



General Conditions of the Subcontract

2018 Edition

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ARTICLE 1
GENERAL PROVISIONS

1.1 GENERAL: SUBCONTRACTOR BOUND TO CONTRACTOR AS CONTRACTOR IS TO OWNER

1.1.1 The Subcontractor is bound to the Contractor first by all terms and conditions of the Subcontract Agreement and these General Conditions (collectively, the "Subcontract") and then by all of the terms and conditions of the agreement between the Owner and Contractor (the "Prime Contract,") which is incorporated by reference into this Subcontract and is an integral part of the Subcontract.

1.1.2 The Contractor agrees to furnish a copy of the Prime Contract to the Subcontractor upon request. The Subcontractor agrees not to divulge any information in or about the Prime Contract to anyone for any purpose other than the ordinary course of business.

1.2 THE CONTRACT DOCUMENTS

1.2.1 The "Contract Documents" include the Subcontract (including these General Conditions), the Prime Contract between the Contractor and the Owner; all general, supplemental, special, and technical terms and conditions; all Plans and Specifications, other drawings, details, and standards; all addenda, modifications, and revisions to any of the foregoing; any other document which provides that it is a Contract Document and all other documents or requirements incorporated or referenced by the foregoing as well as all Work reasonably inferable from the Plans and Specifications. In the event of a conflict between the terms of the Prime Contract and the Subcontract, the terms of this Subcontract shall control. Any other conflicts shall be resolved in accordance with the priority set forth in the Prime Contract between the Contractor and the Owner.

1.3 THE WORK

1.3.1 The Subcontractor shall furnish all labor, materials, tools, equipment, facilities, supervision, management, financing, services, shop drawings, submittals, applicable permits, and any other item of whatever is necessary to fully perform and complete the Work.

1.3.2 The Subcontractor shall perform the Work in strict accordance with the Subcontract and with the Prime Contract that is made a part of this Subcontract. Anything pertaining to the Subcontractor's Work that is mentioned in the specifications but not shown in the drawings, or shown in the drawings but not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. All work of the Subcontractor shall be subject to the approval of the Contractor, Architect, and Owner.

1.4 ACCEPTANCE

1.4.1 No Work is to be performed by Subcontractor until and unless the Subcontractor and the Contractor fully execute the Subcontract or Subcontractor receives a Notice of Intent to Contract from Contractor.

1.4.2 Unless otherwise authorized, any Work performed by the Subcontractor, including but not limited to, shop drawings, requests for information (RFI's), material deliveries, attendance at project meetings, or labor performed prior to execution of the Subcontract by Contractor and Subcontractor shall constitute the establishment of a Subcontract between the parties under the terms of the Subcontract and these General Conditions. The Subcontract shall not be modified thereafter except by written Change Order or amendment to the Subcontract.

ARTICLE 2
OWNER / ARCHITECT

2.1 OWNER

2.1.1 The "Owner" is the person or entity identified as such in the Contract Documents and is referred to as such throughout the Contract Documents as if singular in number. The term Owner means the Owner or his authorized representative(s).

2.2 ARCHITECT

2.2.1 The "Architect" is a person or entity lawfully licensed to practice architecture, and identified as such in the Contract Documents, and is referred to throughout the Contract Documents as if singular in number.

2.2.2 The term Architect may also refer to any other design professional, whether a consultant to the Architect or the Prime Designer, whether a licensed Architect or not.

ARTICLE 3
CONTRACTOR

3.1 DEFINITION

3.1.1 The "Contractor," as used throughout the Contract Documents, refers to Workman Commercial Construction Services, LTD. and its authorized representatives.

3.1.2 The "Superintendent" is an authorized representative of Contractor and shall have the authority to act on behalf of the Contractor relating to matters of construction in the field, but shall not be authorized to amend or revise any term of the Subcontract or to release the Subcontractor from any obligation arising under the Contract Documents without the express written approval of the Project Manager. Superintendent, therefore, may not authorize change orders or direct additional work.

3.1.3 The "Project Manager" is an authorized representative of Contractor and shall have authority to act on behalf of the Contractor. The Contractor may designate the Superintendent as acting Project Manager upon written notice of such designation to Subcontractor.

ARTICLE 4
**ADMINISTRATION OF THE
SUBCONTRACT**

4.1 WARRANTY

4.1.1 The Subcontractor hereby guarantees and warrants that materials and equipment furnished under the Subcontract will be of good quality and new unless the Contract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. This warranty shall extend for the period required by law but not less than the same period as the Contractor's warranty under the Prime Contract or, if not specified, then not less than one year

from the date of final completion of the Work under the Prime Contract. The warranties and guarantees set forth herein are in addition to any other warranties or guarantees required by the Prime Contract, the Plans and Specifications, provided by law, or set forth by separate agreement.

4.1.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with the warranty requirements in the Prime Contract.

4.2 NOT USED

4.3 HARMONIOUS RELATIONS

4.3.1 The Subcontractor shall do, without additional charge, whatever is necessary in the performance of the Subcontract or as the Contractor otherwise directs to assure harmonious labor relations at the Project and to prevent strikes or other labor disputes.

4.4 WORKING SPACE

4.4.1 Subcontractor agrees to abide by Contractor's decisions as to allotment of all storage and working space at the Project site and as to all other matters affecting the organization, flow, coordination, and sequencing of work.

ARTICLE 5 **SUBCONTRACTOR**

5.1 DEFINITION

5.1.1 The "Subcontractor" is the person or entity identified as such in the Subcontract Agreement and is referred to throughout the Contract Documents as if singular in number.

5.1.2 Subcontractor, including its employees, agents, representatives, and its sub-subcontractors of any tier, is at all times and in all respects an independent contractor and is not an agent of Contractor.

5.2 REQUIREMENTS

5.2.1 The Subcontractor shall, at all times, furnish and maintain the following: adequate tools, facilities and equipment; sufficient numbers of qualified workmen; at least one competent English-speaking superintendent or foreman, who shall have the authority to bind the Subcontractor and be present at the Project site at all times during Subcontractor performance; all materials and supplies which comply strictly with the Contract Documents; and any other thing necessary for the Subcontractor to prosecute its Work efficiently and properly. The Subcontractor shall not change its superintendent or foreman without the written permission of the Contractor unless requested by the Contractor.

5.2.2 The Subcontractor shall promptly pay for all materials purchased, labor employed, independent contractors engaged, and equipment rented.

5.2.3 The Subcontractor, or his representative (who shall have the authority to act on behalf of the Subcontractor), shall attend any and all meetings, regularly scheduled or special called, required of it by the Contractor.

5.2.4 The Subcontractor shall, at all times, fully comply with all U.S. immigration laws, including compliance with the Immigration

Reform and Control Act and Form I-9, Employment Eligibility Verification. The Subcontractor agrees that it shall complete and maintain Forms I-9, Employment Eligibility Verification, for its employees and shall not knowingly employ or continue to employ individuals who do not have U.S. work authorization. The Subcontractor agrees that it shall extend this requirement to any sub-subcontractor it may engage. Failure to comply with this provision shall be considered a material breach of the Subcontract.

5.2.5 The Subcontractor shall have no authority to bind the Contractor by any representation, promise, or statement of any kind without first obtaining the Contractor's prior written consent and authorization.

5.2.6 The Subcontractor shall not interfere with the Contractor's relationship with the Owner, Architect, or with Contractor's other subcontractors. The Subcontractor shall not deal directly with either the Owner or the Architect without prior written authorization in each instance from the Contractor.

5.3 LOWER TIER SUBCONTRACTING

5.3.1 UNDER NO CIRCUMSTANCES IS THE SUBCONTRACTOR TO SUBCONTRACT ANY PART OF THE WORK WITHOUT THE EXPRESS WRITTEN CONSENT OF THE CONTRACTOR. Any such subcontracting, which is authorized by the Contractor, must contain language making the sub-subcontractor obligated to the Subcontractor to the same extent as the Subcontractor is to the Contractor, including but not limited to, the Plans & Specifications, performance, safety, insurance requirements, and other requirements of the Contract Documents. The Contractor shall not unreasonably deny the authority of Subcontractor to contract with other parties for a portion of the Work. Subcontractor shall disclose on the *Statement of Lower Tiered Subcontractors* all such Sub-subcontracts. In the event that Subcontractor terminates a previously disclosed Sub-subcontract or enters into a new Sub-subcontract after furnishing Contractor with the *Statement of Lower Tiered Subcontractors*, Subcontractor shall furnish an updated *Statement of Lower Tiered Subcontractors* to Contractor within five (5) business days after such change. **Failure to timely and fully disclose lower tiered subcontractors on the Statement of Lower Tiered Subcontractors and such updated Statement of Lower Tiered Subcontractors shall be considered a material breach of the Subcontract and shall be subject to Section 9.1.7.** Notwithstanding the provisions of this paragraph, the Subcontractor shall remain responsible for all work of the Subcontract, including any work or services performed by its lower tiered subcontractors.

5.4 RESPONSIBILITY FOR PAYMENTS TO THIRD PARTIES

5.4.1 The Subcontractor has exclusive liability for all contributions, taxes, deposits, and payments required of employers by federal, state, or local governments, with respect to wages, salaries, remuneration, or benefits paid or owed by the Subcontractor to any of Subcontractor's employees or others who perform work or render services for Subcontractor in connection with the Subcontract. The Subcontractor has exclusive liability for all income, gross receipts, sales, use, or other taxes applicable to materials, equipment, labor or performance of Work pursuant to the Subcontract.

5.4.2 The Subcontractor expressly agrees to be responsible for his employees who may be covered under an employee leasing agreement, or other such arrangement relating to employees of the Subcontractor. The Subcontractor agrees to indemnify the Contractor against any claim brought by any such firm in accordance with Section 5.5.

5.4.3 The Subcontractor shall promptly pay for all materials purchased, labor employed, independent contractors engaged, and equipment rented and shall not allow a lien to be placed on the Project unless the Contractor has failed to pay for the Work.

5.5 INDEMNIFICATION

5.5.1 INDEMNITY – OTHER THAN EMPLOYEE PERSONAL INJURY CLAIMS. TO THE FULLEST EXTENT PERMITTED BY LAW AND EXCEPT AS PROVIDED IN SECTION 5.5.2 BELOW, THE SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS WORKMAN COMMERCIAL CONSTRUCTION SERVICES, LTD., AND ITS AFFILIATED ENTITIES, INCLUDING ANY PARENT COMPANY AND SUBSIDIARIES, THE OWNER, THE ARCHITECT, AND THEIR OFFICERS, PARTNERS, SHAREHOLDERS, MEMBERS, CONSULTANTS, AGENTS, EMPLOYEES, SUCCESSORS, AND ASSIGNS (THE "INDEMNIFIED PARTIES") FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ARISING IN ANY MANNER FROM, DIRECTLY OR INDIRECTLY, OUT OF, IN CONNECTION WITH, IN THE COURSE OF, OR ALLEGED TO BE RESULTING FROM THE PERFORMANCE OF THIS SUBCONTRACT, TO THE EXTENT CAUSED BY THE NEGLIGENT OR WILLFUL ACTS OR OMISSIONS OF THE SUBCONTRACTOR OR ITS SUB-SUBCONTRACTORS, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY ONE OR MORE INDEMNIFIED PARTIES OR A DEFECT IN PROPERTY OR EQUIPMENT, INCLUDING THOSE PREEXISTING THE SUBCONTRACT.

5.5.2 INDEMNITY – LIMITATIONS. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN THE EVENT THIS SUBCONTRACT RELATES TO A PROJECT OTHER THAN A SINGLE FAMILY HOUSE, TOWNHOUSE, DUPLEX, OR LAND DEVELOPMENT DIRECTLY RELATED THERETO OR A PUBLIC WORKS PROJECT OF A MUNICIPALITY THEN THE INDEMNITY PROVISION IN SECTION 5.5.1 SHALL BE LIMITED SUCH THAT SUBCONTRACTOR SHALL NOT BE REQUIRED TO INDEMNIFY, HOLD HARMLESS OR DEFEND CONTRACTOR OR ANY THIRD PARTIES AGAINST A CLAIM CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, OTHER THAN SUBCONTRACTOR OR ITS AGENT, EMPLOYEE, OR SUBCONTRACTOR OF ANY TIER.

5.5.3 INDEMNITY – EMPLOYEE PERSONAL INJURY CLAIMS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNIFIED PARTIES AND SHALL ASSUME ENTIRE RESPONSIBILITY AND LIABILITY (OTHER THAN AS A RESULT OF AN INDEMNIFIED PARTY'S GROSS NEGLIGENCE) FOR ANY CLAIM OR ACTION BASED ON OR ARISING OUT OF THE PERSONAL INJURY, INCLUDING THE DEATH, OF ANY EMPLOYEE OR AGENT OF THE SUBCONTRACTOR, OR OF ANY SUB-SUBCONTRACTOR, OR OF ANY OTHER ENTITY FOR WHOSE ACTS THEY MAY BE LIABLE, WHICH OCCURRED OR WAS ALLEGED TO HAVE OCCURRED ON THE PROJECT SITE OR IN CONNECTION WITH THE

PERFORMANCE OF THE WORK OF THE PRIME CONTRACT. SUBCONTRACTOR HEREBY INDEMNIFIES THE INDEMNIFIED PARTIES EVEN TO THE EXTENT THAT SUCH PERSONAL INJURY WAS CAUSED OR ALLEGED TO HAVE BEEN CAUSED BY THE SOLE, COMPARATIVE OR CONCURRENT NEGLIGENCE OR THE STRICT LIABILITY OF ANY INDEMNIFIED PARTY. THIS INDEMNIFICATION SHALL NOT BE LIMITED BY DAMAGES, COMPENSATION, OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEES BENEFIT ACTS.

5.5.4 INDEMNITY – PATENT CLAIMS. Without limiting the foregoing indemnity obligations, Subcontractor agrees to defend (with legal counsel reasonably acceptable to Contractor), indemnify, and hold Contractor and the other Indemnified Parties harmless from any and all claims or suits for infringement of patents, or violations of patent rights by Subcontractor, and further agrees to pay all losses and expenses incurred by Contractor by reason of any such claims or suits, including attorneys' fees and court costs in connection therewith.

5.5.5 CLAIMS AND LIENS. IN ADDITION TO AND WITHOUT LIMITING SUBCONTRACTOR'S OTHER OBLIGATIONS UNDER THIS SECTION 5.5, SUBCONTRACTOR SHALL TURN THE WORK OVER TO CONTRACTOR IN GOOD CONDITION, FREE AND CLEAR FROM ALL CLAIMS, ENCUMBRANCES, AND LIENS FOR LABOR, SERVICES, OR MATERIALS, AND AGREES TO DEFEND (WITH COUNSEL OF INDEMNITEE'S CHOICE), INDEMNIFY, SAVE, AND HOLD HARMLESS CONTRACTOR, OWNER, AND THE PROJECT FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES (INCLUDING, BUT NOT LIMITED TO ATTORNEYS' FEES, COURT COSTS AND EXPENSES, WHETHER AT THE TRIAL OR APPELLATE LEVELS) ARISING OUT OF OR IN CONNECTION WITH SUBCONTRACTOR'S WORK AND SUBCONTRACTOR'S ACTS OR OMISSIONS, INCLUDING WITHOUT LIMITATION, ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES, COURT COSTS AND EXPENSES) ARISING OUT OF THE IMPOSITION, FILING AND/OR REMOVAL OF ENCUMBRANCES AND LIENS AFFECTING THE PROJECT OR THE PROPERTY ARISING FROM OR RELATED TO SUBCONTRACTORS' WORK OR ITS ACTS OR OMISSIONS, INCLUDING WITHOUT LIMITATION SUBCONTRACTOR'S FAILURE TO PAY FOR LABOR, SERVICES OR MATERIALS ASSOCIATED WITH SUBCONTRACTOR'S WORK OR ITS OBLIGATIONS UNDER THE SUBCONTRACT. NOTHING HEREIN SHALL DIMINISH SUBCONTRACTOR'S RIGHTS TO PROTECT ITS INTERESTS UNDER THE LIEN LAWS OF THE STATE OF TEXAS.

5.5.6 The indemnity provisions set forth in this Section 5.5 shall survive the expiration or earlier termination of the Subcontract, the final completion of the entire Work under the Prime Contract, and any other services to be provided pursuant to the Subcontract.

5.5.7 The indemnity provisions set forth in this Section 5.5 do not limit the additional insured coverage required by the Subcontract in any way.

5.6 ASSIGNMENTS

5.6.1 The Subcontractor shall not assign any part of the Subcontract without first obtaining the written consent and approval of the Contractor. The Contractor shall in no way be obligated by any assignment made without the express written consent of the Contractor. Any assignment agreed to by the Contractor shall contain a provision binding the assignee to the terms and conditions of the Subcontract including all obligations of the Subcontractor.

5.6.2 Assignments of Subcontract proceeds are permissible, but only if written notice of same is received and acknowledged in writing by a corporate officer of the Contractor at least thirty (30) days before the assigned proceeds are due and payable to the Subcontractor. The Subcontractor and the Subcontractor's assignee shall ensure that the assignment of Subcontract proceeds does not adversely affect the performance of the Subcontract, including the full and timely payment of all bills and obligations owed by the Subcontractor.

5.6.3 **If Subcontractor's proceeds paid to Subcontractor's assignee are insufficient to pay for labor, services and materials that Subcontractor's sub-subcontractors provided to the Project, Subcontractor and Subcontractor's assignee, jointly and severally, agree to indemnify, defend (with counsel of indemnitees' choice), save and hold harmless Contractor and Owner from any and all claims, damages, losses and expenses (including without limitation, attorneys' fees, court costs and expenses) in accordance with Section 5.5.**

5.6.4 Any assignments of Subcontract proceeds and any payment made pursuant to assignments shall be subject to and conditioned upon the Subcontractor's and its assignee's compliance with all terms and conditions of the Subcontract, and any such assignments are expressly restricted to the amount actually collected by the Contractor from the Owner for work performed by the Subcontractor and accepted by the Owner, less retainage, backcharges, or other offsets which are chargeable by the Contractor against the Subcontractor, whether on the Project or otherwise. Acknowledgment, acceptance, or approval of an assignment by the Contractor does not constitute any representation or agreement by the Contractor that the Subcontractor is or will be owed the amount assigned or any specific amount whatsoever.

5.7 SIGNS

5.7.1 The Subcontractor shall not place signs upon the Project site without prior written approval of the Contractor; provided, however, that the Subcontractor may place whatever signs or notices that may be required to comply with local, state or federal laws, codes, or regulations.

5.8 CONSTRUCTION COORDINATION AND LAYOUT

5.8.1 Before proceeding with any Work, the Subcontractor shall layout and field measure all Work, and the Subcontractor shall review all previous and surrounding work done by others to ensure that all work fits and functions properly. The Subcontractor shall attempt to detect and shall, prior to commencement of Work, report in writing to the Contractor any defect, interference, or nonconformity in the work of others or in the Plans and Specifications. If the Subcontractor fails to notify the Contractor of any obvious defect, the Subcontractor shall be responsible for and bear all costs of any cutting, patching, rerouting, replacement, or other action which the Contractor directs to overcome or correct such defect.

5.8.2 Unless otherwise noted in the Subcontract, the Subcontractor shall be responsible for all cutting and patching

required to complete the Work. Subcontractor shall also be responsible for closing all penetrations created by the Work and using fireproofing or other suitable materials as directed by the Plans and Specifications or Contractor.

5.8.3 Subcontractor shall conform to and abide by any additional specifications; drawings and/or explanations furnished by the Contractor to detail and illustrate the work to be done.

5.8.4 If the Subcontractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Subcontractor shall promptly provide notice to Contractor before conditions are disturbed and in no event later than 7 days after first observance of the conditions.

ARTICLE 6 **COOPERATION WITH OTHER SUBCONTRACTORS**

6.1 SUBCONTRACTUAL RELATIONS

6.1.1 The Subcontractor recognizes that it may be working concurrently with the Contractor, separate subcontractors, and others. The Contractor has the right to require the Subcontractor, without cost or liability to the Contractor, to schedule Work hereunder in such a manner as will minimize interference, delay, and expense to work on the Project being performed by others.

6.1.2 If a question or dispute arises as to which subcontractor is responsible for any item of work, the Contractor shall determine the responsible subcontractor and that Subcontractor shall proceed immediately to perform the work at no additional cost to the Contractor. If the Contractor's decision is not acceptable to all parties, any aggrieved subcontractor shall be entitled to resolve the matter only through the Dispute Resolution procedures set forth in Section 13.5.

ARTICLE 7 **CHANGES IN THE WORK**

7.1 CHANGES

7.1.1 The Contractor may make changes in the Work to be performed by Subcontractor by issuing a written order or directive to the Subcontractor, without notice to Subcontractor's sureties. No alterations, increases or decreases, or payments shall be made in the Work as shown or described by the Contract Documents, except on a written order or directive of the Contractor (a "Change Order") and, when so made, if such changes, omissions or additions shall materially affect the amount of work, or the time required for its performance, or shall increase or decrease the cost of the work to the Subcontractor, an equitable adjustment shall be made in the Subcontract price and/or time of completion in accordance with 7.1.2 below. Oral changes to the Subcontract work are not valid and may not be recognized.

7.1.2 The Subcontractor shall respond to all change requests by Contractor within ten (10) days (or such other time as may be required by the Contractor) whether additive, deductive or zero cost change to the Subcontract. Failure to respond within the required time may

result in a unilateral change to the Subcontract for the work covered by the change request.

7.1.3 The Subcontractor shall not, under any circumstances, make changes in the Plans and Specifications without the prior written consent of the Contractor. Furthermore, the Subcontractor shall be responsible for all costs associated with effecting the change whether to Subcontractor's Work or the work of others absent an executed, written Change Order. The Subcontractor shall notify the Contractor of his desire to make any changes from the Plans and Specifications and shall advise the Contractor of any and all changes desired and their effect on the Project. Should the Subcontractor fail to notify the Contractor of such deviations from the Plans and Specifications, then the Subcontractor shall be fully responsible for the consequences of such changes. Approved shop drawings alone shall not be considered adequate notification of a deviation from the Plans and Specifications.

7.2 CLAIMS

7.2.1 In the event the Subcontractor's Work is delayed, disrupted, damaged, or rendered more expensive by the Owner, Contractor, or other subcontractors, the Subcontractor, as its sole and exclusive remedy may, upon written request made to the Contractor, obtain time extensions and/or an increase in the Subcontract price to the extent of any amounts and time extensions that the Contractor believes is justified or, actually receives from the Owner or from the responsible subcontractors for such delays, disruptions, damages, or added expense. As a condition precedent to any relief, the Subcontractor must give the Contractor written notice of delay, disruption, damage, and/or added expense to the Subcontractor's Work within five (5) days after the Subcontractor first knew or should have known of such event or in compliance with the requirements of the Prime Contract, whichever is shorter.

7.2.2 No claim or dispute shall interfere with the progress of construction and the Subcontractor shall proceed diligently with performance of the Subcontract, notwithstanding the existence of any claim or dispute.

7.2.3 Subcontractor hereby waives claims against Contractor for consequential, punitive, or exemplary damages arising out of or relating to the Subcontract.

ARTICLE 8 **TIME**

8.1 PROGRESS AND COMPLETION

8.1.1 **TIME IS OF THE ESSENCE OF THIS SUBCONTRACT.** The Subcontractor shall complete a schedule of Work and submit to Contractor prior to beginning work, which shall indicate the activities covered by the Subcontract, their durations and dependencies. Contractor agrees to consider Subcontractor's schedule when preparing the schedule for the Project. Should the Subcontractor fail to submit a schedule to Contractor prior to beginning work, Contractor shall establish the schedule without input from Subcontractor.

8.1.2 The Subcontractor shall begin working when directed by the Contractor. The Subcontractor shall coordinate and continuously perform its Work competently, efficiently, and at a speed so as to facilitate the general progress of the Project. The Subcontractor shall not delay, disrupt, damage, or render more expensive the work of the Contractor or any other subcontractor. If so ordered by the Contractor, the Subcontractor shall prosecute certain portions of the Subcontract Work in preference to other portions, at no increase in Subcontract price.

8.1.3 Contractor may direct and Subcontractor shall accelerate the Work by means of overtime, additional crews, additional shifts of crews, or re-sequencing the Work.

8.1.3.1 Should the Contractor determine that the Subcontractor is a cause of any delay, then the Subcontractor shall accelerate the work at no additional charge to the Contractor. In addition, should it become necessary to accelerate the Contractor's work or the work of another subcontractor due to a delay caused by the Subcontractor, then the Subcontractor shall become liable for any acceleration costs incurred by the Contractor.

8.1.3.2 Should the acceleration be required for the convenience of the Contractor or Owner, or be due to a delay by another subcontractor, then acceleration costs of the Subcontractor shall be reimbursed, on a "cost" basis, to the Subcontractor. "Cost" basis shall mean actual direct cost of the premium time of labor plus actual labor burden, plus any other direct costs of acceleration approved by Contractor.

8.1.4 **THE WORK IS TO BE CARRIED TO COMPLETION WITH UTMOST SPEED.** Contractor will, from time to time, provide schedules (revised or original) to the Subcontractor either for the Project as a whole or in part, which schedules shall constitute notice under Article 14 of the Subcontract. Subcontractor recognizes and accepts that modifications to the schedule may occur throughout the Project and may be in the form of a formal schedule revision, a two-week-look-ahead schedule or a notice.

8.1.5 The Subcontractor understands that final completion of the project, **INCLUDING ALL PUNCH LIST ITEMS**, is a condition precedent to receiving final payment from the Contractor. Subcontractor hereby agrees to promptly, when notified, correct any deficiencies noted on the punch list(s). Failure to correct punch list items in accordance with the Contractor's schedule may be grounds to take action in accordance with Article 14 herein.

8.2 DELAYS

8.2.1 The Contractor shall have the sole authority to determine the responsible party(ies) for delays in the work. The Subcontractor shall share in the liability for any damages assessed by the Owner against the Contractor or otherwise incurred by the Contractor as a result of delays or difficulties caused by or attributable to the Subcontractor.

ARTICLE 9 **PAYMENTS AND COMPLETION**

9.1 APPLICATIONS

9.1.1 By the 25th of each month, the Subcontractor shall present to the Contractor an itemized statement of the work performed during the previous twenty-five (25) days PLUS an estimate of the work to be performed through to the end of the current month, which statement, when checked and approved by the Contractor, will be included in the Contractor's payment request to the Owner. Contractor agrees to notify Subcontractor of any change in the amount requested and included in the payment request to the Owner. The itemized statement shall be on the form provided or approved by the Contractor and shall include the names of any sub-subcontractors and suppliers which the Subcontractor is using on the Project.

9.1.1.1 Subcontractor expressly consents and agrees that the Contractor may obtain credit and payment information from any and all suppliers or sub-subcontractors of the subcontractor. The

Contractor shall have the right to withhold all payments to the Subcontractor until requested credit or payment information is received from any such suppliers or sub-subcontractors. This information shall be used to ensure that the Project remains free of encumbrances but in no way relieves the Subcontractor of its responsibility to keep the Project free of claims and liens. Contractor may use joint checks or other means to ensure that the Project remains free of claims and liens, but in no way by doing so, is the Contractor assuming responsibility for Subcontractor's liabilities under the Subcontract.

9.1.2 PAY IF PAID. In no event shall the Subcontractor be entitled to receive any form of payment prior to the Contractor's actual receipt of payment from the Owner for the Subcontractor's work. Final payment to the Subcontractor shall be made only out of funds actually received by the Contractor from the Owner in final payment of the Prime Contract and only to the extent said final payment reflects work of Subcontractor approved and paid by Owner. Payment by the Owner to the Contractor, including but not limited to payment for changes in the Subcontract Amount pursuant to Section 7.1.1 above, is a condition precedent to the Subcontractor's right to payment from the Contractor, except as provided by Tex. Bus. & Com. Code §§ 56.001—56.057.

In the event the Contractor is unable to obtain timely progress or final payment from the Owner for work performed Subcontractor agrees to cooperate with Contractor's effort to obtain payment from Owner. Contractor agrees to use its best efforts to obtain all payments from the Owner. With regard to Contractor's liability to Subcontractor, Subcontractor agrees to accept its prorata share of any payments ultimately received on the Project, less costs to recover said payments, by virtue of any action taken by the Contractor against the Owner or the property. In such event Contractor shall not be obligated to pay Subcontractor until all remedies against the Owner are exhausted. In no way is this provision meant to remove or diminish Subcontractor's right to file or perfect or enforce liens against the property under the lien laws of the state of Texas.

In the event that the Owner withholds payment for late, defective or unacceptable work of the Subcontractor, the Subcontractor's sole remedy shall be the rights afforded to it under the lien laws of the state of Texas.

9.1.3 PAY WHEN PAID. Subject to the terms and conditions of the Subcontract, the Contractor agrees to pay the Subcontractor's application for payment within seven (7) working days after the Contractor receives payment from the Owner for the Contractor's application in which the Subcontractor's application is incorporated. Should the Subcontractor's portion of the Contractor's application for payment be reduced for any reason, payment to the Subcontractor will be reduced accordingly. Contractor agrees to provide Subcontractor with explanation of the reduction in payment, if any.

9.1.4 No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and the Subcontractor shall remain responsible and liable for performance in strict compliance with the Subcontract.

9.1.5 SUBCONTRACTOR WILL RECEIVE PAYMENTS MADE BY CONTRACTOR AND WILL HOLD SUCH PAYMENTS AS TRUST FUNDS to be applied first to the payment of any parties furnishing labor, materials, equipment or services for the Work; and Subcontractor will so apply the payments within seven (7) days after receipt from Contractor before using any part thereof for any other purpose.

9.1.6 If Subcontractor requests that Contractor issue joint checks to any of its sub-subcontractors or suppliers, Subcontractor and such other joint check payee must execute Contractor's joint check

agreement and Contractor reserves the right to charge a reasonable processing fee for this service. Any joint check recipient shall be subject to all the terms and conditions of the Subcontract that are applicable to the use of such payments and Contractor may require them to acknowledge in writing their agreement to abide by such terms and conditions before making any joint check payment. In no way shall the execution of a joint check agreement create any requirement by the Contractor to pay any amount greater than the Subcontract Amount.

9.1.7 Notwithstanding anything to the contrary herein, the Contractor shall have the right to withhold payment from the Subcontractor should any of the following conditions, (any of which constitutes a material default under the Subcontract), exist:

- (1) the Subcontract is not fully executed;
- (2) valid certificates of insurance, with valid endorsements, are not on file with the Contractor;
- (3) the Subcontractor's application for payment is incomplete, inaccurate or missing or is submitted untimely or otherwise fails to comply with the requirements for applications for payment;
- (4) a claim, notice of claim, notice of intent to lien or affidavit of lien is received by the Contractor or Owner relating to the Subcontractor's work;
- (5) failure to comply with all provisions of Exhibit P;
- (6) any breach of the Subcontract; or
- (7) any other situation which causes the Contractor to believe that the Subcontractor is unable to complete the Work for the remaining amount of the Subcontract.

The Contractor shall have the right to withhold such payments until such time as the default is cured by the Subcontractor.

9.1.8 The Subcontractor hereby agrees that the Contractor has the right to pay any bills or past due obligations of the Subcontractor related to the Project including backcharges owed to the Contractor. Any such payments made by the Contractor, whether by joint check, direct payment, offset or otherwise, shall apply as a payment of earned proceeds (exclusive of retainage) on the Subcontract. Should the Contractor become aware of any unpaid obligation of the Subcontractor or any claim against the Subcontractor which has the imminent potential of perfecting a claim against the Project, the Contractor shall give the Subcontractor written notice thereof and provide the Subcontractor seven (7) days, or whatever time is reasonably available, to cure such unpaid obligation or claim (including, at the Subcontractor's option, bonding around such claim), prior to payment of any joint checks or direct payments to any suppliers or sub-subcontractors alleging such claim.

9.1.9 If any third party asserts a claim or files suit for the recovery of funds, alleging that Subcontractor failed to pay that third-party for labor or materials provided by such third-party, or that Subcontractor failed to perform any of his other obligations under the Subcontract, Subcontractor shall be liable for all expenses, costs and attorneys' fees incurred by Contractor, Owner, or their Lenders in their investigation and defense of such claims or suits in accordance with Subcontractor's obligations under Section 5.5, irrespective of the validity of such claims or suits.

9.2 RETAINAGE

9.2.1 The Contractor shall withhold retainage in the amount of ten percent (10%), unless otherwise specified in the Subcontract, from payments otherwise due the Subcontractor hereunder until final payment.

9.3 FINAL PAYMENT

9.3.1 Final payment and release of retainage shall be made at the completion of the Work covered by the Subcontract, but only: (1) upon written acceptance thereof by the Contractor, Architect, and Owner; (2) the completion of all punch list items; (3) after Subcontractor has provided all documentation specified by the Prime Contract or by the Subcontract or as otherwise reasonably required by the Contractor; and (4) as a condition precedent to Contractor's obligation to make final payment and release the retainage, the Owner has made final payment and has released retainage to the Contractor.

9.3.2 Acceptance of final payment by the Subcontractor constitutes a general release of the Contractor and the Contractor's surety and the Owner from all claims and liability of whatever nature to the Subcontractor and anyone claiming by, through or under the Subcontractor.

9.4 LIEN RELEASE

9.4.1 Before submitting any application for payment, the Subcontractor shall have paid all material, labor, equipment, and other bills and obligations that relate to the Subcontract, through the period covered by previous payments received from the Contractor, and the Subcontractor shall furnish, at Contractor's request, affidavits, lien releases (including those of staff leasing companies), and other such evidence as Contractor may require to verify compliance with this requirement. Simultaneous with the issuance of final payment and as a condition precedent to Contractor's obligation to make final payment, the Subcontractor shall furnish Contractor an affidavit of payment of all bills and obligations, a release of lien, or other encumbrances respecting the Project, and a general release of claims, together with such affidavits and other documents as may be required by the Contractor or Owner, and have met all obligations of the Subcontract.

9.5 FINANCIAL DISCLOSURE

9.5.1 SUBCONTRACTOR EXPRESSLY AGREES AND ACKNOWLEDGES THAT SUBCONTRACTOR SHARES IN THE RISK OF NON-PAYMENT DUE TO THE FINANCIAL FAILURE OF THE OWNER.

9.5.2 SUBCONTRACTOR HEREBY WARRANTS AND REPRESENTS THAT, PRIOR TO ENTERING INTO THE SUBCONTRACT, SUBCONTRACTOR HAS REQUESTED AND RECEIVED ALL THE FINANCIAL INFORMATION REGARDING THE OWNER'S FINANCIAL VIABILITY AND ARRANGEMENTS FOR FINANCING SUBCONTRACTOR NEEDED IN ORDER TO MAKE AN INFORMED DECISION REGARDING ITS RISK OF NON-PAYMENT FROM THE OWNER.

9.5.3 Subcontractor acknowledges and agrees that Contractor makes no warranty as to the accuracy of the information furnished from the Owner and provided it to the Subcontractor in compliance with applicable law and makes no representation to the Subcontractor concerning the adequacy of the Owner's financial arrangements for the Project. Subcontractor acknowledges and agrees that it is responsible for making its own evaluation of all risks relating to the adequacy of the Owner's financial arrangements and any such evaluation has been made without any reliance on any representation or promise made by the Contractor.

9.5.4 Subcontractor expressly agrees to keep all such information received from the Owner in strictest of confidence and shall not disclose the information to anyone other than a lender considering a loan to the Subcontractor, sub-subcontractor or supplier.

SUBCONTRACTOR HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE CONTRACTOR HARMLESS FROM ANY CLAIM OR ACTION BROUGHT AGAINST THE CONTRACTOR ARISING FROM THE WRONGFUL DISCLOSURE OF SUCH FINANCIAL INFORMATION BY THE SUBCONTRACTOR OR ANY PERSON RECEIVING SUCH INFORMATION FROM OR THROUGH THE SUBCONTRACTOR.

ARTICLE 10 **PROTECTION OF PERSONS AND PROPERTY**

10.1 COMPLIANCE WITH LAWS

10.1.1 Without limiting any of the other provisions of the Subcontract or being limited thereby, Subcontractor agrees that it shall fully, at its own cost and expense, comply with all Federal, State, and local laws, ordinances, building codes, safety requirements, and regulations of whatever nature applicable to its Work or to the employment of its employees or its subcontractor on the Project including, but not limited to, laws providing for obtaining permits or licenses, laws providing for payment of fees, laws providing for inspection and approval of the Work, social security laws, laws providing sales and/or excise taxes, and all laws pertaining to the health and safety of its employees and persons on the Project.

10.2 SAFETY

10.2.1 Subcontractor specifically agrees that, before it moves laborers, material and equipment to the Project and continuously thereafter, Subcontractor will examine, test and inspect all hoists, scaffolding platforms and other work areas whether installed itself or by others, to assure that said facilities and work areas are safe for its own use. Subcontractor assumes full responsibility for any damage or injuries, including death, caused by any such facilities or work areas. **AS AN INDEPENDENT CONTRACTOR, SUBCONTRACTOR ASSUMES FULL CONTROL OVER ALL SAFETY ASPECTS OF ITS WORK AND THE WORK OF ITS EMPLOYEES AND SUBCONTRACTORS OF ANY TIER.**

10.2.2 The Subcontractor shall provide sufficient, safe and proper facilities, equipment, and working conditions, which shall at all times be subject to inspection by Contractor, the Owner, their authorized representatives, or any legal authority having jurisdiction. The Subcontractor shall fully comply with all safety and health-related laws, ordinances, regulations and/or rules of any local, state or federal entity exercising jurisdiction over the Project and/or the site and shall ensure that his employees, at a minimum, comply with the Occupational Safety and Health Administration's (OSHA's) guidelines while on the Project site. The Subcontractor shall be fully responsible for such compliance.

10.2.3 Prior to commencing its work, Subcontractor shall provide Contractor a copy of the Subcontractor's Safety Program and any materials applicable thereto. Subcontractor shall also designate one of his employees as the "Safety Supervisor" for the Subcontractor, who shall be on the Project site at all times that Subcontractor's work is being performed and who shall serve as a liaison between the Contractor and the Subcontractor for matters relating to safety. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Subcontractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures.

10.2.4 The Contractor operates a Drug and Alcohol Free workplace, which are prohibited on the jobsite. Subcontractor shall comply, in the strictest sense, with this provision and shall immediately and permanently remove any of its workers found or SUSPECTED to be violating any portion of this provision. This provision does not prejudice any other legal rights or responsibilities the Contractor may have under the law.

10.2.5 Failure on the part of Subcontractor or its employees, independent contractors or invitees to adhere to these requirements under Section 10.2 shall constitute a default under the Subcontract and shall entitle the Contractor to all legal remedies available to Contractor under Section 14, at law or equity, including, without limitation, the remedy of suspending all work by Subcontractor at the Project until Subcontractor complies with the requirements of Section 10.2, all without any claim by Subcontractor for extra compensation, costs, fees, or time. Subcontractor shall bear all costs incurred by Subcontractor or Contractor for the delay caused by the correction of any such violation.

10.2.6 Any action taken by the Contractor pursuant to its rights under the Subcontract, the failure of Contractor to observe safety violations, the failure of Contractor to stop work that violates any applicable safety laws or regulations, or the implementation or enforcement of Contractor safety rules or a safety programs shall not, in any manner, waive or eliminate Subcontractor's sole responsibility to perform its work in a safe manner in accordance with applicable safety law and regulations, and shall not relieve the Subcontractor of its sole responsibility of controlling the means and methods of its Work and the performance of its Work in a safe manner.

10.3 HAZARDOUS MATERIALS PROGRAM

10.3.1 It is the policy of the Contractor to maintain, at each construction site, a Hazardous Materials Program to provide for the safety of persons and property. Subcontractor shall establish and maintain a Hazardous Materials Program for its work and employees and shall cooperate with the Contractor in compliance with all laws relating to hazardous materials.

10.4 HOUSEKEEPING

10.4.1 The Subcontractor shall contribute to keeping the Project in a clean and neat condition. The Subcontractor shall perform cleanup of his debris as directed by the Contractor at no additional cost to the Contractor. Should the Subcontractor fail to do so promptly upon notice, the Contractor may at its option, cause same to be removed at the Subcontractor's expense. Upon completion of various portions of its work, the Subcontractor shall broom clean its work areas and do whatever else is necessary to put its work in proper condition for application or performance of follow-up work. The Contractor may organize a job cleanup crew when debris is blended. Subcontractor agrees to participate in such crews.

10.5 PROTECTION OF WORK

10.5.1 The Subcontractor shall protect his Work from damage until the Owner accepts the Work and the risk of loss passes to the Owner. The Subcontractor accepts full responsibility for any damage to its work until accepted by the Owner, except as may be covered under a builder's risk policy, if any.

ARTICLE 11 **INSURANCE AND BONDS**

11.1 BONDS

11.1.1 If required by the Subcontract, the Subcontractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Subcontractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. The Subcontractor shall furnish to the Contractor, as Oblige, bonds issued on the standard form provided by the Contractor. The Subcontractor's failure to deliver satisfactory bonds within ten (10) days after demand shall be a material breach of the Subcontract.

11.1.2 Unless otherwise specified in the Subcontract, the actual cost of the surety bonds as evidenced by invoice shall be borne by the Contractor and added to the Subcontract by Change Order.

11.2 INSURANCE

11.2.1 INSURANCE REQUIREMENTS. The Subcontractor shall at its own cost purchase from and maintain in a company or companies lawfully authorized and admitted to issue insurance in the jurisdiction where the Project is located such insurance as expressly required by the Subcontract or elsewhere in the Contract Documents to protect the Contractor and the Owner from claims which may arise out of or result from the Subcontractor's ongoing operations and completed operations under the Subcontract and for which the Subcontractor may be legally liable, whether such operations be by the Subcontractor or by Subcontractor's subcontractors of any tier or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The insurance required by the Subcontract is in addition to insurance of the types and in the limits that Subcontractor deems necessary for its protection. The Subcontractor shall purchase and maintain in force insurance of the types and in the limits that meet or exceed the following insurance requirements and warrants that the requirements shall be satisfied throughout the term of the Subcontract until all of Subcontractor's obligations hereunder are discharged and thereafter as required by the Contract Documents:

11.2.1.1 Commercial General Liability ("CGL") insurance for the Project written on an occurrence form providing coverage for premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under the Subcontract (including the tort liability of another assumed in a business contract) including:

- 11.2.1.1.1 damages because of bodily injury, sickness or disease, including occupation sickness or disease, and death of any person;
- 11.2.1.1.2 personal injury and advertising injury;
- 11.2.1.1.3 damages because of physical damage to, or destruction of, tangible property, including the loss of use of such property;
- 11.2.1.1.4 bodily injury or property damage arising out of completed operations; and
- 11.2.1.1.5 contractual liability insurance applying to the Subcontractor's indemnification obligations under Section 5.5.

11.2.1.2 All insurance that Subcontractor is required to carry hereunder shall be maintained under forms of policies and from companies satisfactory to Contractor and rated no less than A- in the most current edition of A.M. Best's Key Rating Guide. CGL coverage shall be written on ISO Occurrence form CG 00 01 12 04 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under this Subcontract (including the tort liability of another assumed in a business contract).

11.2.1.3 The Subcontractor shall obtain additional insured coverage in favor of Contractor and any other parties required by the Contract Documents on all CGL, automobile liability, and excess or umbrella

liability insurance policies that the Subcontractor must maintain under the Subcontract. Additional insured status on CGL and excess liability policies shall be provided on an unmodified ISO endorsement CG 20 10 11 85 or CG 20 10 10 01 AND CG 20 37 10 01 or CG 20 33 10 01 AND CG 20 37 10 01 or an endorsement providing identical additional insured coverage. This insurance for the additional insureds shall be at least as broad as the coverage provided for the named insured Subcontractor.

11.2.1.4 In addition, the CGL Additional Insured Endorsements shall be provided to the Contractor along with the Certificate of Insurance. See 11.2.3 below.

11.2.1.5 The Subcontractor's CGL is not permitted to include any endorsements that:

11.2.1.5.1 Limit "Contractual Liability" (CG 21 39 10 93 or its equivalent);

11.2.1.5.2 Amend the definition of an "Insured Contract" (CG 24 26 07 04 or CG 24 26 04 13 or their equivalent);

11.2.1.5.3 Exclude damage to work performed by subcontractors of any tier on Subcontractor's behalf (CG 22 94 10 01 or CG 22 95 10 01 or their equivalent);

11.2.1.5.4 Exclude hazards from explosions, collapses, or underground property damage (CG 21 42 12 04 or CG 21 43 12 04 or their equivalent coverage);

11.2.1.5.5 Limit coverage to a designated premises or project (CG 21 44 07 98 or its equivalent);

11.2.1.5.6 Limit coverage to a classification or business description;

11.2.1.5.7 Contain any type of Habitational/Residential Exposure exclusion if the Contractor is engaged in any type of habitational/residential-related work;

11.2.1.5.8 Contain any type of Punitive, Exemplary or Multiplied Damages Exclusion;

11.2.1.5.9 Contain any type of Subsidence exclusion if the Contractor is engaged in any type of earth movement work, including but not limited to compaction, fill, or installation of storm or sewer drains;

11.2.1.5.10 Contain any type of exclusion regarding Owner or Contractor Controlled Insurance Program or "Wraps" if the Contractor is engaged in such work, or

11.2.1.5.11 Any type of property damage completed operations exclusion.

11.2.1.6 The Automobile Liability Insurance must cover liability arising out of any auto (including owned, hired, and non-owned) and must be written on ISO CA 00 01 or its equivalent.

11.2.1.7 The Workers' Compensation / Employers Liability Insurance shall cover liability arising out of Subcontractor's employment of workers and anyone for whom Subcontractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted.

11.2.1.8 The Umbrella Liability insurance shall be excess over and be no less broad than all coverages described above and shall include a drop-down provision.

11.2.1.9 Subcontractor shall maintain such insurance as required by the Subcontract in identical coverage, form and amount, including

required endorsements, for at least three (3) years following completion of the Work under this Agreement. Subcontractor shall maintain Products-Completed Operations coverage, as required under Section 11.2.1.3, with respect to "Bodily Injury" and "Property Damage" cause, in whole or in part, by Subcontractor's work at the Project for a period of at least three (3) years after final completion of the construction of the Project.

11.2.1.10 Failure to provide or maintain the insurance requirements herein stated shall constitute a material breach of the Subcontract. Waiver by Contractor of any provision of this section does not constitute waiver of any other requirement, nor does it relieve the Subcontractor of providing the required insurance unless so relieved in writing by the Contractor.

11.2.2 The POLICY LIMITS for the coverage listed above shall be at least in the amounts required by the Specifications, if any, but shall be no less than the following:

COMMERCIAL GENERAL LIABILITY ON AN OCCURRENCE BASIS: General Aggregate Per Project \$2,000,000

EACH OCCURRENCE: Property Damage" and "Bodily Injury \$1,000,000

Personal Injury & Advertising Injury \$1,000,000

Products/Completed Operations Aggregate Per Premises or Project \$2,000,000

Fire Damage (Any One Fire) \$50,000

Medical Expense (Any One Person) \$5,000

WORKERS' COMPENSATION: STATUTORY

Employer's Liability:
 \$1,000,000 each accident
 \$1,000,000 disease policy limit
 \$1,000,000 disease each employee

AUTOMOBILE LIABILITY:
 Combined Single Limit: \$1,000,000
 Bodily Injury & Property Damage

UMBRELLA LIABILITY: \$1,000,000

11.2.2.1 If Subcontractor's CGL insurance contains a General Aggregate Limit, it shall apply separately to the Project and job site by an aggregate limit per project endorsement on ISO form CG 25 04 05 09.

11.2.3 NOTICE OF CANCELLATION OR CHANGE. Within three (3) business days of the date the Subcontractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Subcontractor shall provide written notice to the Contractor of such impending or actual cancellation or expiration. Upon receipt of the notice from the Subcontractor, the Contractor shall have the right to stop the Subcontractor's Work until the lapse in coverage has been cured by the procurement or replacement of coverage by the Subcontractor. The furnishing of notice by the Subcontractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

11.2.3.1 If any insurance coverage required above is or is to be canceled or changed in any way so as not to satisfy the requirements above, then notice will be given in writing by the Subcontractor to the Contractor or its agents thirty (30) days in advance of the cancellation or change.

11.2.4 **PROOF OF INSURANCE.** The Subcontractor shall furnish to the Contractor proof of the existence of the insurance coverages and limits required above upon execution of the Subcontract, and that proof shall include a Certificate of Insurance on a State-approved form satisfactory to the Contractor. Contractor may require copies of actual policies and endorsements in addition to the Certificate of Insurance. Failure to provide satisfactory proof shall be considered a material breach of the Subcontract.

11.2.5 **NO WAIVER.** The Subcontractor agrees that no act or omission by the Contractor shall act as a waiver of the required insurance coverage in the required amounts.

11.2.6 **PRIMARY COVERAGE.** It is the intent of the parties to this Subcontract that all insurance coverage required herein shall be primary to and shall seek no contribution for any other insurance (whether primary, umbrella, contingent or excess) available to Contractor or Owner, with Contractor's and Owner's insurance being excess, secondary and non-contributing. Each policy required by the Subcontract shall be endorsed to provide such primary and noncontributory liability.

11.2.7 **WAIVER OF SUBROGATION.** The Subcontractor hereby agrees to waive its rights of recovery from the Contractor and any of its subcontractors of any tier, their agents, and their employees; and the Owner with regard to all causes of property and/or liability loss to the extent such losses are covered by insurance required by the Contract Documents or other insurance applicable to the Project and shall cause a waiver of subrogation endorsement to be provided in favor of the Contractor and Owner on all insurance coverage carried by the Subcontractor. In the event of a conflict between the waiver of subrogation requirements of the Prime Contract and the Subcontract, the more expansive waiver requirements shall control.

11.2.8. **DEDUCTIBLE/RETENTION.** Except as otherwise specified herein, no insurance required herein shall contain a deductible or self-insured retention in excess of \$25,000 without prior written approval of Contractor. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at Subcontractor's sole risk.

11.2.9 **INDEMNITY OBLIGATIONS NOT AFFECTED.** The Subcontractor's obtaining or failure to obtain the required insurance shall in no way relieve the Subcontractor from its indemnity obligations hereunder. Further, the Subcontractor's indemnity obligations shall extend to the full amount of any damage, loss, or liability described in the indemnity provisions of the Subcontract, and the Subcontractor's indemnity obligations shall not be limited to the amount of insurance obtained or required.

11.2.10 **BUILDER'S RISK INSURANCE.** Unless otherwise provided by the Owner, the Contractor shall take out and maintain Builder's Risk insurance covering the work, normally in the full amount of the Prime Contract. Subcontractor shall be responsible for its prorata share of any deductible that might apply to any loss. Subcontractor's tools and equipment are not covered by Builder's Risk. Subcontractor is responsible for loss or damage to its own tools and equipment and for any loss to its work not covered by Builder's Risk. Subcontractor may request a copy of the Builder's Risk policy covering this Project and may, at its own expense, purchase additional insurance to protect itself from losses not covered by the policy in place.

11.2.11 **USE OF CONTRACTOR'S OR OWNER'S EQUIPMENT.** Subcontractor, its agents, employees, sub-subcontractors or suppliers shall use Contractor's or Owner's equipment only with express written permission of Contractor's designated representative and in accordance with Contractor's terms and conditions for such use. If Subcontractor or its agents, employees,

sub-subcontractors or suppliers utilize any of Contractor's or Owner's equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of Contractor, Subcontractor shall defend, indemnify and be liable to Contractor and/or Owner for any and all loss or damage that may arise from such use.

11.2.12 **INSURANCE REQUIREMENTS OF SUBCONTRACTOR'S SUB-SUBCONTRACTORS.** Insurance similar to that required of Subcontractor shall be provided by all sub-subcontractors (or provided by Subcontractor on behalf of sub-subcontractors) to cover operations performed under any subcontract agreement. Subcontractor shall be held responsible for any modification in these insurance requirements as they apply to sub-subcontractors. **SUBCONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS CONTRACTOR AND OWNER FOR ANY FAILURE OF SUBCONTRACTOR OR ITS SUB-SUBCONTRACTORS TO OBTAIN THE INSURANCE REQUIRED HEREIN.**

11.2.12.1 Subcontractor shall maintain certificates of insurance from all sub-subcontractors containing provisions similar to those listed herein enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to Contractor upon request.

11.2.12.2 Subcontractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering Subcontractor's or its sub-subcontractor's property shall be Subcontractor's and its sub-subcontractor's sole and complete means of recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, Subcontractor shall not be reimbursed for same. Should Subcontractor or its sub-subcontractors choose to self insure this risk, it is expressly agreed that Subcontractor hereby waives, and shall cause its sub-subcontractors to waive, any claim for damage or loss to said property in favor of Contractor and Owner.

11.2.13 **RELEASE AND WAIVER.** Subcontractor hereby releases, and shall cause its sub-subcontractors to release, Contractor and Owner from any and all claims or causes of action whatsoever that Subcontractor and/or its sub-subcontractors might otherwise now or hereafter possess resulting in or from a or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by Subcontractor and/or its sub-subcontractors pursuant to this Agreement.

11.2.14 Where a requirement pertaining to a certificate of insurance is set out, the underlying policies, when applicable, shall be endorsed to meet those requirements.

ARTICLE 12 **UNCOVERING AND CORRECTION OF WORK**

12.1 DEFECTIVE WORK

12.1.1 The Subcontractor shall, within twenty-four (24) hours after notice from the Contractor, proceed to take down and remove from the premises of the Project all portions of the Work and all material, whether worked or unworked, which the Contractor shall deem as unsound or improper or which fails to conform in any way to the Contract Documents, including the Subcontract. The Subcontractor shall make good all such condemned work, equipment,

and facilities and restore all other work damaged or destroyed in removing or making good such condemned item; this shall be at Subcontractor's sole risk and expense. However, Subcontractor shall not remove any other material from the Project site without Contractor's written permission. The Subcontractor shall bear all costs of re-testing of the Subcontractor's work which failed initial testing or subsequent re-testing.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 PRIOR AGREEMENTS

13.1.1 All proposals, negotiations, and representations with respect to the Subcontract, either oral or written, are hereby superseded and merged into the Subcontract. The Subcontract cannot be changed, modified, altered, suspended, or terminated, except in writing by an instrument signed by an authorized representative of the Contractor.

13.2 COMPLIANCE WITH REQUIREMENTS

13.2.1 No delay, waiver, forbearance, or failure by the Contractor to exercise rights or remedies under the Subcontract or to insist upon strict compliance by the Subcontractor shall relieve the Subcontractor from strict compliance with all terms and conditions hereof nor waive, restrict, or adversely affect any of the Contractor's rights and remedies as to any subsequent or continuing failure of the Subcontractor to comply strictly with all terms and conditions of the Subcontract and these General Conditions.

13.3 INTERPRETATION AND VALIDITY OF TERMS

13.3.1 If any provision of the Subcontract is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be reformed to provide as close to the original intent of the provision as possible while still being enforceable. However, in the event such a reformation is not possible then (i) such provision shall be fully severable; (ii) the Subcontract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been comprised a part of the Subcontract; and (iii) the remaining provisions of the Subcontract shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from the Subcontract.

13.4 GOVERNING LAW

13.4.1 The laws of the state of Texas shall govern the Subcontract.

13.5 DISPUTE RESOLUTION

13.5.1 All claims, controversies, disputes, or disagreements between or among Contractor and Subcontractor arising out of, or relating to the Project or the terms, application, or interpretation of the Subcontract (collectively referred to as a "Dispute"), shall be resolved first by submission to mediation without resorting to either arbitration or litigation. Both Contractor and Subcontractor agree to negotiate in good faith. The parties hereto agree to submit to mediation prior to taking any action to begin arbitration or litigation proceedings.

13.5.2 In the event mediation is unsuccessful, then the Dispute shall be decided, **AT CONTRACTOR'S SOLE OPTION**, either by litigation as provided by Section 13.5.3 below or by arbitration as provided by Section 13.6 below. Any legal action brought in a court in

reference to the Subcontract shall be brought in Travis County, unless a mandatory venue statute is applicable to such legal proceeding and requires such action to be brought in another county. Any other proceeding of any kind brought in reference to the Subcontract shall be held in Travis County.

13.5.3 Contractor may elect to submit any dispute to litigation at its sole discretion. If Contractor elects to submit any dispute to litigation, Contractor shall notify Subcontractor of such election within a reasonable time following service upon Contractor of a notice of an arbitration proceeding brought against the Contractor. Subcontractor agrees to abide by such decision and agrees further that Contractor's election (if any) to resolve disputes by litigation shall be specifically enforceable under applicable law. In the event that any claim, dispute, or other matter is required to be resolved by litigation, the parties hereby agree that any such action shall be brought in a court of competent jurisdiction.

13.5.3.1 To the fullest extent allowed by applicable law, in any such action, the judge, without the assistance of a jury, shall be the finder of fact. Without limiting the foregoing, the parties expressly agree as follows:

WAIVER OF JURY. IN THE EVENT THAT LITIGATION IS AUTHORIZED BY CONTRACTOR PURSUANT TO THIS SUBCONTRACT AND IS BROUGHT FOR THE RESOLUTION OF ANY CONSTRUCTION DISPUTE OR ANY OTHER CLAIM OR DISPUTE ARISING FROM THE PROJECT OR THE SUBCONTRACT, THE PARTIES DO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY SUCH LITIGATION AND THE ISSUES TO BE TRIED THEREIN. IT IS THE INTENT OF THE PARTIES THAT, IN ANY SUCH LITIGATION BETWEEN THE PARTIES, ALL ISSUES IN SUCH LITIGATION SHALL BE TRIED TO A JUDGE AND NOT A JURY.

13.5.4 If Contractor employs an attorney to enforce any provision of the Subcontract, assert a claim against Subcontractor, to investigate, respond to or settle any claims by any third party claiming by, through or under Subcontract, or to defend any claims asserted by Subcontractor, its employees, agents or lower-tier contractors against Contractor, Subcontractor shall pay to Contractor the amount of the attorney's fees, costs and expenses incurred by Contractor. Contractor shall be entitled to deduct said fees, costs and expenses from any amounts due to Subcontractor under the Subcontract or under any other subcontract or agreement between Contractor and Subcontractor.

13.6 ARBITRATION

13.6.1 In the event Contractor elects to resolve any claim or dispute by arbitration pursuant to Section 13.5.2 above, such arbitration shall be governed by the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") currently in effect, unless the parties mutually agree otherwise. With respect to the arbitration, the parties shall, no later than fifteen (15) days after a notice of arbitration is served on the opposing party or the entry of an Order compelling arbitration, agree upon an arbitrator. If the parties cannot agree upon an arbitrator, a demand for arbitration shall be filed in writing with the office of the American Arbitration Association located nearest the site of the Project, with copies to all parties.

13.6.2 Arbitration shall be conducted with a single arbitrator unless the claim, demand, or amount in controversy exceeds \$2,000,000, in which case a panel of three (3) arbitrators shall be used. In the event the amount in controversy exceeds \$2,000,000 and the

parties cannot mutually agree upon three panel members, the parties shall be required to obtain a list of proposed neutrals through the office of the American Arbitration Association located nearest the site of the Project. The parties shall then proceed with the selection of panel members in accordance with AAA Construction Industry Arbitration Rules. Any arbitrator(s) utilized, whether appointed or agreed, must be a reputable person (or persons) actively engaged in the construction industry or as a lawyer in the practice of construction law for a continuous period of not less than ten years, must not be affiliated, in any way, and must not have had (or currently have) material business dealings with the Subcontractor or any other party involved in the arbitration.

13.6.3 The arbitrator(s) shall establish reasonable procedures and requirements for the production of relevant documents and require the exchange of information concerning witnesses to be called. During the entire arbitration process, the arbitrator(s) shall exercise its best efforts to manage the proceedings and engage in all reasonable efforts to minimize any wasteful or unnecessary delays, costs and expenses, including limiting discovery to only that which is reasonably required to allow the Parties and their counsel to expeditiously prepare to present evidence on only those claims and defenses at issue in the arbitration proceeding. There shall be a prehearing meeting between the parties at which the arbitrator(s) shall make and set schedules for discovery and hearings consistent with its powers as set forth herein.

13.6.4 The award of the arbitrator(s) shall be binding on the parties and subject only to the AAA's Option Appellate Arbitration Rules ("Appellate Rules"). Notwithstanding the foregoing, but except with regard to damages incurred by Contractor for which Subcontractor has indemnified the Contractor in accordance with the terms hereof, no punitive or exemplary damages may be awarded by the arbitrator(s) and the parties hereby waive all rights to make, claim, or recover any such damages in arbitration. The arbitrator(s) does not have authority (i) to render a decision which contains a reversible error of state or federal law, or (ii) to apply a cause of action or remedy not expressly provided for under existing state or federal law.

13.6.5 The arbitrator(s) shall award attorneys' fees, costs and expenses to the prevailing party in the arbitration. For the purpose of this Agreement, the prevailing party shall be the party whose last written offer of settlement prior to the filing of the Demand for Arbitration is closest to the award rendered by the arbitrator(s). The arbitrator(s) shall not be made aware of any settlement offers made by any party until after he/she renders an interim award on the merits. Thereafter, the arbitrator shall make a determination of the prevailing party and shall enter a final award including fees, costs and expenses, if any. If the claimant in the arbitration makes no written offer, its last offer shall be the amount claimed in the arbitration. If the defending party makes no written offer, its last offer shall either be zero or, if applicable, the amount of its counterclaim.

16.3.6 Notwithstanding any language to the contrary in the Subcontract, Contractor and Subcontractor agree that the award of the arbitrator(s) may be appealed pursuant to the AAA's Appellate Rules; that the arbitrator(s) award shall, at a minimum, be a reasoned award; and that the arbitrator(s) award shall not be considered final until after the time for filing the notice of appeal pursuant to the Appellate Rules has expired. Following the appeal process the decision rendered by the appeal tribunal may be entered in any court having jurisdiction thereof.

13.7 AUTHORIZED REPRESENTATIVE

13.7.1 The Subcontractor and Contractor represent that the Subcontract is executed by one of its authorized representatives acting within the scope of its authority.

13.8 HEADINGS

13.8.1 The use of headings, titles, and paragraph titles is solely for convenience and shall not limit the meaning of the contents of the paragraph.

13.9 SUCCESSORS

13.9.1 The Subcontract shall be binding upon the successors in interest of the parties thereto.

ARTICLE 14 TERMINATION OF THE SUBCONTRACT

14.1 DEFAULT

14.1.1 Should, in the opinion of the Contractor, the Subcontractor fail to operate in the ordinary course of business or, at any time, refuse, neglect, or fail to furnish and maintain sufficient labor, material, equipment, services, or supervision, or to pay for labor, equipment, or material used by the Subcontractor, or to prosecute the work covered by the Subcontract with promptness and diligence so as not to delay its Work, the work of others, or the Project as a whole, or to perform any term or condition of the Subcontract, all of which are considered material, then upon any one of these events, the Contractor may, at its option, after forty eight (48) hours written notice to Subcontractor, either (1) supplement the Subcontractor with labor, material, and equipment; or (2) terminate the Subcontract in whole or in part and complete the Subcontract with the Contractor's own forces or with others; or (3) issue a deductive change to eliminate the remaining portions of the Subcontract work; or (4) take any combination of the foregoing actions or any other action which the Contractor in good faith, deems reasonable under the circumstances. Subcontractor expressly waives any formal notice by Contractor of Subcontractor's failure to perform, or passive breach of, Subcontractor's express obligations under the Subcontract prior to Contractor exercising any remedies authorized hereunder or by applicable law.

14.1.2 In the event of any failure or inadequacy of performance by the Subcontractor which in the Contractor's opinion requires action under Section 14.1.1 above, the Subcontractor shall be liable to the Contractor for all expenditures made and all damages, losses, expenses, attorneys' fees, and costs of whatever nature, incurred by the Contractor in supplementing the Subcontractor, in completing the Subcontract, or otherwise as a result of Subcontractor's performance delays or failures (including, without limitation, an administrative and supervisory overhead charge equal to fifteen (15%) percent of the sum of the direct damages, losses, expenses, fees and costs incurred by Contractor, which shall also be owing by Subcontractor to Contractor to compensate Contractor for the extraordinary time and expense incurred by Contractor on account of such failure or inadequacy of performance). In the event that the Subcontractor is engaged on other projects with the Contractor, funds that may be due on said other projects may, at the option of Contractor, be used to offset the costs of default on the Subcontract to the fullest extent allowed by applicable law.

14.1.3 In the event of default termination of the Subcontract, in whole or in part, the Contractor may, at its option and without prejudice to or waiver of any other right or remedy, take possession of

materials, tools, equipment, facilities, and other property belonging to Subcontractor at the Project site and assume complete control of the Subcontract Work.

14.1.4 In case of partial or total default termination of the Subcontract, Subcontractor shall not be entitled to receive any further payment under the Subcontract until Subcontractor's entire work shall have been finished completely and final payment for same has been made by the Owner and received by the Contractor. If the charges, losses, expenses, attorneys' fees and damages sustained by the Contractor in completing the Subcontract work or otherwise attributable to Subcontractor's performance delays or failures exceed the unpaid portion of the Subcontract amount, the Subcontractor shall pay the difference to Contractor within five (5) days after demand for same by Contractor. Upon a partial or total default termination of the Subcontract, the Subcontractor shall not be entitled to any payment in excess of the reasonable value of work actually performed by the Subcontractor in strict accordance with the Contract Documents, less offsets and other amounts due the Contractor under the Subcontract.

14.1.5 A default of any of the terms of the Subcontract shall be considered a material breach of the Subcontract and, as such, may be subject to any one of a number of Articles of the Subcontract. The Subcontractor expressly agrees that a material breach of the Subcontract represents value to the Contractor for which Contractor may seek damages.

14.1.6 Termination under the Subcontract may be grounds for termination of any other subcontracts which the Subcontractor has with the Contractor, whether commenced or not and without penalty.

14.2 TERMINATION FOR OTHER THAN DEFAULT

14.2.1 The Contractor shall have the same powers of terminating the Subcontract that the Owner may exercise over the Contractor under provisions of the Prime Contract.

14.2.2 Upon forty-eight (48) hours' notice, Contractor may terminate the Subcontract for its convenience and without cause regardless of the status of the progress of the Work. The manner and time of termination will be as specified in the written notice and shall be without prejudice to any claim which Contractor and/or Owner may have against Subcontractor. Provided Subcontractor is not then in default, Contractor shall pay Subcontractor for all acceptable work performed and paid by the Owner, if any, through the date of termination. Subcontractor shall not be entitled to anticipated profits on work unperformed or on materials or equipment unfurnished.