

Project #: File #:

Project Name:

THIS AGREEMENT made this ____ day of _____, A.D., **BETWEEN**

Graham Infrastructure LP

(hereinafter known as the "Contractor")

AND

(hereinafter known as the "Subcontractor")

THE CONTRACTOR has entered into an agreement (the "Prime Contract") dated the ____ day of _____, with

(the "Owner")

for the construction of _____

(the "Project")

ARTICLE 1 - The Work

The Subcontractor shall furnish all necessary labour, materials, tools and equipment and shall perform the services hereunder (including, to the extent applicable, design services) to complete the portion(s) of the Project, as further detailed in Appendix "A" (the "Work") for the Subcontract Price identified in Article 2 and in accordance with the Contractor's schedule (the "Schedule") which is incorporated herein by reference.

ARTICLE 2 - Subcontract Price

The Subcontract Price is \$ _____ dollars in Canadian Funds exclusive of any value-added tax ("VAT", which shall include but not be limited to the Goods and Services Tax or the Harmonized Sales Tax as applicable under the Excise Tax Act) and inclusive of all other federal and provincial taxes of any kind whatsoever, and the Subcontract Price shall be subject to adjustment by the amount of any increase or decrease in cost to the Subcontractor due to changes to such included taxes arising after the time of bid closing. The Subcontract Price will be adjusted based on approved quantities and unit prices for all unit price items.

ARTICLE 3 - Surety Bonds/Subcontractor Performance Security

The Subcontractor agrees to provide the following surety bonds and/or Subcontractor performance security in a form designated by the Contractor, naming the Contractor as obligee or beneficiary, as the case may be:
N/A.

ARTICLE 4 - Payment

The Contractor agrees to pay the Subcontractor for performance of the Subcontract as follows:

- (a) The Subcontractor shall submit proper progress claims acceptable to the Contractor on or before the 20th day of each month for certification of work performed up to such date.
- (b) Payments will be made monthly on progress claims as certified covering _____ % of the work completed by the Subcontractor plus the applicable VAT, such payments to be made within thirty (30) days after the last day of the month in which the progress claims are received.
- (c) The balance of the amount payable by the Contractor to the Subcontractor pursuant to each such progress claim, as so certified, shall be payable one (1) day after the builders' lien rights expire, and in any event not before the Subcontractor has invoiced the Contractor for such final payment.
- (d) Notwithstanding paragraphs (b) and (c) above, if the Owner fails to make payment to the Contractor when due in accordance with the terms of the Prime Contract, the associated payment to the Subcontractor will become due sixty (60) days after payment was otherwise due to the Contractor from the Owner.

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- (e) The Subcontractor agrees that, if the Owner does not pay the Contractor for reasons of the Owner's insolvency or for reasons relating to the non-performance by the Subcontractor, then, notwithstanding the provisions of paragraph (d) of this Article 4, the Contractor shall not be obligated to pay to the Subcontractor the associated payment.

- (f) No progress payment or final payment shall be due or payable until the Subcontractor furnishes the Contractor with the required documentation as outlined in the billing instructions accompanying this Subcontract, together with a sworn statement that all accounts for labour, sub-subcontracts, materials, construction machinery and equipment and other indebtedness which might have been incurred by the Subcontractor in the performance of the Work and for which the Contractor might in any way be held responsible have been paid in full (except for holdback amounts to be payable out of the funds to be paid to the Subcontractor or unpaid amounts specifically identified and detailed by the Subcontractor as being unpaid as a result of a dispute).

ARTICLE 5 - Schedule

The Subcontractor will begin the Work upon award of the Subcontract and will perform its obligations hereunder to complete the Work in accordance with the Schedule and so as not to interfere with or delay the work of the Contractor or any other subcontractor. The Contractor may amend the Schedule in consultation with the Subcontractor and the Subcontractor agrees it shall perform the Work in accordance with such revised Schedule, including any changes to the order and sequencing of the Work. If the Subcontractor fails to perform in accordance with the Schedule as may be amended from time to time, and by reason thereof, the Contractor becomes liable for damages or suffers losses, or incurs additional costs because of non-performance of the Subcontractor, the Subcontractor shall be liable to the Contractor for such damages, losses and costs

ARTICLE 6 - Notices and Contractor's Representative

Addresses for notices for the parties under this Subcontract are:

Contractor: _____

Contractor's Representative: _____

Subcontractor: _____

The Subcontractor shall provide notice in writing to the Contractor of any claim for an adjustment of the Subcontract Price and/or extension of time to complete the Work, such notice to be provided five (5) business days following when the Subcontractor knew or ought to have known of the event or circumstance giving rise to the Subcontractor's claim. The Subcontractor shall provide such written notice prior to performing any work that is the subject of such claim. The Subcontractor's notice shall contain detailed particulars of the basis of such claim and the specific relief sought and must be delivered to the Contractor's Representative. The Subcontractor's strict compliance with the provisions of this Article shall be a condition precedent to any claim for an adjustment of the Subcontract Price or extension of time to complete the Work. The Subcontractor acknowledges its non-adherence to this Article may prejudice the Contractor's ability to mitigate or seek relief under the Prime Contract and as such the Subcontractor assumes the risk of its non-adherence to these provisions

Where the Subcontractor has provided notice of a claim relating to or arising from acts or omissions of the Owner or those in law for whom it is responsible, the Subcontractor's entitlement to relief, including an adjustment of the Subcontract Price or an extension of time, shall be conditional upon the Contractor's recovery of such relief under the Prime Contract.

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The parties hereto have executed this Agreement including the Terms and Conditions annexed hereto, on the date stated on the first page.

by its general partner,

CONTRACTOR (Legal Name)

SUBCONTRACTOR (Legal Name)

(Authorized Signature)

(Authorized Signature)

(Name and Title of Authorized Signatory)

(Name and Title of Authorized Signatory)

Draft

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1. **PRECEDENCE.**

In the event of any discrepancy between the various documents constituting this Subcontract, the document imposing the higher or more restrictive standard upon the Subcontractor shall prevail.

2. **REGULATIONS, LAWS, PERMITS, ETC.**

The laws of the jurisdiction where the Project is located shall govern the Work. In the performance of the Work, the Subcontractor shall comply with all laws, statutes, regulations, ordinances, judgments, standards and codes which are or come into force during the performance of the Work and which relate thereto. Unless otherwise stipulated the Contractor shall obtain the building permit. The Subcontractor shall obtain all other permits, licenses and certificates relative to the Work.

3. **INSTRUCTIONS AND DECISIONS**

The Subcontractor will carry out the instructions of the Contractor's Representative relative to the Work. Should the Subcontractor hold such instructions to be at variance with this Subcontract, or to involve changes to the Work whether or not it has been performed, or to be given in error, the Subcontractor shall notify the Contractor before proceeding to carry them out in accordance with the provisions of Section 4, Changes of these Terms and Conditions. Absent such prior notification, subsequent work done by the Subcontractor will be at its own risk. If the Contractor and the Subcontractor fail to reach agreement with respect to any such instruction and the Contractor directs to have such instruction carried out, the Subcontractor shall comply with such instruction without delay. Any unresolved difference of cost and/or time resulting from any such instruction shall be resolved in accordance with the dispute resolution provisions of this Subcontract.

4. **CHANGES**

The Subcontractor shall not make any changes to the Work without the prior written consent of the Contractor's Representative. To the extent the Subcontractor believes it has received instructions which constitute a bona fide change in the Work, the Subcontractor will provide written notice to the Contractor in accordance with this Subcontract. Additionally, the Contractor may, by notice in writing, order or propose changes to the Work, including additions or deletions thereto. If the Contractor proposes changes to the Work, the Subcontractor shall promptly provide the Contractor with its estimate of the total cost of such change together with the impact upon the Schedule, whereupon, if the Contractor and the Subcontractor so agree, the Contractor shall issue a Change Order for such proposed work. If the Parties do not agree or the Subcontractor does not provide the Contractor with its estimate within a time frame required by the Contractor or if the Contractor otherwise orders a change to the Work, the Contractor may by issuance of a Change Directive require the Subcontractor to abide by such Change Directive. The issuance of a Change Order or Change Directive will not invalidate this Subcontract and in the event of a dispute arising therefrom, such disputes will be resolved in accordance with the dispute resolution provisions of this Subcontract.

5. **SHOP DRAWINGS.**

The Contractor will determine the number of copies of shop drawings as may reasonably be required together with the procedure and schedule for transfer of same and the Subcontractor shall supply such shop drawings.

6. **TESTS.**

The Contractor shall have the right to request the Subcontractor to open up for inspection any part of the Work the Contractor believes to be defective or otherwise failing to conform with the requirements of this Subcontract. If tested Work is found to be in accordance with this Subcontract, the Contractor shall pay the costs of re-examination, testing and replacement. If such Work is defective or is otherwise not in accordance with the requirements of this Subcontract, the Subcontractor shall pay the costs of re-examination, testing and replacement, and will pay the costs and damages arising from any resultant delay.

7. **SUPERVISION AND PERSONNEL**

The Subcontractor shall employ a competent and fully dedicated supervisor and any necessary assistants, all satisfactory to the Contractor throughout the course of the Work. The supervisor shall not be changed except with the consent of the Contractor, unless the supervisor ceases to be in the Subcontractor's employ. The supervisor shall represent the Subcontractor and direction given to the supervisor shall be deemed to be given to the Subcontractor. The Subcontractor shall not employ on the Work any unfit or unskilled person. The Subcontractor shall remove from the Project's work site any Subcontractor employee or contractor who, in the reasonable opinion of the Contractor's Representative, fails to abide by the Contractor's HSEMS (as defined in Section 25 Safety), is unfit or unskilled or persistently disrupts the activities of the Contractor or other subcontractors.

8. **EMERGENCIES**

The Subcontractor acknowledges that the Contractor and the Owner have authority in an emergency to stop the progress of the Work whenever, in its opinion, such stoppage may be necessary to protect the health and safety of any person, the environment or any part of the Project, or any neighboring property. Where such stoppage is made necessary by acts or omissions of the Subcontractor, any costs for such work stoppage will be to the Subcontractor's account.

9. **PROTECTION OF THE WORK AND PROPERTY AND RISK OF LOSS**

The Subcontractor shall protect all of the Work from damage and shall not cause damage to the Work or property of others. In the event the Subcontractor damages the Work or property of others, it shall indemnify and hold harmless the Contractor from all claims, losses, costs, damages and expenses arising from such damage and the Contractor shall have authority to assess all such damages and may deduct the cost thereof from payment then or thereafter due to the Subcontractor.

10. **HOUSEKEEPING**

The Subcontractor shall at its own expense complete its own clean-up and removal from site of all debris resulting from the carrying out of the Work to ensure a safe and accessible work area is available at all times, failing which the Subcontractor shall be liable for all costs and expenses incurred by the Contractor to perform such work.

11. **PERFORMANCE SECURITY.**

The Subcontractor, when required under Article 3 of the Subcontract and before starting the Work, must deliver the Subcontractor performance security in a form designated by the Contractor and must maintain same in good standing until completion of this Subcontract. Unless the Contractor specifically directs otherwise, the cost of the Subcontractor performance security shall be borne by the Subcontractor, who shall promptly provide proof of payment for such performance security when requested by the Contractor.

12. **CONTRACTOR'S EQUIPMENT AND STORAGE**

Any storage, site offices, site shops or any of the Contractor's equipment shall be available to the Subcontractor only at the Contractor's discretion and on mutually agreed terms. The Subcontractor assumes the risk of loss to any equipment, supplies or materials used by the Subcontractor in the performance of the Work but not incorporated into or forming a permanent part of the Work.

13. **INSURANCE**

- a) The Subcontractor shall, without limiting its obligations or liabilities as stated elsewhere in this Subcontract, obtain and continuously maintain at its own expense and cost, the following insurance coverages:
- i Workers' Compensation insurance covering all employees, partners and directors engaged in the Work in accordance with the statutory requirements of the Province or Territory having jurisdiction over such employees;
 - ii General Liability insurance, including coverage for completed operations hazards;
 - iii Automobile Liability insurance covering all owned and non-owned motor vehicles operated or used by the Subcontractor in the performance of the Work;
 - iv Equipment insurance covering all construction machinery, temporary buildings, equipment and tools used by the Subcontractor in the performance of the Work;
 - v If watercraft or aircraft are used or operated by the Subcontractor in the performance of the Work, Watercraft and Aircraft Liability insurance; and
 - vi to the extent the Work includes professional services, including but not limited to design services, professional liability insurance covering the Subcontractor's professional services (and any professional services provided by a sub-subcontractor or a consultant of the Subcontractor)
 - vii Such other insurance that may be deemed required by the Owner or Contractor.
- b) The minimum limits of insurance to be provided by the Subcontractor under Section 13(a)(ii), (iii) and (v) shall be \$5,000,000 per occurrence. Such insurance shall be maintained for at least two (2) years following completion of the Project and for the insurance required under Section 13(a)(ii), for six (6) years with respect to the completed operations hazards. The minimum limit of insurance to be provided by the Subcontractor under Section 13(a)(vi) shall be \$2,000,000 per occurrence. Such insurance shall be maintained for at least two (2) years following completion of the Project.

- c) The Subcontractor's General Liability insurance shall name both the Contractor and Owner as additional insureds with respect to liability arising out of the operations of the Subcontractor in performing this Subcontract and shall provide that the insurer shall waive any right of subrogation against the Contractor and the Owner. The Subcontractor's equipment insurer shall also waive any right of subrogation against Contractor and against the Owner.
- d) On projects where the Owner or the Contractor provide Course of Construction and/or Wrap-Up Liability insurance, such insurance will be subject to deductibles. The applicable deductible shall be the obligation of the party causing the damage or injury. In the case of Course of Construction losses, if no responsible party can be established, the deductible shall be borne by the party or parties whose work has been damaged in proportion to such damage. If the Contractor is providing Course of Construction and/or Wrap-Up Liability insurance, the applicable deductible shall not be less than \$25,000 per loss. It is the responsibility of the Subcontractor to satisfy itself as to the adequacy of such insurance.
- e) Prior to the commencement of the Work and upon request by the Contractor during the course of its completion, the Subcontractor shall provide to the Contractor a certificate of insurance in respect of the required insurance coverages (or a certified copy of the entire policy or policies, if so requested), and a clearance certificate or similar instrument of the relevant Workers Compensation authority or authorities. The insurer(s) shall provide thirty (30) days prior written notice of cancellation to the Contractor and the Owner of the coverage required under Section 13 (a) (ii), (iii), (iv), (v), (vi) and (vii).
- f) The Subcontractor shall indemnify and hold harmless the Contractor from any claims, demands, losses, costs, damages, actions, suits or proceedings arising from the Subcontractor's failure to obtain the insurances required hereunder.

14. **INDEMNIFICATION**

The Subcontractor shall indemnify and hold harmless the Contractor, its agents, employees, affiliates, directors and officers from and against any and all claims, demands, losses, costs, damages, actions, suits or proceedings by third parties ("Third Party Liabilities") that arise out of or are attributable to the Subcontractor's performance of the Subcontract, providing that such Third Party Liabilities are caused by acts or omissions of the Subcontractor or anyone else for whom the Subcontractor may be liable.

15. **DEFECTIVE WORK.**

The Subcontractor shall promptly report and remove from the Project site any defective work, whether the result of poor workmanship, use of defective materials, non-conformance with the requirements of this Subcontract, damage through carelessness or other acts of the Subcontractor, which has been determined by the Contractor and/or the Owner and/or its Consultant(s) as failing to conform to this Subcontract, whether incorporated in the Work or not. The Subcontractor shall promptly report and replace and re-execute such defective work, and pay for any resultant damages, costs, losses and expenses caused thereby.

16. **DEFAULT AND TERMINATION**

- a) The Subcontractor shall be in default of this Subcontract if the Subcontractor:
 - (i) Is adjudged bankrupt, or is unable to meet its financial obligations as they become due, or makes a general assignment for the benefit of creditors, or if a receiver is appointed, or if a creditor takes possession of any of the Subcontractor's property, or if a distress, execution or similar process is commenced against such property;
 - (ii) (Fails to perform the Work in accordance with the Schedule;
 - (iii) Fails to perform the Work in accordance with this Subcontract;
 - (iv) Abandons the Work;
 - (v) Fails to maintain the insurance or performance security required to be maintained hereunder;
 - (vi) Fails to pay its sub-subcontractors, suppliers and employees performing the Work all amounts due and owing;
 - (vii) Breaches or disregards occupational health and safety laws and regulations or the HSEMS;
 - (viii) Makes a material misrepresentation to the Contractor;
 - (ix) Fails to supply sufficient skilled and competent workers to perform the Work; or

- (x) Otherwise breaches, or is reasonably likely to breach, a material provision of the Subcontract;

and in the case of the circumstances described in this Section 16 (a) (ii)-(vii), (ix) and (x), the Subcontractor may remedy such default within three (3) days of being notified thereof, or in the case where such default cannot reasonably be remedied within three (3) days, provided the Contractor is not materially prejudiced by such continuing default, the Contractor may in its sole discretion request a rectification plan. Where so requested, the Subcontractor shall provide a comprehensive and substantive rectification plan within the time frame required by the Contractor. If the rectification plan is accepted by the Contractor (such acceptance being within sole discretion of the Contractor), the Subcontractor shall diligently implement such plan so as to remedy the default. Should the Subcontractor fail to provide such rectification plan or otherwise fail to diligently implement the Contractor-accepted rectification plan, the Contractor shall advise the Subcontractor that its default remains unremedied, whereupon the Contractor may exercise the remedies under this Section 16 (b).

- b) Upon the Subcontractor's unremedied or irremediable default and without prejudice to any other rights and remedies the Contractor may have, the Contractor may, upon written notice to the Subcontractor:
 - (i) Correct such default and deduct the cost thereof from any payment then or thereafter due to the Subcontractor and any remaining cost due shall remain the liability of the Subcontractor; and/or
 - (ii) Terminate the Subcontractor's right to continue with the Work, in whole or in part.
- c) If the Contractor terminates the Subcontractor's right to continue with the Work, the Contractor shall be entitled to:
 - (i) Take possession of the Work and materials and, where the Contractor has made a good-faith determination its use is necessary for the timely completion of the Work utilize the construction machinery and equipment available upon the Project site, subject to the rights of third parties and finish the Work by whatever method the Contractor may consider expedient; and
 - (ii) Charge the Subcontractor the sum of:
 - 1) the cost of completing the Work;
 - 2) the equivalent of 15% of the cost of completing the Work and performing corrections as an allowance to cover the Contractor's overhead and fees; and
 - 3) such other losses, damages, costs and expenses incurred by the Contractor by reasons of the Subcontractor's default.
- d) To the extent of the Owner's right to terminate the Prime Contract for convenience or otherwise without cause, the Contractor shall have the right to terminate this Subcontract for convenience or otherwise without cause by providing the Subcontractor with a written Notice of Termination, to be effective upon receipt by the Subcontractor. If the Subcontract is so terminated, the Subcontractor shall be paid in accordance with Article 4 - Payment, for Work duly performed up to the date of termination.
- e) In the event of default by the Owner under the Prime Contract, the Contractor shall have the right to terminate this Subcontract by providing the Subcontractor with a written Notice of Termination, to be effective upon receipt by the Subcontractor. In such case, the Subcontractor shall only be entitled to such payments in respect of the Work as the Contractor is able to secure from the Owner.

17. **PROJECT MATERIALS AND EQUIPMENT.**

The Subcontractor shall not remove any materials or equipment brought on to the Project site for incorporation into the Work without the prior written authority of the Contractor.

18. **SUBCONTRACTOR'S RIGHT TO SUSPEND WORK OR TERMINATE SUBCONTRACT.**

If the Subcontractor has submitted proper progress claims on time to the Contractor and such claims are not paid when due, the Subcontractor may, upon ten (10) days written notice to the Contractor, stop work and may terminate this Subcontract thirty (30) days after giving such notice to the Contractor. The Subcontractor may not terminate this Subcontract if payment of any sums overdue is made by the Contractor to the Subcontractor before the expiry of the thirty (30) day notice period or if any payment is not made by the Contractor due to such payment being disputed in good faith.

19. **ASSIGNMENT.**

Subject to any provision in the Prime Contract providing for assignment of this Subcontract to the Owner in the event of the Contractor's default, neither party shall assign this Subcontract nor any part thereof without the prior written consent of the other party, except in the case of an assignment by the Contractor to an affiliate or to the Owner, if applicable, in which case the Contractor shall provide written notice to the Subcontractor and the Contractor shall remain liable for its obligations hereunder. The Subcontractor will not assign payments under this Subcontract without the written consent of the Contractor, provided always, however, that the Subcontractor by reason of this provision will not be precluded from assigning or pledging the benefits of this Subcontract in the normal course of business. The Subcontractor agrees that the list of names of sub-subcontractors supplied prior to the signing of this Subcontract is the list of sub-subcontractors to be used to carry out those portions of the Work noted thereon and the Subcontractor shall not employ any to whom the Contractor may reasonably object. No such sub-contracting by the Subcontractor will relieve the Subcontractor from any obligations under this Agreement.

20. **INSOLVENCY AND BANKRUPTCY.**

In the event of the insolvency of the Subcontractor this Subcontract shall, at the option of the Contractor, cease and terminate and, in that event, the assignees or trustees in bankruptcy of the Subcontractor shall not acquire any interest in or to this Subcontract but shall be paid (but in all cases subject to the terms of this Subcontract including without limitation the provisions of Section 16 hereof) only for such Work as the Subcontractor has performed and been unpaid for as at the date of insolvency or bankruptcy. The Contractor's determination of the amount payable as at the date of insolvency or bankruptcy shall be conclusive.

21. **PAYMENT OF BILLS.**

The Subcontractor shall promptly and satisfactorily settle and pay for all accounts or claims made by the Subcontractor's employees, hires, creditors, subcontractors, permitted assigns, or anyone for whom the Subcontractor has legal responsibility related to the Work. In no event will the Subcontractor permit a lien or encumbrance against the Project, Project lands or any other Project assets ("Encumbrance") by any entity described in this Section 21 and in the case of the Subcontractor, Encumbrances which are not bona fide. If an Encumbrance is registered, the Subcontractor will, at its own expense, promptly and, in any event, no later than the time reasonably required by the Contractor, discharge such Encumbrance. Should the Subcontractor fail to do so, the Contractor may discharge such Encumbrance at the Subcontractor's expense and may set-off those expenses from any payments due to the Subcontractor. Such expenses shall include, but are not limited to, legal costs.

22. **SETOFF.**

The Contractor is entitled to set-off against payments owing to the Subcontractor where the Contractor has made, in good faith, a determination that the Subcontractor is in default of its obligations under the Subcontract, and such default has caused, or is reasonably likely to cause, the Contractor, the Owner or another party working on the Project, damages because of such default. In such cases, the Contractor will set-off the amount as is reasonably necessary to maintain itself in a "no-better/no-worse" position, as if there had otherwise been no such default by the Subcontractor.

23. **PARTIAL OCCUPANCY.**

Should the Owner's Consultant or the Owner request partial occupancy, the Subcontractor shall prepare the portion of the Work necessary for partial occupancy. The Contractor shall endeavor to make arrangements with the Owner to accept those portions to be used and to start from the date of such acceptance any guarantee or warranty under the Prime Contract as to performance and/or of quality of the work furnished pursuant to the Prime Contract.

24. **DISPUTES.**

In the case of any dispute arising between the Contractor and the Subcontractor as to their respective rights and obligations under the Subcontract, the Contractor, in the first instance, shall interpret and provide its decision in writing.

Differences between the parties as to the interpretation, application or administration of the Subcontract or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by decisions of the Contractor shall be settled as follows:

- a) The Subcontractor shall be conclusively deemed to have accepted the Contractor's written decision and to have expressly waived and released the Contractor from any claims in respect of the particular matter unless within ten (10) working days after receipt of that decision, the Subcontractor provides written notice to the Contractor of any dispute in respect of such decision.

- b) The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations.
- c) If the dispute is not resolved by negotiations, either party shall be entitled to request the use of a mediator to be appointed through mutual agreement to assist the parties to reach agreement on any unresolved dispute.
- d) Failing agreement as to the appointment of a mediator within thirty (30) days of such dispute arising or failing resolution through mediation and subject to the Contractor's peremptory rights below, either party shall be entitled to give the other notice of a request to arbitrate.
- e) The arbitration shall be conducted before a single arbitrator, shall take place in the jurisdiction of the place of the Work in accordance with the National Arbitration Rules of the ADR Institute of Canada, Inc. and the decision of the arbitrator will be final and binding upon the parties. The language of the arbitration will be English.
- f) Should any dispute or portion of any dispute between the Contractor and Subcontractor relate to a dispute between the Owner and the Contractor, and where the Prime Contract contemplates dispute resolution by arbitration, the Contractor may direct that such dispute or portion thereof as between the Contractor and Subcontractor be disposed of in the same arbitral proceedings, and the Subcontractor agrees to such direction and joinder of proceedings. Where the Prime Contract contemplates dispute resolution by litigation, or where the Contractor otherwise notifies the Subcontractor of its intention that any disputes not resolved following mediation be resolved by litigation, notwithstanding any request for arbitration issued by the Subcontractor, the Contractor shall have the peremptory right to issue written notice to the Subcontractor directing the waiver of arbitration proceedings hereunder, and such dispute will be resolved by litigation. Where a dispute has arisen under the Subcontract prior to the Project achieving substantial completion, the Contractor may at any time or at any stage in the dispute resolution process, deliver written notice to the Subcontractor directing that the dispute resolution proceedings be suspended until following attainment of such substantial completion of the Project whereupon such proceedings shall be deemed stayed and the Parties shall execute such further written assurances to stay such proceedings to give effect to this provision.
- g) The Subcontractor acknowledges that notwithstanding the referral of any dispute to the procedures hereunder, it shall not be entitled to suspend or delay the performance of the Work.

25. **SAFETY.**

The Subcontractor acknowledges and accepts the Contractor's health, safety and environment management system ("HSEMS") as governing the Work, which HSEMS includes, but is not limited to, Project Specific Site Safety Plans ("PSSP") and Protective and Preventative Measures ("PPM"), and the Subcontractor agrees to implement and administer, and have its subcontractors implement and administer, the following procedures:

- a) The Subcontractor shall implement a health, safety and environment management system and project site safety plan that meets or exceeds the requirements of the Contractor's HSEMS and PSSP. If any part of such system or plan are deemed by the Contractor not to comply with the requirements of the Contractor's HSEMS, the Subcontractor shall implement the corresponding part(s) of Contractor's HSEMS. The Subcontractor shall also implement and comply with the Owner's requirements regarding health, safety and the environment.
- b) The Subcontractor shall comply with all local, provincial and federal Occupational Health and Safety legislation and regulations.
- c) The Subcontractor shall actively promote safe work environments. The Subcontractor's site supervisors shall attend all safety meetings as may be scheduled by the Contractor.
- d) The Subcontractor shall have a representative at the Contractor's scheduled safety meetings and inform all of its employees of current safety procedures and Project-specific hazards and requirements to meet the Contractor's PSSP.
- e) The Subcontractor shall cooperate with all safety personnel having jurisdiction at the Project site.

- f) The Subcontractor shall ensure that before any of its personnel begin work on the Project, the Subcontractor has conducted hazard assessments that meet all applicable regulatory requirements, and that its personnel have been advised and fully informed as to the identified hazards and safety absolutes and PPM within the PSSP.
- g) The Subcontractor shall inform its personnel of Project specific emergency response plan for First Aid, evacuations and emergency calls.
- h) The Subcontractor shall take immediate action to correct unsafe behavior or conditions when reported or observed.
- i) The Subcontractor shall use its own regular system of inspection to detect and correct hazardous conditions, safety absolutes violations and unsafe behavior or conditions in its own area, provided such system meets or exceeds the system of inspection set out in the Contractor's PSSP.
- j) The Subcontractor shall at all times provide and enforce the use of personal protective equipment required by the applicable workers' compensation authority, and all local, provincial and federal Regulations.
- k) The Subcontractor shall at all times employ good and orderly housekeeping methods. Special attention must be given to maintaining clear walkways, removal of trash, removal of slipping and tripping hazards, and proper storage of materials. Temporary material storage accesses must be requested and cleared through the Contractor and kept neat at all times.
- l) The Subcontractor's representative shall give his or her current address and telephone number to the Contractor's Representative so that this person may be contacted after-hours in case of any emergency involving hazard, loss or damage of the Subcontractor's Work or equipment.
- m) The Subcontractor must attend the pre-mobilization kickoff meeting, if applicable, and at least one (1) site person, preferably the Subcontractor's Site Superintendent, must attend.
- n) The Subcontractor must comply with the incident reporting and injury classification standards as detailed in the PSSP.

26. **THIRD PARTY INTELLECTUAL PROPERTY.**

The Subcontractor shall pay the royalties and patent license fees required for the performance of the Work. The Subcontractor shall hold the Contractor harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the Subcontractor's performance of the Subcontract which are attributable to an infringement or an alleged infringement of any intellectual property rights by the Subcontractor or anyone for whose acts the Subcontractor may be liable.

27. **NON-MERGER OF REMEDIES.**

Each of the rights and remedies of the Contractor provided for in this Subcontract shall be in addition to and not in substitution for any of the other rights and remedies of the Contractor provided for in this Subcontract or available to the Contractor at law or in equity and none of such rights and remedies shall be construed so as to limit, prejudice or adversely affect any other of such rights and remedies.

28. **ENTIRE AGREEMENT.**

This Subcontract, together with any documents attached or incorporated, constitutes the entire agreement between the parties, and supersedes all previous communications between them, either oral or written. No modification of this Subcontract and no waiver of rights under this Subcontract shall be valid or binding on the parties unless the same be in writing. Failure of the Contractor to insist upon strict performance of any term or condition of the Subcontract, or to exercise any option in any one or more instances, shall not be construed to be a waiver of any such term, condition or option, or any other covenants or agreements, but the same shall be and remain in full force and effect. The partial or complete invalidity of any one or more conditions or sentences of the Subcontract shall not affect the validity or continuing force and effect of any other condition. The rights and remedies of the Contractor hereunder will survive termination of this Subcontract for any reason.

29. **ENUREMENT.**

This Subcontract shall enure to the benefit of and be binding upon the parties hereto, their successors, executors, administrators or permitted assigns.

30. **QUALITY.**

In addition to performing its Work in accordance with this Subcontract, the Subcontractor agrees to implement a formal quality control program and administer the following:

- a) The Subcontractor shall conduct progressive quality control inspections to comply with the Contractor's Quality Management System ("QMS") requirements for the Project. If the Subcontractor's inspection program does not meet Contractor's QMS requirements, the Subcontractor shall, at its own expense, implement Contractor's inspection program.
- b) The Subcontractor shall provide the Contractor with documentary evidence, in a timely manner, for all quality control inspections conducted for the Project.
- c) All certification and qualification documents shall be submitted to the Contractor prior to commencing the Work.
- d) All materials and equipment will be installed and commissioned, as applicable, in accordance with the manufacturers' instructions. To the extent that any manufacturer's instructions are inconsistent with the Contractor's QMS requirements, the Subcontractor shall promptly notify the Contractor of such discrepancy prior to installation but shall otherwise take no steps that would violate the manufacturer's warranty.
- e) The Subcontractor shall provide the Contractor with all applicable manufacturers' and suppliers' recommendations for storage, handling, usage, installation, operation, etc. for all Subcontractor-supplied materials and equipment.
- f) The Subcontractor shall assign a quality designate for the Project. This person shall be responsible for implementing Subcontractor's quality control program for the Project and shall act as the Subcontractor's contact person for all QMS processes.
- g) The Subcontractor shall promote a culture of quality and encourage personnel to identify and report any deficiencies and noncompliance observed.

31. **DOCUMENT CONTROL.**

Where the Contractor utilizes a document control system or other project-specific software or hardware tools, the Subcontractor shall ensure all Subcontractor personnel use such designated systems or tools.

32. **BUSINESS ETHICS.**

At all times during performance of the Work, the Subcontractor and its personnel shall continually observe and promote ethical business practices.