

The following Subcontract Terms and Conditions are incorporated in the Subcontract between Contractor and Subcontractor.

ARTICLE 1

SUBCONTRACT DOCUMENTS

1.1 The Prime Contract consists of the construction contract between Contractor and Owner for the Project and all addenda, modifications, and revisions thereto, together with all drawings, project manuals, specifications, conditions (general, technical, supplementary, and special), and all other documents listed in or referenced by the Prime Contract. The Prime Contract is incorporated herein by reference and to the extent it is applicable to this Subcontract and not contradicted or amended by this Subcontract it is made an integral part of the Subcontract.

1.2 The Subcontract consists of the Agreement between Contractor and Subcontractor and all addenda, modifications and revisions thereto, together with all exhibits thereto, including, without limitation, these Subcontract Terms and Conditions, the Project-Specific Supplemental Terms, and the Prime Contract to the extent described in Paragraph 1.1. Subcontractor hereby acknowledges that it has carefully reviewed and examined the Subcontract, and that any and all ambiguities and discrepancies have previously been clarified and/or corrected. Subcontractor agrees that it will not make any claim or demand upon Contractor based upon or arising out of any misunderstanding or misconception on Subcontractor's part of the provisions and requirements of the Subcontract if Subcontractor knew or should have known of the ambiguity or discrepancy.

1.3 In case Subcontractor discovers any ambiguity or discrepancy in the Subcontract relating to the Subcontract Work (as defined in Article II hereof), Subcontractor shall promptly notify Contractor of the same in writing. Subcontractor shall, at its sole expense, make any change in its planned, fabricated or installed work, and shall be responsible for the expense of changing the subsequent work of others, necessitated by failure to disclose said ambiguity or discrepancy which Subcontractor discovered or should have discovered.

1.4 All of the provisions which comprise the Subcontract shall be interpreted together and in harmony with one another. However, in case of conflict, the more expensive or stringent requirement shall control.

1.5 Subcontractor binds itself to Contractor and is obligated to Contractor in the same manner and to the same extent that Contractor is bound and obligated to Owner under the Prime Contract with respect to the Subcontract Work. All rights which Owner may exercise and enforce against Contractor may be exercised and enforced by Contractor against Subcontractor, including any claim for

liquidated damages payable to the Owner. Subcontractor shall be required to do all things and be bound by all decisions, directives, interpretations, and rulings of Owner, Architect, Engineer, or others authorized to act on behalf of Owner, including all decisions as to the scope of the Subcontract Work, to the same extent that Contractor is bound thereby. In no event shall Subcontractor be entitled to greater rights, higher entitlements or more relief against Contractor than Contractor actually obtains from Owner on Subcontractor's behalf or with respect to the Subcontract Work. To the extent the Prime Contract or the law require the inclusion of any provision, clause or other requirement in the Subcontract, or in the Prime Contract that relates to the Subcontract Work, those provisions, clauses and requirements are incorporated by reference in and made a part of the Subcontract as though fully set forth in the Subcontract.

ARTICLE 2

SCOPE OF SUBCONTRACT WORK

2.1 The "Subcontract Work" includes the work set forth in Section I of the Agreement, all incidental work usually performed under customary trade practices by the trades to be furnished by Subcontractor, and all changes in the Subcontract Work as described in Article XI hereof. The Subcontract Work shall be performed in accordance with the Subcontract and in a skillful and workmanlike manner, with material and equipment being of the kind and grade necessary for the purpose intended. Subcontractor shall be responsible for any loss or damage to Contractor or others by reason of Subcontractor's failure to perform its work in accordance with the terms of the Subcontract.

2.2 Subcontractor has fully examined the Project site and analyzed all existing surveys, test reports and schedules that could affect its performance, and acknowledges that no conditions exist which would adversely affect the progress, schedule, performance, or price of the Subcontract or the quality of the Subcontract Work.

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

2.4 Subcontractor shall, at its own expense, pay all inspection and testing costs, royalties, and license fees required for the Subcontract Work, and the costs of inspections which disclose, or are necessitated by, incorrect or faulty materials or workmanship. Subcontractor shall make all necessary arrangements and agreements, at its own expense, so as not to infringe any patents, trademarks, or copyrights in the performance of the Subcontract Work.

ARTICLE 3

VERIFYING FIELD CONDITIONS

3.1 Subcontractor is responsible for the proper layout and location of the Subcontract Work. Before proceeding with any portion of the Subcontract Work, Subcontractor shall thoroughly and accurately: (a) observe and verify all previous and surrounding work performed by others and determine the location, condition, and correctness of same to the extent necessary to assure that the Subcontract Work can be performed as intended; and (b) measure all field conditions relating to the Subcontract Work.

3.2 Subcontractor shall give Contractor written notice of any condition it discovers which may or will adversely impact upon Subcontractor's performance of the Subcontract Work, such notice to be provided within forty-eight (48) hours after discovery and prior to any disturbance of the condition. Subcontractor shall, at its own expense, make any change in its planned, fabricated or installed work, and shall be responsible for the costs to change the subsequent work of others, necessitated by Subcontractor's failure to give such notice to Contractor.

ARTICLE 4

COMPLIANCE WITH SCHEDULES; COOPERATION WITH OTHERS

4.1 Subcontractor shall proceed with each portion of the Subcontract Work in a prompt and diligent manner and in strict compliance with all performance schedules and sequencing, as directed by Contractor. Subcontractor shall, within the time specified by Contractor and in no event more than fourteen (14) days after the date of the Agreement, furnish to Contractor all information and data requested by Contractor for the preparation of performance schedules, including progress schedules for the Subcontract Work, and submit the same to Contractor for review and approval. Subcontractor shall from time to time revise its progress schedules to conform to the progress of the Subcontract Work and changes in the performance schedules, and Subcontractor shall submit such progress schedules to Contractor for review and approval. Subcontractor acknowledges that Contractor may, from time to time, modify the performance schedules as it determines necessary or desirable in its sole discretion. In the event Contractor modifies the performance schedules, Subcontractor must notify Contractor within seven (7) days of any cost impact relating to such modification, or Subcontractor shall be deemed to have waived any claim for such extra costs.

4.2 Any duration of time specified in the Subcontract or in any agreed performance schedule for the completion of any of Subcontractor's work activities is of the essence and a material provision of the Subcontract.

4.3 Subcontractor shall furnish sufficient forces to assure proper performance of the Subcontract Work in strict compliance with all performance schedules and as required in this Article IV. Subcontractor shall, if requested by Contractor, furnish adequate evidence to substantiate its ability to meet the performance schedules and planned progress of the Subcontract Work, including periodic progress reports setting forth the status of material, equipment, manpower and submittals.

4.4 Upon request by Contractor, Subcontractor shall promptly increase its work force, accelerate its performance, work overtime, and work Saturdays, Sundays and holidays, or perform "odd-shift" work (i.e., work performed at off hours when the nature of the work is such that it would be disruptive to other trades or occupants), all without additional compensation, if, as reasonably determined by Contractor, such work is necessary as a result of Subcontractor being behind the current Project performance schedule due to Subcontractor's own defective or deficient work, dilatory performance or nonperformance.

4.5 Subcontractor shall conform to Contractor's hours of work, which shall be generally consistent with the standard construction practice in the area where the Project is located or as may be otherwise provided in the Project-Specific Supplemental Terms. No premium time will be acknowledged or paid unless pursuant to a prior written authorization by Contractor.

4.6 Subcontractor shall fully cooperate and coordinate its work with that of Contractor and any other subcontractor or supplier for the Project, and shall not interfere with Contractor's relationship with other subcontractors and suppliers. Subcontractor shall commence, continue and complete the Subcontract Work so as not to delay completion of the Project or any portions thereof, including portions to be performed by others.

4.7 The responsibility of Subcontractor for prompt and timely performance shall not be deemed waived by any assent or acquiescence by Contractor to Subcontractor's late performance of a portion thereof.

4.8 In the event of Subcontractor's failure to comply with this Article IV, then in addition to the other remedies provided herein or available at law or in equity, Subcontractor shall be liable for all actual damages suffered by Contractor as a result of Subcontractor's failure to comply, including that portion of any liquidated damages payable by Contractor to Owner pursuant to the Prime Contract and reasonably attributable to Subcontractor's failure to comply. In the event that Subcontractor is delaying the performance of Contractor's Work and such is concurrent with other delays to the performance of Contractor's Work (whether the other delays are attributable to others of Contractor's subcontractors or delay attributable to Contractor's own

forces), then the actual damages, including liquidated damages payable by the Contractor, shall be apportioned equally among those contributing to the concurrent delay.

4.9 All communication between Subcontractor and Owner, Architect or Engineer shall be conducted through Contractor.

4.10 Notwithstanding any provision in the Subcontract to the contrary, in the event that Subcontractor remains behind schedule 48 hours after receiving notice from Contractor thereof, Contractor may, to the extent it deems necessary in its sole judgment, supplement the Subcontractor's work forces with its own forces or those of another contractor until such time as Contractor is satisfied that the Subcontractor has recovered and shall maintain its compliance with all performance schedules under this Article IV. Any costs incurred by Contractor in supplementing Subcontractor's work forces under this paragraph, plus fifteen percent (15%) for Contractor's overhead and fee, shall be deducted from the Subcontract Price.

ARTICLE 5

INSPECTION, STORAGE AND APPROVAL OF SUBCONTRACT WORK

5.1 Subcontractor shall be solely responsible for thorough inspections of the Subcontract Work for conformance with the requirements of the Subcontract.

5.2 Subcontractor shall provide, and shall ensure that its sub-subcontractors and suppliers provide, sufficient, safe and proper facilities for such inspection and/or observation of the Subcontract Work by Contractor, Owner, Architect or Engineer as may be requested. Subcontractor shall, upon request, demonstrate and confirm the quantities and qualities of the materials and equipment being supplied to the Project.

5.3 Subcontractor shall store its equipment, material and tools only in the areas designated by Contractor.

5.4 Subcontractor shall be responsible for the receipt, delivery, unloading, storage, warehousing, protection, insurance, and all risk of loss relating to any materials or equipment it is to furnish, install, provide, or have provided to it for performance of the Subcontract Work. Regardless of any payment, the risk of loss of such materials and equipment shall remain upon Subcontractor until final acceptance of the Project by Owner.

5.5 If Contractor furnishes material or equipment to Subcontractor to be incorporated into the Subcontract Work, Subcontractor shall, immediately upon receipt, make a thorough inspection as to the physical condition and suitability of the material or equipment, and shall immediately notify Contractor, in writing, of any defect or nonconformity in the material or equipment. If Subcontractor fails to provide such notice, Subcontractor shall be liable for all damages, and shall defend and indemnify Contractor against any claims, arising or alleged to arise out of such

defect or nonconformity, whether such defects or nonconformities are patent or latent.

5.6 Subcontractor agrees that any tools, material or equipment of Owner or Contractor which are not to be incorporated into the Subcontract Work will be available to Subcontractor only with Contractor's express written permission and in accordance with Contractor's terms and conditions for such use. If Contractor allows Subcontractor to use any such equipment, Subcontractor agrees that any operator provided by Owner, Contractor or Subcontractor shall be the agent and servant of Subcontractor, and Subcontractor shall be solely responsible and liable for the acts of the operator during the time of Subcontractor's equipment use notwithstanding any negligence or alleged negligence of the Contractor. Subcontractor shall, immediately upon receipt, make a thorough inspection as to the physical condition and suitability of any such tools, material or equipment and the competency of the operator, and shall immediately notify Contractor, in writing, of any defect or nonconformity in the tools, material or equipment or any incompetence; of the operator. If Subcontractor fails to provide such notice, Subcontractor shall be liable for any damages, and shall defend and indemnify Contractor against any claims, arising or alleged to arise out of such defect or nonconformity in the tools, material or equipment and incompetence of the operator, notwithstanding any negligence or alleged negligence of the Contractor.

5.7 Within seventy-two (72) hours after notice from Contractor, or immediately after notice in emergency or critical path situations, Subcontractor shall commence, and thereafter proceed diligently, to take down and remove any designated portion of its work which is condemned or is disapproved as not being in compliance or conformity with the requirements of the Subcontract. Subcontractor shall promptly, at its own expense, correct the same. If Contractor determines that it will accept nonconforming work, Contractor shall be entitled to an equitable credit for the nonconformity.

5.8 Subcontractor shall promptly perform at its own expense any and all punch list work or corrective work submitted to it by Contractor. If such work is not performed within a reasonable time prescribed by Contractor, then in addition to its other remedies provided herein or available at law or in equity, Contractor may complete or correct the Subcontractor's Work and deduct the cost thereof from the Subcontract Price. In addition to amounts that may be withheld by Contractor under Article IX, Contractor may withhold the greater of (i) two times the reasonable cost to complete the punch list and corrective work or (ii) \$10,000, as security for the performance of the punch list and corrective work until such work is completed.

5.9 No substitution shall be permitted in the Subcontract Work or materials specified to be provided by Subcontractor unless permitted by the Subcontract, and Subcontractor shall first obtain written approval from Contractor for any such substitution. Subcontractor shall defend and indemnify Contractor against all claims and

expenses incurred by Contractor as a result of any unapproved substitution.

ARTICLE 6

SAFETY AND CLEAN-UP/JOB SITE MEETINGS

6.1 Subcontractor shall be solely responsible for the safety of its employees, sub-subcontractors, suppliers, and any other person present at the site at Subcontractor's invitation or to provide labor, services, materials or equipment to Subcontractor (collectively, the "Subcontractor Personnel"), and shall maintain its work area so as to at all times provide a safe working environment, including erection and maintenance of suitable warning notices, fences, barriers, and barricades when required for the safe performance of the Subcontract Work. Subcontractor shall ensure that all Subcontractor Personnel comply with (i) all safety policies and requirements set forth in Contractor's current safety policies, including but not limited to those set out in Contractor's "SHARP" Manual available for inspection at the jobsite, (ii) such additional safety requirements as may be set forth in the Project-Specific Supplemental Terms, and (iii) all safety requirements of any applicable governmental authority, including OSHA. In the event that there is any conflict in the standards or requirements of applicable safety policies, rules, regulations or guidelines, Subcontractor shall be bound by the strictest standard or requirement. In addition to and without limiting the generality of the foregoing, Subcontractor shall replace any warning notices, fences, barricades and/or barriers which Subcontractor removes or damages in the performance of the Subcontract Work and shall be responsible for maintaining a safe working environment while such fences, barriers and barricades are damaged or removed. Subcontractor shall provide at its own expense all items of safety-related equipment, protective gear or clothing for Subcontractor Personnel necessary to comply with all requirements of this Article VI.

6.2 Subcontractor, its sub-subcontractors, suppliers, and any other person or entity for whom Subcontractor is responsible, shall not generate, introduce, transport, store or dispose of any hazardous substance as defined in CERCLA or RCRA, at, near or on the Project without the prior written consent of Contractor. Subcontractor shall notify Contractor in writing if Subcontractor discovers at, near or on the Project any actual or potential hazardous substance, such notice to be provided within forty-eight (48) hours of obtaining knowledge thereof. Such written notice must also be given to others at the Project site and to governmental authorities prior to exposure to such substance or chemical of any persons at the Project site and, in any event, in sufficient time to permit others at the Project site to comply with all governmental laws, rules, and regulations. All such written notices shall include a description of the chemical composition of the substance or chemical in sufficient detail to permit compliance with all governmental laws, rules, and regulations, and Subcontractor shall furnish copies of all such notices to Contractor. Upon such discovery, Subcontractor shall cease any work which may impact the hazardous substance until receipt of a written notice to proceed from Contractor.

6.3 Subcontractor shall continuously maintain its work areas of the Project free from all dirt, rubbish, debris, and any other waste materials and ensure their proper removal from the Project site or, if applicable, to common receptacles or bins supplied by Contractor. In addition, Subcontractor shall comply with Contractor's Waste Management Plan for the Project, if applicable, which is incorporated herein by reference and which will be provided to Subcontractor upon request. On completion of the various portions of the Subcontract Work, Subcontractor shall broom clean its work areas.

6.4 If Subcontractor fails, upon twenty-four (24) hours written notice, to maintain its work area as herein required, then in addition to its other remedies provided herein or available at law or in equity, Contractor may cure the deficiency and deduct the cost thereof from the Subcontract Price. In such event, the cost will be calculated at \$50.00/hour for each individual employed by Contractor for the cleanup process, together with costs of materials and equipment and a fifteen percent (15%) markup for Contractor's administrative overhead..

6.5 Subcontractor shall attend all job site meetings as requested by Contractor, including regular informational, progress, and safety meetings. Failure of Subcontractor to attend meetings as requested shall constitute a material breach of the Subcontract entitling Contractor to withhold payment until such non-attendance is remedied or to terminate the Subcontract.

6.6 Subcontractor shall ensure compliance by itself, its employees, and its sub-subcontractors with any applicable laws or regulations with respect to "alcohol or drugs and the workplace," and shall be solely responsible for the consequence of any alcohol- or drug-related losses or expenses due to their noncompliance. Subcontractor is advised that Contractor's current safety manual sets out specific alcohol and drug policies which apply to this Project. Contractor specifically reserves the right to exclude from the jobsite Subcontractor's or its Sub-subcontractor's employees who violate any alcohol or drug-related policies, and Subcontractor shall have no claim for delay or damages on such account

ARTICLE 7

ASSIGNMENT/SUB-SUBCONTRACTORS /SUPPLIERS

7.1 Subcontractor shall not engage or employ any person or entity, including employees, sub-subcontractors and suppliers, to which Contractor has reasonable objection, and shall immediately remove from the Project site any such person or entity. Promptly after executing the Agreement, Subcontractor shall submit for Contractor's review and approval a list of sub-subcontractors and suppliers it proposes to use in performing the Subcontract Work, and shall update this list as any changes occur. Subcontractor shall ensure that any sub-subcontractors engaged by it in connection with the Subcontract Work shall be bound to Subcontractor and obligated to Subcontractor in the same

manner and to the same extent that the Subcontractor is bound to the Contractor under the Subcontract, and that to the extent the Prime Contract or the law require the inclusion of any provision, clause or other requirement in the Sub-subcontract, those provisions, clauses and requirements are incorporated by reference in and made a part of the Sub-subcontract.

7.2 Subcontractor shall not assign or sublet its obligations to perform the Subcontract, or any part thereof, without Contractor's prior written consent. Any such assignment or subletting without such consent shall be void. If Contractor consents to an assignment of part or all of the Subcontract, or if Subcontractor assigns any accounts receivable relating to the Subcontract, such assignment shall be subject to and subordinated to: (a) all labor preferences and other liabilities, actual or potential, as may be imposed on Contractor due to any obligation or liability of Subcontractor; and (b) all payment obligations of Subcontractor under the Subcontract. Under no circumstances shall any valid assignment of accounts receivable by Subcontractor to a third party, whether by express approval or by operation of law, have priority over Subcontractor's payment responsibilities to Contractor, sub-subcontractors, suppliers, employees, union trust funds or taxing authorities, or to any person or entity which may file a lien on the Project site or a claim under any bond posted by Contractor. Subcontractor shall require any assignee who takes an interest in the Subcontract as collateral to agree that: (1) it shall have no right to payment unless and until all sub-subcontractors, suppliers, employees, union trust funds and taxing authorities have been paid, and any claims of Contractor have been satisfied; and (2) it will repay to Contractor immediately upon receipt any amount received in violation of this Paragraph, with or without demand by Contractor.

7.3 Contractor's consent to any such assignment or subletting shall not in any manner relieve Subcontractor of its obligations to Contractor under the Subcontract, and Subcontractor shall remain fully liable for the Subcontract Work, as performed by its suppliers, assignees, and sub-subcontractors.

7.4 Contractor shall have the right to assign all or any portion of its rights and interests in the Subcontract to Owner, Owner's lenders, Contractor's sureties, a joint venture or partnership in which Contractor is a joint venturer or partner, or to any entity which is affiliated with Contractor, and Subcontractor shall thereupon have all of the same duties and obligations to said assignee as if said assignee had been the original contracting party hereto. Upon request, Subcontractor shall promptly provide Contractor with written confirmation of Subcontractor's consent to such assignment.

7.5 Subcontractor shall make prompt payment to all persons and entities to which it becomes obligated in connection with its performance of the Subcontract, including sub-subcontractors, suppliers, employees, union trust funds and taxing authorities, and any person or entity which may assert a lien on the Project or Project site or a claim under any bond posted by Owner or Contractor, and

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

ARTICLE 8

SUBCONTRACTOR'S SUPERINTENDENT

8.1 Subcontractor shall furnish a competent and experienced superintendent approved by Contractor at the Project at all times when the Subcontract Work is in progress. Such superintendent shall represent Subcontractor at all meetings at which Subcontractor attendance is required pursuant to Section 6.5 above and shall have absolute authority to act, in all respects, on behalf of Subcontractor. Subcontractor shall not replace said superintendent without prior approval of Contractor, which approval shall not be unreasonably withheld.

8.2 Subcontractor's superintendent shall submit daily reports, on a form to be provided by Contractor, to Contractor's Project Superintendent no later than 8:00 a.m. on the work-day after the work-day described in the daily report. The daily reports shall include a detailed description of the Subcontract Work performed, problems encountered, manpower levels, deliveries of materials and/or equipment, and such other information as may be relevant to the progress of the Subcontract Work. Failure to submit daily reports shall constitute a material breach of the Subcontract entitling Contractor to withhold payment until such breach is remedied or to terminate the Subcontract.

ARTICLE 9

PAYMENTS

9.1 If Contractor is entitled to apply for progress payments from Owner pursuant to the Prime Contract, Subcontractor shall be entitled to apply for progress payments for the Subcontract Work performed during the payment periods established in the Prime Contract, but not more frequently than monthly.

9.2 Within fourteen (14) days after execution of the Agreement, Subcontractor shall prepare and submit to Contractor (i) a schedule of values apportioned to the various divisions or phases of the Subcontract Work in a form acceptable to Contractor, which schedule of values must be supported by such documents and proof as Contractor may require, (ii) a summary log identifying all submittals required of Subcontractor pursuant to Section 18.1 hereof (the

"Submittal Log"), and (iii) a summary log identifying all warranties, guarantees and maintenance and operation manuals to be delivered by Subcontractor pursuant to Section 18.3 hereof (the "Close-out Document Log"). Said schedule of values shall be used for payment purposes only and shall not relieve Subcontractor of any responsibilities under the Subcontract. Progress payments under this Subcontract shall not commence until the requirements of this Paragraph have been met by Subcontractor. Contractor may, in its sole discretion, determine to waive the requirements set forth in this Paragraph, which waiver shall only be effective if in writing.

9.3 Progress payments shall be made by Contractor seven (7) days after a corresponding payment for Subcontractor's Work has been received by Contractor from Owner or its agent. Subcontractor acknowledges that Contractor has previously disclosed to Subcontractor the Payment terms between the Owner and Contractor including the dates upon which payment is due to the Contractor from the Owner. To the fullest extent allowed by law, in no event shall Subcontractor be entitled to receive any payment from Contractor or Contractor's sureties for any portion of the Subcontract Work, including retainage, progress payments, changes in the Subcontract Work as set forth in Article XI hereof, claims as described in Subparagraphs 12.2 through 12.5 hereof, or final payment, prior to Contractor's actual receipt of that payment from Owner, which payment shall be a condition precedent to Contractor's obligation to pay Subcontractor unless nonpayment is caused solely by the negligent acts or omissions of Contractor. Subcontractor waives all right to commence litigation, arbitration or any other proceeding against Contractor or its sureties for payment until said monies are received by Contractor, unless nonpayment is caused solely by the negligent acts or omissions of Contractor. Subcontractor agrees that Contractor's sureties are intended third-party beneficiaries of this Paragraph.

9.4 As further condition precedent to payment by Contractor as referenced in Paragraph 9.3, Subcontractor shall submit the following to Contractor at least five (5) days prior to the date Contractor is required to submit its progress estimate to Owner, or within such other timeframe as may be specified in the Project-Specific Supplemental Terms: (a) Subcontractor's monthly progress estimate and invoice in triplicate, along with proper back-up, on AIA forms G702 and G703 or such other forms as may be required by Contractor; (b) executed waivers of lien rights and releases of claims from Subcontractor and its sub-subcontractors and suppliers in sufficient form for Owner and Owner's lender and title insurer, if any, to determine Contractor's right to payment under the Subcontract and all applicable laws; (c) as to Subcontractor's billings for materials stored at the Project site, a detailed list of such items and a copy of the invoice from supplier thereof; and (d) as to Subcontractor's billings for materials stored off-site, but within the state in which the Project is located: (i) a copy of the supplier's invoice for such materials, (ii) a certificate of insurance specifically listing such materials as covered and identifying Owner and Contractor as additional insureds, (iii) a photograph of the materials, and (iv) a completed certificate of title or bill of sale transferring

ownership to Contractor upon payment of the applicable progress payment (less retainage). All waivers and releases shall be in a form satisfactory to Contractor and shall, at Contractor's written request, be on a current basis. No requests for payment regarding materials stored outside the state in which the Project is located will be honored unless specifically approved by Owner and Contractor in writing in advance. Owner and/or Contractor shall be entitled to adjust Subcontractor's monthly progress estimate to the amount which Owner and/or Contractor reasonably believes to be the actual amount earned by Subcontractor during the applicable time period, and shall only be responsible for payment to Subcontractor of that adjusted amount. Contractor may, in its sole discretion, determine to waive the requirements set forth in this Paragraph, which waiver shall only be effective if in writing.

9.5 Subcontractor agrees that all funds received by Subcontractor are to be held in trust, and Subcontractor further agrees to be bound as a fiduciary to Contractor and to Subcontractor's subcontractors and suppliers to apply the funds held in trust properly to payment of labor, equipment, services and materials in connection with the Subcontract Work or for which any person or entity may assert a lien on the Project or Project site or a claim under any bond posted by Owner or Contractor.

9.6 To the extent permitted by applicable law, progress payments to Subcontractor for any payment period shall be subject to retainage of ten percent (10%) and therefore shall not exceed ninety percent (90%) of the value of Subcontractor's labor and materials which have been placed in position or suitably stored on or off the Project site and approved and paid by Owner for the Subcontract Work completed to date. In addition to this ten percent (10%) retainage, all or part of monthly Progress payments may be withheld from Subcontractor by Contractor, and/or Subcontractor may be back charged, to the extent that:

9.6.1 Subcontractor is indebted to Contractor pursuant to the Subcontract or any other agreement between Subcontract and Contractor or its affiliates or subsidiaries, whether or not such other agreement is related to the Project;

9.6.2 Defective Subcontract Work has not been remedied;

9.6.3 Subcontractor has failed to pay, or provide satisfactory evidence of payment to, sub-subcontractors, suppliers, employees, laborers, union trust funds and taxing authorities, or any claim or lien by any third party has been asserted or threatened with respect to the Subcontract Work;

9.6.4 Contractor has a reasonable basis to believe that the Subcontract Work cannot be completed for the unpaid portion of the Subcontract Price or in accordance with the Project schedule;

9.6.5 Contractor, Owner, or another subcontractor or supplier has been injured or damaged by Subcontractor's performance or failure to perform the Subcontract Work;

9.6.6 Subcontractor fails to submit waivers of lien rights and/or releases of claims as required in the Subcontract or fails to provide certified payroll data when requested by Contractor; or

9.6.7 In the event of a Change Order or Construction Change Directive deleting a portion of the Subcontract Work, Contractor shall have the right to withhold from its periodic progress payments to Subcontractor an amount which Contractor, in its reasonable judgment, determines to be the value of such work. Said amount may be held by Contractor until the value of such work is determined by agreement or by the dispute resolution procedures provided in Article XII hereof.

9.6.8 The Subcontract otherwise provides for such withholding of payment.

Monies withheld or retained by Contractor from Subcontractor as provided in this Article IX shall not accrue interest.

9.7 All amounts withheld or retained by Contractor from monthly progress payments as provided in this Article IX shall be reduced to any amount then being withheld by Owner from Contractor for the Subcontract Work upon the latest to occur of the following:

9.7.1 Owner's release of any retainage it has withheld as to the Subcontract Work;

9.7.2 Substantial completion of the Subcontract Work;

9.7.3 The curing of all deficiencies set forth in Subparagraphs 9.6.1 through 9.6.8; and

9.7.4 Approval by Subcontractor's sureties of the reduction in retainage.

Notwithstanding anything to the contrary herein, Contractor shall be entitled to withhold or retain amounts sufficient to reimburse Contractor for amounts owed by Subcontractor pursuant to Articles XV and XXI hereof.

9.8 Except as provided in Subparagraphs 9.6.1 through 9.6.8, final payment shall be payable to Subcontractor no later than thirty (30) days after final completion and acceptance of the Project by Owner and receipt of final payment by Contractor, subject to the provisions of Paragraph 9.3. Prior to final payment, Subcontractor shall submit on behalf of itself and its sub-subcontractors and suppliers all documents and materials required by Article XVIII hereof, together with appropriate waivers of lien rights and releases of claims against Contractor and its sureties, and verifying full payment of all monies due or to become due to

others relating to the Subcontract. Subcontractor's requisite release must constitute a full release of Owner, Contractor and Contractor's sureties. If Subcontractor intends to exclude any claims from said release, the release shall specifically detail each and every claim that Subcontractor asserts against Contractor and its sureties, or said claims shall be deemed waived.

9.9 Subcontractor agrees it will pay all amounts owing to its sub-subcontractors and suppliers within seven (7) days of receipt of a progress or final payment from Contractor for all work performed and all materials furnished through the date of Subcontractor's payment request to Contractor, or within the time required by applicable law, whichever is less. Subcontractor agrees that Contractor may make payment to Subcontractor by check payable jointly to Subcontractor and its sub-subcontractors, suppliers, sureties, and/or governmental agencies when Contractor, in its sole discretion, determines such joint payment is desirable in Contractor's sole discretion to protect Contractor or Owner from claims.

9.10 No payment, including final payment, shall be evidence of the performance of the Subcontract by Subcontractor, either in whole or in part. No payment shall be construed as an acceptance of defective or incomplete work, and Subcontractor shall remain responsible for its performance conforming with the requirements of the Subcontract,

9.11 If Contractor has furnished a performance and payment bond, Subcontractor hereby waives any right that Subcontractor may have to direct, request or order Owner, lenders, or title insurers to withhold amounts owed to Contractor to satisfy any claims of Subcontractor.

ARTICLE 10 COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

10.1 All labor, services, equipment and materials to be furnished as part of the Subcontract Work shall comply, at Subcontractor's own expense, with all applicable federal, state, and local statutes, regulations, rules, and ordinances, including those relating to safety, hazardous waste, discrimination, fair employment, equal opportunity and worker's compensation. Additionally, Subcontractor is responsible for compliance with building codes when referenced in the Subcontract, and will comply with local trade practices concerning workmanship and compliance with building codes. Subcontractor shall, at its own expense, correct any violations hereof, and shall defend and indemnify Contractor against all claims and expenses relating thereto.

10.2 In case of discovery of any variance between the Subcontract and any applicable statutes, regulations, rules, or ordinances, Subcontractor shall promptly notify Contractor thereof in writing, and make the necessary changes before proceeding with the Subcontract Work. In the event that Subcontractor discovers or should have discovered any such variance and fails to promptly notify Contractor, Subcontractor shall at its sole expense make any change in

the Subcontract Work necessitated by failure to disclose such variance, and shall defend and indemnify Contractor against all claims and expenses relating thereto.

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

ARTICLE 11

CHANGES IN SUBCONTRACT WORK

11.1 Contractor retains the right to make changes in the Subcontract Work, which may be accomplished after execution of the Subcontract by Change Order, Construction Change Directive, or Field Order, subject to the limitations stated in the Subcontract. To aid Contractor, Architect, Engineer and Owner in determining whether to issue a proposed Change Order Construction Change Directive, or Field Order, Subcontractor shall, upon request, within the time specified in the request and at no additional charge, submit a budget and time estimate for a proposed Change for review.

11.2 Changes in the Subcontract Work shall be performed under applicable provisions of the Subcontract, and Subcontractor shall proceed promptly with such changes, unless otherwise provided in the Change Order, Construction Change Directive, or Field Order.

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

11.4 A Change Order is a written instrument prepared by Contractor and signed by Contractor and Subcontractor, stating their agreement upon all of the following:

11.4.1 A change in the Subcontract Work;

11.4.2 The amount of the adjustment in the Subcontract Price, if any; or the method for determining the amount of the adjustment (which

may be the method described in Paragraph 11.10 and may include an agreed maximum or "not-to-exceed" value); and

11.4.3 The extent of the adjustment in the time for Subcontractor's performance, if any, or the method for determining the amount of the adjustment.

11.5 Within ten (10) days of receipt of any proposed Change Order from Contractor or within such shorter time as may be prescribed in the Subcontract, Subcontractor shall notify Contractor in writing of any adjustment in the Subcontract Price or time for performance necessitated thereby, including a detailed breakdown of the difference in time required and value of the work, labor, services, and materials to be altered, added, omitted or changed, and including quotes from sub-contractors and suppliers. If Contractor and Subcontractor agree on all adjustments, and Owner issues a corresponding Change Order to Contractor, then a Change Order will be issued to Subcontractor. If they do not agree, Contractor may issue a Construction Change Directive as provided herein.

11.6 A Construction Change Directive is a written order prepared and signed by Contractor, directing a change in the Subcontract Work and stating a proposed basis for adjustment, if any, in the Subcontract Price or time for performance, or both. A Construction Change Directive shall be used in the absence of total agreement on the terms of a proposed Change Order.

11.7 If a Construction Change Directive provides for an adjustment to the Subcontract Price, and if unit prices have not been previously agreed upon, the adjustment shall be based upon one of the following methods:

11.7.1 Mutual acceptance of a lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation;

11.7.2 Unit prices subsequently agreed upon;

11.7.3 Cost to be determined in a manner agreed upon by the parties; or

11.7.4 As provided in Paragraph 11.10, with or without a maximum cost stated in the Construction Change Directive.

11.8 Upon receipt of a Construction Change Directive, Subcontractor shall promptly proceed with the change in the Subcontract Work involved and advise Contractor of Subcontractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Subcontract Price or time for performance. Within ten (10) days after receipt of any Construction Change Directive from Contractor or within such shorter time as may be prescribed in the Subcontract, Subcontractor shall notify Contractor in writing of any adjustment in the Subcontract Price or time for performance necessitated thereby, including a detailed breakdown of the difference in time required and value of the

work, labor, services, and materials to be altered, added, omitted or changed, and including quotes from subcontractors and suppliers.

11.9 A Change Order or Construction Change Directive signed by Subcontractor indicates the agreement of Subcontractor therewith, including adjustment in Subcontract Price and time for performance, if any, and Subcontractor shall make no further claim for costs, time or other impacts relating to such change.

11.10 If agreed by the Contractor and Subcontractor, or if Subcontractor does not respond promptly to a Construction Change Directive or disagrees with the proposed method for adjustment in the Subcontract Price, the method and the adjustment shall be determined on the basis of reasonable expenditures and savings attributable to the change, including, in case of an increase in the Subcontract Price, a reasonable allowance for Subcontractor's overhead and profit. In such case, Subcontractor shall keep and present, in such form as Contractor may prescribe, an itemized accounting, together with appropriate supporting data. In no event shall labor charges for overtime work exceed the standard percentage increase paid for similar overtime work in the community in which the Project is located. "Overhead" shall be deemed to include full and complete compensation to Subcontractor for all general and administrative expenses, home office overhead, field office overhead, bonding and insurance costs, and supervision, and shall be an amount consistent with the Prime Contract, provided, however, that in no event shall overhead and profit combined exceed ten percent (10%) of the cost of the adjusted work performed by Subcontractor's own forces or five percent (5%) of the cost of work performed by sub-subcontractors. "Cost" for the purpose of this Paragraph means Subcontractor's net costs and shall be limited to the following:

11.10.1 Costs of labor, including Social Security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

11.10.2 Costs of material, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

11.10.3 Rental costs of machinery and equipment, exclusive of hand tools (for which overhead and profit shall be limited to five percent (5%)); and

11.10.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes related to the Subcontract Work.

11.11 Pending final determination of Subcontractor's cost, amounts not in dispute may be included in Subcontractor's applications for progress payments. When both additions and credits covering related work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

11.12 Where any adjustment to the Subcontract Price in connection with a Change Order or Construction Change Directive is based on unit prices or cost of labor, materials and the like, Subcontractor's superintendent shall, separate from the daily reports required under Section 8.2, submit to Contractor's Project Superintendent daily accountings of the quantities of all cost items, whether in the nature of labor, materials, unit price items or otherwise, to be claimed as a basis for the adjustment to the Subcontract Price. The Subcontractor shall submit such accountings no later than 8:00 a.m. on the work-day after the work-day described in the accounting. Failure of the Subcontractor to submit such daily accountings shall constitute a waiver of any claim for payment for such items.

11.13 A Field Order is a written order signed by Contractor, directing a minor change in the Subcontract Work not involving adjustment in the Subcontract Price or time for performance and not inconsistent with the Subcontract. Such change shall be performed promptly upon issuance of the Field Order describing said change and shall be performed without any adjustment of Subcontract Price or time for performance.

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

11.15 All written communications from Subcontractor to Contractor under this Article XI shall refer to the applicable "cost issue number" assigned by Contractor in connection with the changed work.

11.16 Any disputes arising out of or relating to a request for or issuance of a Change Order, Construction Change Directive, or Field Order, including disputes as to adjustments to the Subcontract Price or time for performance relating thereto, shall be resolved as provided in Article XII hereof.

ARTICLE 12 RESOLUTION OF DISPUTES

12.1 Definition of Claim: A claim is a demand or assertion made in writing by Contractor or Subcontractor seeking an adjustment in the Subcontract Price and/or time for performance, an adjustment or interpretation of the Subcontract terms, or other relief arising under or relating to the Subcontract, including the resolution of any matters in dispute between Contractor and Subcontractor in connection with the Project; except matters relating to aesthetics and matters covered by insurance. Subcontractor shall make no claim or initiate any proceeding against Contractor arising out of or relating to the Subcontract, the performance of the Subcontract Work, or otherwise relating to the Project except as specifically provided herein, and then only after all required notice and claims procedures have been strictly followed. In the event of such claim, which must be

submitted in writing, Subcontractor shall, upon request, make available to Contractor for inspection all of Subcontractor's files and records including its bid preparation files relevant to such claim. The party making a claim shall have the burden of proving the claim.

12.2 Remedies: Should Subcontractor's performance, in whole or in part, be delayed, disrupted, accelerated or suspended in the commencement, prosecution or completion of the Subcontract Work ("Delay"), for reasons beyond Subcontractor's control and without its fault or negligence, Subcontractor's sole remedy against Contractor for claims based upon the action or inaction of Contractor, including action or inaction amounting to breach of the Subcontract, or the action or inaction of any person or entity other than Owner or its agents including its design professionals, shall be a reasonable extension of the time for performance of the Subcontract Work. If such Delay claims are based upon the action or inaction of the Owner or its agents including its design professionals, Subcontractor's sole remedies against Contractor shall be: (a) a reasonable extension of the time for performance in which to complete the Subcontract Work, provided that a similar extension of time has been granted to Contractor by Owner; and (b) to the extent that Owner pays amounts to Contractor as compensation for the Delay, such payment being a condition precedent to Contractor's obligation hereunder, then Subcontractor shall receive reasonable compensation for such Delay, not to exceed the amount actually received by Contractor as compensation for Subcontractor's Delay. Subcontractor shall only be entitled to the remedies specified herein if Subcontractor shall have notified Contractor in writing of the cause of Delay no later than seventy-two (72) hours after the occurrence of the event causing the Delay.

12.3 Claims by Owner: Subcontractor shall defend and indemnify Contractor against any damage, cost or expense (including but not limited to attorneys' and experts' fees and expenses) related to any claim by Owner against Contractor based upon, arising out of or related to the Subcontract Work or Subcontractor's performance of the Subcontract Work.

12.4 Pass-Through Claims:

12.4.1 If Subcontractor is unsatisfied with any Change Order or Construction Change Directive, or otherwise has a claim for which Owner is or may be responsible, Contractor, upon Subcontractor's timely request and at Subcontractor's sole expense, will either at Contractor's sole option (a) prosecute Subcontractor's claims singly or in combination with its own claims, claims by other subcontractors or both, or (b) assist Subcontractor in presenting its claims to Owner, Architect and/or Engineer in Contractor's name, but in so doing Contractor acts solely as a conduit for such claim and assumes no responsibility or liability therefor. If the Contractor elects to authorize the Subcontractor to prosecute its claims in the name of the Contractor, Subcontractor shall furnish copies of all documents concerning the claim and the prosecution and appeal of such claim to Contractor; consult with Contractor from time to

time on the course and status of the claims and any appeal; reimburse Contractor for any cost or expense relating to the claims and appeals including costs of producing and providing witnesses and documents and any attorneys or expert fees and expenses; and indemnify and hold Contractor harmless from any damage, cost, expense or claim arising out of any delay in the close-out of the Prime Contract, any additional retainage withheld by the Owner from the Contractor, any delay in commencement of warranties or other adverse consequence related to the prosecution and appeal of the Subcontractor's claims. Subcontractor further agrees to proceed with any disputed work related to its claims or appeal in accordance with Contractor's instructions, notwithstanding the pendency of the claims or appeal.

12.4.2 Notice of any claim by Subcontractor which will affect or become part of a claim which Contractor is required by the Prime Contract to make within a specified time period or in a specified manner shall be made in writing prior to executing the change and in no later than seventy-two (72) hours after the occurrence of the event giving rise to the claim. Submittal of the details of any such claim shall be made in writing in sufficient time and sufficient manner to permit Contractor to satisfy the requirements of the Prime Contract. Such submissions shall be received by Contractor not less than ten (10) days preceding the time by which Contractor's submission must be made. Failure of Subcontractor to satisfy the requirements of this Subparagraph shall bind Subcontractor to the same consequences as those to which Contractor is bound.

12.5 Procedures for Claims Described in Subparagraphs 12.3 and 12.4: When Subcontractor prosecutes or defends any claim described in Subparagraph 12.3 or 12.4, Subcontractor shall follow all claim procedures in the Prime Contract. Subcontractor shall be bound to Contractor to the same extent that Contractor is bound to Owner by all decisions made in any proceeding authorized by the Prime Contract. Subcontractor's compensation on claims described in Paragraph 12.4 shall be limited to the compensation actually paid to Contractor in connection with those claims, and receipt of such payment by Contractor is a condition precedent to Contractor's obligations hereunder.

12.6 Joinder of Subcontractor: Contractor may, in its sole discretion, join Subcontractor in any dispute resolution proceeding to which Contractor is or becomes a party and which, in Contractor's sole judgment, relates to or affects the Subcontract Work or Subcontractor's performance of the Subcontract Work, including: (a) any dispute resolution procedure provided in the Prime Contract for disputes arising between Contractor, Owner and/or others, including mediation, arbitration and submission to Architect or Engineer; (b) litigation; (c) administrative proceedings; and (d) any other dispute resolution proceeding applicable under the prevailing law. If so joined, Subcontractor shall participate at its own expense in said proceeding, shall be bound by its

outcome, and shall dismiss or abate any mediation, arbitration or litigation proceedings instituted against Contractor under Paragraph 12.7.

12.7 Claims between Contractor and Subcontractor:

12.7.1 If either party has claims against the other which are not covered under Paragraphs 12.3 through 12.6, the claimant shall provide written notice of such claims to the other party within seven (7) days after the claimant knew or should have known of the facts giving rise to the claim, except as otherwise provided in Paragraph 12.2. Prior to the commencement of arbitration or litigation, each party agrees, upon the written request of the other party, to submit the claims to a mediator and to negotiate in good faith in an attempt to reach a settlement of the claims. The parties shall endeavor to agree upon a mutually acceptable mediator; failing agreement, the parties shall seek the assistance of the American Arbitration Association in selecting a mediator. Except as modified by this Subcontract, mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association. The mediation proceeding shall be held in the county in which the Project is located, unless otherwise mutually agreed. The parties shall share equally the fees and expenses of the American Arbitration Association and the mediator. Neither party shall proceed with arbitration nor litigation while mediation is ongoing, except as otherwise provided in Paragraph 12.6.

12.7.2 With respect to the claims identified in Subparagraph 12.7.1, if neither party requests mediation, or if mediation does not resolve the dispute, Contractor may elect at any time to arbitrate or to litigate the dispute, and Subcontractor hereby agrees to arbitrate if so elected by Contractor. Subcontractor agrees to dismiss or abate any proceeding pending in a forum other than that selected by Contractor. Any arbitration proceeding shall be governed by the Construction Industry Arbitration Rules of the American Arbitration Association, as supplemented by Subparagraphs 12.7.3 and 12.7.4 and by Paragraph 12.8 hereof. Any arbitration proceeding shall be held in the county in which the Project is located, unless otherwise mutually agreed. No arbitration or litigation shall include by consolidation, joinder or in any other manner, parties other than Owner, Architect, Engineer, Contractor, Subcontractor and any other persons substantially involved in a common question of fact or law, whose presence is required if complete relief is to be accorded. If arbitration is selected by Contractor, the award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The arbitrator(s) shall issue a reasoned explanation of the award.

12.7.3 Subcontractor agrees to require its sureties and insurers to be bound by any arbitration award against it.

12.8 Notwithstanding any claims Contractor or Subcontractor may have or assert, Subcontractor agrees to continue performance of the Subcontract Work to completion and to provide all warranties and corrective work required by the Subcontract, and Contractor agrees to make timely payment of any undisputed amounts due Subcontractor.

12.9 General Provisions:

12.9.1 Subcontractor shall proceed with the Subcontract Work and maintain its progress in all respects during the pendency of any claim, dispute, mediation, arbitration or litigation.

12.9.2 If the elections afforded Contractor in Subparagraphs 12.7.1 or 12.7.2 hereof are not enforceable then both parties shall be bound to arbitrate the dispute in accordance with the requirements of Subparagraph 12.7.2.

12.9.3 If Contractor has provided any bonds under any requirement of the Prime Contract or pursuant to 40 U.S.C. Section 270(a), et seq. (the "Miller Act") or pursuant to any state or local statutory or regulatory requirement, Subcontractor agrees to stay any action or claim against Contractor and/or its sureties arising out of or relating to the Subcontract or the Subcontract Work pending the complete and final resolution, including appropriate appeals, of all claims involving the Subcontract or the Subcontract Work submitted pursuant to any of the dispute resolution procedures set forth in the Prime Contract or in Paragraphs 12.3 through 12.7 hereof. This provision in no way excuses or stays Subcontractor's obligations to file any and all notices or claims as required by statute, code, rule, regulation or bond.

12.9.4 Should either party file a claim or demand arbitration to enforce any of the provisions hereof, to protect its interests in any manner arising under the Subcontract, or to recover on a surety bond furnished by a party to the Subcontract, the substantially prevailing party shall be entitled to recover from the other party and its sureties all reasonable attorneys' fees, costs, charges, expert witness fees, and expenses incurred in said proceeding.

12.9.5 Subcontractor waives its right to trial by jury in any litigation to which it is or becomes a party under the provisions of the Subcontract. Subcontractor agrees to include this condition in every Sub-subcontract and agreement for materials, supplies, labor or equipment entered into by Subcontractor in regard to the Subcontract Work.

12.9.6 The validity, interpretation, and performance of the Subcontract shall be governed by

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

12.9.7 Subcontractor agrees that Contractor's sureties are intended third-party beneficiaries of and shall be bound by this Article 12.

ARTICLE 13 **INSURANCE**

13.1 Prior to start of the Subcontract Work, Subcontractor shall obtain, and shall maintain until three (3) years following final acceptance of the Project by Owner or such longer period as the Prime Contract may prescribe, all insurance coverage as may be specified in the Prime Contract or elsewhere in the Subcontract, and in amounts not less than those so specified. In no case, however, shall Subcontractor procure and maintain less than the following insurance coverages:

13.1.1 Workers' Compensation or similar insurance as required by the laws of the state in which the Subcontract Work is to be performed or as required by applicable federal law.

13.1.2 Employer's Liability Insurance with an occurrence limit of not less than \$100,000.

13.1.3 Comprehensive General Liability or Commercial General Liability (collectively, "CGL") - coverage with an occurrence limit of not less than \$1,000,000 combined single limit and an aggregate limit of not less than \$2,000,000. Such coverage shall include Premises/Operations, Products/Completed Operations, Blanket Contractual Liability (to insure defense and indemnity obligations specified herein), Broad Form Property Damage (including completed operations), Personal Injury (waive employment related exclusion), Blanket XCU, Incidental Malpractice, Host Liquor Liability, Contractor's Protective and Independent Subcontractor's. Subcontractor shall provide mold coverage when available on commercially reasonable terms. Claims-made policy forms are not acceptable unless prior written approval is given by an authorized representative of Contractor.

13.1.4 Business Automobile – coverage with an accident limit of not less than \$1,000,000 combined single limit, including Owned, Hired, and Non-Owned Autos.

13.2 Contractor makes no representation that the required minimum amounts of insurance shall be adequate

to protect Subcontractor, and the procuring and/or carrying of such insurance shall not limit Subcontractor's obligation or liability pursuant to the Subcontract as a matter of law.

13.3 All insurance shall be procured at Subcontractor's expense. Its policies other than the workers compensation policy shall be endorsed to name Contractor, Owner, Architect, Engineer and other parties as required in the Subcontract or Prime Contract as additional insureds, including Products/Completed Operations for two years.

13.4 Subcontractor shall require insurance with the same coverages and limits from its sub-subcontractors and suppliers, and their CGL and automobile policies shall be endorsed to name the same additional insureds as is required of Subcontractor.

13.5 All insurance required to be furnished by Subcontractor shall be maintained with insurance companies with an A.M. Best rating of A- or better, which companies shall be an admitted carrier and subject to the applicable insolvency fund of the state in which the Project is located. Any exceptions to this requirement must be requested by Subcontractor in writing to Contractor and written consent received in writing from Contractor at least five (5) days prior to commencement of the Subcontract Work. Certificates of insurance for all coverage to be maintained by Subcontractor shall be delivered to Contractor five (5) days prior to scheduled commencement of the Subcontract Work. Subcontractor shall not commence work on-site until Contractor has received such a certificate, and Contractor shall make no payment to Subcontractor under this Subcontract until it has received such a certificate. The following requirements shall be endorsed onto the policies reflecting the insurance required by the Subcontract: (a) thirty (30) days prior written notice shall be given to Contractor in the event of cancellation, material change, or non-renewal of the insurance required by the Subcontract; and (b) the insurance afforded to the additional insureds on Subcontractor's policies shall be primary insurance over any other valid or collectible insurance that the additional insured may have with respect to loss under the policy, other insurance of additional insureds applicable to the loss shall be excess over Subcontractor's policies, and the amount of Subcontractor's insurance company's liability shall not be reduced by the existence of any other insurance. Subcontractor agrees to waive, and shall require all sub-subcontractors to the lowest tier to waive, all subrogation rights against Contractor, Owner, their parents, affiliates and subsidiaries, employees, and agents, and all other persons or entities providing labor or material to the Project as required in the Subcontract.

13.6 Failure of Subcontractor to maintain or furnish evidence of all insurance required herein shall permit Contractor, in addition to other remedies provided herein or available at law or in equity, to withhold progress payments otherwise due or to terminate the Subcontract or to obtain said insurance at Subcontractor's sole expense. Contractor's election to obtain said insurance shall in no case limit Contractor's other remedies nor reduce Subcontractor's responsibility pursuant to the Subcontract.

13.7 If the Contractor is required by the Prime Contract to pay any deductible or self-retained limit on any Builder's Risk insurance obtained by Owner or Contractor, Subcontractor and Contractor shall pay all or a portion of such deductible or self-retained limit as follows: (a) if Subcontractor and/or Contractor is responsible, in whole or in part, for the insured damages, each shall pay that part of the deductible proportionate to its responsibility as determined by Contractor; (b) Contractor will seek contributions from other subcontractors consistent with part a; and (c) for that part of the deductible not paid under parts a or b, Subcontractor shall pay, in addition to any payment required under part a, an amount proportionate to the insured damages to the Subcontract Work compared to the total insured damages to the total Contract Work. If an earthquake or flood causes damage to the Subcontract Work, and earthquake or flood insurance is not required to be obtained in accordance with the Prime Contract, is otherwise not being provided, or is inadequate to cover the loss, Subcontractor shall be required to pay the amount necessary to restore the Subcontract Work in accordance with the Subcontract.

ARTICLE 14

BONDS

14.1 When requested by Contractor, Subcontractor shall furnish to Contractor duly executed Performance and Payment Bonds or such substitute security as is acceptable to Contractor. Said bonds shall be issued by such surety company and in such format as are satisfactory to Contractor, and shall provide that the sureties' obligations are co-extensive with those of Subcontractor under the Subcontract. Unless otherwise specified, said Bonds shall each be in the full amount of the Subcontract Price, and shall be automatically increased if the Subcontract Price is increased by Change Order or Construction Change Directive, without further notice to the surety. Failure to timely furnish the requested Bonds or to increase promptly the amounts thereof may be deemed a material breach of the Subcontract. Contractor shall make no payment to Subcontractor under this Subcontract until it has received all required bonds.

14.2 No change, alteration or modification to or deviation from the Subcontract shall release or exonerate, in whole or in part, any bond or any surety on a bond given in connection with the Subcontract, and no notice is required to be given to such surety of any such change, alteration, modification or deviation.

ARTICLE 15

DEFENSE AND INDEMNIFICATION

15.1 To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Contractor, Owner, Architect, Engineer, their sureties, consultants, and all persons indemnified by Contractor pursuant to the Prime Contract, and all parents, subsidiaries, affiliates, agents and employees of any of them (the "Indemnitees") from and against any and all claims, liabilities, liens, costs, damages, citations, penalties, fines, attorneys' fees, losses, and expenses of whatever nature (the "Indemnified Claim") arising out of or

resulting from Subcontractor's performance of or failure to perform the Subcontract Work or Subcontractor's obligations under the Subcontract, including loss of use of any property resulting therefrom, regardless of whether or not the Indemnified Claim is caused in part by one or more Indemnitees, but only to the extent caused in whole or in part by breach of the Subcontract or by negligent or otherwise wrongful acts or omissions of Subcontractor, Subcontractor's sub-subcontractors, suppliers, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to any Indemnitee, and shall survive the completion of the Project and final payment to Subcontractor.

15.2 With respect to an Indemnified Claim against an Indemnitee by an employee of Subcontractor, Subcontractor's sub-subcontractors, suppliers, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the defense and indemnification obligations under this Article XV shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Subcontractor or its sub-subcontractors or suppliers under worker's compensation acts, disability benefit acts, or other employee benefit acts.

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

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

15.5 In the event of any Indemnified Claim, or any threat thereof, Contractor may retain any and all monies due or to become due to Subcontractor under the Subcontract in an amount sufficient to assure Subcontractor's obligations under this Article XV. This right of retention is in addition to, and is intended to complement, that set forth in Article IX hereof.

15.6 Notwithstanding any provision to the contrary in any applicable law, including any statute of limitations, an Indemnitee's claim for indemnification by Subcontractor shall not accrue, and any applicable statute of limitations shall not begin to run, until Indemnitee's payment of a final judgment, arbitration award or settlement arising out of any Indemnified Claim.

15.7 With respect to any matter to which Subcontractor's defense obligations apply, the Indemnitee shall have the right to assume its own defense if, in its sole discretion, it determines that the defense being provided by

Subcontractor is inadequate. If the Indemnitee assumes its own defense, or if the Indemnitee incurs expenses or fees in connection with a defense undertaken by Subcontractor, Subcontractor shall reimburse the Indemnitee for all attorneys' fees and other expenses related to the preparation and defense obligations to the Indemnitee, such payment to be made within ten (10) days after Subcontractor's receipt of a statement of such fees and expenses. Subcontractor's obligations to defend the Indemnitee shall be independent of and in addition to Subcontractor's indemnity obligations, and shall apply to the fullest extent permitted by law.

ARTICLE 16

TAXES

16.1 Subcontractor is an independent contractor, and shall timely pay, or cause its sub-subcontractors or suppliers to pay, all taxes, contributions, premiums, assessments, or fees imposed directly or indirectly on account of the Subcontract Work, including those payable on its employees or on its operations under Worker's Compensation Laws, Employment Welfare Benefit Plans, gross business taxes, and sales and use taxes and any other taxes, contributions and/or premiums which may become payable by operation of law or contract, including contributions payable by the employees. Subcontractor shall defend and indemnify Contractor against all liability, loss and expense resulting from Subcontractor's failure to comply with such requirements. At no time shall there be any increase in the Subcontract Price on account of any such tax or charge unless allowed by the Prime Contract. Subcontractor shall, if requested by Contractor, substantiate that all taxes and other charges have been and are being paid. If any claim or demand is made against Contractor for any matter enumerated herein, any payment due, or thereafter to become due, to Subcontractor shall be held by Contractor to cover such and expenses, including reasonable attorneys' fees.

ARTICLE 17

LABOR RELATIONS

17.1 Subcontractor shall do whatever is reasonably necessary in the prosecution of the Subcontract Work to assure harmonious labor relations at the Project and to prevent strikes or other labor disputes. Subcontractor shall fully abide by all labor agreements, project agreements, and jurisdictional decisions presently in force or subsequently executed with or by Contractor. Subcontractor's failure to so act may be deemed a material breach of the Subcontract. In the event that, notwithstanding Subcontractor's efforts pursuant to this paragraph, labor disputes, strikes, slowdowns or the like among Subcontractors' work forces are materially delaying or hindering the progress of the Subcontract Work or the work of others on the Project, Contractor may terminate the Subcontract and proceed in accordance with the provisions of Article XXI.

ARTICLE 18

SUBMITTALS, AS-BUILT DRAWINGS AND CLOSE-OUT DOCUMENTS

18.1 Subcontractor shall prepare and submit to Contractor in a timely manner all shop drawings, product samples, test results, installer's instructions, certificates, and other required submittals, and obtain all required approvals, permits, and licenses, necessary or required in connection with the Subcontract Work. In no event shall said items be submitted to Contractor later than fifteen (15) days following the award of the Subcontract without the written consent of Contractor. Submittals shall be provided by Subcontractor in the quantities and as otherwise specified in the Project-Specific Supplemental Terms. Subcontractor, within seven (7) days after receiving notice from Contractor regarding the inadequacy or insufficiency of any submittal, shall resubmit corrected submittals with respect to those submittals for which such notice was received.

18.2 Contractor's review of shop drawings or other submittals shall be for general concept only. Approval by Contractor of any submittals of Subcontractor shall not relieve Subcontractor of liability for any deviations from the Subcontract, unless said deviation is specifically called to Contractor's attention in writing and is then so approved by Contractor in writing.

18.3 Subcontractor shall provide to Contractor on a daily basis all information necessary to accurately update the on-site record drawings to reflect changes thereto in connection with the Subcontract Work, in accordance with the requirements of the Project-Specific Supplemental Terms. Subcontractor shall submit to Contractor, within fifteen (15) days after the completion of the Subcontract Work, final as-built drawings and/or record drawings of the Subcontract Work. No later than (i) 50% completion of the Subcontract Work or (ii) sixty (60) days before completion of the Subcontract Work, Subcontractor shall provide to Contractor copies of all warranties, guarantees, and maintenance and operation manuals with respect to the Subcontract Work, in such quantities as may be specified in the Project-Specific Supplemental Terms or the Prime Contract, whichever is greater.

ARTICLE 19

GUARANTEES AND WARRANTIES

19.1 Subcontractor, in addition to all other guarantees and warranties required by law or by the Prime Contract, and not in limitation thereof, warrants and guarantees that its work is and shall be in conformance in all respects with the Subcontract, and that it shall provide all necessary maintenance of the Subcontract Work until final acceptance of the Project. For one year after the date of final acceptance of the Project or such longer period as the Prime Contract or the law may provide, Subcontractor shall: (a) promptly perform any corrective work on the Subcontract Work without cost to Contractor; and (b) pay for the cost of any corrective work to any adjacent work or materials damaged during or as a result of such corrective work within ten (10)

days after receipt of written notice from Contractor and without cost to Contractor.

ARTICLE 20

NON-INTERFERENCE WITH PRINCIPLE RELATIONSHIP

20.1 Subcontractor shall not interfere with Contractor's relationship with Owner, Architect or Engineer. Subcontractor shall not enter into any other contract relating to the Project without Contractor's prior written consent, which consent shall not be unreasonably withheld.

ARTICLE 21

DEFAULT AND TERMINATION

21.1 Should Subcontractor: (a) fail to proceed with the Subcontract Work in the time or sequence directed by Contractor; (b) fail to prosecute the Subcontract Work diligently, including failure to provide sufficient numbers of skilled workmen or proper materials, or failure to adhere to the applicable performance schedules; (c) cause Delay as defined in Paragraph 12.2 hereof to the work of Contractor or other subcontractors, sub-subcontractors or suppliers on the Project; (d) fail to perform any of its obligations under the Subcontract; (e) fail to perform the Subcontract Work in accordance with the Subcontract; (f) file bankruptcy, assign assets for the benefit of creditors, become insolvent, or be unable or fail to pay its obligations as they mature; or (g) repeatedly perform the Subcontract Work in a manner which is rejected by Owner, Architect, Engineer, Contractor or governmental agencies having jurisdiction over the Project, then Contractor may deem Subcontractor to be in default and, at Contractor's sole option, and without limitation on other remedies available at law or in equity, take one or more of the following actions:

21.1.1 Take temporary possession if all Subcontractor's material and equipment intended for performance of the Subcontract Work (whether or not located on the Project site) in order to assure its availability for completion of the Subcontract Work,

21.1.2 Upon forty-eight (48) hours prior written notice of default, and provided the default is not fully cured within forty-eight (48) hours, cure the default at Subcontractor's expense plus fifteen percent (15%) for Contractor's overhead and fee, and deduct the cost thereof from the Subcontract Price,

21.1.3 Where the work of other contractors or Subcontractors will be materially delayed, Contractor may proceed upon written notice to immediately cure the default at Subcontractor's expense plus fifteen percent (15%) for Contractor's overhead and fee, and deduct the cost thereof, together with any damages due to the Owner or other contractors or Subcontractors, from the Subcontract Price; and/or

21.1.4 Upon forty-eight (48) hours prior written notice of default, and provided the default is not fully

cured within said forty-eight (48) hours, give Subcontractor written notice of termination of the Subcontract and, at Contractor's option, take permanent possession of all of Subcontractor's material, equipment, manuals, records, drawings, and other items intended for the performance of the Subcontract Work (whether or not located on the Project site), which Subcontractor hereby assigns and transfers to Contractor for such purpose, subject only to Contractor's exercising its option pursuant to this Subparagraph 21.1.4.

21.2 In the event of termination of the Subcontract as provided in Subparagraph 21.1.4, Subcontractor shall receive no further payment of any unpaid portion of the Subcontract Price until such time as the Subcontract Work is completed, at which time Subcontractor will be entitled to the unpaid portion of the Subcontract Price, less all costs and expenses incurred by Contractor in curing said default and completing the Subcontract Work, plus fifteen percent (15%) for Contractor's overhead and fee, plus all costs and attorneys' fees incurred in connection with the default, the completion of the Subcontract Work, and the resolution of any dispute concerning the amount owing to Subcontractor. If said costs, expenses, overhead and fee exceed the unpaid portion of the Subcontract Price, Subcontractor and its sureties shall be liable for, and shall promptly pay to Contractor, such excess amount, plus all costs and expenses, including reasonable attorneys' fees, incurred by Contractor in obtaining such payment, and Contractor shall have a lien upon Subcontractor's materials, tools, and equipment in Contractor's possession to secure payment thereof. All obligations of the Subcontractor to defend and indemnify Contractor and any Indemnitee under any defense or indemnification provision of the Subcontract shall survive termination.

21.3 If Owner has the right to suspend or terminate the Prime Contract, in whole or in part, for convenience, whether or not the Prime Contract is in default, then Contractor has the right to suspend or terminate the Subcontract upon the same terms and conditions. Subcontractor's rights, obligations and remedies upon suspension or termination for convenience shall be limited to the corresponding rights, obligations and remedies available to Contractor under the Prime Contract. In the event of suspension or termination for convenience by Owner of the Prime Contract, or such portion of the Prime Contract relating to the Subcontract Work, Contractor shall suspend or terminate the Subcontract for convenience, and Subcontractor shall not be entitled to any compensation for such suspension or termination except to the extent and in the amount that Contractor actually receives payment from Owner with respect to the suspension or termination of the Subcontract Work.

21.4 The Contractor may, at any time by written notice, terminate the Subcontract for the Contractor's convenience and without cause. Upon receipt of such written notice from the Contractor, the Subcontractor shall (a) cease operations as directed by the Contractor in the notice; (b) take actions necessary, or that the Contractor may direct, for the protection and preservation of the Subcontract Work; and (c)

except for Subcontract Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In case of such termination for the Contractor's convenience, the Subcontractor shall be entitled to receive payment from the Contractor for the value of the Subcontract Work executed, and costs incurred by reason of such termination, excluding any profit or overhead for work not performed and less any claims of Contractor against Subcontractor. In no event shall the amount payable by Contractor to Subcontractor under this Paragraph exceed the Subcontract Price.

shown by clear and convincing evidence, such as acknowledgment of receipt, written response to the notice or inclusion of the email notice in a written communication from the party receiving the notice. Email may constitute a writing for purposes of this Paragraph.

ARTICLE 22

CONTRACT INTERPRETATION

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

22.2 The failure of either party to insist, in any one or more instances, upon the performance of any of the terms of the Subcontract shall not be construed as a waiver or relinquishment of such term as respects further performance.

22.3 Except as otherwise specifically set forth herein, the Subcontract is solely for the benefit of the parties hereto, and shall not confer any rights, remedies or benefits upon anyone other than the named parties hereto and their successors and assigns. In no event shall Contractor incur any third party liability or responsibility by virtue of the Subcontract.

22.4 The Subcontract constitutes the entire agreement between the parties, and supersedes all prior negotiations, representations or agreements, oral or written. It is expressly understood and agreed that there are no agreements or promises by and between said parties, except as aforesaid, and that any additions to and changes in the Subcontract shall be in writing and signed by both parties hereto, except as otherwise provided in Article XI hereof. No provision of the Subcontract is to be construed against any party solely because that party was responsible for drafting it. Titles, captions or headings to any Article, Paragraph or Subparagraph shall not limit the full contents of same, and said Articles, Paragraphs and Subparagraphs shall have full force and effect as if no titles, captions or headings existed.

22.5 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice, or if delivered by fax provided that receipt of the fax is acknowledged by the recipient or a copy of the faxed notice is promptly sent by registered or certified mail. Written notice shall also be deemed to have been given if and when actually received by an officer or the Project Manager of the Contractor or an officer of the Subcontractor, regardless of the manner of delivery. Notice given solely by email shall be deemed "actually received" only if receipt is