

and material covered thereby. All payments to the Subcontractor shall be made by the Contractor solely out of the funds actually received by the Contractor from the Owner and from no other source.

**Final Payment:** Subcontractor shall submit to Contractor a statement signed by the job superintendents of Contractor and Subcontractor, stating that all work covered by this Subcontract has been satisfactorily completed and performed. Upon receipt of said statement, the final payment shall be paid by the Contractor to the Subcontractor within 30 days after the Contractor shall have received the final payment from the Owner on the Prime Contract.

**Receipted Invoices and Affidavit:** As a further condition of progress payments and final payment, the Contractor may require the Subcontractor to furnish receipted invoices for all materials incorporated into the work or placed on the job site, supported by the affidavit of the Subcontractor setting forth that all claims for labor and material have been paid, with the names and addresses of all laborers and material men listed. No certificate given or payment made under this contract, except the final certificate or final payment shall be conclusive evidence of the performance of this contract, either wholly or in part, and no payment shall be construed to be an acceptance of defective work or improper materials.

**SECTION 5.** The Subcontractor agrees:

1. To be bound to the Contractor by the terms of the Prime Contract, General Conditions, Plans and Specifications, and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the Owner. To the extent of the terms of the Prime Contract are in conflict with each other or the terms hereof, the terms of the Prime Contract shall govern, unless the parties mutually agree otherwise, in a writing, signed by the parties after the execution of this Subcontract. Subcontractor further agrees to incorporate the requirements of this Subcontract and the Prime Contracts into any of its agreements with its suppliers, sub-tiers, vendors, and other underlying parties. Copies of the Prime Contracts are on file in the office of the Contractor and are available to Subcontractor at any time, upon request.
2. Subcontractor agrees that, prior to its execution of this Subcontract, it has reviewed and examined and understands all of the Subcontract documents along with the documents associated with the Prime Contract, has examined and inspected and investigated the location and condition of the Project where the work is to be performed, understands the conditions under which the Work is to be performed, and determined that the Subcontract documents are sufficient to enable Subcontractor to reasonably determine the contract sum for completion of the Work.
3. This Subcontract (including any exhibits referenced herein) and the Contract Documents supersedes any and all other letters of agreement, scope letters, bids, proposals, or other such agreements. Exclusions, clarifications, and definitions of work not included in this Subcontract are null and void. The Subcontract Agreement constitutes the entire agreement between the parties hereto and is effective on the date set forth herein. There are no oral representations or other agreements except as stated in this Subcontract. The Subcontract may not be changed in any way except as herein provided, and no provision hereof may be waived by Contractor except in writing signed by its duly authorized officer or agent.
4. To submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply to the Owner or Architect for payment.
5. To make all claims for extras, for extensions of time and for damages for delays or otherwise, to the Contractor in writing before proceeding to execute such work.
6. That this Subcontract shall not be assigned unless the Contractor shall first consent thereto in writing.
7. To procure, carry and maintain on all operations hereunder, insurance, at its own expense, in companies approved by Contractor as follows:
  - A. Workers Compensation and Employers Liability Insurance for protection of Subcontractor's owners, partners and employees as required by law of the state, district, or territory of the United States in which the work is situated. Employers Liability insurance will have limits of not less than \$500,000 Each Accident, \$500,000 Occupational Disease/Each Employee and \$500,000 Occupational Disease/Policy Limit. Such policy shall provide Waiver of Subrogation in favor of Project Owner, Prime Contractor, Contractor, their directors, officers, and employees.
  - B. Commercial General Liability Insurance written on an Occurrence Form (Claims Made Form will not be acceptable) with policy limits of not less than \$1,000,000 Each Occurrence for Bodily Injury, Personal

Injury, and Property Damage coverages; \$2,000,000 Products and Completed Operations Aggregate and \$2,000,000 General Aggregate. Defense Costs must be payable outside the applicable limits of liability and the General Aggregate shall apply separately to each project. Such policy or policies shall specify the Project Owner, Prime Contractor, Contractor, their directors, officers, and employees as Additional Insureds for Ongoing and Completed Operations. The policy shall include coverage for the following:

- (1) Premises and Operations Liability
  - (2) Contractual Liability Insuring the obligations assumed by Subcontractor in this Contract.
  - (3) Products and Completed Operations Liability
  - (4) Electronic Data Liability
  - (5) Broad Form Property Damage Liability
  - (6) Liability which Subcontractor may incur as a result of the operations, acts or omissions of its subcontractors, suppliers or materialmen, and their agents or employees.
  - (7) Explosion, Collapse and Underground Hazards including Subsidence or
  - (8) Earth Movement
  - (9) Third Party Action Over
  - (10) Such policy shall include coverage for the Additional Insureds by use of ISO form CG2010 and CG2037. Additional Insured endorsements, or equivalent, providing coverage for Ongoing and Completed Operations. Waiver of Subrogation in favor of Project Owner, Prime Contractor, Contractor, their directors, officers, and employees shall be evidenced by ISO form CG2404 or equivalent. Such policy shall be endorsed to stipulate that the Subcontractor's insurance shall be primary insurance and that any insurance carried by Project Owner, Prime Contractor, Contractor, their directors, officers, and employees shall be excess and not contribute to any loss. All endorsements referred to in this subsection must be included and attached to the Certificate of Insurance provided to Contractor.
  - (11) Any additional insurance or endorsements required by Owner as shown in the specifications for the job.
- C. Automobile Liability Insurance with policy limits of not less than \$1,000,000 Combined Single Limit covering the use, operation and maintenance of any automobiles, trucks, trailers, or other vehicles owned, hired, and non-owned by Subcontractor providing bodily injury, including death, and property damage coverage.
- D. Excess/Umbrella Liability insurance written on an Occurrence Form (Claims Made Form will not be acceptable) with policy limits of not less than \$1,000,000 Each Occurrence and \$1,000,000 General Aggregate. There shall not be any exclusions restricting coverage from being identical as provided by underlying policies.
- E. Professional Liability Insurance with limits of not less than \$1,000,000 Each Claim and \$1,000,000 Aggregate is required if this contract includes Professional Services to be performed by Subcontractor. This insurance coverage must remain in effect for a minimum of two years post-substantial completion.
- F. Pollution Liability insurance providing coverage for bodily injury, property damage, environmental damage and cleanup costs resulting from pollution arising out of the work or services performed under this contract if work or services being performed involves environmental hazards. Coverage shall be provided for both work performed on site, as well as, during the transportation of hazardous materials. Limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate shall be provided including Contractor, Prime Contractor, Project Owner, their directors, officers, and employees as additional insured. This insurance coverage must remain in effect for a minimum of two years post-substantial completion. This insurance requirement may be waived upon approval of Contractor.
- G. Subcontractor waives all rights of recovery against Prime Contractor, Contractor, Owner, and Architect for payments made on account of injuries to Subcontractor's employees that arise out of the Subcontractor's work, and also for damages arising out of the Subcontractor's work. Subcontractor shall furnish Contractor with Certificates of Insurance including Additional Insured, Primary & Non-Contributory and Waiver of Subrogation endorsements, prior to commencement of any work, evidencing all of the foregoing insurance is in effect and will not be canceled or materially changed without thirty (30) days prior written notice to Contractor. All deductibles and/or self-insured retentions applicable to General Liability, Automobile Liability, Workers Compensation and Excess Liability

policies must be disclosed on the Certificate of Insurance. Upon Contractor's request, Subcontractor will provide copies of all insurance policies. Contractor may withhold payments otherwise due to Subcontractor until such certificates have been furnished and all required insurance coverages in this contract have been complied with and evidenced.

- H. Contractor and Subcontractor waive all rights against each other and the Project Owner for damages caused by fire or other perils to the extent covered by property insurance applicable to the Project or work (but only to the extent of actual recovery of insurance proceeds), except such rights as they may have to the proceeds of such insurance. Subcontractor will be responsible for the cost of Deductibles if said contractor is responsible for such damage.
  - I. All required insurance shall be maintained for the entire duration of the contract and project. The Subcontractor shall maintain the products/completed operations coverage required herein full force and effect until the statute of limitation or statute of repose, whichever is longer, applicable to the Subcontractor's work has lapsed. No policy shall expire, be canceled, or materially changed to affect the coverage available to the Project Owner and Contractor for the duration of the contract and project without thirty (30) days advanced notice to Contractor. If any insurance policy expires during the contract/project term, Subcontractor shall provide a renewal certificate to Contractor not less than thirty (30) days prior to the expiration date.
  - J. Contractor does not represent that the coverage types and limits of insurance required by this Section are adequate to protect Subcontractor against all potential losses Subcontractor may incur. The insurance limits and coverage required in this contract are minimum requirements and in no way shall limit Subcontractor's obligations within this contract.
  - K. Subcontractor shall be responsible for providing insurance for all its property, tools and equipment used on the site or away from the site in the performance of this agreement.
  - L. Subcontractor shall ensure that all its subcontractors (lower tiers) shall maintain insurance in like forms and amounts including the additional insured requirements set forth herein.
  - M. If subcontractor or its subcontractors' work involves the rigging, hoisting, lowering, raising, or moving of property or equipment, they shall carry Riggers Liability insurance to insure against physical loss or damage to this property or equipment.
  - N. If an Owner Controlled Insurance Program (OCIP) or Contractor Controlled Insurance Program (CCIP) is being provided by Project Owner or Prime Contractor, an addendum to this contract will be provided by the OCIP/CCIP Program Administrator. Insurance policies provided by the OCIP/CCIP shall govern if such insurance policies are being required herein.
- 8. To pay all social security, unemployment compensation, sales or other taxes or charges assessed against the wages or salary of the Subcontractor's employees or officers or against any materials used in the performance of this Subcontract in accordance with state and local regulations.
  - 9. To indemnify and hold Contractor and Owner harmless from any and all liability, claims, suits, damage, loss, judgment, or expense, including attorney's fees, which may be incurred by Contractor or Owner by reason of Subcontractor's performance of the work. This shall include any damage to Contractor's property, or by reason of any injury to or death of Contractor's employees, Subcontractor's employees or to third persons or damage to their property. This agreement of indemnity expressly indemnifies Contractor and Owner against all liability, claims, suit, damage, loss, judgment, or expense, including attorney's fees, which Contractor or Owner might incur because of Contractor's or Owner's negligent failure or alleged failure to discover or remedy a dangerous condition created by Subcontractor.
  - 10. Contractor is not required to make any payments to Subcontractor unless, Subcontractor has provided lien waivers executed by all persons who might have a mechanics' lien, claims, demands, stop notice, or labor and material bond rights against the Project arising out of the work performed under this Subcontract. If any claims arising out of, or in conjunction with, Subcontractor's operations under this Subcontract are made against Contractor by any person other than Subcontractor, Contractor shall have the right to withhold out of any payments, final or otherwise, which may become due to Subcontractor, such sums as Contractor may deem sufficient to protect it against loss and/or assure payment of claims of third persons, and at Contractor's option to apply such sums in such manner as Contractor may deem proper to secure protection and/or to satisfy such claims. Such application shall constitute payment for Subcontractor's account. Subcontractor shall not cease work or prompt payments to underlying parties or cause damage to Contractor or Owner resulting from withheld payments for cause. Any actions thereof shall be considered a breach of this agreement. Subcontractor agrees within three (3) days after notice

from Contractor to cause any such liens, claims, demands, or stop notices to be discharged; and if Subcontractor fails to do so, Contractor may cause the same to be discharged and the expense thereof, as well as the amount of any obligations assumed by Contractor and Contractor's reasonable attorney's fees in connection therewith, shall be charged to and paid by Subcontractor. In the event any action or proceeding is brought by either party to enforce the provisions of this Subcontract or otherwise in connection with this Subcontract, the prevailing party in such action or proceeding shall be entitled to an award of its reasonable costs and expenses of litigations or other dispute resolution process, including attorney's fees, in such amount as may be determined by the court having jurisdiction, such award to be paid by the losing party. Subcontractor may litigate any lien or suit described herein provided Subcontractor causes the effect thereof to be removed, promptly in advance, from the Site, and shall further do such things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such claims, liens, or suits. Subcontractor's obligations hereunder shall not be construed to negate, abridge, or otherwise reduce any other obligation of indemnity, which would otherwise exist for the benefit of the Contractor and Owner and their directors, officers, agents, and employees from any other person or entity.

11. Subcontractor shall assume the risk of loss and damage for any and all materials, equipment, tools, and any other components of its Work that are in process, complete, or stored on or off the Project prior to installation. Subcontractor shall be responsible for its own Work, property, and/or materials, until completion and final acceptance by the Owner. In the event of loss or damage, Subcontractor shall proceed promptly to make repairs or replacement of the damaged work, property, and/or materials at its own expense, as directed by Contractor.
12. If as a result of causes beyond the control and without the fault or negligence of the Contractor, including without limitation, strikes, acts of God or the public enemy, labor disputes, fire, earthquake, floods, explosion, out of the ordinary actions of the elements, invasion, war, insurrection, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials, or supplies in the open market unless reasonably otherwise available to Contractor, failure of transportation, lockouts, actions of labor unions, laws or orders of governmental, civil, military or naval authorities, governmental restrictions, enemy action, riot, civil commotion, unavoidable casualty, or other causes (whether similar or dissimilar) beyond the control of Contractor, Contractor determines to postpone prosecution of the Subcontractor Work, Subcontractor shall, upon receipt of written notice from Contractor, immediately discontinue further progress of the Subcontract Work until such time as contractor advises Subcontractor in writing to resume such Subcontract Work which Subcontractor shall promptly do upon receipt of such written notice from Contractor. Subcontractor hereby releases and discharges Contractor from any liability for damages or expenses of whatever kind of nature whatsoever which may be caused to or sustained by Subcontractor by reason of such delay or cessation of the Subcontract Work.
13. To furnish as a condition to obtaining payments hereunder all releases, discharges or other instruments that may be required to release the structure from any and all liens and to release the Owner and the Contractor from any and all claims, demands, suits, or whatever kind or nature, arising out of the performance of this Subcontract.
14. Subcontractor shall pay timely progress payments and final payments, consistent with such payments made from Contractor to the Subcontractor, to any and all suppliers, sub-tiers, vendors, and any underlying parties in accordance with the contract and its referenced documents. Subcontractor shall not withhold project payments from suppliers, sub-tiers, vendors, and underlying parties for any reason whatsoever. All project payments to underlying parties shall be made promptly. Subcontractor shall provide signed lien waivers including any and all underlying lien waivers as a condition of payment made from the Contractor to the Subcontractor.
15. Contractor may withhold, or on account of subsequently discovered evidence, nullify the whole or part of any payment to the extent necessary to protect Contractor from loss, including costs and attorney's fees, on account of (i) detective Work not remedied; (ii) claims filed of reasonable evidence indicating the probable filing of a claim; (iii) failure of Subcontractor to make payments promptly to its suppliers, sub-tiers, vendors, and other underlying parties; (iv) reasonable doubt that this Subcontract can be completed timely or for the balance of unpaid; (v) damage to another subcontractor or to the Project or its Work; (vi) penalties or deductions assessed against Contractor or Owner or Subcontractor for failure of Subcontractor to comply with Contract or damage caused by Subcontractor; (vii) incomplete or unacceptable reporting or documentation as required by this Subcontract or Prime Contract; (viii) any