
MASTER SUBCONTRACT AGREEMENT

To:

Date:

Phone:

WHEREAS, A.R. MAYS CONSTRUCTION, an Arizona Corporation, hereinafter called the "Contractor" and, hereinafter called the "Subcontractor" both understand and agree that:

- 1) The intent of this Subcontract Agreement is to set forth the terms of an ongoing relationship between Contractor and Subcontractor whereby Contractor may, from time to time, authorize Subcontractor to perform construction work of limited cost for Contractor pursuant to certain prior agreed upon terms and conditions.
- 2) Contractor may, in its sole discretion, from time to time request Subcontractor to perform construction work pursuant to the terms of this Subcontract. Contractor will authorize such work by issuing a "Subcontract Work Order" to Subcontractor in the form of the sample Subcontract Work Order (attached). Subcontractor shall execute the Subcontract Work Order, return it promptly to Contractor and shall perform the construction work authorized pursuant to the terms of the Subcontract Work Order. If Subcontractor is otherwise unwilling or unable to perform the requested construction work, Subcontractor shall notify in writing Contractor's representative who authorized the work within three (3) days of receipt of the Subcontract Work Order.
- 3) Subcontractor agrees that its compensation for construction work authorized pursuant to this Subcontract shall be based upon the amounts set forth in the Subcontract Work Order. If, after issuing a Subcontract Work Order, Contractor requests Subcontractor to perform additional, or eliminate, construction work from the scope of work authorized in the Subcontract Work Order, Contractor will issue a change order to that specific Subcontract Work Order. Subcontractor shall immediately notify Contractor's representative who authorized the construction work and an appropriate adjustment shall be made in Subcontractor's compensation.
- 4) This Subcontract shall commence upon execution of this Subcontract by Contractor and Subcontractor and continue in effect until terminated by either party. Either party to this Subcontract may terminate the Subcontract upon ten (10) days written notice to the other party. Such termination shall not affect contracts for which a Subcontract Work Order has already been executed.

INCORPORATED DOCUMENTS - The attached Sample Subcontract Work Order; AGC form 655; Addendum to the AGC and Supplementary Articles; Acknowledgement of Receipt & Review of the Safety Plan; are a part of this Master Agreement and are incorporated herein by this reference as if set out in full .



A.R. MAYS

CONSTRUCTION

6900 East Indian School Road
Scottsdale, Arizona 85251
TEL 480.850.6900
www.armays.com
AZ 070922 / 129831 / 134664
NV 0076749 / 0029672 Unlimited

DIRECT ENQUIRIES TO:

Lauren Sullivan
Project Accounting Manager
A.R. Mays Construction
6900 E. Indian School Road, Suite 200
Scottsdale, AZ 85251
480.850.6900 Phone
lsullivan@armays.com

MASTER SUBCONTRACT AGREEMENT must be signed and returned no later than seven (7) days from the date of receipt along with:

- 1) Completed Insurance Certificates - A.R. Mays Construction must be listed as "Additional Insured" as well as "Any and all projects" must be referenced in the Description of Operations/Locations/Vehicles/Special Items section of the Acord Certificate of Insurance form.
- 2) Contractor's License (photocopy) - if applicable
- 3) W-9 Form or Federal Tax Identification Number

The parties hereby agree to be bound by the terms and conditions hereinabove stated and have executed this agreement on the date stated.

ORDERED BY:

ACCEPTED BY:

A.R. MAYS CONSTRUCTION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____



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Scottsdale, Arizona 85251
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SUBCONTRACT WORK ORDER

To: Subcontract #:
Date:
Job:
Job Address:

THIS SUBCONTRACT WORK ORDER AGREEMENT, by and between A.R. MAYS CONSTRUCTION, an Arizona Corporation, hereinafter called the "Contractor" and, hereinafter called the "Subcontractor".

WHEREAS, the Contractor has entered into a contract with hereinafter called the "Owner", to perform certain labor and furnish certain material for the erection and completion of hereinafter called the "Project", pursuant to plans and specifications prepared by hereinafter called the "Architect/Engineer". It is the intention of the Contractor to complete the project on or before.

WHEREAS, the Subcontractor has been selected for the performance of the work and furnishing of items specified in Exhibit A Scope of Work.

CONTRACT SUM AND RETAINAGE - There shall be % retainage until the Owner releases retention to the Contractor. The Contract Sum is as follows:

Table with 4 columns: Item, Description, Cost Code, Amount. Includes a Total Subcontract Amount row.

INCORPORATED DOCUMENTS - The Master Subcontract Agreement, which has been previously executed by Subcontractor, Letter of Intent, Exhibit A Scope of Work, Base Contract Drawings per Drawing Log dated attached hereto as Exhibit B, and Baseline Construction Schedule dated and attached hereto as Exhibit C, are part of this agreement and are incorporated herein by this reference as if set out in full.

SUBCONTRACT WORK ORDER must be signed and returned no later than seven (7) days of receipt along with one (1) copy of project specific Safety Data Sheets (SDS), Safety Plan and HazCom Program.

BILLING DATE - Gross Billings less retention are due via email to the Project Accountant. Please submit by the , projecting thru the .

INSURANCE - If approved Insurance Certificates for "Any and All Jobs" are not currently on file in our office, they must list A.R. Mays Construction as the certificate holder and as additionally insured

PROJECT TEAM - A.R. Mays Construction, 6900 E. Indian School Road, Suite 200, Scottsdale, AZ 85251, 480.850.6900 Phone, 480.850.6901 Fax.

The parties hereby agree to be bound by the terms and conditions hereinabove stated and have executed this agreement on the date stated.

ORDERED BY: ACCEPTED BY:
A.R. MAYS CONSTRUCTION
By: By:
Title: Title:
Date: Dat

EXHIBIT A SCOPE OF WORK

TO: Subcontractor Name

JOB NAME:

SUBCONTRACT NO: XXXXXX-XXX

A. JOB SPECIFIC INCLUSIONS – The Subcontractor's "Scope of Work" includes the following:

- | Item No. | Description |
|----------|---|
| 1 | The subcontractor agrees to furnish all labor, material, equipment and supervision required to complete all _____ work as outlined in specification section(s) _____ and in accordance with the Contract documents. |
| 2 | SCOPE OF WORK STARTS HERE. (DELETE) |
| 3 | |

B. JOB SPECIFIC EXCLUSIONS – The Subcontractor's "Scope of Work" excludes the following items:

- | Item No. | Description |
|----------|-------------|
| 1 | Taxes. |

C. CHANGES IN SCOPE OF WORK

- 1 The overhead and profit allowance for extra work performed shall not exceed ten percent (10%) including all office and site supervision, vehicles, small tools and miscellaneous support items.
- 2 The Subcontractor agrees to the following prices which include all fringes, insurance, taxes, overhead and profit for changes in "Scope of Work":

_____ Laborer: \$ _____/hr.

D. SCHEDULE AND PERFORMANCE – The Subcontractor shall meet or exceed the following performance requirements:

- 1 Mobilizations as required to maintain or better the schedule as requested by jobsite Superintendent.
- 2 Delays due to clarifications from Subcontractor will not be allowed. Subcontractor shall plan ahead and ask necessary clarifications in writing prior to the start of the work in order to avoid delays to your contracted durations.
- 3 AR Mays will post a master CPM schedule for the project at the jobsite. The trade is responsible to communicate with AR Mays to verify all projected start and finish dates for your scope of work.
- 4 Project requirements:
Complete _____ in _____ calendar days.

E. GENERAL INCLUSIONS

- 1 A representative from your company will be responsible for attending weekly contractor meetings, safety meeting and scheduling meetings.
- 2 As-Built drawings to be updated weekly by Subcontractor on AR Mays' record As-Built Drawing set.
- 3 Provide drinking water for your crew.
- 4 Weekly onsite Safety meetings are mandatory. Failure to comply with AR Mays safety standards shall result in the following:
 - (i) 1st offense – Warning issued by AR Mays' Superintendent to Subcontractor's employee.
 - (ii) 2nd offense – Subcontractor's employee will be asked to leave the jobsite and the subcontractor's office will be notified. The Subcontractor shall replace the employee the following day with a different employee.

F. SUBMITTALS – The Subcontractor shall submit product samples to this office and electronically submit product data and/or shop drawings by xx/xx/xxxx. Subcontractor shall be responsible for obtaining approvals in sufficient time to meet the requirements of the construction schedule.

G. PAYMENT AND PERFORMANCE BOND WILL NOT BE REQUIRED.

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA



MODIFIED AGC DOCUMENT NO. 655
STANDARD FORM OF AGREEMENT
BETWEEN CONTRACTOR AND
SUBCONTRACTOR

(Where the Contractor and Subcontractor Share the Risk
of Owner Payment) TABLE OF ARTICLES

1. SCOPE OF WORK
2. SUBCONTRACTOR'S RESPONSIBILITIES
3. CONTRACTOR'S RESPONSIBILITIES
4. PROGRESS SCHEDULE
5. CHANGES IN THE SUBCONTRACT WORK
6. PAYMENT
7. INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION
8. CONTRACTOR'S RIGHT TO PERFORM SUBCONTRACTOR'S RESPONSIBILITIES AND TERMINATION OF AGREEMENT
9. DISPUTE RESOLUTION
10. MISCELLANEOUS PROVISIONS

This Agreement has important legal and insurance consequences. Consultation with an attorney and an insurance consultant is encouraged with respect to its completion or modification.

DocuBuilder® • AGC DOCUMENT NO. 655 • STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

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ARTICLE 1

SCOPE OF WORK

1.1 **SUBCONTRACT WORK** The Contractor contracts with the Subcontractor as an independent contractor to provide all labor, materials, equipment and services necessary or incidental to complete the work described in the Subcontract work order for the Project in accordance with, and reasonably inferable from, that which is indicated in the Subcontract Documents, and consistent with the Progress Schedule, as may change from time to time. The Subcontractor shall perform the Subcontract Work under the general direction of the Contractor and in accordance with the Subcontract Documents.

1.2 **CONTRACTOR'S WORK** The Contractor's work is the construction and services required of the Contractor to fulfill its obligations pursuant to its agreement with the Owner (the Work). The Subcontract Work is a portion of the Work.

1.3 **SUBCONTRACT DOCUMENTS** The Subcontract Documents include this Agreement, the Owner-Contractor agreement, special conditions, general conditions, specifications, drawings, addenda, the Subcontract work Order, Subcontract Change Orders, amendments and any pending and exercised alternates. The Contractor shall make available to the Subcontractor, prior to the execution of the Subcontract Agreement, copies of the Subcontract Documents to which the Subcontractor will be bound. The Subcontractor similarly shall make copies of applicable portions of the Subcontract Documents available to its proposed subcontractors and suppliers. Nothing shall prohibit the Subcontractor from obtaining copies of the Subcontract Documents from the Contractor at any time after the Subcontract Agreement is executed. Upon receipt of a written request from the Subcontractor, a copy of the Owner-Contractor Agreement ("Prime Contract") shall be made available to the Subcontractor for its review.

1.4 **CONFLICTS** In the event of a conflict between this Agreement and the other Subcontract Documents, this Agreement shall govern.

1.5 **EXTENT OF AGREEMENT** Nothing in this Agreement shall be construed to create a contractual relationship between persons or entities other than the Contractor and Subcontractor. This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

1.6 DEFINITIONS

.1 Wherever the term Progress Schedule is used in this Agreement, it shall be read as Project Schedule when that term is used in the Subcontract Documents.

.2 Whenever the term Change Order is used in this Agreement, it shall be read as Change Document when that term is used in the Subcontract Documents.

.3 Unless otherwise indicated, the term Day shall mean calendar day.

ARTICLE 3

SUBCONTRACTOR'S RESPONSIBILITIES

2.1 **OBLIGATIONS** The Contractor and Subcontractor are hereby mutually bound by the terms of this Subcontract. To the extent the terms of the prime contract between the Owner and Contractor apply to the work of the Subcontractor, then the Contractor hereby assumes toward the Subcontractor all the obligations, rights, duties, and redress that the Owner under the prime contract assumes toward the Contractor. In an identical way, the Subcontractor hereby assumes toward the Contractor all the same obligations, rights, duties, and redress that the Contractor assumes toward the Owner and Architect/Engineer under the prime contract. In the event of an inconsistency among the documents, the specific terms of this Subcontract shall govern. Upon receipt of a written request from the Subcontractor, a copy of the Owner-Contractor Agreement ("Prime Contract") shall be made available to the Subcontractor for its review.

2.2 The Subcontractor agrees to furnish its best skill and judgment in the performance of the Subcontract Work and to cooperate with the Contractor so that the Contractor may fulfill its obligations to the Owner. The Subcontractor

shall furnish all of the labor, materials, equipment, and services, including but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of the Subcontract Work. The Subcontractor shall provide the Contractor a list of its proposed subcontractors and suppliers, and be responsible for taking field dimensions, providing tests, obtaining required permits related to the Subcontract Work and affidavits, ordering of materials and all other actions as required to meet the Progress Schedule.

2.3 INCONSISTENCIES AND OMISSIONS The Subcontractor shall make a careful analysis and comparison of the drawings, specifications, other Subcontract Documents and information furnished by the Owner relative to the Subcontract Work. Such analysis and comparison shall be solely for the purpose of facilitating the Subcontract Work and not for the discovery of errors, inconsistencies or omissions in the Subcontract Documents nor for ascertaining if the Subcontract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules or regulations. Should the Subcontractor discover any errors, inconsistencies or omissions in the Subcontract Documents, the Subcontractor shall report such discoveries to the Contractor in writing within three (3) days. Upon receipt of notice, the Contractor shall instruct the Subcontractor as to the measures to be taken and the Subcontractor shall comply with the Contractor's instructions. If the Subcontractor performs work knowing it to be contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations without notice to the Contractor and advance approval by appropriate authorities, including the Contractor, the Subcontractor shall assume appropriate responsibility for such work and shall bear all associated costs, charges, fees and expenses necessarily incurred to remedy the violation. Nothing in this Paragraph 2.3 shall relieve the Subcontractor of responsibility for its own errors, inconsistencies and omissions. If any discrepancies occur between the construction documents concerning materials, methods or governing authorities, the Subcontractor agrees to proceed with the more stringent requirements.

2.4 SITE VISITATION Prior to performing any portion of the Subcontract Work, the Subcontractor shall conduct a visual inspection of the Project site to become generally familiar with local conditions and to correlate site observations with the Subcontract Documents. If the Subcontractor discovers any discrepancies between its site observations and the Subcontract Documents, such discrepancies shall be promptly reported to the Contractor.

2.5 INCREASED COSTS AND/OR TIME The Subcontractor may assert a Claim as provided in Article 5 if Contractor's clarifications or instructions in responses to requests for information are believed to require additional time or cost. If the Subcontractor fails to perform the reviews and comparisons required in Paragraphs 2.3 and 2.4, above, to the extent the Contractor is held liable to the Owner because of the Subcontractor's failure, the Subcontractor shall pay the costs and damages to the Contractor that would have been avoided if the Subcontractor had performed those obligations.

2.6 COMMUNICATIONS Unless otherwise provided in the Subcontract Documents and except for emergencies, Subcontractor shall direct all communications related to the Project to the Contractor.

2.7 SUBMITTALS

2.7.1 The Subcontractor promptly shall submit for approval to the Contractor all shop drawings, samples, product data, manufacturers' literature and similar submittals required by the Subcontract Documents. The Subcontractor shall be responsible to the Contractor for the accuracy and conformity of its submittals to the Subcontract Documents. The Subcontractor shall prepare and deliver its submittals to the Contractor in a manner consistent with the Progress Schedule and in such time and sequence so as not to delay the Contractor or others in the performance of the Work. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Subcontract Documents unless express written approval is obtained from the Contractor and Owner authorizing such deviation, substitution or change. In the event that the Subcontract Documents do not contain submittal requirements pertaining to the Subcontract Work, the Subcontractor agrees upon request to submit in a timely fashion to the Contractor for approval any shop drawings; samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Contractor, Owner or Architect/Engineer.

2.7.2 The Contractor, Owner, and Architect/Engineer are entitled to rely on the adequacy, accuracy and completeness of any professional certifications required by the Subcontract Documents concerning the performance criteria of systems, equipment or materials, including all relevant calculations and any governing performance requirements.

2.8 DESIGN DELEGATION

2.8.1 If the Subcontract Documents (1) specifically require the Subcontractor to provide design services and (2) specify all design and performance criteria, the Subcontractor shall provide those design services necessary to satisfactorily complete the Subcontract Work. Design services provided by the Subcontractor shall be procured from licensed design professionals retained by the Subcontractor as permitted by the law of the place where the Project is located (the Designer). The Designer's signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by the Designer. Shop Drawings and other submittals related to the Subcontract Work designed or certified by the Designer, if prepared by others, shall bear the Subcontractor's and the Designer's written approvals when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certification or approvals performed by the Designer.

2.8.2 If the Designer is an independent professional, the design services shall be procured pursuant to a separate agreement between the Subcontractor and the Designer. The Subcontractor-Designer agreement shall not provide for any limitation of liability, except to the extent that consequential damages are waived pursuant to Paragraph 4.8, or exclusion from participation in the multiparty proceedings requirement of Paragraph 9.4. The Subcontractor shall notify the Contractor in writing if it intends to change the Designer. The Subcontractor shall be responsible for conformance of its design with the information given and the design concept expressed in the Subcontract Documents. The Subcontractor shall not be responsible for the adequacy of the performance or design criteria required by the Subcontract Documents.

2.8.3 The Subcontractor shall not be required to provide design services in violation of any applicable law.

2.9 COORDINATION The Subcontractor shall:

.1 cooperate with the Contractor and all others whose work may interface with the Subcontract Work;

.2 specifically note and immediately advise the Contractor of any such interface with the Subcontract Work; and

.3 participate in the preparation of coordination drawings and work schedules in areas of congestion.

.4 Subcontractor shall attend weekly meetings held by the Contractor's superintendent to address all coordination and scheduling for the week's work. An authorized representative of each trade involved with the project during the following week will be required to attend. The representatives for each firm must have authority to commit to items such as start and completion dates, material deliveries and manpower. Safety and problems will also be discussed. Goals involving your work will be set at the meeting and you will be expected to achieve these goals. Minutes will be taken at the meetings and copies will be distributed to those firms in attendance.

.5 upon the Subcontractor's arrival at the jobsite, the Subcontractor's foreman must check in with Contractor's superintendent and confirm that the construction documents he has are current.

2.10 SUBCONTRACTOR'S REPRESENTATIVE The Subcontractor shall designate a person, subject to Contractor's approval, who shall be the Subcontractor's authorized representative. This representative shall be the only person to whom the Contractor shall issue instructions, orders or directions, except in an emergency. The Subcontractor's authorized representative shall be a fluent English speaking representative who is at the Project site during all times that the Subcontractor's work is in progress, and such representative shall be authorized to represent and bind the Subcontractor as to all matters relating to this Subcontract. Subcontractor shall be responsible for the accurate translation of all oral and written information to Subcontractor's employees and shall maintain a competent translator at the Project at all times, if required to communicate with the Subcontractor's non-English speaking personnel. Subcontractor shall not change its representative without the prior consent of Contractor and any such replacement

shall be fully trained by Subcontractor regarding the policies and procedures discussed at all previous Project meetings.

2.11 TESTS AND INSPECTIONS The Subcontractor shall schedule all required tests, approvals and inspections of the Subcontract Work at appropriate times so as not to delay the progress of the work. The Subcontractor shall give proper written notice to all required parties of such tests, approvals and inspections. The Subcontractor shall bear all expenses associated with tests, inspections and approvals required of the Subcontractor by the Subcontract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity approved by the Contractor and Owner. Required certificates of testing, approval or inspection shall, unless otherwise required by the Subcontract Documents, be secured by the Subcontractor and promptly delivered to the Contractor.

2.12 CLEANUP

2.12.1 The Subcontractor shall at all times during its performance of the Subcontract Work keep the work site clean and free from debris resulting from the Subcontract Work. Prior to discontinuing the Subcontract Work in an area, the Subcontractor shall clean the area and remove all its rubbish and its construction equipment, tools, machinery, waste and surplus materials. Subcontractor shall make provisions to minimize and confine dust and debris resulting from its construction activities. The Subcontractor shall not be held responsible for unclean conditions caused by others.

2.12.2 If the Subcontractor fails to commence compliance with cleanup duties within twenty-four (24) hours after written notification from the Contractor of non-compliance, the Contractor may implement appropriate cleanup measures without further notice and the cost thereof shall be deducted from any amounts due or to become due to the Subcontractor. Contractor shall give Subcontractor only one written notice during course of construction; thereafter, Contractor shall have right to deduct cost of cleanup from any amounts due Subcontractor without any further notice being given.

2.13 SAFETY

2.13.1 The Subcontractor is required to perform the Subcontract Work in a safe and reasonable manner. The Subcontractor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

- .1 employees and other persons at the site;
- .2 materials and equipment stored at the site or at offsite locations for use in performance of the Work; and
- .3 all property and structures located at the site and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

2.13.2 The Subcontractor shall give all required notices and comply with all applicable rules, regulations, orders and other lawful requirements established to prevent injury, loss or damage to persons or property.

2.13.3 The Subcontractor shall implement appropriate safety measures pertaining to the Subcontract Work and the Project, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers, and establishing proper notice procedures to protect persons and property at the site and adjacent to the site from injury, loss or damage. All Subcontractor's personnel and independent Contractors shall utilize required safety equipment at all times while on the site, including, but not limited to, hard hats, steel-toed boots, long pants, etc.

2.13.4 The Subcontractor shall exercise extreme care in carrying out any of the Subcontractor work which involves explosive or other dangerous methods of construction or hazardous procedures, materials or equipment. The Subcontractor shall use properly qualified individuals or entities to carry out the Subcontract Work in a safe and reasonable manner so as to reduce the risk of bodily injury or property damage.

2.13.5 Damage or loss not insured under property insurance which may arise from the performance of the Subcontract Work, to the extent of the negligence attributed to such acts or omissions of the Subcontractor, or anyone for whose acts the Subcontractor may be liable, shall be promptly remedied by the Subcontractor. Damage or loss attributable to the acts or omissions of the Contractor and not to the Subcontractor shall be promptly remedied by the Contractor.

2.13.6 The Subcontractor is required to designate an individual at the site in the employ of the Subcontractor who shall act as the Subcontractor's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Subcontractor in writing to the Contractor, the designated safety representative shall be the Subcontractor's project superintendent.

2.13.7 The Subcontractor has an affirmative duty not to overload the structures or conditions at the site and shall take reasonable steps not to load any part of the structures or site so as to give rise to an unsafe condition or create an unreasonable risk of bodily injury or property damage. The Subcontractor shall have the right to request, in writing, from the Contractor loading information concerning the structures at the site.

2.13.8 The Subcontractor shall give prompt written notice to the Contractor of any accident involving bodily injury, any property damage, or any failure that could have resulted in serious bodily injury, whether or not such and injury was sustained.

2.13.9 Prevention of accidents at the site is the responsibility of the Contractor, Subcontractor, and all other subcontractors, persons and entities at the site. Establishment of a safety program by the Contractor shall not relieve the Subcontractor or other parties of their safety responsibilities. The Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by the Contractor and Owner, including, but not limited to, requirements imposed by the Subcontract Documents. The Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project, and shall stop any part of the Subcontract Work which the Contractor deems unsafe until corrective measures satisfactory to the Contractor shall have been taken. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility therefor. The Subcontractor shall notify the Contractor immediately following an accident and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by the Contractor. Each party to this Agreement shall indemnify the other party from and against fines or penalties imposed as a result of safety violations, but only to the extent that such fines or penalties are caused by its failure to comply with applicable safety requirements. Each party to this agreement shall also indemnify the other party from and against any loss or claim caused by its failure to comply with applicable safety requirements.

2.14 PROTECTION OF THE WORK The Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of others from damage caused by the Subcontractor's operations. Should the Subcontractor cause damage to the Work or property of the Owner, the Contractor or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor, or the Contractor may remedy the damage and deduct its cost from any amounts due or to become due the Subcontractor, unless such costs are recovered under applicable property insurance.

2.15 PERMITS, FEES, LICENSES AND TAXES The Subcontractor shall give timely notices to authorities pertaining to the Subcontract Work, and shall be responsible for all permits, fees, licenses, assessments, inspections, testing and taxes necessary to complete the Subcontract Work in accordance, with the Subcontract Documents. To the extent reimbursement is obtained by the Contractor from the Owner under the Owner-Contractor agreement, the Subcontractor shall be compensated for additional costs resulting from taxes enacted after the date of this Agreement. Upon receipt of a written request from the Subcontractor, a copy of the Owner-Contractor Agreement ("Prime Contract") shall be made available to the Subcontractor for its review.

2.16 ASSIGNMENT OF SUBCONTRACT WORK The Subcontractor shall not assign the whole nor any part of the Subcontract Work without prior written approval of the Contractor. It shall be a material breach of the Subcontract Agreement or Subcontract Work Order if Subcontractor assigns Subcontract work without prior written approval from

Contractor.

2.17 HAZARDOUS MATERIALS To the extent that the Contractor has rights or obligations under the Owner-Contractor agreement or by law regarding hazardous materials as defined by the Subcontract Document within the scope of the Subcontract Work, the Subcontractor shall have the same rights or obligations. Upon receipt of a written request from the Subcontractor, a copy of the Owner-Contractor Agreement ("Prime Contract") shall be made available to the Subcontractor for its review.

2.18 MATERIAL SAFETY DATA (MSD) SHEETS The Subcontractor shall submit to the Contractor all Material Safety Data Sheets required by law for materials or substances necessary for the performance of the Subcontract Work. MSD sheets obtained by the Contractor from other subcontractors or sources shall be made available to the Subcontractor by the Contractor.

2.19 LAYOUT RESPONSIBILITY AND LEVELS The Contractor shall establish principal axis lines of the building and site, and benchmarks. The Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontract Work and for any loss or damage to the Contractor or others by reason of the Subcontractor's failure to lay out or perform Subcontract Work correctly. The Subcontractor shall exercise prudence so that the actual final conditions and details shall result in alignment of finish surfaces.

2.20 WARRANTIES The Subcontractor warrants that all materials and equipment furnished under this Agreement shall be new, unless otherwise specified, of good quality, in conformance with the Subcontract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of Substantial Completion of the Work or a designated portion. The Subcontractor shall provide for their scope of work, a two (2) year warranty from the date of substantial completion, unless the project specifications require a longer period.

2.21 UNCOVERING/CORRECTION OF SUBCONTRACT WORK

2.21.1 UNCOVERING SUBCONTRACT WORK

2.21.1.1 If required in writing by the Contractor, the Subcontractor must uncover any portion of the Subcontract Work which has been covered by the Subcontractor in violation of the Subcontract Documents or contrary to a directive issued to the Subcontractor by the Contractor. Upon receipt of a written directive from the Contractor, the Subcontractor shall uncover such work for the Contractor's or Owner's inspection and restore the uncovered Subcontract Work to its original condition at the Subcontractor's time and expense.

2.21.1.2 The Contractor may direct the Subcontractor to uncover portions of the Subcontract Work for inspection by the Owner or Contractor at any time. The Subcontractor is required to uncover such work whether or not the Contractor or Owner had requested to inspect the Subcontract Work prior to it being covered. Except as provided in Clause 2.21.1.1, this Agreement shall be adjusted by change order for the cost and time of uncovering and restoring any work which is uncovered for inspection and proves to be installed in accordance with the Subcontract Documents, provided the Contractor had not previously instructed the Subcontractor to leave the work uncovered. If the Subcontractor uncovers work pursuant to a directive issued by the Contractor, and such work upon inspection does not comply with the Subcontract Documents, the Subcontractor shall be responsible for all costs and time of uncovering, correcting and restoring the work so as to make it conform to the Subcontract Documents. If the Contractor or some other entity for which the Subcontractor is not responsible caused the nonconforming condition, the Contractor shall be required to adjust this Agreement by change order for all such costs and time.

2.21.2 CORRECTION OF WORK

2.21.2.1 If the Architect/Engineer or Contractor rejects the Subcontract Work or the Subcontract Work is not in conformance with the Subcontract Documents, the Subcontractor shall promptly correct the Subcontract Work whether it had been fabricated, installed or completed. The Subcontractor shall be responsible for the costs of correcting such Subcontract Work, any additional testing, inspections, and compensation for services and expenses of the Architect/Engineer and Contractor made necessary by the defective

Subcontract Work.

2.21.2.2 In addition to the Subcontractor's obligations under Paragraph 2.20, the Subcontractor agrees to promptly correct, after receipt of a written notice from the Contractor, all Subcontract Work performed under this Agreement which proves to be defective in workmanship or materials within a period of two years from the date of Substantial Completion of the Subcontract Work or for a longer period of time as may be required by specific warranties in the Subcontract Documents. Substantial Completion of the Subcontract Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Subcontract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use of which it is intended. If, during the two-year period, the Contractor fails to provide the Subcontractor with prompt written notice of the discovery of defective or nonconforming Subcontract Work, the Contractor shall neither have the right to require the Subcontractor to correct such Subcontract Work nor the right to make claim for breach of warranty. If the Subcontractor fails to correct defective or nonconforming Subcontract Work within a reasonable time after receipt of notice from the Contractor, the Contractor may correct such Subcontract Work pursuant to Subparagraph 8.1.1.

2.21.3 The Subcontractor's correction of Subcontract Work pursuant to this Paragraph shall not exceed the two-year period for the correction of Subcontract Work, but if Subcontract Work is first performed after Substantial Completion, the two-year period for corrections shall be extended by the time period after Substantial Completion and the performance of that portion of Subcontract Work. The Subcontractor's obligation to correct Subcontract Work within two years as described in this Paragraph 2.21 does not limit the enforcement of Subcontractor's other obligations with regard to the Agreement and the Subcontract Documents.

2.21.4 If the Subcontractor's correction or removal of Subcontract Work destroys or damages completed or partially completed work of the Owner, the Contractor or any separate contractors, the Subcontractor shall be responsible for the cost of correcting such destroyed or damaged construction.

2.21.5 If portions of Subcontract Work which do not conform with the requirements of the Subcontract Documents are neither corrected by the Subcontractor nor accepted by the Contractor, the Subcontractor shall remove such Subcontract Work from the Project site if so directed by the Contractor.

2.22 MATERIALS OR EQUIPMENT FURNISHED BY OTHERS In the event the scope of the Subcontract Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to exercise proper care in receiving, handling, storing and installing such items, unless otherwise provided in the Subcontract Documents. The Subcontractor shall examine the items provided and report to the Contractor in writing any items it may discover that do not conform to requirements of the Subcontract Documents. The Subcontractor shall not proceed to install nonconforming items without further instructions from the Contractor. Loss or damage due to acts or omissions of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor.

2.23 SUBSTITUTIONS No substitutions shall be made in the Subcontract Work unless permitted in the Subcontract Documents, and only upon the Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions.

2.24 USE OF CONTRACTOR'S EQUIPMENT The Subcontractor, its agents, employees, subcontractors or suppliers shall use the Contractor's equipment only with the express written permission of the Contractor's designated representative and in accordance with the Contractor's terms and conditions for such use. If the Subcontractor or any of its agents, employees, subcontractors or suppliers utilize any of the Contractor's equipment, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Contractor, the Subcontractor shall defend, indemnify and be liable to the Contractor as provided in Article 7 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Contractor's employees operating the Contractor's equipment.

2.25 WORK FOR OTHERS Until final completion of the Subcontract Work, the Subcontractor agrees not to perform

any work directly for the Owner or any tenants, or deal directly with the Owner's representatives in connection with the Subcontract Work, unless otherwise approved In writing by the Contractor.

2.26 SUBCONTRACTOR BONDS

2.26.1 If required by the Subcontract Agreement or the Subcontract Work Order, the Subcontractor shall furnish to the Contractor, as the named Obligee, appropriate surety bonds to secure the faithful performance of the Subcontract Work and to satisfy all Subcontractor payment obligations related to Subcontract Work.

2.26.2 If a performance or payment bond, or both, are required of the Subcontractor under this Agreement, the bonds shall be in a form and by a surety mutually agreeable to the Contractor and Subcontractor, and in the full amount of the Subcontract, unless otherwise specified. If payment and performance bonds are required of the Subcontractor, said bonds shall be from a surety company listed in the latest edition of the Federal Register as holding a certificate of authority and an underwriting limit large enough for the Project. The surety must also be licensed to do business in the State in which the project is located.

2.26.3 The Subcontractor shall be reimbursed for the cost of any required performance or payment bonds simultaneously with the first progress payment. If the Subcontract Agreement or Subcontract Work Order requires payment and performance bonds, the Subcontractor and his surety agree to increase the amount of Subcontractor's payment and performance bond by the full amount of any amendment in work scope resulting in a cost increase. If the Contract sum is increased by more than twenty percent (20%) of the original Contract sum, the Subcontractor will furnish a consent of surety to the Contractor. The Subcontractor agrees that the additional bond premium for any amendment will be included in the Contract sum increase in that amendment.

2.26.4 In the event the Subcontractor shall fail to promptly provide any required bonds, the Contractor may terminate this Agreement and enter into a subcontract for the balance of the Subcontract Work with another subcontractor. All Contractor costs and expenses incurred by the Contractor as a result of said termination shall be paid by the Subcontractor.

2.27 SYSTEMS AND EQUIPMENT STARTUP With the assistance of the Owner's maintenance personnel and the Contractor, the Subcontractor shall direct the check-out and operation of systems and equipment for readiness, and assist in their initial startup and the testing of the Subcontract Work.

2.28 COMPLIANCE WITH LAWS The Subcontractor agrees to be bound by, and at its own costs comply with, all federal, state and local laws, ordinances and regulations (the Laws) applicable to the Subcontract Work, including but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety and all other Laws with which the Contractor must comply. The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply with Laws, including, but not limited to, any fines, penalties or corrective measures, except as provided in Subparagraph 2.13.9.

2.29 CONFIDENTIALITY To the extent the Owner-Contractor agreement provides for the confidentiality of any of the Owners proprietary or otherwise confidential information disclosed in connection with the performance of this Agreement, the Subcontractor is equally bound by the Owners confidentiality requirements. Upon receipt of a written request from the Subcontractor, a copy of the Owner-Contractor Agreement ("Prime Contract") shall be made available to the Subcontractor for its review.

2.30 ROYALTIES, PATENTS AND COPYRIGHTS The Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Subcontractor and incorporated in the Subcontract Work. The Subcontractor shall defend, indemnify and hold the Contractor and Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Subcontractor shall be liable for all loss, including all costs, expenses, and attorneys' fees, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Subcontract Documents. However, if the Subcontractor has reason to believe that a particular design, process or product required by the Subcontract Documents is an infringement of a

patent, the Subcontractor shall promptly furnish such information to the Contractor or be responsible to the Contractor and Owner for any loss sustained as a result.

2.31 LABOR RELATIONS

2.31.1 EMPLOYEES

2.31.1.1 The Subcontractor agrees to conform to Contractor's labor policies, practices and procedures and to comply with all applicable federal and state labor laws and regulations, including but not limited to, the Civil Rights Act of 1964, as amended, and the Age Discrimination Act of 1967, as amended.

2.31.1.2 The Subcontractor agrees to employ no person whose employment on or in connection with the Subcontract Agreement or Subcontract Work Order may be objectionable and to remove from the project any such person when requested to do so.

2.31.2 LABOR DISPUTE

2.31.2.1 Subcontractor agrees that no labor dispute of any kind involving Subcontractor, or his employees or agents shall be permitted to occur or to be manifested on the project, and the Subcontractor agrees to that end to only employ persons on the work who will work at all times in harmony with other persons employed on the project.

2.31.2.2 The Subcontractor agrees that its employees or agents shall not participate in or accede to any work stoppage, slowdown, or any type of interference with the performance of work by other persons on the project which may occur as a result of any labor disputes involving its employees or agents.

2.31.3 WORK STOPPAGE

2.31.3.1 Should there be a work stoppage, slowdown or any type of interference with the performance of work on the project involving Subcontractor's employees or agents resulting from labor dispute and which in the judgment of Contractor will cause, or threatens to cause delay in the progress of construction, then upon twenty-four (24) hours written notice the Contractor shall have the right to declare the Subcontractor in default under the Subcontract Agreement or Subcontract Work Order and take such steps as necessary to finish the uncompleted portion of the work. In such event, the Contractor shall have the right to take possession of and use all of the Subcontractor's materials and equipment intended for use on the work. The cost of completion, including all expenses, attorney's fees and costs incurred in resolving the labor dispute, shall be charged against the Subcontractor's remaining interest in the contract price. In addition, should the Subcontractor become involved in a labor dispute resulting in a work stoppage, slowdown or any type of interference with the progress of construction and resulting in an increase in the interest charges to the Contractor, the Subcontractor shall be liable to the Contractor for this increased cost. If the Subcontractor's remaining interest in the contract price exceeds the cost of completion; the Subcontractor shall be entitled to the difference. If however, the cost of the completion exceeds the Subcontractor's remaining interest in the contract price, then the Subcontractor agrees to pay the Contractor such excess within thirty (30) days after written demand for such excess has been made upon him by the Contractor. Provisions similar to the provisions of this paragraph shall be included in any of Subcontractor's subcontracts relating to the project.

2.32 CLOSEOUT Submit all specified closeout documentation to t upon completion of your scope of work and prior to final payment application

ARTICLE 3

CONTRACTOR'S RESPONSIBILITIES

3.1 PAYMENT BOND REVIEW If the Contractor has provided the Owner a payment bond. The Contractor's

payment bond for the Project, if any, shall be made available by the Contractor for review and copying by the Subcontractor.

3.2 OWNER'S ABILITY TO PAY

3.2.1 The Subcontractor shall have the right upon request to receive from the Contractor such information as the Contractor has obtained relative to the Owner's financial ability to pay for the Work, including any subsequent material variation in such information. The Contractor, however, does not warrant the accuracy or completeness of the Information provided by the Owner.

3.2.2 If the Subcontractor does not receive the information referenced in Subparagraph 3.2.1 with regard to the Owner's ability to pay for the Work as required by the Contract Documents, the Subcontractor may request the information from the Owner and/or the Owner's lender.

3.3 INFORMATION OR SERVICES The Subcontractor is entitled to request through the Contractor any information or services relevant to the performance of the Subcontract Work which is under the Owner's control. To the extent the Contractor receives such information and services, the Contractor shall provide them to the Subcontractor. The Contractor, however, does not warrant the accuracy or completeness of the information provided by the Owner.

3.4 STORAGE AREAS The Contractor shall allocate adequate storage areas, if available, for the Subcontractor's materials and equipment during the course of the Subcontract Work. Unless otherwise agreed upon, the Contractor shall reimburse the Subcontractor for the additional costs of having to relocate such storage areas at the direction of the Contractor.

3.5 TIMELY COMMUNICATIONS The Contractor shall transmit to the Subcontractor, with reasonable promptness, all submittals, transmittals, and written approvals relative to the Subcontract Work. Unless otherwise specified in the Subcontract Documents, communications by and with the Subcontractor's subcontractors, materialmen and suppliers shall be through the Subcontractor.

3.6 USE OF SUBCONTRACTOR'S EQUIPMENT The Contractor, its agents, employees or suppliers shall use the Subcontractor's equipment only with the express written permission of the Subcontractor's designated representative and in accordance with the Subcontractor's terms and conditions for such use. If the Contractor or any of its agents, employees or suppliers utilize any of the Subcontractor's equipment, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Subcontractor, the Contractor shall defend, indemnify and be liable to the Subcontractor as provided in Article 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Subcontractor's employees operating the Subcontractor's equipment.

ARTICLE 4

PROGRESS SCHEDULE

4.1 WORK FORCE Subcontractor shall provide a proper work force of qualified trades persons so as to adhere to the Contractor's schedule and not impede the timely completion of the project.

4.2 DEFINITION OF DAYS The subcontractor acknowledges that all references to "days" as it applies to work durations shall be deemed to mean calendar days even if called out as "work days".

4.3 SCHEDULE CHANGES The Subcontractor acknowledges that project start and finish dates as well as this Subcontractor's scope of work start and finish dates, may change due to circumstances which may or may not be within the contractor's control. Further, the Subcontractor shall notify the Contractor in writing if changes in the project start and finish dates and/or changes in the Subcontractor's scope of work start and finish dates adversely affect this Subcontractor's ability to perform its work in accordance with the scheduled durations as defined by this subcontract. If the Subcontractor fails to notify the Contractor in writing of any circumstances, constraints, restraints, and/or delays that inhibit and/or prohibit the Subcontractor from performing its scope of work within the scheduled durations as defined by this Subcontract prior to starting its work, then Subcontractor acknowledges, agrees, and accepts that it will perform the scope of work in accordance with the scheduled durations as defined by the subcontract.

4.4 SCHEDULED INSPECTIONS: The Subcontractor shall be responsible for expediting, coordinating, scheduling, and participating in all required governing authority field inspections for Subcontractor's scope of work with the onsite

Project Superintendent.

4.5 TIME IS OF THE ESSENCE Time is of the essence for both parties. They mutually agree to see to the performance of their respective obligations so that the entire Project may be completed in accordance with the Subcontract Documents and particularly the Progress Schedule as set forth in the Subcontract Agreement or Subcontract Work Order.

4.6 SCHEDULE OBLIGATIONS The Subcontractor shall provide the Contractor with any scheduling information proposed by the Subcontractor for the Subcontract Work. In consultation with the Subcontractor, the Contractor shall prepare the schedule for performance of the Work (the Progress Schedule) and shall revise and update such schedule, as necessary, as the Work progresses. Both the Contractor and the Subcontractor shall be bound by the Progress Schedule. The Progress Schedule and all subsequent changes and additional details shall be submitted to the Subcontractor promptly and reasonably in advance of the required performance. The Contractor shall have the right to determine and, if necessary, change the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the Subcontract Work.

4.7 DELAYS AND EXTENSIONS OF TIME

4.7.1 OWNER CAUSED DELAY Subject to Subparagraph 4.7.2, if the commencement and/or progress of the Subcontract Work is delayed without the fault or responsibility of the Subcontractor, the time for the Subcontract Work shall be extended by Subcontract Change Order to the extent obtained by the Contractor under the Subcontract Documents and the Progress Schedule shall be revised accordingly.

4.7.2 CLAIMS RELATING TO OWNER The Subcontractor agrees to initiate all claims for which the Owner is or may be liable in the manner and within the time limits provided in the Subcontract Documents for like claims by the Contractor upon the Owner and in sufficient time for the Contractor to initiate such claims against the Owner in accordance with the Subcontract Documents. At the Subcontractor's request and expense to the extent agreed upon in writing, the Contractor agrees to permit the Subcontractor to prosecute a claim in the name of the Contractor for the use and benefit of the Subcontractor in the manner provided in the Subcontract Documents for like claims by the Contractor upon the Owner. All claims shall be resolved in the manner provided in Article 9.

4.7.3 CLAIMS RELATING TO CONTRACTOR The Subcontractor shall give the Contractor written notice of all claims not included in Subparagraph 4.7.2 within forty-eight (48) hours of the Subcontractor's knowledge of the facts giving rise to the event for which claim is made; otherwise, such claims shall be deemed waived. All unresolved claims, disputes and other matters in question between the Contractor and the Subcontractor not relating to claims included in Subparagraph 4.7.2 shall be resolved in the manner provided in Article 9. Should the Subcontractor be delayed in his work by Contractor, then the Contractor shall owe Subcontractor therefore only an extension of time for completion equal to the delay caused and then only if a written claim for delay is made to Contractor within forty-eight (48) hours from the time of the beginning of the delay; and under no circumstances shall Contractor be liable to pay to Subcontractor any delay compensation or loss profits for such contractor-caused delays.

4.7.4 DAMAGES If the Subcontract Documents provide for liquidated or other damages for delay beyond the completion date set forth in the Subcontract Documents, and such damages are assessed, the Contractor may assess a share of the damages against the Subcontractor in proportion to the Subcontractor's share of the responsibility for the delay. However, the amount of such assessment shall not exceed the amount assessed against the Contractor. This Paragraph 4.7 shall not limit the Subcontractor's liability to the Contractor for the Contractor's actual delay damages caused by the Subcontractor's delay.

4.7.4.1 Any damages to Contractor for delays caused by Subcontractor shall be deducted by Contractor from the agreed price for the work as damages and not as penalty, subject, however, to the option of Contractor to terminate the Subcontractor agreement for default or to exercise any other right as provided herein.

4.7.4.2 Except as is otherwise provided in subparagraph 4.7.1 of this agreement, Contractor shall not be liable to the Subcontractor for delay to Subcontractor's work by any act, neglect or default of the owner, Contractor, or the architect, or by reason of fire or other casualty, or on account of riots, or of strikes, or other combined action of the workmen or others, or on account of any acts of God, or any cause beyond Contractor's control, or on account of any circumstances caused or contributed to be the Subcontractor; provided, however, notwithstanding anything else contained herein, the Contractor will be liable to the Subcontractor only to the extent the owner is liable for such damages and actually pays the Contractor for such damages; it being expressly understood that the only obligation the Contractor has to the Subcontractor under this subparagraph is to pass on to the owner and to pay to Subcontractor any amounts which the owner pays to the Contractor as a result of such claims for owner-caused delays.

4.8 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

4.8.1 To the extent the Owner-Contractor agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, the Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Agreement, including to the extent provided in the Owner Contractor agreement, damages for principal office expenses and the compensation of personnel stationed there; loss of financing, business and reputation; and for loss of profit. Similarly, the Subcontractor shall obtain from its sub-subcontractors mutual waivers of consequential damages that correspond to the Subcontractor's waiver of consequential damages herein. To the extent applicable, this mutual waiver applies to consequential damages due to termination by the Contractor or the Owner in accordance with this Agreement or the Owner-Contractor agreement. To the extent the Owner-Contractor agreement does not preclude the award of liquidated damages, nothing contained in this Paragraph 4.8 shall preclude the imposition of such damages, if applicable in accordance with the requirements of the Subcontract Documents. Upon receipt of a written request from the Subcontractor, a copy of the Owner-Contractor Agreement ("Prime Contract") shall be made available to the Subcontractor for its review.

4.8.2 To the extent the Owner-Contractor agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, damages for which the Contractor is liable to the Owner including those related to Subparagraph 7.1.1 are not consequential damages for the purpose of this waiver. Similarly, to the extent the Subcontractor-sub-subcontractor agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, damages for which the Subcontractor is liable to lower-tiered parties due to the fault of the Owner or Contractor are not consequential damages for the purpose of this waiver. Upon receipt of a written request from the subcontractor, a copy of the Owner-Contractor Agreement ("Prime Contract") shall be made available to the subcontractor for its review.

ARTICLE 5

CHANGES IN SUBCONTRACT WORK

5.1 SUBCONTRACT CHANGE ORDERS When the Contractor orders in writing, the Subcontractor, without nullifying this Agreement, shall make any and all changes in the Subcontract Work which are within the general scope of this Agreement. Any adjustment in the Subcontract Amount or Subcontract Time shall be authorized by a Subcontract Change Order. No adjustments shall be made for any changes performed by the Subcontractor that have not been ordered by the Contractor. A Subcontract Change Order is a written instrument prepared by the Contractor and signed by the Subcontractor stating their Agreement upon the change in the Subcontract Work. When a Subcontractor receives notification of a change to the project, five (5) calendar days are allotted from the date on the transmittal to reply to the Project Manager with an itemized breakdown of any change in cost. If there is a change in cost, the Project Manager will circulate a Change Order Request to the Architect and Owner and upon receiving Architect and/or Owner approval, the Contractor will issue Subcontract Agreement Change Orders to all involved Subcontractors and Suppliers. The itemized breakdown shall include the units of work, labor and material unit prices and extensions, overhead and profit.

5.1.1 In no event shall the Contractor be liable to Subcontractor for payments for any extra work Subcontractor performs in addition to that required by the subcontract, unless Subcontractor

performs such work by specific written and signed directive of the Contractor. No employee or agent of Contractor is authorized to direct any extra work by oral order.

5.2 CONSTRUCTION CHANGE DIRECTIVES To the extent that the Subcontract Documents provide for Construction Change Directives in the absence of agreement on the terms of a Subcontract Change Order, the Subcontractor shall promptly comply with the Construction Change Directive and be entitled to apply for interim payment if the Subcontract Documents so provide.

5.3 UNKNOWN CONDITIONS If in the performance of the Subcontract Work the Subcontractor finds latent, concealed or subsurface physical conditions which differ materially from those indicated in the Subcontract Documents or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist, and not generally recognized as inherent in the kind of work provided for in this Agreement, the Subcontract Amount and/or the Progress Schedule shall be equitably adjusted by a Subcontract Change Order within a reasonable time after the conditions are first observed. The adjustment which the Subcontractor may receive shall be limited to the adjustment the Contractor receives from the Owner on behalf of the Subcontractor, or as otherwise provided under Subparagraph 4.7.2.

5.4 ADJUSTMENTS IN SUBCONTRACT AMOUNT If a Subcontract Change Order requires an adjustment in the Subcontract Amount, the adjustment shall be established by one of the following methods:

- .1 mutual acceptance of an itemized lump sum;
- .2 unit prices as indicated in the Subcontract Documents or as subsequently agreed to by the parties; or
- .3 costs determined in a manner acceptable to the parties and a mutually acceptable fixed or percentage fee; or
- .4 another method provided in the Subcontract Documents.

5.5 SUBSTANTIATION OF ADJUSTMENT If the Subcontractor does not respond promptly or disputes the method of adjustment, the method and the adjustment shall be determined by the Contractor on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Subcontract Amount, an allowance for overhead and profit of the percentage provided in Paragraph 5.6. The Subcontractor may contest the reasonableness of any adjustment determined by the Contractor. The Subcontractor shall maintain for the Contractor's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Subcontract Change Order:

- .1 labor costs, including Social Security, health, welfare, retirement and other fringe benefits as normally required, and state workers' compensation insurance;
- .2 costs of materials, supplies and equipment, whether incorporated in the Subcontract Work or consumed, including transportation costs;
- .3 costs of renting machinery and equipment other than hand tools;
- .4 costs of bond and insurance premiums, permit fees and taxes attributable to the change; and costs of additional supervision and field office personnel services necessitated by the change

Adjustments shall be based on net change in Subcontractor's reasonable cost of performing the changed Subcontract Work plus, in case of a net increase in cost, an agreed upon sum for overhead and profit shall be established in the Subcontract Agreement or Subcontract Work Order.

5.6 NO OBLIGATION TO PERFORM The Subcontractor shall not perform changes in the Subcontract Work until a Subcontract Change Order has been executed or written instructions have been issued in accordance with Paragraphs 5.2 and 5.8.

5.7 EMERGENCIES In an emergency affecting the safety of persons and/or property, the Subcontractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Subcontract Amount and/or the Progress Schedule on account of emergency work shall be determined as provided in this Article.

5.8 INCIDENTAL CHANGES The Contractor may direct the Subcontractor to perform Incidental changes in the

Subcontract Work which do not involve adjustments in the Subcontract Amount or Subcontract Time. Incidental changes shall be consistent with the scope and intent of the Subcontract Documents. The Contractor shall initiate an incidental change in the Subcontract Work by issuing a written order to the Subcontractor. Such written notice shall be carried out promptly and is binding on the parties.

5.9 BACKCHARGES AND EXTRA WORK Subcontractors are to receive written authorization from the Contractor's Superintendent prior to performing any work that will involve a backcharge or extra payment. Time and material sheets must be submitted to the Contractor's Superintendent daily for work performed on a time and material basis. If these time and material sheets are not submitted on a daily basis and authorized by the Contractor's Superintendent, additional payment for this extra work will not be recognized.

ARTICLE 6

PAYMENT

6.1 OWNER PAYMENT Subcontractor understands and agrees that the Owner shall be the sole source of funding and payment for all work on the project, and that the Subcontractor will be paid for its work when and if payment is received from the Owner.

6.2 SCHEDULE OF VALUES As a condition to payment, the Subcontractor shall provide a schedule of values satisfactory to the Contractor not more than fifteen (15) days from the date of execution of the Subcontract Work Order. This breakdown will be used in approving monthly pay applications.

6.3 PROGRESS PAYMENTS

6.3.1 APPLICATIONS The Subcontractor's applications for payment shall be itemized and supported by substantiating data as required by the Subcontract Documents. If the Subcontractor is obligated to provide design services pursuant to Paragraph 2.8, Subcontractor's applications for payment shall show the Designer's fee and expenses as a separate cost item. The Subcontractor's application shall be notarized if required and if allowed under the Subcontract Documents may include properly authorized Subcontract Construction Change Directives. The Subcontractor's progress payment application for the Subcontract Work performed in the preceding payment period shall be submitted for approval of the Contractor in accordance with the schedule of values if required and Subparagraphs 6.3.2, 6.3.3, and 6.3.4. The Contractor shall incorporate the approved amount of the Subcontractor's progress payment application into the Contractor's payment application to the Owner for the same period and submit it to the Owner in a timely fashion. The Contractor shall immediately notify the Subcontractor of any changes in the amount requested on behalf of the Subcontractor. Subcontractor payment applications are to be submitted to the Contractor's Project Accountant per the billing dates specified in the Subcontract Agreement or Subcontract Work Order. Contractor will not assume responsibility for pay requests given to Project Superintendents.

6.3.2 RETAINAGE The rate of retainage shall be ten percent (10%), unless a different amount is mandated by state law or specified in the Subcontract Work Order. The retainage amount is equal to the percentage retained from the Contractor's payment by the Owner for the Subcontract Work. If the Subcontract Work is satisfactory and the Subcontract Documents provide for reduction of retainage at a specified percentage of completion, the Subcontractor's retainage shall also be reduced when the Subcontract Work has attained the same percentage of completion and the Contractor's retainage for the Subcontract Work has been so reduced by the Owner.

6.3.3 STORED MATERIALS Unless otherwise provided in the Subcontract Documents, and if approved in advance by the Owner, applications for payment may include materials and equipment not incorporated in the Subcontract Work but delivered to and suitably stored at the site or at some other location agreed upon in writing. Approval of payment applications for such stored items on or off the site shall be conditioned upon submission by the Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to the Owner and Contractor to establish the Owner's title to such materials and equipment, or otherwise to protect the Owner's and Contractor's interest including transportation to the site.

6.3.4 TIME OF PAYMENT Receipt of payment by the Contractor from the Owner for the Subcontract Work is a condition precedent to payment by the Contractor to the Subcontractor. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Contractor for payment of Subcontract Work. Progress payments received from the Owner for the Subcontractor for satisfactory performance of the Subcontract Work shall be made no later than seven (7) days after receipt by the Contractor of payment from the Owner for the Subcontract Work.

6.3.5 PAYMENT DELAY If the Contractor has received payment from the Owner and if for any reason not the fault of the Subcontractor, the Subcontractor does not receive a progress payment from the Contractor within seven (7) days after the date such payment is due, as defined in Subparagraph 6.3.4, the Subcontractor, upon giving seven (7) days written notice to the Contractor, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to the Subcontractor has been received. The Subcontract Amount and Time shall be adjusted by the amount of the Subcontractor's reasonable and verified cost of shutdown, delay, and startup, which shall be effected by an appropriate Subcontractor Change Order.

6.3.6 PAYMENTS WITHHELD The Contractor may reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, as may reasonably be necessary to protect the Contractor from loss or damage based upon:

- .1 the Subcontractors repeated failure to perform the Subcontract Work as required by this Agreement;
- .2 loss or damage arising out of or relating to this Agreement and caused by the Subcontractor to the Owner, Contractor or others to whom the Contractor may be liable;
- .3 the Subcontractor's failure to properly pay for labor, materials, equipment or supplies furnished in connection with the Subcontract Work;
- .4 rejected, nonconforming or defective Subcontract Work which has not been corrected in a timely fashion;
- .5 reasonable evidence of delay in performance of the Subcontract Work such that the Work will not be completed within the Subcontract Time, and that the unpaid balance of the Subcontract Amount is not sufficient to offset the liquidated damages or actual damages that may be sustained by the Contractor as a result of the anticipated delay caused by the Subcontractor;
- .6 reasonable evidence demonstrating that the unpaid balance of the Subcontract Amount is insufficient to cover the cost to complete the Subcontract Work;
- .7 third party claims involving the Subcontractor or reasonable evidence demonstrating that third party claims are likely to be filed unless and until the Subcontractor furnishes the Contractor with adequate security in the form of a surety bond, letter of credit or other collateral or commitment which are sufficient to discharge such claims if established.

The Contractor shall give written notice to the Subcontractor, at the time of disapproving or nullifying an application for payment stating its specific reasons for such disapproval or nullification. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be made for amounts previously withheld.

6.4 FINAL PAYMENT

6.4.1 APPLICATION Upon completion of the Project and acceptance of the Subcontract Work by the Owner and the Contractor, the Contractor shall incorporate the Subcontractors application for final payment into the Contractors final application for payment to the Owner.

6.4.2 REQUIREMENTS Before the Contractor shall be required to incorporate the Subcontractor's application for final payment into the Contractor's next application for payment, the Subcontractor shall submit to the Contractor:

- .1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontract Work for which the Owner or its property or the Contractor or the Contractor's surety might in any way be liable, have been paid or otherwise satisfied;
- .2 consent of surety to final payment, if required;
- .3 satisfaction of required closeout procedures;
- .4 certification that insurance required by the Subcontract Documents to remain in effect beyond final payment pursuant to Clauses 7.2.3.1 and 7.2.6 is in effect and will not be cancelled or allowed to expire without at least thirty (30) days written notice to the Contractor unless a longer period is stipulated in this Agreement;
- .5 other data, if required by the Contractor or Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be designated by the Contractor or Owner;
- .6 written warranties, equipment manuals, startup and testing required in Paragraph 2.27; and
- .7 as-built drawings if required by the Subcontract Documents.

6.4.3 TIME OF PAYMENT Receipt of final payment by the Contractor from the Owner for the Subcontract Work is a condition precedent to payment by the Contractor to the Subcontractor. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Contractor for payment of Subcontract Work. Final payment of the balance due of the Contract Price shall be made to the Subcontractor:

- .1 upon receipt of the owner's waiver of all claims related to the Subcontract Work except for unsettled liens, unknown defective work, and non-compliance with the Subcontract Documents or warranties; and
- .2 within seven (7) days after receipt by the Contractor of final payment from the Owner for such Subcontract Work.

6.4.4 FINAL PAYMENT DELAY If the owner or its designated agent does not issue a certificate for final payment or the Contractor does not receive such payment for any cause which is not the fault of the Subcontractor, the Contractor shall promptly inform the Subcontractor in writing. The Contractor shall also diligently pursue, with the assistance of the Subcontractor, the prompt release by the owner of the final payment due for the Subcontract Work. At the Subcontractor's request and expense, to the extent agreed upon in writing, the Contractor shall institute reasonable legal remedies to mitigate the damages and pursue payment of the Subcontractor's final payment including interest.

6.4.5 WAIVER OF CLAIMS Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontract Work, but shall in no way relieve the Subcontractor of liability for the obligations assumed under Paragraphs 2.20 and 2.21, or for faulty or defective work or services discovered after final payment.

6.5 LATE PAYMENT INTEREST To the extent obtained by the Contractor under the Subcontract Documents, progress payments or final payment due and unpaid under this Agreement shall bear interest from the date payment is due at the rate provided in the Subcontract Documents.

6.6 CONTINUING OBLIGATIONS Provided the Contractor is making payments on or has made payments to the Subcontractor in accordance with the terms of this Agreement, the Subcontractor shall reimburse the Contractor for any costs and expenses for any claim, obligation or lien asserted before or after final payment is made that arises

from the performance of the Subcontract Work. The Subcontractor shall reimburse the Contractor for costs and expenses including attorneys' fees and costs and expenses incurred by the Contractor in satisfying, discharging or defending against any such claims, obligation or lien including any action brought or judgment recovered. In the event that any applicable law, statute, regulation or bond requires the Subcontractor to take any action prior to the expiration of the reasonable time for payment referenced in Subparagraph 6.4.3 in order to preserve or protect the Subcontractor's rights, if any, with respect to mechanic's lien or bond claims, then the Subcontractor may take that action prior to the expiration of the reasonable time for payment and such action will not create the reimbursement obligation recited above nor be in violation of this Agreement or considered premature for purposes of preserving and protecting the Subcontractor's rights.

6.7 PAYMENT USE RESTRICTION Payments received by the Subcontractor shall be used to satisfy the indebtedness owed by the Subcontractor to any person furnishing labor or materials, or both, for use in performing the Subcontract Work through the most current period applicable to progress payments received from the Contractor before it is used for any other purpose. In the same manner, payments received by the Contractor from the Owner for the Subcontract Work shall be dedicated to payment to the Subcontractor. This provision shall bear on this Agreement only, and is not for the benefit of third parties. Moreover, it shall not be construed by the parties to this Agreement or third parties to require that dedicated sums of money or payments be deposited in separate accounts, or that there be other restrictions on commingling of funds. Neither shall these mutual covenants be construed to create any fiduciary duty on the Subcontractor or Contractor, nor create any tort cause of action or liability for breach of trust, punitive damages, or other equitable remedy or liability for alleged breach.

6.8 PAYMENT USE VERIFICATION If the Contractor has reason to believe that the Subcontractor is not complying with the payment terms of this Agreement, the Contractor shall have the right to contact the Subcontractor's subcontractors and suppliers to ascertain whether they are being paid by the Subcontractor in accordance with this Agreement.

6.9 PARTIAL LIEN WAIVERS AND AFFIDAVITS As a prerequisite for payments, the Subcontractor shall provide, in a form satisfactory to the Owner and Contractor, partial lien or claim waivers in the amount of the application for payment and affidavits covering its subcontractors and suppliers for completed Subcontract Work. Such waivers may be conditional upon payment. In no event shall Contractor require the Subcontractor to provide an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

6.10 SUBCONTRACTOR PAYMENT FAILURE Upon payment by the Contractor, the Subcontractor shall promptly pay its subcontractors and suppliers the amounts to which they are entitled. In the event the Contractor has reason to believe that labor, material or other obligations incurred in the performance of the Subcontract Work are not being paid, the Contractor may give written notice of a potential claim or lien to the Subcontractor and may take any steps deemed necessary to assure that progress payments are utilized to pay such obligations, including but not limited to the issuance of joint checks. If upon receipt of notice, the Subcontractor does not (a) supply evidence to the satisfaction of the Contractor that the moneys owing have been paid; or (b) post a bond indemnifying the Owner, the Contractor, the Contractor's surety, if any, and the premises from a claim or lien, the Contractor shall have the right to withhold from any payments due or to become due to the Subcontractor a reasonable amount to protect the Contractor from any and all loss, damage or expense including attorneys' fees that may arise out of or relate to any such claim or lien.

6.11 SUBCONTRACTOR ASSIGNMENT OF PAYMENTS The Subcontractor shall not assign any moneys due or to become due under this Agreement, without the written consent of the Contractor, unless the assignment is intended to create a new security interest within the scope of Article 7 of the Uniform Commercial Code. Should the Subcontractor assign all or any part of any moneys due or to become due under this Agreement to create a new security interest or for any other purpose, the instrument of assignment shall contain a clause to the effect that the assignee's right in and to any money due or to become due to the Subcontractor shall be subject to the claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Subcontract Work.

6.12 PAYMENT NOT ACCEPTANCE Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Subcontract Work.

6.13 ADDITIONAL PAYMENT TERMS

6.13.1 The following items must be submitted to the Contractor before the subcontractor

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receives his first payment:

- .1 Signed Master Subcontract Agreement and Subcontract Work Order or Subcontract Agreement
- .2 Completed insurance certificates
- .3 Performance and payment bonds (if required)
- .4 Cost Breakdowns (if required)
- .5 Current Contractors License (if required by governing municipality)
- .6 Completed W-9 Form
- .7 Material Safety Data Sheets (MSDS)
- .8 Lower tier Subcontractors and supplier waivers (if required)

6.14 SUBCONTRACTOR'S SUB-SUBCONTRACTS AND MATERIAL ORDERS If requested by the Contractor, the Subcontractor agrees to the following:

6.14.1 The Subcontractor shall provide to the Contractor a list containing all of Subcontractor's sub-subcontracts and material orders exceeding \$1,000.00.

6.14.2 With each pay application, the Subcontractor shall furnish invoices from the firms on the list required in item 6.14.1 for that month's work.

6.14.3 With the second and subsequent pay applications the Subcontractor shall furnish lien waivers on a form acceptable to the Contractor for payments made for the previous month's application to the firms on the list required in item 6.14.1.

6.14.4 The Contractor reserves the right to make joint check payment to Subcontractor and any or all of his Sub-subcontractors or suppliers.

6.15 PAYMENT FOR MATERIAL STORED OFF-SITE Payment for material stored off-site is subject to the Owner's approval in advance. The following is a list of items that may be required to authorize payment:

- .1 A list of material consigned to this project (which shall clearly be identified) giving a place of storage together with copies of invoices and the reasons why the material cannot be delivered to the Site.
- .2 Certification that all items have been tagged for delivery to the project and that they will not be used for any other purpose.
- .3 Insurance certificates naming Contractor and the Owner as insured parties.
- .4 Material must be stored in an insured and bonded location
- .5 Contractor, Architect and Owner must be able to inspect the goods at the place of storage
- .6 Bill of sale establishing Owner's title

ARTICLE 7

INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION

7.1 INDEMNITY

7.1.1 INDEMNITY Subcontractor shall indemnify, defend and save harmless Contractor and Owner from and against any and all claims, debts, demands, damages (including direct, liquidated,

consequential, incidental, expenses, costs, and attorney's fees, or other damages), judgments, awards, losses, at any time arising out of any failure by of Subcontractor to perform any of the terms and conditions of this Agreement or which are in any manner directly or indirectly caused or occasioned by or contributed to, or claimed to be caused or occasioned by, or contributed to, by any act, omission, fault or negligence, whether active or passive, of Subcontractor or anyone acting under its direction or control, or on its behalf in connection with or incident to the workers, even though the same may have resulted from the joint, concurring or contributory act, omission or negligence active or passive, of Contractor, Owner or any other person unless the same be caused by the sole negligence or willful misconduct of Contractor, or Contractor's agents, servants or independent contractors who are directly responsible to Contractor. Without limiting the generality of the foregoing, the same shall include injury or death to any person or persons, including agents and employees of Owner, Contractor, and Subcontractor, and damage to any property, regardless of location, including property of Owner, Contractor, or Subcontractor, and shall extend to any similar obligations of Contractor under the General Contract with respect to the work hereunder, Subcontractor will on request and at its expense, defend any action, suit or proceedings arising hereunder and shall reimburse and pay Contractor for any loss, cost, damage or expense (including legal fees) suffered by it hereunder.

7.1.2 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.2 INSURANCE

7.2.1 SUBCONTRACTOR'S INSURANCE Before commencing the Subcontract Work, and as a condition of payment, the Subcontractor shall purchase and maintain, and require its sub-tier contractors to purchase and maintain, insurance that will cover the claims arising out of its operations under this Agreement, whether the operations are by the Subcontractor, or any of its consultants or subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

7.2.2 MINIMUM LIMITS OF LIABILITY The Subcontractor shall maintain at least the limits of liability with an insurance that are rated A- and VII or better by A.M. Best's key rating guide, and are approved to do business in the state in which the Project is being constructed, and are satisfactory to Contractor. Payment will be withheld for work performed under this Subcontract Agreement or the Subcontract Work Order until verification of all insurance coverage required under the terms of this Subcontract is received.

7.2.2.1 SUBCONTRACTOR INSURANCE REQUIREMENTS Insurance requirements are as follows:

- A. Workers' Compensation and Employer's Liability Insurance which shall extend to the workers' compensation laws of any state, district, or territory of the United States in which the work is situated. Employer's Liability Insurance shall have limits of not less than \$1,000,000 each accident/\$1,000,000 aggregate for disease, \$1,000,000 disease per employee.
- B. Commercial General Liability ("CGL") Insurance with policy limits of not less than \$1,000,000 as to each occurrence for Bodily Injury, Personal Injury, and Property Damage coverage, \$2,000,000 Products – Completed Operations Aggregate, and a General Aggregate of \$2,000,000 per project. Such policy or policies shall specify coverage for completed operations and the following:

1. Premises and Operations Liability;
 2. Contractual Liability insuring the obligations assumed by Subcontractor in this Agreement;
 3. Products – Completed Operations Liability;
 4. Broad Form Property Damage Liability;
 5. Explosion, Collapse, and Underground Hazards.
 6. Completed Operations insurance shall be extended by endorsement for at least 8 years after either ninety (90) days following Substantial Completion of the Subcontract Work or final payment to the Contractor, whichever is earlier.
- C. Automobile Liability insurance, which shall cover liability arising out of the operations, use, loading or unloading of any motor vehicles, including trailers and Owned, Non-Owned and Hired Autos with a limit of not less than \$1,000,000. The policy must include coverage for liability assumed under an insured contract. If Subcontractor or its subcontractors are responsible to transport any hazardous materials, the Subcontractor must provide the following commercial automobile insurance endorsements:
1. Endorsement CA 99 48 10 13 (Pollution Liability – Broadened Coverage for Covered Autos)
 2. Endorsement MCS-90 (Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980).
- D. If the Contractor specifies any additional insurance of higher limits than herein specified, Subcontractor shall, at its expense, procure insurance coverage to comply therewith. Before commencing any work hereunder, Subcontractor shall furnish Contractor certificates from approved insurance companies, evidencing that all the foregoing insurance is in force. Contractor may withhold payment otherwise due to Subcontractor until such certificates have been furnished by Subcontractor, or after receipt of notice of intent to cancel policy, until withdrawal of said notice, or the reinstatement of any cancelled policy. The requirement for carrying insurance hereunder shall not be in derogation of other provisions of this Agreement.
- E. Equipment insurance covering all tools and equipment owned, leased or used by the Subcontractor in the performance of the Subcontract Work. The insurance shall extend to equipment, materials and supplies stored off the Project site or in transit to the project that are not intended to be furnished as part of the Subcontract work and incorporated into the Project.
- F. If Subcontractor is engaged for environmental abatement or remediation work, including treatment, storage, removal or transport of Hazardous Materials at, to, or from the Project site, Subcontractor must carry Contractor's Pollution Liability Insurance with limits of not less than \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate. Completed operations coverage shall be extended for at least 8 years after either ninety (90) days following Substantial Completion of the Subcontract Work or final payment to the Contractor, whichever is earlier.

7.2.3 GENERAL REQUIREMENTS RELATED TO SUBCONTRACTOR INSURANCE REQUIREMENTS

- A. For all insurance policies required by this Exhibit, except contractor's equipment insurance, which deductible shall not exceed \$10,000, deductibles or self-insured retentions may not exceed \$25,000 without the approval of the Contractor.
- B. If self-insured, the Subcontractor agrees to administer its self-insurance program in a commercially reasonable manner to ensure the availability of funds to cover losses required to be insured against by Subcontractor under the terms of this Exhibit.
- C. Subcontractor, prior to commencement of the Subcontract Work under this Agreement, shall provide the Contractor with certificates of insurance and signed insurance policy endorsements, on forms acceptable to Contractor, as evidence that the required insurance is in full force and effect. Where applicable, each certificate of insurance and signed insurance policy endorsement shall specifically provide verification that **A.R. Mays Construction, Inc. and its affiliates and respective officials, officers, directors, shareholders, employees, members, managers and representatives; Owner and Owner's Lender** (collectively called "**Insured Parties**") have been added as additional insureds on the insurance policy being referenced.
- D. The Certificates of Insurance shall be addressed as follows: A.R. Mays Construction Inc, 6900 E. Indian School Rd, Ste 200, Scottsdale, AZ 85251
- E. All insurance policies required under this Exhibit shall be in force until the end of the term of this Agreement or completion of the Project, whichever comes later.
- F. If the insurance expires during the term of the Agreement, the Subcontractor shall immediately renew or replace the required insurance and provide a new current certificate of insurance and signed insurance policy endorsements, or it may be declared in breach of contract. Contractor reserves the right to withhold all progress and retention payments until the breach is cured to the satisfaction of Contractor. Subcontractor must provide renewal insurance certificates and signed policy endorsements to Contractor within ten (10) days following the expiration of the previous insurance certificates and signed policy endorsements.
- G. In the event Subcontractor fails to keep in effect at all times the specified insurance coverage, Contractor may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
- H. The insurance required by the Subcontractor Insurance Requirements above, except for Workers Compensation and Employers Liability insurance, shall be endorsed to include the Insured Parties as additional insureds, but only with respect to liability assumed by Subcontractor under the terms of this Agreement, or liability arising out of the performance of the Subcontract Work. The CGL insurance endorsement shall be issued on ISO Forms CG 20 10 07 04 and CG 20 37 07 04 or their equivalent.
- I. Subcontractor, and any insurer providing insurance required by the Subcontractor Insurance Requirements above shall be endorsed, or shall include a specific condition, to waive any right of recovery or subrogation it may have against the Insured Parties for direct physical loss or damage to the Project, or for any liability arising out of the Subcontract Work performed by Subcontractor under this Agreement.
- J. All insurance policies required under the Subcontractor Insurance Requirements above, shall contain a provision that coverage will not be materially changed or cancelled without thirty (30) days prior written notice to Contractor.
- K. Subcontractor shall be responsible for and may not recover from any of the Insured Parties any deductible or self-insured retention that is connected to the insurance required under the Subcontractor Insurance Requirements section above.

- L. The insurance required under the Subcontractor Insurance Requirements section above, except for Workers Compensation and Employers Liability insurance shall be endorsed to be primary and non-contributing with any insurance or self-insurance maintained by any of the Insured Parties.
- M. Contractor reserves the right to request certified copies of any of the insurance policies required under the Subcontractor Insurance Requirements section above, which shall be provided by the Subcontractor within ten (10) working days following the request by Contractor
- N. The cost of all insurance required under the Subcontractor Insurance Requirements section above is the sole cost of the Subcontractor and is a component part of the Subcontractor's compensation.
- O. Subcontractor's insurance shall strictly comply with the requirements of this Insurance Exhibit B and any endorsement or exclusion which modifies the requirements herein shall not be acceptable. Without limitation to the foregoing, the following endorsements/exclusions are not acceptable without the prior consent of Contractor: 1) Any Form, including Form CG 2294 (10/01) or its equivalent, which purports to remove the Subcontractor exception to the Damage to Your Work Exclusion; 2) any CGL insurance endorsement or exclusion excluding injury or damage: (a) arising from explosion, collapse, underground property damage, or (b) arising from a prior occurrence causing continuous or progressively deteriorating injury or damage; 3) any CGL Insurance endorsement or exclusion excluding damage or injury caused directly, indirectly, in whole or in part by the exterior insulation and finish system or by the design, installation, construction or manufacture thereof; 4) any CGL provision allowing for reimbursement of defense costs to the insurance carrier from the additional insured in the event of a later determination of non-coverage of all or part of any claim(s), 5) If the work to be performed by the Subcontractor includes blasting; grading of land; excavation; burrowing; filling; backfilling; tunneling; drilling; pile driving; coffer-dam work; caisson work; moving, shoring, underpinning, raising or demolition of any building or structure; or removal or rebuilding of any building or structural support the policy shall not exclude injury to or destruction of property arising out of or caused by such work.

7.2.4 PROFESSIONAL LIABILITY INSURANCE

7.2.4.1 PROFESSIONAL LIABILITY INSURANCE The Subcontractor shall require the Designer(s) to maintain Project Specific Professional Liability Insurance with a company satisfactory to the Contractor, including contractual liability insurance against the liability assumed in Paragraph 2.8, and including coverage for any professional liability caused by any of the Designer's(s') consultants. Said insurance shall have specific minimum limits as set forth below:

Limit of \$1,000,000 per claim.

General Aggregate of \$2,000,000 for the subcontract services rendered

The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all subcontract services rendered by the Designer. Said insurance shall be continued in effect with an extended period of 8 years following final payment to the Designer.

Such insurance shall have a maximum deductible amount of \$25,000 per occurrence. The deductible shall be paid by the Subcontractor or Designer.

7.2.4.2 The Subcontractor shall require the Designer to furnish to the Subcontractor and Contractor, before the Designer commences its services, a copy of its professional liability policy evidencing the coverages required in this Paragraph.

7.2.5 NUMBER OF POLICIES Commercial General Liability Insurance and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by

an Excess or Umbrella Liability Policy.

7.2.6 BUILDERS RISK INSURANCE

7.2.6.1 Upon written request of the Subcontractor, the Contractor shall provide the Subcontractor with a copy of the Builder's Risk policy of insurance or any other property or equipment insurance in force for the Project and procured by the Owner or Contractor. The Contractor will advise the Subcontractor if a Builder's Risk policy of insurance is not in force.

7.2.6.2 If the Owner or Contractor has not purchased Builder's Risk insurance satisfactory to the Subcontractor, the Subcontractor may procure such insurance as will protect the interests of the Subcontractor, its subcontractors and their subcontractors in the Subcontract Work.

7.2.6.3 If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Subcontract Documents, the Subcontractor shall procure and maintain at the Subcontractor's own expense property and equipment insurance for the Subcontract Work including portions of the Subcontract Work stored off the site or in transit, when such portions of the Subcontract Work are to be included in an application for payment under Article 7.2.7.4 Any losses incurred by the Subcontractor shall not be the responsibility of the Contractor.

7.2.7 WAIVER OF SUBROGATION

7.2.7.1 The Contractor and Subcontractor waive all rights against each other, the Owner and the Architect/Engineer, and any of their respective consultants, subcontractors, and sub-subcontractors, agents and employees, for damages caused by perils to the extent covered by the proceeds of the insurance provided in Clause 7.2.3.1, except such rights as they may have to the insurance proceeds. The Subcontractor shall require similar waivers from its subcontractors.

7.2.8 ENDORSEMENT If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

ARTICLE 8

CONTRACTOR'S RIGHT TO PERFORM SUBCONTRACTOR'S RESPONSIBILITIES AND TERMINATION OF AGREEMENT

8.1 FAILURE OF PERFORMANCE

8.1.1 NOTICE TO CURE If the Subcontractor refuses or fails to supply enough properly skilled workers, proper materials, or maintain the Progress Schedule, or fails to make prompt payment to its workers, subcontractors or suppliers, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, the Subcontractor shall be deemed in default of this Agreement. If the Subcontractor fails within three (3) days after written notification to commence and continue satisfactory correction of the default with diligence and promptness, then the Contractor without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

.1 supply workers, materials, equipment and facilities as the Contractor deems necessary for the completion of the Subcontract Work or any part which the Subcontractor has failed to complete or perform after written notification, and charge the cost, including reasonable overhead, profit, attorneys' fees, costs and expenses to the Subcontractor;

.2 contract with one or more additional contractors to perform such part of the Subcontract Work as the Contractor determines will provide the most expeditious completion of the Work, and charge the cost to the Subcontractor as provided under Clause 8.1.1.1; and/or

.3 withhold any payments due or to become due the Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of the Contractor.

In the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice, but the Contractor shall give the Subcontractor notice promptly after the fact as a precondition of cost recovery.

8.1.2 TERMINATION BY THE CONTRACTOR The Contractor may furnish those materials, equipment and/or employ such workers or subcontractors as the Contractor deems necessary to maintain the orderly progress of the Work. All costs incurred by the Contractor in performing the Subcontract Work, including reasonable overhead, profit and attorneys' fees, costs and expenses, shall be deducted from any moneys due or to become due the Subcontractor. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount. At the Subcontractor's request, the Contractor shall provide a detailed accounting of the costs to finish the Subcontract Work. If Contractor fails to commence and satisfactorily continue correction of default within (3) three days after written notification issued in 8.1.1, then the Contractor may, in lieu of or in addition to 8.1.1, terminate the Subcontract Agreement or Subcontract Work Order without any further notice.

8.1.3 USE OF SUBCONTRACTOR'S EQUIPMENT If the Contractor performs work under this Article, either directly or through other subcontractors, the Contractor or other subcontractors shall have the right to take and use any materials, implements, equipment, appliances or tools furnished by, or belonging to the Subcontractor and located at the Project site for the purpose of completing any remaining Subcontract Work. Immediately upon completion of the Subcontract Work, any remaining materials, implements, equipment, appliances or tools not consumed or incorporated in performance of the Subcontract Work, and furnished by, belonging to, or delivered to the Project by or on behalf of the Subcontractor, shall be returned to the Subcontractor in substantially the same condition as when they were taken, normal wear and tear excepted.

8.2 BANKRUPTCY

8.2.1 TERMINATION ABSENT CURE If the Subcontractor files a petition under the Bankruptcy Code, this Agreement shall terminate if the Subcontractor or the Subcontractor's trustee rejects the Agreement or, if there has been a default, the Subcontractor is unable to give adequate assurance that the Subcontractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

8.2.2 INTERIM REMEDIES If the Subcontractor is not performing in accordance with the Progress Schedule at the time a petition in bankruptcy is filed, or at any subsequent time, the Contractor, while awaiting the decision of the Subcontractor or its trustee to reject or to assume this Agreement and provide adequate assurance of its ability to perform, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Progress Schedule. The Contractor may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided including, but not limited to, reasonable overhead, profit and attorneys' fees. The Subcontractor shall be liable for the payment of any amount by which costs incurred may exceed the unpaid balance of the Subcontract Price.

8.3 SUSPENSION BY OWNER Should the Owner suspend the Work or any part which includes the Subcontract Work and such suspension is not due to any act or omission of the Contractor, or any other person or entity for whose acts or omissions the Contractor may be liable, the Contractor shall notify the Subcontractor in writing and upon receiving notification the Subcontractor shall immediately suspend the Subcontract Work. In the event of Owner suspension, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor.

8.4 **TERMINATION BY OWNER** Should the Owner terminate its contract with the Contractor or any part which includes the Subcontract Work, the Contractor shall notify the Subcontractor in writing within three (3) days of the termination and upon written notification, this Agreement shall be terminated and the Subcontractor shall immediately stop the Subcontract Work, follow all of Contractor's Instructions, and mitigate all costs. In the event of Owner termination, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the owner termination and to permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor. In no event shall the Subcontractor be entitled to anticipatory profit or damages or consequential damages for any termination, nor shall the Subcontractor be entitled to assert a claim in quantum meruit or any other measure of damages. In the event of disagreement as to the amount due the Subcontractor on any termination, if any, the dispute shall be decided in accordance with Article 9.

8.5 **CONTINGENT ASSIGNMENT OF THIS AGREEMENT** The Contractor's contingent assignment of this Agreement to the Owner, as provided in the Owner Contractor agreement, is effective when the Owner has terminated the Owner-Contractor agreement for cause and has accepted the assignment by notifying the Subcontractor in writing. This contingent assignment is subject to the prior rights of a surety that may be obligated under the Contractor's bond, if any. Subcontractor consents to such assignment and agrees to be bound to the assignee by the terms of this Agreement, provided that the assignee fulfills the obligations of the Contractor. Upon receipt of a written request from the Subcontractor, a copy of the Owner-Contractor Agreement ("Prime Contract") shall be made available to the Subcontractor for its review.

8.6 **SUSPENSION BY CONTRACTOR** The Contractor may order the Subcontractor in writing to suspend all or any part of the Subcontract Work for such period of time as may be determined to be appropriate for the convenience of the Contractor. Phased Work or interruptions of the Subcontract Work for short periods of time shall not be considered a suspension. The Subcontractor, after receipt of the Contractor's order, shall notify the Contractor in writing in sufficient time to permit the Contractor to provide timely notice to the Owner in accordance with the Owner-Contractor agreement of the effect of such order upon the Subcontract Work. The Subcontract Amount or Progress Schedule shall be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Agreement caused by such suspension. No claim under this Paragraph shall be allowed for any costs incurred more than fourteen (14) days prior to the Subcontractor's notice to the Contractor. Neither the Subcontract Amount nor the Progress Schedule shall be adjusted for any suspension, to the extent that performance would have been suspended, due in whole or in part to the fault or negligence of the Subcontractor or by a cause for which Subcontractor would have been responsible. The Subcontract Amount shall not be adjusted for any suspension to the extent that performance would have been suspended by a cause for which the Subcontractor would have been entitled only to a time extension under this Agreement. Upon receipt of a written request from the Subcontractor, a copy of the Owner-Contractor Agreement ("Prime Contract") shall be made available to the Subcontractor for its review.

8.7 **WRONGFUL EXERCISE** If the Contractor wrongfully exercises any option under this Article, the Contractor shall be liable to the Subcontractor solely for the reasonable value of Subcontract Work performed by the Subcontractor prior to the Contractor's wrongful action, including reasonable overhead and profit on the Subcontract Work performed, less prior payments made, together with reasonable overhead and profit on the Subcontract Work not executed, and other costs incurred by reason of such action.

ARTICLE 9

DISPUTE RESOLUTION

9.1 **INITIAL DISPUTE RESOLUTION** If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be resolved through direct discussions, the parties shall participate in mediation. Mediation shall be held in Phoenix, Arizona. Engaging in mediation is a condition precedent to any other form of dispute resolution or civil litigation.

9.2 **WORK CONTINUATION AND PAYMENT** Unless otherwise agreed in writing, the Subcontractor shall continue the Subcontract Work and maintain the Progress Schedule during any dispute resolution proceedings. If the Subcontractor continues to perform, the Contractor shall continue to make payments in accordance with this Agreement.

9.3 **NO LIMITATION OF RIGHTS OR REMEDIES** Nothing in this Agreement shall limit any rights or remedies not

expressly waived by the Subcontractor which the Subcontractor may have under lien laws or payment bonds.

9.4 MULTIPARTY PROCEEDING The parties agree that to the extent permitted by Subcontract Document all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. To the extent disputes between the Contractor and Subcontractor involve in whole or in part disputes between the Contractor and the Owner, disputes between the Subcontractor and the Contractor shall be decided by the same tribunal and in the same forum as disputes between the Contractor and the Owner.

9.5 DISPUTES BETWEEN CONTRACTOR AND SUBCONTRACTOR In the event that the provisions for resolution of disputes between the Contractor and the Owner contained in the Subcontract Documents do not permit consolidation or joinder with disputes of third parties, such as the Subcontractor, resolution of disputes between the Subcontractor and the Contractor involving in whole or in part disputes between the Contractor and the Owner shall be stayed pending conclusion of any dispute resolution proceeding between the Contractor and the Owner. At the conclusion of those proceedings, disputes between the Subcontractor and the Contractor shall be submitted again to mediation pursuant to Paragraph 9.1. Any disputes not resolved by mediation shall be decided in the manner selected in the agreement between the Owner and the Contractor.

9.5.1 In case of any dispute between the Subcontractor and Contractor, Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to owner by the terms of the Owner-Contractor Agreement ("Prime Contract") and by any and all decisions or determinations made thereunder by the party or board so authorized in the Prime Contract. The Contractor agrees to present to the owner, in Contractor's name, all of the Subcontractor's claims for extras whenever the Contractor is permitted to do so by the terms of the Prime Contract and to further invoke, on behalf of the Subcontractor, those provisions in the Prime Contract for determining disputes. The Subcontractor agrees to exhaust the remedies available under the Prime Contract, including remedies available for breach of contract, through the Contractor prior to instituting a separate action in any court; or, in the event that a separate action is instituted prior to the exhaustion of the aforesaid remedies, the Subcontractor agrees to stay said action pending the exhaustion of remedies against the owner. Subcontractor also agrees to be bound to the Contractor to the same extent the Contractor is bound to owner by the final decision of an arbitration panel or court of competent jurisdiction, whether or not Subcontractor is a party to such proceedings. If such dispute is prosecuted or defended by Contractor against owner under the terms of the Prime Contract in court action, Subcontractor agrees to furnish all documents, statements, witnesses and other information required by Contractor for such purpose and to pay or reimburse Contractor for all expenses and costs, if any, incurred in connection therewith. It is expressly understood that as to any and all materials or services furnished or agreed to be furnished by Subcontractor, and as to any and all damages, if any incurred by Subcontractor, in connection with this construction project, Contractor may be liable to Subcontractor to the same extent that owner is liable to Contractor but never to any greater extent than the owner is liable to the Contractor. No dispute shall interfere with the progress of construction and Subcontractor shall proceed with its work as directed.

9.5.2 If at any time a controversy should arise between the Contractor and Subcontractor with respect to any matter or thing involved in this subcontract or construction project, which controversy is not controlled or determined by the preceding paragraphs or other provisions of the Subcontract Agreement or Subcontract Work Order, then the decision of the Contractor shall be followed by the Subcontractor, and said controversy shall be decided as follows:

9.5.2.1 The Subcontractor shall conclusively be bound by and abide by the Contractor's decision, unless the Subcontractor shall commence arbitration proceedings or legal action as hereinafter provided.

9.5.2.2 If the Subcontractor decides to appeal from the decision of the Contractor, then the controversy shall be decided by arbitration under the rules as hereinafter provided if the amount in controversy in the aggregate does not exceed \$25,000, and the arbitration decision shall be final and binding on both parties to resolve the controversy; provided, however, that arbitration proceedings shall be commenced by Subcontractor not later than thirty (30) days following receipt of notice of Contractor's decision.

9.5.2.3 No dispute or controversy shall interfere with the progress of construction, and

Subcontractor shall proceed with its work without interruption, deficiency, or delay.

9.5.2.4 The Board of Arbitration shall consist of one person mutually agreeable to by the Contractor and Subcontractor. If agreement as to the arbitrator cannot be reached, then the Contractor shall select one person, and the Subcontractor shall select another, and these two shall select a third person, and these three persons shall then constitute the Board of Arbitration. The place of arbitration shall be Phoenix, Arizona. The written decision of any two of this board shall be final and binding on both parties hereto. Each party shall pay one-half of the expenses of arbitration (including arbitrator's fees and expenses, reporting costs and other such costs) until such time as Arbitration board decides matter and then the prevailing party shall have paid by the other party its share of attorney's fees, costs, and arbitration costs. The prevailing party shall be entitled to all (not a pro-rata share based on percentage of the amount recovery as compared to amount of claim) of its attorneys' fees and costs associated with arbitrating the matter. Nothing contained herein shall excuse Subcontractor from completion of the work in the manner provided in this subcontract. The pendency of the dispute or arbitration proceeding not shall excuse any interruption, deficiency, delay, or noncompliance there with.

9.5.2.5 Arbitration shall be deemed to have been commenced when the Subcontractor furnishes in writing to Contractor the name of the arbitrator of Subcontractor's selection.

9.5.3 In the event any dispute is not required to be submitted to arbitration by the provisions of the Prime Contractor this subcontract, an action may only be commenced by the Subcontractor in a court of competent jurisdiction if commenced within one year following substantial completion of the project. The issuance of an architect's certificate of substantial completion shall be conclusive as to the date of substantial completion. The prevailing party shall be entitled to all (not a pro-rata share based on percentage of the amount of recovery as compared to amount of claim) of its attorneys' fees and costs associated with litigating the matter.

9.6 COST OF DISPUTE RESOLUTION The cost of any mediation proceeding shall be shared equally by the parties participating. The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by arbitration designated in the Subcontract Documents shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such dispute resolution process. The prevailing party shall be entitled to all (not a pro-rata share based on percentage of the amount recovery as compared to amount of claim) of its attorneys' fees and costs associated with arbitrating the matter.

ARTICLE 10

MISCELLANEOUS PROVISIONS

10.1 GOVERNING LAW This Agreement shall be governed by the law in effect at the location of the Project.

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

10.3 NO WAIVER OF PERFORMANCE The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of term, covenant, condition or right with respect to further performance.

10.4 TITLES The titles given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

10.5 JOINT DRAFTING The parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

10.6 OFFSETS The Subcontractor hereby agrees and consents that Contractor may deduct backcharges or set off any sum(s) owing by the Subcontractor to Contractor under the terms of the Subcontract Agreement or Subcontract Work Order, any other Subcontract Agreement or Subcontract Work Order or otherwise, from any amounts earned, due or to become due to Subcontractor under this Subcontract Agreement or Subcontract Work Order relationship or

transaction between Contractor and Subcontractor.

10.7 RECORD DRAWINGS The Subcontractor shall maintain on the Site a complete, current set of record drawings with all as-built information involving his work including measured dimensions of all concealed pipe, conduit, duct, etc. Failure to do so will be grounds for the Contractor to suspend all progress or final payments until the record drawings are brought to a current status.

10.8 SUBCONTRACTOR INSPECTIONS The Subcontractor shall fully inspect the substrate, preceding work and other conditions affecting his installation and shall report in writing to the Contractor any conditions that are unsatisfactory prior to proceeding.

10.9 CONTRACTOR'S SERVICE CLAUSE If additional services are required by the Contractor's staff to assist the Subcontractor in performing his obligations in this Subcontract Agreement, the cost of these additional services may be deducted from any amounts earned, due or to become due to Subcontractor under the Subcontract Agreement or Subcontract Work Order, any other Subcontract Agreement or Subcontract Work Order, relationship or transaction between Contractor and Subcontractor. Additional services include but are not limited to rechecking Subcontractor's shop drawings and submittals upon second and subsequent submittals; staff time, phone expenses and travel expenses to expedite Subcontractor's materials; staff time and consulting costs to troubleshoot non-conforming work by Subcontractor; additional accounting and data processing time to issue joint checks to Subcontractor and his vendors and/or Sub-subcontractors; and staff time and attorney's fees required due to invalid liens from Subcontractor or his vendors or Sub-subcontractors.

10.10 SUBCONTRACTOR'S REPRESENTATIVE The Subcontractor shall advise the Contractor who their office representative and field representative is for each Project. The office representative shall be the Contractor's contact for any matter regarding the Subcontract Agreement or Subcontract Work Order. The office representative shall attend weekly coordination meetings if requested by the Contractor. The Contractor may also give directions regarding scheduling, sequencing, production, quality, safety, clean up, field changes and other field matters to the Subcontractor's field representative. The field representative shall be on-site at all times work is being performed by the Subcontractor and shall be the Contractor's sole field contact regardless of how many trades or crews the Subcontractor may have on the Project.

10.11 UNDERGROUND DIGGING The Subcontractor shall comply with all Federal, State and Municipality requirements as it relates to his work including determining locations of underground facilities, careful and prudent excavation, and notice to the utility company in the event of damage, payment of the cost of repairs and payment of civil penalties for violation of the law.

10.12 USE OF SITE The Subcontractor agrees to abide by Contractor's decision in regard to location and allotment of all storage and working space on the project.

10.13 ADMINISTRATIVE COMPLAINT If Subcontractor files a complaint, claim, or otherwise makes a grievance against the Contractor with any administrative agency or body, and it is determined that the Contractor is not at fault as to the item(s) complained of or that agency or administrative body requires no action by the Contractor as to the item(s) complained of, then Subcontractor shall pay the Contractor for all attorney's fees and all attendant costs of defending against such complaint, claim, or grievance, which are attributable to that item(s) of complaint.

10.14 SAFETY

10.14.1 Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to occupational safety and health, accident, preventions, safety equipment and practices, including the accident prevention and safety programs of Owner and Contractor. Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and assumes sole responsibility for providing a safe place to work for its employees and for employees of its Subcontractors and suppliers, for the adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards and statutes.

10.14.2 Subcontractor shall indemnify, defend and hold harmless Contractor, its members, officers, agents, and employees from any claim, citation, suit, penalty, damages, liability, loss, cost and expense, including attorney's fees, arising from any failure or alleged failure of Subcontractor, to comply with any law, order, citation, rule, regulation, standard or statute in any way relating to the

occupational health or safety of employees, including but not limited to the use of equipment, hoists, elevators or scaffolds of Contractor or others, unless caused by the sole negligence or willful misconduct of Contractor, or Contractor's agents, servants or independent contractors who are directly responsible to Contractor.

10.15 CLEAN JOBSITE To assure the safety of all jobsite personnel including personnel of this Subcontractor, a clean jobsite clear of construction debris must be maintained at all times. Therefore, cleanup of debris generated by the Subcontractor must be performed on a daily basis. Subcontractor acknowledges that it will abide by this policy by cleaning up all debris generated by its work and no further notices are required or will be issued for any violations. If cleanup of debris generated by this subcontractor is not performed on a daily basis by the Subcontractor throughout the duration of the project, the Subcontractor hereby authorizes the Contractor to perform cleanup of Subcontractor's debris with Contractor's forces at the Subcontractor's laborer rate identified in the Subcontract Work Order. If a laborer rate is not stated in the Subcontract Work Order, a labor rate charge of \$26/hr with a two-hour minimum will be applied. This subcontractor hereby authorizes all Contractor's costs incurred for this clean up to be deducted from the Subcontract amount.

10.16 PUNCH LIST WORK All punch list work is to be performed and completed within 10 days after receiving any punch list. Subcontractor acknowledges that no further notices are required or will be issued for uncompleted punch list work. The Project Superintendent must sign off all completed punch list items. It is the Subcontractor's responsibility to obtain sign off. If any punch list items are not completed and signed off within the 10 day time period, Contractor will complete punch list items with its own forces at a supervisor's rate of \$65/hr and a laborer rate of \$26/hr. Markup at the rate identified in the Subcontract Work Order will be applied to all labor and materials. Subcontractor hereby authorizes all costs incurred including mark up to be deducted from the contract amount. If Contractor does not complete outstanding punch list items with its own forces it may hire another Subcontractor to complete outstanding punch list work and Subcontractor authorizes all costs incurred including markup deducted from this Subcontract amount.

ACKNOWLEDGMENT OF RECEIPT & REVIEW OF A.R. MAYS CONSTRUCTION SUBCONTRACTOR PROJECT SAFETY PLAN FOR ANY AND ALL A.R. MAYS CONSTRUCTION PROJECTS

Attached is a copy of the A.R. Mays Construction Subcontractor Project Safety Plan adopted for this project and included in your company's subcontract agreement with A.R. Mays Construction. These guidelines are provided to enhance the safety of all construction personnel at the job-site.

It is the responsibility of the A.R. Mays Construction Project Manager or Field Superintendent for this job to provide and review this Subcontractor Project Safety Plan with all Subcontractors on the job.

It is the Subcontractor's responsibility to read this Subcontractor Project Safety Plan and insure that its employees comply with it.

Please maintain one copy of this Subcontractor Safety Plan at each job-site.

I have read and understand the Subcontractor Project Safety plan including the General Safety Rules.

Subcontractor: _____

Signed: _____



By: _____
(Please Print Name)

Title: _____

Date: _____

SUBCONTRACTOR PROJECT SAFETY PLAN FOR ALL A.R. MAYS CONSTRUCTION PROJECTS

I. Introduction

It shall be the policy of each Subcontractor to provide a healthy and safe place to work with the prevention of accidents being recognized as necessary at all times. Per the Subcontract Agreement, Subcontractors on the project have a legal obligation to perform their work in a safe manner and meet these minimum safety requirements:

- A. Avoid loss of life, injury of any person, and damage to or loss of property.
- B. Instill safety awareness in all employees.
- C. Assure that an organized and systematic approach is utilized to identify and correct safety hazards, and that safety is fully considered from conception to completion of all activities.
- D. Review, evaluate, and implement plans, systems and activities related to establishing and meeting safety requirements unique to this project.

II: Subcontractor's Minimum Safety Plan Requirements

- A. Each Subcontractor shall have a comprehensive, written safety program that includes all items from this plan as appropriate.
- B. Each Subcontractor is required to have a written code of safe practices that specifically addresses the exposures at the project site and exposures inherent in the Subcontractor's trade.
- C. Each Subcontractor shall designate in writing a Safety Coordinator prior to the start of work. The

Safety Coordinator shall have primary responsibility for Subcontractor's compliance with the Subcontractor Project Safety Plan and shall carry out the duties provided for in this plan.

- D. Names of the personnel trained in CPR and First Aid shall be provided to A.R. Mays Construction in writing prior to the start of work.

III. Project Safety Orientation Meeting

Prior to the start of construction the Subcontractor's Safety Coordinator shall meet and review safety requirements of the Project with A.R. Mays Construction. The review should include:

- A. Introduction of Subcontractor's Safety Coordinator and/ or superintendent or foreman.
- B. General discussion of need to follow the OSHA standards and A.R. Mays Construction Subcontractor Project Safety Plan at minimum and particular Subcontractor requirements for this Project.
- C. Clarify any unique Subcontractor safety requirements.
- D. Review reporting required by this Subcontractor Project Safety Plan during the construction period.
- E. Clarify location for field office, personnel facilities, material storage, debris removal, material flow, and traffic movement.

IV. Subcontractor's Minimum Safety Requirements During Construction

During the construction period, the Subcontractor shall:

- A. Comply with all OSHA and A.R. Mays Construction Subcontractor Project Safety Plan requirements, as well as the requirements of the Subcontractor's own safety program.
- B. Perform daily (informal) visual inspections of all portions of its work on the project with hazardous conditions promptly reported verbally or by handwritten memo to the Subcontractor's superintendent and to A.R. Mays Construction. Any hazardous condition shall be abated by the responsible Subcontractor immediately, if possible. At a minimum, the hazardous condition shall be barricaded, marked with safety tape or otherwise isolated and indicated in an appropriate manner so as to prevent injury to any person.
- C. A.R. Mays Construction's Field Superintendent shall be promptly notified in writing by the Subcontractor of any hazardous conditions on the project site that cannot be immediately remedied by the Subcontractor.
- D. The Subcontractor Safety Coordinator shall effect the following actions:
 - 1. Establish a formal, regularly scheduled weekly safety toolbox meeting prior to the start of work and inform A.R. Mays Construction in writing of day, time, and place for the weekly meeting. Transmit a copy of the meeting minutes to the A.R. Mays Field Superintendent.
 - 2. Conduct the weekly safety toolbox meeting and site inspections of the project. The use of a special checklist during such inspections should be encouraged. The meeting should cover at a minimum:
 - a. Minutes of the previous safety meetings and bulletins as they affect Subcontractor's work.
 - b. Review of work area hazards and preventive measures to avoid each hazard.
 - c. Designation of a crewmember to be in charge in the event of an emergency.
 - d. Location of fire extinguishers and provisions for emergency treatment at the work site and dissemination of the information to all employees.
 - e. Worker indoctrination for all new employees coming to the job-site.
 - f. Injuries that have occurred to their workers.
 - g. A review of the Subcontractor's work expected in the next week and any related safety issues.
 - h. Coordination and safety issues involving other Subcontractors.
 - i. Any known serious hazardous condition or safety issue discussed at the meeting must be addressed in writing to the

- A.R. Mays Construction's Field Superintendent within 24 hours of the meeting, or immediately if required to protect persons and property from immediate danger or damage.
- j. A.R. Mays Construction's Field Superintendent or other representative may, but are not required to, attend these meetings.
- 3. Check periodically with the other Subcontractor's Safety Coordinators on safety matters and coordination of work.

V. Subcontractor's Accident Response

- A. Provision shall be made by each Subcontractor for immediate and proper first aid and/or treatment by a physician for every work injury.
- B. For injuries or emergencies requiring treatment by a physician, a hospital emergency or physician should be called to alert them that an injured employee is arriving.
- C. A list of doctors, hospitals, and emergency services shall be posted in a conspicuous place in the Subcontractor's field office.

VI. Subcontractor Record Keeping and Reporting of Accidents

- A. Recordable accidents are as defined in the OSHA regulations. In summary, they include all fatalities, lost work day injuries, and work related illnesses.
- B. Complete the Subcontractor's accident investigation report and the employer's "First Report of Injury," for each recordable accident. Submit a copy of these reports to the A.R. Mays Construction's Field Superintendent, appropriate authorities, and other affected Subcontractors with 24 hours of each lost time accident involving any worker on the site.
- C. Within 24 hours of receipt, provide the A.R. Mays Construction's Field Superintendent with copies of any citations, inspections, reports or notices from OSHA or any other governmental or regulatory agency.

VII. Subcontractor Fire Prevention

- A. Subcontractor's Safety Coordinator should, on a weekly basis, inspect project for adherence to special procedures established due to pre- planning efforts and to normal fire prevention as outlined by the Subcontractor's program.
- B. Subcontractor Field Offices on Site:
 - 1. Are to be constructed using only fire retardant materials. As a minimum, any lumber used in field office construction should meet the American Wood Preserves Association's Standard C1, C20, and C27, and shall bear certificates of performance.
 - 2. All materials should have a flame spread rating no greater than 25 (ASTM standard E84) with no evidence of progressive combustion for at least 30 minutes.
 - 3. All job offices should be located at least 5 feet from material, which present extraordinary fire hazards.
 - 4. Each job office should have at least one 20# ABC fire extinguisher.
 - 5. Rubbish should not be permitted to accumulate adjacent to any job office.
 - 6. No oily clothes, oily rags, or fuels should be stored in job offices.
 - 7. All job offices shall be constructed in such a manner that a fire therein shall cause no damage to permanent construction and installation.
- C. All temporary electric power distribution and lighting must be installed and maintained in accordance with all applicable codes.
- D. Storage of any materials within 15 feet of fire hydrants is strictly prohibited.
- E. Work areas should be policed on a regular basis to prevent accumulation of material.
- F. No motors or machinery should be left running during non-working hours except as specifically directed by the Subcontractor's superintendent.
- G. All heating equipment shall have necessary safety devices and shall be wired, piped, and operated according to all applicable codes, rules and regulations (including those in job offices and shanties.)
- H. All tarps and blankets should be of fire retardant material.

- I. All fuel and solvent containers should be placed on drip pans.
- J. No open burning of fires shall be permitted on site. Anyone doing so is subject to immediate dismissal.
- K. During welding or cutting operations, a fire watch should be the responsibility of the Subcontractor performing this work.
- L. Fire Fighting:
 - 1. The Subcontractor should maintain, in easily identified locations consistent with project status, all-purpose fire extinguishers. These extinguishers will not be intended to replace normal Subcontractor fire watch responsibilities.
 - 2. Water and/or fire should be provided where practical, for additional first effort fire protection.

VIII. Subcontractors Emergency Procedures for Fire

- A. When reporting a fire or medical emergency, the following information will be necessary when placing a call with the fire department:
 - 1. Name and address of construction site.
 - 2. Give the nature of the emergency and the circumstances, if possible.
 - 3. Give your name and telephone number from which you are calling.
 - 4. Give any special instructions that may be necessary for the Fire Department in gaining access to the property. Subcontractors should be prepared to receive the rescue unit at the entrance gate and guide the unit to the appropriate building location.
- B. If the Subcontractor cannot readily contact emergency units, A.R. Mays Construction's personnel with cellular phones can be utilized to contact their field or home office for emergency unit notification.

IX. Subcontractor Material Safety Data Sheets

Each Subcontractor shall fully comply with the OSHA Hazard Communication Standard (Right to Know Act) and shall maintain a complete set of Material Safety Data Sheets (MSDS) on site at all times. Each Subcontractor shall provide a copy of all MSDS sheets to A.R. Mays Construction's main office prior to bringing substance on site.

X. Public safety, Visitors to the site, Administrative and Misc.

- A. Due the size of the project, it will be extremely difficult to totally control public access beyond the project perimeter. All Subcontractors must individually be responsible for control of any member of the public visiting their field offices or the construction site, under their invitation. Any person not directly involved with the on-site construction must check in with A.R. Mays Construction field office and sign a visitor release. All visitors must wear a hard hat and must not be allowed to tour site unescorted.
- B. If a member of the public is injured:
 - 1. A.R. Mays Construction is to be notified immediately.
 - 2. Send report to your insurance carrier promptly and forward another copy of this report to the A.R. Mays Construction's Field Superintendent.

XI. Special Considerations

- A. A.R. Mays Construction General Safety Rules
 - 1. For the safety of all concerned it is mandatory that all Subcontractor employees understand and comply with the A.R. Mays Construction General Safety Rules. These rules should be issued to all employees and reviewed at the first tool box safety meeting, and periodically reviewed at future toolbox safety meetings. The A.R. Mays Construction general safety rules are intended to establish minimum general criteria for safe work practices on the project. It does not replace the requirement that each Subcontractor develop and implement a written safety plan and code of safe practices specific to its trade and scope of work for the project.
 - 2. Special note: No drugs, alcohol, intoxicating substances, firearms, or other weapons are

allowed in any office, vehicle, or other location on the job-site. No person shall be on the job-site in possession of or under the influence of alcohol, drugs or other intoxicating substances, or in possession of a firearm or weapon. Any Subcontractor employee violating these rules shall be removed from the job-site immediately and will not be permitted to return to work on this project.

- B. All Subcontractors and their Sub-Subcontractors working on the project are responsible for instructing their employees in the prevention, recognition, and abatement of unsafe conditions and the regulations and practices applicable to their work environment required to control or eliminate any hazards or other exposures to illness or injury to any person on this project.

XII. A.R. Mays Construction Administration of Subcontractor Project Safety Plan

- A. It shall be the responsibility of the A.R. Mays Construction's Superintendent to:
 - 1. Implement and administer A.R. Mays Construction safety plan with respect to A.R. Mays Construction's employees.
 - 2. Implement the Subcontractor Project Safety Plan.
 - 3. Facilitate communication and coordination of safety issues among all Subcontractors on the project.
- B. A.R. Mays Construction Weekly Subcontractor Safety Meeting
 - 1. All Subcontractor Safety Coordinators and/or field superintendents or foremen shall attend a regularly scheduled weekly A.R. Mays Construction safety meeting and site inspection to maximize communication and coordination of safety issues among all Subcontractors on the site. Accidents and hazardous conditions discovered during the prior week, and Subcontractor activities and safety issues for the coming week will be discussed.
 - 2. A.R. Mays Construction's Field Superintendent may schedule other meetings if he deems them necessary or appropriate and Subcontractor's attendance is mandatory.
 - 3. At any meeting held by A.R. Mays Construction, each Subcontractor's representative in attendance shall sign a "Safety meeting Attendance" form to document their attendance.
- C. With respect to the Subcontractor project safety plan, A.R. Mays Construction's Field Superintendent shall:
 - 1. Conduct initial orientation meeting with the Subcontractor's safety coordinator and other representatives prior to the start of construction.
 - 2. Attend, at his option, any Subcontractor weekly safety toolbox meeting.
 - 3. Review and file all memos, reports, forms or meeting minutes related to safety provided by Subcontractor. Transmit copies to others as necessary.
 - 4. Conduct weekly A.R. Mays Construction safety meetings and site inspection with the safety coordinators of all Subcontractors working on the site.
 - 5. Conduct informal and formal and site safety inspections periodically and prepare a written report of any serious hazardous conditions discovered with copies to A.R. Mays Construction's Project Manager, Program Administrator, and responsible Subcontractor Safety Coordinator.
 - 6. Review and file all reports of hazardous conditions and accidents submitted by Subcontractors. Follow through on all such reports to ensure hazard has been abated by responsible Subcontractor and that a thorough accident investigation has been conducted by responsible Subcontractor. Prepare additional reports as deemed necessary.
 - 7. Ensure that all visitors to the site register at A.R. Mays Construction's Field office are issued a hard hat and are escorted on site.
 - 8. Establish and maintain general signage at entry to site.
 - 9. Coordinate and cooperate with any OSHA inspection or inspection by A.R. Mays Construction's general liability carrier.
 - 10. Maintain a file of all MSDS sheets provided by Subcontractors.
 - 11. A.R. Mays Construction's Superintendents may transmit safety directives, bulletins, memos or other such information as deemed appropriate to Subcontractor Safety Coordinators.