

BROADWAY ELECTRIC SERVICE CORP (BESCO).
SUBCONTRACT TERMS AND CONDITIONS (LABOR AND INSTALLATION)

These Terms and Conditions (“Terms and Conditions”) govern the terms and conditions under which a Subcontract Agreement shall be issued by Broadway Electric Service Corporation (BESCO), a Tennessee corporation, to control all work performed as described and all change orders issued by Contractor to Subcontractor either by Contractor’s written request, verbal request or otherwise unless otherwise specified on the change orders. For the considerations herein expressed, the Contractor and Subcontractor do hereby mutually agree as follows:

Article 1 – Scope of Work

1.1 Contractor contracts with the Subcontractor as an independent contractor to provide all work, labor, materials, equipment, services and appliances necessary or incidental to complete the work described in Exhibit A for the Project (as defined in Subparagraph 2.3 below), in accordance with, and reasonably inferable from, that which is indicated in the Subcontract Documents (as defined in Subparagraph 2.1 below) (collectively, the “Subcontract Work”), and consistent with the progress schedule attached hereto as Exhibit B, as it may be changed by Contractor from time to time (collectively, the “Progress Schedule”). The Subcontractor shall perform the Subcontract Work in accordance with the Subcontract Documents for the Subcontract Price (as defined in Subparagraph 4.1 below).

1.2 Subcontractor agrees to furnish its diligent efforts and judgment in the performance of the Subcontract Work and to cooperate with Contractor so that Contractor may fulfill its obligations to the Owner (as defined in Subparagraph 2.3 below). The Subcontract Work shall include and Subcontractor shall furnish, without limitation, all of the labor, materials, equipment, and services, including but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of the Subcontract Work. The Subcontractor shall provide Contractor a list of its proposed subcontractors and suppliers, and be responsible for taking field dimensions, providing tests, obtaining required permits related to the Subcontract Work and affidavits, ordering of materials and all other actions as required to meet the Progress Schedule.

Article 2 – Contract Documents

2.1 The term “Contract Documents” or “Subcontract Documents” includes this Subcontract Agreement and as applicable to the Subcontract Work, the Prime Contract (as defined in this Article), and all of their respective attachments and all other documents specifically referenced therein or herein, including, but not limited to, all exhibits, appendices, advertisements for bids, instructions to bidders, bid documents, addenda, Change Orders (as defined under Article 6 below), plans and drawings (“Plans and Drawings”), specifications (“Specifications”), approved submittals, general conditions, special terms and conditions that apply, guarantees, and all other documents forming, or by reference, made a part of this Subcontract Agreement.

2.2 This Subcontract Agreement supersedes any prior written or oral agreements and Subcontractor’s conditions forming any part of Subcontractor’s proposals. Any additional or different terms and conditions set forth in Subcontractor’s proposals, invoices, purchase orders, acknowledgments or similar documents, or in Subcontractor’s electronic acknowledgments or communications, are hereby objected to by Contractor and will not be binding upon Contractor unless specifically agreed to in writing and signed by Contractor’s Authorized Representative (as defined in Article 19 below).

2.3 Subcontractor acknowledges that the Subcontract Work is a portion of the work required of Contractor under the Contract between Owner and Contractor. The Subcontract Work shall be performed by Subcontractor strictly in accordance with the Contract Documents to be performed at the Project address specified in this Subcontract Agreement under a separate prime contract (as applicable to the Subcontract Work, “Prime Contract”) between Contractor and a prime contractor or a subcontractor (of any tier) to a prime contractor or directly with an owner (collectively as to any such prime contractor, subcontractor (of any tier) and owner and as applicable to the Subcontract Work, “Owner”) as generally identified on Exhibit C. As between Contractor and Subcontractor under this Subcontract Agreement, to the extent applicable to the Subcontract Work, (a) Subcontractor hereby assumes toward and accepts for the benefit of Contractor (and, as determined by Contractor, for the benefit of Owner) all of the obligations and responsibilities which the Contractor, by and through the Prime Contract, has toward and for the benefit of Owner (and of any parties to be indemnified by Contractor under the Prime Contract) and further agrees that it is bound to Contractor to the same extent that Contractor is bound to Owner (and any parties to be indemnified by Contractor under the Prime Contract) under the Prime Contract; (b) Contractor has all of the same rights and remedies against Subcontractor which Owner (or any parties to be indemnified by Contractor under the Prime Contract) has against Contractor under the Prime Contract; and (c) Subcontractor hereby makes all of the same representations, warranties and covenants to Contractor which Contractor has made to Owner under the Prime Contract. Subcontractor

acknowledges that it has received a copy of the Prime Contract though Contractor may have redacted and has the right to redact confidential or proprietary information.

2.4 This Subcontract Agreement, the provisions of the Prime Contract and the other Contract Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If, in the event a conflict arises between any of the Contract Documents, such conflict shall be resolved using the following order of precedence and as applicable to the Contract Documents: (a) Change Orders (as defined in Subparagraph 6.7 below); (b) any special terms and conditions that apply, as determined by Contractor; (c) this Subcontract Agreement; (d) the Prime Contract and its exhibits, appendices and other attachments (each having the order of precedence as set forth in the Prime Contract); (e) the Plans and Drawings; (f) the Specifications; and (g) any other documents identified in this Subcontract Agreement. Notwithstanding the foregoing, Contractor shall decide priority where any ambiguities, discrepancies, conflicts, or inconsistencies exist between any documents not listed above, which have equal precedence to each other.

Article 3 - Performance

3.1 Time is of the essence for the Subcontract Work. Subcontractor shall begin performance of the Subcontract Work when notified by Contractor to proceed and shall perform the Subcontract Work in accordance with the Project Schedule. Subcontractor shall direct all communications related to the Project to the Contractor.

3.2 If Subcontractor has reason to believe that the Subcontract Work will not be performed or completed in accordance with the Project Schedule, Subcontractor shall immediately and no later than twenty four (24) hours after Subcontractor becomes aware of such delay, notify Contractor of the nature and extent of such delay, along with an action plan which shall be acceptable to Contractor to remedy such delay; provided, however, that nothing herein shall affect the applicability of or excuse performance under Article 9 or 21 of this Subcontract Agreement. If Contractor believes that the Subcontract Work is not being performed according to the Project Schedule, Contractor may require Subcontractor to increase its manpower and equipment, increase working hours or to otherwise accelerate its performance until the Subcontract Work is back on the Project Schedule. Such increases and/or acceleration shall be at no additional cost to Contractor.

3.3 Contractor reserves the right at any time to direct the Subcontractor to schedule, re-schedule, or re-sequence the order of the Subcontract Work. Further, Subcontractor shall cooperate with Contractor and its other subcontractors and Owner and its other contractors to coordinate the execution of their respective work scopes.

3.4 Subcontractor shall make a careful analysis and comparison of the Plans and Drawings and Specifications, other Subcontract Documents and information furnished by the Owner relative to the Subcontract Work. Should the Subcontractor discover any errors, inconsistencies or omissions in the Subcontract Documents, including, without limitation, any requirements in the Subcontract Documents which are not compliant with applicable laws, statutes, ordinances, building codes, rules or regulations as related to performance of the Subcontract Work, the Subcontractor shall report such discoveries to Contractor in writing within three (3) days of discovery. Upon receipt of notice, Contractor shall instruct the Subcontractor as to the measures to be taken, and the Subcontractor shall comply with Contractor's instructions. If the Subcontractor performs any Subcontract Work without resolution of any errors, inconsistencies or omissions in the Subcontract Documents which were discovered or should have been discovered in the foregoing analysis and comparison and without notice to Contractor and advance approval by appropriate authorities, including Contractor, or otherwise performs any Subcontract Work in violation of any applicable laws, statutes, ordinances, building codes, rules or regulations, the Subcontractor shall assume sole responsibility for such Subcontract Work and shall bear all associated costs, charges, fees and expenses necessarily incurred to remedy the violation and/or arising as a result of such errors, inconsistencies or omissions. Nothing in this paragraph shall relieve the Subcontractor of responsibility for its own errors, inconsistencies and omissions.

3.5 Prior to performing any portion of the Subcontract Work, the Subcontractor warrants that it has (i) conducted a visual inspection of the Site and become generally familiar with the nature and location of the work to be performed, the general and local conditions of the applicable site, including, without limitation, those related to transportation, handling and storage of materials, water, power, roads, weather and ground conditions and similar conditions and the location and existence of existing structures, improvements and obstructions and all other matters upon which information was reasonably attainable and which could in any way affect Subcontractor's performance of the Subcontract Work or the cost thereof; and (ii) carefully examined and reviewed the Contract Documents, including, without limitation, any applicable Plans and Drawings and Specifications. Subcontractor shall be responsible for any and all costs arising from its failure to comply with the foregoing warranties and obligations, including without limitation, any and all additional costs and expenses which Contractor incurs in connection with its or its other subcontractors' work with respect to the Prime Contract as a result of Subcontractor's failure to comply with the foregoing warranties and

obligations when performing the Subcontract Work and/or which Subcontractor incurs to correlate site observations and/or the Subcontract Documents with the Subcontract Work.

3.6 Subcontractor will provide only skilled, competent workers and supervision for the performance of the Subcontract Work and shall ensure harmonious labor relationships among its workers at the Site. Subcontractor shall immediately remove from the Site, when requested to do so by Contractor or Owner, any person to whom Contractor or Owner reasonably objects, and such person may not thereafter re- enter the Site without Contractor's or Owner's written consent.

3.7 Subcontractor is responsible for the quality of the Subcontract Work. Contractor and/or any applicable Owner have the right to inspect any portion of the Subcontract Work, whether such work is on or off the Site and at any time or phase. Subcontractor shall give Contractor reasonable advance notice when any portion of the Subcontract Work is ready for inspection. If adequate reasonable notice is not provided or if any Subcontract Work is covered before Contractor and/or any applicable Owner performs an inspection, Subcontractor shall, at Contractor's and/or any applicable Owner's option, uncover the Subcontract Work at Subcontractor's cost. Neither the inspection nor the failure to inspect by Contractor and/or Owner shall be considered an acceptance of the Subcontract Work or serve to release Subcontractor from any of its obligations under this Subcontract Agreement or any Contract Documents. If any tests or inspections reveal that the Subcontract Work, or any portion thereof, is not in compliance with the Contract Documents, Contractor may, without risk or liability, reject the Subcontract Work or that portion not in compliance, and Subcontractor shall promptly make any repairs, replacements or modifications necessary to achieve compliance and re-perform the tests at its own expense. In addition, Contractor shall retain all other rights and remedies specified elsewhere in this Subcontract Agreement, any Contract Documents or at law.

3.8 Contractor and/or Owner have the right at any time to occupy or use any portion of the Subcontract Work that has been partially or fully completed prior to final inspection and acceptance when it is useful or necessary to do so. Such occupancy or use shall not be deemed an acceptance or approval of the Subcontract Work, nor shall it relieve Subcontractor of its obligations hereunder, including, without limitation, obligations to complete the Subcontract Work and to remedy any defects in material and workmanship as provided in the Contract Documents. Notwithstanding the occupancy or use of the Subcontract Work or any portion thereof, the warranty period will not commence until Final Completion (as defined in Article 31 below).

3.9 If Contractor furnishes material and/or supplies to Subcontractor in connection with the Subcontract Work, then Subcontractor shall be responsible for and shall bear the risk of loss or damage to all such materials and/or supplies upon delivery to Subcontractor. Materials and/or supplies lost or damaged after delivery to Subcontractor, from any cause whatsoever, shall be replaced by and at the expense of Subcontractor.

3.10 Subcontractor may be required to prepare detailed reports concerning the Subcontract Work, including but not limited to, submittals, shop drawings, samples, product data, manufacturer's literature, construction schedules, manpower schedules, material delivery status reports, expenditure reports, time and material reports, depending on the requirements of the Subcontract Work and/or the Project and/or the Owner. If required, such reports shall be prepared and submitted to Contractor in a manner consistent with the Project Schedule and in such time and sequence so as not to delay Contractor or others in the performance of the Subcontract Work and otherwise in accordance with the Contract Documents. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions, or changes in the requirements of the Subcontract Documents unless express written approval is obtained from Contractor authorizing such deviation, substitution or change in a Change Order or Construction Change Directive (as defined in Subparagraph 6.1 below). Approval of such shop drawings by Contractor and/or the Architect shall not relieve the Subcontractor of its obligation to perform the Subcontract Work in strict accordance with the Plans, Specifications, the additional provisions hereof and the other Contract Documents, nor of its responsibility for the proper matching and fitting of the Subcontract Work with contiguous work and the coordination of the Subcontract Work with other work being performed on the Site, which obligation and responsibility shall continue until Final Completion of the Subcontract Work. In the event that the Subcontract Documents do not contain submittal requirements pertaining to the Subcontract Work, the Subcontractor agrees upon request to promptly submit to Contractor for approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by Contractor or the Project's architect ("Architect"). Contractor and Architect are entitled to rely on the adequacy, accuracy and completeness of any professional certifications required by the Subcontract Documents concerning the performance criteria of systems, equipment or materials, including all relevant calculations and any governing performance requirements.

3.11 Subcontractor shall be responsible to Contractor for any costs or damages for which Contractor becomes liable to Owner as a result of any failure by Subcontractor to abide by the terms of this Subcontract Agreement or any Contract Documents, including, but not limited to, any delay or liquidated damages.

3.12 In the event that liquidated damages have been specified in the applicable Contract Documents, Contractor and Subcontractor agree that liquidated damages have been agreed upon with respect to the applicable delay or failure to perform because consequential damages were uncertain and difficult to determine with exactness at the time the Subcontract Agreement was executed. Contractor and Subcontractor further agree that the amount of liquidated damages, as so agreed, is fair and not out of proportion to the probable loss and is not a penalty and that such liquidated damages shall not limit or restrict Contractor's right to pursue its other rights and remedies with respect to Subcontractor's other delays or failures to perform under the Contract Documents.

3.13 Subcontractor shall cooperate with Contractor and all others whose work may interface with the Subcontract Work and shall immediately advise Contractor of any such interface. Subcontractor shall participate in the preparation of coordination drawings and work schedules in areas of congestion.

Article 4 – Payment

4.1 As full compensation for performance of this Agreement, and after Contractor has received the requisite Schedule of Values, Subcontractor shall be paid for the satisfactory performance of the Subcontract Work, subject to all applicable provisions of the Subcontract, the Subcontract Price set forth above, subject to additions and deductions as provided for in the Subcontract Documents; or (b) alternates and unit prices in accordance with Exhibit D, which is expressly incorporated by reference; or (c) time and material rates and prices in accordance with Exhibit E, which is expressly incorporated by reference (collectively, "the Subcontract Price"). Each payment shall be subject to retention of five percent (5%) or such other retention amount as may be specified in this Subcontract Agreement. Progress payments to the Subcontractor for satisfactory performance of the Subcontract Work shall be made no later than five (5) days after receipt by Contractor of payment from the Owner for the Subcontract Work to which such progress payment is applicable.

4.2 The Subcontractor shall submit progress payment applications to Contractor no later than the 20th day of the month for the Subcontract Work performed up to and include the last day of the previous month for Subcontract Work completed during the payment period and, to the extent allowed under Article 4, materials suitably stored during the preceding payment period. No payment made to Subcontractor shall be construed as an acceptance or approval of any Subcontract Work, nor shall such payment constitute a waiver of any claim or right that Contractor may then or thereafter have against Subcontractor.

4.3 Any payment due Subcontractor under the Contract Documents may be withheld in whole or in part by Contractor on account of: (a) defective materials or work; (b) claims, liens, or reasonable belief that such may exist; (c) any breach by Subcontractor of any provision or obligation of the Contract Documents, including without limitation, Subcontractor's failure to provide a schedule of values satisfactory to Contractor within fifteen (15) days from the date of execution of this Agreement; (d) a reasonable doubt that the Subcontract Work can be completed for the balance of the applicable Subcontract Price then unpaid; (e) a reasonable doubt that Subcontractor, for any reason, is unable to complete the Subcontract Work; (f) failure of Subcontractor to submit any required documentation or deliverables as required by the Contract Documents, including but not limited to full or partial lien waivers; (g) any debt of any kind whatsoever owed to Contractor by Subcontractor; (h) failure of Subcontractor to properly pay any of its sub-subcontractors, vendors or suppliers; or (i) the Owner's failure for any reason to pay Contractor for the Subcontract Work to which such payment is applicable. If the foregoing causes are remedied or adjusted to Contractor's satisfaction, the withheld payment shall be made promptly. If the said causes are not so remedied or adjusted, Contractor may remedy the same for Subcontractor's account and charge the entire cost thereof to Subcontractor, as provided herein.

4.4 Contractor retains the right to set-off against any amount payable under this Subcontract Agreement or Contract Documents any and all present and future indebtedness of Subcontractor to Contractor arising from this Subcontract Agreement or any Contract Document or any other transaction between Contractor and Subcontractor.

4.5 Unless otherwise provided in the Subcontract Documents, applications for payment may include materials and equipment not yet incorporated in the Subcontract Work but delivered to and suitably stored on-site or off-site including applicable insurance, storage and costs incurred transporting the materials to an off-site storage facility. Approval of payment applications for such stored items on or off the site shall be conditioned upon submission by the Subcontractor of bills of sale and required insurance or such other procedures satisfactory to the and Contractor to establish the title to such materials and equipment, or otherwise to protect the Owner's and Contractor 's interest including transportation to the site.

4.6 Contractor shall make the final payment of the Subcontract Price (including retention) due and owing to Subcontractor, subject to withholding as permitted hereunder, within thirty (30) days after: (a) Contractor's receipt of a properly formatted and complete final invoice; (b) complete performance of the Subcontract Work; (c) the occurrence of Final Completion; (d) Contractor's receipt from Subcontractor of all final waivers and releases of liens in such form as Contractor shall require; (e) Contractor's receipt from Subcontractor of a Contractor's sworn statement that all payrolls, bills for materials and equipment, and all other indebtedness connected with the Subcontract Work have been paid or otherwise satisfied in full; (f) return of all tools, equipment, materials, property, goods, documents and supplies that Subcontractor is required to return to Contractor in the condition required by the Contract Documents; (g) completion and submittal of all other documentation required by the Contract Documents, including without limitation, all written warranties, equipment manuals, startup and testing documents; (h) consent of surety to final payment (if required); (i) as built drawings if required by the Subcontract Documents; and (j) the receipt by Contractor from the Owner of all amounts under the Prime Contract applicable to such final payment and the Subcontract Work.

4.7 If the Owner or its designated agent does not issue a certificate for final payment or Contractor does not receive such payment for any reason which is not the fault of the Subcontractor, Contractor shall promptly inform the Subcontractor in writing. Contractor shall also diligently pursue, with the assistance of the Subcontractor, the prompt release by the Owner of the final payment due for the Subcontract Work.

4.8 Acceptance of final payment shall in full constitute a waiver of all claims by the Subcontractor relating to the Subcontract Work, but shall in no way relieve the Subcontractor of liability for the obligations assumed under this Subcontract Agreement, or for faulty or defective work or services.

4.9 All Subcontractor invoices must contain, at a minimum, the job number, dates of work performed and description of the work being billed. Subcontractor's application for payment shall be itemized and supported by substantiating data as required by the Subcontract Documents. The Subcontractor's application shall be notarized if required by Contractor and if allowed under the Subcontract Documents may include properly authorized Construction Change Directives. The Subcontractor's progress payment application for the Subcontract Work performed in the preceding payment period shall be submitted for Contractor's approval. Contractor shall incorporate the approved amount of the Subcontractor's progress payment application into Contractor's payment application for the same period and submit it to the Owner in a timely fashion.

4.10 Notwithstanding anything in the Contract Documents to the contrary, Subcontractor acknowledges and agrees that any obligation of Contractor to make a payment under this Agreement, whether a progress or final payment, or for extras or Change Orders or delays to the Subcontract Work, is subject to the express condition precedent of payment therefor by the Owner. Given that Subcontractor is to be paid exclusively out of dollars paid by the Owner and only if such payment is made by Owner, Subcontractor understands and accepts the risk of non-payment by the Owner. If Contractor has provided payment or performance bonds or a combination of payment and performance bond, the obligation of Contractor and its Surety under any of those bonds to make any payment (whether a progress payment or final payment) to a claimant on that bond is similarly subject to the express condition precedent of payment therefor by the Owner.

4.11 Subcontractor shall submit with its first requisition for payment a detailed schedule showing the breakdown of the Price into its various parts for use only as a basis for checking the Subcontractor's monthly requisition. Contractor reserves the right to advance the date of any payment (including final payment) under this Agreement, if in its sole judgment, it becomes desirable to do so. Subcontractor agrees that, if and when requested to do so by Contractor, it shall furnish such information, evidence and substantiation as Contractor may require with respect the nature and extent of all obligations incurred by the Subcontractor for or in connection with the Subcontract Work, all payments made by the Subcontractor thereon, and the amounts remaining unpaid, to whom and the reasons therefor.

4.12 In the event it reasonably appears to Contractor that any of the labor, materials and other bills furnished or incurred in the performance of the Subcontract Work are not being currently paid, Contractor may take all such steps as Contractor determines are necessary or appropriate to insure that any payments of the Subcontract Price (including, without limitation, any partial, interim progress or final payments thereof) are utilized to pay such bills and that such bills are otherwise paid in full, which steps may include, without limitation, paying such unpaid bills directly and setting off such payments against the Subcontract Price, with any payments made by Contractor in excess of the remaining balance of the Subcontract Price being due from Subcontractor to Contractor promptly on demand. Contractor shall not be liable to Subcontractor for any such payments made in good faith. Notwithstanding anything in this Subcontract Agreement to the contrary, nothing herein shall confer upon any sub-subcontractor or other supplier or vendor of Subcontractor any right to seek payment from Contractor nor shall Contractor have any liability therefor.

4.13 If any progress payments are made to Subcontractor for the Subcontract Work, to the extent of such payments, Subcontractor grants to Contractor a first priority security interest in Subcontractor's inventory of materials used to manufacture or fabricate the Subcontract Work and in partially fabricated components of the Subcontract Work, wherever located, to secure: Subcontractor's obligations to perform the Subcontract Work according to the Contract Documents; all advances evidenced by Contractor's payments of Subcontractor's applications for payment with respect to such materials; and all of the Subcontractor's liabilities to Contractor now existing or later incurred, direct or contingent.

4.14 Notwithstanding anything in this Agreement or any Contract Documents to the contrary, the Subcontract Price in this Agreement is firm and not subject to escalation for any reason unless expressly authorized by Contractor in writing in accordance with this Agreement. For the avoidance of doubt, the Subcontract Price in this Agreement includes, without limitation, all applicable federal, state and local taxes and all import charges in effect or otherwise assessed as of the date of execution of this Agreement or at any time prior to the Final Completion of the Subcontract Work. Further, the Subcontract Price in this Agreement shall not be subject to escalation or surcharges based on any changes (whether foreseeable or unforeseeable) in market volatility or material availability of any applicable goods or materials required for the Subcontract Work (or any components thereof) in response to or resulting from imposition of any such taxes or import charges. The term "import charges" as referred to above is given its customary meaning, applies whether paid or absorbed by Subcontractor directly or indirectly and includes, without limitation, value added taxes, duties, tariffs and excise taxes and any other cost assessed by a government authority in connection with the importation of goods, third party brokerage fees, penalties and classification charges (under the Harmonized System classification code), charges for export compliance screening and verification and the assignment of Export Control Classification Number (for the U.S), and charges related to the management of variances between the quoted import charges and actual costs; provided that if any governmental customs or tax officials impose any surcharges, fines, penalties or other charges on the goods or materials required for any Subcontract Work (or components thereof), including after Final Completion thereof, the Subcontract Price stated in this Agreement shall also include such surcharges, fines, penalties and other charges.

Article 5 – Bonds

If required by Contractor, Subcontractor shall, prior to commencement of the Subcontract Work, furnish to Contractor a payment and performance bond for one hundred percent (100%) of the Subcontract Price specified herein, the cost of which shall be included in the Subcontract Price. Such bonds shall be executed on forms furnished by or acceptable to Contractor and by a surety or sureties satisfactory to Contractor. As a minimum requirement, the surety or sureties providing such bonds must be listed as acceptable to the United States Government in the Department of the Treasury's Circular 570 (latest revision). All bonds shall extend to and cover the warranty period for the Subcontract Work and any extra work or changes performed by Subcontractor pursuant to the Contract Documents, unless advised otherwise in writing by Contractor. Should any surety refuse to pay on a bond claim, the Subcontractor shall be liable to the Contractor for any and all reasonable attorney's fees, costs and expenses incurred by Contractor in pursuing payment of such a bond by the surety.

Article 6 – Changes

6.1 Without notice to Subcontractor's surety and without invalidating this Subcontract or the surety bonds, Contractor may from time to time, by written directive to Subcontractor, require Subcontractor to make changes in the Subcontract Work (both additions and deletions), and the changed work shall be part of the Subcontract Work (as to any such written directive, a "Construction Change Directive"). Subcontractor shall perform changed work as part of the Subcontract Work and in accordance with the terms of this Subcontract as and when directed to so in writing by Contractor.

6.2 If in the performance of the Subcontract Work, Subcontractor finds latent, concealed or subsurface physical conditions that (a) differ materially from those indicated in the Contract Documents, (b) were otherwise not disclosed to Subcontractor in writing prior to the date of this Agreement, (c) are of a type that Subcontractor could not have reasonably discovered them by performance of its obligations under Section 3.5 above, and (d) are otherwise physical conditions of an unusual nature which differ materially from those ordinarily found to exist, and not generally recognized as inherent in the kind of work provided for in this Agreement (collectively, "Differing Conditions"), Subcontractor shall notify Contractor within two-thirds of the time period required by the Contract Documents or seven (7) calendar days, whichever is the shorter period of time, of such Differing Conditions in order to seek an adjustment in the Subcontract Price and/or Project Schedule or Subcontractor shall be deemed to have waived all rights to both Subcontract Price and Project Schedule adjustment. To the extent the cost or time to perform the Subcontract Work is increased as a direct result of such conditions, Subcontractor may seek a change pursuant to Section 6.3.

6.3 Within two-thirds of the time period required by the Contract Document or seven (7) calendar days of receiving a Construction Change Directive or discovery of a Differing Condition, whichever is the shorter period of time, Subcontractor shall submit to Contractor a written proposal for any adjustment to the Subcontract Price or Project Schedule with respect to such Construction Change Directive, which proposal shall be amply detailed and supported and conforming to the requirements of the Contract Documents. Such written proposal shall include, without limitation, a description of Subcontractor's basis for the adjustment, any monetary credits or charges sought by Subcontractor which are associated with such basis, and Subcontractor's assessment of any changes to its schedule as a result. Subcontractor agrees that it waives all its rights to both Subcontract Price and Project Schedule adjustments if it fails to submit its written proposal within the required time.

6.4 Subcontractor agrees that adjustments in the amount for which Contractor is compensated for any Construction Change Directive (including the Subcontractor's costs, if any) or the time for the Subcontract Work for changes based on direction from Owner shall be limited to Subcontractor's portion of the adjustments to Contractor's compensation under the Prime Contract (less, in the case of price adjustments, any markup or other similar amount allowed for the Contractor's account or the account of other subcontractors). When changes are the subject of unit prices under Exhibit D, the Subcontract Price adjustment shall be limited to the lesser of the amount obtained by applying such unit prices to the number of units for which Contractor is actually compensated or the amount of compensation allowed to Contractor for such change to Subcontractor.

6.5 Subcontractor's price quotations for all changes or Differing Conditions shall be based on actual savings or costs directly resulting from the applicable changes. Actual savings and costs will only include the following items: cost of materials, including sales tax and cost of delivery; cost of labor, including social security and unemployment insurance, and other charges or fringe benefits required by law, agreement or custom; workmen's compensation insurance; bond premiums; actual rent for, or reasonable rental value of Subcontractor owned equipment and machinery; all other costs to be incurred in or as a consequence of the change or Differing Conditions plus reasonable allowances for all direct and indirect overhead costs and profit.

6.6 Subcontractor agrees that it shall price all changes fairly and reasonably. The parties agree to attempt to determine the amount of any Subcontract Price adjustment and the extent of any Project Schedule adjustment (a) prior to performance of the changed work for a change which adds any work; (b) prior to deletion for a change which only deletes work; and (c) promptly after the discovering of Differing Conditions for Differing Conditions. Subcontractor, however, will promptly proceed with changes to the Subcontract Work (whether additions or deletions) and with the Subcontract Work despite Differing Conditions when it receives a Construction Change Directive to do so by Contractor even if Subcontractor and Contractor have not agreed upon Subcontract Price and Project Schedule adjustments related to the changes or Differing Conditions. In such event, Subcontractor shall maintain records of the actual costs Subcontractor incurred or saved as a direct result of the changes or as a direct result of the Differing Conditions and forward such records to Contractor on a weekly basis. The final adjustment in the Subcontract Price or Project Schedule as a result of the changed work or the Differing Conditions will then be determined after Final Completion. Subcontractor's failure to comply with a Construction Change Directive from Contractor to proceed with a change or to proceed with the Subcontract Work despite Differing Conditions is a material breach of this Subcontract. Notwithstanding the foregoing, any changes in the law with respect to taxes, import charges, or any other related escalations or surcharges will not constitute a change in the Subcontract Price, consistent with Section 4.14 herein.

6.7 Subcontractor shall not proceed with changed work in any event unless it first receives with respect to such changed work a Construction Change Directive or a written change order is executed by Contractor and Subcontractor which covers such changed work and memorializes any mutually agreed change in the Subcontract Price and Project Schedule ("Change Order"). Subcontractor shall not be entitled to either a Subcontract Price or time adjustment to the Project Schedule if it performs changed work before receiving a Construction Change Directive for such changed work or enters into a Change Order with Contractor for such changed work.

6.8 Contractor may direct the Subcontractor to perform incidental changes in the Subcontract Work which do not involve adjustments in the Subcontract Price or Project Schedule. Incidental changes shall be consistent with the scope and intent of the Subcontract Documents. Contractor shall initiate an incidental change in the Subcontract Work by issuing a written order to the Subcontractor. Such written notice shall be carried out promptly and are binding on the Parties.

Article 7 – Liens

7.1 As a condition of any payment, Subcontractor shall provide, in a form satisfactory to Contractor and/or, if required by Contractor, to Owner, completed and fully executed lien waivers and affidavits from Subcontractor, and its sub-subcontractors, vendors and suppliers, for the Subcontract Work, each of which shall be in such form as

Contractor shall designate. The forms of lien waivers and affidavits to be furnished with respect to partial and interim progress payments are attached hereto as Exhibit F-1 and F-2, and the forms of lien waivers and affidavits to be furnished with respect to final payments are attached hereto as Exhibit F-3 & F-4. As a further condition of any payment, Subcontractor shall also provide to Contractor such other lien waivers and affidavits as may be required under the Prime Contract.

7.2 In the event that any lien claims or liens are filed against the Project, the Site, the Contractor and/or Owner or their property by any sub-subcontractors, vendors or suppliers of Subcontractor based in whole or in part on the Subcontract Work, then Subcontractor shall immediately and at no cost or expense to Contractor or Owner:

1. Pay and secure a full discharge of the lien(s);
2. Cause the lien(s) to be discharged by filing a surety bond or depositing funds as required by law; and
3. Take any other necessary steps required to resolve and discharge the lien(s).

7.3 Should Subcontractor fail to take all the necessary steps required to release any such lien, Contractor may, at its sole discretion and without limiting or waiving any of its rights or remedies or that of any other interested person or party, pay the amount of such lien or lien claim (along with the necessary fees and costs) and invoice Subcontractor, or retain from payments then due or which thereafter become due to Subcontractor, an amount equal to such payments, fees and costs.

7.4 With respect to all Subcontract Work and other work and materials for which Subcontractor has been paid by Contractor, Subcontractor shall indemnify and hold harmless the Contractor and Owner from and against all liabilities, losses, damages, judgments, penalties, fees, costs, or expenses (including, without limitation, reasonable attorney's fees and costs) due to any and all lien notices, lien claims, liens, encumbrances, security interests, or other lien rights of any kind filed by Subcontractor, or its sub-subcontractors, vendors or suppliers, which, in whole or in part, are based on the Subcontract Work.

Article 8 - Compliance with Regulations and Other Requirements

Subcontractor and its sub-subcontractors, vendors and suppliers are required to meet and comply with all local, state, federal and local ordinances, codes, statutes, acts, regulations and laws. All Subcontract Work shall be performed and provided in strict conformance with the latest edition of all applicable codes and specifications and any additional requirements placed upon Contractor for the Subcontract Work set forth herein. Subcontractor shall defend, indemnify and hold harmless Contractor, upper-tier Contractors and Owner against all claims, demands, fines, causes of action and costs and expenses (including, without limitation, reasonable attorney's fees and costs) arising out of Subcontractor's or its subcontractor's and supplier's non-compliance with any such ordinances, codes, statutes, acts, regulations, laws or other regulatory requirements or any such codes or specifications.

Article 9 - Delays and Extension of Time

9.1 Notwithstanding anything in this Subcontract Agreement or any other Contract Document to the contrary, Subcontractor shall not be entitled to any extension of time or change in the Subcontract Price for delays due to an act or omission of the Subcontractor, its sub-subcontractors, vendors or suppliers and such delays shall be remedied by the Subcontractor at no additional cost to Contractor.

9.2 If Subcontractor is delayed at any time during the progress of the Subcontract Work by any Excusable Delay (as defined below), Subcontractor shall be excused from the timely performance of the Subcontract Work but only to the extent directly impacted thereby and only if Subcontractor gives written notice to Contractor of the nature of such Excusable Delay within twenty-four (24) hours after the commencement of the event giving rise to such Excusable Delay (or, if shorter, any applicable period of time as may be required by the Prime Contract) and gives Contractor a reasonably detailed written explanation evidencing the extent and direct impact of such Excusable Delay and all other information required by any applicable Prime Contract within five (5) days after the commencement of such event giving rise to such Excusable Delay (or, if shorter, any applicable period of time as may be required under the Prime Contract). The foregoing notwithstanding, if a Prime Contract is applicable to the Subcontract Work affected by the Excusable Delay, Subcontractor shall only be excused from the timely performance of the Subcontract Work to the extent such Excusable Delay excuses Contractor's timely performance under the Prime Contract with respect to such Subcontract Work and then only if Subcontractor timely complies with the foregoing notice and explanation requirements; provided that if the Excusable Delay arises directly out of the acts or omissions of Contractor or any of its other subcontractors and if the Excusable Delay is not due (in whole or in part) to any act or omission of Subcontractor or its sub-subcontractors, vendors, suppliers, employees or agents, then Subcontractor shall be entitled to an extension of time for performance of the Subcontract Work to the extent the Subcontract Work is delayed as a direct result of such Excusable Delay, provided that Subcontractor timely complies with the foregoing notice and explanation requirements. Notwithstanding anything in this Subcontract Agreement to the contrary, Subcontractor shall not be excused hereunder

with respect to any Excusable Delay to the extent of any delay, caused by the acts or omissions of Subcontractor, its sub-subcontractors, that is concurrent with such Excusable Delay.

9.3 Unless Contractor is able to secure a Change Order from Owner for an increase in cost resulting from any delay (including, without limitation, an Excusable Delay), unless such delay is an Excusable Delay and directly caused by Contractor or any of its other subcontractors and Contractor has timely received the notice and explanation required under Section 9.2 above with respect to such delay (which explanation shall be delivered together with a reasonably detailed explanation of any claimed increased costs and shall evidence that such costs are a direct result of such delay in order to be effective), an extension of time, as provided in Section 9.2 above, shall be Subcontractor's sole and exclusive remedy for such delay. In no event shall Subcontractor be entitled to any monetary compensation for any such delay in excess of the amount that Contractor is able to recover from Owner with respect to such delay, whether or not such delay is determined to be an Excusable Delay.

9.4 Subcontractor shall be liable to Contractor for any and all damage claims and costs, including but not limited to delay or liquidated damages, assessed against Contractor by Owner for delays or failures caused by Subcontractor or its sub-subcontractors, suppliers or vendors. Such claims and costs shall be immediately reimbursed by Subcontractor to Contractor upon notification to Subcontractor of such obligation.

9.5 Nothing in this Article 9 shall affect the applicability of or excuse performance under Articles 3 or 21 of this Subcontract Agreement

9.6 An "Excusable Delay" is any of the following: (i) acts of God or a public enemy; (ii) fires, floods, explosions or other catastrophes unless caused by the delayed party; (iii) epidemics or quarantines; (iv) strikes, slowdowns, lockouts or labor stoppages (if the delayed party is Subcontractor, such strikes, slowdowns, lockdowns or labor stoppages must have occurred on a national basis) unless caused by the delayed party's failure to comply with applicable collective bargaining or other labor agreements; (v) freight embargoes; (vi) the neglect of the other party or any of its employees or other contractors or their subcontractors; or (vii) any other unforeseeable event or condition not subject to the reasonable control of and not caused (in whole or in part) by the delayed party (as to any such event, "Excusable Delay"). Contractor shall not be liable to Subcontractor for a delay in Contractor's performance hereunder (and shall be excused from timely performance hereunder to the extent) directly caused by any Excusable Delay. Subcontractor shall not be liable to Contractor for a delay in Subcontractor's performance hereunder (and shall be excused from timely performance hereunder to the extent) directly caused by an Excusable Delay provided that Subcontractor strictly complies with the terms and conditions of this Article 9 with respect to such Excusable Delay. The foregoing notwithstanding, no Excusable Delay shall excuse either party from the timely performance of its monetary obligations under this Agreement. Further, notwithstanding anything herein to the contrary, the following shall NOT constitute an Excusable Delay: (i) changes in economic conditions; (ii) if Subcontractor is the delayed party, changes in the financial condition of Subcontractor or any of its sub-subcontractors or suppliers; (iii) labor shortages or the inability to retain qualified personnel; (iv) normally occurring adverse weather conditions; (v) delays in transportation other than as a direct result of an Excusable Delay; or (vi) if Subcontractor is the delayed party, accidents or events that are in whole or in part caused by Subcontractor or any of its sub-subcontractors or suppliers.

9.7 In the planning and scheduling of the Subcontract Work, Subcontractor shall allow for the occurrence of normally occurring adverse weather conditions, including but not limited to, precipitation, temperature, wind, ice, and river level, typical for the time of year and locality of the Site and any location in which the Subcontract Work will be performed, and under no circumstances shall such normally occurring adverse weather conditions form a basis for an Excusable Delay. Adverse weather conditions will be considered normally occurring adverse weather conditions if they are consistent with NOAA Meteorological Data covering the preceding ten (10) year period for the locality of the Site (or, as applicable, the place where the Subcontract Work has been affected) at the applicable time of year. If Subcontractor believes that an abnormally occurring adverse weather condition is impacting or will impact its performance of the Subcontract Work as an Excusable Delay, in addition to strictly comply with the other terms and conditions of this Article 9, within two (2) days after the commencement of the applicable adverse weather event (or, if shorter, any applicable period of time as may be required under the Prime Contract) Subcontractor shall deliver to Contractor NOAA Meteorological Data covering the preceding ten (10) year period for the locality of the Site (and/or, as applicable, the place where the Subcontract Work is being performed and has been affected) at the applicable time of year. If Subcontractor fails to timely submit such information to Contractor or if a comparison of such NOAA Meteorological Data to the actual adverse weather conditions reflects that such actual adverse weather conditions are normally occurring adverse weather conditions for the locality of the Site (and/or, as applicable, the place where the Subcontract Work is being performed and has been affected) at the applicable time of year during the preceding ten (10) year period, the applicable adverse weather conditions shall be deemed normally occurring adverse weather conditions and not an Excusable Delay.

Article 10 - Suspension

10.1 Contractor may suspend (as opposed to terminate, which is covered by Article 11 herein) performance of the Subcontract Work, from time to time in whole or in part, without cause and for Contractor's own convenience. In the event of a suspension, Contractor shall give Subcontractor a written notice of suspension specifying which portion of the Subcontract Work is suspended and when such suspension is to become effective ("Notice of Suspension"). Notwithstanding the preceding, in the case of an emergency which affects the safety of persons or property, Contractor may immediately suspend all Subcontract Work.

10.2 Promptly upon receiving a Notice of Suspension, except as otherwise directed by Contractor, Subcontractor shall (a) stop the Subcontract Work on the date and to the extent specified in the Notice of Suspension, and (b) place no further orders or subcontracts except as may be necessary for completing any portions of the Subcontract Work not specifically suspended, and (c) suspend all orders and subcontracts that relate to the suspended portions of the Subcontract Work, and (d) take such action as may be necessary and as directed by Contractor to protect and preserve the Subcontract Work completed or started prior to such notice.

10.3 Unless the applicable suspension is the result of Subcontractor's failure to perform any of its obligations under the Contract Documents, Subcontractor will be entitled to an increase in the Subcontract Price for the affected Subcontract Work but only to reimburse Subcontractor for its incremental costs incurred as a direct result of such suspension, as agreed upon by the parties and for which Subcontractor is not otherwise compensated by any price adjustment provisions under the Contract Documents. Subcontractor shall take all reasonable steps to minimize these costs. Each such claim for price adjustment under this Article shall be submitted to Contractor with fully documented and detailed support for all costs claimed for the suspension within five (5) days of Subcontractor's receipt of the applicable Notice of Suspension or in accordance with the timeframes set forth in the Prime Contract, if such timeframes are shorter, or such claim shall be deemed waived.

10.4 Notwithstanding the foregoing, should the Owner suspend the Prime Contract or any part that includes the Subcontract Work, Contractor's liability to Subcontractor under such suspension by Owner shall be limited solely to the extent of Contractor's recovery from Owner on Subcontractor's behalf.

Article 11 - Default

11.1 If Subcontractor breaches any provision of or otherwise fails to perform any of its obligations under this Subcontract Agreement or any other Contract Document, including, but not limited to: (a) failing to supply sufficient properly skilled workers, supervisory personnel or proper materials; (b) failing to maintain the Project Schedule or otherwise perform the Subcontract Work in a timely manner; (c) failing to make payments to workers, sub-subcontractors, vendors or suppliers; (d) failing to immediately correct safety violations; (e) failing to comply with any laws, rules, regulations or codes of any authority having jurisdiction of the Subcontract Work; (f) becoming insolvent or making a general assignment for the benefit of creditors; (g) filing or having filed against it a petition under any bankruptcy laws; (h) having its affairs placed in the hands of a receiver, trustee or assignee for the benefit of creditors; (i) abandoning the Subcontract Work; (j) being otherwise unable or unwilling to perform the Subcontract Work as required under the Contract Documents; (k) failing to maintain or cause to be maintained any of the insurance coverage required under Article 15 hereof; or (m) violating any of the provisions of Article 33 hereof, then Contractor may declare Subcontractor to be in default of this Subcontract Agreement.

11.2 In the event of default by Subcontractor, Contractor shall give Subcontractor notice of default. If Subcontractor fails, within three (3) days after receiving such notice, to correct the default or, within said three (3) day period, to commence to cure such default (which may include providing Contractor with a plan to correct such default satisfactory to Contractor) and thereafter to diligently pursue completion of such cure (and, in any event, in accordance with any applicable plan to correct such default satisfactory to Contractor), then Contractor, without prejudice to any of its rights or remedies, shall have the right to exercise its remedies under the following Subparagraph 11.4.

11.3 Notwithstanding the above provision of Article 11, if the default involves a material failure to comply with any laws, rules, regulations or codes of any authority having jurisdiction of the Subcontract Work or is a breach or default under the Prime Contract for which no opportunity to cure is applicable under the Prime Contract (collectively, as to any such default under this sentence, ("Immediate Default"), Subcontractor shall not be afforded any opportunity to cure such Immediate Default before Contractor shall be entitled to exercise its remedies under Subparagraph 11.4 below.

11.4 If, after receiving a notice of default under the preceding Subparagraph 11.2, Subcontractor fails to timely correct the default or begin and continue correction of such default as provided in the preceding Subparagraph to

the satisfaction of Contractor or, if an Immediate Default is applicable, then Contractor may exercise any one or more of the following remedies immediately after providing a second written notice to Subcontractor of the applicable remedy:

1. Terminate this Subcontract Agreement.
2. Terminate only a portion of the Subcontract Work.
3. For any Subcontract Work that is terminated, Contractor may:
 - a. Perform all or portions of the Subcontract Work itself and/or hire other subcontractors as it deems necessary for the completion of the Subcontract Work, and charge the reasonable direct and indirect costs thereof, including, without limitation, reasonable overhead, profit and any and all attorney's fees and costs, to Subcontractor and/or,
 - b. Use any materials, equipment, appliances or tools furnished by or belonging to Subcontractor at the Site to complete the Subcontract Work; and/or,
 - c. Deduct all reasonable direct and indirect costs incurred by Contractor in performing the Subcontract Work, including, without limitation, reasonable overhead, profit and attorney's fees and costs, from any monies due or to become due Subcontractor.
4. Without terminating this Subcontract Agreement or any portion of any Subcontract Work, Contractor may:
 - a. Suspend Subcontractor's performance of all or any portion of the Subcontract Work and perform and/or hire other subcontractors as Contractor deems necessary for the completion of the suspended Subcontract Work, and charge the reasonable direct and indirect costs thereof, including, without limitation, reasonable overhead, profit and any and all attorney's fees and costs, to Subcontractor and/or,
 - b. Use any materials, equipment, appliances or tools furnished by or belonging to Subcontractor at the Site to complete the suspended Subcontract Work; and/or,
 - c. Deduct all reasonable direct and indirect costs incurred by Contractor in performing the suspended Subcontract Work, including, without limitation, reasonable overhead, profit and attorney's fees and costs, from any monies due or to become due Subcontractor.

11.5 In the case of an emergency which affects the safety of persons or property, Contractor may, notwithstanding any other provisions of this Subcontract Agreement or any other Contract Documents to the contrary, proceed to exercise any of the remedies set forth in this Article 11, with respect to any portion of the Subcontract Work or this Subcontract Agreement without advance notice to Subcontractor.

11.6 In the event of Contractor exercising any of its remedies under this Article, Subcontractor shall not be entitled to receive any further payment until the applicable Subcontract Work is finished. If the expense, compensation, costs and damages incurred by Contractor resulting from the default exceed such unpaid balance of the Subcontract Price as specified in this Agreement, Subcontractor and its sureties, if any, shall be liable for and shall pay the difference to Contractor promptly on demand. Failure of Contractor to exercise any of the rights given it under this Article shall not excuse Subcontractor from compliance with the provisions of the Contract Documents, nor prejudice any rights of Contractor to recover damages for such default. In addition to the foregoing, Contractor may exercise its remedies under the preceding Subparagraph 11.4 of this Subcontract Agreement for the same reasons or circumstances, and in accordance with the same rules and procedures as Owner may exercise such remedies pursuant to the terms of the Prime Contract.

11.7 The foregoing rights and remedies shall be in addition to all other rights and remedies available to Contractor under the Contract Documents and/or at law or in equity with respect to the particular default, such rights and remedies being cumulative and not exclusive.

11.8 If Contractor wrongfully terminates this Subcontract Agreement, such termination shall be converted to a Termination for Convenience under Article 12 below and Subcontractor shall be paid in accordance with Article 12 hereof and Contractor shall have no further liability or obligation to Subcontractor.

Article 12 – Termination for Convenience

12.1 The Contractor may for its own convenience and without cause terminate the Agreement. Subcontractor's sole and exclusive remedy for Contractor's termination for convenience shall be payment as set forth in this Article for Subcontract Work performed and in progress plus reasonable termination expenses. All obligations of the Subcontractor under the Contract with respect to completed Work, including but not limited to all warranties, guarantees, and indemnities, shall apply to all Subcontract Work completed by the Subcontractor prior to a convenience termination by the Contractor. Notwithstanding the above, any convenience termination by the Contractor or payments to the Subcontractor shall be without prejudice to any claims or legal remedies that the Contractor may have against the Subcontractor under the Contract Documents.

12.2 Upon receipt of the Contractor's notice of termination, the Subcontractor shall (i) immediately stop, secure, protect, preserve and release all existing Subcontract Work to Contractor, including any related documents or work product, and any stored materials and equipment; (ii) cancel or terminate all subcontract agreements, purchase orders, and other obligations related to the Subcontract Work; (iii) demobilize all personnel, Subcontractors, tools, and construction equipment and machinery.

Article 13 – Waiver of Consequential Damages

Subcontractor waives claims against Contractor and Owner for incidental and/or consequential damages arising out of or relating to this Agreement, damages for loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. Similarly, the Subcontractor shall obtain in another agreement from its Sub-Subcontractors waivers of consequential damages that correspond to the Subcontractor's waiver of consequential damages herein. To the extent applicable, this waiver applies to consequential damages due to termination by Contractor or the Owner in accordance with this Agreement or the Agreement between Contractor and Owner. The provisions of this Article shall also apply to and survive termination of this Agreement.

Article 14 - Indemnification

14.1 Subcontractor shall defend, indemnify, save and hold harmless, Contractor, Owner, architect, engineer and all their respective affiliates, parents, subsidiaries, divisions, directors, officers, agents, shareholders, heirs, assigns, successors in interest, representatives and employees (collectively, "Indemnitees"), from and against any and all lawsuits, claims, liabilities, demands, damages, losses, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, court costs, awards, fines and judgments, in law or in equity, of every kind and nature whatsoever (collectively or individually, "Claims"), arising by reason of personal injury, the death of or bodily injury to persons (including, without limitation, employees of Subcontractor), design defects (to the extent design is furnished as part of the Subcontract Work), defective materials or equipment (to the extent materials or equipment are furnished as part of the Subcontract Work), damages or destruction of property arising out of or alleged to have arisen out of in whole or in part from, or in any way connected with Subcontractor's performance under this Subcontract Agreement or any Contract Document, or any act or omission of Subcontractor, its sub-subcontractors, vendors, suppliers, invitees, or anyone for whose acts any of them may be liable.

14.2 Subcontractor shall defend, indemnify, and hold harmless Indemnitees from and against any and all Claims arising out of any actual or alleged infringement or improper use of any patent, trade secret, proprietary right, copyright or other intellectual property right in connection with or applicable to the Subcontract Work. If any such Claims should be made, Subcontractor, at its sole cost and expense, shall timely procure the right to continue its performance of the Subcontract Work in accordance with the Contract Documents. Further, if the Indemnitees should be enjoined from the use of any materials, equipment, processes or works covered by this Subcontract Agreement, then Subcontractor shall promptly either: (1) secure a termination of the injunction and procure the applicable Indemnitees' right to use such materials, equipment, processes or works, without obligation or liability, or (2) replace such materials, equipment, processes or works, or modify the same so that they become non-infringing, in accordance with the Contract Documents, all at Subcontractor's sole cost and expense. Notwithstanding the foregoing, Subcontractor shall have no obligation or liability under this Subparagraph 14.2 to the extent the applicable Claims arises directly out of the designs, specifications, processes, or methods specifically required by Contractor or Owner to be used by Subcontractor in furnishing the applicable Subcontract Work unless such Claim arises out of Subcontractor's failure to comply with such designs, specifications, processes or methods.

14.3 If Subcontractor or any of its sub-subcontractors, by rental, loan or otherwise, uses Contractor's or Owner's tools, equipment, scaffolding, or other appliances, whether or not such is owned, rented leased, or borrowed by Contractor or Owner, Subcontractor agrees to accept such tools, equipment, scaffolding or other appliances in their "as is, where is and with all faults" condition and that such use shall be at the sole risk of Subcontractor. All such tools, equipment, scaffolding and appliances shall be returned to Contractor or, as applicable, Owner in the same condition originally received by Subcontractor, ordinary wear and tear excepted. Subcontractor shall defend, indemnify and hold harmless Indemnitees from and against any and all Claims of every nature and kind arising out of the condition or use of any such tools, equipment, scaffolding, or other appliances. **THIS INDEMNITY SHALL APPLY EVEN IF SUCH CLAIMS ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, STRICT LIABILITY, STATUTORY LIABILITY OR FAULT OF THE INDEMNITEES.**

14.4 In any and all Claims against the Indemnitees by any employee of Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone for whose acts it may be liable, the indemnification obligations 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 any workmen's compensation acts, disability benefit acts or other employee benefit acts.

14.5 In any jurisdiction wherein a provision requiring Subcontractor to indemnify the Indemnitees against the consequences of Indemnitees' negligence would be void or unenforceable, the foregoing indemnification provision shall be deemed to apply only to such matters excluding Indemnitees' negligence.

14.6 The provision of Article 14 shall survive termination of this Subcontract Agreement and shall take precedence over any and all past or future agreements, either written or verbal, including but not limited to any rental agreements, inspection sheets, work orders, equipment time sheets, or operator time sheets that may be issued by Subcontractor. The provisions of this Article may only be changed or amended by a written agreement signed by Subcontractor and the Chief Executive Officer of Contractor.

Article 15 – Insurance

15.1 Subcontractor shall procure and maintain, and shall require each of its sub-subcontractors (regardless of tier) to procure and maintain, in effect during the performance of any Subcontract Work or any other work under this Subcontract Agreement and the term of all applicable warranty periods and, if longer, the coverage period required under the Prime Contract, the following minimum insurance coverages with carriers satisfactory to Contractor:

a. Workers Compensation Insurance, with statutory limits as required by the state in which the Subcontract Work is to be performed. Jones Act and/or United States Longshoreman & Harbor Workers Act coverage shall be provided where applicable.

Employer's liability insurance shall be provided with limits of not less than:

- \$500,000 each accident for bodily injury by accident
- \$500,000 policy limit for each bodily injury by disease
- \$500,000 each employee for bodily injury by disease

15.2 If Subcontractor is performing Subcontract Work on a project in the State of Ohio, coverage shall also be provided for Employers' Liability Coverage (stop gap), including "substantially certain to occur" claims with limits of not less than:

- \$500,000 each accident for bodily injury by accident
- \$500,000 policy limit for each bodily injury by disease
- \$500,000 each employee for bodily injury by disease

b. Comprehensive General Liability or Commercial General Liability insurance, utilizing ISO (Insurance Services Organization) Form CG 0001 (current edition) or its equivalent, covering all operations by or on behalf of Subcontractor, providing insurance for bodily injury liability and property damage liability for the limits of liability and including coverage for independent contractors, premises and operations, products and completed operations, contractual liability insuring the obligations assumed by Subcontractor in this Subcontract Agreement and all applicable Contract Documents, broad form property damage (including completed operations), explosion, collapse and underground hazards, and personal injury liability.

Limits of Coverage should be provided in amounts not less than:

- \$1,000,000 per occurrence
- \$2,000,000 products and completed operations aggregate
- \$2,000,000 general aggregate (on a per project basis)
- \$1,000,000 personal and advertising injury

15.3 General Liability coverage shall not include any exclusion for damage to work performed by Subcontractor (i.e. ISO exclusion endorsement CG2294 or its equivalent).

15.4 Completed Operations coverage will be maintained for not less than two (2) years from the date of Final Completion or any longer period required by the Prime Contract.

c. Comprehensive automobile liability insurance, with limits of not less than one million dollars \$1,000,000 combined single limit for bodily injury and property damage shall be maintained to protect Subcontractor and the additional insureds against all claims for injuries and damage to property arising from the use of motor vehicle(s) and shall cover operation on and off the Site, whether they are owned, non-owned, rented, leased or hired.

d. Professional Liability Insurance, (if the Subcontract Work involves or includes the Subcontractor providing or performing design, engineering, consulting, or any professional service) with a combined single limit of not less than five hundred thousand dollars (\$500,000.00) per occurrence, including extended reporting period coverage for not less than two (2) years from the date of Final Completion or any longer period required by the Prime Contract.

e. Contractor's Pollution Liability Insurance (if the Subcontract Work involves or includes Subcontractor handling, transporting, disposing, or performing work or operations with hazardous substances, contaminants, waste, toxic materials, or any potential pollutants) with a combined single limit of not less than one million dollars (\$1,000,000.00) per occurrence, including extended reporting period coverage for not less than two (2) years from the date of Final Completion or any longer period required by the Prime Contract.

f. Excess or Umbrella Liability Insurance, with a combined single limit of not less than five million dollars (\$5,000,000.00) per project or location aggregate. Coverage shall apply over the primary General Liability, Automobile Liability and Employers' Liability coverage as required above.

g. Builder's Risk/ Installation Coverage for the Subcontract Work and building materials stored at the construction site or at any other locations until those materials are permanently incorporated into the property at the Site and accepted by Contractor and Owner.

h. Contractor's Equipment & Tool Coverage for Subcontractor's tools and equipment including scaffolding and false work. Whether or not Subcontractor maintains equipment and tool coverage, Contractor shall not be liable for any damage or loss of any contractor equipment or tools of any cause or nature, unless directly caused by Contractor.

15.5 All liability insurance policies shall name Contractor, Owner and Owner's engineer (if any) as an additional insured. The General Liability policy shall name Contractor, Owner and Owner's engineer (if any) as an additional insured on a primary basis for ongoing and completed work utilizing ISO form(s) CG 2010 and CG2037 (current edition) or their equivalent.

15.6 It is expressly agreed and understood by Subcontractor that the insurance afforded to the additional insured(s) shall be primary insurance and that any other insurance carried by Contractor, Owner or Owner's engineer (if any) shall be excess of all insurance carried by the Subcontractor and shall not contribute with Subcontractor's insurance.

15.7 All of the insurance policies required under this Subcontract Agreement shall contain a provision, or be endorsed to waive Subcontractor's and its insurance carrier's rights of subrogation against Contractor and any other additional insured listed in this Article, regardless of the negligence of Contractor or any of the additional insureds.

15.8 All coverage shall be placed with an insurance company that is reasonably acceptable to Contractor and all Subcontractor insurance carriers must maintain an AM Best rating of "A-" or better. The insurance company or companies shall be lawfully authorized to do business in the state where the Subcontract Work is to be performed.

15.9 The above policy limits may be attained through a combination of primary and umbrella or excess layer policy limits.

15.10 Any deductibles or self-insured retention shall be for the sole account of Subcontractor.

15.11 Prior to starting any of the Subcontract Work, Subcontractor shall furnish Contractor with current certificates of insurance executed by its insurance carrier or its authorized agent as evidence that insurance meeting the requirements of this Article are in full force and effect. The foregoing certificates shall be delivered to Contractor electronically to such e-mail address as may be designated by Contractor from time to time. All certificates shall provide that any company issuing such insurance policies shall provide not less than thirty (30) days advance written notice to Contractor of any cancellation, termination, or material change of any policy of insurance. If requested by Contractor, Subcontractor shall also furnish Contractor with copies of the insurance policies and/or endorsements evidencing the coverage required under this Article.

15.12 Failure to obtain and maintain the required insurance shall automatically constitute a default by Subcontractor, and Subcontractor shall be liable to Contractor for any and all costs, premiums and rate increases,

liabilities, damages, penalties and costs and expenses (including, without limitation, reasonable attorneys' fees and costs, court costs, and settlement expenses) resulting from such default.

15.13 None of the requirements contained herein as to the types or limits of insurance coverage to be maintained by Subcontractor are intended to and shall not in any manner limit any liabilities or obligations of Subcontractor. Contractor's approval or failure to approve any insurance coverage provided by Subcontractor shall not relieve Subcontractor of its obligations herein and shall not reduce or limit the liabilities or obligations of Subcontractor.

15.14 Should the Owner require additional coverage or higher policy limits; Subcontractor shall be required to meet those additional insurance requirements.

Article 16 - Title and Risk of Loss

16.1 Title to any materials supplied by Subcontractor related to the Subcontract Work and any portion thereof, shall pass to Contractor or Owner, as the case may be, at the time of payment or delivery, whichever is earlier. At any time after transfer of title to Contractor or Owner, Subcontractor shall, upon written request, execute and deliver to Contractor (or if required by Contractor, to Owner) a bill of sale or other sufficient conveyance, assignment or transfer, vesting Contractor or Owner with free, clear and marketable title to the Subcontract Work.

16.2 Regardless of the passage of title, Subcontractor shall be responsible for, and shall bear all risk of loss or damage to the Subcontract Work and all materials, appliances, supplies and equipment applicable thereto until Final Completion, regardless of cause or fault, unless such loss or damage results from the direct and sole negligence of Contractor. Subcontractor agrees to pay for any and all damage that may be caused to any other work or the work of others caused by Subcontractor or its sub-subcontractors, suppliers, vendors or invitees or anyone for whom any of them may be responsible at any time. If any of the Subcontract Work is damaged or lost due to the fault or negligence of Subcontractor or its sub-subcontractors, suppliers, vendors or invitees or anyone for whom any of them may be responsible, Subcontractor shall repair or replace such portion of the Subcontract Work at its own expense.

Article 17 - Dispute Resolution

17.1 Unless otherwise agreed in writing, the Subcontractor shall continue the Subcontract Work and maintain the Progress Schedule during any dispute mitigation or resolution proceedings. If the Subcontractor continues to perform, the Contractor shall continue to make payments in accordance with this Agreement. Both parties shall endeavor to settle any dispute that arises out of or relates to this Subcontract Agreement, first through direct discussions by their respective Authorized Representatives at the Site. If such dispute cannot be resolved by the Authorized Representatives within fifteen (15) days, then either party may give written notice to the other party requesting that the dispute be escalated to the next level of discussions. Within fifteen (15) days after the receipt of such notice, the parties shall attempt to resolve the dispute by direct discussions of their respective corporate officers. If the corporate officers are unable to resolve the dispute within thirty (30) days after the receipt of such notice, or within a time period otherwise agreed to by the parties in writing, the parties agree to proceed to mediation. All negotiations pursuant to this Subparagraph 17.1 are considered to be confidential and shall be treated only as compromise and settlement negotiations for purposes of federal and state rules of evidence.

17.2 Mediation shall take place with a mutually agreed upon mediator. The mediation shall take place at Contractor's place of business unless otherwise agreed to by the parties. Each party will pay an equal share of the cost of the mediator and mediation facilities. If after commencement of mediation, either party determines at any time that the dispute cannot be resolved by mediation, that party may withdraw from mediation. If the mediation process has not resolved the dispute within thirty (30) days of the submission of the matter to mediation, or a longer period if agreed to by the parties, the mediation process shall be stopped.

17.3 If the dispute has not been resolved through the mediation process, the dispute may, if the parties agree, be submitted to arbitration in accordance with the American Arbitration Association, Construction Industry Arbitration Rules then applicable, or a mutually agreed upon set of arbitration rules. Any agreement to arbitrate, and any other agreement or consent to arbitrate entered into in accordance herewith, will be specifically enforceable under the prevailing arbitration law of any court having jurisdiction. Notice of a request for arbitration must be filed in writing with the other party and accepted in writing by such other party. The request for arbitration must be made within a reasonable time after the mediation process has been ceased, but in no event may a request for arbitration be made after an applicable statute of limitations would bar any legal or equitable proceedings or actions based on such dispute. Any arbitration award shall be specifically enforceable in any court of competent jurisdiction. Unless agreed upon otherwise by the parties, arbitration shall be initiated and conducted in the location where the Project is located. In reaching a final decision, the arbitrator(s) must render findings of fact and conclusions of law, upon which the decision must be based. Decisions shall be made only by a majority of the arbitrators, if more than one. All decisions shall be final and binding

on the parties and may be entered in any court of competent jurisdiction, except that appeals based on errors of law, lack of evidence, sufficiency of evidence, or any other grounds provided by statute may be made to a federal district court of competent jurisdiction nearest the site of the arbitration. The decision must be rendered in writing, and may include an award of attorney' fees and costs as the arbitrator(s) will deem reasonable. The arbitrator(s) shall not grant any punitive damages or any relief prohibited by or inconsistent with this Subcontract Agreement.

17.4 In the event that the dispute is not to be resolved through arbitration, then either party shall be free to bring legal action for resolution of the dispute, consistent with the provisions of Article 23 below; provided, however, that the parties agree that such legal action shall be tried and heard before a judge sitting without a jury, it being agreed that each of Contractor and Subcontractor, with full understanding and advice of counsel, waives its right to a jury in any such proceeding. Subcontractor further waives any and all rights and remedies to which it might otherwise be entitled because of any default, breach, act or omission of Contractor, saving only Subcontractor's right to money damages, subject to Article 13 hereof.

17.5 Notwithstanding anything herein to the contrary, if in the opinion of Contractor, Subcontractor is or may be liable for claims asserted by or against a third party with respect to the Subcontract Work or Subcontractor has claims under this Subcontract Agreement or otherwise with respect to any Subcontract Work which arise in whole or part out of or are otherwise related to claims which Contractor has against Owner under the Prime Contract, then, at the election of Contractor, Subcontractor consents to being joined by Contractor in any dispute proceeding applicable thereto, including, without limitation, any arbitration proceeding, involving Contractor and, as applicable, such third party or Owner. The final adjudication rendered in any such proceeding in which Subcontractor is joined shall be binding upon Subcontractor.

17.6 All offers, promises, communications, statements and actions during the course of any informal dispute resolution process, and any mediation or arbitration, by any party or individual:

- (a) are confidential, privileged and may not be disclosed (including by any mediator);
- (b) are inadmissible, are not discoverable and may not be used (or referred to) for any purpose, including impeachment of any other testimony in an arbitration, judicial, administrative or regulatory proceeding; and
- (c) stay all statutory or contractual limitations that limit a Party's right to litigate.

Notwithstanding the above, either party hereto may bring legal action consistent with Article 23 to obtain equitable relief at any time.

Article 18 - Independent Contractor

Subcontractor and each of its sub-subcontractors shall at all times remain independent contractors and not agents, partners, joint-ventures, or employees of Contractor. Although Subcontractor may receive general instructions or direction from Contractor concerning the Subcontract Work, Subcontractor's performance of the Subcontract Work shall remain under Subcontractor's exclusive charge and control and Subcontractor shall be solely responsible for the means and methods of its work, including, without limitation, the safety of its operations and its employees. Subcontractor shall be solely responsible for the hire, retention, supervision, termination, wages, withholdings, benefits, insurance, and workers' compensation for all of its employees working under this Subcontract Agreement. Subcontractor agrees to indemnify, defend and hold harmless Indemnitees and reimburse them for any and all expenses and liabilities incurred as a result of Subcontractor's breach of this Article 18. Nothing in this Subcontract Agreement or any Contract Document shall be construed or interpreted to mean that Contractor is a co-employer or joint employer with Subcontractor or any of its sub-subcontractors (regardless of tier).

Article 19 - Authorized Representative

Prior to starting the Subcontract Work and when required by Contractor, Subcontractor shall designate and provide Contractor with the name of a full-time on Site field representative ("Subcontractor's Authorized Representative") who shall be assigned to the Site and who shall be in charge of and responsible for the Subcontract Work. Subcontractor's Authorized Representative shall have full authority to receive notices and instructions on Subcontractor's behalf, approve any changes in the Subcontract Work, and otherwise act on behalf of and bind Subcontractor. Subcontractor may not change the Subcontractor's Authorized Representative without the prior written consent of the Contractor. Contractor shall designate a representative who shall be assigned to the project for which the Subcontract Work is to be performed ("Contractor's Authorized Representative") (as to either Subcontractor's Authorized Representative or Contractor's Authorized Representative, an "Authorized Representative"). Subcontractor shall take direction from Contractor's Authorized Representative and shall communicate with such representative on all matters related to the Subcontract Work.

Article 20 - Labor and Supervision

20.1 Subcontractor shall employ and maintain a work force of experienced, competent and properly trained employees, along with the proper equipment and tools necessary to complete the Subcontract Work in accordance with the Contract Documents. Subcontractor shall provide an adequate number of qualified and competent administrative and/or supervisory staff and shall have on the Site, a competent superintendent or project manager, satisfactory to Contractor, who is responsible for the direction of the Subcontract Work and to enforce discipline and order among its employees.

20.2 Subcontractor shall in all respects comply with and shall cooperate with the Contractor, Owner and other subcontractors in enforcing the Site procedures, conditions and rules established by the Contractor or Owner which affect the Subcontract Work, or the Site, including but not limited to the Project Schedule or other related Project schedules, access, security, traffic, solicitation, work and storage areas, utilities, safety, medical and first aid facilities, fire and explosion precautions, pollution, sanitation, cleanup and work conditions. Subcontractor shall be required to attend all Site or Project meetings held by the Contractor or Owner in regard to the Subcontract Work or the Project for which the Subcontract Work is being performed.

Article 21 - Warranties

21.1 Subcontractor warrants to Contractor that all equipment and material furnished as part of the Subcontract Work (a) will be of new manufacture (unless specifically noted otherwise in the Contract Documents), and (b) will be free from defects in design, workmanship, and materials, and (c) will be suitable for its intended purpose as specified in the Contract Documents, and (d) will be fit for the particular purpose for which it is intended, to the extent such purpose is set forth in the Contract Documents or to the extent that Subcontractor should reasonably know of such purpose, and (e) will be in compliance, and will have been manufactured and sold in accordance, with all applicable laws, and (f) will have been fully tested pursuant to and will otherwise be in strict compliance with all of the requirements of the Contract Documents. Subcontractor further warrants that all equipment and material will comply with Plans and Drawings and the Specifications that are part of the Contract Documents and will comply with all performance requirements (including, without limitation, all guarantees), tolerances, and representations contained in the Contract Documents and applicable to the Subcontract Work.

21.2 If any equipment, materials or services do not comply with any one or more of the foregoing warranties, or becomes noncompliant or defective within a period of one (1) year, or such longer period as specified in the Contract Documents, after Final Completion (excluding any period the equipment or material is not available for use or operation because of breach or non-conformity with any of said warranties), then Subcontractor shall, at its sole cost and expense, promptly correct, by repair, replacement or re-performance, all defective or non-conforming equipment, material and services. The decision whether to repair, replace or re-perform shall be made solely by Contractor and such repair, replacement or re-performance shall be scheduled consistent with Contractor's or Owner's operating and scheduling requirements so as to minimize loss of production or use of the equipment or material or of any plant or equipment of which the equipment or material is a part or which is otherwise affected by the applicable defective or nonconforming equipment, materials or services. All costs and expenses associated with access to, repair or replacement of any such equipment or material or re-performance of such services, including, but not limited to, additional legal or engineering activities, packing, unpacking, examination, salvage, transportation, testing, re-shipping and removal and all other incidental damages relating thereto (including, without limitation, the repair or replacement of any other equipment, material or work affected thereby and/or the applicable nonconformity) shall be paid by Subcontractor. The warranty period for any repaired, replaced or re-performed equipment, material or services shall be extended to one year from the date from completion and acceptance by Contractor or Owner of the repaired, replaced or re-performed equipment, material or services or for the duration of the unused original warranty period, if such period is longer.

21.3 Contractor's inspection, testing, acceptance, payment, or use of any of the Subcontract Work shall not constitute a waiver by it of any warranties and shall not affect the warranties and obligations of Subcontractor under the Contract Documents.

21.4 In the event of Subcontractor's failure to repair or replace or re-perform any of the Subcontract Work, or to otherwise correct defaults in accordance with any term of this Subcontract Agreement, Contractor, after notice to Subcontractor, may correct any such deficiencies in the Subcontract Work, or may purchase replacement thereof. Contractor may either invoice Subcontractor for the cost of correcting the deficiencies, including, without limitation, the costs directly attributable to other services that are required to be performed in connection with the correction of such deficiencies, additional legal or engineering expense, salvage costs, testing expense and other incidental damages relating thereto, or deduct such costs from any payments due or subsequently due Subcontractor.

21.5 If and whenever a latent defect, that is, a defect which exists in the Subcontract Work that was not and would not normally be revealed, discovered, or located before the end of the warranty period by a reasonable

inspection becomes apparent, Contractor shall, as promptly as practical, notify Subcontractor and Subcontractor shall promptly correct such defect by re-performing, repairing or replacing the defective portion of the Subcontract Work at its expense and in accordance with the Contract Documents and shall otherwise have all of the same liabilities and responsibilities to Contractor under this Subcontract Agreement with respect to such defect just as though such defect had been discovered before expiration of any warranty period.

21.6 Subcontractor shall exercise all reasonable efforts to obtain warranties at least as long as the warranty periods applicable to Subcontractor's warrantees under this Subcontract Agreement against defects in design, materials and workmanship from every manufacturer or supplier furnishing material, equipment, appliances or other products for the Subcontract Work. All such manufacturer or supplier warranties, including those which extend beyond Subcontractor's warranty period, shall be assigned to Contractor or Owner, as the case may be. Subcontractor shall allow Contractor or Owner to make any claim under, and shall assign to Contractor or Owner at Contractor's request, any such warranties during the term of Subcontractor's warranty obligations hereunder. The existence and terms of, or Contractor's exercise of any rights under, any manufacturer or supplier warranty shall in no way limit the Subcontractor's warranty obligations under the Contract Documents.

Article 22 - Entire Agreement and Amendments

This Subcontract Agreement, together with the other Contract Documents, constitutes the entire agreement between Contractor and Subcontractor and supersedes all prior agreements, understandings and commitments, whether oral or in writing, relating to the subject matter thereof. This Subcontract Agreement may not be amended or modified in any manner except by a written document signed by both parties that expressly amends the same. Any captions used herein and in the other Contract Documents are for the convenience of the parties and shall not be used in construing the meaning of any Articles, provisions, terms or conditions. The amendment provisions of this Article shall be subject to the provisions of Article 14 of this Subcontract Agreement, which pursuant to Subparagraph 14.6 thereof requires the signature of the Chief Executive Officer of Contractor in order for any changes to said Article 14 to be valid and enforceable.

Article 23 - Governing Law

Unless otherwise agreed to by the parties, this Subcontract Agreement shall be construed and interpreted in accordance with the laws in effect in the State where the Subcontract Work is to be performed; provided, however, that all judicial proceedings hereunder or pursuant to this Subcontract Agreement shall be brought in courts with jurisdiction over and sitting in Knox County, Tennessee. Contractor and Subcontractor agree to such venue and submit themselves to the jurisdiction of such courts, hereby waiving any claim about an inconvenient forum or other procedural restrictions or impediments to the jurisdiction of said courts.

Article 24 - Severability

If any provision, or any part thereof, of this Subcontract Agreement or any other Contract Document is found by any court or governmental agency of competent jurisdiction to be invalid or unenforceable for any reason whatsoever, such provision shall be replaced with the strictest enforceable provision in the governing jurisdiction. In any event, the invalidity or unenforceability of any provision, or any part thereof, shall not affect the remainder of such provision or any other provision hereof, all of which shall remain in full force and effect.

Article 25 - Assignment

It is expressly understood and agreed that Subcontractor's responsibilities and obligations under this Subcontract Agreement or any Contract Document are non-delegable. Subcontractor shall not assign or transfer any rights, claims, interests, or obligations under any the Contract Documents including, but not limited to, claims for monies that are due or may become due, without the prior written consent of Contractor in each instance. Except for the provisions of this Subcontract Agreement affording rights or benefits to the Owner or Contractor in reference to Subcontractor's sub-subcontractors, agents or employees and Subcontractor's books, records and accounts, nothing contained in the Contract Documents shall create any contractual or third-party beneficiary relationship between any parties other than Contractor and Subcontractor. Contractor may assign its rights, claims, interests, and obligations in the Contract Documents to any third party (including, without limitation, to the Owner) upon notice to Subcontractor without the consent of Subcontractor or any other party and without any limitation. In the event of an assignment of the Contract Documents to Owner, Contractor shall automatically be deemed released from all duties and obligations of Contractor arising or accruing on or after the effective date of such assignment.

Article 26 - Audit Rights

Contractor or its designated agents or representations, shall have access to Subcontractor's books, records and accounts at all reasonable times on reasonable notice to the extent necessary to verify the pricing, costs and payment provisions of this Subcontract Agreement or to determine Contractor's rights or Subcontractor's obligations under this

Subcontract Agreement or any Contract Documents or to ascertain any facts relative to any claim by or against Subcontractor or Contractor which may become a charge against or which may otherwise relate to any of the Subcontract Work, for a period of three (3) years after final payment. In any event, to the extent the Owner has the right to audit Contractor's books, records and accounts under the Prime Contract, the Owner shall have the same such rights with regard to Subcontractor's books, records and accounts.

Article 27 - Waiver

Contractor's failure to insist or delay its insistence upon strict observance or performance by Subcontractor of any of the terms, conditions or provisions of this Subcontract Agreement, or any Contract Document or Contractor's failure or delay in exercising any of its rights or remedies provided herein, shall not be deemed as a waiver by Contractor of any terms, conditions or provisions, or its rights or remedies hereunder or under any Contract Document. No waiver shall be binding upon the Contractor unless the same is in writing signed by the Contractor and shall then only be for the particular instance referred to in said writing only and shall not act as a waiver of any future instances. The waiver of any one failure breach or right shall not be deemed a waiver of any other failure, breach or right. Payment of any sum by Contractor to Subcontractor with knowledge of any breach or failure shall not be deemed to be a waiver of such breach or failure.

Article 28 - Notices

Any notice pertaining to this Subcontract Agreement, the Subcontract Work or any Contract Document shall be put in writing and sent via facsimile transmittal or electronic transmittal with confirmed receipt, registered or certified mail (postage prepaid), or by commercial overnight courier, to Contractor's Authorized Representative or Subcontractor's Authorized Representative as the case may be, at their respective addresses appearing on this Subcontract Agreement and to the parties designated at the head of this Subcontract Agreement.

Article 29 - Reference to Days

All references to "days" in this Subcontract shall mean calendar days, unless otherwise stated to be business days.

Article 30 - Clean-up

Subcontractor shall at all times keep all structures and premises free from debris resulting from the Subcontract Work. If Subcontractor fails to keep all structures and premises free from debris, Contractor may give Subcontractor notice to clean up such areas. If Subcontractor fails to begin such clean up measures within twenty-four (24) hours after written notification from Contractor, Contractor may implement such clean up measures without further notice and deduct the cost thereof from any amounts due or to become due to Subcontractor.

Article 31 - Final Completion

The Subcontract Work or any portion of the Subcontract Work or any repair, replacement or re-performance of prior equipment, materials, services or other work under warranty or otherwise shall not be deemed complete until Contractor has notified Subcontractor of its final acceptance of same ("Final Completion").

Article 32 - Lower-tier Subcontracts

Subcontractor shall not subcontract any portion of the Subcontract Work without the prior written consent of Contractor in each instance. Any portion of the Subcontract Work to be performed for Subcontractor by a sub-subcontractor shall be performed pursuant to a written subcontract between Subcontractor and its sub-subcontractor. Subcontractor shall require its sub-subcontractors to assume the same duties and obligations towards Contractor and Owner that Subcontractor assumes under the Contract Documents. No subcontract shall relieve Subcontractor of its obligations under the Contract Documents for the Subcontract Work or the Project. Subcontractor shall be fully responsible for the management and direction of its sub-subcontractors, their agents and employees and shall be as fully liable for the acts and omissions of its sub-subcontractors, their agents and employees as it is for the acts and omissions of Subcontractor's own employees. Contractor shall have no duty or obligation to any sub-subcontractor of Subcontractor unless, and then only to the extent that, Contractor specifically agrees to such in writing to be bound.

Article 33 - Safety and Security

33.1 The Subcontractor shall be solely responsible for the safety and security of its employees, as well as its sub-subcontractors, vendors, suppliers and invitees while working on the Subcontract Work. Subcontractor shall pursue the Subcontract Work in a safe manner at all times, taking all necessary precautions to avoid injury to any person and damage to any property. Subcontractor shall develop, maintain and enforce a comprehensive safety and health program that meets or exceeds all applicable federal, state and local safety related laws and regulations during the performance of the Subcontract Work. Subcontractor shall comply with all laws, ordinances, codes, rules, regulations and standards relative to safety and health, including, without limitation, the Occupational Safety and Health Act of 1970 and any and all

amendments thereto, as well as the requirements of Contractor's and Owner's safety rules and procedures.

33.2 Subcontractor shall, and shall require all of its sub-subcontractors to, provide their workers with all appropriate safety equipment, which shall be worn, used and maintained in good condition at all times while at the Site.

33.3 Subcontractor shall comply with Contractor's and Owner's rules and policies governing the admittance of Subcontractor's employees to the Site and their identification while working on the Site. All persons entering or leaving the Site may be subject to a search of their person, effects, and vehicles in accordance with Contractor's or Owner's security rules and procedures.

33.4 Subcontractor shall immediately report to Contractor each accident and injury involving its employees, sub-subcontractors, suppliers or invitees occurring at the Site. Reports of personal injury or death to any person shall be made to Contractor's Authorized Representative as soon as possible and in all cases within twelve (12) hours of the incident or, if earlier, within the period of time required by the Prime Contract.

33.5 Subcontractor shall ensure that all hazardous substances supplied and/or used in the performance of the Subcontract Work are properly stored and labeled. Subcontractor shall not bring, nor permit its sub-subcontractors or others performing the Subcontract Work to bring any hazardous substance to the Site that is prohibited by the Contract Documents without specific approval from Contractor or Owner. Should any hazardous substances be permitted at the Site by Contractor or Owner, Subcontractor shall ensure that a copy of the substance's Safety Data Sheet is provided to Contractor and Owner upon its arrival to the Site. Subcontractor is responsible for disposing of, in accordance with all applicable federal, state and local laws, rules and regulations, any and all surplus hazardous substances brought to the Site by Subcontractor or any of its sub-subcontractors (regardless of tier) and all hazardous wastes generated by Subcontractor or any of its sub-subcontractors (regardless of tier) while at the Site.

33.6 Subcontractor or any of its sub-subcontractors, suppliers or invitees fails to comply with any requirement of this Article, Contractor and Owner shall have the right, but not the obligation, to require Subcontractor to correct such failure and to immediately stop all or any portion of the Subcontract Work until such failure is corrected. If Subcontractor fails to meet the safety standards of Contractor or Owner, Contractor may require Subcontractor to assign an additional dedicated Site safety representative at the cost of Subcontractor. Whether or not all or any portion of Subcontract Work is stopped, Subcontractor's refusal or failure to correct any such failure within twenty-four (24) hours of being notified by Contractor or Owner to do so shall constitute a default by Contractor. Any violation of this Article 33 shall entitle Contractor or Owner to have those responsible for the violation immediately removed from the Site without prior notice or warning. Subcontractor shall not be entitled to any extension of time on account of any of the Subcontract Work being stopped, or to claim any additional costs on account of corrective actions it is required to take, as a result of a failure to comply with this Article.

Article 34 - Cumulative Remedies

The rights and remedies of Contractor as specified in the Contract Documents shall be cumulative and in addition to all other rights and remedies Contractor may have in law or in equity or otherwise. In the event of a conflict between or among available remedies, Contractor may choose from and pursue any combination of available remedies. All of Contractor's rights and remedies herein specified shall survive the termination or expiration of this Subcontract Agreement, regardless of whether survivability is specified in any particular Article.