



Subcontract

Contract Number: _____
This number and the project name must appear on all invoices and delivery tickets or payment will be delayed.

This subcontract made on _____ by and between Hamilton Stern Construction, LLC, ("Hamilton Stern") and the company named below, hereinafter called Subcontractor.

Subcontractor Company Name: _____

Subcontractor Address: _____

Subcontractor Phone Number: _____

Subcontractor Email Address: _____

Project Name: _____

Project Address: _____

Project Owner: _____

Project Architect/Documents: _____

Hamilton Stern has entered, or is about to enter, into a contract with the Owner in accordance with the Contract Documents prepared by the Architect referenced above. The parties agree that Subcontractor shall perform the following work on the project:

Scope of Work:

See Exhibit C

Contract Price for the Above Work: Base: \$ _____

Sales Tax: [] Sales Tax Exempt

[] Sales Tax Included

_____% Tax Amount \$ _____

Total Contract Price: \$ _____ 0.00

Additional terms and conditions which are listed on the following pages are included in and part of this subcontract.

Subcontractor Signature _____ Date _____

Hamilton Stern Construction Signature _____ Date _____

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1.1 The Subcontractor agrees to perform such part of the Work (hereinafter called Subcontractor's "Work") under the general direction of the Contractor and subject to the final approval of the Architect/Engineer or other specified representative of the Owner, in accordance with the Contract Documents, a non-exhaustive list of the Contract Documents is attached hereto as Exhibit A. The Work to be performed by the Subcontractor includes that Work specifically set forth in this Agreement, as well as any and all other work incident or related thereto, including but not limited to that work reasonably necessary for a complete and proper Project, or which is necessary to have a properly working and totally acceptable system and Project. Subcontractor will furnish all of the labor and materials, along with competent supervision, shop drawings and samples, tools, equipment, scaffolding, and permits which are necessary for such performance.

1.2 The Contract Documents include this Agreement, all addenda attached hereto, and the Contractor's contract with the Owner, together with all changes, additions, and modifications thereof. The Contractor's contract with the Owner (the "Prime Contract") includes, but is not limited to, the agreement between the Contractor and Owner, all addenda, modifications, revisions, plans, drawings, specifications, details, all general, technical, supplementary, and special terms and conditions, any invitation for bids or information for bidders, if any, to the extent applicable, and all other documents listed in or referred to by the Contractor's contract with the Owner.

1.3 The Subcontractor binds itself to the Contractor for the performance of Subcontractor's work in the same manner as the Contractor is bound to the Owner for such performance under Contractor's contract with Owner. The pertinent parts of such contract will be made available upon Subcontractor's request. The terms and conditions of the Subcontract are intended to supplement the Contract Documents. If any of the provisions of this Subcontract change, modify, eliminate, or are inconsistent with any of the provisions of the Contract Documents, the provision of the Subcontract shall govern.

1.4 Should any question arise with respect to the interpretation of the drawings and specifications, such questions shall be submitted to the Architect/Engineer and his decision shall be final and binding to the extent provided in the Prime Contract. If there is no Architect/Engineer for this Project, the Contractor's decision shall be final and binding on the Subcontractor.

1.5 The Subcontractor shall pay all inspection fees, royalties, and license fees. The Subcontractor shall make all necessary arrangements and agreements so as not to infringe any patents, trademarks, or copyrights; and Subcontractor agrees to defend and hold harmless the Contractor and the Owner and the Architect/Engineer for any claims including attorneys' fees arising out of any such infringement or alleged infringement.

1.6 The Subcontractor's Work shall include, at no extra cost, all cutting, fitting, and patching required to make it come together properly and fit to receive or be received by work of other contractors, all as shown on or reasonably implied by the Contract Documents, or as required by job conditions.

1.7 The Work shall proceed as directed by the Architect/Engineer or the Contractor. Work, which in the opinion of the Architect/Engineer or Contractor fails to conform to the Contract Documents, shall be removed and replaced by Subcontractor with satisfactory materials and workmanship, and the Subcontractor shall make good any other work damaged thereby. Alternatively, if the Owner so elects, the non-conforming Work may be accepted and the Contractor may deduct from the amount due to the Subcontractor the difference in value between the Work specified and the Work furnished as determined by the Owner's representative and/or the Contractor.

1.8 The Subcontractor shall, within 24 hours after receiving specific written notice from the Contractor, commence to take down and remove any designated portion of its Work which is condemned, or disapproved, as not being in strict compliance and conformity with the requirements of this Agreement or the Contractor's contract with the Owner. The Subcontractor shall promptly, at its own expense, correct and rectify same. If the Contractor determines that it will accept non-conforming work, the Contractor shall be entitled to a credit for the non-conformity, and all associated costs as determined by the Owner's representative and/or the Contractor.

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1.9 If work of others is damaged by Subcontractor, the Subcontractor will cause such damage to be corrected to the satisfaction of and without cost to the Contractor and Owner.

1.10

(a) Subcontractor may not commence any work hereunder, without first furnishing the following:

- (i) A fully executed copy of this Subcontract.
- (ii) Proof satisfactory to Contractor that Subcontractor has procured all required insurances.
- (iii) When applicable, proof that prevailing rates have been posted as required by law.
- (iv) When applicable, proof satisfactory to Contractor that all workers on site have received OSHA 10-hour course certification.
- (v) Such other reports, forms, certifications, lien waivers and other documents or records required by the Owner, the Contract Documents, Contractor or by law, with such frequency as is specified or as requested by Contractor.

(b) Subcontractor shall not be entitled to any payments unless and until it furnishes, and keeps current, in forms satisfactory to Contractor, the following:

- (i) All documents or other records specified above in subparagraph (a).
- (ii) For all contracts involving prevailing wage requirements, a verified statement from the Subcontractor and each of its first and second tier sub-subcontractors, in form satisfactory to Contractor, attesting that the Subcontractor and each sub-subcontractor has received and reviewed a copy of the schedule of wages and supplements specified in the Contract Documents (or any applicable schedule subsequently issued) and agreeing that it will pay the applicable prevailing wages and supplements specified therein.
- (iii) For subcontracts involving prevailing wage requirements, weekly certified payrolls as requested by Contractor.
- (vii) Such other reports, forms, certifications, lien waivers and other documents or records required by the Owner, the Contract Documents, Contractor or by law, with such frequency as is specified or as requested by Contractor.

ARTICLE 2: Payments

2.1 Contractor shall pay the Subcontractor progress payments to the extent and with such frequency as Contractor receives such payments for the Subcontractor's work from the Owner. (Payment for materials or equipment suitably stored at the site or elsewhere shall be made only to the extent allowed and paid by the Owner.) Such payments will be made by Contractor within such period as provided by law after being paid for the work by Owner, not to exceed 30 days, and will equal the value of the work done by the Subcontractor according to Owner's estimate at applicable unit prices or a percentage of total completion, whichever is applicable, less the sum of previous payments and less retainage at the maximum rate authorized by law or ten percent, whichever is less; provided that if Subcontractor is indebted to Contractor or anyone else for cash advances, labor, supplies, materials, equipment, rental or other proper charges and/or back-charges against the work a reasonable amount for such indebtedness may be deducted from any payment or payments to be made under this provision; and provided further that Contractor may withhold release of any progress payment to the extent that Subcontractor is in default of any of the terms and conditions of this Subcontract Agreement. Estimates and calculations made by Owner, or its representative, as to the amount of work performed and materials furnished by Subcontractor shall be final and binding on the parties to this agreement and shall conclusively establish the amount of work done by Subcontractor. All statements for which payment is requested by Subcontractor must be received by Contractor on or before the last day of the contract pay period for work performed the preceding month. Receipt of progress payments from Owner shall be a condition precedent, to the extent permitted by law, to Contractor's obligation to make progress payments hereunder. With each application for payment, Subcontractor shall provide Contractor with the names of all union benefit accounts, subcontractors and suppliers, an acceptable schedule of values showing the amount of each sub-subcontract or the price of such labor, material and equipment needed for its entire portion of the Work, evidence of monthly toolbox talks and any other documentation requested by the Contractor. Approval and payment of the Subcontractor's

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monthly estimate is specifically agreed not to constitute or imply acceptance by the Contractor or Owner of any portion of the Subcontractor's Work.

2.2 In the event the Subcontractor does not submit to the Contractor directed timely application for a progress payment, then the Contractor may at its option include in its application to the Owner for Work performed during the preceding period such amount as it may deem proper for the Work of the Subcontractor for that period and the Subcontractor agrees to accept such approved portion thereof without objection.

2.3 In the event it appears to the Contractor that the labor, material and other bills incurred in the performance of Subcontractor's Work are not being currently paid, the Contractor may take such steps as it deems necessary to insure that the money paid with any progress payment will be utilized to pay such bills, including but not limited to issuing joint checks to the Subcontractor and its suppliers and/or subcontractors.

2.4 Subject to the provisions of paragraphs 2.9 herein, final payment shall be paid by the Contractor to the Subcontractor upon approval by the Owner, Architect/Engineer and the Contractor of the Subcontractor's Work and, satisfactory evidence having been received by the Contractor that all labor, including customary fringe benefits and payments due under collective bargaining agreements, and all subcontractors and material men have been paid to date and are waiving their lien rights upon the final payment of a specific balance due.

2.5 The Subcontractor's application for final payment shall be in such detail as the Owner and Contractor may require, and the following additional conditions must be fulfilled before final payment shall be due:

- a. A full and final waiver of all liens in connection with the Work shall be submitted by each person to receive a payment thereunder, which waiver of lien shall be in a form as approved by the Contractor for the Project. In the event that any such release or waiver of lien is not or cannot be furnished, then the Subcontractor may furnish to Owner and Contractor a bond or other security reasonably satisfactory to Owner and Contractor to indemnify them against any such lien.
- b. The Subcontractor shall have made, or caused to have been made, all corrections to its Work which are required to remedy any defects therein or as required to achieve compliance with the applicable drawings and specifications and any requirements of applicable codes or ordinances or any of the orders or directions of the Contractor or Architect/Engineer.
- c. The Subcontractor through the Contractor shall have delivered to the Owner all written guarantees, warranties, statements of Application and bonds required by the Contract Documents of this portion of the Work.
- d. The Subcontractor shall have delivered, in form satisfactory to the Owner's representative, reproducible final drawings showing Subcontractors' Work "as built," and all guarantees and operation and maintenance instructions for equipment and apparatus.
- e. The Architect/Engineer shall have issued a Final Certificate for Payment.
- f. The Subcontractor shall have furnished to the Contractor a detailed sworn statement of all liens, claims and demands, just or unjust, of sub-subcontractors, material men and others then outstanding or which the Subcontractor has reason to believe may hereafter be made on account of the Work or the performance thereof.
- g. The Subcontractor shall have delivered to the Contractor all releases required by the Contractor of such liens, claims and demands, or receipts in full in lieu therefor, and an affidavit to the effect that insofar as Subcontractor has knowledge or information, such releases and receipts included all the labor, materials, supplies, equipment and other services or items

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for which a lien, claim or demand could be filed or asserted. In lieu of such affidavit, the Subcontractor may, if the Contractor consents, furnish a bond satisfactory to the Contractor indemnifying the Owner and Contractor against such lien or demand.

Acceptance by Subcontractor of the Final Payment shall constitute a release of the Owner, the Contractor, and the Architect/Engineer from all uninsured liability for all things done or furnished in connection with the Work, and for every uninsured act or omission or neglect by the Owner, the Contractor and the Architect/Engineer relating to or arising out of the Work. The Subcontractor, before Final Payment, shall also execute and deliver a General Release to the Owner, Contractor and Architect/Engineer of all liability as set forth in the preceding sentence.

2.6 The Contractor may deduct from any amounts due or to become due to the Subcontractor any sum or sums owing by the Subcontractor to the Contractor under this Agreement or otherwise. Additionally, in the event of a claim or lien by any person or entity against the Owner, the Contractor, Contractor's surety, or the premises upon which the Work was performed, which claim or lien arises out of the Subcontractor's Work under this Agreement, the Contractor shall have the right, but is not required, to retain out of any payments due or to become due to the Subcontractor an amount sufficient to completely protect the Contractor from any and all loss, damage or expense therefrom, including attorney's fees, until the claim or lien has been resolved by the Subcontractor to the satisfaction of the Contractor. The Subcontractor shall discharge, within five (5) days after filing, any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Subcontractor's Work. If the Subcontractor fails to discharge such liens, the Contractor may do so at the Subcontractor's expense, including attorney's fees. This paragraph shall be applicable even though the Subcontractor has posted a full payment and performance bond.

2.7 Notwithstanding any other provision, the Contractor may withhold any payment or payments due or to become due to the Subcontractor if and to the extent that the Contractor deems it necessary or desirable to protect itself against possible loss or damage due to:

- a. defective Work not remedied to the satisfaction of the Contractor; or
- b. third-party claims or reasonable evidence indicating probable third-party claims; or
- c. failure or alleged failure of the Subcontractor to make payments to its subcontractors or suppliers as required; or
- d. inability, or reasonable doubt as to the ability, of the Subcontractor to complete the Subcontractor's Work within the required time or for the unpaid balance of the Subcontract Sum; or
- e. damage to the Contractor or a separate subcontractor; or
- f. unsatisfactory prosecution of the Subcontractor's Work by the Subcontractor; or
- g. previous overpayment to the Subcontractor for Work performed; or
- h. unauthorized deviations from the Contract Documents.

2.8 Neither issuance of the final certificate, final payment pursuant thereto, nor any provisions in the Contract Documents, shall relieve the Subcontractor of responsibility for any deficiency in materials, equipment or workmanship, and, unless otherwise directed, the Subcontractor shall promptly remedy any defects due thereto and pay for any damage to other Work resulting therefrom. The Owner or Contractor shall give written notice of such observed defects with reasonable promptness.

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2.9 Progress payments, final payment and retainage payments to the Subcontractor, otherwise due under the terms of the Contract for satisfactory performance of the Work, shall be made no later than 15 calendar days after receipt by the Contractor of payment from the Owner for the Work. If Final payment from the Owner for such Work is not received by the Contractor, through no fault of the Subcontractor, the Contractor will make payment to the Subcontractor within a reasonable time for the Work satisfactorily performed, subject to the requirements for Subcontractor to first proceed with the primary collection remedies described below.

2.9.1 To the extent permitted by law the Subcontractor hereby acknowledges that it is relying primarily on the credit of the Owner, not the Contractor, for payment for its Work. In situations where the Subcontractor has not been paid by the Contractor and Contractor has not been paid by the Owner for any reason, Subcontractor agrees to first exhaust its mechanics lien and foreclosure rights, to final judgment and through all appeals if necessary, as a condition precedent to any collection effort against the Contractor or its surety. This condition shall apply regardless of whether the Owner or any other person or entity becomes subject to a proceeding in bankruptcy or for the benefit of creditors. The Contractor's certification that it has not materially breached the Prime Contract shall be presumptive proof of such fact.

2.9.2 If, after exhausting its rights and remedies in a foreclosure action, Subcontractor elects to assert or maintain a claim against the Contractor and/or its surety, Contractor and/or the surety may assert all available defenses thereto and shall be entitled to full disclosure, without limitation, of all of Subcontractor's bid documents, cost records and litigation papers in the lien foreclosure and deficiency judgment litigation. In any such proceeding against the Contractor, the Subcontractor shall have the burden as a condition precedent to establish that it properly and timely exhausted its lien and other remedies as set forth above.

2.9.3 If the Subcontractor proceeds with a lien foreclosure action as provided under paragraph 2.9.3 above, or proceeds in bankruptcy as provided under paragraph 2.9.4 above, Contractor agrees to cooperate reasonably by providing Subcontractor with documents or information reasonably necessary to prosecute or pursue said claims; provided however, that if Contractor incurs any material expenses, including attorney fees, in providing said cooperation, Subcontractor agrees to reimburse Contractor for all such expenses upon receipt of a bill verified by an officer of Contractor which shall be prima facie proof of the amount thereof.

2.9.4 Because Contractor has no control over Subcontractor's election or pursuit of its rights or remedies in a lien foreclosure action, Subcontractor agrees that any interest on its claims against Contractor or its surety shall not accrue, except to the extent required by the Lien Law, until after all of Subcontractor's remedies have been finally exhausted as provided above.

ARTICLE 3: Prosecution of the Work

3.1 Time is of the essence as to the prosecution of the Subcontractor's Work. If requested, the Subcontractor shall provide the Contractor with scheduling information and Subcontractor's proposed schedule for the Subcontractor's Work. The Contractor may prepare the Schedule of Work for the Project and, as may be necessary, revise the same as the Work progresses. The Subcontractor shall commence the Subcontractor's Work promptly within five days after the date of the notice to proceed. The Subcontractor shall commence, continue, and complete its performance of the Project in a prompt and diligent manner at such times, in such order, and in such manner, as directed by the Contractor or in accordance with the Schedule of Work without hindering the Work of the Contractor or any other subcontractor, and so as to insure completion as directed by the Contractor. Any time specified for the completion of this Agreement, or portion thereof, is a material provision of this Agreement. The Subcontractor shall proceed with the Subcontractor's Work, including all necessary submittals, mock-ups and deliveries, so as to progress and complete its Work in accordance with the Contractor's most current Schedule of Work or as directed by the Contractor. Whenever, in the Contractor's judgment, the Subcontractor fails or is in danger of failing to maintain its part of the Schedule of the Work, Subcontractor shall, without additional compensation, work such overtime and/or additional shifts as the Contractor may direct.

3.2 The Subcontractor shall be responsible for and will prepare for performance of Subcontractor's Work, including, without limitation thereto, the submission of shop drawings, samples, tests, and field dimensions, determination of labor requirements and

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ordering of materials as required to meet the most current Schedule of Work or the direction of the Contractor. Subcontractor shall notify Contractor when portions of its Work are ready for inspection.

3.3 The Subcontractor will furnish periodic progress reports of the Subcontractor's Work as requested including the progress of materials or equipment to be provided under this Agreement that may be in the course of preparation or manufacture. Deliveries to the site must be prearranged on at least 24 hours notice, unless Subcontractor will be present to receive them.

3.4 The Subcontractor shall cooperate with the Contractor and subcontractors whose work may interfere with the Subcontractor's Work and participate in the preparation of coordinated drawings and work schedules in areas of congestion, specifically noting and advising the Contractor in writing of any interference by other contractors or subcontractors.

3.5 The Contractor shall not be obligated or liable to the Subcontractor for, and the Subcontractor hereby expressly waives any claims against the Contractor on account of, any damages, costs or expenses of any nature which the Subcontractor or its subcontractors may incur as a result of any delays, interferences, suspensions, changes in sequence or the like arising from or out of any act or omission of or attributed to the Contractor, the Owner or the Owner's representatives, it being understood and agreed that such delays, interferences, changes in sequence or the like are contemplated by the parties and that the Subcontractor's sole and exclusive remedy in such event shall be an extension of time, but only in accordance with the provisions of this Agreement and only to the extent an extension of time is actually allowed to the Contractor by the Owner or its representative under the terms of the Contractor's contract with the Owner.

In addition, the Subcontractor expressly agrees not to make, and hereby waives, any claim for damages, including those resulting from increased supervision, labor or material cost, on account of any delay, obstruction or hindrance for any cause whatsoever, including but not limited to the aforesaid causes, and agrees that the sole right and remedy therefor shall be an extension of time and only to the extent an extension of time is actually allowed to the Contractor by the Owner or its representatives under the terms of the Contractor's contract with the Owner.

3.6 The Subcontractor shall keep the building and premises reasonably clean of debris resulting from the performance of Subcontractor's Work. In keeping the premises reasonably clear of debris, Subcontractor shall, at a minimum, provide (if contracted to do so) and maintain dumpsters and legally dispose of all debris off site. If the Subcontractor fails to comply with this paragraph within 24 hours after receipt of notice of noncompliance from the Contractor, the Contractor may perform such necessary clean-up and deduct the cost from any amounts due to the Subcontractor.

3.7 The Subcontractor shall give adequate notices pertaining to the Work of the Subcontractor to proper authorities and secure and pay for all necessary licenses and permits to carry on the Subcontractor's Work, the furnishing of which is required by the Contract Documents.

3.8 The Subcontractor shall comply with all Federal, State, and local laws, including without limitation, Labor laws, Social Security Laws and Unemployment Compensation Laws, Workers' Compensation Laws, Safety Laws and all other laws insofar as applicable to the performance of this Agreement. Subcontractor shall also maintain its own safety program for compliance with such laws. Subcontractor shall pay all benefit fund contributions, insurance premiums and all sales, use or other taxes, of whatever nature applicable to the performance of Subcontractor's Work. The Subcontractor shall abide by all applicable prevailing wage rate requirements and schedules applicable to its Work and any changes thereto during the course of the Work. The Subcontractor shall indemnify and save harmless the Contractor from all costs, damages, liabilities, penalties, legal expenses and attorney's fees and other charges to which the Contractor may be subjected by reason of the failure of the Subcontractor to comply with this Paragraph.

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3.9 The Subcontractor shall not assign this Subcontract or the proceeds thereof nor subcontract any part of the Work to be performed hereunder without the prior written consent of the Contractor, with the exception of those subcontractors listed by the Subcontractor and furnished to the Contractor at the time this Agreement is executed.

3.10 The Subcontractor, upon twenty-four (24) hours notice, in person or by a duly authorized representative having power to act and acceptable to Contractor, shall attend, at its own expense, all meetings or conferences that the Owner, Architect/Engineer or Contractor may call, at the building site or elsewhere, for the purpose of discussing the progress of the Work, safety at the site, or ways to expedite the completion of the Project.

3.11 In prosecuting its Work, the Subcontractor shall protect the Work and property and shall abide by the following provisions:

- a. The Subcontractor shall continuously protect the Work. It shall also protect the Owner's and Contractor's property, and the property of others, from damage, injury or loss arising in connection with the Subcontractor's Work under the Contract Documents. The Subcontractor shall make good any such damage, injury or loss, except such as may be solely due to errors in the Contract Documents or caused by agents or employees of the Owner or Architect/Engineer, or due to causes beyond the control of Subcontractor and not to its fault or negligence.
- b. The Subcontractor will remove all snow and ice as may be required for the proper protection and prosecution of its Work. The Subcontractor shall at all times provide and maintain adequate protection against weather so as to preserve its Work, materials, equipment, apparatus, and fixtures free from injury or damage, including mold.
- c. The Subcontractor shall employ only methods of constructing or erection, and hoists, rigging, forms, scaffolding, cribbing, tools, structures, etc., at the site of the Work which conform to OSHA regulations and local, State and Federal safety laws and codes.
- d. The Subcontractor shall confine its construction equipment, the storage or materials and the operations of workmen to the limits indicated by laws, ordinances, permits, and as may be established by the Contractor, and shall not unreasonably encumber the premises with construction equipment or materials.
- e. The Subcontractor shall enforce the Owner's and Contractor's instructions and all laws and regulations regarding signs, advertisements, fires, firearms and smoking and the presence of alcohol or drugs.
- f. The Subcontractor will prevent dust, fumes or smoke from its operations from violating any applicable specification, code or other legal requirement and from harming or interfering with the normal activities of others.
- f. The Subcontractor, as necessary for its Work, shall provide flagmen and erect proper barricades and other safeguards, post danger signs and other warnings as warranted by hazards and existing conditions.
- h. The Subcontractor, its subcontractors and material men shall cooperate fully with all interested parties on accident prevention and claim handling procedures.
- i. The Subcontractor must promptly report in writing to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the site, which caused death, personal injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger. Any event or circumstance responsible for three (3) or more injuries from (1) incident resulting in inpatient hospitalizations must be reported to OSHA within eight (8) hours. Any fatalities must be reported to OSHA within eight (8) hours of occurrence.

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3.12 Contractor shall be entitled, upon written request, to receive promptly from Subcontractor such assurance as Contractor may require, including without limitation scheduling information and manpower commitments, that Subcontractor will duly and timely perform its obligations hereunder. Failure to furnish such assurance satisfactory to Contractor with shall be a material breach hereof.

ARTICLE 4: Labor, Workmanship and Materials

4.1 The Subcontractor's Work shall be done in the best manner by workmen who are satisfactory to the Contractor and the materials used shall be acceptable to the Contractor.

4.2 If the Subcontractor becomes involved in any labor difficulties which, in the opinion of the Contractor, impedes or slows down the Work, then the Contractor may, upon five days' notice and opportunity to cure, and without prejudice to any other right or remedy, either supplement Subcontractor's forces by subcontract or otherwise at Subcontractor's expense to advance Subcontractor's Work, or terminate this Subcontract with the Subcontractor, take possession of all materials and equipment thereon, and complete the Work, in which case the Subcontractor shall not be entitled to receive any further payments until the Work is completed. In either case, if the unpaid balance under the Subcontract shall exceed the expense of supplementing or finishing the Work, including compensation for additional managerial and administrative services, and all other associated expenses including attorney's fees, the excess shall be paid to the Subcontractor. If such expense is greater than such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

ARTICLE 5: Use of Contractor Equipment

5.1 Subcontractor shall not use or permit others to use any scaffold, ladders, lifts or other equipment or tools owned or leased by Contractor except with Contractor's written consent. By using or permitting others to use any Contractor-owned or leased equipment or tools, Subcontractor represents that it has independently confirmed the safety and adequacy thereof, and that such use shall comply with all applicable safety requirements. To the extent permitted by law Subcontractor shall defend and indemnify Contractor against all claims, costs, damages or liability arising out of Subcontractor's or its licensee's use of such equipment or tools. The insurance required by this Subcontract shall apply to Subcontractor's or its licensee's use of any Contractor owned or leased equipment or tools.

ARTICLE 6: Changes in the Work

6.1 The Contractor and Subcontractor agree that the Contractor may, by written directive, modify, add to or deduct from the Work covered by this Agreement, and to the extent warranted a Change Order shall be issued therefor. The Subcontractor agrees to proceed with the Work as changed when so ordered in writing by the Contractor so as not to delay the progress of the Work and pending Contractor's issuance of a Change Order, unless Contractor first requests a proposal of cost before the change is affected. If the Contractor requests a proposal of cost for a change, the Subcontractor shall promptly comply with such request.

6.2 The value of the change order shall be calculated as the actual cost of the change plus 10% for overhead and profit, unless a lesser percentage is stipulated in the Contractor's contract with the Owner. Labor cost shall not include field supervision, project management or any other office personnel. The Subcontractor shall provide all back-up as deemed necessary by the Contractor to substantiate actual cost with all change order requests.

6.3 Subcontractor shall be entitled to receive no extra compensation for extra work or materials or changes of any kind regardless of whether the same was ordered by the Contractor or any of its representatives unless a Change Order therefor has been issued in writing by the Contractor.

6.4 The Subcontractor agrees that no claim for additional services rendered or materials furnished by the Subcontractor to the Contractor shall be valid unless written notice of such claim is given to the Contractor prior to the furnishing of the services or material. Subcontractor shall be bound by any changes or alterations made by Owner to the Contract Documents or to the Subcontract Work to

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the same extent that Contractor is bound. Subcontractor also agrees that the terms of the Contract Documents relating to changes, changed conditions, extra work, Owner-furnished property, suspension of work, termination, claims and disputes are incorporated herein by reference, except that to the extent they may conflict with any term herein this Agreement shall control.

6.5 In addition to the requirements of Section 6.3, if the Subcontractor believes that any order, directive, or condition entitles Subcontractor to extra compensation or an extension of time, Subcontractor shall, as a condition precedent to any recovery therefor, give the Contractor written notice of its claim not later than three (3) days after the occurrence of the event giving rise to the claim and, within 14 days thereafter, shall furnish in writing sufficient facts in support of its position as may be necessary for a decision. Any claim by the Subcontractor for extra compensation or an extension of time not so made shall be waived, and the Subcontractor shall not be entitled to any extra compensation or an extension of time as a result thereof.

6.6 Notwithstanding any other provision, if the Work for which the Subcontractor claims extra compensation or a time extension is determined by the Owner or Architect/Engineer not to entitle the Contractor to a such a contract adjustment, then the Contractor shall not be liable to the Subcontractor for any extra compensation time extension for such Work, unless Contractor agrees in writing to such extra compensation.

6.7 The Subcontractor shall pay, immediately upon demand therefor, all costs, losses, damages and expenses, and all administrative, management, overhead and other direct or indirect expenses, including reasonable attorneys' fees (the "Costs") incurred by the Contractor in connection with any default by Subcontractor or exercise by Contractor of any right to remedy upon Subcontractor's default. If the Subcontractor does not pay the Costs immediately, the Contractor may deduct all such Costs from any payments otherwise due. If payments due or to become due to the Subcontractor are not sufficient to cover the Costs, the Subcontractor immediately shall pay to Contractor the full amount of any such excess with interest thereon nine percent (9%) per annum. The liability of the Subcontractor hereunder shall extend to and include, without limitation, the full amount of Costs incurred and obligations assumed by the Contractor in good faith under the reasonable belief that such Costs or obligations were necessary or required, (i) in completing the Work and providing labor, materials, equipment, supplies and other items therefor or resubcontracting the Work, and/or (ii) in settlement, discharge or compromise of any claims, demands, suits or judgments pertaining to or arising out of the Work.

ARTICLE 7: Insurance and Indemnity

7.1 The Subcontractor shall procure and maintain at its own expense and from insurers acceptable to Contractor, such insurance policies as will fully protect Subcontractor, Contractor, Owner, and any other person or entity required to be covered by the Prime Contract from all claims for injuries or damages, including attorneys' fees, by whomever caused, arising out of the performance of the Subcontract Work, whether before or after its completion. The insurance companies providing the required coverages shall be licensed to do so in the state or jurisdiction where the Project is located, and shall be rated no lower than "A-" by the most recent Best's Key Rating Guide or Best's Agent's Guide, and shall have a Best's Financial Size Category of not less than VIII, unless agreed to by Contractor. Subcontractor shall also maintain at its own expense any other insurance required by the Contract Documents, including those coverages, forms and endorsements set forth on Exhibit B and in Section 7.2 below.

7.2 The Subcontractor's Insurance required by Paragraph 7.1 shall be written on an occurrence basis in the types, for the coverages, and for not less than the limits of liability, on a per project basis, as follows:

- a. Worker's Compensation and Employer's Liability including Broad Form All States Endorsement and Voluntary Compensation Endorsement. A waiver of subrogation shall apply for this project.
- b. Comprehensive General Liability:

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Combined Single Limit -
\$1,000,000 each occurrence
\$2,000,000 general aggregate

such coverage shall include:

Premises-Operations, Contractor's Protective, Products-Completed Operations for at least three years after Owner's final acceptance, Contractual Liability covering the liability assumed by this Agreement, Personal Injury, Broad Form Property Damage (including Completed Operations), full Explosion, Collapse, and Underground Coverage, Broad Form Notice of Occurrence.

c. Comprehensive Automobile Liability:

Combined Single Limit
\$1,000,000 each occurrence
Such coverage will include all owned, non-owned, leased and hired automobiles.

d. Umbrella Liability:

Bodily Injury and Property Damage
Combined Single Limit
\$5,000,000 each occurrence
\$5,000,000 aggregate

- e. Any and all additional insurance coverage and limits required by the Contract Documents or the laws of the state in which the Project is situated.
- f. If requested by Contractor, Subcontractor shall provide, during the term of this Agreement, in the name of the Contractor, Owner's and Contractor's Protective Liability Insurance coverage for the limits set forth in paragraph 7.2(b) above.
- g. Asbestos, Lead and/or Mold Liability: If the work contemplates asbestos, lead or mold abatement, then Subcontractor shall provide liability insurance coverage, on an occurrence basis, for claims arising out of abatement, removal, storage, transportation and/or disposal activities.
- h. Pollution Legal Liability: If the work contemplates handling or hauling other pollutants or other hazardous materials, then Subcontractor shall provide, on an occurrence basis, liability insurance to cover, among other things, claims arising out of all hazardous material and hazardous waste remediation, storage, transportation and disposal. Coverage shall include liability assumed under contract. If the work involves hauling pollutants or other hazardous materials offsite, then coverage shall apply to transportation and the policy shall not have any exclusions for transportation. If the work involves disposal of the pollutants or other hazardous materials at another site, then coverage shall apply to liability from non-owned disposal sites. Contractor, the Owner and any other party required by the Contract Documents must be named as additional insured.

All the insurances required hereunder shall name as Additional Insureds the Contractor, the Owner and any other person or entity required to be covered by the Prime Contract, and such liability insurance coverages shall be primary and non-contributory to any other available insurance, with the exception of workers compensation. The carrying of the above coverages shall not relieve the Subcontractor of its obligations assumed under this Subcontract Agreement.

7.3 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 policy, insuring all Work done and all materials, equipment, apparatus, fixtures, supplies

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and temporary structures incident to the construction described in the contract between the Contractor and the Owner, if the same are not otherwise insured by the Subcontractor, and while the same are located on the site of the Work, or adjacent thereto on sidewalks, streets or alleys. Such insurance shall not apply to plant, equipment, tools or fixtures forming part of the capital assets of the Subcontractor, or belonging to any of its employees, and which are not included in the cost of the Work herein described, nor to usual exclusions in standard policies of insurance. The amount of such insurance shall, at all times be sufficient to cover the cost of repairing, rebuilding or replacing the property lost or damaged by causes to which such insurance is applicable. In the event of such loss or damage, if the Contractor is liable to repair, rebuild or replace such property so lost or damaged, the Subcontractor agrees to be and remain liable for the replacement to its original condition of such portion of the Subcontractor's Work as may be so lost or damaged, which replacement shall be in accordance with the provisions of this Subcontract and of the aforesaid Owner-Contractor contract, and shall be at the sole cost and expense of the Subcontractor; provided, that the Contractor shall be obligated to pay the Subcontractor on account of the cost of such replacement, such sum or sums as shall be paid to the Contractor by any applicable builder's risk insurance carrier on account of such loss or damage to the Work performed by, or property owned, controlled or furnished by the Subcontractor and covered by such insurance. The Subcontractor agrees to cooperate to the extent required to establish a proper appraisal of the property lost or destroyed and otherwise to perform the conditions precedent to adjustment of such loss or damage.

7.4 The foregoing policies shall contain a provision that coverages afforded under the policies will not be cancelled or not renewed until at least thirty (30) days prior written notice has been given to the Contractor. Certificates of insurance acceptable to the Contractor shall be filed, in duplicate, with the Contractor prior to the commencement of Work.

7.5 The Subcontractor, for itself and its insurers, waives all rights of subrogation against the Contractor, the Owner, the Owner's consultants and contractors, and Contractor's other subcontractors.

7.6.1 To the extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless Contractor and the Owner, and their officers, directors, employees, agents, affiliates, successors, and assigns, and any others for whom indemnification is required by the Contract Documents, from and against any and all claims, costs, liabilities, suits, judgments, losses, damages, demands and expenses, including without limitations, attorneys' fees arising or alleged to arise from, or caused by or claimed to have been caused in connection with the Subcontract Work, whether or not any action or omission of Contractor or the Owner contributed thereto, including, without limitations, all liability imposed by virtue of any law designed to protect persons employed at the work site.

7.6.2 Without limiting the generality of the foregoing, such defense and indemnity includes all liability, damages, loss, claims, demands and actions on account of personal injury, death or property loss to any Indemnitee, any of Indemnitee's employees, agents, contractors or subcontractors, licensees or invitees, or other contractor or subcontractor, their employees, agents, subcontractors, licensees or invitees or to any other persons, whether based upon, or claimed to be based upon, statutory (including, without limiting the generality of the foregoing, Worker's Compensation), contractual, tort or other liability of any Indemnitee, contractor, subcontractor or any other persons. In addition, the liability, damages, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any other so-called "intangible" property rights, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatever or which arise out of any failure of Subcontractor to discharge its duties specified in the Contract Documents.

7.6.3 In the event more than one Subcontractor is connected with an accident or occurrence covered by this indemnification, then all of such Subcontractors shall be jointly and severally responsible to the Indemnitees for defense and indemnification and the ultimate responsibility among such indemnifying Subcontractors for the loss and expense of any such indemnification shall be settled by separate proceedings and without jeopardy to any Indemnitee. The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnitee for its own negligence if not permitted by law or to eliminate or reduce any other indemnification or right which Owner, Contractor or Architect/Engineer has by law.

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7.6.4 Subcontractor expressly understands and agrees that any performance bond or insurance protection required by this Article or any other provision of the Contract Documents, or otherwise provided by Subcontractor, shall in no way limit the responsibility to indemnify, save and hold harmless and defend the Indemnitees as herein provided.

7.6.5 The Subcontractor shall bear any expense, whether incurred or paid, of any Indemnitee because of any claim or other matter indemnified against hereunder, including reasonable attorneys' fees and court costs in the defense of, or preparing for the defense against, any such claim, even if such claim or any lawsuit arising therefrom is groundless, false or fraudulent. If any such claim has not been settled or discharged when the Work is finished, final settlement between the Contractor and the Subcontractor and final payment of the Subcontract Price and the acceptance of the Work may be deferred until any such claim is paid or settled or the Subcontractor provides proof, acceptable to the Contractor, that sufficient insurance or other security is in place to satisfy such claim. At the request of any Indemnitee, the Subcontractor, at its own expense, shall assume the defense, on behalf of such Indemnitee, of any such claim; provided, however, that any attorney employed in such defense must be satisfactory to such Indemnitee.

7.6.6 In any and all claims against the Contractor or any of its agents or employees by any employee of the Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable, the indemnification obligation under this Paragraph 7.6 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.

7.6.7 The obligations of the Subcontractor under Paragraph 7.6 shall not extend to the liability of the Architect/Engineer, its agents or employees, arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (b) the giving of or failure to give directions or instructions by the Architect/Engineer, his agents or employees, providing such giving or failure to give is the primary cause of the injury or damage.

7.7 All indemnification provisions set forth in this Agreement shall survive termination of this Agreement.

ARTICLE 8: Performance Bond and Labor and Material Payment Bond

8.1 Prior to commencing Work, **and only if specifically required in Exhibit C: Scope of Work**, the Subcontractor shall furnish at its own expense, and in a form satisfactory to Contractor, full and duly executed Performance and Labor and Material Payment Bonds, underwritten by a surety or sureties satisfactory to the Contractor, in the full amount of this Subcontract. The Subcontractor's failure to deliver satisfactory bonds within ten (10) calendar days after demand may be deemed a material breach of this Subcontract.

ARTICLE 9: Warranty

9.1 The Subcontractor agrees to promptly make good without cost to the Owner or Contractor any and all defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period so established in the Contract Documents; and if no such period be stipulated in the Contract Documents, then such guarantee shall be for a period of one year from date of completion and acceptance of the Project by the Owner. The Subcontractor further agrees to execute any special guarantees as required by the terms of the Contract Documents, prior to final payment. The Subcontractor also agrees to pay for any damage to the Project resulting from defects in the Work and all costs of removal, replacement or repair of other work damaged in complying with this guarantee.

9.2 Subcontractor warrants to the Contractor and Owner that all materials and equipment furnished shall be new unless otherwise specified, and that all Work under this Subcontract shall be of good quality, free from faults and defects and in conformance with the Contract Documents.

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ARTICLE 10: Contractor's Obligations

10.1 The Contractor shall not issue or give any instructions, orders or directions directly to employees or workmen of the Subcontractor other than to the persons designated as the authorized representative(s) of the Subcontractor.

10.2 Subcontractor and Contractor recognize that time is of the essence and that prompt completion of the Work is essential under the Contract Documents. Subcontractor shall be liable for any liquidated or other damages assessed against Contractor by Owner as a result of Subcontractor's failure to prosecute the work diligently, and as herein required, and such amounts may be back-charged against the Subcontract Amount. This provision does not preclude any claim the Contractor may have for its own actual damages under the law.

ARTICLE 11: Termination and Suspension

11.1 Should the Subcontractor fail at any time to supply a sufficient number of properly skilled workmen or sufficient materials and equipment of the proper quality, or fail in any respect to prosecute the Work with promptness and diligence, or fail to promptly correct defective Work or fail in the performance of any of the agreements herein contained, the Contractor may, upon two days' notice and opportunity to cure, provide such labor, materials and equipment and deduct the cost thereof, together with all loss or damage occasioned thereby, including attorney's fees, from any money then due or thereafter to become due to the Subcontractor under this Agreement.

11.2 If the Subcontractor at any time shall refuse or neglect to supply sufficient properly skilled workmen, or materials or equipment of the proper quality and quantity, or fail in any respect to prosecute Subcontractor's Work with promptness and diligence, or cause by any action or omission the stoppage, delay or interference with the work of the Contractor or other subcontractors, or fail in the performance of any of the covenants herein contained, or be unable to meet its debts as they mature, or assign or sublet the Work or any monies due hereunder without the Contractor's written consent the Contractor may at its option at any time after serving written notice of such default with direction to cure in a specific period, but not less than two (2) working days, and after the Subcontractor fails to cure the default, terminate the Subcontractor's employment by delivering written notice of termination to the Subcontractor. Thereafter, the Contractor may take possession of the plant and work, materials, tools, appliances and equipment of the 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 shall be deemed necessary, and shall deduct the cost thereof, including without restriction thereto all charges, expenses, losses, costs, damages, and attorneys' fees, incurred as a result of the Subcontractor's failure to perform, from any money then due or thereafter to become due to the Subcontractor under this Agreement.

11.3 If the Contractor so terminates the employment of the Subcontractor, the Subcontractor shall not be entitled to any further payments under this Agreement until Subcontractor's Work has been completed and accepted by Owner, and payment has been received by the Contractor from the 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 the Subcontractor, but if such expense exceeds the balance due, the Subcontractor agrees promptly to pay the difference to the Contractor. In addition, Subcontractor agrees to promptly pay to Contractor, all costs set forth under paragraph 6.6 of this Agreement.

11.4 Contractor shall have the right to terminate this Subcontract, by written notice, without Subcontractor being at fault, for any cause or for its own or the Owner's convenience, and require Subcontractor to immediately stop Work. In such event, Contractor shall pay Subcontractor for that Work actually performed in an amount proportionate to this Subcontract sum, along with any other sums, if any, paid by the Owner on account of Subcontractor's Work. Contractor shall not be liable to Subcontractor for any other costs nor for prospective profits on work not performed. However, if the reason for the termination and cancellation is due to any default or action by the Owner, or as a result of court order or order of public authority, then Contractor shall not be liable to Subcontractor for any sum greater than that which Contractor receives from Owner with respect to Subcontractor's performance, less any costs incurred by Contractor. Any default termination subsequently determined to have been erroneous shall be treated as a termination for convenience.

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11.5 Should the Owner suspend its contract with the Contractor or any part which includes the Subcontractor's Work, the Contractor shall so notify the Subcontractor in writing and upon written notification the Subcontractor shall immediately suspend the Subcontractor's Work. In the event of such Owner suspension, the Contractor's liability to the Subcontractor is limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Contract Documents.

11.6 The Contractor may order the Subcontractor in writing to suspend, delay, or interrupt all or any part of the Subcontractor's Work for such period of time as may be determined to be appropriate for the convenience of the Contractor. Phased or interrupted Work when required shall not be deemed a suspension of Work. The Subcontractor shall notify the Contractor in writing within ten (10) working days after receipt of the Contractor's order of the effect of such order upon the Subcontractor's Work. To the extent allowed the Contractor under the Contract Documents, the Contract Sum or contract time shall be adjusted by Change Order for any increase in the time or cost of performance of this Agreement caused by such suspension, delay, or interruption. No claim under this Article shall be allowed for any costs incurred more than ten (10) working days prior to the Subcontractor's notice to the Contractor.

11.7 In no event shall Contractor be liable to Subcontractor for any damages for delays or interference with the work. For purposes of the Contract, "damages for delays" shall include disruptions, interference, inefficiencies, pediments, hindrance, acceleration and the "stacking of trades". Subcontractor's sole remedy for any delay is a time extension, and only to the extent that a time extension is granted by the Owner. The contract time shall not be adjusted under this Article for any suspension, delay or interruption to the extent that performance would have been so suspended, delayed, or interrupted by the fault or negligence of the Subcontractor or by a cause for which Subcontractor would have been responsible.

ARTICLE 12: Disputes

12.1 All claims, disputes and other matters in question arising out of, or relating to, this Subcontract or the breach thereof that, in Contractor's judgment, arise from the Owner's action or inaction, shall be decided in accordance with the Disputes provision of the Contract Documents. Subcontractor waives any claim against Contractor for compensation or equitable adjustment for any claims, changes or extra work for which Owner or its representatives may be responsible except to the extent the same is allowed and paid to Contractor by the Owner. Contractor shall reasonably cooperate with Subcontractor in submitting meritorious claims to the Owner for changes, changed conditions, and the like, with respect to Subcontract Work but this shall not be interpreted as an attempt to create any direct contractual relationship between Subcontractor and Owner. All costs, including attorney's fees, incurred by Contractor in any formal or informal claim proceeding for the benefit of Subcontractor shall be born solely by Subcontractor. No change or extra work ordered or required by either Owner or Contractor shall invalidate any bond or bonds to be furnished by Subcontractor, and all work Subcontractor performs hereunder or otherwise at Contractor's request shall be subject to the terms of this Subcontract and covered by the insurance provided hereunder.

12.2 In the event the Contractor and Owner or others become involved in any proceedings, be they judicial, administrative, arbitration or other, concerning matters relating to this Subcontract, it shall be the responsibility of the Subcontractor to prepare and present the Contractor's case, to the extent the proceedings are related to claims by the Subcontractor under this Subcontract. To the extent such proceedings are related to claims by the Owner or others against Contractor relating to this Subcontract, Subcontractor shall give its full cooperation and assistance to Contractor in the preparation and presentation by Contractor of its defense to such claims, and produce and make available to Contractor any books, records, documents, information or other evidence, and witnesses, including expert witnesses, which may be required by Contractor in connection therewith.

12.3 Should the Contractor become involved in any proceedings, be they judicial, administrative, arbitration or other, with the Owner or others concerning matters relating to this Subcontract, the Subcontractor shall be bound by the result to the same degree as the Contractor.

12.4 The Subcontractor shall carry on Subcontractor's Work and maintain its progress during any such proceedings.

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ARTICLE 13: Safety Compliance

13.1 In addition to the requirements of Paragraph 3.8, the Subcontractor shall maintain and institute on the job site a written safety program ("Program"). The Program shall include, but not be limited to, provisions for weekly "tool-box talks" relating to safety issues, on-site safety inspections of the Work, a hazard communication program which complies with all federal and state occupational safety and health guidelines, procedures to train employees in safe work methods and a comprehensive listing and catalog of all Material Safety Data Sheets. At Contractor's request, Subcontractor shall provide to Contractor Subcontractor's Program for Contractor's review. The review of the Program by Contractor shall not be deemed to release Subcontractor or in any way diminish its liability, by way of indemnity or otherwise, as assumed by it under this Subcontract.

13.2 When so ordered, Subcontractor shall stop any part of the Work which Contractor deems unsafe until corrective measures satisfactory to Contractor have been taken. Should Subcontractor neglect to adopt such corrective measures, Contractor may do so and deduct the cost from any payments then due or thereafter to become due to Subcontractor. Subcontractor shall timely submit copies of all accident or injury reports to Contractor.

13.3 Subcontractor shall comply with all statutory and other safety requirements applying to its work and/or initiated by the Contractor as well as 29 CFR Part 1926 – OSHA Safety and Health Standards for the Construction Industry, 29 CFR Part 1910 – OSHA General Industry Safety and Health Standards applicable to Construction, as published by the U. S. Department of Labor, Occupational Safety and Health Administration (OSHA). Subcontractor shall immediately notify Contractor, and shall give notice to Contractor within (1) day, of the occurrence of any personal injury, whether to an employee or to a member of the public, or of any property damage.

13.4 Prior to the start of the subcontract work, the subcontractor shall submit a copy of its safety program and hazard communication program to Contractor. Contractor assumes no responsibility for the Subcontractor's safety program. Subcontractors shall be solely responsible for the implementation and execution of its safety program. Subcontractor shall be responsible for assuring that its employees and sub-subcontractors act in a safe and reasonable manner. Subcontractor is responsible to correct any exposure that they create and the correction must be compliant with applicable safety standards. If Contractor corrects a condition created by the Subcontractor, due to Subcontractor failure to abate, the Subcontractor will be charged for materials and time spent correcting the condition.

13.5 If Subcontractors use any facilities, tools or equipment owned, leased or operated by Contractor, the Subcontractor does so at its own risk. Subcontractors are responsible to thoroughly inspect tools and equipment prior to use to determine that they are in safe working order and warranties to Contractor that Subcontractor's operators of such equipment are licensed or otherwise qualified to operate the equipment.

13.6 Contractor's Project Managers, Superintendents, employees and other authorized representatives shall have the authority to enforce safety requirements on the project, including, but not limited to, the authority to:

- 1) Stop unsafe work. Work stoppage shall not increase the time for completion of work.
- 2) Remove from the project any employee without the proper personal protective equipment or working in an unsafe manner.
- 3) To impose monetary fines or to apply safety back charges to subcontractors when corrective measures are taken by Contractor to remedy an unsafe condition created by Subcontractor.

13.7 Subcontractor shall, to the extent permitted by law, defend and indemnify Contractor against all claims, costs, damages, or liability arising on account of Subcontractor's actions or neglect in the performance of this Subcontract, including but not by way of limitation, OSHA fines, penalties and attorney's fees.

13.8 Because we recognize the hazards caused by exposure to environmental tobacco smoke, as well as the life-threatening diseases linked to the use of all forms of tobacco, it is the policy of Hamilton Stern Construction to provide a tobacco-free work environment for

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all employees, subcontractor and supplier employees, and all visitors. This policy covers the smoking of any tobacco product and the use of oral tobacco products or “spit” tobacco and applies to both employees and non-employees of all Hamilton Stern Construction office locations and project sites.

ARTICLE 14: Hazardous Material and Toxic Substance

14.1 In the event the Subcontractor encounters on the site materials reasonably believed to be hazardous material or toxic substance in any form, including but not limited to, mold, lead, asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Subcontractor shall immediately stop Work in the area affected and report the condition to the Contractor in writing. The Work in the affected area shall not thereafter be resumed except by written direction of the Contractor. To the extent permitted by law Subcontractor shall indemnify and hold harmless Owner, Contractor, the Architect/Engineer, and their consultants, agents and employees, from and against claims, liabilities, costs, damages, losses and expenses, including reasonable attorneys' fees, arising out of or relating to Subcontractor's failure to comply with this Article.

ARTICLE 15: Equal Opportunity

15.1 During performance, Subcontractor shall not discriminate against any employee or applicant for employment because of race, creed, disability, color, sex, age, marital status or national origin. Subcontractor shall comply with any equal opportunity or affirmative action requirements or plans as may be set forth in the Contract Documents or in any exhibit attached hereto.

ARTICLE 16: Privity

16.1 Until final completion of the Project, the Subcontractor agrees not to perform any work directly for the Owner or any tenants thereof, or deal directly with the Owner's representatives in connection with the Project, unless otherwise directed in writing by the Contractor. All Work for this Project performed by the Subcontractor shall be processed and handled exclusively through the Contractor.

ARTICLE 17: Miscellaneous Provisions

17.1 All matters relating to the validity, performance, interpretation or construction of this Agreement, or the breach thereof, shall be governed by the laws of the State of New York, without regard to its conflict of law principles. Subcontractor and any surety or Guarantor, if any, hereby submit to the jurisdiction of the courts of the State of New York. The venue of any proceeding brought under this Subcontract shall be Monroe County, New York.

17.2 Upon acceptance of this Agreement by signature, all prior negotiations and communications between the parties, verbal or written, are superseded by and merged in this Agreement and evidence of such negotiations or communications prior to such execution shall be inadmissible to vary the terms hereof. No modification of this Agreement shall be binding unless the same is in writing signed by the Contractor and Subcontractor.

17.3 If Contractor does not insist in any instance upon strict compliance with any of the provisions of this Subcontract, or to exercise any options provided, this shall not be construed as a waiver of its right to thereafter require such compliance or to exercise such option.

17.4 To the best knowledge and belief of the parties, this Subcontract contains no provision that is contrary to federal or state law, ruling or regulation. However, if any provision of this Subcontract shall conflict with any such law, ruling or regulation, then such provision shall continue in effect only to the extent permissible. In the event any provision is thus inoperative, the remaining provisions shall, nevertheless, remain in full force and effect.



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17.5 Subcontractor acknowledges and agrees that it has read, understands and has negotiated the terms of this Subcontract. As a result, this Agreement shall not be deemed the product of either Contractor or Subcontractor. Therefore, this Subcontract shall not be enforced or interpreted any more stringently or strictly against either Contractor or Subcontractor.

17.6 Except as otherwise provided herein or in the Prime Contract, no provision of this Agreement shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a third party beneficiary of this Agreement or of any one or more of the terms hereof or otherwise give rise to any cause of action in any person not a party hereto.

17.7 If Subcontractor is a corporation or limited liability company, the person signing this Agreement on behalf of Subcontractor hereby agrees to be personally liable and responsible for and guarantees the performance and obligations of the Subcontractor under the terms of this Agreement.

17.8 Should any part of this Subcontract be found to be invalid or illegal by reason of any existing or subsequently enacted legislation or by any decision of a court of competent jurisdiction, it is agreed that such finding shall not affect the remainder of the Subcontract and the remaining paragraphs or parts shall remain in full force and effect.

17.9 If so provided by the Contract Documents or by law, this Subcontract is subject to Architect and/or Owner approval of the Subcontractor, or execution of necessary funding agency certifications, or approval of any required hiring, subcontracting or purchasing plans; but this Subcontract shall be and remain effective in the absence of a specific written disapproval by such Architect, Owner or funding agency.