# Table of Contents

**Article 1** Subcontract Documents  
1.1 Prime Contract ................................................................. 1  
1.2 Subcontract ........................................................................ 1  
1.3 Interpretation of the Subcontract Documents .................... 1  
1.4 Obligations Under the Subcontract Documents ............... 1  

**Article 2** Scope of Subcontract Work  
2.1 General ............................................................................ 1  
2.2 Subcontractor Review ........................................................ 1  
2.3 Tools and Equipment .......................................................... 1  
2.4 Permits and Licenses .............................................................. 1  
2.5 Schedule of Values and Submittals  
   A. Schedule of Values .......................................................... 1  
   B. Submittals and Logs ......................................................... 2  
2.6 Review and Updating ......................................................... 2  
2.7 As-Built Drawings and Close-Out Documents .................. 2  
2.8 Independent Contractor Status .......................................... 2  
   A. No Employee Relationship ............................................. 2  
   B. Payment of Taxes and Other Costs ............................... 2  

**Article 3** Field Conditions  
3.1 Verifying Field Conditions .................................................. 2  
   A. Site Visit ........................................................................ 2  
   B. Responsibility for Field Conditions .................................. 2  
   C. Notice of Conditions with Adverse Impact .................... 2  
   D. Presence of Hazardous Material .................................... 2  
3.2 Reference Lines ................................................................ 3  

**Article 4** Schedule Compliance  
4.1 Proceed with Diligence ....................................................... 3  
4.2 Performance Schedules ...................................................... 3  
4.3 Adequate Work Force ......................................................... 3  
4.4 Use of Site ....................................................................... 3  
4.5 Coordination .................................................................... 3  
4.6 Inspection ........................................................................ 4  

**Article 5** Delivery, Storage and Equipment  
5.1 Deliveries and Storage ....................................................... 4  
5.2 Use of Contractor Owned Equipment and Material ........... 4  
5.3 Substitution .................................................................... 5  

**Article 6** Safety  
6.1 Safety of Subcontractor Personnel ...................................... 5  
6.2 Work Area ...................................................................... 5  
6.3 Rigging & Hoisting ............................................................ 5  
6.4 Written Job Safety Plan ....................................................... 5  
6.5 Hazardous Materials .......................................................... 6  
6.6 Notice of Injury ................................................................. 6  
6.7 Job-Site Safety Compliance ............................................... 6  

**Article 7** Sub-Subcontractors and Assignment  
7.1 List of Sub-Subcontractors and Suppliers ......................... 6  
7.2 Subcontractor Payment Obligations  
   A. Prompt Payment ............................................................ 6  
   B. Removal of Liens ........................................................... 6  
7.3 Assignment ..................................................................... 6  
   A. Assignment by Subcontractor ...................................... 6  
   B. Assignment of Accounts Receivables .......................... 6  
   C. Assignment by Contractor ........................................... 7  

**Article 8** Subcontractor’s Superintendent  
8.1 On-Site Superintendent ..................................................... 7  
8.2 Daily Reports .................................................................. 7  

**Article 9** Payments  
9.1 Payment Application ......................................................... 7  
   A. Schedule of Values Form ............................................... 7  
   B. Lien Waiver and Release of Claims ............................... 7  
   C. Stored Material List and Invoice ..................................... 7  
   D. Current Sub-Supplier Notification ................................ 7  
   E. Prevailing Wage ............................................................ 7  
9.2 Progress Payments ............................................................ 7
9.3 Retainage and Decision to Withhold Payment .......................................................................................................................... 8
9.4 Final Payment ..................................................................................................................................................................................... 8
9.5 Reservation of Rights ................................................................................................................................................................. 9
Article 10 Compliance with Laws and Regulations
10.1 Labor and Materials ........................................................................................................................................................................ 9
10.2 Variance ............................................................................................................................................................................................. 9
10.3 Licenses ............................................................................................................................................................................................ 9
10.4 Equal Employment Opportunity .................................................................................................................................................. 9
Article 11 Changes in Subcontract
11.1 General ............................................................................................................................................................................................. 9
   A. Proposed Change ..................................................................................................................................................................................... 9
   B. Proposed Adjustment ............................................................................................................................................................................ 9
   C. Written Direction .................................................................................................................................................................................. 9
11.2 Change Orders .................................................................................................................................................................................. 10
11.3 Construction Change Directive ........................................................................................................................................................ 10
11.4 Minor Change in the Work ............................................................................................................................................................... 10
11.5 Unit Prices .......................................................................................................................................................................................... 10
Article 12 Dispute Resolution
12.1 Claim ................................................................................................................................................................................................. 10
12.2 Notice of Claims ................................................................................................................................................................................. 10
12.3 Continuing Contract Performance ................................................................................................................................................... 11
12.4 Claims for Additional Cost .............................................................................................................................................................. 11
12.5 Claims for Additional Time ............................................................................................................................................................... 11
   A. No Damages for Delay Against Contractor ................................................................................................................................... 11
   B. Extension of Time .................................................................................................................................................................................. 11
12.6 Claims for Consequential or Liquidated Damages .......................................................................................................................... 11
12.7 Negotiation of Claims ........................................................................................................................................................................ 11
12.8 Mediation .......................................................................................................................................................................................... 11
12.9 Mechanic’s Lien .................................................................................................................................................................................... 11
12.10 Arbitration and Litigation ................................................................................................................................................................. 11
12.11 Pass-Through Claims ........................................................................................................................................................................ 12
12.12 Attorney’s Fees and Governing Law ............................................................................................................................................ 12
Article 13 Insurance
13.1 Subcontractor’s Liability Insurance ................................................................................................................................................ 12
   A. Workers’ Compensation and Employer’s Liability Coverage .................................................................................................... 12
   B. Commercial General Liability Coverage ....................................................................................................................................... 12
   C. Business Automobile ........................................................................................................................................................................... 12
   D. Umbrella ............................................................................................................................................................................................. 12
   E. Professional Liability .......................................................................................................................................................................... 12
13.2 Builder’s Risk Insurance ................................................................................................................................................................. 13
13.3 General ............................................................................................................................................................................................ 13
13.4 Failure to Comply ............................................................................................................................................................................... 13
Article 14 Bonds .................................................................................................................................................................................. 14
Article 15 Defense and Indemnification ................................................................................................................................................... 14
Article 16 Labor Relations ........................................................................................................................................................................ 14
Article 17 Guarantees and Warranties ................................................................................................................................................... 14
Article 18 Non-Interference with Principle Relationship .................................................................................................................... 15
Article 19 Default and Termination
19.1 Event of Default ................................................................................................................................................................................ 15
19.2 Remedies ........................................................................................................................................................................................... 15
   A. Take Possession ....................................................................................................................................................................................... 15
   B. Cure ........................................................................................................................................................................................................ 15
   1. 48 Hour Notice ...................................................................................................................................................................................... 15
   2. Immediate Cure .................................................................................................................................................................................... 15
   3. Punch List or Corrective Work ......................................................................................................................................................... 15
   4. Non-Complying Work .................................................................................................................................................................... 15
   C. Terminate.................................................................................................................................................................................................. 15
   D. Damages .................................................................................................................................................................................................. 16
19.3 Termination for Convenience ............................................................................................................................................................ 16
   A. Owner .................................................................................................................................................................................................. 16
   B. Contractor ................................................................................................................................................................................................ 16
Article 20 Contract Interpretation ............................................................................................................................................................. 16
ARTICLE 1: SUBCONTRACT DOCUMENTS

1.1 Prime Contract. The Prime Contract is the construction contract between Contractor and Owner for the Project, addenda, modifications, and revisions thereto, drawings, project manuals, specifications, conditions (general, technical, supplementary, and special) and all other documents listed in or referenced by the Prime Contract. The Prime Contract is incorporated herein by reference, and is made an integral part of the Subcontract.

1.2 Subcontract. The Subcontract is the Project Agreement between Contractor and Subcontractor ("Project Agreement"), addenda, modifications and revisions thereto, all exhibits, including these Subcontract Terms & Conditions, and the Prime Contract. The Prime Contract's inclusion of any federal, state or local statutory or regulatory provisions or requirements are incorporated herein, and Subcontractor is responsible for compliance as applicable. Subcontractor acknowledges it has reviewed and examined the Subcontract, and any ambiguities and discrepancies have been clarified and/or corrected.

1.3 Interpretation of the Subcontract Documents. If Subcontractor discovers any ambiguity or discrepancy in the Subcontract relating to the Subcontract Work (as defined in Article 2), Subcontractor shall promptly notify Contractor of the same in writing. Failure to disclose such ambiguity or discrepancy, which Subcontractor discovered or should have discovered, will be remedied at Subcontractor’s sole expense. Subcontractor shall make any change in its planned, fabricated or installed work, and shall be responsible for all expenses necessary due to this failure to disclose. In the event of any conflict among Subcontract documents, the more expensive or stringent requirement shall control.

1.4 Obligations under the Subcontract Documents. Subcontractor is obligated to Contractor to the same extent that Contractor is obligated to Owner under the Prime Contract with respect to the Subcontract Work. All rights that Owner may exercise and enforce against Contractor may be exercised and enforced by Contractor against Subcontractor, including any claim for liquidated damages payable to the Owner. Subcontractor shall be bound by all decisions, directives, interpretations, and rulings of Owner or others authorized to act on behalf of Owner. In no event shall Subcontractor be entitled to greater rights or remedies against Contractor than Contractor actually obtains from Owner with respect to the Subcontract Work.

ARTICLE 2: SCOPE OF SUBCONTRACT WORK

2.1 General. The Scope of the Subcontract Work includes the work set forth in Section I of the Project Agreement, incidental work usually performed under customary trade practices by the trades to be furnished by Subcontractor, and all changes in the Subcontract Work as described in Article 11 hereof. Subcontractor shall perform the Subcontract Work in a skillful and workmanlike manner, with material and equipment being of the kind and grade necessary for the purpose intended.

2.2 Subcontractor Review.
   A. Subcontractor has fully examined the Project site and analyzed all existing surveys, test reports and schedules that could affect its performance, and acknowledges that no conditions exist that would adversely affect the progress, schedule, performance, or price of the Subcontract or the quality of the Subcontract Work.
   
   B. At its own expense, Subcontractor shall pay all inspection costs, testing costs, permits, royalties, and license fees required for the Subcontract Work, as well as the costs of inspections that disclose, or are necessitated by, incorrect or faulty materials or workmanship. Subcontractor shall make all necessary arrangements and agreements, at its own expense, so as not to infringe any patents, trademarks, or copyrights in the performance of the Subcontract Work.

2.3 Tools and Equipment. Except as otherwise agreed by Contractor and Subcontractor in writing, Subcontractor shall provide at its own expense, all temporary and permanent tools, equipment (including safety equipment), scaffolding, implements, shop and working drawings, samples, models, guarantees, licenses, unloading facilities and services, and all other items necessary for the proper performance and acceptance of the Subcontract Work.

2.4 Permits and Licenses. At its expense, Subcontractor shall obtain all required approvals, permits and licenses necessary or required in connection with the Subcontract Work.

2.5 Schedule of Values and Submittals. Within 14 days after signing the Subcontract, or as Contractor otherwise directs, Subcontractor shall submit to Contractor the following:
A. **Schedule of Values.** A Schedule of Values apportioned to the various divisions of the Subcontract Work supported by such documents and proof as Contractor may require. The Schedule of Values shall be used for payment purposes only and does not change the Subcontract terms.

B. **Submittals and Log.** All items identified in the Project Agreement's Section I entitled “Scope of Contract Work,” together with a “Submittal Log” identifying the submittals being provided. Such items may include drawings, product samples, test results, installer’s instructions, certificates and other required submittals. All shop drawings and product literature shall be e-mailed to Contractor in either Revit or DWG, and PDF format. Three hard copies of all samples will be sent via next day delivery to Contractor. Submittals shall be provided by Subcontractor in the quantities required by the Contract Documents. If any submittal is inadequate or insufficient, Subcontractor shall resubmit corrected submittals within 7 days of receiving notice from Contractor.

2.6 **Review and Updating.** Contractor’s review of shop drawings or other submittals shall be for general concept only and its approval shall not relieve Subcontractor of liability for any deviations from the Subcontract, unless Contractor approves after receiving written notice of the deviation from Subcontractor. Subcontractor shall provide to Contractor on a daily basis all information necessary to accurately update the on-site record drawings to reflect changes thereto in connection with the Subcontract Work.

2.7 **As-Built Drawings and Close-Out Documents.** Within 14 days after the completion of the Subcontract Work, Subcontractor shall provide to Contractor final as-built drawings and/or record drawings of the Subcontract Work. No later than 50% completion or 60 days before completion of the Subcontract Work, Subcontractor shall provide to Contractor copies of all warranties, guarantees, operation and maintenance manuals (“O & M Manuals”) with respect to the Subcontract Work, in such quantities specified by the Prime Contract.

2.8 **Independent Contractor Status.**

A. **No Employee Relationship.** Subcontractor is an independent contractor and not an employee for any purposes. Nothing in this Agreement creates the relationship of employer and employee between Contractor and any employee or agent of the Subcontractor. Subcontractor retains sole and absolute discretion in the manner and means of carrying out its Work, including but not limited to labor and employment matters, compensation, discipline, and supervision. Subcontractor is responsible for the acts or omissions of its employees, agents, or other person or entity under its direction or control, including acts or omissions of its subcontractors and their employees.

B. **Payment of Taxes and Other Costs.** Subcontractor is responsible for and shall timely pay, or cause its sub-subcontractors or suppliers to pay, the following:

1. Taxes including but not limited to payroll, sales and use, income, and gross business;
2. Contributions including but not limited to Employee Welfare Benefit Plans and Unemployment Insurance;
3. Insurance premiums, including but not limited to Workers’ Compensation, and those identified in Article 13; and
4. Other assessments or fees imposed directly or indirectly on account of the Subcontract Work, including those payable on its employees or on its operations.

ARTICLE 3: FIELD CONDITIONS

3.1 **Verifying Field Conditions.**

A. **Site Visit.** Subcontractor is advised to visit the site and carefully inspect and become familiar with conditions as they exist at the site.

B. **Responsibility for Field Conditions.** Subcontractor is responsible for the proper layout and location of the Subcontract Work. Before proceeding with any portion of the Subcontract Work, Subcontractor shall thoroughly and accurately observe and verify all previous and surrounding work performed by others and determine the location, condition, and correctness of same to the extent necessary to assure that the Subcontract Work can be performed as intended. Subcontractor shall also measure all field conditions relating to the Subcontract Work.

C. **Notice of Conditions with Adverse Impact.** Subcontractor shall give Contractor written notice of any condition it discovers that may or will adversely impact Subcontractor's performance of the Subcontract Work. Such notice shall be provided within 48 hours after discovery and prior to any disturbance of the condition. Failure to give such notice shall
require Subcontractor at its own expense to make any change in its planned, fabricated or installed work, and to bear the costs to change any subsequent work of others.

D. Presence of Hazardous Material. Hazardous materials may exist in some site areas and no demolition or material removal shall occur without first obtaining Contractor’s written permission to continue. If removal is to occur, Subcontractor shall document its removal and disposal methods. The term hazardous material includes but is not limited to any substance or material which contains lead, contains asbestos, contains polychlorinated biphenyl, is identified as hazardous by law or regulation, is subject to regulatory requirements governing handling, disposal, or cleanup, or is otherwise defined as such in the Subcontract Documents.

3.2 Reference Lines. Contractor will establish and maintain necessary reference lines and permanent bench marks. There shall be no fewer than 2 such bench marks and they will be located in widely separated locations. At each major level Contractor will provide a North/South and East/West reference line. Subcontractor shall be responsible for its survey/task layout from the established control.

ARTICLE 4: SCHEDULE COMPLIANCE

4.1 Proceed with Diligence. Subcontractor shall proceed with each portion of the Subcontract Work in a prompt and diligent manner and in strict compliance with all performance schedules and sequencing, as directed by Contractor. Prompt and timely performance shall not be deemed waived by any assent or acquiescence by Contractor to Subcontractor’s late performance of a portion thereof.

4.2 Performance Schedules. At Contractor’s direction and in no event more than 14 days after the signing of the Subcontract, Subcontractor shall provide to Contractor, for review and approval, all information and data requested by Contractor for the preparation of performance schedules, including Subcontract Work progress schedules. Contractor may in its sole discretion modify the performance schedules, and Subcontractor may be required to submit revised schedules to conform to the progress of the Subcontract Work. If Contractor modifies the performance schedules, Subcontractor must notify Contractor within 7 days of any cost impact relating to such modification, or Subcontractor shall be deemed to have waived any claim for extra costs. Multiple mobilizations may be required for performance of the Subcontract Work and are accounted for in the Subcontract Price. If Contractor requests, Subcontractor shall furnish adequate evidence to substantiate its ability to meet the performance schedules and planned progress of the Subcontract Work, including periodic progress reports setting forth the status of material, equipment, manpower and submittals.

4.3 Adequate Work Force. Subcontractor shall furnish sufficient forces to assure proper performance of the Subcontract Work in strict compliance with all performance schedules. Upon request by Contractor, Subcontractor shall promptly increase its work force, accelerate its performance, work overtime, and work Saturdays, Sundays and holidays, or perform “odd-shift” work (i.e., work performed at off hours when the nature of the work is such that it would be disruptive to other trades or occupants), all without additional compensation, if, as reasonably determined by Contractor, such work is necessary as a result of Subcontractor being behind the current Project performance schedule due to Subcontractor’s own defective or deficient work, dilatory performance or nonperformance.

4.4 Use of Site. Subcontractor shall conform to Contractor’s hours of work, which shall be generally consistent with the standard construction practice in the area where the Project is located or as indicated by the Prime Contract. No premium time will be acknowledged or paid unless Contractor gives prior written authorization. Subcontractor shall not disrupt operations of Owner’s existing facilities and access to existing facilities must be scheduled with Contractor. Except as expressly authorized by the Prime Contract, construction personnel’s use of existing facilities is not permitted. Fraternization with guests/residents at existing facilities is not permitted. Any work that disrupts the daily activities will be done before or after hours. Subcontractor shall comply with Owner’s noise-control requirements in addition to such other applicable noise control requirements of any governmental authority having jurisdiction over the Project.

4.5 Coordination.

A. Subcontractor shall cooperate and coordinate its work with that of Contractor and any other subcontractor or supplier for the Project, and shall not interfere with Contractor’s relationship with other subcontractors and suppliers. Subcontractor shall commence, continue and complete the Subcontract Work so as not to delay completion of the
Subcontractor terms & conditions

Project or any portions thereof, including portions to be performed by others. Subcontractor shall be responsible for costs arising from conflicts between subcontractors or trades or their work resulting from lack of coordination.

B. Subcontractor acknowledges that this project incorporates multiple Subcontract trades as well as tie-ins to existing work as applicable, and is responsible to review and incorporate all planned and existing conditions and required interfaces into the Subcontract Price. Contractor will not be responsible for any costs associated with Subcontractor’s omission of required coordination with other subcontractors or tie-ins to planned or existing work.

C. Within 14 days of signing the Subcontract, Subcontractor shall provide coordination drawings as required by the Specifications or as otherwise required by Contractor or the Owner for the proper completion of the Subcontract Work.

D. Subcontractor shall provide detailed, large-scale drawings for location and installation of items to be incorporated into the work of other subcontractors. Costs of all remedial work resulting from failure to timely provide the required drawings and materials will be paid by the untimely subcontractor.

E. Communication between Subcontractor and Owner, Architect or Engineer shall be conducted through Contractor.

4.6 Inspection. Subcontractor shall be solely responsible for thorough inspections of the Subcontract Work to confirm it conforms to the Subcontract requirements.

ARTICLE 5: DELIVERY, STORAGE AND EQUIPMENT

5.1 Deliveries and Storage.

A. Upon request, Subcontractor shall demonstrate and confirm the quantities and qualities of the materials and equipment supplied to the Project. Subcontractor shall store its equipment, material and tools only in designated areas. Space is limited and Subcontractor must submit a plan to Contractor to approve office and storage space prior to mobilization on-site. Office and storage trailers are to be removed from the site at the conclusion of each construction phase at no additional cost to Owner or Contractor.

B. Subcontractor is responsible for the receipt, delivery, unloading, storage, warehousing, protection, insurance, and risk of loss relating to materials or equipment it is to furnish, install, provide, or have provided to it for performance of the Subcontract Work, and such costs are included in the Subcontract Price. Subcontractor shall provide its own trained and certified flagmen for deliveries, hauling material to and from site, delivery truck access, and all other operations that may interfere with construction or non-construction traffic or access per OSHA. Regardless of any payment, the risk of loss of such materials and equipment shall remain upon Subcontractor until final acceptance of the Project by Owner.

C. Material stored on-site without the approval of Contractor or stored outside of designated areas will be removed from the site and warehoused at Subcontractor’s expense. Subcontractor shall avoid having materials or equipment delivered that cannot be installed within 2 days.

D. Subcontractor is responsible to schedule all major deliveries through the Contractor with notice of at least 72 hours prior to delivery. Subcontractor shall submit to Contractor for its approval a written plan showing the proposed routing of deliveries through the Project. Contractor reserves the right to turn away any deliveries not previously scheduled, without any liability to Subcontractor for resulting damages or delays.

E. Deliveries made during non-working or overtime hours are subject to a charge for the cost of Contractor’s personnel required to remain on site.

F. For material storage on elevated floors, Subcontractor must provide Contractor with the size and weight of all material and equipment to be used or stored on the floor and provide engineering calculations which demonstrate that the load will be acceptable.

G. Payment for materials stored off-site will not be allowed unless approved in advance by Contractor and the Owner, and then only under the conditions specified in Paragraph 9.1(C) herein. If approved, Subcontractor shall remain responsible for the materials and must provide secure, weather tight storage and separate insurance for the stored materials.
5.2 **Use of Contractor-Owned Equipment and Material.**

A. If Contractor furnishes material or equipment to Subcontractor to be incorporated into the Subcontract Work, Subcontractor shall, immediately upon receipt, thoroughly inspect as to the physical condition and suitability of the material or equipment, and shall immediately provide written notice to Contractor of any defect or nonconformity in the material or equipment. If Subcontractor fails to provide such notice, Subcontractor shall be liable for all damages and shall defend and indemnify Contractor against any claims arising or alleged to arise out of such defect or nonconformity, whether they are patent or latent.

B. Any tools, material or equipment of Owner or Contractor that are not to be incorporated into the Subcontract Work will be available to Subcontractor only with Contractor's express written permission and in accordance with Contractor's terms and conditions for such use, which include the inspection and notification requirements of Paragraph 5.2(A). In such case, any operator provided by Owner, Contractor or Subcontractor shall be the agent and servant of Subcontractor and it shall be solely responsible for operator's acts during such use.

5.3 **Substitution.** No substitution shall be permitted in the Subcontract Work or materials specified to be provided by Subcontractor unless permitted by the Contract Documents, and Subcontractor shall first obtain written approval from Contractor for any such substitution. Subcontractor shall defend and indemnify Contractor against all claims and expenses incurred by Contractor as a result of any unapproved substitution. If Subcontractor is submitting a substitution, it shall note such on the submittal. Any substitutions shall be equal to or better than the specified product as required by the contract documents.

**ARTICLE 6: SAFETY**

6.1 **Safety of Subcontractor Personnel.**

A. Subcontractor shall be responsible for the safety of its employees, sub-subcontractors, suppliers, any other person or entity for whom the Subcontractor is liable or who is present at the site at Subcontractor's invitation or provides labor, services, materials or equipment to Subcontractor (collectively, the “Subcontractor Personnel”).

B. Subcontractor shall ensure that all Subcontractor Personnel comply with the following:
   1. Safety policies and requirements required by governmental agencies, including OSHA;
   2. Contractor's and Owner's current safety policies, including but not limited to those set out in Contractor's “SHARP” Manual available for inspection at the jobsite; and
   3. The requirement to wear high visibility safety apparel, Performance Class 2 or 3, in accordance with ANSI/ISEA 107-2004 if exposed to vehicular traffic or construction equipment at the jobsite or in-route from parking.

C. In the event a conflict exists in the standards of applicable safety policies, rules, regulations or guidelines Subcontractor shall be bound by the strictest standard or requirement. Subcontractor shall provide at its own expense all safety-related equipment, protective gear or clothing, and badges or vehicle passes if required for Subcontractor Personnel to comply with all requirements of the Subcontract Documents.

6.2 **Work Area.**

A. Subcontractor shall maintain its work area as a safe environment at all times. Subcontractor is responsible for the erection and maintenance of suitable temporary safety installations including but not limited to warning notices, fences, barriers and barricades when required for the safe performance of the Subcontract Work. Such temporary safety installations shall not unreasonably interfere with the work of others at the site. Subcontractor is responsible for removing, repairing, and re-installing these temporary installations as necessary to complete or protect its scope of work, and to provide security for the safety of persons and property on or adjacent to the job site.

B. If Subcontractor removes or damages any temporary safety installations in the performance of the Subcontract Work it shall be responsible for maintaining a safe working environment until they are re-installed.

C. Subcontractor shall continuously maintain its work areas free from all dirt, rubbish, debris, or waste materials. Subcontractor is responsible for compliance with the Contractor's Waste Management Plan for the Project, including proper disposal or removal of waste materials. The Waste Management Plan is incorporated into this contract by reference and is available upon request. If Subcontractor fails, upon 24 hours written notice, to maintain its work area as
required, then in addition to its other remedies Contractor may cure the deficiency as provided in section 19.2 of this Subcontract.

6.3 **Rigging & Hoisting.** Subcontractor shall arrange and pay for unloading and hoisting equipment of sufficient capacity to perform and complete its work along with any rigging and hook-men as needed. Use of all equipment, systems, and operators must meet the safety criteria of Contractor, the Owner, and all applicable government agencies.

6.4 **Written Job Safety Plan.**
   A. Subcontractor shall submit its written job specific Safety Plan to Contractor prior to commencing work on-site. Failure to do so will result in delay in the processing of progress payments. Subcontractor’s field supervisor shall complete Contractor’s “Field Orientation” prior to commencing work and shall disseminate all pertinent information and safety requirements to their field staff.

   B. The Safety Plan shall address fire safety, including supplying and maintaining all fire extinguishers, fire protection, fire watch, and any other appropriate precautions as required by any regulatory authority, the Subcontract, the Contractor, or the Owner.

   C. Subcontractor shall ensure compliance by all Subcontractor Personnel with any applicable laws, regulations, or job specific policies regarding alcohol or drugs in the workplace. Contractor reserves the right to exclude any Subcontractor Personnel from the job-site who violates these policies, and Subcontractor shall have no claim for delay or damages on such account.

6.5 **Hazardous Materials.** Subcontractor Personnel shall not generate, introduce, transport, store or dispose of any hazardous substance as defined in CERCLA or RCRA, at, near or on the Project site without the prior written consent of Contractor. Subcontractor shall provide written notice to Contractor, others at the project site, and governmental authorities as applicable if any actual or potential hazardous substance is discovered at, near or on the Project site. Such notice shall include a description of the chemical composition of the substance, and shall be provided within 48 hours of obtaining knowledge thereof, prior to exposure to such substance or chemical by others, or in sufficient time to permit all parties’ compliance with governmental laws, rules, and regulations. Upon such discovery, Subcontractor shall cease any work that may impact the hazardous substance until Contractor provides written notice to proceed.

6.6 **Notice of Injury.** Subcontractor must notify Contractor’s Project Superintendent immediately in the event of any injury or accident, and must submit all paperwork as required by Contractor within 24 hours.

6.7 **Job-Site Safety Compliance.** In the event that Subcontractor does not respond to verbal or written warnings regarding safety non-compliance, Contractor may impose fines as reasonably necessary, in addition to other remedies available, to ensure the safety of all persons and property on the job-site. Fines can be up to an amount of $5,000 per violation, based upon factors including, but not limited to the seriousness of the violation, repetition and responsiveness to warnings. Subcontractor must remit payment for all fines within 10 working days of written notice by Contractor. Nothing herein is intended to nor shall it be construed as relieving Subcontractor of its legal and contractual obligation to comply with its Subcontract and the laws and regulations referenced therein.

**ARTICLE 7: SUB-SUBCONTRACTORS AND ASSIGNMENT**

7.1 **List of Sub-Subcontractors and Suppliers.** Upon signing the Subcontract, Subcontractor shall submit for Contractor’s review and approval a list of sub-subcontractors and suppliers it proposes to use in performing the Subcontract Work, and shall update the list as changes occur. Subcontractor shall ensure that its sub-subcontractors shall be obligated to Subcontractor in the same manner and to the same extent that Subcontractor is bound to the Contractor under the Subcontract. Subcontractor shall not engage or employ any person or entity, including employees, sub-subcontractors and suppliers, to which Contractor has reasonable objection, and shall immediately remove from the Project site any such person or entity.

7.2 **Subcontractor Payment Obligations.**
   A. **Prompt Payment.** Subcontractor shall promptly pay all persons and entities to which it becomes obligated in connection with its performance of the Subcontract, including sub-subcontractors, suppliers, employees, union trust
funds and taxing authorities, and any person or entity that may assert a lien on the Project or Project site or a claim under any bond posted by Owner or Contractor.

B. **Removal of Liens.** Within 10 days of receiving notice of any lien or claim, Subcontractor shall take such action, at its own expense, as is necessary to remove any mechanic’s or contractor’s liens or other claims that relate or are alleged to relate to or arise out of the Subcontract Work and are filed against the Project or the property on which the Project is located, Owner or Contractor, or any bonds provided by Owner or Contractor in connection with the Project. Subcontractor shall further take such action, at its own expense, as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of any such liens or other claims. Subcontractor shall defend and indemnify Owner, Contractor and their sureties against any claims, liens, actions, costs, expenses and damages, including attorneys’ fees, arising or alleged to arise out of Subcontractor’s failure to comply with this Paragraph.

7.3 **Assignment.**

A. **Assignment by Subcontractor.** Subcontractor shall not assign or sublet its obligations to perform the Subcontract, or any part thereof, without Contractor’s prior written consent. Any such assignment or subletting without such consent shall be void. Contractor’s consent shall not relieve Subcontractor of its obligations to Contractor under the Subcontract, and Subcontractor remains liable for the Subcontract Work, as performed by its suppliers, assignees, and subcontractors, as well as payment obligations to its subcontractors and suppliers.

B. **Assignment of Accounts Receivables.** If Subcontractor assigns its accounts receivable to a third party, it shall be subordinate to Subcontractor’s payment responsibilities to Contractor, sub-subcontractors, suppliers, employees, union trust funds or taxing authorities, or to any person or entity that may file a lien on the Project site or a claim under any bond posted by Contractor. Subcontractor shall provide notice of subordination to any assignee and shall require any assignee who takes an interest in the accounts receivable or the Subcontract as collateral to agree to such subordination. Any assignee shall agree it will repay to Contractor immediately upon receipt any amount received in violation of this Paragraph, with or without demand by Contractor.

C. **Assignment by Contractor.** Contractor shall have the right to assign all or any portion of its rights and interests in the Subcontract to Owner, Owner’s lenders, Contractor’s sureties, a joint venture or partnership in which Contractor is a partner, or to any entity affiliated with Contractor. Subcontractor shall thereupon have the same duties and obligations to said assignee. Upon request, Subcontractor shall promptly provide Contractor with written confirmation of Subcontractor’s consent to such assignment.

**ARTICLE 8: SUBCONTRACTOR’S SUPERINTENDENT**

8.1 **On-Site Superintendent.** Subcontractor shall furnish a competent and experienced superintendent approved by Contractor at the Project at all times during Subcontract Work. The superintendent shall represent Subcontractor at all jobsite meetings as reasonably requested by Contractor, including regular, informational, progress and safety meetings, and shall have authority to act on behalf of Subcontractor. Subcontractor shall not replace the superintendent without Contractor’s prior approval, which shall not be unreasonably withheld.

8.2 **Daily Reports.** Subcontractor’s superintendent shall submit daily reports on Contractor’s form to Contractor’s Project Superintendent no later than 8:00 a.m. on the work-day after the work-day described in the daily report. The daily reports shall describe in detail the Subcontract Work performed, problems encountered, manpower levels, deliveries of materials and/or equipment, and other information as may be relevant to the Subcontract Work.

**ARTICLE 9: PAYMENTS**

9.1 **Payment Application.** As a condition precedent to receive payment, Subcontractor shall submit the following to Contractor at least 5 days prior to the date Contractor is required to submit its Schedule of Values to Owner:

A. **Schedule of Values Form.** Subcontractor shall provide a monthly Schedule of Values and invoice, along with proper back-up, on signed Subcontractor Payment Application or such other forms as may be required by Contractor;

B. **Lien Waiver and Release of Claims.** Subcontractor shall provide a signed Lien Waiver and Release of Claim (“Lien Waiver”) for itself and its sub-subcontractors and suppliers in a form satisfactory to Contractor, Owner and its lender and title insurer, if any, to determine Subcontractor’s right to payment under the Subcontract and applicable laws;
C. **Stored Material List and Invoice.** Subcontractor’s billings for stored materials shall include the following:

1. For materials stored on-site, a detailed list of such items and a copy of supplier’s invoice;
2. For materials stored off-site, but within the state in which the Project is located:
   a. Copy of the supplier’s invoice for such materials;
   b. Certificate of insurance specifically listing such materials as covered and identifying Owner and Contractor as loss payee and additional insureds;
   c. Photograph of the materials; and
   d. Completed certificate of title or bill of sale transferring ownership to Contractor upon payment of the applicable progress payment (less retainage).
3. For materials stored outside the Project state, Subcontractor must obtain written approval from Owner and Contractor prior to requesting payment for such materials.

D. **Current Sub-Supplier Notification.** Current list identifying sub-subcontractors and suppliers Subcontractor used to perform the Subcontract Work.

E. **Prevailing Wage.** If Local, State, or Federal prevailing wage rates apply to the project then the Subcontractor must submit certification that these rates are being met, a prevailing wage sheet, and any other documents requested by the Contractor as necessary to confirm that Subcontractor is meeting the Prime Contract requirements.

9.2 **Progress Payments.**

A. Subcontractor may apply for a “Progress Payment” for the Subcontract Work performed during the payment period if Contractor has the right to progress payments. Such applications shall occur no more frequently than monthly and payments shall not begin until Subcontractor has supplied its Schedule of Values and Submittal Log. Owner and/or Contractor shall be entitled to adjust Subcontractor’s monthly progress estimate to the amount reasonably believed to be the actual amount earned by Subcontractor during the applicable time period, and to pay Subcontractor the adjusted amount.

B. Contractor shall pay Subcontractor 7 days after it receives from Owner a corresponding payment for Subcontractor’s Work. Payment terms between the Owner and Contractor including the dates upon which payment is due to the Contractor from the Owner are set forth in Section I2 of the Project Agreement. A condition precedent to its payment obligations is Contractor’s actual receipt of the corresponding payment from Owner.

C. Contractor’s Superintendent and Owner’s representative shall review and approve as-built drawings for completeness prior to releasing each progress payment.

D. Funds received by Subcontractor are to be held in trust to be applied to payment of labor, equipment, services and materials related to the Subcontract Work, or to payment to anyone that may assert a lien on the Project site or a claim under any bond posted by Owner or Contractor.

9.3 **Retainage and Decision to Withhold Payment.**

A. To the extent permitted by applicable law, retainage of 10% shall be withheld from each progress payment. Contractor may withhold all or part of monthly Progress Payments or back charge the Subcontractor, to the extent that:

1. Subcontractor is indebted to Contractor pursuant to the Subcontract or any other agreement between Subcontractor and Contractor or its affiliates, whether or not such other agreement is related to the Project;
2. Defective Subcontract Work has not been remedied;
3. Subcontractor has failed to pay or provide adequate evidence of payment to sub-subcontractors, suppliers, employees, laborers, union trust funds and taxing authorities, or any claim by any third party has been asserted or threatened with respect to the Subcontract Work;
4. Contractor has a reasonable basis to believe that the Subcontract Work cannot be completed for the unpaid portion of the Subcontract Price or in accordance with the Project schedule;
5. Contractor, Owner, or another subcontractor or supplier has been injured or damaged by Subcontractor’s performance or failure to perform the Subcontract Work;
6. Subcontractor fails to submit Lien Waivers or fails to provide certified payroll data when requested by Contractor;
7. In the event of a Change Order or Construction Change Directive deleting a portion of the Subcontract Work, Contractor shall have the right to withhold from its periodic Progress Payments to Subcontractor an amount that Contractor determines in its reasonable judgment to be the value of such work. Said amount may be held by Contractor until the value of such work is determined by agreement or by the dispute resolution procedures provided in Article 12; or
8. The Subcontract otherwise provides for such withholding of payment. Monies withheld or retained by Contractor from Subcontractor as provided in this Article 9 shall not accrue interest.

B. All amounts withheld or retained by Contractor from monthly progress payments shall be reduced to any amount then being withheld by Owner from Contractor for the Subcontract Work upon the latest to occur of the following:
1. Owner’s release of any retainage it has withheld as to the Subcontract Work;
2. Substantial completion of the Subcontract Work;
3. The curing of all deficiencies set forth in Subparagraphs 9.3(A)(1-8); and
4. Approval by Subcontractor’s sureties of the reduction in retainage. Notwithstanding anything to the contrary, Contractor shall be entitled to retain amounts sufficient to reimburse Contractor for amounts owed by Subcontractor pursuant to Articles 15 and 19 hereof.

C. Subcontractor shall pay its sub-subcontractors and suppliers within 7 days of receipt of a progress or final payment from Contractor for work performed and materials furnished through the date of Subcontractor’s payment request to Contractor. In its sole discretion, Contractor may make payment to Subcontractor by check payable jointly to Subcontractor and its sub-subcontractors, suppliers, sureties, and/or governmental agencies.

9.4 Final Payment.
A. Prior to receiving final payment, Subcontractor must provide the following documents on behalf of itself and its sub-subcontractors and suppliers:
1. Final Payment Application.
2. As-Built Drawings and Close-out Documents, per Paragraph 2.7 herein.
3. Lien Waivers and Releases of Claims against Contractor, its sureties and Owner, verifying full payment of amounts due or to become due to others relating to the Subcontract. Any claims not specifically identified in writing and excluded from the Lien Waiver shall be deemed waived.

B. Except as provided in Subparagraph 9.3, Contractor shall make final payment to Subcontractor within 7 days, or as otherwise required by the applicable law in the State of work after it receives final payment from Owner.

9.5 Reservation of Rights. Payment is not evidence that Subcontractor has met the terms of its Subcontract, or that Contractor accepts its work, and Contractor reserves all rights related to such work.

ARTICLE 10: COMPLIANCE WITH LAWS AND REGULATIONS
10.1 Labor and Materials. At its own expense, Subcontractor’s labor, services, equipment and materials shall comply with applicable federal, state and local statutes, building codes, regulations, rules, and ordinances, including those relating to safety, hazardous waste, discrimination, fair employment, fair wages, equal opportunity and worker’s compensation. Subcontractor will comply with local trade practices for workmanship and compliance. Subcontractor shall, at its own expense, correct any violations hereof, and shall defend and indemnify Contractor against all claims and expenses relating thereto.

10.2 Variance. If Subcontractor discovers a variance between the Subcontract and any applicable statutes, regulations, rules, or ordinances, it shall promptly provide written notice to Contractor, and make the necessary changes before proceeding with the Subcontract Work. If Subcontractor discovers or should have discovered any such variance and fails to promptly notify Contractor, Subcontractor shall at its sole expense make any change in the Subcontract Work necessitated by failure to disclose such variance, and shall defend and indemnify Contractor against all claims and expenses relating thereto.

10.3 Licenses. If applicable, Subcontractor warrants that it is licensed by applicable government authorities to perform the Subcontract Work and will maintain such licenses at its own expense for a minimum of 1 year after the date of final acceptance of the Project. If the Subcontract Work includes any design services which must by law be performed by a licensed design professional, Subcontractor agrees that it shall provide such design services through a design professional licensed in the
jurisdiction of the Project, approved in writing in advance by Contractor and carrying professional liability insurance from an insurer licensed in that jurisdiction in an amount and for a duration agreed in advance in writing by Contractor. Subcontractor agrees to provide Contractor with a certificate evidencing such insurance prior to seeking payment for any services of such design professional. The approved, insured and licensed design professional shall supervise all such design and provide its professional seal to all its instruments of service where required by law.

10.4 Equal Employment Opportunity. Contractor’s policy is to maintain a working environment and climate free from discrimination and harassment on the basis of disability, marital status, national origin, race, religion, sex, or sexual orientation, and Subcontractor shall abide by such policy.

ARTICLE 11: CHANGES IN SUBCONTRACT

11.1 General.

A. Proposed Change. Contractor retains the right to make changes in the Subcontract Work pursuant to a Change Order, Construction Change Directive, or order for minor change in the work issued to Contractor by the Owner. Within 3 days after receipt of any proposed change, or as otherwise directed, Subcontractor shall notify Contractor in writing of any adjustment necessary in the Subcontract Price or time to complete the Subcontract Work. Such notice shall include a detailed breakdown of the differences in time, value of the work, labor, materials and services including quotes from subcontractors and suppliers to allow Contractor, Owner and Owner’s Consultants to determine whether to issue the proposed Change Order.

B. Proposed Adjustment. Proposed changes in the Subcontract Price or extensions of time will be reviewed by the Contractor, Owner and all other parties required by the Prime Contract Documents. If the proposed adjustments are agreed upon by all parties in a timely manner, and the Owner issues a corresponding Change Order to Contractor, then a Change Order will be issued to Subcontractor as outlined in Paragraph 11.2. If the parties do not agree on the adjustment method, the Owner may issue a Construction Change Directive to the Contractor as outlined in the Prime Contract, which Contractor shall provide to Subcontractor.

C. Written Direction. Subcontractor shall not perform any work that constitutes a change in the Subcontract Work without first receiving a written Change Order, Construction Change Directive or a minor change in the Work from Contractor. Once issued, Subcontractor shall proceed promptly with such changes. Subcontractor shall not be entitled to payment for any work performed in violation of this Paragraph, and shall be liable to Contractor for any costs incurred by Contractor in connection with such unauthorized work.

Any disputes arising out of or relating to a request for or issuance of a Change Order, Construction Change Directive, or minor change in the Work, including disputes as to adjustments to the Subcontract Price or Time, shall be resolved as provided in Article 12 hereof.

11.2 Change Orders. A Change Order is a written instrument prepared by Contractor and signed by Contractor and Subcontractor, stating their agreement to a change in the Subcontract Work, the amount of any Subcontract Price adjustment or the method to determine any adjustment, and the extent of any time adjustment for Subcontractor’s performance, or the method to determine any adjustment. Upon signing a Change Order, Subcontractor agrees with any adjustment in Subcontract Price and time for performance, and shall make no further claim for costs, time or other impacts relating to such change.

11.3 Construction Change Directive.

A. A Construction Change Directive is a written order by the Owner directing a change in the Work and stating a proposed basis for adjustment to the Subcontract Price or schedule, in response to any estimates provided by Subcontractor. It shall be used in the absence of timely agreement on the terms of a proposed Change Order. In the event that a Construction Change Directive is issued by the Owner, the Contractor will notify the Subcontractor, which shall promptly proceed with the change in the Subcontract Work. Subcontractor shall advise the Contractor of its agreement or disagreement with the method, if any, provided for determining the proposed adjustment.

B. If Subcontractor does not respond promptly to a Construction Change Directive or disagrees with the proposed method for adjustment in the Subcontract Price, the method and the adjustment shall be determined by the Owner. Such method shall be consistent with the Prime Contract, and based on the reasonable expenditures and savings of those
performing the work attributable to the change, including, in the case of an increase to the work, a reasonable amount for Overhead and Profit as outlined in the Subcontract Documents. Subcontractor shall keep and present an itemized accounting and supporting data in a form as Contractor or Owner may require.

C. Pending final determination of any adjustment, amounts not in dispute may be included in Subcontractor’s applications for progress payments. When both additions and credits covering related work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on a basis consistent with the Prime Contract Documents. “Overhead” shall be deemed to include full and complete compensation to Subcontractor for all general and administrative expenses, home office overhead, field office overhead, bonding and insurance costs, and supervision.

11.4 Minor Change in the Work. Contractor may direct a minor change in the Subcontract Work, which does not involve an adjustment in the Subcontract Price or time for performance and which is consistent with the Subcontract. Such change shall be performed promptly upon issuance.

11.5 Unit Prices.
A. Where unit prices have been agreed upon by Contractor and Subcontractor, all adjustments, whether increases or decreases, shall be made in accordance with said unit prices. Unit prices shall be deemed to include all general and administrative expenses, overhead, profit, supervision, extended performance cost factors, and all other direct and indirect expenses.

B. If any adjustment to the Subcontract Price in connection with a Change Order is based on unit prices Subcontractor shall submit to Contractor’s Project Superintendent daily accountings of the quantities of all cost items, including but not limited to labor, materials, or unit price items to be claimed as a basis for the adjustment to the Subcontract Price. Failure to submit such daily accountings shall constitute a waiver of any claim for payment for such items.

ARTICLE 12: DISPUTE RESOLUTION

12.1 Claim. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Subcontract. The term “Claim” also includes other disputes and matters in question between the Contractor and Subcontractor arising out of or relating to the Subcontract. The responsibility to substantiate Claims shall rest with the party making the Claim.

12.2 Notice of Claims. Claims by either the Contractor or the Subcontractor shall follow the process set forth in the Prime Contract and must be initiated by written notice to the other party. Subcontractor shall be bound to Contractor to the same extent that Contractor is bound to Owner by all decisions made in any proceeding authorized by the Prime Contract. Unless the Prime Contract provides for a shorter notice period, Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. If Subcontractor knows or should have known that such occurrence will result in the delay of Work, then Subcontractor shall provide written notice to Contractor within 72 hours of such occurrence.

12.3 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Article 19, the Subcontractor shall proceed diligently with performance of the Subcontract and the Contractor shall continue to make payments of undisputed amounts in accordance with the Subcontract.

12.4 Claims for Additional Cost. If the Subcontractor wishes to make a Claim for an increase in the Subcontract Price, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property. Subcontractor’s compensation on Claims, if any, shall be limited to the compensation actually paid to Contractor in connection with the Claim, and receipt of such payment by Contractor is a condition precedent to Contractor’s obligations hereunder.

12.5 Claims for Additional Time.
A. No Damages for Delay Against Contractor. Should Subcontractor’s performance be delayed, disrupted, accelerated or suspended in the start, progress or completion of the Subcontract Work (“Delay”), for reasons beyond Subcontractor’s control and without its fault, Subcontractor’s sole remedy against Contractor for claims based upon the action or inaction of Contractor shall be a reasonable extension of the time to perform the Subcontract Work. This paragraph applies
regardless of the cause of Delay, which may include but not be limited to action or inaction by Contractor amounting to breach of the Subcontract, or the action or inaction of any person or entity other than Owner or its agents including its design professionals. However, if the Prime Contract allows for Owner to compensate Contractor for any Delay, then Subcontractor may be entitled to reasonable compensation for such Delay, not to exceed the amount actually received by Contractor, if such compensation is related to the Delay of Subcontractor’s Work. Payment by the Owner to Contractor is a condition precedent to any obligation by the Contractor to compensate Subcontractor for a Delay.

B. Extension of Time. The Prime Contract governs any claims related to an extension of time. If a Delay claim is based upon the action or inaction of the Owner or its agents including its design professionals, Subcontractor shall be entitled to a reasonable extension of the time for performance in which to complete the Subcontract Work, provided Owner has granted a similar extension of time to Contractor. If the Subcontractor wishes to make a Claim for an increase in the time to perform the Work, written notice as provided herein shall be given. The Subcontractor’s Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Unless otherwise stated in the Prime Contract, adverse weather conditions shall not be the basis of a claim for additional time.

12.6 Claims for Consequential or Liquidated Damages. Claims for consequential damages shall be governed by the Prime Contract. If Owner seeks consequential or liquidated damages from Contractor, Contractor reserves the right to seek from Subcontractor indemnification for such costs if such damages arise out of or are caused in whole or in part by Subcontractor’s performance of the Work or its failure to meet its Subcontract obligations.

12.7 Negotiation of Claims. In the event of any dispute, claim, question or disagreement arising out of or relating to the Subcontract or the breach thereof prior to Final Completion (other than those covered by insurance), the parties agree to use their best efforts to settle such dispute, claim, question or disagreement. To this effect, upon written demand by either party the parties agree to convene a meeting of senior management with decision-making authority within 14 days after such demand (or such other time as may be mutually agreed) and to consult and negotiate with each other in good faith and recognizing their mutual interests, in an attempt to reach a just and equitable solution satisfactory to both parties. Nothing in this Agreement shall restrict the parties from settling a dispute by negotiation at any time during the dispute resolution process.

12.8 Mediation. If the Claim cannot be resolved by negotiation, each party agrees, upon the written request of the other party, to submit the claims to a mediator and to negotiate in good faith in an attempt to reach a settlement of the claims. The mediation shall occur in the State where the Project is located.

12.9 Mechanic’s Lien. If a Claim relates to or is the subject of a mechanic’s lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines. Contractor reserves all claims and counterclaims related to such filing, including the right to receive attorneys’ fees and costs, if applicable.

12.10 Arbitration and Litigation. If mediation does not resolve the dispute, Contractor may elect at any time to arbitrate or to litigate the dispute, and Subcontractor hereby agrees to arbitrate if so elected by Contractor. Subcontractor agrees to dismiss or abate any proceeding pending in a forum other than that selected by Contractor. Any arbitration proceeding shall be governed by the Construction Industry Arbitration Rules of the American Arbitration Association. Any arbitration proceeding shall be held in the county in which the Project is located, unless otherwise mutually agreed. If arbitration is selected by Contractor, the award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The arbitrator shall issue a reasoned explanation of the award. Subcontractor agrees to require its sureties and insurers to be bound by any arbitration award against it. In the event of litigation, Subcontractor waives its right to trial by jury in any litigation to which it is or becomes a party under the Subcontract.

12.11 Pass-Through Claims. If Subcontractor is dissatisfied with any Change Order or Construction Change Directive, or otherwise has a claim for which Owner may be responsible, it may request Contractor to prosecute the claim with the Owner. If such request is timely made, Contractor in its sole discretion may (a) pursue Subcontractor’s claim singly or in combination with other claims or (b) assist Subcontractor in presenting its claim to Owner, Architect and/or Engineer in Contractor’s name. For a Pass-Through Claim, Contractor acts solely as a conduit and assumes no responsibility or liability therefor. Any expense related to a Pass-Through Claim is borne by Subcontractor.
12.12 Attorney's Fees and Governing Law.
A. If either party files a claim or demands arbitration to enforce the Subcontract, to protect its interests under the Subcontract, or to recover on a surety bond furnished by a party to the Subcontract, the substantially prevailing party shall be entitled to recover from the other party and its sureties all reasonable attorneys' fees, costs, charges, expert witness fees, and expenses incurred in said proceeding.

B. This Subcontract shall be governed by the laws of the State which govern the validity, interpretation, and performance of the Prime Contract, and Subcontractor submits to the jurisdiction of the federal and state courts of the State in which the Project is located. Unless otherwise agreed in writing or unless otherwise provided in the Prime Contract, any mediation or arbitration proceeding permitted hereunder shall be conducted in the county in which the Project is located.

ARTICLE 13: INSURANCE

13.1 Subcontractor's Liability Insurance. Prior to start of the Subcontract Work, Subcontractor shall obtain all insurance coverage as may be specified in the Prime Contract or elsewhere in the Subcontract, in amounts not less than those so specified. Such coverage shall be maintained for 3 years following final acceptance of the Project by Owner, or as specified in the Prime Contract, whichever is longer. Such coverage shall include:

A. Workers' Compensation and Employer's Liability Coverage. As required by the laws of the state in which the Subcontract Work is to be performed and as required by applicable federal law.

B. Commercial General Liability Coverage. An occurrence limit of not less than $1,000,000 and an aggregate limit of not less than $2,000,000. The general aggregate limit shall apply separately to this project. Such coverage shall include Premises/Operations, Products/Completed Operations, Blanket Contractual Liability (to insure defense and indemnity obligations specified herein), Broad Form Property Damage (including completed operations), Personal Injury (waive employment related exclusion if required by contract), Blanket XCU, Contractor's Protective and Independent Subcontractor's. Claims-made policy forms are unacceptable unless prior written approval is given by an authorized representative of Contractor.

C. Business Automobile. Coverage with a combined single limit of not less than $1,000,000 including Owned, Hired, and Non-Owned Autos.

D. Umbrella. $1,000,000 minimum and higher limits when directed by Contractor and/or Owner.

E. Professional Liability. If design services are performed, Subcontractor shall maintain Professional Liability Insurance coverage in an amount of not less than $1,000,000 each claim/$1,000,000 annual aggregate, with a maximum deductible of $25,000.

1. All Professional Liability Insurance coverage shall include a Retroactive Date prior to any design work being performed for this project.

2. The term design services as used in this agreement includes, but is not limited to architecture, engineering, contract administration in the course of design services, sprinkler design, fire protection design, life safety design, security systems design, light use, acoustical or signage design, landscaping design, surveying, quantity surveying, material testing, economic, feasibility, technical consulting or technical studies or opinions, or scientific reviews, software design for the purpose of operating or maintaining any building system, interior design or space planning services, or design services to support Leadership in Energy and Environmental Design (LEED) certification for a project.

3. If design services are performed by a sub-subcontractor or outside design consultant, Subcontractor shall require it to maintain Professional Liability Insurance in the amounts set forth above.

13.2 Builder's Risk Insurance. If the Contractor is required by the Prime Contract to pay any deductible or self-retained limit on any Builder's Risk insurance Subcontractor shall pay all or a portion of such deductible or self-retained limit if Subcontractor is responsible in whole or in part for the insured damages, or the damages result from a failure to fulfill the Subcontractor's obligations under this Subcontract. If an earthquake or flood damages the Subcontract Work, and earthquake or flood insurance is not required to be obtained under the Prime Contract, is otherwise not being provided, or is inadequate to cover the loss, Subcontractor shall be required to pay the amount necessary to restore the Subcontract Work in accordance with the Subcontract.
13.3 General.
A. Contractor makes no representation that the required minimum amounts of insurance shall be adequate to protect Subcontractor and the procuring and/or carrying of such insurance shall not limit Subcontractor’s obligation or liability under this Subcontract. Should any certificate of insurance be accepted or should any of the insurance requirements set forth herein be waived or modified due to Subcontractor’s inability or refusal to obtain the required coverages and endorsements, such acceptance or waiver does not release Subcontractor from any of its obligations under this Subcontract.
B. All insurance shall be procured at Subcontractor’s expense.
C. Its policies other than the worker’s compensation policy shall be endorsed to name Contractor, Owner, Architect, Engineer and other parties as required in the Prime Contract as additional insureds. Additional insured status under the General Liability and Umbrella policy shall include Products/Completed Operations for 2 years after final completion of the work, and acceptance by Owner. The insurance afforded to the additional insureds shall apply on a primary and non-contributory basis.
D. Subcontractor waives, and shall require all sub-subcontractors to the lowest tier to waive, all subrogation rights under the General Liability, Auto, Worker’s Compensation, or Umbrella policies against Contractor, Owner, their parents, affiliates, subsidiaries, officers, directors, members, employees, and agents, and all other persons or entities providing labor or material to the Project as required in the Subcontract.
E. All policies required by this Subcontract shall be endorsed to provide 30 days prior written notice to Contractor in the event of cancellation, material change, or non-renewal.
F. Subcontractor shall require insurance with the same coverages and limits from its sub-subcontractors and suppliers.
G. All insurance required to be furnished by Subcontractor shall be maintained with insurance companies with an A.M. Best rating of A- or better, which companies shall be an admitted carrier and subject to the applicable insolvency fund of the state in which the Project is located. Any exceptions to this requirement must be requested by Subcontractor in writing to Contractor and written consent received in writing from Contractor at least 5 days prior to commencement of the Subcontract Work.
H. Certificates of insurance for all coverage to be maintained by Subcontractor shall be delivered to Contractor 5 days prior to scheduled commencement of the Subcontract Work. Subcontractor shall not commence work on-site until Contractor has received such a certificate. Subcontractor directly assumes any and all liability omission for any failure or refusal of Subcontractor’s insurance carrier(s) to meet the required insurance coverages and endorsements.

13.4 Failure to Comply. Failure of Subcontractor to maintain or furnish evidence of all insurance required herein shall permit Contractor to withhold progress payments otherwise due, terminate the Subcontract or obtain insurance at Subcontractor’s sole expense, in addition to other available remedies. In obtaining said insurance, Contractor shall in no case limit its other remedies nor reduce Subcontractor’s responsibility pursuant to the Subcontract. Failure of the Subcontractor’s Insurance carrier(s) to provide required coverage and/or endorsements shall not waive or alleviate the Subcontractor’s responsibility to meet these requirements for coverage and endorsements. In the event that Contractor makes a claim hereunder or an incident occurs that may relate to, invoke, or trigger the insurance coverages set forth herein, Subcontractor hereby grants Contractor the authority to contact Subcontractor’s Insurance agent, broker or carrier directly.

ARTICLE 14: BONDS
If required by the Project Agreement, Subcontractor shall furnish to Contractor executed Performance and Payment Bonds in an amount equal to 100% of the Subcontract price issued by a surety company and in a format satisfactory to Contractor. Contractor shall make no payment to Subcontractor under this Subcontract until it has received all required bonds.

ARTICLE 15: DEFENSE AND INDEMNIFICATION
A. Subcontractor shall defend, indemnify and hold harmless Contractor, Owner, Architect, Engineer, their sureties, consultants, and all persons indemnified by Contractor pursuant to the Prime Contract, and all parents, subsidiaries, affiliates, agents, officers, directors, members and employees of any of them (the “Indemnitees”) from and against any and all claims, liabilities, liens, costs, damages, citations, penalties, fines, attorneys' fees, losses, and expenses of whatever nature (the “Indemnified Claim”) related to Subcontractor’s performance of or failure to perform under the Subcontract. This indemnification shall include loss of use of any property resulting therefrom, regardless of whether or not the Indemnified Claim is caused in part by one or more Indemnitees, but only to the extent caused in whole or in part by breach of the Subcontract or by negligent or otherwise wrongful acts or omissions of Subcontractor, Subcontractor’s sub-subcontractors, suppliers, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to any Indemnitee, and shall survive the completion of the Project and final payment to Subcontractor.

B. In the event there is a limit on the amount or type of damages, compensation, or benefits payable under worker's compensation acts, disability benefit acts, or other employee benefit acts, this does not alter or relieve the indemnification obligations of this Article.

C. Subcontractor's obligations herein shall not extend to the liability of Architect or Engineer, their consultants, and agents and employees of any of them arising out of: (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications or (b) the giving of or the failure to give directions or instructions provided such giving or failure to give is the primary cause of the injury or damage.

D. Subcontractor shall maintain such insurance as is necessary to fully underwrite Subcontractor's defense and indemnity obligations hereunder.

E. In the event of any Indemnified Claim, or any threat thereof, Contractor may retain any and all monies due or to become due to Subcontractor under the Subcontract in an amount sufficient to assure Subcontractor's obligations under this Article 15, in addition to Contractor's other remedies.

F. For purposes of statute of limitations, an Indemnitee's claim shall not begin to run until payment of a final judgment, arbitration award or settlement arising out of any Indemnified Claim.

G. With respect to any matter to which Subcontractor's defense obligations apply, the Indemnitee shall have the right to assume its own defense if, in its sole discretion, it determines that the defense being provided by Subcontractor is inadequate. If the Indemnitee assumes its own defense, or if the Indemnitee incurs expenses or fees in connection with a defense undertaken by Subcontractor, Subcontractor shall reimburse the Indemnitee for all attorneys’ fees and other expenses related to the preparation and defense obligations to the Indemnitee, such payment to be made within 10 days after Subcontractor’s receipt of a statement of such fees and expenses. Subcontractor's obligations to defend the Indemnitee shall be independent of and in addition to Subcontractor's indemnity obligations, and shall apply to the fullest extent permitted by law.

ARTICLE 16: LABOR RELATIONS
Subcontractor shall act reasonably to assure harmonious labor relations at the Project and to prevent strikes or labor disputes. Subcontractor shall abide by labor and project agreements and by jurisdictional decisions presently in force or subsequently executed with or by Contractor. Subcontractor's failure to so act may be deemed a material breach of the Subcontract. If despite such effort, labor disputes, strikes, or slowdowns among Subcontractor's work forces materially delay or hinder the progress of the Subcontract Work or the work of others on the Project, Contractor may terminate the Subcontract and proceed in accordance with the provisions of Article 19.

ARTICLE 17: GUARANTEES AND WARRANTIES
In addition to guarantees and warranties required by law or by the Prime Contract, Subcontractor warrants and guarantees that its work is and shall conform with the Subcontract, and that it shall provide all necessary maintenance of the Subcontract Work until final acceptance of the Project. For 1 year after the date of final acceptance of the Project or such longer period as the Prime Contract or the law may provide. Subcontractor shall without cost to Contractor: (a) promptly perform any corrective work
required and (b) pay for the cost of any corrective work to any adjacent work or materials damaged during or as a result of such corrective work within 10 days after receipt of written notice from Contractor.

ARTICLE 18: NON-INTERFERENCE WITH PRINCIPLE RELATIONSHIP
Subcontractor shall not interfere with Contractor’s relationship with Owner, Architect or Engineer. Subcontractor shall not enter into any other contract relating to the Project without Contractor’s prior written consent, which consent shall not be unreasonably withheld.

ARTICLE 19: DEFAULT AND TERMINATION
19.1 Event of Default. An Event of Default occurs if Subcontractor does any of the following:
   A. Fails to proceed with the Subcontract Work in the time or sequence directed by Contractor;
   B. Fails to prosecute the Subcontract Work diligently, including failure to provide sufficient numbers of skilled workers or proper materials, or failure to adhere to the applicable performance schedules;
   C. Causes Delay to the work of Contractor, other subcontractors, sub-subcontractors or suppliers on the Project;
   D. Fails to perform the Subcontract Work or its obligations in accordance with the Subcontract;
   E. Files bankruptcy, assigns assets for the benefit of creditors, becomes insolvent, or is unable or fails to pay its obligations as they mature; or
   F. Repeatedly performs the Subcontract Work in a manner which is rejected by Owner, Architect, Engineer, Contractor or governmental agencies having jurisdiction over the Project.

19.2 Remedies. In addition to other available remedies, if Subcontractor is in default, Contractor has the sole discretion to take one or more of the following actions:
   A. Take Possession. Take temporary possession of Subcontractor’s material and equipment intended for performance of the Subcontract Work to assure its availability for completion of the Subcontract Work.
   B. Cure. Contractor has the right to cure any default at Subcontractor’s Expense as follows:
      1. 48 Hour Notice. If Subcontractor fails to cure the Event of Default within 48 hours of Contractor’s prior written notice of default, Contractor may cure the default at Subcontractor’s expense plus 15% for Contractor’s overhead and fee, and deduct the cost from the Subcontract Price. In the event of schedule delay, such cure may include, in Contractor’s sole judgment, supplementing Subcontractor’s work forces until such time as Contractor is satisfied the Subcontractor will maintain compliance with performance schedule, with such costs being borne by Subcontractor as provided herein.
      2. Immediate Cure. If the Event of Default will materially delay the work of Contractor or other subcontractors, Contractor may proceed upon written notice to immediately cure the default at Subcontractor’s expense plus 15% for Contractor’s overhead and fee, and deduct the cost and any damages due to the Owner or other contractors or subcontractors, from the Subcontract Price.
      3. Punch List or Corrective Work. If Contractor notifies Subcontractor of punch list or corrective work, Subcontractor must complete it within a reasonable time as determined by Contractor. If Subcontractor fails to do so, it shall be in default, and Contractor may cure the default as set forth in (B)(1) herein. In addition, Contractor may withhold the greater of (i) 2 times the reasonable cost to complete the punch list and corrective work or (ii) $10,000, as security for the performance of the punch list and corrective work until such work is completed.
      4. Non-Complying Work. If Contractor or its agents determine that any portion of Subcontractor’s Work fails to comply with the Subcontract, Subcontractor shall promptly, at its own expense, correct such non-conformity. If Contractor determines it will accept such non-conformity, Contractor may be entitled to an equitable credit for the non-conformity.
   C. Terminate. If Subcontractor fails to cure the Event of Default, Contractor may:
      1. Terminate the Subcontract by giving Subcontractor written notice;
2. Take permanent possession of Subcontractor’s material, equipment, manuals, records, drawings, and other items intended for the performance of the Subcontract Work (whether or not located on the Project site), which Subcontractor hereby assigns and transfers to Contractor for such purpose;

3. Withhold further payment until the Subcontract Work is completed. At such time, Subcontractor will be entitled to the net remaining unpaid portion of the Subcontract Price, after deducting the costs to cure and complete the Subcontract Work, plus 15%, plus any costs and attorneys’ fees related to the default, cure or dispute resolution. If after deductions the Subcontract Price is a negative balance, Subcontractor and its sureties shall be liable for and promptly pay to Contractor the negative balance plus Contractor’s costs and reasonable attorneys’ fees to obtain such payment. Contractor shall have a lien upon Subcontractor’s materials, tools, and equipment in Contractor’s possession to secure payment thereof. Subcontractor’s defense and indemnity obligations to Contractor and any Indemnitee shall survive termination.

D. Damages. In addition to other remedies, Subcontractor shall be liable for all actual damages suffered by Contractor as a result of the Subcontractor’s failure to comply with the Subcontract, including any Work schedule provided by Contractor. Remedies include that portion of any liquidated damages payable by Contractor to Owner pursuant to the Prime Contract and reasonably attributable to Subcontractor’s failure to comply.

19.3 Termination for Convenience.

A. Owner. If Owner has the right to suspend or terminate the Prime Contract, in whole or in part, for convenience, then Contractor may suspend or terminate the Subcontract on the same terms and conditions. Subcontractor’s rights, obligations and remedies upon suspension or termination for convenience shall be limited to the corresponding rights, obligations and remedies available to Contractor under the Prime Contract. Subcontractor shall not be entitled to any compensation for such suspension or termination except to the extent and in the amount that Contractor receives from Owner with respect to the suspension or termination of the Subcontract Work.

B. Contractor. Contractor may terminate the Subcontract for the Contractor’s convenience and without cause at any time by giving written notice. Upon receipt of such notice Subcontractor shall (a) cease operations as directed by the notice; (b) take necessary actions to protect and preserve the Subcontract Work; and (c) except for 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 enter into no further subcontracts and purchase orders. Subcontractor shall be entitled to receive payment from the Contractor for the value of the Subcontract Work executed, and costs incurred by reason of such termination, excluding any profit or overhead for work not performed and less any claims of Contractor against Subcontractor. The amount payable to Subcontractor shall not exceed the Subcontract Price.

ARTICLE 20: CONTRACT INTERPRETATION

A. The partial or complete invalidity of any Subcontract provision shall not affect the validity and continuing force and effect of any other provision.

B. The failure of either party to insist upon the performance of any of the terms of the Subcontract shall not be construed as a waiver of such term for further performance.

C. Except as expressly set forth herein, the Subcontract is solely for the benefit of the parties hereto, and shall not confer any rights, remedies or benefits upon anyone other than the named parties and their successors and assigns. Contractor shall not incur third party liability or responsibility by virtue of the Subcontract.

D. The Subcontract constitutes the entire agreement between the parties, and supersedes all prior negotiations, representations or agreements, oral or written. Any additions or modifications to the Subcontract shall be in writing signed by both parties hereto.

E. Written notice shall be deemed to have been served if delivered in person to an agent of the entity for which it was intended or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice. Email may constitute written notice for purposes of this paragraph if acknowledgment is received from the intended party.