

Subcontractor: _____

Project #: _____

Project Name: _____

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

BETWEEN

(hereinafter known as the "Contractor")

AND

(hereinafter known as the "Subcontractor")

BACKGROUND:

A. The Contractor and _____ (the "Owner") have entered into a contract dated ____ day of _____, (the "Prime Contract") for the construction/management of _____ (the "Project").

B. The Subcontractor has agreed to perform a certain scope of work from the Prime Contract as further described in this Agreement (the "Subcontract").

C. Accordingly, the Contractor and the Subcontractor agree as follows:

ATTACHMENTS

The following Attachments form a part of this Subcontract:

- (1) Attachment "A" – Terms and Conditions of this Subcontract
- (2) Attachment "B" – Scope of Work & Subcontract Price Details
- (3) Attachment "C" – Application for Payment
- (4) Attachment "D" – Lien and Claim Release

ARTICLE 1 - THE WORK

The Subcontractor shall furnish all necessary labor, supervision, services, materials, tools, equipment and all other items, whether of a temporary or permanent nature, and shall perform all operations necessary and required hereunder (including, to the extent applicable, any required engineering or design services), all as further detailed in Attachment "B" (the "Work") for the Subcontract Price identified in Article 2, and all Work will be completed in accordance with the Contractor's Prime Contract schedule (the "Schedule") which is incorporated herein by reference. For clarity, the Work includes all related work reasonably inferable from the Subcontract Documents, including all efforts necessary to produce the intended results in accordance with best industry practice.

The Subcontractor's performance and completion of the Work shall be in strict compliance with:

- (a) all applicable laws and government regulations;
- (b) the provisions of the Subcontract Documents (as defined in Article 5 below); and
- (c) if the Work requires engineering or design services, these services will be completed in accordance with the standard of care as defined in the Prime Contract, and if no standard of care is defined in the Prime Contract, these services will be completed in accordance with the standard of care required by reasonable professionals providing services similar to the engineering or design services required by this Subcontract.

ARTICLE 2 - SUBCONTRACT PRICE

As full consideration for the correct, full and complete performance by the Subcontractor of this Subcontract, the Subcontractor shall be entitled to the following compensation, exclusive of any value added tax (the "Subcontract Price") of \$ _____ dollars in American funds for the fully completed Work in accordance with the terms of this Subcontract, subject to any additions or deductions for changes made to the Work as provided for in the Subcontract Documents. The Subcontract Price is more fully described in Attachment "B".

Subcontractor Initial _____

Subcontractor:

Project #:

Project Name:

ARTICLE 3 - SURETY BONDS/SUBCONTRACT PERFORMANCE SECURITY

The Subcontractor, on or before the date of commencement of the Work by the Subcontractor, agrees to provide to the Contractor the following performance and payment bonds and/or Subcontractor performance security in a form acceptable to the Contractor, naming the Contractor as obligee or beneficiary, as the case may be:

All bonds shall be in the form acceptable to the Contractor and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds" and as "Acceptable Reinsuring Companies" as published in Circular 570 by the U.S. Treasury. If the Subcontractor's surety is removed from the current Circular 570 list, the Contractor reserves the right to insist the Subcontractor obtain a qualified surety at no additional cost to the Contractor. All bonds signed by an agent must be accompanied by a certified copy of that agent's authority to act. All sureties must be authorized to conduct business in the state where the Project is located. No change, alteration or modification to the terms, conditions or scope of this Subcontract or in the terms or manner of payment shall in any way exonerate or release, in whole or in part, any surety on a bond furnished by or on behalf of the Subcontractor.

No payment whatsoever shall be due to the Subcontractor until the provisions of this Article have been met to the Contractor's satisfaction. Failure of the Subcontractor to provide the aforementioned bonds or other security within the time periods required by this provision shall constitute a material breach of this Subcontract, including, without limitation, entitling the Contractor, at its option, to immediately terminate the Subcontract as provided herein, or declare this Subcontract null and void.

ARTICLE 4 - SCHEDULE

Time is of the essence with respect to the performance of the Subcontract. The Subcontractor will begin the Work in accordance with the Schedule or as otherwise directed by the Contractor and will perform its obligations hereunder to complete the Work in accordance with the Schedule and so as not to interfere with, hinder or delay the work of the Contractor or any other subcontractor. The Subcontractor agrees to keep itself thoroughly informed as to the overall progress of the project, to commence and prosecute the Work in a prompt and diligent manner whenever such Work, or any part of it, becomes available, or at such time or times as the Contractor may direct, and the Subcontractor agrees it shall perform the Work in accordance with such revised Schedule or the Contractor's direction, including any changes to the order and sequencing of the Work. The Subcontractor agrees to notify the Contractor of its objection or inability to comply with any directive, notification, order, schedule or revision thereof dealing with the time or times of its performance within three (3) days of the Contractor's issuance thereof. In the absence of such notice to the Contractor, the Subcontractor agrees to any and all orders, notices, directives, schedules or revisions which may be issued from time to time to the Subcontractor. The Subcontractor's obligations for timely performance of its Work shall be based on the planned activity durations in the Schedule once the Work has commenced and on the dates specified in the Subcontract Documents and any amendments thereto.

The Subcontractor shall submit schedules, plans and reports to the Contractor in compliance with the Subcontract Documents, including all required Critical Path Method (CPM) schedules and detailed schedule information for Subcontractor's Work. Receipt by the Contractor of any schedule, plan, or report shall be for information only and shall not signify any change in the requirements of the Subcontract Documents.

If the Subcontractor (a) fails to achieve substantial completion, final completion, or any other critical or required milestone noted in the Schedule within the time required by this Subcontract, or (b) the Contractor's schedule is delayed due to the acts or omissions of the Subcontractor, the Subcontractor shall reimburse the Contractor for the liquidated damages assessed by the Owner against the Contractor as a result of such delays. Such amounts are deemed to be direct damages. Further, whether or not such liquidated damages are so assessed, the Subcontractor agrees to pay the Contractor any other costs or damages the Contractor may sustain by reason of any such delay, including, but not limited to, recovery of the Contractor's reasonable overhead. The Subcontractor further agrees that neither the payment of such damages nor any liability incurred for the payment of such damages shall release the Subcontractor from its obligation to otherwise fully perform the Work.

Subcontractor Initial _____

Subcontractor: _____

Project #: _____

Project Name: _____

ARTICLE 5 - SUBCONTRACT DOCUMENTS

The Subcontractor agrees to be bound by all of the terms and conditions of the Prime Contract to the extent applicable to the Subcontractor's Work, including without limitation all plans, specifications, general and supplementary conditions and addenda thereto, and in construing the Subcontractor's obligations under the Prime Contract, terms denoting "Owner" will be read as "Contractor" and the terms denoting "Contractor" will be read as the term "Subcontractor". The terms and conditions of the Prime Contract (including without limitation any guarantees or warranties thereunder as to performance and/or quality of the Work) and the plans, specifications, general and supplementary conditions and addenda of the Prime Contract, and Attachment "A" Terms and Conditions of this Subcontract, any and all documents incorporated by reference, any appendices, attachments or exhibits attached hereto, including any addenda, and the Schedule, insofar as they are applicable, generally or specifically, to Subcontractor's Work, all form part of this Subcontract and the whole shall constitute the entire Subcontract between the parties and the same are hereinafter referred to as the "Subcontract Documents."

ARTICLE 6 - NOTICES

Addresses for notices for the parties under this Subcontract are:

Contractor: _____

Contractor's Representative: _____

Subcontractor: _____

IN WITNESS WHEREOF THE CONTRACTOR and SUBCONTRACTOR have executed this Subcontract, effective the date noted above.

CONTRACTOR (Company Name)

SUBCONTRACTOR (Company Name)

By _____
CONTRACTOR (Authorized Signature)

By _____
SUBCONTRACTOR (Authorized Signature)

(Name and Title)

Registration Number

Registration Number

Federal Tax I.D. Number

Date

Date

Subcontractor Initial _____

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1. PRECEDENCE

In the event of any discrepancy between the various documents constituting the Subcontract Documents, the document imposing the most strict or stringent clause or requirement shall prevail.

2. SUBCONTRACTOR FURNISHED DRAWINGS, DATA, SAMPLES AND SUBMITTALS**(a) Submittals**

In conformance with the Schedule and the Subcontract Documents, the Subcontractor shall prepare and submit for the Contractor's approval: (i) all that is required to be submitted by the Subcontract Documents; (ii) all that is required to provide suppliers and construction personnel sufficient instruction and detail to execute the Work; and (iii) all other things necessary and incidental to the prosecution of its Work. Submittals shall include, but not be limited to, all shop drawings, request for design clarification, Work details, product data, certificates, supplier warranties, O&M manuals, and samples. When required for safety, or by the Contractor, the Subcontract Documents, or the law, submittals shall be prepared and approved by a professional engineer legally registered in the state where the Project is located. The Subcontractor shall prepare, submit, and maintain to the satisfaction of the Contractor, a document numbering, tracking, and transmittal system. All documents, correspondence, drawings, reports, and other items generated as part of the Work that are required to be submitted to the Contractor by the Subcontractor shall be numbered, tracked, and transmitted by the Subcontractor per the approved system.

(b) Reliance on Submittals

The Contractor and the Owner are entitled to rely on the adequacy and completeness of any Subcontractor submittal or certificate concerning the operations, maintenance, or performance criteria of systems, equipment, or materials including all relevant calculations and any governing performance requirements. No review or approval, or failure to review or approve, by the Contractor or the Owner shall in any way release or relieve the Subcontractor from any obligations to construct the Work in accordance with the terms of the Subcontract Documents.

(c) Right to Intellectual Property

The Contractor and the Owner shall have, and the Subcontractor hereby grants the Contractor and the Owner, a permanent, non-assignable, non-exclusive, royalty-free license to use any concept, product, process, copyrighted material, intellectual property, or confidential information used or developed by the Subcontractor in the performance of this Subcontract or furnished or supplied to the Contractor or the Owner by the Subcontractor in the performance of this Subcontract. The Subcontractor shall arrange for and pay for all licenses, fees, and royalties due for items, materials, methods, systems, or processes applicable to the Work that are subject to copyrights or patent rights. The Subcontractor shall take such steps as are necessary to overcome the effects of an injunction against the use of any deliverable furnished by the Subcontractor under this Subcontract. The Subcontractor shall indemnify, defend and hold harmless the Contractor and any other affected parties for any claim by third parties for unauthorized use of any intellectual property.

(d) Substitutions

The term "substitution" shall be deemed to include any substitution for, modification of, or deviation from the requirements of the plans and specifications referenced in or made a part of the Subcontract Documents with respect to the materials, equipment and methods of construction or manufacture applicable to the Work hereunder. The Subcontractor agrees and represents, at the time of entering this Subcontract, that it has thoroughly familiarized itself with all of the various sections, divisions and subdivisions of the Subcontract Documents, including in particular those areas in which the Work may in any way affect or be affected by the work of the Contractor or other subcontractors. The Subcontractor shall make no substitution, as defined herein, unless prior written approval of both the Owner and Contractor has been obtained. Such approval will not be granted by the Contractor unless applied for in writing by the Subcontractor setting forth a full disclosure of the effect of the proposed substitution upon the Work, and the work of the Contractor or any other subcontractor. In making or seeking to make any substitution, the Subcontractor hereby agrees to pay or reimburse the Contractor for any increase whatever in the cost of the work undertaken by Contractor or by any other subcontractor as a result of any substitution made upon initiation of the Subcontractor.

Subcontractor agrees and represents, at the time of entering this Subcontract, that no substitution was contemplated in arriving at the Subcontract Price except for which a full written description has been furnished to the Contractor prior to the effective date of this Subcontract. For clarity, the approval of a substitution by the Owner and Contractor in accordance with this section does not relieve or release the Subcontractor from fulfilling any of the provisions of this Subcontract, and Subcontractor acknowledges that Owner and Contractor's review of the proposed substitution is for the purposes of information only.

3. **PAYMENTS**

(a) **General**

Payment to the Subcontractor shall be made within fourteen (14) days from Contractor's receipt of payment from Owner or such shorter time as may be required by applicable law, provided however that the Contractor shall not make any payment for any Work performed by Subcontractor until the Application for Payment has been approved by the Contractor, and payment for the same obligation or Work has been made by the Owner and received by the Contractor. Where not prohibited by applicable law, receipt by Contractor of the corresponding payment from Owner is acknowledged and agreed by Subcontractor to be an express condition precedent to Subcontractor's right to receive payment from Contractor.

(b) The Subcontractor shall submit to the Contractor an application for payment on or before the twentieth (20th) of the month (or earlier if required by the Contractor for the purpose of allowing the Contractor to be compliant with the Prime Contract), for certification of Work performed up to such date, to enable the Contractor to apply in a timely manner for and obtain payment from the Owner. The Subcontractor's application for payment shall include:

- i. A completed Application for Payment, the form of which is attached hereto as Attachment "C" (the "Application for Payment");
- ii. For progress payments, a completed Interim Lien and Claim Release that covers the Subcontractor's Work in place on the Project at the date of the Application for Payment, the form of which is attached hereto as Attachment "D" (the "Interim Lien and Claim Release"), and a completed Interim Lien and Claim Release from each sub-subcontractor and material supplier covering labor and/or materials in place on the Project at the date of the Application for Payment and identified in the Application for Payment;
- iii. For final payments, a completed Final Lien and Claim Release, the form of which is attached hereto as Attachment "D" (the "Final Lien and Claim Release"), and a completed Final Lien and Claim Release from each sub-subcontractor and material supplier; and
- iv. Any other documents required by the Subcontract Documents or the Contractor.

(c) Receipt of the fully executed Interim Lien and Claim Release or Final Lien and Claim Release, as applicable, is a condition of payment. The Application for Payment shall not include a payment request for equipment and materials not yet incorporated into the Work unless specified otherwise by the Contractor. The Application for Payment shall constitute the Subcontractor's guarantee that the Work has been performed in strict compliance with the Subcontract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of (1) all claims, liens and other title defects, encumbrances, and security interests, and (2) all patent, licensing, copyright, or royalty obligations, upon incorporation into the Work, or upon the Subcontractor's receipt of payment under Application, whichever occurs earlier.

(d) No progress payment shall constitute acceptance or approval by the Contractor of the Work, materials or equipment for which the progress payment is made, nor a waiver of any right by the Contractor to require fulfillment of all terms of the Subcontract Documents. Neither the final payment nor any progress payment shall constitute acceptance by the Contractor of defective work, improper materials or improper equipment. Each progress payment and the final payment made hereunder, and the total thereof, will be subject to final audit and adjustment, and the Subcontractor hereby agrees to reimburse the Contractor in the event of overpayment, together with any costs and expenses, including audit and attorneys' fees, Contractor may incur in securing recovery thereof.

- (e) The Subcontractor shall pay its own sub-subcontractors and suppliers all sums owed them within ten (10) days (or such shorter time as may be required by applicable law) of receipt of payment from or on behalf of the Contractor. Payments received by the Subcontractor for Work properly performed by its employees, sub-subcontractors and suppliers shall be held by the Subcontractor in trust for those employees, sub-subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Subcontractor for which payment was made to the Subcontractor by the Contractor. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Subcontractor.
- (f) Contractor shall withhold retainage from the Subcontractor at the rate stated in the Prime Contract, unless the rate of retainage is otherwise set by applicable state or federal statute, and may withhold any other monies that it is entitled to withhold under this Subcontract. Payment for withheld retainage shall be made within fourteen (14) days after receipt of the corresponding retainage payment from the Owner to the Contractor, unless a shorter period is mandated by applicable law. The Contractor's obligation to release retainage to the Subcontractor shall be subject to satisfactory evidence that there are no unpaid claims which would provide the basis of a lien against the Project lands, retainage or payment bond, or subject to (1) withholding of sufficient funds to cover any defaults or deficiencies in the Work, or (2) at Contractor's option, furnishing of adequate and sufficient security to cover any defaults or deficiencies in the Work, which may include bonds or letters of credit if permitted by applicable law.
- (g) In the event the Subcontractor is in default of, or breaches or fails to comply with any provision, covenant or requirement of this Subcontract or the Subcontract Documents; or in the event any person asserts, or indicates it will assert, any lien, claim, demand, or charge against the Project or land or improvements or funds related to the Project, or against the Owner, the Contractor or any surety, arising from the Subcontractor's performance of this Subcontract, the Contractor may, at its option, withhold from any payments due or to become due to the Subcontractor such amounts as the Contractor may deem sufficient to protect and indemnify the Contractor from any and all loss, damage and/or expense arising therefrom, including attorneys' fees, until the condition requiring such measures has been remedied by Subcontractor to the satisfaction of the Contractor. If the offending condition is not remedied by the Subcontractor within a reasonable period of time, the Contractor may, at its option, proceed to make application of the withheld funds in whatever manner the Contractor may determine is required to remedy the offending condition.
- Notwithstanding anything to the contrary in this Subcontract, the Contractor shall not be obligated to make payments to the Subcontractor under this Subcontract: (i) when such payments will leave a balance due Subcontractor which is less than an amount adequate to satisfy all outstanding and subsequent obligations of the Subcontractor for labor, materials, supplies, tools, machines, plant, equipment, services, furnished or to be furnished by the Subcontractor in performance of the Work required under this Subcontract; (ii) when the Subcontractor is, or with reasonable probability may become, unable to comply with any provision of this Subcontract; (iii) whenever Contractor shall determine the Project is being delayed or is in danger of being delayed by the Work of the Subcontractor or by a failure of the Subcontractor to comply with any provision of this Subcontract; or (iv) until satisfactory correction, repair, replacement and/or restoration of faulty or deficient Work, or of any Work rejected as not conforming with this Subcontract or the Subcontract Documents.
- (h) If the Prime Contract permits payment for materials delivered to the job site, or to satisfactory storage facilities, the Subcontractor may invoice for materials so delivered and receive payment to the extent the Contractor is paid for such materials. Notwithstanding any payment under this Section 3, the Subcontractor shall be responsible for material as described in Section 9.
- (i) With respect to any progress payments paid to the Subcontractor by the Contractor through any financial instrument whatsoever, it is agreed that such payment will be effective as an unconditional lien and claim waiver and once the financial instrument has been paid by the Contractor, shall become effective to release in respect of the Work invoiced any and all claims and rights of lien which the Subcontractor has or may have on the property identified in the Prime Contract, for labor, services, equipment, rented or supplied, materials furnished and any/all claims unconditionally for the amount of the payment.

- (j) With respect to final payment, the Subcontractor shall submit its final Application for Payment to the Contractor in accordance with the Subcontract Documents. Prior to the submission of the final Application for Payment, the Subcontractor shall submit the following: (a) as-built drawings, quality records, warranties, and other such documents as required by the Subcontract Documents; (b) certificates of insurance confirming that required coverage will remain in effect consistent with the requirements of the Subcontract Documents; and (c) consent of the Subcontractor's surety to final payment. The final payment will be made within thirty (30) days after the Work has been completed by the Subcontractor to the satisfaction of the Owner and the Contractor, and the Contractor has received from the Owner written acceptance thereof together with payment in full for the Subcontractor's Work. The final payment is further subject to the Contractor's determination that all of the terms, conditions, requirements and covenants of the Subcontract Documents have been satisfied and discharged by the Subcontractor.
- (k) **Cost-Reimbursement Documentation Required**
Should any portion of the Work be performed on a cost reimbursable basis, including any claimed changes or scope adjustments, the Subcontractor agrees, upon the Contractor's request, to furnish payroll affidavits, receipts, vouchers, invoices, agreements, releases of claims for labor, equipment, and material, and such other documentation the Contractor considers necessary to verify that all claims from any supplier or subcontractor of the Subcontractor have been satisfied. The Subcontractor also agrees to furnish same from its subcontractors, suppliers, and consultants all in a form satisfactory to the Contractor.
- (l) **Certified Payroll and Employment Compliance**
When Work is performed on a cost reimbursable basis, or the Work is subject to the Davis-Bacon Wage Act, other similar federal or state laws or local ordinances relating to prevailing wages, or where the Owner requires it, the Subcontractor shall submit certified payroll records to the Contractor not later than three (3) days after paying labor. In addition, the Subcontractor shall comply with all requirements of the Prime Contract and Subcontract Documents concerning pay benefits and contributions, anti-kickback clauses, fair labor practices, nondiscrimination clauses, equal employment opportunity laws, orders and directives and other labor arrangement requirements insofar as such matters pertain to its Work under this Subcontract. Failure of the Subcontractor to observe any of the aforesaid requirements, including the prompt submission to the Contractor of required reports and affidavits, shall constitute cause for withholding progress payments until such requirements are met. The Subcontractor is responsible for determining its own status under the various regulatory acts relating to employment, and nothing in this Subcontract shall serve to make the Contractor liable for any errors or acts of the Subcontractor with respect thereto. The Subcontractor agrees that if any portion of its Work under this Subcontract is further subcontracted, such lower-tier subcontractor shall comply with, observe and be bound by the terms and provisions of this Section, and the Subcontractor shall incorporate the terms and provisions of this Section in any lower-tier Subcontract.
- (m) **Subcontractor's Payment Obligations**
The Subcontractor will promptly pay its lower tier subcontractors, suppliers and consultants for all materials and supplies furnished and for all work, labor and services performed as required under this Subcontract or within such time as required by law. In addition, the Subcontractor will notify the Contractor within seven (7) days of any disputed amounts withheld from the subcontractors, suppliers and consultants for Work for which the Subcontractor was paid. In addition, any reduction of the retention amount withheld for the Subcontractor shall result in a corresponding reduction to retainage withheld from the Subcontractor's lower tier subcontractors. The Subcontractor shall pay its lower tier subcontractors the reduced retention within fourteen (14) days of the payment of the reduction of the retention to Subcontractor or within such shorter time as may be required by applicable law. If the Subcontractor fails to make payments in accordance with this Section, Contractor may, in addition to any other rights and remedies available to it under this Subcontract and at law, take any one or more of the following actions: (a) hold Subcontractor to be in material default under this Subcontract and pursue all remedies available to Contractor as a result of this material default; (b) withhold future payments including retention until proper payment has been made to lower tier subcontractors in accordance with this Section; or (c) issue a payment jointly payable to the Subcontractor and its lower tier subcontractor. In addition, the Subcontractor shall indemnify, defend, and hold harmless Owner and Contractor against any claims, liens, demands or suits for the material and supplies purchased and for the work, labor and services performed for the Subcontractor pursuant to this Subcontract.

- (n) The Subcontractor will make no assignment of any payments due or to become due under this Subcontract without the prior written consent of the Contractor. In no instance shall the Contractor be obligated to any assignee of the Subcontractor on account of payments at any time made in good faith under any assignment and/or erroneously or inadvertently made to the assignor.

4. **SETOFF**

The Contractor is entitled to set-off any sums due or to become due to the Contractor against any payments due to the Subcontractor or to become due to the Subcontractor where the Contractor, acting reasonably, has made a determination that the Subcontractor is in default of its obligations under this Subcontract, and such default has caused, or is reasonably likely to cause, the Contractor, the Owner or another party working on the Project, damages or loss because of such default.

5. **IDENTIFICATION OF MAJOR SUBCONTRACTORS AND SUPPLIERS**

The Subcontractor shall, within ten (10) days of execution of this Subcontract, provide the Contractor with all of the information requested by the Contractor that is related to the Work, including, but not limited to, a list of Subcontractor's lower tier subcontractors and suppliers who will furnish any labor to the Project, and a list of lower tier subcontractors and suppliers who will furnish any equipment and/or material to the Project with a value of \$1000 or greater, and shall not subsequently change any of the listed lower tier subcontractors and suppliers without the Contractor's prior written approval. This list shall include each lower tier subcontractor's and supplier's name, address, telephone number and identify whether they are supplying labor only, equipment only, materials only, or labor, equipment and materials, or any combination thereof. This identification obligation shall be a continuing one and, in the event of any change in this information, the Subcontractor shall promptly advise the Contractor of such change in writing. For clarity, providing this information does not relieve or release the Subcontractor from its liability for the performance of its subcontractors and suppliers and its lower tier subcontractors and suppliers, and Subcontractor acknowledges that Owner and Contractor's review of the proposed substitution is for the purposes of information only.

6. **SUBCONTRACT INTERPRETATION**

Subcontractor shall be solely responsible for requesting instructions or interpretations and shall be solely liable for any costs and expenses arising from failure to do so in a timely manner. 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 out such instructions, and shall then proceed in accordance with the provisions and requirements of Section 7, Changes. Absent such prior notification, subsequent work done by the Subcontractor will be at its own risk.

All determinations, instructions, and clarifications of the Contractor shall be final and conclusive, unless determined to have been fraudulent, arbitrary and capricious, or so grossly erroneous as necessarily implying bad faith. At all times, the Subcontractor shall proceed with the Work in accordance with the determinations, instructions, and clarifications of the Contractor. Any unresolved difference of cost and/or time resulting from any such determination, instruction or clarification shall be resolved in accordance with the dispute resolution provisions of this Subcontract.

7. **CHANGES**

(a) **General**

The Contractor may, at any time, without invalidating this Subcontract and without notice to Subcontractor's surety, order in writing changes to the Subcontractor's Work by altering, adding to, or deducting from the Work, the Subcontract Price or the Schedule. If such Contractor's order causes an increase or decrease in the cost of performance or in the time required for performance, the Subcontract shall be modified in writing accordingly ("Change Order"). Nothing in this Section or in this Subcontract shall excuse Subcontractor from proceeding with the prosecution of the Work. All such Work shall be executed in accordance with this Subcontract and the Subcontract Documents. The Subcontractor shall not make any changes to the Work unless the same is agreed upon in writing by the Contractor prior to the performance of the Work.

(b) **Subcontractor Submitted Request for Change**

Subject to any notice requirement in this Subcontract, if at any time Subcontractor believes that there has been a change to the Work, the Subcontractor shall submit to the Contractor, within the earlier of three (3) days or within a sufficient amount of time to allow the Contractor to submit a change order request to the Owner under the Prime Contract, a written notice in the form of a change order request. The change order request shall explain the basis for the request and merit, nature, time impact, and monetary extent of such request in sufficient detail to permit a thorough analysis by the Contractor and shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested cost or time adjustment is the entire adjustment to which Subcontractor believes it is entitled as a result of said event. The Subcontractor's entitlement to an adjustment in the cost or time required for the performance of a change in the Work directed or caused by the Owner shall be governed by the terms of the Prime Contract. Failure by Subcontractor to submit the required notice within the time noted in this section 7(b), or to keep detailed, segregated cost and time records for an alleged change shall constitute a waiver by the Subcontractor of any claim for an increase in the Subcontract Price or an extension of time resulting from an alleged change.

(c) **Time and Price Adjustment as a Result of Change**

If necessary, the Subcontract Price, or the time for the Subcontractor's performance of the Schedule, or both, may be adjusted by appropriate additions or deductions executed by a Change Order. The Subcontractor's substantiation of the impact to cost and schedule shall be consistent with the obligations imposed on the Contractor under the terms of the Prime Contract. No allowance for an adjustment of the time for the Subcontractor's performance or an extension of time, for any cause whatsoever, shall be claimed or made by the Subcontractor unless the Subcontractor shall have made written request upon the Contractor for such adjustment of the time for the Subcontractor's performance or an extension of time within three (3) days after the cause for such extension of time first occurred. No extension of time granted the Contractor by the Owner shall inure to the benefit of the Subcontractor unless such extension of time is directly related to Subcontractor's Work hereunder. In no event shall an extension of time or allowance for extra time be granted to the Subcontractor for delays attributable to untimely or incorrect preparation and/or submissions of shop drawings, samples, product data, or any other submittal information required by the Subcontract Documents; or when orders have not been placed with manufacturers or suppliers in a timely manner; or for delays resulting from the Subcontractor's substitution, or attempt to make substitution, of materials, equipment or methods of construction or manufacture in lieu of those specified or previously approved; or for any delay resulting from or attributable to the Subcontractor's failure to comply with any of the provisions of the Subcontract Documents.

The Subcontractor shall take all reasonable steps to avoid or limit losses that may result from a change to the Work. The Subcontractor shall take reasonable action to reduce the length and effect of any delay and to minimize the costs incurred or to be incurred, because of any change to the Work.

Payment for any change shall be made in accordance with the payment provisions of the Subcontract Documents. In the event that the parties are unable to reach agreement regarding the adjustment of the Subcontract Price or the time for the Subcontractor's performance of the Schedule as a result of any alleged change, the Subcontractor shall proceed promptly with the Work as directed by the Contractor and the dispute shall be resolved in accordance with the dispute resolution procedures contained herein. The Subcontractor acknowledges that, any change in the Subcontract Price and time for the Subcontractor's performance effected through a written Change Order shall constitute full and final payment and shall constitute an accord and satisfaction for all costs incurred, labor performed, material and equipment furnished, and any delay, acceleration, or loss of efficiency associated with the change to the Work and the Contractor shall not be liable for any costs or alterations of the Subcontract Price, or time for the Subcontractor's performance or extension of time not subject to a Change Order.

8. **INDEPENDENT CONTRACTOR AND SUBCONTRACTOR AS EMPLOYER**

The Subcontractor shall act as an independent contractor and not as the agent of Contractor or Owner in performing this Subcontract. The Subcontractor shall perform the Work hereunder in accordance with the Subcontractor's own means and methods. The Subcontractor shall maintain complete control over its employees, agents, and all of its subcontractors, suppliers, and consultants. The Subcontractor represents and warrants that it is fully experienced, properly qualified, registered, licensed, equipped, organized, and financed to perform the Work. The Subcontractor shall employ only competent and skilled personnel to perform the Work. Nothing contained in this Subcontract, any purchase order, subcontract, or agreement awarded by the Subcontractor shall create any contractual relationship between any such subcontractors, suppliers, or consultants and either the Contractor or the Owner. There are no third-party beneficiaries to the Subcontract.

If the Project is located in the State of Washington, the Subcontractor agrees that it has the status of an employer as defined by the Industrial Insurance, Workmen's Compensation Act, Social Security, and other similar acts of the federal, state and local governments. Regardless of where the Project is located, the Subcontractor will withhold from its payroll the applicable Social Security taxes, Workmen's Compensation, Unemployment Compensation contributions, withholding taxes, and any applicable union dues, and pay the same. The Contractor shall in no way be liable as an employer to or on account of any of the employees of the Subcontractor. The Subcontractor agrees to indemnify the Contractor for any and all claims, damages or demands made under such laws arising from the Work performed under this Subcontract.

9. **MATERIALS**

Materials delivered by or for the Subcontractor and intended to be incorporated into the Project shall remain on the job site and shall become the property of the Contractor upon delivery. The Subcontractor shall unload, store, and protect from damage all materials that are intended to be incorporated into the Project. The Subcontractor shall bear the risk of loss and shall protect these materials against loss, damage or degradation until actually incorporated into the Project and accepted, even though title may previously have passed to the Contractor as set forth in this Subcontract.

Materials condemned by the Contractor, Owner, or Owner's representative, as failing to conform to the Prime Contract, shall upon notice from the Contractor, be immediately removed by the Subcontractor. Failure of the Contractor to immediately condemn any work or materials as installed shall not in any way waive the Contractor's right to object thereto at any subsequent time.

10. **QUALITY**

In addition to performing its Work in accordance with this Subcontract, the Subcontractor agrees to implement a formal quality control program to ensure that all portions of the Work meet the technical, quality, workmanship and other requirements of the Subcontract Documents and the Contractor's Quality Management System ("QMS"), which program shall include, but is not limited to, the following:

- (a) The Subcontractor shall conduct progressive quality control inspections to comply with the Contractor's 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. The Work may be subject to quality inspection and quality audit by Contractor and Owner, or their authorized representatives, whom, upon reasonable notice and at Subcontractor's expense, shall be afforded safe and ample facilities for inspecting the Work, and full access to the job site, the Work, shops, factories or other places of Subcontractor and Subcontractor's lower-tier subcontractors and suppliers. For clarity, any inspection or audit conducted in accordance with this section does not relieve or release the Subcontractor from fulfilling any of the provisions of this Subcontract, and Subcontractor acknowledges that Owner or Contractor's inspection or audit is for the purposes of information only.
- (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 and shall have the authority to reject any non-conforming Work performed by the Subcontractor and its lower-tier subcontractors and suppliers
- (g) The Subcontractor shall promote a culture of quality and encourage personnel to identify and report any deficiencies and noncompliance observed.

11. DEFAULT AND TERMINATION

- (a) The Subcontractor shall be in default of this Subcontract if the Subcontractor:
 - i. Will not, or is generally unable to, pay its debts as they become due; or seeks (or has sought against it): (A) a proceeding to be declared bankrupt or insolvent; (B) a proceeding for an order for reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, or other relief with respect to it or its debts; (C) to have appointed a receiver, trustee, custodian, conservator, or other similar official for it or for all or any substantial part of its assets; or (D) to make a general assignment for the benefit of its creditors;
 - ii. Fails to perform the Work in accordance with the Schedule;
 - iii. Fails to perform the Work in accordance with the requirements of the Subcontract, including in the event Subcontractor fails to supply a sufficient number of properly skilled workers or sufficient supplies, materials, equipment or fails to prosecute the Work with promptness and diligence;
 - iv. Abandons the Work, or gives the Contractor notice of the Subcontractor's inability to continue performance of the Work;
 - v. Fails to maintain and provide evidence of 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 applicable occupational health and safety laws and regulations or the HSEMS;
 - viii. Makes a material misrepresentation to the Contractor;
 - ix. Fails to comply, or becomes unable to comply, or is reasonably likely to become unable to comply with any of the material provisions of this Subcontract;
 - x. In the event the Subcontractor defaults under any other agreement between the Contractor and Subcontractor; or
 - xi. Otherwise breaches, or is reasonably likely to breach, a material provision of this Subcontract;

and in the case of the circumstances described in Section 11 (a) (ii), (iii), (v)-(vii), (ix), (x) and (xi), the Subcontractor may remedy such default within three (3) business days of being notified thereof, or in the case where such default cannot reasonably be remedied within three (3) business 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, 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, in writing, advise the Subcontractor that its default remains unremedied, whereupon the Contractor may exercise the remedies under Section 11(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:
- i. Correct such default, by taking whatever reasonable steps are necessary to do so, which may include, but are not limited to, taking over the Work or supplementing the Subcontractor's efforts to complete the Work (or both), and in all such cases, 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, in whole or in part, the Contractor shall be entitled to:
- i. Take possession of the Work, Subcontractor's materials, supplies, tools 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;
 - ii. Charge the Subcontractor the sum of:
 - 1) all of the direct and indirect costs of completing the Work, including, but not limited to, the costs of supervision, administration, jobsite overhead, travel, attorney's fees, legal and accounting fees and expenses, Contractor's general and administrative costs;
 - 2) an estimation of the cost of corrections to the Work originally performed by the Subcontractor that may be required to fulfill the Subcontractor's warranty obligations hereunder;
 - 3) the equivalent of 15% of the cost of completing the Work and performing corrections as an allowance to cover the Contractor's markup; and
 - 4) such other losses, damages, costs and expenses incurred by the Contractor by reasons of the Subcontractor's default.
 - iii. Upon expiry of the warranty period, charge the Subcontractor the amount by which the cost of corrections to the Work exceeds the amount estimated for such corrections under Section 11 (c) (ii) (2), or if the cost of such correction is less than such amount, pay the Subcontractor the difference.
 - iv. In the event the Contractor's termination of the Subcontractor's right to continue with the Work, in whole or in part, is found to be improper, then such termination is deemed to be a termination for convenience and will be governed by s. 11(d) of this Subcontract.

- (d) The Contractor may, at any time or for any reason, terminate the Subcontractor's Work, in whole or in part, at the Contractor's convenience. Upon receipt of notice of termination for convenience, the Subcontractor shall, unless the notice directs otherwise, immediately discontinue the Work, including but not limited to the placing of orders and subcontracts related to the performance of this Subcontract. If requested, the Subcontractor shall also make every reasonable effort to procure cancellation of all existing orders and subcontracts, upon terms satisfactory to the Contractor, or at the option of the Contractor, give the Contractor the right to assume those obligations directly, including all benefits derived therefrom. The Subcontractor shall thereafter do only such Work as may be necessary to preserve and protect the Work and to protect material and equipment on the job site or in transit thereto. Upon such termination, the Subcontractor shall be entitled to payment in accordance with the provisions of this Subcontract for the reasonable cost of the Work completed up to the date of the notice of termination for convenience, and for any reasonable costs associated with demobilizing from the Project site. There shall be deducted from such sums as provided in this Subsection the amount of any payments made to the Subcontractor prior to the date of the termination of this Subcontract. In no event shall payment due hereunder exceed the amount based upon approved units of Work or percentage of completion. The Subcontractor shall not be entitled to any claim or lien against the Contractor or the Owner for any additional compensation or damages in case of such termination for convenience and payment related thereto.
- (e) Should the Owner terminate the Prime Contract for convenience, the Contractor may terminate this Subcontract for convenience. In such case, the Contractor is only obligated to pay the Subcontractor the amount that the Contractor can collect from the Owner on behalf of the Subcontractor as a result of the Owner's termination for convenience of the Prime Contract. The Subcontractor shall not be entitled to any claim or lien against the Contractor, the Owner or the Project for any additional compensation or damages in the case of Contractor's termination for convenience as a result of the Owner's termination for convenience of the Prime Contract and payment related thereto.
- (f) 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. The Subcontractor shall not be entitled to any claim or lien against the Contractor, the Owner or the Project for any additional compensation or damages in the case of Contractor's termination as a result of the Owner's default under the Prime Contract and payment related thereto.

12. SUSPENSION

The Contractor may order the Subcontractor, by written notice, to suspend all or part of the Subcontractor's Work for such period of time ordered by the Owner in the case of an Owner suspension of the Work, of if suspension is ordered by the Contractor alone, such period of time, not to exceed ninety (90) days, as may be determined to be appropriate by the Contractor. Phased Work or interruptions of the Subcontractor's Work for short periods of time shall not be considered a suspension. Upon receiving notification of suspension, the Subcontractor shall: (a) immediately discontinue the Work on the date and to the extent specified in the notice; (b) place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice; (c) continue to protect and maintain the Work including those portions where Work has been suspended; (d) if the suspension order requires the Subcontractor to suspend purchases, subcontracts, and rental agreements, the Subcontractor shall promptly make every reasonable effort to obtain suspension, upon terms satisfactory to the Contractor, of all orders, subcontracts, and rental agreements to the extent they relate to performance of suspended Work; and (e) take any other reasonable steps to minimize costs associated with such suspension.

Upon receipt of notice to resume suspended Work, the Subcontractor shall immediately resume performance under this Subcontract to the extent required in the notice. Any change request seeking an adjustment in the cost of performance or extension of time as a result of such suspension, or both, shall be submitted no later than 10 days after the date fixed for resumption of Work. The Contractor's liability to the Subcontractor for Work suspended by the Owner, shall not exceed the Subcontractor's proportionate share of any cost and time adjustment provided by the Owner to the Contractor for the impact of the Owner's suspension.

13. UNIT PRICE

In the event the Subcontract contains unit price items, it is understood and agreed that any quantities are approximate only and subject to change as required by the Prime Contract and as ordered and directed by the Contractor. Final payment for unit price items will be based on the unit price items and Contractor approved quantities

14. PROJECT DAMAGE

Any damage caused by the Subcontractor or its sub-subcontractors or suppliers to the Work, the Project, or any third party property, shall be reported immediately to the Contractor, and the Subcontractor shall be responsible for the repair of such damage, or the cost to repair, at the sole discretion of the Contractor. The Subcontractor agrees to furnish continuous and effective protection at all times for its own Work under this Subcontract, and to bear and be solely liable for all loss or damage of any kind to this Work occurring at any time prior to the final completion and acceptance thereof.

15. WARRANTY

The Subcontractor warrants to the Owner and the Contractor that all materials, equipment, and other items furnished and incorporated into the Work, shall be new and of recent manufacture, unless otherwise specified, and that all Work under this Subcontract shall be performed in a good and workmanlike manner, shall be of good quality, free from faults and defects, and in conformance with all Subcontract Documents. The Subcontractor represents and warrants to the Owner and the Contractor that all services provided under the Subcontract will be performed by experienced and capable personnel, the provided services and products of the services will be in strict accordance with the Subcontract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective. The Subcontractor shall correct, remove, or replace, at the Contractor's option, any part of the defective Work at no cost to the Owner or Contractor. The warranty provided in this Section shall be in addition to, and not in limitation of, any other warranty or remedy provided by law, the Subcontract Documents, or Subcontractor's subcontractors, suppliers, and consultants.

The warranty period for the Work under this Subcontract shall be two (2) years after Contractor's final payment unless a longer period is required by the Subcontract Documents. Notwithstanding the forgoing, such warranty period shall not terminate prior to the Contractor's release from responsibility to the Owner under the Prime Contract or applicable law for the Work which the Subcontractor performs or furnishes under this Subcontract. The Subcontractor will assign to the Contractor and the Owner the warranty or guarantee of the manufacturer(s) and supplier(s) of items of machinery, equipment, materials, or products manufactured or sold by others including but not limited to any cause of action and will cooperate and assist the Contractor in the Contractor's enforcement thereof. The Subcontractor's assignment of any third-party warranties does not relieve the Subcontractor of its warranty obligation under this Subcontract.

16. HOUSEKEEPING

The Subcontractor will be responsible for daily and final clean up and disposal of refuse, waste and debris produced by its performance of the Work. Refuse shall not be permitted to accumulate to the extent that it interferes with free access to the Project site. In the event of the Subcontractor's failure after notification, or refusal to meet these requirements, refuse removal may be done by the Contractor and charged to the Subcontractor.

17. WORKER'S COMPENSATION INSURANCE

- (a) The Subcontractor will furnish to the Contractor evidence that it has in force Worker's Compensation Insurance, as required by the jurisdiction in which the Work is being performed. Where applicable, this insurance shall include United States Longshoremen's and Harbor Workers Act coverage. The Subcontractor shall maintain a coverage limit not less than \$1 million or an amount as specified by Contractor or statutory requirement. The Subcontractor shall provide evidence of such coverage satisfactory to Contractor and shall provide for not less than thirty (30) days' notice to the Contractor of cancellation or reduction of such coverage. The Subcontractor shall be responsible for confirming compliance with this provision by all of its lower-tier subcontractors.
- (b) In the State of Washington, Subcontractor shall secure its liability for industrial injury to its employees in accordance with Washington State Industrial Insurance Act, Title 51 revised Code of Washington (the "WSIIA"). Any subcontractor or sub-Subcontractor or employer qualified as a self-insurer in accordance with the WSIIA shall so certify by a letter signed by a corporate officer setting forth the limits of any policy of excess insurance covering their employees. Subcontractor shall be responsible for confirming compliance of all sub-Subcontractors with this provision.

18. INSURANCE

- (a) The Subcontractor will, at its sole expense and cost, and without limiting its obligations or liabilities as described in this Subcontract, obtain and continuously maintain in force during the term of this Subcontract (including, for clarity, the duration of the Subcontractor's warranty obligations described in this Subcontract) the following insurance coverages with limits not less than those set forth below, or as specified in the Prime Contract, whichever is greater, which limits, subject to Contractor's approval, may be satisfied by a combination of primary and umbrella/excess policies as long as the applicable umbrella/excess policy follows form or evidences the same endorsements (including, without limitation, waiver of subrogation, additional insured and primary and non-contributing endorsements) required by Contractor as provided herein:
- i. Commercial General Liability Policy ("CGL Policy") with a general aggregate limit (per project) of \$5 million for each occurrence. The CGL Policy will include Products – Comp/Op with aggregate of \$5 million for a period of six years following Final Completion of the Project or as required by applicable law; Personal Injury & Advertising Liability of \$5 million; Damage to Rented Premises (each occurrence) of \$100,000; and Medical Expense (any one person) of \$10,000;
 - ii. Auto Liability Policy (including hired and non-owned vehicles) with a combined single limit of \$5 million;
 - iii. Employer's Liability Policy with a limit of \$3 million for each accident; and \$3 million for disease (each employee). For clarity, if the Project is being performed in a jurisdiction where the state has a monopolistic workers' compensation fund, the Subcontractor will also obtain stop-gap insurance that provides coverage for employer's liability;
 - iv. In the event that the Subcontractor's Work includes the provision of any professional services, including but not limited to, design work or assistance with design work, whether performed by the Subcontractor, or any consultant or sub-subcontractor of the Subcontractor, the Subcontractor will have a professional liability insurance policy covering such work and such providers of this work with a limit of not less than \$2 million per claim (or limits required by the Prime Contract, whichever is greater), and such policy will provide coverage to the end of the relevant Statute of Repose for the jurisdiction in which the Project is performed. In addition, this professional liability insurance policy will include punitive damages coverage (where not prohibited by law) and limited contractual liability coverage. For clarity, the professional liability policy described above is not required if there is a project specific professional liability policy covering all professional services provided to the Project;
 - v. Unless excused in writing by the Contractor, the Subcontractor will maintain policies of insurance providing for: pollution liability coverage (including remediation) with a limit of \$2 million for each;
 - vi. If required by Contractor, the Subcontractor shall maintain policies of insurance for aircraft coverage and watercraft coverage acceptable to Contractor;
 - vii. Equipment insurance covering all construction machinery, temporary buildings, equipment and tools used by the Subcontractor in the performance of the Work. Subcontractor's equipment insurer shall waive any right of subrogation against Contractor and the Owner; and
 - viii. Such other insurance that is required by the Owner pursuant to the Prime Contract.
- (b) Where the Owner or the Contractor provide Builders Risk insurance, such insurance will be subject to deductibles. Payment of the applicable deductible shall be the obligation of the party causing the damage or injury. In the case of Builders Risk losses, if no responsible party can be established, the deductible shall be borne by the party whose work has been damaged in proportion to such damage. It is the responsibility of the Subcontractor to satisfy itself as to the adequacy of such Builders Risk insurance.
- (c) Except for Professional Liability insurance, none of the policies required of the Subcontractor under this Subcontract can be a claims-made policy.

- (d) Except for the Builders Risk insurance deductible noted in 18(b) above, payment of the deductible or self-insured retention under any policy provided by the Subcontractor shall be borne by the Subcontractor. No policy provided by the Subcontractor shall contain a deductible or self-insured retention of more than \$25,000 without the express written consent of the Contractor. All such deductibles and self-insured retentions shall be declared on the certificate of insurance.
- (e) Prior to the commencement of the Work, and also upon the request by the Contractor at any time that the Subcontractor is required to maintain the insurance required by this Subcontract, the Subcontractor shall furnish to the Contractor a certificate of insurance evidencing the required insurance coverages (or a certified copy of the entire policy or policies and all endorsements, if so requested). The required insurance shall name the Contractor, the Owner and any other parties required by the Prime Contract to be included as additional insureds, including for ongoing and completed operations. A waiver of subrogation shall be provided on behalf of the additional insureds and their respective affiliates, subsidiaries, officers, directors, employees, and agents for Work performed under the Subcontract. Such insurance coverages shall be primary and non-contributory to other coverages of the additional insureds.
- (f) In the event that:
- (i) the Subcontractor fails to furnish evidence of the required insurance coverages in a timely manner;
 - (ii) the Subcontractor fails to maintain any insurance required during the term of this Subcontract; or
 - (iii) any insurance coverage required to be maintained by the Subcontractor during the term of this Subcontract is cancelled,

each shall be deemed a material breach of this Subcontract by the Subcontractor and the Contractor shall be entitled to terminate this Subcontract in accordance with Section 11. Alternatively, the Contractor may at its option, purchase such insurance coverage in the name of Subcontractor and set-off the cost of same against payments due to this Subcontractor. None of the remedies set forth in this Section shall in any way limit the Contractor's other remedies available at law or pursuant to this Subcontract.

19. **SUB-SUBCONTRACTORS/SUPPLIERS**

All sub-subcontractor or suppliers of the Subcontractor shall be bound to the Subcontractor to the same extent that Subcontractor is bound to Contractor and to the same extent that Contractor is bound to the Owner. The Subcontractor shall incorporate the Subcontract Documents into all agreements with its subcontractors, suppliers, or consultants to the extent necessary to make all provisions of the Subcontract Documents fully effective and in such a way as to fully obligate its subcontractors, suppliers, and consultants to follow the Subcontract. In the event that the Subcontractor fails or refuses to pay its sub-subcontractors or suppliers, the Contractor has the right, but not the obligation, to pay any sub-subcontractor or supplier of material or equipment directly. Such direct payment by the Contractor shall not create any direct contractual or any other obligations owing by the Contractor to such sub-subcontractors or suppliers. Each sub-tier subcontract and supplier agreement shall contain a provision requiring the rights and obligations under such subcontract or supplier agreement to be automatically assigned to Contractor upon default by Subcontractor under such agreement, which default results in the agreement being terminated.

20. **ASSIGNMENT**

The Subcontractor shall not assign this Subcontract nor any part thereof, nor subcontract, assign, transfer or sublet any portion or part of the Work required by this Subcontract, nor assign any payments hereunder to others, without the prior written consent of the Contractor. No such assignment by the Subcontractor will relieve the Subcontractor from any obligations under this Subcontract. The Contractor may, in its sole discretion, assign the Subcontract to the Owner. In the event of such assignment, the Owner will assume and have all the rights and obligations of the Contractor under this Subcontract and the Contractor shall be relieved of all obligations hereunder.

21. **MODIFICATIONS**

No modification of this Subcontract and no waiver of rights hereunder shall be valid or binding on the parties unless such modification or waiver is made in writing.

22. AS-BUILT DRAWINGS and FINAL INSPECTION

The Subcontractor shall supply and keep up-to-date a complete set of as-built drawings of the execution of the Work, as well as any maintenance manuals, instructions, brochures, guarantees, warranties, certificates, and other similar documents, as required of it by this Subcontract and the Prime Contract in a manner and at a time stipulated by the Contractor. Without limiting the foregoing, the Subcontractor shall submit to the Contractor, upon completion of each phase or major category of the Work, two complete sets of as-built drawings and O&M manuals for that portion of Work completed as a condition precedent to final payment. The Contractor shall designate an amount to be retained from this Subcontract Price until the Subcontractor has delivered the materials and documents so required.

If the Subcontractor considers the Work under this Subcontract to be complete and ready for acceptance, the Subcontractor shall notify the Contractor and request inspection of the Work in writing, using a form acceptable to the Contractor. Prior to requesting such inspection, all required testing of the Work, including equipment and systems testing, must be complete. If the Contractor deems that the Work is not substantially complete and ready for inspection, the inspection will not be performed, and the Contractor will notify the Subcontractor accordingly. If the Contractor considers the Work to be substantially complete, the Contractor shall perform such reviews, inspections, and tests as the Contractor and/or Owner deems necessary, to verify that all of the Work conforms to all requirements of the Subcontract. If the Contractor after inspection deems that the Work is not complete and/or does not conform to all requirements of the Subcontract, the Contractor shall notify the Subcontractor of the nonconformance and identify punch-list items that must be completed prior to final acceptance of the Work. The Subcontractor shall immediately correct punch-list items and shall provide adequate and sufficient personnel to complete the Work in order to meet the Schedule. Once the Contractor is satisfied that the Work conforms to all requirements of the Subcontract, the Contractor will notify the Subcontractor that final acceptance of the Work has been achieved. Notification of final acceptance does not waive any of the Subcontractor obligations under the Subcontract.

23. SUBCONTRACTOR REPRESENTATIVE, REPORTS AND MEETINGS

The Subcontractor shall have a representative of the Subcontractor on the job site at all times during the performance of the Work with authority to make immediate decisions on the Subcontractor's behalf. The Subcontractor's Representative shall attend scheduled Project meetings as requested by the Contractor and Subcontractor shall submit field reports, schedules, work plans, and any other information required by the Contractor at a frequency and in a form acceptable to the Contractor.

24. HEALTH, SAFETY and ENVIRONMENT

The Subcontractor shall take all steps required to protect the environment (both on and off the Project site) from the effects of the Work and to prevent damage or nuisance to people and property resulting from pollution, noise, and any other effects of its operations. The Subcontractor shall ensure that air emissions, surface discharges, and effluent at or from the job site related to the Work under the Subcontract shall not exceed the values prescribed by law, regulation, permit, order or decree, or in the Subcontract Documents.

The Subcontractor shall also be fully responsible for conducting the Work in such a manner as not to endanger people or property (including property that is part of the Work). The Subcontractor shall diligently and constantly inspect and analyze: the job site; items that the Subcontractor or its subcontractors, suppliers, and consultants have provided to the job site; and all aspects of the Work necessary to discover conditions that might create such endangerment.

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 strictly observe and comply with all applicable local, state and federal Occupational Safety and Health Administration laws, rules, 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 designate an authorized and competent, qualified or certified safety representative for the Project. The Subcontractor shall have its this 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. In the event of an emergency that could affect the health or safety of persons, the environment, the Work, property, or property adjacent to the job site, Subcontractor, without special instruction or authorization from the Contractor, is obligated to immediately act to prevent or mitigate the threatened damage, injury, or loss. Subcontractor shall properly plan and practice emergency evacuation
- (h) The Subcontractor shall take immediate action to correct unsafe behaviors or conditions when reported or observed.
- (i) The Subcontractor shall use its own regular system of inspection to detect and correct hazardous conditions, safety violations and unsafe behaviors 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, state 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. Unless stated in the Subcontract Documents the Subcontractor is responsible for providing all temporary facilities and services required by the Subcontractor to perform and protect its Work.
- (l) The Subcontractor's Representative shall give the Representative's 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.
- (o) Subcontractor shall maintain accident, injury, and any other records required by applicable laws and regulations, including OSHA laws and regulations, or by the Contractor. Subcontractor shall furnish Contractor all records requested and a monthly summary report that provides: a description of work-related injury or illness; labor hours; safety training records; and a copy of any accident investigation documentation.

In the event the Subcontractor is in receipt of any citation, fine, penalty, or claim of any kind alleging a violation of any OSHA or EPA laws, rules or regulations (or any other laws, rules or regulations of a state or local agency or authority with jurisdiction over workplace health, safety or environment) (the "Safety & Environment Laws") arising from the Subcontractor's Work, the Subcontractor shall, within 24 hours, report the same in writing to Contractor.

Subcontractor agrees to defend, indemnify and save Contractor, its surety and Owner harmless from and against any and all claims, losses, fines, penalties, expense, attorney's fees and costs, including but not limited to any fines or penalties assessed against Contractor (and all other parties required to be indemnified by this Subcontract), which arise out of Subcontractor's failure to comply with any Safety & Environment Laws, or provisions of this Subcontract. Subcontractor shall not settle or otherwise resolve any matters related to its violation of Safety & Environment Laws, without the express written consent of Contractor. In the event Contractor and Subcontractor agree to settle or resolve any matters related the Subcontractor's violation of Safety & Environment Laws, the amount of the citation, fine or penalty shall be paid promptly by the Subcontractor and if such payment is not made promptly, the Contractor may issue such payment and deduct the amount paid from any amounts due to the Subcontractor hereunder.

The Contractor reserves the right to stop Work if the Contractor determines the Subcontractor is performing the Work in an unsafe manner; in violation of this Subcontract, or in violation of any Safety & Environment Laws. The Subcontractor shall not be entitled to any additional compensation or time for any such work stoppage. The Contractor may, at its option, withhold out of any payments due or to become due to the Subcontractor such amounts as the Contractor may deem sufficient to protect and indemnify the Contractor, the Project or the Owner from any and all loss, damage and/or expense therefrom, including attorneys' fees, until any such failure has been remedied by the Subcontractor to the satisfaction of the Contractor.

25. **HAZARDOUS MATERIALS**

Where the Contractor or the Owner has made investigations of hazardous building materials, hazardous substances, gases, explosives, flammable materials, asbestos, hazardous waste, pollutants, PCBs, petroleum, radioactive material, contaminated or potentially contaminated waste materials, and other dangerous conditions, things, or substances (the "Hazardous Materials") in areas where Work is to be performed, such investigations are made by the Contractor or the Owner solely for study and information. If the records of such investigation are included in the Subcontract Documents, the interpretation of such records shall be the sole responsibility of the Subcontractor. The Subcontractor shall determine and conduct all additional investigations that are required to satisfactorily and safely perform the Work.

Prior to beginning Work where the Subcontractor anticipates the existence of Hazardous Materials, the Subcontractor shall submit to the Contractor for approval, the Subcontractor's detailed plans to safely deal with the hazards and to obtain any required permits and implement all that is required to safely proceed with the Work.

Upon discovery of Hazardous Materials, the Subcontractor shall immediately stop all Work in any area affected thereby, verbally notify the Contractor immediately, and thereafter confirm such notice in writing within five (5) days. The Subcontractor shall not resume any Work in any such affected area until and unless it is safe, and until special conditions under which the Work may be resumed safely are approved by the Contractor and implemented, and any required permits related thereto are obtained by the Subcontractor.

The Subcontractor shall be solely responsible for care, transportation, storage, treatment, and disposal of all Hazardous Materials introduced to the job site by the Subcontractor. The Subcontractor shall have no authority to take ownership of Hazardous Materials Subcontractor has not introduced to the job site or for the off-site transportation, storage, treatment, or disposal of such Hazardous Materials, of any kind, found at the job site, unless the handling of such Hazardous Materials is part of the Subcontractor's Work.

26. LABOUR RELATIONS

The Subcontractor represents that it is not involved in any labor disputes and that throughout the term of this Subcontract, it shall comply with all applicable laws and regulations and comply with the provisions of all labor agreement(s) that apply to the Work performed under this Subcontract. The Subcontractor shall give the Contractor immediate notice and full information regarding any existing, or impending, labor dispute that could interrupt, delay or threaten to delay the timely performance of the Work or any other part of the Project. The Subcontractor shall cooperate in any effort by the Contractor to mediate or otherwise attempt to resolve Work stoppages, slowdowns, interruptions, boycotts, disturbances, strikes, picketing, or labor disputes affecting any participant in the Project, but the Subcontractor shall have exclusive control of, and responsibility for, its own labor relations. The Subcontractor shall indemnify, defend, and hold harmless the Contractor and the Owner from any and all damages or other harm arising from or related to work stoppages, slowdowns, interruptions, boycotts, disturbances, strikes, picketing, or labor disputes.

The Subcontractor agrees that in the event of any strike, picket, sympathy strike, work stoppage, slowdown, interruption, boycott, disturbance, or other form of labor dispute at or affecting the construction site, regardless of whether that dispute or picket relates to the Contractor, Subcontractor, the Owner, or any other contractor or subcontractor on the job site, the Subcontractor will continue to perform the Work required herein without interruption or delay. Additionally, should the Subcontractor be party to one or more labor agreements it shall take all reasonable action to avoid any work stoppage slowdown, or interruption and, in the event a work stoppage, slowdown or interruption should occur, it shall, within twenty-four (24) hours, take any and all legal action provided for, or permitted by, such labor agreements in order to expedite resumption of work on this project. The Subcontractor shall, if necessary, utilize to the fullest extent possible all rights that allow for the hiring of replacement employees, should the hiring hall of the Subcontractor be unable or unwilling to meet the needs of the Subcontractor.

27. COMPLIANCE WITH ALL LAWS

The Subcontractor shall, at its sole cost and expense, and without increase in the Subcontract Price: comply with all laws, ordinances, decrees, orders, citations, rules, regulations, standards, and codes applicable to the Subcontractor or its performance of the Work; obtain all necessary permits and licenses, except for those permits and licenses to be provided by others as specified in the Subcontract Documents; and pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance, and contributions for social security and unemployment which are measured by wages, salaries, or other remuneration paid to the Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules, or regulations. The Subcontractor, upon the Contractor's request, shall furnish evidence satisfactory to the Contractor that the foregoing obligations have been fulfilled.

The Subcontractor agrees to defend, indemnify, and hold harmless the Contractor for, of, and from any loss, including but not limited to fines, penalties, and corrective measures the Contractor may sustain by reason of the Subcontractor's failure to comply with all laws, rules, and regulation in connection with the performance of this Subcontract.

Without limiting the foregoing, the Subcontractor further agrees to comply fully with all local, state and federal non-discrimination legislation, regulations, directives, orders and programs including, but not limited to, those called for in the Prime Contract and Executive Order 11246, if applicable, relating to equal employment opportunity and non-segregated facilities, including timely submittal of all documents required by the Owner or any government agency. This Subcontract incorporates by reference, as though fully set forth herein, 41 C.F.R. S. 60-1.4, 48 C.F.R. 52.222-26, and Executive Order 11246, as amended, to the extent that they are applicable.

28. INDEMNIFICATION

The Subcontractor agrees to defend, indemnify and hold the Contractor harmless from any and all claims, demands, losses and liabilities related to the performance of this Subcontract by the Subcontractor (and those for whom the Subcontractor is responsible at law), including, but not limited to, failure of the Subcontractor to perform the Work; breach of this Subcontract (intentional or otherwise); negligence or tortious conduct, all to the fullest extent permitted by law. The Subcontractor's duty to defend, indemnify and hold the Contractor harmless shall include, as to all claims, demand, losses and liability to which it applies, the Contractor's personnel-related costs, reasonable attorney's fees, court costs and all other claim-related expenses. Further, the indemnification obligation under this Subcontract shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefits acts, or other employee benefits acts.

If applicable, the Subcontractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 revised Code of Washington. BY SIGNING THIS SUBCONTRACT, THE PARTIES ACKNOWLEDGE THAT THEY HAVE SPECIFICALLY AND EXPRESSLY NEGOTIATED THIS WAIVER. Nothing in this Section requires Subcontractor to indemnify, defend, or hold harmless Contractor for its own sole negligence. In the event of concurrent negligence, the Subcontractor's obligations under this Section shall only apply to the extent of Subcontractor's negligence and shall not apply to the extent of claims caused by the negligence of the Contractor. The Subcontractor's waiver of immunity by the provisions of this Section extends only to claims against the Subcontractor by the Contractor, and does not include, or extend to, any claims by the Subcontractor's employees directly against the Subcontractor.

29. **CLAIMS**

The Subcontractor must provide Contractor with written notice of all claims, including, but not limited to, claims for payment, extension of time, additional cost, damages, or any other requests for relief as a result of disputed changes, disagreements, controversies or questions of interpretation of this Subcontract. The timing for all notices required by this Section 29, must be given in accordance with Section 35(a) of this Subcontract. In addition, the notice must be in writing and provide sufficient detail to identify the basis and particulars of the claim, including a detailed description of all events or circumstances which led to the claim, the Subcontractor's best estimate of the impact to the Schedule or the Subcontract Price being claimed, and any other information as may be required under the Prime Contract. Notice must be on Subcontractor's letterhead with "NOTICE OF CLAIM" across the top and clearly identifying the Project name. In the event notices are not provided in accordance with the procedures specified by this Section, the claims shall be deemed waived by the Subcontractor.

No act, omission, or knowledge, actual or constructive, of the Contractor shall be deemed to be a waiver of any of the Subcontractor's obligation to provide written notice of any claim, nor any other obligations of the Subcontractor contained herein, unless the Contractor's Representative provides the Subcontractor with an express written waiver of such obligation. In the absence of written notice of any claim to the Contractor, the Subcontractor shall be fully and solely responsible and liable for any and all expense, loss or damage resulting from such claim and the Contractor shall be relieved of any liability in connection with it.

The Subcontractor acknowledges that the Subcontract Price and Schedule may only be adjusted pursuant to a Change Order issued in accordance with this Subcontract and no changes to the Subcontract Price or Schedule will be made due to any error, omission, inconsistency, ambiguity or conflict unless such has been reported to the Contractor as required herein. Where the Subcontractor has provided notice of a claim relating to or arising from acts or omissions of the Owner, or those at law for which it is responsible, the Subcontractor's entitlement to relief, including an adjustment of the Subcontract Price or Schedule, shall be conditional upon the Contractor's recovery of such relief under the Prime Contract.

30. **RESOLUTION OF DISPUTES**

The parties are fully committed to cooperating with each other, the Owner and other subcontractors throughout the Work and agree to communicate regularly to avoid or minimize claims, disputes, disagreements, or controversies ("disputes"). If disputes arise, Subcontractor and Contractor each commit to resolving such disputes in an amicable, professional, and expeditious manner to avoid unnecessary losses, delays, or disruptions to the Work.

In the case of any dispute arising between the Contractor and the Subcontractor, the Contractor, in the first instance, may interpret and provide its decision in writing to the Subcontractor.

Any disputes which are not resolved in the first instance by the decision of the Contractor shall be resolved as provided herein, although the Subcontractor shall be conclusively deemed to have accepted the Contractor's decision and to have expressly waived and released the Contractor from any claims in respect of the particular matter unless within fifteen (15) days after receipt of that decision, the Subcontractor provides written notice to the Contractor of any dispute in respect of such decision. The dispute will be solved as follows:

- (a) The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations. The Subcontractor and the Contractor will first attempt to resolve disputes at the field level through discussions between the Subcontractor and the Contractor's authorized representatives. If a dispute cannot be resolved through the Subcontractor and the Contractor's authorized representatives, the Subcontractor and the Contractor, upon the request of either party, shall each appoint a senior representative, both of whom shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute. Prior to any meetings between the senior representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute.
- (b) If the dispute is not resolved by negotiations, or the senior representatives fail to meet within the required timeline, 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.
- (c) Failing agreement as to the appointment of a mediator within thirty (30) days of the date the parties mutual agreement to resolve the dispute through mediation, or failure to resolve the dispute through mediation no later than thirty (30) days after the appointment of a mediator (unless otherwise agreed by the parties that the mediation period can exceed 30 days), and subject to the Contractor's preemptory rights below, either party shall then have the right to pursue any legal remedy as described further in this Subcontract.
- (d) If attempts to resolve any dispute as described in subsections (a), (b) and (c) of this Section 30 are unsuccessful, the dispute shall, at the Contractor's sole option, be resolved by binding arbitration. Such arbitration shall be administered by a single arbitrator under the American Arbitration Association's Construction Industry Arbitration Rules, unless mutually agreed to by the parties otherwise in writing. If the Contractor elects to proceed to arbitration, judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any arbitration conducted in accordance with this provision shall take place in the same jurisdiction as the location of the Project, unless the parties agree otherwise.
- (e) The Contractor reserves the right to join Subcontractor to any and all legal proceedings that relate to the Subcontractor's Work and the Subcontractor hereby consents to being joined to such legal proceeding. In the event the Contractor initiates arbitral proceedings as described in subsection (d) above, and at that time the Subcontractor has initiated litigation against the Contractor, the Contractor can demand, and the Subcontractor hereby consents to, the litigation being consolidated or joined to the arbitral proceedings. In the event that the litigation cannot be consolidated with the arbitral proceeding, the Subcontractor agrees to dismiss or in the event dismissal would prejudice Subcontractor's rights, stay the litigation.
- (f) The Subcontractor shall diligently continue to perform the Work in accordance with the Schedule pending the final resolution of any dispute between the Subcontractor and the Contractor.
- (g) Notwithstanding the above, for Subcontractor disputes for which the Owner may be liable under the Prime Contract, or for which the Contractor notifies the Subcontractor that the Owner may be liable, the Subcontractor agrees that such disputes will be resolved pursuant to the dispute resolution procedures in the Prime Contract. The Contractor and Subcontractor shall cooperate in an attempt to resolve the dispute pursuant to that procedure. The Contractor will not be liable to the Subcontractor on account of any dispute not timely or properly presented by the Subcontractor. The Contractor and the Subcontractor shall each bear its own costs in prosecuting the dispute pursuant to the Prime Contract dispute resolution procedure. For those disputes for which the Owner may be liable under the Prime Contract, the Contractor will not be liable to Subcontractor unless and until and only to the extent the dispute is allowed and paid for by the Owner. Nothing herein shall require the Contractor to certify a claim under the Prime Contract when it cannot do so in good faith. The Contractor retains the sole right to settle or compromise all disputes against the Owner so long as it does so in good faith. If a settlement or decision is achieved that does not separately identify Subcontractor's recovery, the Contractor shall make a good faith apportionment of the proceeds. The Subcontractor's recovery for any claim for damages; equitable adjustment of the Subcontract Price; or an extension of time that constitutes a claim under the Prime Contract shall be limited to the Subcontractor's equitable share of the amounts recovered by the Contractor from the Owner after paying all claim expenses, including attorney fees. The dispute resolution procedure set forth in the Prime Contract is specifically incorporated herein and made a part of this Subcontract.

It is expressly understood and agreed in connection with the determination of Subcontractor's interest in such claims or disputes that the Contractor shall never be liable to the Subcontractor to any greater extent than Owner is liable to the Contractor for the disputed item.

- (h) In the event the Prime Contract is (1) between Contractor and an agency of the United States Government, or (2) requires certification of any claims, the Subcontractor agrees as a condition precedent that any claim by it will be prepared and submitted in full compliance with applicable law, including the Contract Disputes Act, and all related certification requirements of the Prime Contract. The Subcontractor further agrees to indemnify and hold harmless the Contractor for any defects or misrepresentations in its certifications, including any relating to payments, cost or pricing data. The Subcontractor shall make available for inspection and/or audit by the Contractor, Owner and/or the Government all financial and project records in any way related to its claim. If applicable, the Subcontractor agrees to pursue and exhaust the procedures of the Contract Disputes Act before commencing any other action for any claims it may have arising out of the performance of the work hereunder.
- (i) In the event that the Contractor provides notice to the Subcontractor that the claim or dispute directly or indirectly involves a claim against the Owner, the Subcontractor agrees to present and pursue the claim or dispute entirely at its own cost, and pursuant to the dispute provisions of the Prime Contract, and agrees to stay any action or claim filed against the Contractor or its surety, including any Miller Act or "Little Miller Act" actions, pending the complete and final resolution of all claims involving the Subcontractor submitted pursuant to the disputes procedure referenced above.
- (j) For all claims and disputes contemplated by this Section 30, the prevailing party shall be entitled to recover as part of any arbitration action, legal proceeding, or proceeding brought to recover prevailing party costs, the party's reasonable attorney's fees, costs and expenses, including expert witness fees and arbitrators fees, if applicable. For the purposes of this Section 30(j), the "prevailing party" shall be determined by the decision maker in the action or legal proceeding, who shall consider, among other things, any misconduct of the parties in the action or proceeding; the good faith of the parties in initiating the dispute that resulted in the action or proceeding; the party that prevails on the majority of the claims and counterclaims in the action or proceeding; and the monetary value of the claims or counterclaims decided in the action or proceeding.
- (k) Where a dispute has arisen under this Subcontract prior to the Project achieving substantial completion (as such term, or its equivalent, is defined in the Prime Contract), 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.
- (l) 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.

31. **SUBCONTRACTOR RECORDS AND AUDIT**

- (a) The Subcontractor shall maintain accurate and complete job costs records and accounts and exercise such controls as may be necessary for proper project and financial management, using accounting and control systems in accordance with generally accepted accounting practices, scheduling and cost engineering standards. The records and accounts shall accurately document the performance of the Work, Subcontract obligations and the incurred costs related to the Work, both direct and indirect, of any nature. All financial records of the Subcontractor and its lower tier subcontractors shall be maintained in accordance with generally accepted accounting principles and auditing standards for governmental institutions. Separate cost records shall be maintained for all Work which the Subcontractor claims is extra work, including but not limited to, extra work attributable to delays, acceleration, changed conditions or Change Orders. The failure to maintain such records shall preclude recovery for claims not documented as required by this Section. The Subcontractor's obligation to keep records under this Section is in addition to any other record-keeping obligation required to be kept by other terms of this Subcontract, including, for clarity, the Subcontract Documents. The Subcontractor agrees that, upon reasonable notice, the Contractor and Contractor's representatives may review and audit, including making copies of the Subcontractor's cost records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data related to cost reimbursable Work, changes to the Work, issues of dispute or issues related to the subject of legal proceedings. The Subcontractor shall retain all such records for a period of not less than 3 years following final payment, unless a longer period is required by law or the Prime Contract.
- (b) the Subcontractor agrees that, upon the request of the Contractor, the Subcontractor will provide copies of all financial statements reflecting the current financial status of the Subcontractor, which statements will only be used by the Contractor for the purposes of assessing the Subcontractor's financial capability for completing the Work. The Contractor will appoint a corporate representative to receive the financial statements, and this corporate representative will keep such financial statements confidential, only sharing such financial statements within the Contractor's organization if the financial statements indicate that the Subcontractor does not likely have the financial capability to complete the Work.

32. **LIENS or BOND CLAIMS**

Subcontractor shall promptly pay or discharge in full or provide adequate security for the payment of all claims of any persons, firms or corporations furnishing or claiming to have furnished labor, materials, tools, equipment or incidentals used in, upon or for the Work, whether or not any such claim of lien or right of enforcement is established or attempted to be established upon or against the Work. In the event any mechanic's lien or bond claim is filed by a third party (including, but not limited to, a sub-subcontractor or supplier) against the Project, or a bond provided by Contractor relating to the Project, seeking recovery for any amounts allegedly due to the third party by the Subcontractor, or suit is brought on any such claim or lien, Subcontractor shall immediately cause to be filed in compliance with applicable law such bond as is required to cause the mechanic's lien or bond claim to be released. In the event Subcontractor shall fail to do so, Contractor is authorized to use whatever means in Contractor's discretion deemed appropriate to cause this lien or bond claim to be removed or dismissed and the cost thereof, together with attorneys' fees, shall be immediately due and payable to Contractor by Subcontractor. The Contractor's rights and remedies under this Section are in addition to any other rights and remedies available to Contractor under this Subcontract and at law.

Subcontractor shall, if requested by Contractor, defend any such suit at its own expense and in any event shall indemnify Owner and Contractor against any loss, damage or expense, including reasonable attorney's fees incurred or suffered as a result thereof. Subject to the payment provisions of this Subcontract, Contractor may as a condition precedent to any payment to Subcontractor hereunder, require Subcontractor to submit satisfactory evidence of payment and completed waivers and releases in favor of Owner, Contractor, and their sureties of any and all claims of any such persons, firms or corporations in a form acceptable to Contractor. The evidence, releases or waivers must be submitted covering all such claims as a condition precedent to the final payment.

33. NATURE OF WORK AND EXISTING CONDITIONS

The Subcontractor acknowledges that it was its responsibility, prior to entering into this Subcontract, to investigate and familiarize itself with: (i) all laws, ordinances, and regulations applicable to its Work under this Subcontract; (ii) the Subcontract Documents (iii) the availability of personnel, workers, material, supplies, equipment, power, utilities, fuel and other requirements for the performance of the Subcontract; (iv) the cost and suitability thereof with respect to each of the foregoing; (v) the prevailing wage scales, benefits and working conditions; (vi) site considerations and restrictions; (vii) prevailing weather and climatological conditions and history; and (viii) any other factors which may affect the Subcontractor's Work under this Subcontract. Subcontractor hereby acknowledges that it has investigated all such matters and familiarized itself therewith to the extent that it, in its sole discretion, deems necessary. The Subcontractor further agrees that the Contractor shall not be liable to the Subcontractor on any claim for additional payment or additional time or any other relief if such claim directly or indirectly results from the Subcontractor's failure to investigate and familiarize itself sufficiently with the conditions under which this Subcontract is to be performed, including the foregoing but without restriction thereto, or from any misunderstanding thereof on the part of the Subcontractor.

Where the Contractor or Owner has made investigations of subsurface conditions, including underground facilities and utilities whether active or abandoned, in areas where Work is to be performed under this Subcontract, such investigations are made by the Contractor or Owner for the sole purpose of study and information. If the records of such investigation are included in the Subcontract Documents, the interpretation of such records shall be the sole responsibility of the Subcontractor. The Subcontractor shall determine and conduct all additional subsurface investigations that are required to satisfactorily and safely perform the Work. The Contractor shall not be liable for Subcontractor's failure to properly investigate the site or any misinterpretation by the Subcontractor of any site condition.

The Subcontractor shall perform the Work in such a manner that will protect existing facilities and not injure or damage any other work performed by the Contractor, other subcontractors and the Owner. The Subcontractor shall pay or reimburse the Contractor on account of any injury or damage to the work or property of the Owner, the Contractor and other subcontractors caused by or arising from the performance of the Work, including the cost of replacing, repairing, refinishing or restoring any work damaged, removed or displaced in the course of correcting or repairing Work rejected by the Owner or which are deemed to be at variance with the requirements of this Subcontract. The Subcontractor is responsible for locating all underground utilities prior to performing any excavation involved with the Work. If the Subcontractor is required to tie into existing utilities, either in the form of a temporary or permanent tie-in, the Subcontractor shall make all necessary arrangements for such work with the utility owner and any pertinent local authority, at no expense to the Contractor. If the Subcontractor injures or damages any existing utilities, the Subcontractor shall arrange with the utility owner to replace, repair, refinish or restore the damaged utilities, at the Subcontractor's expense, to the satisfaction of the utility owner.

If the Subcontractor encounters a subsurface or physical condition, which it believes will affect the Work, or if the Subcontractor encounters any other condition upon which it may base a claim for extra compensation, extra time, or any other type of claim, it shall be its duty to immediately inform the Contractor and follow up with a written notice to the Contractor as required by Section 29 of this Subcontract. The Subcontractor shall not further disturb the subsurface or physical condition or perform Work in connection therewith (except with respect to an emergency) until receipt of a written statement from the Contractor's Representative permitting the Subcontractor to do so. In the absence of such notice to the Contractor, the Subcontractor shall be fully and solely responsible and liable for any and all expense, loss, or damage resulting from said condition and the Contractor shall be relieved of all liability in connection therewith. Discovery of such unforeseen conditions shall not constitute a change to the Work unless a change is authorized and approved by the Contractor.

34. BUSINESS ETHICS

At all times during performance of the Work, the Subcontractor and its personnel shall continually observe and promote ethical business practices. The Subcontractor acknowledges the Contractor's Code of Business Ethics and Conduct (https://www.grahambuilds.com/site/assets/files/1332/vendor_code_of_business_conduct.pdf) and shall fully comply with the principles contained therein.

35. MISCELLANEOUS PROVISIONS

(a) **Notices**

(i) To the extent that any notice, information, consent, claim, request, response, submission or other communication (a "Communication") is required to be given by the Subcontractor to the Contractor under this Subcontract in respect of which a corresponding Communication must be given by Contractor to the Owner under the Prime Contract, the Subcontractor shall provide such Communication to the Contractor not less than 2 business days prior to the time such Communication is required to be submitted to the Owner by the Contractor.

(ii) To the extent any Communication is required to be given by the Subcontractor to the Contractor under this Subcontract, the Communication must be given, in order of precedence (a) by the time indicated in this Subcontract; (b) as soon as reasonably possible; or (c) no later than 5 business days.

(iii) All Communication will be given to the Contractor as required by Article 6 of this Subcontract.

(b) **Governing Law**

This Subcontract shall be governed by the law in effect at the location of the Project.

(c) **Severability**

The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provisions.

(d) **No Waiver of Performance**

The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants, conditions of this Subcontract, or to exercise any of its rights, shall not be construed as a waiver or relinquishment with respect to performance. No payment by the Contractor shall constitute approval or acceptance of any Work under this Subcontract, nor be considered a waiver by the Contractor or Owner of any of the terms of this Subcontract.

(e) **Survival**

The Subcontractor's obligations under this Subcontract shall not be released, and shall specifically survive, the completion of the Work hereunder by the Subcontractor, final payment to the Subcontractor, and termination of this Subcontract for any reason.

(f) **Subcontractor's Work Area**

All of the Subcontractor work areas on the job site will be assigned by Contractor. The Subcontractor shall confine its operations to the areas so assigned.

(g) **Computation of Times**

The word "day" shall constitute a calendar day of twenty-four (24) hours measured from midnight to the next midnight, and the phrase "business day" means any Monday through Friday, excluding any Monday-Friday that is a legal holiday by the law of the applicable jurisdiction. If the last day of any such period falls on a Saturday, Sunday, or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

(h) **Liability for Tort or Contract**

The Subcontractor shall not be entitled to claim and neither the Contractor nor Owner shall be liable to the Subcontractor, Subcontractor's lower-tier suppliers, or subcontractors in tort (including negligence) or any other tort-based cause of action. The only obligations and remedies of the Subcontractor shall be governed by the express terms of this Subcontract.

(i) **Removal of Subcontractor's Personnel**

The Contractor may request the Subcontractor to remove (or cause to be removed) any subcontractor, sub-subcontractor, vendor, or person employed on the job site, whom in the reasonable opinion of the Contractor: engages in misconduct; is incompetent or negligent in the performance of any duties; fails to conform to any provisions of the Subcontract; engages in any conduct which is prejudicial to safety, health, or protection of property and the environment; or with respect to the performance of the Work required hereunder, with whom the Contractor is not satisfied, in the Contractor's reasonable sole discretion. Further, at no additional cost to the Contractor, the Subcontractor shall remove and replace any employee, subcontractor, sub-subcontractor, or vendor as directed by the Owner.

(j) **Communications with Others**

The Subcontractor shall not communicate with the Owner or applicable governmental regulatory agencies with regard to the Work without prior written approval by Contractor. To the extent feasible, Subcontractor shall direct inquiries from the Owner or applicable governmental regulatory agency to the Contractor for Contractor's response.

(k) **Proprietary Information; Confidentiality and Advertising**

The Subcontractor shall consider all information concerning Work to be confidential and shall not disclose any such information for any purpose other than performing this Subcontract, unless the Subcontractor obtains written permission from the Contractor explicitly permitting disclosure. The Subcontractor shall not advertise or publish the fact that the Contractor has contracted with Subcontractor, nor shall any information relating to the Subcontract be disclosed without the Contractor's written permission. Unless otherwise agreed to in writing, no commercial, financial (except for financials statements provided to the Contractor pursuant to Section 31(b)), or technical information disclosed in any manner or at any time by the Subcontractor to the Contractor shall be deemed secret or confidential and the Subcontractor shall have no rights against the Contractor with respect thereto.

(l) **Emergency**

In the event of an emergency, the Contractor may take any action reasonably necessary to prevent or mitigate harm to people, property including Work, or the environment and the Contractor may also assess the cost of such action to Subcontractor's account to the extent caused by Subcontractor.

(m) **Permits, Licenses, and Fees**

Unless specifically noted otherwise in this Subcontract, the Subcontractor shall be fully responsible for identifying, securing, and paying for all necessary permits, licenses, fees, inspections, waivers, utility connection fees, and similar authorizations from governmental and utility authorities, required to fulfill the requirements of the Subcontract under this Subcontract. The Subcontractor shall give all notices required for timely compliance with applicable federal, state, and local laws, ordinances, rules, regulations, and restriction.

(n) **Taxes**

The Subcontractor agrees to and does hereby accept full and exclusive liability for the payment of any and all taxes, including personal property, sales taxes, use and excise taxes, relating to the materials, supplies, tools, machinery, equipment and plant which may be purchased, acquired, rented or used by the Subcontractor relating to Work performed under this Subcontract.

(o) **Savings**

If any provision of this Subcontract is determined to be unenforceable or in contravention of any applicable law, such provision shall be deemed modified to the minimum extent required to bring such provision into compliance with said law.

(p) **Waiver of Jury Trial**

The Subcontractor and Contractor expressly waive any right to have any legal proceedings hereunder determined by trial by jury.

(q) **Entire Agreement**

This Subcontract represents the entire agreement between the Contractor and the Subcontractor, and supersedes any other oral or written agreements, representations, and writings between the Contractor and the Subcontractor. This Subcontract includes all alternatives, changes, addenda, amendments or any other instruments of like effect made, issued, or exercised by the Owner or the Owner's authorized agent through the Effective Date hereof. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding not set forth herein.

(r) **Execution in Counterpart and Facsimile Signatures.**

This Subcontract may be executed by the parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all such counterparts shall together constitute one and the same instrument. All such counterparts may be delivered among the parties hereto by electronic transmission, which shall not affect the validity thereof. Facsimile signatures are sufficient and fully binding.

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