

ATTACHMENT "A"
TERMS AND CONDITIONS FOR:
SUBCONTRACT AGREEMENT

ARTICLE 1: Scope of Work

1.1 Contractor employs Subcontractor as an independent contractor to perform all work and furnish all labor, materials, equipment, scaffolding, shop drawings, samples, tools, supervision, supplies, applicable taxes, permits, freight, insurance, and all other things necessary for and incidental to the construction and completion of the scope of work which the Contractor has contracted with the Owner to provide on the Project.

1.2 Subcontractor agrees to perform its Work under the general direction of Contractor and subject to the final approval of Owner, its Architect/Engineer, or other specified representative of Owner, in strict accordance with the Contract Documents.

1.3 The term "Contract Documents" as used in this Subcontract includes the Site Plan for the project, the Construction Agreement between Contractor and Owner (including any general conditions or addenda thereto), this Subcontract Agreement, Contractor's Safety and Health Program, Contractor's Application for Payment Form and Lien Waiver Form, the construction drawings for the Project (including any notes thereon), the Specifications for the project, all addenda, as well as special contract documents, if any. Except to the extent specifically included above, Subcontractor's bid documents, including any preliminary proposals submitted by Subcontractor during the bidding process, are not Contract Documents. The Contract Documents are available, and will continue to be made available, to Subcontractor for inspection and copying at Contractor's office.

1.4 Subcontractor binds itself to Contractor for the performance of Subcontractor's Work in the same manner as Contractor is bound to Owner for such performance under Contractor's contract with Owner. This includes, but is not limited to, Subcontractor hereby expressly waiving its lien rights if Contractor has waived its lien rights under Contractor's contract with Owner. The pertinent parts of the Contract Documents will be made available upon Subcontractor's request. Subcontractor shall have only the rights which Contractor has under its contract with Owner, and Subcontractor shall assume all obligations, risks and responsibilities which Contractor has assumed towards Owner in its contract with Owner as they may relate to Subcontractor's work.

ARTICLE 2: Contract Payments

2.1 Contractor agrees to pay to Subcontractor for the satisfactory completion of Subcontractor's Work. Monthly progress payments, less retainage shall be made for the work performed in the preceding month in accordance with the progress estimate prepared by Subcontractor and approved by Contractor and Owner's representative. Subcontractor shall provide monthly completed lien waivers and affidavits, in a form satisfactory to Owner and Contractor. Payment of the approved portion of Subcontractor's monthly estimate shall be made within five (5) business days of receipt by Contractor of its payment from Owner.

2.2 Subcontractor is to submit its monthly bill using the Application for Payment Form attached to this Agreement. Subcontractor shall bill for their work completed during the period from the 21st of the preceding month to the 20th of the current month. This may include materials and/or equipment that has been delivered to the site by the 20th of the current month that is properly stored and insured. In the event that Subcontractor does not submit its monthly estimate by the **TWENTIETH OF THE MONTH** then Contractor may at its option include in its monthly bill to Owner such amount as it deems proper for Subcontractor's work for the preceding month and Subcontractor agrees to accept such approved portion thereof in lieu of a monthly payment based on Subcontractor's estimate.

2.3 Progress payments shall be made by Contractor to Subcontractor within five (5) business days following Contractor's receipt of payment from Owner for Subcontractor's work. If progress payments from Owner for Subcontractor's work are not received by Contractor through no fault of Subcontractor, Contractor agrees to make payment to Subcontractor within a reasonable time, not to exceed ninety (90) days.

2.4.1 Subcontractor hereby grants and authorizes Contractor, in its sole discretion, the option to make payments to Subcontractor by joint check made payable to Subcontractor and its suppliers and subcontractors

for labor and/or materials provided to the Project. In the event that Contractor elects to issue payment by joint check, Subcontractor agrees to provide Contractor with all necessary information required by Contractor for such purpose, including without limitation the name and address of its subcontractors and suppliers, and invoices and statements showing the balances owed to each. Subcontractor will ensure that the supplier or subcontractor credits the full amount of each Joint Check against Subcontractor's account on the Project, regardless of any other amounts Subcontractor may owe the subcontractor or supplier on any other project. The full amount of each Joint Check shall be credited automatically against the remaining balance of the Subcontract Price. Contractor does not guarantee any payments to Subcontractor's suppliers and subcontractors, and Contractor is not creating or intending to create a direct contractual relationship, or third party beneficiary status, between Contractor and Subcontractor's suppliers and subcontractors.

2.4.2 In the event that Subcontractor declines or fails to respond to a request to endorse any check made payable jointly to Subcontractor and any of its subcontractors or suppliers, Contractor may make payment directly to the subcontractor or supplier to whom Contractor has determined payment is owed by Subcontractor. Any direct payment, including administrative costs, attorneys' fees and expenses, will be credited automatically against the remaining balance of the Subcontract Price.

2.5 Final payment, subject to withholdings permitted hereunder, shall be made to Subcontractor after: (1) Subcontractor's work has been completed and approved by Owner; (2) evidence has been received that all Subcontractor's labor and materialmen have been paid to date and are waiving their lien rights upon the final payment of a specified balance due; (3) the entire Project is certified complete by Owner; and (4) Contractor has been paid in full for the Subcontractor's work. If the Owner delays final payment for the Subcontractor's work, or Contractor does not receive final payment for the Subcontractor's work for any cause which is not the fault of Subcontractor, Contractor shall promptly inform Subcontractor. Contractor shall diligently pursue, with the assistance of Subcontractor, the prompt release by Owner of the final payment due for Subcontractor's work. If final payment from Owner for Subcontractor's work is not received by Contractor through no fault of Subcontractor, Contractor agrees to make final payment to Subcontractor within a reasonable time, not to exceed ninety (90) days.

2.6 LATE INVOICES: Invoices for work performed by Subcontractor on this project must be received by Contractor no later than 60 days following completion of the work being invoiced. Contractor shall not be responsible to pay, and Subcontractor hereby forfeits its right to receive payment, for any work that is not billed to Contractor within 60 days of completion of the work being invoiced.

2.7 Contractor may withhold amounts otherwise due under this Subcontract, or amounts due under any other contractual arrangement between Contractor and Subcontractor on any other project, to compensate Contractor for costs that Contractor has incurred or may incur for which Subcontractor may be responsible hereunder or otherwise. Appropriate adjustments to withholdings shall be made when the exact amounts owed are determined. In the event of the assertion by other parties of any claim or lien against Owner, Contractor, Contractor's Surety, or the premises upon which Subcontractor's work is performed, which claim or lien arises out of Subcontractor's performance under this agreement or any other contractual arrangement between Contractor and Subcontractor, Contractor shall have the right, but is not required, to retain any payments due or to become due to Subcontractor in an amount sufficient to completely protect Contractor and Owner from any and all loss, damage or expense therefrom, until the claim or lien has been adjusted by Subcontractor to the satisfaction of Contractor. This paragraph shall be applicable even if Subcontractor has posted a full payment and performance bond.

ARTICLE 3: Prosecution of the Work

3.1 ***TIME IS OF THE ESSENCE IN THIS AGREEMENT.*** Subcontractor will proceed with its work in a prompt and diligent manner, in accordance with Contractor's directives and Contractor's schedule, revised if necessary, as the work progresses. Subcontractor agrees to see to the performance of its Work and the work of its subcontractors so that the entire project may be completed according to Contractor's schedule and the Contract Documents. Subcontractor shall not be entitled to additional compensation for compliance with schedule revisions, except to the extent that the Contract Documents entitle Contractor to additional compensation and such reimbursement is actually obtained from Owner.

3.2 If requested by Contractor, Subcontractor shall promptly submit to Contractor a detailed schedule for performance of the work, in a form acceptable to Contractor, which shall comply with all scheduling requirements of the Contract Documents and of Section 3.1 above. Contractor may direct Subcontractor to make reasonable modifications and revision in said schedule.

3.3 Subcontractor shall prosecute its work in a prompt and diligent manner in accordance with the schedule of Work without hindering the work of Contractor or any other Subcontractor. If work of others is damaged by Subcontractor, Subcontractor will cause such damage to be corrected to the satisfaction of, and without cost to, Contractor and Owner. In the event that Subcontractor fails to maintain its part of the schedule of the Work, it shall, without additional compensation, work such overtime as Contractor may direct until Subcontractor's Work is in accordance with such schedule.

3.4 Subcontractor shall be responsible for and will prepare for performance of Subcontractor's work, including without limitation, the preparation and submission of shop drawings, submittals, samples, tests, field measurements, determination of labor requirements and ordering of materials as required to meet the construction schedule.

3.5 Subcontractor shall comply with all Federal, State and local laws, Social Security Laws and Unemployment compensation Laws, Worker's Compensation Laws and Safety Laws insofar as applicable to the performance of this Agreement. It shall pay all taxes applicable to the performance of its work. Subcontractor shall also maintain its own safety program for compliance with such laws.

3.6 Subcontractor shall at all times safely guard Owner's, Contractor's, and Subcontractor's property and employees from injury or loss in connection with the performance of this subcontract. Subcontractor shall be responsible for the protection of its own partially or completely finished work and that of the adjacent property and all adjacent work from damage. Subcontractor shall protect (at its cost) all equipment, apparatus, machinery and other property and materials to be incorporated into the project and as well as all adjacent work whenever guards, barricades, boarding, bracing, covering, or any other safeguards are needed so as to keep the premises safe and materials free from dampness, dirt, dust, or other damage resulting from high wind, rain or other weather conditions. Subcontractor shall remove all such temporary protection upon completion of its operations.

ARTICLE 4: Safety & Health Requirements

4.1 Subcontractor agrees that the prevention of accidents to workmen engaged upon or in the vicinity of its Work is its responsibility. Subcontractor agrees to comply with all Federal, State, Municipal and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning the safety as shall be applicable to the Work, the Federal Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder, and with the safety standards established during the progress of the Work by Contractor and/or Owner. When so ordered, Subcontractor shall stop any part of the Work which Contractor and/or Owner deems unsafe until corrective measures satisfactory to Contract have been taken, and Subcontractor agrees that it shall not have or make any claim for damages growing out of such stoppage. Should Subcontractor neglect to take such corrective measures, Contractor may do so at Subcontractor's cost and expense and may deduct the cost thereof from any payments due or become due to Subcontractor. Failure on the part of Contractor to stop unsafe practice shall in no way relieve Subcontractor of its responsibility thereof. The failure of Subcontractor to implement its own construction safety policy or program and/or abide by, follow, properly implement and/or supervise any safety standards established during the progress of the Work by Contractor and/or Owner including, but not limited to, the policy and program described in this Agreement shall constitute primary negligence on behalf of Subcontractor and shall entitle Contractor and/or Owner to seek indemnity from Subcontractor to the full extent permitted by law and/or pursuant to the terms of this Agreement.

4.2 Subcontractor shall be responsible for payment of all safety-related citations, fines, and/or claims arising out of or relating to its work levied against Contractor. Subcontractor understands and acknowledges

that Contractor has its own written Safety and Health Program, a copy of which is located at the Project site and is available for Subcontractor's review upon request. Subcontractor acknowledges that Contractor's Safety and Health Program imposes penalties for non-compliance, including but not limited to monetary fines, and Subcontractor agrees to comply with Contractor's Safety and Health Program or be subject to the penalties set forth therein.

4.3 Subcontractor shall take all reasonable safety precautions with respect to its Work, shall comply with all safety measures initiated by Contractor and with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property in accordance with the requirements of the Contract documents. Subcontractor shall immediately report to Contractor any injury to any of Subcontractor's employees at the site. In addition, Subcontractor will submit to Contractor's Safety Director its drug/alcohol policy and program prior to commencing work. In the absence of its own drug/alcohol policy and program (approved by Contractor) Subcontractor agrees to abide by Contractor's Policy, which can be obtained via written request to Contractor's Safety Director. Any of Subcontractor's or sub-Subcontractor's employee(s) directly or indirectly involved in an incident may be required, at Contractor's direction, to submit to a drug/alcohol screen at the time of the incident, in accordance with either Subcontractor's approved policy or Contractor's Policy.

4.4 At a minimum all of Subcontractor's employees, trade contractors, and/or site visitors are required to abide by the following guidelines regarding personal protective equipment:

HARDHATS – All of Subcontractor's employees must wear OSHA approved protective helmets at all times to eliminate the possible danger of head injury from impact or from falling or flying objects or from electrical shock and burns.

SAFETY GLASSES – Subcontractor must provide its employees with and the employees must wear at all times eye protection equipment to help eliminate potential eye or face injury from physical, chemical, or radiation agents.

STEEL TOE BOOTS – All of Subcontractor's employees must wear steel-toed shoes (ANSI approved) and all site visitors must wear a hard soled shoe with enclosed toes at all times on the Project site to eliminate foot injuries due to falling or rolling objects, or objects piercing the sole, and exposure to electrical hazards.

SAFE WORK ATTIRE - Subcontractor shall ensure that each employee is wearing the appropriate safe work attire at all times for the work tasks they are performing. The wearing of shorts, cutoff jeans or athletic-type shorts is prohibited on the Project site.

Subcontractors may request a review of this subsection (4.4) and relief from this requirement if, prior to the commencement of any work, Subcontractor can demonstrate to Contractor's Safety Director or on-site superintendent, in their sole discretion, that it is infeasible or creates a greater hazard to use said personal protective equipment.

4.5 Subcontractor is required to comply with the following safety conditions and Subcontractor's failure to do so may be resolved by Contractor's Superintendent at Subcontractor's expense:

- Subcontractor will maintain accessibility to all fire extinguishers and hydrants.
- Subcontractor will provide and maintain special danger signs where its work or equipment requires it, such as "no Smoking," "Flammable," etc.
- When a Subcontractor creates a hazard such as a floor opening, wall opening, or an unsafe stairway, such Subcontractor shall provide acceptable protective railing(s), guardrail(s), temporary tread(s), hole cover(s), or other protection which meets OSHA and other safety rules and regulations. If a Subcontractor is given permission to remove any perimeter protection installed by Contractor or another Subcontractor, the Subcontractor removing said protection must replace it in the condition found before removal and in compliance with any federal, state and/or local laws, statutes and /or ordinances relating thereto.

- Subcontractor will be responsible for the safe use, handling and storage of all its gas bottles. Disputes involving bottle ownership will be resolved by Contractor's Superintendent.
- Subcontractor must maintain a clean work area and each day remove the debris produced by its activities and keep its materials and equipment safely and neatly stored.
- Smoking on the project site is prohibited except in specific areas designated by Contractor's Superintendent and clearly marked for such activity.
- When Subcontractor requests the use of any equipment owned or leased by Contractor, Subcontractor is certifying by such request that it (and its employees) has any required certification needed to operate said equipment. Subcontractor shall sign Contractor's Equipment Users Agreement. Failure to sign will result in Subcontractor being denied use of Contractor's equipment. Subcontractor consideration for use of Contractor's equipment is solely at the discretion of the Contractor's Superintendent. Contractor prohibits all Subcontractors from usage of any swing stages (spiders) and scaffold owned or leased by Contractor for any construction activity.
- When a Subcontractor requests the use of a crane owned or leased by Contractor, the Subcontractor shall sign Contractor's Crane Operation Agreement. Failure to sign will result in the Subcontractor being denied crane usage. Subcontractor will ensure their personnel are fully trained and qualified per governmental regulations to properly rig material.

4.6 All equipment used by Subcontractor will be maintained in a good state of repair. Subcontractor agrees to inspect all hand tools, power tools, and electrical cords for defects and remove all defective items from the job site. Any unsafe equipment and tools must be reported immediately to Contractor's Superintendent. If during the course of the work any of Subcontractor's materials or equipment are determined by Contractor, in its sole discretion, to be in an unsafe condition or fails to meet OSHA Standards, Subcontractor agrees to discontinue use of the materials or equipment immediately and to remove them from the Project site. If Subcontractor fails or refuses to remove it, it will be removed from the Project site at the expense of Subcontractor.

4.7 In the event that Subcontractor encounters on the site material reasonably believed to be hazardous substances (including, without limitation, asbestos, lead, mold or polychlorinated biphenyl (PCB)) which has not been rendered harmless, Subcontractor shall immediately stop Work in the area affected and immediately report the condition to Contractor in writing. Work in the affected area shall resume when such hazardous substances has been rendered harmless or removed as determined by Contractor in its sole and absolute discretion. To the extent of Subcontractor's responsibilities hereunder, Subcontractor does indemnify and save harmless Contractor from and against any and all loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, cost and expenses, including legal fees and disbursements, caused or occasioned directly or indirectly by Subcontractor in regard to such hazardous substances.

4.8 If hazardous substances of a type of which an employer is required by law to notify its employees are being used in the site by Subcontractor, Sub-subcontractors or anyone directly or indirectly employed by them, Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to Contractor in sufficient detail and time to permit compliance with such laws by Contractor, and other Subcontractors, and other employers on site.

4.9 If any release into the environment of pollutants, hazardous substances and/or hazardous wastes as defined by applicable law should occur as a result of performance of Subcontractor's work, Subcontractor, at its sole cost, shall (i) immediately notify Contractor; (ii) clean up and otherwise respond to any such release pursuant to applicable Laws, and (iii) timely make all release notifications and reports required by Law and provide Contractor with written copies of all such release notifications and reports no later than two (2) days after making same.

4.10 Subcontractor agrees that all of its personnel will be trained in Hazardous Communications and that Subcontractor will have available a copy of its Hazardous Communications Program on the Project site and will have all material safety data sheets for all chemicals that it has on the Project site.

4.11 Subcontractor agrees to notify Miss Utility and all appropriate public utilities before it performs any excavation work on the Project site.

4.12 No alcoholic beverages or non-prescription drugs or any person under the influence of such will be permitted on the Project site. If Contractor, in its sole discretion, has reason to believe that Subcontractor's employees may be under the influence of alcohol or any controlled substance, Subcontractor agrees that its employees will voluntarily submit to a drug or alcohol test, the cost of which will be the responsibility of Contractor. If Subcontractor's employee refuses to submit to such testing when requested, Subcontractor's employee shall be immediately removed from the Project site and not be permitted to work on that or any future Contractor project(s).

4.13 No horseplay or unsafe acts will be tolerated by any person on the Project site. No conduct or language will be permitted that is found to be offensive to another person authorized to be on the site, employee, site visitor, or the general public.

4.14 Subcontractor understands and agrees that its failure to comply with any of the requirements or standards set forth in this ARTICLE 4: Safety & Health Requirements will be considered a breach of this Subcontract Agreement.

ARTICLE 5: Subcontractor's Liability

5.1 Subcontractor shall be liable to Contractor for all costs Contractor incurs as a result of Subcontractor's failure to perform this Subcontract Agreement in accordance with the Contract Documents, including the failure of its subcontractors and suppliers and/or subcontractors of any tier to timely and properly perform or pay lower tier suppliers and subcontractors. Subcontractor's liability shall include, but not be limited to: (1) damages and other delay costs payable by Contractor to Owner; (2) Contractor's increased performance costs, such as extended overhead and increased performance costs resulting from Subcontractor-caused delays or improper Subcontractor work; (3) warranty and rework costs; (4) liability to third parties, including but not limited to other subcontractors of Contractor; (5) excess costs of procurement; and (6) attorney's fees and other costs related to resolving disputes that concern Subcontractor or Subcontractor's work or payment to lower tier subcontractors and suppliers.

5.2 If Subcontractor or any of its agents, employees, suppliers, or lower-tier subcontractors use any machinery, equipment, tools, scaffolding, hoists, lifts or other items belonging to or under the control of Contractor or other subcontractors or suppliers, Subcontractor assumes all risks of such use. Subcontractor shall be liable to and indemnify Contractor for any loss or damage, including personal injury or death, which may arise of or result from such use, to the extent caused or alleged to be caused in whole or in part by any negligent act or omission of Subcontractor or any of its agents, employees, suppliers, or lower-tier subcontractors.

ARTICLE 6: Changes in the Work

6.1 Contractor and Subcontractor agree that Contractor may add to or deduct from the amount of work covered by this Agreement, and any other changes so made in the amount of work involved, or any other part of this Agreement shall be by a written agreement setting forth in detail the changes involved and the value thereof which shall be mutually agreed upon ("Change Order"). If Contractor requests a proposal of cost for a change, Subcontractor shall promptly comply with such request.

6.2 Any change in the contract price resulting from changes in the Work ordered by Contractor or Owner shall be as provided in this Section:

- a. By the applicable unit prices, if any, set forth in the contract; or
- b. If no unit prices are provided, then by unit prices or by a lump-sum amount mutually agreed upon by Contractor and Subcontractor; such unit prices or lump sum being arrived at by estimates of reasonable value prepared in general conformance with the outline set forth in (c) below.
- c. Contractor, at any time, may require a written breakdown of the following amounts for all Work necessary for the changes:
 - (1) Cost of materials delivered to the job Site for incorporation into the contract Work.

- (2) Wages paid to workmen and foremen/superintendents at the work site.
- (3) Premiums or taxes paid by the Contractor for workmen's compensation insurance, unemployment insurance, FICA tax and other payroll taxes as required by law.
- (4) Sales and use taxes paid as required by law.
- (5) Allowances for necessary use of construction equipment (exclusive of hand tools and minor equipment), as approved by the Architect/Engineer.
- (6) An amount for overhead.
- (7) An amount for profit.

Construction equipment rental rates shall be in accordance with those published in that issue of the Associated Equipment Distributors (AED) Rental Guide, current at the time work is done. In the event that rental rates for equipment used in the performance of extra work are not listed in the AED Rental Guide, rental rates will be approved for payment that are consistent with those prevailing in the construction industry in the area of the Work. Monthly, weekly, or daily rates shall apply, prorated to the actual time the equipment is in use; the classification of monthly, weekly, or daily rate to be used shall be determined by the length of time the piece of equipment under consideration was in use on the total project under Contract plus the time used in the performance of the extra work or the time used in the performance of the extra work plus additional subsequent time used in the total project under contract. Gasoline, oil and grease required for the operation and maintenance will be paid for at the actual cost. When, in the opinion of Contractor or the Architect/Engineer, suitable equipment is not available on the Site, the moving of said equipment to and from the Site will be paid for at actual cost.

Subcontractor shall submit evidence satisfactory to Contractor and/or Architect/Engineer to substantiate each and every item included in an estimate for additional work.

The amounts allowed for overhead and profit for a change resulting in an increase in Contract price must comply with all requirements set forth in the agreement between Contractor and Owner and may be less than, but shall not exceed, the applicable percentages as follows:

- (a) The overhead and profit set forth in the agreement between Contractor and Owner;
- (b) In the absence of (a) above:
 - 1) For work done directly by the Subcontractor's own labor force, the sum of overhead amount plus profit amount shall not exceed 15% of the cost.
 - 2) For work done by subcontractors of any tier, the sum of total overhead amounts of the Subcontractor and its sub-subcontractors, plus total profit amounts for each, shall not exceed 25% of the cost.

Overhead is defined as all expenses not included in the amounts outlined in (c) (1) through (c) (5) above, including administration, superintendence, insurance not outlined in (c) (1) through (c) (5), material used in temporary structures, additional premiums placed upon the labor and performance bonds of the Subcontractor and small hand tools.

Where Work necessitated by the change involves overtime, no payroll taxes, overhead or profit will be allowed on the premium portion of overtime pay.

6.3 In the event that a change in the work involves the deletion of equipment or a reduction in the scope of work, Subcontractor agrees that the credit provided shall include the full cost of the equipment, materials, and labor, plus Subcontractor's profit markup on the full cost. Contractor shall not be required to credit its overhead markup. In the event that Subcontractor provides to Contractor a breakdown of Subcontractor's contract price into specific components of work (a schedule of values), and the breakdown provided by Subcontractor is incorporated into a Schedule of Values that is provided to Owner, if a specific component of Subcontractor's work is deleted by Owner, the credit given by Subcontractor shall equal the amount set forth in Subcontractor's breakdown that was incorporated into the Schedule of Values provided to Owner.

6.4 Subcontractor agrees to proceed with the Work as changed when so ordered by Contractor so as not to delay the progress of the Work. If the Contractor and Subcontractor cannot agree upon an equitable adjustment of the Contract price prior to performance of the change in the Work, a written Proceed Order will be issued by Contractor authorizing the change and Subcontractor shall proceed with the work thereof by the most economical methods. Upon completion of the change in the work and a determination of the adjustment in the Contract price as provided in 6.2 above, a written Change Order will be issued.

6.5 Subcontractor shall be entitled to receive no extra compensation for extra work or materials or changes of any kind unless a Proceed Order or a Change Order therefore has been issued in writing by Contractor. If Subcontractor performs extra work but does not receive a written Proceed Order or Change Order, Subcontractor shall be deemed to have waived any claim for extra compensation therefore. Subcontractor shall be responsible for any costs incurred by Contractor for changes of any kind made by Subcontractor that increase the cost of the Work for either Contractor or other subcontractors when Subcontractor proceeds with such changes without a written change order.

6.6 Subcontractor agrees that no claim for additional labor or materials furnished by Subcontractor shall be valid unless notice is given to Contractor prior to the furnishing of the labor or material or unless written notice of the claim therefore is given by Subcontractor to Contractor not later than the last day of the calendar month following that in which the claim originated, with the amount of the claim to be given in writing by Subcontractor as soon as practicable.

ARTICLE 7: Temporary Facilities and Utilities

7.1 Contractor will provide temporary sanitary facilities. Subcontractor shall be responsible for furnishing any utilities or services necessary to perform its Work, including a job site telephone, a temporary office and/or a storage facility, if needed.

ARTICLE 8: Claims

8.1 Any claims for adjustment in price or time shall be submitted in writing to Contractor either: (1) in sufficient time for Contractor to submit such claims to Owner in accordance with the Contract Documents, or (2) within seven (7) calendar days of the event giving rise to the claim, whichever is first to occur. If directed by Contractor, Subcontractor shall certify the completeness and accuracy of its claim as a condition to its consideration by Contractor or Owner, allowing a reasonable period of time for the Subcontractor to do so with the information available to the Subcontractor or to become available to Subcontractor. Failure to submit such written notice shall constitute a conclusive presumption that Subcontractor is not entitled to a price or time adjustment for the event giving rise to the claim or dispute.

8.2 If Subcontractor has a claim or dispute arising out of or relating to problems caused by or which are the responsibility of Owner, Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to Owner by the terms of the Contract Documents and by any and all decisions or determinations made by the party or board or Court so authorized in the contract documents to decide disputes between Contractor and Owner, whether or not Subcontractor is a party to such proceedings. Contractor shall be liable to Subcontractor for no more than Subcontractor's equitable share of any recovery from Owner. In accordance with the procedures prescribed in the Contract Documents, Contractor agrees to present to Owner the Subcontractor's claim to the extent Contractor reasonably believes Subcontractor's claim to be valid. Subcontractor agrees to furnish all documents, statements, witnesses and other information required by Contractor to investigate and present Subcontractor's claims and to pay or reimburse, at Contractor's election, all expenses and costs including legal fees, if any, incurred in connection with Subcontractor's claims. Contractor has final authority to settle all claims submitted to Owner. No dispute shall interfere with the progress of construction and Subcontractor shall continue with its work as directed.

8.3 If the Owner recovers liquidated or other damages against Contractor, the contractor may assess and enforce against Subcontractor the portion of the Owner's damages that represent Subcontractor's share of the responsibility due to a default or breach by subcontractor or its obligations hereunder. The amount of such assessment for Owner damages shall not exceed the amount assessed against Contractor plus the portion of costs and attorney's fees Contractor incurred in defending against Owner's claim for damages caused in whole or in part by Subcontractor.

ARTICLE 9: Performance Bond and Labor and Material Payment Bond

9.1 If Subcontractor has not been required to furnish a Performance Bond and Labor and Material Payment Bond or if Contractor desires that Subcontractor furnish such bond coverage, Contractor may, at any time upon written request, instruct Subcontractor to provide such bonds for the full amount of this subcontract within ten (10) calendar days in a form and from a surety acceptable to Contractor. In this event, Contractor will reimburse Subcontractor the amount of the bond cost. Subcontractor's obligation to provide such bonds shall continue throughout the term of this agreement and in the event that Contractor becomes concerned about Subcontractor's ability to continue performance and/or to satisfy the requirements and obligations imposed by the Contract Documents, Contractor may demand other assurances, in a form acceptable to Contractor in its sole discretion, from Subcontractor that future performance of this Subcontract will be satisfactory and in accordance with the Contract Documents. Failure to comply with such a demand within ten (10) calendar days of receipt of the demand shall entitle Contractor to terminate this Subcontract for default.

ARTICLE 10: Default

10.1 If Subcontractor at any time shall refuse or neglect to supply a sufficient number of properly skilled workmen or sufficient materials or equipment of the proper quality, or fails in any respect to prosecute its work with promptness and diligence, or fails to promptly correct defective Work, or causes by any act or omission the stoppage or interference with Work of Contractor or other subcontractors, or fails to pay laborers, mechanics, materialmen, and suppliers when due, or shall become insolvent or unable to meet its obligations, or shall make an assignment for the benefit of creditors, or shall commence any proceeding in bankruptcy, or if any such proceedings are commenced against it (and are not discharged within fifteen (15) days), or fails in the performance of any of the obligations contained in this Agreement, Subcontractor shall be deemed to be in default and Contractor may, at its option, at any time after providing written notice of such default with direction to cure in a specific period, but not less than twenty four (24) hours, and Subcontractor's failure to cure the default, terminate this agreement by providing written notice to Subcontractor. Thereafter, Contractor may take possession of the work, materials, tools, appliances and equipment of Subcontractor at the building site, and through itself or others provide labor, equipment and materials to prosecute Subcontractor's Work on such terms and conditions as Contractor, in its sole discretion, shall be deemed necessary, and shall deduct the cost thereof, including without restriction thereto all charges, expenses, losses, costs, damages and attorney's fees incurred as a result of Subcontractor's default, from any money due or thereafter to become due to Subcontractor under this Agreement or any other contractual arrangement between the parties. The remedy provided in this paragraph shall not preclude any claim Contractor may have for other damages allowable under law.

10.2 If Subcontractor defaults under this Contract or if Contractor terminates the employment of Subcontractor pursuant to this Article, Subcontractor shall not be entitled to any further payments under this Agreement, or under any other contractual arrangement between the parties on any other projects, until Subcontractor's Work has been completed and accepted by Owner, and payment has been received by Contractor from Owner with respect thereto. In the event that the unpaid balance due exceeds the Contractor's cost of completion, the difference shall be paid to Subcontractor; but if such expense exceeds the balance due, Subcontractor agrees promptly to pay the difference to Contractor.

10.3 If Subcontractor defaults under this Contract, Subcontractor shall be liable to Contractor for any expenses incurred by Contractor, including attorney's fees, incurred in connection with this transaction and/or the enforcement of this agreement. In the event that either party institutes legal proceedings to enforce this agreement, Subcontractor hereby consents and agrees that the venue for any such proceedings shall be Rockingham County, Virginia.

ARTICLE 11: Termination for Convenience

11.1 Contractor shall have the right to terminate this Subcontract, without cause, for convenience, when Contractor determines that it is in its own best interests to so terminate the Subcontract. If this Subcontract is terminated for convenience, Subcontractor shall comply with all of Contractor's termination instructions and shall be entitled to receive payment for work actually performed and a reasonable overhead and profit in connection with such work, except that if Contractor's contract with Owner is also terminated for

convenience, termination settlement costs to Subcontractor shall be as provided in the Contract Documents, and in the amount received by Contractor on behalf of Subcontractor from Owner. Subcontractor shall not be entitled to any recovery of profit or unabsorbed overhead in connection with work not actually performed or future work.

ARTICLE 12: Warranty

12.1 Subcontractor warrants to Owner and Contractor that all materials and equipment furnished shall be new, unless otherwise specified, and that all work under this Subcontract Agreement shall be of good quality, free from faults and defects and in strict conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized by Contractor, in writing, may be considered defective.

12.2 Subcontractor warrants its work for the same period as Contractor warrants the Work to the Owner under the Contract Documents. If the Contract Documents do not state a specific warranty period, then for a period of one (1) year from the date of substantial completion of the entire project.

12.3 If advised by Contractor of a warranty claim, Subcontractor agrees to promptly make good without cost to Owner or Contractor any and all defects due to faulty workmanship and/or materials which may appear within the warranty period. Subcontractor further agrees to execute any special guarantees as required by the Contract Documents as a condition of final payment.

ARTICLE 13: Insurance Requirements

13.1 Subcontractor shall, during the progress of its Work, maintain the following insurance coverages:

- a.) Commercial General Liability (CGL) with limits of Insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual General Aggregate.
 - i.) If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.
 - ii.) CGL coverage shall be written on ISO Occurrence form CG 00 01 10/01 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.
 - iii.) General Contractor and Owner shall be included as insureds on the CGL, using ISO Additional Insured Endorsements CG 2010 07/04 and CG 2037 07/04 or any endorsements providing equivalent coverage to the additional insureds. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured subcontractor. It shall apply as Primary Insurance and non-contributory to any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.
 - iv.) Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least two (2) years after completion of the Work.
- b.) Automobile Liability
 - i.) Business Auto Liability with limits of at least \$1,000,000 each accident.
 - ii.) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
- c.) Commercial Umbrella
 - i.) Umbrella limits must be at least \$1,000,000.
 - ii.) Umbrella coverage must include as insureds all entities that are additional insureds on the CGL.
 - iii.) Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Auto Liability and Employers Liability coverages maintained by the Subcontractor.
- d.) Workers Compensation and Employers Liability
 - i.) Employers Liability Insurance limits of at least \$500,000 each accident for bodily injury by accident and \$500,000 each employee for injury by disease.

13.2 The foregoing policies shall contain a provision that coverages afforded under the policies will not be canceled or not renewed until at least (30) day's prior written notice has been given to Contractor. Certificates of Insurance acceptable to contractor shall be filed with Contractor prior to commencement of the Work. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor's Commercial General Liability Policy.

13.3 Subcontractor waives all rights against Contractor, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance maintained per the requirements set forth above.

ARTICLE 14: Indemnification

14.1 To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Owner, Contractor, and other contractors and subcontractors, and all of their respective officers, directors, agents and employees, from and against all claims, damages, losses, or expenses, including attorneys fees, court costs or any other costs associated with said claim, damage or loss, arising out of or resulting from the performance of the Subcontractor's work provided that: (1) any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Subcontractor's work itself) including the loss of use associated therewith, to the extent caused or alleged to be caused in whole or in any part by any negligent act or omission of Subcontractor or anyone directly or indirectly employed by or associated with Subcontractor or anyone for whose acts Subcontractor may be liable; and (2) such obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article. Subcontractor shall use proper care in the performance of its work so as not to cause damage to any adjacent property and shall indemnify and hold Owner and Contractor harmless from any liabilities, claims or demands for damage to such adjacent property.

14.2 In any and all claims against Owner, Contractor, and other contractors and subcontractors, or any of their respective officers, directors, agents or employees, by any employee of Subcontractor (including anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable), the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under Worker's Compensation Acts, disability benefit acts, or other employee benefit acts.

ARTICLE 15: Clean Up

15.1 Subcontractor shall keep the work site in a clean and orderly condition and upon completion of its Work shall remove from the premises all rubbish and surplus materials resulting from its Work. If Subcontractor fails to comply with this paragraph within 24 hours after receipt of notice of non-compliance from contractor, Contractor may perform such necessary cleanup and deduct the cost from any amounts due Subcontractor.

ARTICLE 16: Miscellaneous Provisions

16.1 Subcontractor shall operate as an independent contractor in the performance of this agreement. Neither party shall assign or transfer this Contract or any interest therein without the prior written consent of the other party. This Contract constitutes the entire agreement between the parties and supersedes all prior negotiations, representations or agreements. Neither of the parties shall be bound by any promises, representations, or agreements other than those expressly set forth herein. This Subcontract shall be construed according to Virginia law in effect on the date it is executed. One or more waivers of any conditions by either party shall not be construed as a waiver of a further breach of the same condition. 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. This Subcontract shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

NOTE: THIS OFFER TO SUBCONTRACT WILL BE WITHDRAWN AND BECOME NULL AND VOID UNLESS A FULLY-EXECUTED, UNALTERED, ORIGINAL COPY IS RECEIVED BY OUR OFFICE WITHIN FIFTEEN (15) DAYS FROM THE DATE OF THE SUBCONTRACT.