Section 6.6 shall be deemed Subcontractor's acceptance of the updated Project Schedule with no impacts, and Subcontractor's waiver of its right to make a claim relating to such Project Schedule update.

6.3 Lean Practices The Contractor frequently utilizes lean practices to plan, coordinate and execute the Work and requires the Subcontractor to participate. The Subcontractor shall reasonably share information and cooperatively collaborate in the lean practice efforts as required by the Contractor. Subcontractor shall designate a representative satisfactory to the Contractor who has authority to commit resources on behalf of the Subcontractor. The representative shall attend and participate in meetings as required by the Contractor. Planning and coordination tools utilized on the Project do not constitute the Project Schedule and any representation/information contained in any planning or coordination tools utilized on the Project do not modify the Project Schedule, change any contractual requirements or relieve Subcontractor from following the terms of this Agreement.

6.4 Time is of the Essence Time is of the essence with respect to Subcontractor's prosecution of the Subcontract Work so the entire Project may be completed in accordance with the Subcontract Documents and the Project Schedule.

6.5 Priority of Work The Subcontractor shall commence the Subcontract Work promptly within five (5) calendar days after the date of the notice to proceed issued by the Contractor. The Subcontractor shall commence, continue and complete its performance of the Subcontract Work in a prompt and diligent manner in such time, order, and manner as directed by the Contractor and in accordance with the Project Schedule without hindering the work of the Contractor or any other subcontractor, and so as to ensure completion as directed by the Contractor. Whenever, in the Contractor's opinion, the Subcontractor fails to maintain its part of the Project Schedule, the Contractor may direct the Subcontractor to take all steps, such as overtime or shift work, until the Subcontract Work is in accordance with such Project Schedule. Such steps shall be without additional cost to or compensation from the Contractor. Upon Contractor's request, Subcontractor shall provide information and evidence of material orders, lead times, shipping dates and other information reasonably requested by Contractor pertaining to the Subcontract Work.

6.6 Delays, Extensions of Time and Claims

- .1 **Owner-Caused Delay** Subject to Paragraph 6.6.2, if the commencement or progress of the Subcontract Work is delayed by Owner, Architect/Engineer, or anyone for whom Owner is responsible, without the fault or responsibility of the Subcontractor, the time for the Subcontract Work shall be extended by Subcontract Change Order to the extent obtained by the Contractor from the Owner pursuant to the Prime Contract, and the Project Schedule shall be revised accordingly.
- .2 **Claims Relating To Owner** The Subcontractor agrees to make all claims for additional compensation, additional time, or any other relief for which the Owner is or may be liable in the manner and within the earlier of three (3) business days prior to the time limits provided in the Subcontract Documents for like claims by the Contractor upon the Owner, or ten (10) business days after the occurrence of the event giving rise to the claim. The Subcontractor also agrees to make such claims in sufficient time for the Contractor to initiate such claims against the Owner in accordance with the Subcontract Documents. Failure to timely submit such claims shall waive Subcontractor's right to any relief resulting therefrom. Subcontractor's proportionate share of

recovery that Contractor receives from the Owner shall be Subcontractor's sole and exclusive remedy for such claims.

- .3 Claims Relating to Contractor** The Subcontractor shall give the Contractor written notice of all claims for additional compensation, additional time, or any other relief relating to the Subcontract Work or arising under this Agreement and not included in Paragraph 6.6.2 within ten (10) business days of the occurrence of the event giving rise to the claim; otherwise, such claim shall be deemed waived. All unresolved claims, disputes and other matters in question between the Contractor and the Subcontractor not relating to claims included in Paragraph 6.6.2 shall be resolved in the manner provided in Article 12.
- .4 Written Notices** All notices required in this Section 6.6 shall include a detailed factual narrative, a detailed analysis showing entitlement and a detailed analysis of the proposed change to the Subcontract Price, Project Schedule and/or other relief sought by the Subcontractor.
- .5 Strict Compliance Required** Failure to timely and strictly comply with the notice requirements set forth in this Article shall be deemed a waiver of Subcontractor's right to pursue such claim and a waiver of any relief resulting therefrom, including but not limited to additional time or compensation. The acceptance and consideration of any claim out of time by the Contractor shall not create any precedent nor "course of dealing" between the Contractor and the Subcontractor, nor shall it waive the Contractor's right to insist on strict adherence by the Subcontractor to the claims procedures set forth in the Subcontract Documents.
- .6 Subcontractor Delays** Should the progress of the Subcontract Work be delayed, obstructed or interfered with through any fault, action or failure to act by the Subcontractor or any of its officers, agents, employees, Sub-subcontractors or Suppliers so as to cause any additional cost, expense, liability or damage to the Contractor or the Owner, including legal fees or expenses incurred in defending claims arising from such delay or seeking reimbursement and indemnity from the Subcontractor and its surety hereunder, the Subcontractor agrees to compensate and indemnify the Contractor and the Owner against all such costs, expenses, damages and liabilities. In addition, the Subcontractor, at the Contractor's direction and at the Subcontractor's own cost and expense, shall work such overtime as may be necessary to make up for all time lost in the completion of the Subcontract Work and in the completion of the Project due to such delay. If the Subcontractor fails to make up for the time lost by reason of such delay, the Contractor has the right to use other subcontractors or suppliers and to take whatever other action the Contractor deems necessary to avoid delay in the completion of the Subcontract Work and the Project, the cost of which shall be borne by the Subcontractor. In the event Subcontractor delays timely performance of the Subcontract Work or the completion of the Project, Subcontractor shall be liable to the Contractor for liquidated damages, not as a penalty, to the same extent the Contractor shall be liable to the Owner under the Subcontract Documents, and the Contractor shall have no obligation to prove actual damages. Liquidated damages, when assessed, shall not exceed the Subcontractor's proportionate share of the responsibility as determined by Contractor pursuant to a generally accepted critical path method schedule analysis for such liquidated damages. In addition to liability for its proportionate share of liquidated damages, Subcontractor shall also be liable to Contractor for, and shall indemnify and hold Contractor harmless from and against, all other damages caused by Subcontractor's delay, including but not limited to other delay damages for which Contractor may be liable to Owner, delay damages and attorneys' fees incurred by Contractor and delay damages incurred by other subcontractors or suppliers. This Paragraph shall survive any abandonment by Subcontractor or termination of this Agreement. The Contractor may offset any such damages against the remaining balance due to the Subcontractor on the Subcontract Price, if any. The foregoing remedies are in addition to any remedies set forth in Article 11.

6.7 Mutual Waiver of Consequential Damages The Contractor and the Subcontractor waive claims against each other for consequential damages arising out of or relating to this Agreement, including damages for principal office expenses and the compensation of personnel stationed there; for loss of financing, business and reputation; and for loss of profit. This mutual waiver applies to consequential damages due to termination by the Contractor or the Owner in accordance with this Agreement or the Prime Contract. Notwithstanding the foregoing, the following damages shall not be deemed "consequential damages" for the purposes of this waiver, and Contractor does not waive its right to recover such damages from Subcontractor: (1) liquidated damages and other damages for which Subcontractor is liable pursuant to Section 6.6.6, (2) any damages for which Contractor is liable to the Owner, including those arising under Paragraphs 9.1 and 9.1.1 recoverable by the Owner against Contractor under the Prime Contract and (3) any damages recoverable from Subcontractor's insurance.

Article 7. Subcontract Price and Payment

7.1 The Contractor agrees to pay to the Subcontractor for the satisfactory completion of Subcontract Work the amount of

XXXXXXXX and 00/100 Dollars (\$XX.00)

("Subcontract Price") which sum includes Performance and Payment Bonds per Exhibit G and is Tax Exempt in accordance with attached Exhibit I and is subject to additions or deductions as provided in Article 8. Any applicable alternates or unit prices are set forth in Exhibit A to this Agreement. The Subcontract Price includes all applicable sales, use, excise, transportation taxes, and any other taxes, tariffs and duties that have been or will be imposed and/or levied on the Subcontract Work (collectively, "Taxes") and the Subcontractor agrees to pay all Taxes and to conform to all applicable municipal, state and federal laws regarding collection, reporting and payment of Taxes not including those taxes provided for in Tax Exempt Certificate Exhibit I.

7.2 Schedule of Values Within ten days after execution of this Agreement, and as a condition to payment, the Subcontractor shall provide a schedule of values satisfactory to the Contractor. If cost loading is required or utilized on the Project, the Subcontractor shall align its schedule of values with its schedule activities reflecting the Work Breakdown Structure (WBS) or similar grouping of related activities. Failure to provide the schedule of values shall be grounds for the Contractor to withhold payment from the Subcontractor.

7.3 Progress Payments

- .1 Application** The Subcontractor's progress payment application for Subcontract Work performed in the preceding payment period shall be submitted for approval of the Contractor in a form acceptable to Contractor and Owner and in accordance with the schedule of values submitted pursuant to Paragraph 7.2, as well as Paragraphs 7.3.2, 7.3.3, 7.3.4, and 7.3.5. The Subcontractor's application for payment shall be itemized and supported by substantiating data as required by the

Contractor. Subcontractor shall submit a Sworn Statement in the format attached as Exhibit J, or such other form as may be requested by Owner, and shall furnish, in the form and substance requested by Contractor, all required reports and forms, lien waivers, and affidavits certifying that payment has been made for all labor, materials and services furnished in the performance of this Agreement as Contractor may require. Any payment under this Agreement is conditioned on Subcontractor's compliance with the conditions stated herein. If the Subcontractor is obligated to provide design services pursuant to Section 4.13, the Subcontractor's applications for payment shall show the Designer's fee and expenses as a separate cost item. The Subcontractor's application shall be notarized, if required, and, if allowed under the Subcontract Documents, may include properly authorized Work Change Directives. Provided the Subcontractor has complied with the requirements of this Paragraph 7.3.1, the Contractor shall incorporate the approved amount of the Subcontractor's progress payment application into the Contractor's payment application to the Owner for the same period and submit it to the Owner in a timely fashion.

- .2 Retainage** The rate of retainage shall be equal to the percentage retained from the Contractor's payment by the Owner for the Subcontract Work.
- .3 Time of Application** Unless otherwise provided for in the Subcontract Documents or directed by the Contractor, the Subcontractor shall submit progress payment applications to the Contractor no later than the 25th day of each month for Subcontract Work performed up to the end of that month indicating the Subcontract Work completed and, to the extent allowed under Paragraph 7.3.5, materials suitably stored during the payment period.
- .4 Payment Management System** Provided Exhibit P is attached to and incorporated in this Agreement, Subcontractor acknowledges and agrees that Contractor will utilize an electronic payment management system (the "System"), to manage the payment application and payment processes during the Project, as further described in Exhibit P to this Agreement. All payment applications and all supporting documents required by this Agreement as a condition of payment to Subcontractor shall be in electronic format and shall be submitted to Contractor using the System.
- .5 Stored Materials** Unless otherwise provided in the Subcontract Documents, and if approved in advance by the Owner, applications for payment may include materials and equipment not incorporated in the Subcontract Work but delivered and suitably stored at the site or at some other location agreed upon in writing. Approval of payment applications for such stored items on or off the site shall be conditioned upon submission by the Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to the Owner and the Contractor to establish the Owner's title to such materials and equipment, or otherwise to protect the Owner's and the Contractor's interest, including transportation to the site.
- .6 Time of Payments** Progress payments to the Subcontractor for satisfactory performance of the Subcontract Work shall be made, to the extent received from the Owner, no later than ten (10) calendar days after receipt by the Contractor of payment from the Owner for the Subcontract Work, or such shorter period of time as required by Law. The Contractor's receipt of payment from the Owner shall be a condition precedent to the Contractor's obligation to remit payment to the Subcontractor, and payment for the Subcontract Work will be made to the Subcontractor by the Contractor if and only to the extent such payment is received by the Contractor from the Owner. The Subcontractor hereby acknowledges that it relies on its own evaluation of the credit worthiness of the Owner, and not the credit worthiness of the Contractor, with respect to payment for the Subcontract Work, and expressly assumes the risk of non-payment by the Owner thereof, for any reason including, without limitation, insolvency of the Owner. No partial or progress payment, or certificate therefore, shall constitute acceptance or approval by the Contractor of the Subcontract Work or material for which the partial payment is made. No partial or progress payment shall constitute a waiver by the Contractor of any right to require fulfillment of all the terms of this Agreement.
- .7 Deductions** The Contractor shall have the right, but is not required, to set off against any amounts due or to become due to the Subcontractor any sum or sums owed by the Subcontractor to the Contractor under this Agreement or any other agreement between Contractor and Subcontractor. In the event of any breach by the Subcontractor of any provision or obligation of this Agreement, or in the event of or the assertion by other parties of any claim or lien against the Owner, the Contractor, the Contractor's Surety, the public improvement fund or the premises upon which the Subcontract Work was performed, which claim or lien arises out of the Subcontractor's performance of this Agreement, the Contractor shall have the right, but is not required, to retain out of any payments due or to become due to the Subcontractor an amount sufficient to completely protect the Contractor from any and all loss, damage or expense therefrom, until the claim or lien has been resolved or removed by the Subcontractor to the satisfaction of the Contractor.
 - 7.3.7.1** If any claim or lien is made or filed with or against the Contractor, the Contractor's surety (if any), the Owner, the Project, or the Project funds by any person, entity, union or fund by any sub-subcontractor or supplier, of any tier, performing under Subcontractor, Subcontractor shall defend and indemnify Contractor, Contractor's surety, and Owner from and against any and all losses, damages, lawsuits and costs, including legal fees and expenses, arising from any such claim or lien to the extent Subcontractor has received payment by Contractor when due under this Agreement. To the extent any such lien is filed, Subcontractor shall also remove the lien or secure Contractor, Contractor's Surety and Owner against loss on account thereof with an adequate surety bond, satisfactory in the discretionary judgment of the Contractor and the Owner, in the amount required by any applicable state statute, or if no statute is applicable, then in an amount equal to 150% of the lien or payment claimed, within fourteen (14) calendar days. If the Subcontractor fails to so remove or secure such liens, the Contractor may remove the liens at the Subcontractor's expense, including bond costs and attorney's fees. This Paragraph shall be applicable even in the event the Subcontractor has posted a full payment and performance bond.
 - 7.3.7.2** If the Subcontractor or any sub-subcontractor or supplier, of any tier, performing under Subcontractor causes damage to the Subcontract Work or any other work on the Project, Subcontractor shall defend and indemnify Contractor and Owner

from and against any and all losses, damages, lawsuits and costs, including legal fees and expenses, arising from any such claim or damage.

7.3.7.3 Contractor shall also have the right to retain from any payment then due or thereafter due to Subcontractor an amount which the Contractor deems sufficient to satisfy, discharge and/or defend against any such claim, lien or damage, and make good any such nonpayment, failure, damage or default.

.8 Withholding Notwithstanding any other provision, the Contractor may additionally withhold any payment or payments due or to become due to the Subcontractor if and to the extent the Contractor deems it necessary or desirable to protect itself against possible loss or damages for any reason including, but not limited to:

7.3.8.1 defective Subcontract Work not remedied to the satisfaction of the Contractor;

7.3.8.2 third-party claims or reasonable evidence indicating probable third-party claims arising from the acts or omissions of Subcontractor or any person or entity for whose acts or omissions Subcontractor is responsible;

7.3.8.3 failure or alleged failure of the Subcontractor to make payments to Sub-subcontractors or Suppliers as required;

7.3.8.4 inability, or reasonable doubt as to the ability, of the Subcontractor to complete the Subcontract Work within the required time or for the unpaid balance of the Subcontract Price;

7.3.8.5 damage to the Contractor or a separate subcontractor arising from the acts or omissions of Subcontractor or any person or entity for whose acts or omissions Subcontractor is responsible;

7.3.8.6 unsatisfactory prosecution of the Subcontract Work by the Subcontractor;

7.3.8.7 the Subcontractor's failure to provide the Contractor with insurance certificates in compliance with Exhibit B;

7.3.8.8 the Subcontractor's failure to provide the Contractor with performance and payment bonds if required by the Subcontract Documents;

7.3.8.9 the Subcontractor's failure to provide the Contractor with a written list of Sub-subcontractors and Suppliers as required by Paragraph 4.5 of this Agreement;

7.3.8.10 the Subcontractor's failure to provide the Contractor with weekly-certified payroll records if required by Subcontract Documents;

7.3.8.11 the Subcontractor's failure to provide a schedule of values pursuant to Paragraph 7.2 of this Agreement; and

7.3.8.12 payment of the fee as provided in Paragraph 7.5 of this Agreement.

7.3.8.13 The Contractor shall give the Subcontractor prompt notice following Contractor's discovery of reason to withhold any payments from Subcontractor.

7.3.9 Proper Application of Progress Payments Subcontractor agrees to promptly pay all Sub-subcontractors, workers, vendors and Suppliers of Subcontractor. Payment received by the Subcontractor shall be used to satisfy the indebtedness owed by the Subcontractor to its Sub-subcontractors, Suppliers, laborers or materialmen furnishing labor, equipment or materials for use in performing the Subcontract Work on this Project before it is used in any other manner. As a prerequisite for each payment, the Subcontractor shall provide, in a form satisfactory to the Owner and the Contractor, partial lien and claim waivers and affidavits from the Subcontractor, Sub-subcontractors and Suppliers for the completed Subcontract Work. Such waivers and affidavits may be made conditional upon payment. At any time, Contractor may demand additional written evidence of Subcontractor's capability to perform and of such payments to such persons by Subcontractor.

7.3.10 Payment Utilization In the event it appears to the Contractor that the labor, material and other bills incurred in the performance of Subcontract Work are not being currently paid, the Contractor may, but is not required to, take such steps as it deems necessary to ensure the money paid with any progress payment will be utilized to pay such bills, with such steps including, but not limited to, payment by checks made jointly payable to the Subcontractor and the Subcontractor's subcontractors and/or materialmen, or if Subcontractor fails to cooperate in effecting such joint payments, by direct payment to such parties and withholding from progress payments an amount to protect the Contractor from any and all potential or actual claims, losses, or damages, including reasonable attorneys' fees arising out of the same.

7.3.11 Payment Use Verification The Contractor shall have the right at all times to directly contact the Subcontractor's Sub-subcontractors and Suppliers to ensure the same are being paid promptly by the Subcontractor for the labor or materials furnished for use in performing the Subcontract Work.

7.4 Final Payment

.1 Application Upon acceptance of the Subcontract Work by the Owner and the Contractor and receipt from the Subcontractor of evidence of fulfillment of the Subcontractor's obligations in accordance with the Subcontract Documents and Paragraph 7.4.2, the Contractor shall incorporate the approved amount of the Subcontractor's application for final payment into the Contractor's payment application to the Owner.

.2 Requirements Before the Contractor shall be required to submit the Subcontractor's application for final payment to the

Owner, the Subcontractor shall submit to the Contractor:

- 7.4.2.1** an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontract Work for which the Owner, the Owner's property or the Contractor or the Contractor's surety might in any way be liable, have been paid or otherwise satisfied;
- 7.4.2.2** a sworn statement in the form of Exhibit J, or such other form as may be requested by Owner;
- 7.4.2.3** consent of Subcontractor's surety, if any, to final payment;
- 7.4.2.4** satisfaction of required closeout procedures;
- 7.4.2.5** at Contractor's option, a certification that insurance required by the Subcontract Documents will remain in effect beyond final payment and will not be canceled or allowed to expire without at least thirty (30) calendar days written notice to the Contractor;
- 7.4.2.6** other data, if required by the Contractor or the Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be designated by the Contractor or the Owner;
- 7.4.2.7** written warranties and equipment manuals; and
- 7.4.2.8** as-built drawings if required by the Subcontract Documents.

3 Time of Payment Provided Subcontractor has satisfied all requirements set forth in Paragraph 7.4.2, final payment of the balance due of the Subcontract Price shall be made to the Subcontractor:

- 7.4.3.1** upon complete and full satisfaction of all claims, demands, disputes and obligations of the Subcontractor arising out of or related to this Agreement, including those between Contractor and the Subcontractor and between the Subcontractor and any third party; and
- 7.4.3.2** within thirty (30) calendar days after receipt by the Contractor of final payment from the Owner for such Subcontract Work, unless a shorter time period is required by Law. Contractor's receipt of final payment from the Owner for the Subcontract Work is a condition precedent to Contractor's obligation to remit final payment to Subcontractor.

4 Waiver of Claims Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontract Work, except those claims specifically reserved by Subcontractor in writing within the time required by this Agreement and, if this Agreement does not set forth a specific time for providing written notice, before final payment is made. Contractor shall make payment of such amounts not otherwise in dispute. Contractor's making of such final payment shall in no way relieve the Subcontractor of liability for the obligations assumed under Paragraphs 10.2.1 and 10.2.2, or for faulty or defective Subcontract Work discovered after final payment. Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Subcontract Work.

7.5 Subcontractor's Assignment of Payments The Subcontractor shall not assign any money due or to become due under this Agreement, without the prior written consent of the Contractor. In the event the Subcontractor assigns, sells, encumbers or otherwise transfers its right to any money due or to become due under this Agreement to a third-party as security for any loan, financing or other indebtedness ("Assignment of Receivables"), such Assignment of Receivables shall not be effective against the Contractor until the Contractor receives written notice and proof of assignment as required by Law. If the Contractor makes any payments to an assignee/transferee or jointly to Subcontractor and an assignee/transferee pursuant to an Assignment of Receivables, Contractor shall be paid a fee equal to five percent (5%), up to a total cumulative fee of \$5,000, of each payment Contractor makes to any such assignee/transferee or jointly to Subcontractor and such assignee/transferee, which fee shall be deducted by Contractor from each such payment. The Subcontractor agrees that any Assignment of Receivables shall not relieve the Subcontractor of any of its agreements, duties, responsibilities or obligations under this Agreement and the Subcontract Documents and shall not create a contractual relationship or a third-party beneficiary relationship of any kind between the Contractor and such assignee or transferee. The Subcontractor shall defend, indemnify and hold harmless the Contractor, the Contractor's surety (if any), the Owner and their agents, consultants, members and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, expert's fees, consultant's fees, and related costs and expenses arising from (1) Subcontractor's failure to pay its Sub-subcontractors and Suppliers due to an Assignment of Receivables, and/or (2) any payment by Contractor to any assignee/transferee of Subcontractor pursuant to an Assignment of Receivables.

7.6 Sums Are Tentatively Earned All sums tentatively earned by Subcontractor by the partial or complete performance of the Subcontract Work and any balance of unearned Subcontract Price, if and when paid by Owner to the Contractor, shall constitute a fund for the purpose of (a) full and timely completion of the Subcontract Work and fulfillment of all Subcontract requirements, (b) payment of any backcharges or claims due Contractor from Subcontractor based upon this Agreement or otherwise, and (c) payment to the Sub-subcontractors, Suppliers, workers, design professionals, material and service suppliers of Subcontractor, and others who have valid and enforceable mechanic's lien claims or valid and enforceable bond claims (if the Project is bonded). Such tentative earnings shall not be due or payable to Subcontractor or anyone else claiming in Subcontractor's place and stead, including but not limited to a trustee in bankruptcy, receiver or assignee/transferee, until and unless such Subcontract Work is fully and satisfactorily completed, all Subcontract requirements are fulfilled, Contractor and such persons are fully paid and satisfied and the provisions of Paragraph 7.4.2 are fully satisfied. Subcontractor declares all funds received by Subcontractor from Contractor hereunder shall be deemed to be held by Subcontractor in trust for the benefit of those furnishing work, labor, materials, services, equipment, etc., to or through Subcontractor for the Subcontract Work.

7.7 Interest No interest shall accrue or be due the Subcontractor on any funds or payments described in Article 7, including reserves, paid within the time periods set forth herein, nor shall interest accrue or be due the Subcontractor for any funds withheld to protect the

interests of the Contractor or the Owner as set forth in this Agreement.

Article 8. Changes in Subcontract Work

8.1 Subcontract Changes The Contractor and the Subcontractor agree the Contractor may add to, deduct from, revise or otherwise modify the Subcontract Work covered by this Agreement, and any changes so made shall be by a written Change Order or Work Change Directive, setting forth in detail the changes involved. Contractor shall not make changes in Subcontract Work, whether additions, deletions or other revisions in any manner except by written Change Order or Work Change Directive. Changes in the Subcontract Work shall be performed in accordance with applicable provisions of the Subcontract Documents.

- .1 A Change Order is a written instrument prepared by the Contractor and signed by the Subcontractor stating their mutual agreement upon the change in the Subcontract Work. Any cost and schedule adjustments set forth in a Change Order shall be a full accord and satisfaction for all cumulative impacts of the underlying change, and execution of a Change Order waives Subcontractor's rights to seek any additional time or costs associated with the work set forth in such Change Order, including but not limited to any delays, inefficiencies, lost productivity, resequencing of work, trade stacking or cumulative impact.
- .2 A Work Change Directive is a written directive that instructs Subcontractor to take some immediate action in connection with the Subcontract Work. Work Change Directives are issued when there is insufficient time to agree upon a Change Order, or the parties have been unable to agree upon the value or other terms of the Change Order. Subcontractor shall immediately proceed so as not to delay the progress of the Work and in accordance with the terms of the Work Change Directive. Any impact of a Work Change Directive on the Subcontract Price or Project Schedule shall be adjusted by a Change Order.
- .3 If the Contractor requests a proposal of cost for a change, the Subcontractor shall promptly comply with such request. Subcontractor shall not implement the change or incur any costs until a Change Order is fully executed or a Work Change Directive is issued.

8.2 The Subcontractor shall not be entitled to receive additional compensation for extra work or materials or changes of any kind except to the extent the same was ordered by the Contractor or any of its authorized representatives in writing through a Change Order or Work Change Directive. The Subcontractor shall be responsible for any costs incurred by the Contractor for changes of any kind made by the Subcontractor that increase the cost of the Work for either the Contractor or other subcontractors when the Subcontractor proceeds with such changes without a Change Order or Work Change Directive.

8.3 Unknown Conditions If in the performance of the Subcontract Work the Subcontractor finds latent, concealed or subsurface physical conditions which differ

materially from those indicated in the Subcontract Documents or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist, and not generally recognized as inherent in the kind of Subcontract Work provided for in this Agreement, the Subcontractor shall notify the Contractor before those conditions are disturbed, and subject to Paragraph 6.6.2, no later than three (3) calendar days after its observance of the conditions. The adjustment which the Subcontractor may receive in Subcontract Price and/or in the Project Schedule shall be limited to the adjustment the Contractor receives from the Owner on behalf of the Subcontractor (exclusive of the Contractor's markup).

8.4 Determination by Owner or Architect/Engineer Notwithstanding any other provision, Subcontractor shall be bound by all determinations by the Owner or Architect/Engineer as to additional compensation or time extensions, and Subcontractor's relief shall be limited to the additional compensation or time extension, if any, granted by Owner or Architect/Engineer to Contractor, unless the Contractor expressly agrees, in a written Change Order, to pay such additional compensation or to grant such extension.

8.5 Adjustments in the Subcontract Price If a Change Order requires an adjustment in the Subcontract Price, and is not a change covered by Article 8.4, the adjustment shall be established by one of the following methods:

- .1 mutual acceptance of an itemized lump sum; or
- .2 unit prices as indicated in the Subcontract Documents or as subsequently agreed to by the parties; or
- .3 costs determined in a manner acceptable to the parties and a mutually-acceptable fixed or percentage fee; or
- .4 another method provided in the Subcontract Documents.

If the Parties are unable to agree on the dispositions of a change order request or Work Change Directive, Contractor will either (i) issue a Notice denying Subcontractor's request or (ii) issue a unilateral Change Order setting forth the Contractor's final determination regarding the adjustments, subject to Subcontractor's right to pursue dispute resolution.

8.6 Substantiation of Adjustment If the Subcontractor does not respond promptly or disputes the method of adjustment to the Subcontract Price, the method and the adjustment shall be determined by the Contractor on the basis of reasonable expenditures and savings of those performing the Subcontract Work attributable to the change, including, in the case of an increase in the Subcontract Price, an allowance for overhead and profit of the percentage provided in Paragraph 8.7. The Subcontractor shall maintain for the Contractor's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Change Order:

- .1 direct labor costs, including Social Security, health, welfare, retirement and other fringe benefits as normally required, state workers' compensation insurance, and state occupational disease insurance;

- .2 costs of materials, supplies and equipment, whether incorporated in the Subcontract Work or consumed, including transportation costs;
- .3 costs of renting machinery and equipment other than hand tools;
- .4 costs of bond and insurance premiums, permit fees and taxes attributable to the change; and
- .5 costs of additional supervision and field office personnel services necessitated by the change.

8.7 Adjustments shall be based on the net change in the Subcontractor's reasonable cost of performing the changed Subcontract Work plus, in case of a net increase in cost, a sum for overhead and profit as provided in the Prime Contract, but no greater than fifteen percent (15%).

8.8 Emergencies In an emergency affecting the safety of persons and/or property, the Subcontractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Subcontract Price and/or the Project Schedule on account of emergency work, provided such emergency work is not the result of Subcontractor's fault, negligence or responsibility, shall be determined as provided in this Article.

8.9 No notice to the Subcontractor's surety shall be required for any such change, addition, or omission. The Subcontractor shall promptly arrange for an increase in the penal sum of any surety bond due to additions to the Subcontract Work, unless such increase is waived by the Contractor in writing.

8.10 Incidental Changes The Contractor may direct the Subcontractor to perform incidental changes in the Subcontract Work which do not involve adjustments in the Subcontract Price or Project Schedule. Incidental changes shall be consistent with the scope and intent of the Subcontract Documents. The Contractor shall initiate an incidental change in the Subcontract Work by issuing a written order to the Subcontractor. Such written order shall be carried out promptly and is binding on the parties.

Article 9. Indemnity and Insurance

9.1 Indemnity To the fullest extent permitted by Law, the Subcontractor shall defend, indemnify and hold harmless the Contractor, Owner and any other entities Contractor is required to indemnify in the Prime Contract to the same extent Contractor is obligated to defend, indemnify and hold harmless the Owner pursuant to the Prime Contract.

- .1 Notwithstanding any indemnification obligation of the Subcontractor to the contrary set forth in Paragraph 9.1, Subcontractor shall also defend, indemnify and hold harmless the Contractor, the Contractor's surety (if any), the Owner and all of their agents, consultants, members and employees (the "Indemnitees") from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, expert's fees, consultant's fees, and related costs and expenses for bodily injury and property damage that may arise from the performance of the Subcontract Work to the extent of the negligent acts or omissions by, or the fault of, the Subcontractor, Sub-subcontractors of any tier, Suppliers 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 Subcontractor agrees to purchase and maintain contractual liability insurance covering its obligations in this Article 9. These obligations shall not be interpreted to reduce or negate any other rights or obligations of indemnity otherwise existing with regard to any party or person described in this Article.
- .2 If Owner or any other person or entity asserts a claim or institutes a lawsuit, action or proceeding against the Contractor involving, actually or allegedly, the manner or sufficiency of the performance of the Subcontract Work, the Subcontractor shall, upon written request of Contractor, promptly assume the defense of such claim, suit, action or proceeding, at Subcontractor's expense. The Subcontractor shall indemnify and save harmless the Contractor and its agents, consultants, members and employees, from and against any liability, loss, damage, or expense, including attorneys' fees, expert's fees, and consultant's fees, and related costs and expenses, arising out of or related to such claim, suit, action or proceeding. The Contractor shall also be entitled to recover any attorneys' fees, expert's fees, and consultant's fees, and related costs and expenses, as well as other costs expended in enforcing this indemnification and defense obligation.

9.2 No Limitation on Liability In any and all claims against the Indemnitees by any employee of the Subcontractor, Contractor or its agents or employees, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts or omissions the Subcontractor may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for the Subcontractor under Worker's Compensation acts, disability benefit acts or other employee benefit acts.

9.3 Subcontractor's Insurance Before commencing the Subcontract Work, and as a condition of payment, the Subcontractor shall purchase and maintain insurance that will protect it and all additional insureds from the claims arising out of its operations under this Agreement, whether the operations are by the Subcontractor, or any of its consultants, Sub-subcontractors, Suppliers, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

9.4 Insurance Requirements The Subcontractor shall maintain insurance of the types, and at least the limits of liability specified, and with a company satisfactory to the Contractor as set forth in Exhibit B. Subcontractor shall comply with all requirements for insurance set forth in Exhibit B.

9.5 Damage or loss to property which results from negligence and which is not covered by property insurance shall be promptly remedied by Subcontractor, to the extent of the negligence attributed to acts or omissions of the Subcontractor, or anyone for whose acts or omissions the Subcontractor may be liable.

9.6 Bonding The Subcontractor shall furnish to the Contractor, as named Obligees with others as Obligees at Contractor's option, surety bonds to secure the faithful performance of the Subcontract Work and to satisfy all Subcontractor payment obligations related to Subcontract Work and shall include a cost or premium for the bond in the Subcontract price. If bonds are required, they shall be furnished by a surety acceptable to the Contractor, in the full amount of the Subcontract Price, and on the forms attached as Exhibit G.

- .1 If Subcontractor fails to promptly provide any required bonds, the Contractor may terminate this Agreement for default and enter into a subcontract for the balance of the Subcontract Work with another subcontractor. All damages, costs and expenses incurred by the Contractor as a result of said termination shall be paid by the Subcontractor.

Article 10. Uncovering/Correction of Subcontract Work

10.1 Uncovering of Subcontract Work The Contractor may direct the Subcontractor to uncover portions of the Subcontract Work for inspection by the Owner or the Contractor at any time. The Subcontractor is required to uncover such work whether or not the Contractor or the Owner had requested to inspect the Subcontract Work prior to it being covered. If the Subcontractor has covered any portion of the Subcontract Work in violation of the Subcontract Documents or contrary to a directive issued to the Subcontractor by the Contractor, the Subcontractor shall uncover such work for the Contractor's or the Owner's inspection and restore the uncovered Subcontract Work to its original condition at the Subcontractor's time and expense. In any other situation this Agreement shall be adjusted by change order for the cost and time of uncovering and restoring any work which is uncovered for inspection and proves to be installed in accordance with the Subcontract Documents, provided the Contractor had not previously instructed the Subcontractor to leave the work uncovered. If the Subcontractor uncovers Subcontract Work pursuant to a directive issued by the Contractor, and such work upon inspection does not comply with the Subcontract Documents, the Subcontractor shall be responsible for all costs and time of uncovering, correcting and restoring the work so as to make it conform to the Subcontract Documents. If the Contractor or some other entity for which the Subcontractor is not responsible caused the non-conforming condition, and Subcontractor was unaware of this condition when the work was covered, the Contractor shall be required to adjust this Agreement by change order for all such costs and time.

10.2 Correction of Subcontract Work

- .1 If the Subcontract Work is not in conformance with the Subcontract Documents, the Subcontractor shall promptly correct the Subcontract Work whether it has been fabricated, installed or completed. The Subcontractor shall be responsible for the costs of correcting such Subcontract Work, any additional testing, inspections, and compensation for services and expenses of the Owner, Architect/Engineer and the Contractor made necessary by the defective Subcontract Work.
- .2 In addition to the Subcontractor's obligations pursuant to this Section 10.2, the Subcontractor agrees to promptly, but in no event later than the time period required by the Prime Contract, correct, as directed by Contractor, all Subcontract Work performed under this Agreement which proves to be defective in workmanship or materials within the longer of (i) a period of one year from the date of Substantial Completion of the Work or (ii) such period of time as may be required by the Subcontract Documents. Substantial Completion occurs as defined by the Prime Contract. In the absence of such definition, Substantial Completion of the Work, or a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Subcontract Documents so the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended.
- .3 The Subcontractor's correction of Subcontract Work pursuant to this Section 10.2 shall extend the correction period required by the Subcontract Documents. If any Subcontract Work is first performed after Substantial Completion, such correction period shall be extended by the time period between Substantial Completion and the completion of that portion of Subcontract Work. Nothing contained in this Section 10.2 shall be construed to establish a period of limitation with respect to other obligations which the Subcontractor has under the Laws or under the Subcontract Documents. Establishment of the time period as described in Section 10.2 relates only to the specific obligation of the Subcontractor to correct the Subcontract Work, and has no relationship to time within which the obligation to comply with the Subcontract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Subcontractor's liability with respect to the Subcontractor's obligations.
- .4 If the Subcontractor's correction or removal of Subcontract Work destroys or damages completed or partially completed work or property of the Owner, the Contractor or any separate contractors, the Subcontractor shall be responsible for the cost of correcting such destroyed or damaged work or property.
- .5 If portions of the Subcontract Work which do not conform with the requirements of the Subcontract Documents are neither corrected by the Subcontractor nor accepted by the Contractor, the Subcontractor shall remove such Subcontract Work from the Project site if so directed by the Contractor.

Article 11. Default, Termination and Suspension

11.1 Default

- .1 If the Subcontractor is unable, refuses or fails to supply enough properly-skilled workers, proper materials or equipment, or maintain the Project Schedule, or fails to make prompt payment to its workers, unions, Sub-subcontractors or Suppliers, or violates or disregards Laws, violates safety policies, fails in the performance of any duties, obligations or responsibilities required under this Agreement, fails to provide and maintain the insurance and bonds required hereunder, or breaches a provision of this Agreement, the Subcontractor shall be deemed in default of this Agreement. If the Subcontractor fails within seventy-two (72) hours after written notification to commence and continue satisfactory correction of the default with diligence and promptness, then the Contractor, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

- 11.1.1 supply workers, materials, equipment and facilities as the Contractor deems necessary for the completion of the Subcontract Work or any part which the Subcontractor has failed to complete or perform after written notification, and

charge the cost, including reasonable overhead, profit, attorneys' fees, costs and expenses to the Subcontractor;

- 11.1.1.2** contract with one or more additional contractors to perform such part of the Subcontract Work as the Contractor determines will provide the most expeditious completion of the Subcontract Work, and charge the cost to the Subcontractor;
- 11.1.1.3** withhold any payments due or to become due the Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of the Contractor;
- 11.1.1.4** terminate this Agreement for default; and
- 11.1.1.5** charge the Subcontractor an administrative fee of 15% of all costs incurred by the Contractor in exercising any of the above remedies.

- 2** In the event of a default affecting the safety of persons or property, or a default that cannot be cured, the Contractor may proceed with the remedies set forth in 11.1. without notice.

- 3 Termination for Default** If Contractor elects to terminate this Agreement pursuant to Paragraph 11.1.4, the Subcontractor shall (1) cease operations as directed by the Contractor in the notice; and (2) take actions necessary, or that the Contractor may direct, for the protection and preservation of the Subcontract Work; and (3) except for the Subcontract Work directed to be performed prior to the effective date of termination stated in the notice, and unless Contractor notifies Subcontractor that it intends to take assignment of a particular subcontract or purchase order, terminate all existing subcontracts and purchase orders and not enter into further subcontracts and purchase orders. The Contractor may take possession of the Subcontract Work, materials, tools, appliances and equipment of the Subcontractor at the Project site, and through itself or others provide labor, equipment and materials to prosecute, complete and correct the Subcontract Work on such terms and conditions as shall be deemed by the Contractor as reasonable, and shall deduct the cost, including all claims, charges, expenses, losses, costs, damages, and attorneys' fees, incurred as a result of the Subcontractor's failure to perform, from any money then due or thereafter to become due to the Subcontractor under this Agreement. The Subcontractor shall not be entitled to any further payments under this Agreement and no sum shall be deemed due or to become due to the Subcontractor until the Subcontract Work has been completed and accepted by the Owner, all requirements of the Subcontract Documents have been fulfilled, and payment has been received by the Contractor from the Owner. In the event the unpaid Subcontract Price exceeds the Contractor's cost of completion and any and all incidental costs, including administrative, legal and other professional fees, the difference shall be paid to the Subcontractor, but if such expenses exceed the unpaid Subcontract Price, the Subcontractor shall pay the difference to the Contractor promptly.

- 4** If it is determined or agreed that the Contractor wrongfully exercised its right to terminate for default, the termination shall be converted to a termination for convenience, and Subcontractor's sole relief shall be the recovery as set forth in Paragraph 11.4. Under no circumstances shall the Subcontractor be entitled to recovery of overhead or profit on Subcontract Work not performed.

11.2 Suspension by Contractor The Contractor may order the Subcontractor in writing to suspend or delay or interrupt all or any part of the Subcontract Work for such period of time as may be determined to be appropriate for the convenience of the Contractor. Subcontract Work when required to be phased or interrupted shall not be deemed a suspension.

- 1** The Subcontractor shall notify the Contractor in writing within ten (10) business days, or such shorter period of time as required by the Prime Contract, after receipt of the Contractor's order suspending, delaying or interrupting the Subcontract Work of the effect of such order upon the Subcontract Work. To the extent allowed the Contractor under the Prime Contract and granted by Owner, the Subcontract Price or Project Schedule shall be adjusted by Subcontract Change Order for any increase in the time or direct cost of performance of this Agreement caused by such suspension, delay or interruption.
- 2**
- 3** No claim relating to suspension shall be allowed for any costs incurred more than ten (10) business days prior to the Subcontractor's notice to the Contractor as provided in Paragraph 11.2.1.
- 4**
- 5** Neither the Subcontract Price nor the Project Schedule shall be adjusted under this Section 11.2 for any suspension, delay or interruption to the extent that performance would have been suspended, delayed, or interrupted by the fault or negligence of the Subcontractor or by a cause for which the Subcontractor would have been responsible.
- 6**
- 7** The Subcontract Price shall not be adjusted under this Section 11.2 for any suspension, delay or interruption to the extent that performance would have been suspended, delayed or interrupted by a cause for which the Subcontractor would have been entitled only to a time extension under this Agreement.
- 8** In the event the Subcontract Work suspended, delayed or interrupted is, for any reason, removed from the Contractor's or the Subcontractor's scope of work, the Contractor shall be liable to the Subcontractor solely for the reasonable value of Subcontract Work performed by the Subcontractor (as reflected in the Subcontractor's approved schedule of values) prior to such removal, including reasonable overhead and profit on Subcontract Work performed, but only to the extent the Contractor receives payment from the Owner for such Subcontract Work as provided in Paragraph 7.3.6.

11.3 Suspension by Owner Should the Owner suspend the Prime Contract or any part of Contractor's Work which includes the Subcontract Work, the Contractor shall notify the Subcontractor in writing and, upon receiving notification, the Subcontractor shall immediately suspend the Subcontract Work. In the event of Owner suspension, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and Contractor may, at its sole discretion, permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor.

11.4 Termination for Convenience The Contractor may, at any time, terminate this Agreement, in whole or in part, for the Contractor's

convenience and without cause. Upon receipt of written notice from the Contractor of such termination for the Contractor's convenience the Subcontractor shall (1) cease operations as directed by the Contractor in the notice; and (2) take actions necessary, or that the Contractor may direct, for the protection and preservation of the Subcontract Work; and (3) except for the Subcontract Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and not enter into further subcontracts and purchase orders. In the event of termination for the Contractor's convenience, the Contractor shall reimburse the Subcontractor for reasonable costs, overhead and profit it has incurred as of the date of the termination, less prior payments made, but in no event shall such amount exceed the proportionate share of the approved schedule of values for work completed, and in no event shall Subcontractor be entitled to profits or overhead on Subcontract Work not performed, materials not furnished, or any consequential losses.

11.5 Termination by Owner Should the Owner terminate the Prime Contract or any part which includes the Subcontract Work, the Contractor shall notify the Subcontractor in writing and upon written notification, this Agreement shall, unless assigned to the Owner pursuant to Paragraph 11.7, be terminated and the Subcontractor shall immediately stop the Subcontract Work, follow all of the Contractor's instructions, and mitigate all costs. In the event of Owner termination, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the Owner termination and Contractor may, at its sole discretion, permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor.

11.6 Bankruptcy

11.6.2 Termination Absent Cure If the Subcontractor files a petition under the Bankruptcy Code, enters into an assignment for the benefit of creditors, or seeks any other relief due to insolvency, the Subcontractor shall be in default and Contractor may exercise the remedies set forth in Paragraph 11.1.1 without further notice. The Subcontractor agrees it is essential to the performance of this Agreement and the overall completion of the Project that the Subcontract Work continue without interruption, and further that this Agreement shall terminate if the Subcontractor or the Subcontractor's trustee rejects this Agreement or, if there has been a default, the Subcontractor is unable to give adequate assurance that the Subcontractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

11.6.3 Interim Remedies If the Subcontractor is not performing in accordance with the Project Schedule at the time a petition in bankruptcy is filed, or at any subsequent time, the Contractor, while awaiting the decision of the Subcontractor or its trustee to either reject this Agreement or to assume this Agreement and provide adequate assurance of its ability to perform, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Project Schedule. The Contractor may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided including, but not limited to, reasonable overhead, profit and attorney's fees. The Subcontractor shall be liable for the payment of the amount by which all such costs incurred exceed the unpaid balance of the Subcontract Price.

11.7 Contingent Assignment of Subcontract The Contractor's contingent assignment of the Subcontract to the Owner, as provided in the Prime Contract, is effective when the Owner has accepted the assignment by notifying the Subcontractor in writing. This contingent assignment is subject to the prior rights of a surety that may be obligated under the Contractor's bond, if any. The Subcontractor consents to such assignment and agrees to be bound to the assignee by the terms of this Agreement.

11.8 Survival The amount to be paid to Contractor pursuant to Paragraph 11.1.3, provisions pertaining to Subcontractor's warranties, Subcontractor's obligations to correct Subcontract Work, Subcontractor's insurance and bond obligations, Subcontractor's indemnity obligations, intellectual property, dispute resolution, confidentiality, and all other provisions intended by their nature to survive termination or abandonment of this Agreement, shall survive termination or abandonment of this Agreement.

Article 12. Disputes

12.1 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 company officers of the Contractor and the Subcontractor with full authority to resolve the dispute. Such direct discussions are a condition precedent to any further dispute resolution proceedings between the parties.

12.2 Work Continuation and Payment Unless otherwise agreed in writing, the Subcontractor shall continue the Subcontract Work and maintain the Project Schedule pending any dispute, including but not limited to continuing work during any dispute resolution proceedings. As the Subcontractor continues to perform, the Contractor shall continue to make undisputed payments in accordance with this Agreement.

12.3 Multiparty Proceeding To the extent permitted by Subcontract Documents, all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding.

12.4 Disputes Relating to Owner To the extent disputes between the Contractor and the Subcontractor involve in whole or in part disputes between the Contractor and the Owner, disputes between the Subcontractor and the Contractor shall be decided by the same tribunal and in the same forum as disputes between the Contractor and the Owner. Subcontractor consents to be joined in any such proceeding. In the event the provisions for resolution of disputes between the Contractor and the Owner contained in the Subcontract Documents do not permit consolidation or joinder with disputes of third parties, such as the Subcontractor, resolution of disputes between the 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. Subcontractor agrees to be bound by the procedure and final determinations in Contractor's dispute resolution with the Owner, and Subcontractor shall not be entitled to receive any greater amount from Contractor than Contractor is entitled to and actually does receive from the Owner on

account of Subcontractor's Work, less any markups or costs incurred by the Contractor and to which Contractor is otherwise entitled, and Subcontractor agrees that it will accept such amount, if any, received by Contractor from Owner as full satisfaction and discharge of such claims. Subcontractor's proportionate share of recovery that Contractor receives from the Owner shall be Subcontractor's sole and exclusive remedy for any such claims.

12.5 Disputes Between Contractor and Subcontractor

- 1** Initial Dispute Resolution If, at any time, any dispute or controversy shall arise between Contractor and Subcontractor regarding anything in any way pertaining to and/or arising under this Agreement or the Subcontract Work performed hereunder, and such controversy or dispute is not one described in Paragraph 12.4 and the dispute has not been resolved through direct discussions, the parties shall resolve their disputes pursuant to the Construction Industry Mediation Rules and Arbitration Rules of the American Arbitration Association, adjusted as set forth in this Article 12. The location of the mediation shall be the place of the Project; and shall occur within sixty (60) days of the date a request or demand is submitted to the American Arbitration Association, unless otherwise agreed by the parties. No later than fourteen (14) days prior to the mediation, each party shall serve upon the mediator and the other party its mediation position statement. No later than five (5) days prior to the mediation, each party shall serve upon the mediator and the other party a response to the other party's mediation position statement. After eight (8) hours of mediation conducted in a single day, if the matter is not resolved, each party shall submit its last, best and final offer and demand in writing to the mediator before adjourning the mediation that day ("Final Offers"). The mediator shall disclose the Final Offers to the parties.
- 2**
- 3** Expedited Dispute Resolution If the dispute or controversy involves only claims for money and the dollar amount difference as disclosed in the Final Offers is less than \$500,000, as determined by the mediator, the mediator shall immediately assume the role of arbitrator. The arbitrator shall not consider any item of evidence other than the parties' respective mediation position statements, responses, and information disclosed during the mediation, as determined in the arbitrator's discretion. Within three (3) business days after receiving the Final Offers, the arbitrator shall issue an award adopting one and only one of the Final Offers, without modification or amendment. The parties hereby agree to the conversion of the mediator to an arbitrator, and agree that the award rendered by the arbitrator shall be final and binding, and judgment may be entered upon it in accordance with applicable Law in any court having jurisdiction thereof. Each party shall bear its own costs and fees associated with the Expedited Dispute Resolution proceeding described herein.
- 4**
- 5** Dispute Resolution If the dispute or controversy involves claims other than for money or the dollar amount difference as disclosed in the Final Offers is \$500,000 or more, as determined by the mediator, the mediation shall be adjourned, and either party may submit the dispute to arbitration. The dispute or controversy shall be resolved by binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then in effect. Venue for the arbitration shall be in the city identified in Contractor's address on page 1 of this Agreement, unless otherwise mutually agreed by the parties. Subcontractor and Contractor agree that the Federal Arbitration Act shall be applicable to the arbitration contemplated by this Paragraph. The award rendered by the arbitrator or arbitrators shall be final and binding, and judgment may be entered upon it in accordance with applicable Law in any court having jurisdiction thereof.

12.6 Cost of Dispute Resolution and Prevailing Party 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 Subcontract Documents, other than an Expedited Dispute Resolution proceeding as set forth in Paragraph 12.5.2, shall be entitled to recover from the other party those reasonable attorneys' fees, costs and expenses (including but not limited to attorney's fees, expert witness fees, costs and expenses for all phases of the dispute) incurred by the prevailing party in connection with such dispute resolution process after direct discussions and mediation.

Article 13. Miscellaneous Provisions

13.1 Severability The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance. Any waiver by Contractor must be expressly provided in writing.

13.2 Titles The titles given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

13.3 Governing Law All matters relating to the validity, performance, interpretation or construction of this Agreement, or the breach of this Agreement, shall be governed by the Law in effect at the location of the Project.

13.4 Joint Drafting The parties expressly agree this Agreement was subject to negotiation and 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.

13.5 Extent of Agreement Nothing in this Agreement or the Subcontract Documents shall be construed to create a contractual relationship between persons or entities other than the Contractor and the Subcontractor. This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. No modification of this Agreement shall be binding unless the same is in writing signed by the Contractor and the Subcontractor. Any field tickets, daily reports, timesheets, delivery receipts, invoices, bills of lading, or similar documents ("Field Documentation") signed by Contractor personnel regardless of title, shall be deemed to have been signed solely for the limited purpose of acknowledging receipt of materials, equipment, or labor, or verifying factual information such as time on site or workforce counts. Such signatures shall not be construed as agreement to any terms or conditions contained in such Field Documentation, including but not limited to any provisions regarding pricing, change orders, claims, schedule impacts, indemnity, or modifications to this

Agreement. In no event shall such Field Documentation be deemed to amend, supplement, or waive any rights or obligations under this Agreement. In the event the Subcontractor commences performance prior to the execution of this Agreement, the Subcontractor acknowledges and agrees that it shall be bound by the terms and conditions of this Agreement as of the date the Subcontract Work is commenced.

Article 14. Schedule of Exhibits to the Agreement

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

- Exhibit A:** The Subcontractor's Scope of Work, including alternative or unit prices
- Exhibit B:** Insurance Requirements
- Exhibit C:** Contractor's Policies and Procedures Acknowledgement
- Exhibit D:** Specifications, Drawings and Addenda (The Subcontract Documents are identified in Article 3.4)
- Exhibit E:** Labor Relations
- Exhibit F:** Project Schedule
- Exhibit G:** Performance and Payment Bond Forms
- Exhibit I:** Tax Exemption
- Exhibit J:** Subcontractor Sworn Statement
- Exhibit P:** Payment Management System
- Exhibit T:** Source of Payments for Texas Construction
- Exhibit X:** Special Provisions

This Agreement is entered into as of the date entered in Article 1.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION THAT MAY BE ENFORCED BY THE PARTIES.

XXXXXXXXXXXXXXXXXXXX

BY: _____

Print Name: _____

Print Title: _____

Designate type of organization: _____

Organized in the State of: _____ License Number: _____

with its principal place of business at: _____

XXXXXXXXXXXXXXXXXXXX

BY: _____

Print Name: _____

Print Title: _____