

From: <u>Dana Gunnell LLC</u> Contractor	To: _____ Subcontractor
Address: 7788 N Burr Oak Dr. Eagle Mountain, UT 84005	Address: _____
Phone: 801.657.1414 <u>stephen@danagunnell.com</u>	Phone: _____

MASTER SUBCONTRACT AGREEMENT

Dana Gunnell LLC ("Contractor") and Subcontractor wish to establish the terms and conditions under which Subcontractor may, from time to time, furnish labor, materials, equipment, and/or services to Contractor on one or more projects. This Master Subcontract Agreement ("Agreement" or "MSA") defines the standing terms and conditions governing the commercial relationship between Contractor and Subcontractor and is supplemented, for each project, by a project-specific Work Order issued under and incorporating this Agreement.

Important Note:

SUBCONTRACTOR MAY NOT BEGIN WORK ON ANY PROJECT UNLESS AND UNTIL CONTRACTOR IS IN RECEIPT OF (1) SUBCONTRACTOR'S GENERAL LIABILITY, AUTO AND WORKER'S COMPENSATION CERTIFICATES OF INSURANCE THAT ARE IN STRICT COMPLIANCE WITH THE REQUIREMENTS OF SECTION 19, (2) THE APPLICABLE WORK ORDER EXECUTED BY SUBCONTRACTOR IN A FORM ACCEPTABLE TO CONTRACTOR, AND (3) PAYMENT AND PERFORMANCE BONDS FULLY EXECUTED (IF REQUIRED BY THE APPLICABLE WORK ORDER). BY STARTING WORK, SUBCONTRACTOR ACCEPTS THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THE APPLICABLE WORK ORDER AND GUARANTEES COMPLIANCE.

MSA No. _____ Effective Date _____

DANA GUNNELL - REFERENCE COPY

This Agreement is made this _____ day of _____ between Dana Gunnell LLC (Contractor) and _____ (Subcontractor).

Subcontractor. "Subcontractor" means the subcontractor identified on the cover and signature page of this Agreement, and includes its employees, agents, and its lower-tier subcontractors, suppliers, and materialmen of every tier (each, a "Sub-Subcontractor"), for whose acts and omissions Subcontractor is fully and solely responsible.

Work Orders. Contractor may, but is not obligated to, issue Subcontractor one or more project-specific work orders specifying the scope of Work, the Subcontract Price, the schedule, and other project-specific terms for a particular project (each, a "Work Order"). This Agreement does not obligate Contractor to issue any Work Order and does not guarantee any work to Subcontractor. No Work Order is binding unless executed by Contractor.

Prime Contract. The contract(s) governing a project between Contractor and the owner of that project (as defined in such contract, the "Owner"), including all exhibits, drawings, specifications, addenda, and modifications, is the "Prime Contract" for that project. A copy of the applicable Prime Contract (which may be redacted as to price) shall be attached to or identified in the applicable Work Order and is incorporated into the Subcontract for that project.

Subcontract. This Agreement, together with a Work Order and the applicable Prime Contract for a project, constitutes the "Subcontract" for that project. Each Work Order incorporates this Agreement as if fully set forth therein. Capitalized terms used in a Work Order have the meanings given in this

Agreement unless otherwise defined. The specific scope of Work, Subcontract Price, and schedule for each project are set forth in the applicable Work Order and Contract Documents.

Flow-Down. As to each project, Subcontractor assumes toward Contractor all obligations and responsibilities that Contractor assumes toward the Owner under the applicable Prime Contract, to the extent applicable to the Work, and shall be entitled to no greater rights against Contractor than Contractor has against the Owner with respect to the Work.

Precedence. Except to the extent a Work Order expressly states that it modifies a specific provision of this Agreement for the applicable project, this Agreement shall govern in the event of any conflict between this Agreement and a Work Order.

SECTION 1 - SCOPE OF WORK

The Subcontractor agrees to furnish all necessary management, supervision, labor, materials, tools, supplies, equipment, plant, services, engineering, testing and/or any other act or thing required to diligently and fully perform and complete the portions of the Work as described in the Contract Documents, subject at all times to the terms and conditions of this Agreement, all of which shall be referred to herein as the "Work." Without limitation, the Subcontractor's Work shall specifically include and be subject to the following:

A. Compliance with Specifications. Subcontractor acknowledges and agrees that any description or recapitulation of the Work to be performed shall be for the sole and exclusive purpose of clarifying the status of those items which are specifically mentioned as being included in, or excluded from, the scope of the Work. Where a division or divisions of the project Specifications is/are referred to in describing the Work to be performed under this Agreement, the Subcontractor shall, unless otherwise specified, perform all of the Work required by such division or divisions, plus all additional related Work of a similar nature generally performed by the trades or crafts employed or engaged by the Subcontractor in executing the principal Work, whether or not such additional related Work of a similar nature is specifically called for in the plans, in other divisions of the Specifications, or in any other of the Contract Documents for the project.

B. Material/Equipment Deliveries. The Subcontractor will unload, store and protect all materials and equipment required for Work as delivered to the jobsite. Delivery tickets shall be clearly marked by date, material name, quantity and location, and shall list the party responsible for unloading. Subcontractor must give Contractor 24-hour prior notice of delivery of materials and equipment to the jobsite. There shall be no unscheduled deliveries of major materials. Subcontractor agrees to prepay the transportation charges on all materials and equipment shipped, and to indemnify, defend and save harmless Contractor against all costs or claims for transportation, freight and express charges on workmen, materials and equipment to and/or from the jobsite, and for all other incidental expenses in connection with Subcontractor's Work. In the event the material or equipment is delivered when the Subcontractor's personnel is not available, the Contractor, at its option, may unload the material or equipment and back charge the Subcontractor for the cost of unloading and storing of the materials or equipment on behalf of the Subcontractor. If any materials are to be furnished but not installed by Subcontractor, it is understood and agreed that Subcontractor shall deliver and unload said materials at the jobsite without expense to the Contractor. Subcontractor understands the Project necessarily evolves during its Work. Subcontractor has thus made accommodations for, and agrees to move and store material and equipment as directed by Contractor without an increase in the Subcontract Price. Subcontractor recognizes the jobsite is not conducive to onsite storage, and therefore agrees all its deliveries to the site – without exception – shall be just-in-time deliveries, coordinated in advance with and approved by Contractor's superintendent. Subcontractor further agrees to provide traffic control, signal "flag" men, temporary signage and barricades as necessary to safely control and supervise delivery vehicle movement, including but not limited to pedestrian and traffic control and safe passage as necessary to satisfy Contractor and as required by the Authority Having Jurisdiction (AHJ). Subcontractor shall provide delivery schedules coordinated with the then-current Project Schedule, ensuring sufficient and competent personnel are on-site to receive and unload all materials and equipment to prevent Project delays.

C. Penetrations / Fire Ratings / Sound Ratings. Subcontractor is responsible for maintaining the fire

rating of any wall, floor, ceiling or roof that is penetrated by its Work. If the scope of the Work includes, requires or creates penetrations of any kind into work of others, Subcontractor is responsible for maintaining the integrity and requirements of others, including fire and water protection requirements. Subcontractor shall securely cover floor penetrations (such as core drills or sleeves) created in the performance of its Work. Subcontractor shall ensure compliance with sound/STC ratings at all locations where its scope of Work penetrates or affects sound-rated assemblies, as specified in the Contract Documents.

D. Layout. Subcontractor is responsible for layout of its Work. Contractor shall provide an elevation mark at each level and one grid offset in each grid direction. Unless otherwise noted in the specific provision of the scope, all layout from that stated above will be the responsibility of the Subcontractor. Checking of layout or providing assistance in layout by the Contractor shall in no way be construed to relieve this Subcontractor from complete responsibility for the layout. Any sleeving, block outs, backing, supports, anchors, embeds, and/or associated templates required for its scope of Work. Subcontractor is responsible for providing complete systems, and any costs associated with correcting deficiencies due to failure to furnish, install, or coordinate these items shall be borne by Subcontractor.

E. Cutting/Patching. The Subcontractor shall perform all cutting and patching as required to install its Work as required by the Contract Documents. Subcontractor is responsible for maintaining the integrity and requirements of the work of other trades, including fire and water protection requirements, in connection with any cutting and patching it performs. Subcontractor shall perform all sealing and waterproofing for penetrations through roofs or exterior enclosures, including but not limited to roof jacks and flashings as specified in the Contract Documents. Subcontractor shall ensure all plumbing, mechanical piping, ducting, equipment, and fire sprinkler systems fit within designated joist spaces or soffits as shown in the Contract Documents, bearing all costs for additional soffits or modifications required due to its scope of Work.

F. Water. The Contractor will provide a source of construction water reasonably close to the point of use for all work sites requiring water. Subcontractor shall be responsible for connection to that source and for distribution to the point of use and pressure increase required for special applications. Subcontractor will be responsible for its own drinking water.

G. Hoisting. The Subcontractor shall be responsible for hoisting its own material, supplies, equipment and personnel.

H. Stormwater Management. Subcontractor shall strictly follow stormwater Best Management Practices (BMPs) and shall, at its own cost, repair or replace any mud tracking or damage caused by its personnel or activities and shall maintain dust control during all on-site Work to prevent debris from being tracked onto adjacent streets, in compliance with all Project Stormwater Pollution Prevention Plan (SWPPP) requirements. Subcontractor shall perform street cleaning and debris sweeping attributable to its scope of Work, while Contractor will provide track-off mats at each jobsite access point as per SWPPP requirements.

I. Temporary Facilities. Contractor shall provide portable restrooms and 110v and 220v power distribution to designated locations. Subcontractor shall furnish all other temporary facilities, including power distribution from the designated location and task lighting required for its scope of Work. Contractor shall provide power for task lighting and egress lighting, while Subcontractor shall bear all costs for additional facilities or modifications necessary to complete its Work.

J. Mock Ups. Subcontractor agrees to participate in all necessary mock-up exercises as requested by Contractor at no additional cost. Subcontractor recognizes mockups are included and agrees to perform mock-up work as necessary to facilitate timely and compliant completion of the Project.

K. Parking. Subcontractor understands no on-site parking is available and therefore agrees to arrange and pay for off-site parking for its personnel, including employees and vendors. Subcontractor shall manage transportation between the off-site parking and the Project site and ensure all personnel are informed of and comply with this off-site parking requirement, at Subcontractor's expense.

SECTION 2 - PRICE

Contractor agrees to pay Subcontractor for the strict performance of its Work the Subcontract Price stated in the applicable Work Order (the "Subcontract Price"), subject to adjustments for changes in the Work as may be directed in writing by Contractor. The Subcontract Price for each project, together with its cost-code breakdown, is set forth in the applicable Work Order and Schedule of Values.

The Subcontract Price is inclusive of all costs, overhead and profit relating to performance and completion of the Subcontractor's Work under this Agreement. Escalation costs applicable to all labor and materials (including fuel) necessary for completion of the Work, and mobilizations, as required, are included in the Subcontract Price. Payment, less retainage of ten percent (10%) unless a different retainage is stated in the applicable Work Order, shall be made in monthly progress payments. The Subcontractor's Scope of Work and Subcontract Price also include, but are not necessarily limited to, the following:

A. Permits and Licenses. The Subcontractor shall obtain and pay for all permits, fees, licenses, duties and official inspections made necessary by or required for execution of its Work and shall comply with all laws, ordinances and regulations bearing on the Work under this Agreement. The general building permit shall be pulled and paid for by Contractor.

B. Taxes. Subcontractor agrees to and does hereby accept full and exclusive liability for the payment of any and all applicable taxes, including personal property taxes, sales tax, use taxes, excise taxes, gross receipts taxes, and payroll taxes relating to the materials, supplies, tools, machinery, equipment and plant which may be purchased, acquired, rented or used by Subcontractor relating to Work performed under this Agreement.

C. Fringes. Subcontractor accepts full and exclusive liability for the payment of any and all contributions, taxes, insurance or benefits of any description whatever, now or hereafter imposed by any governmental authority or labor union, which are measured by the wages, salaries or other compensation paid to persons employed by Subcontractor on Work performed pursuant to the terms of this Agreement.

SECTION 3 - PAYMENT

Contractor agrees to pay Subcontractor for the full and faithful performance of its Work pursuant to the terms this Agreement. Contractor shall not be obligated to make any payments to Subcontractor, however, unless Subcontractor submits progress Work done and material furnished and satisfactory to Contractor and are in strict compliance with the Contract Documents. Each application for payment shall constitute a representation and warranty by Subcontractor the Work performed is in compliance with this Agreement, the Contract Documents and all applicable law.

A. Payments in Trust. The Subcontractor accepts the fiduciary obligation and agrees and covenants that money received for the performance of its Work under this Agreement shall be used solely for the benefit of persons and firms supplying labor, materials, supplies, tools, machines, equipment, plant or services exclusively for the project and having the right to assert liens or other claims against the land, improvements or funds involved in the project or against any bond or other security posted by Contractor or Owner; that any money paid to the Subcontractor pursuant to this Agreement shall immediately become and constitute a trust fund and be held in trust for the benefit of said persons and firms, and shall not in any instance be diverted by Subcontractor to any other purpose until all obligations arising hereunder have been fully discharged and all claims arising here from have been fully paid

B. Lien Waivers. Upon request, the Subcontractor shall submit a complete list of its lower-tier subcontractors and suppliers who will be providing material and/or labor in performance of the Work. Subcontractor agrees, as a condition precedent to payment hereunder, to furnish Contractor with such conditional and unconditional partial and/or final releases and waivers of lien, bond or other claims as the Contractor may from time to time request. The forms of lien waiver to be used will be furnished by Contractor, and Subcontractor acknowledges its pay application will not be processed for payment unless and until the forms are filled out completely and accurately. The Subcontractor shall reimburse the Contractor for costs and expenses including attorneys' fees and costs incurred by the Contractor in satisfying, discharging or defending against any such claim, obligation or lien, including any action

brought or judgment recovered.

C. Assignment of Payment. The Subcontractor and Contractor agree as follows with respect to the assignment of payments as may be due or as may become due to Subcontractor under this Agreement:

1. The Subcontractor will make no assignment of the proceeds hereof without the prior written consent of the Contractor, which consent shall not be unreasonably withheld;
2. In no instance shall the Contractor be obligated to any assignee of the Subcontractor on account of payments at any time made in good faith under any assignment and/or erroneously or inadvertently made to the Subcontractor as assignor;
3. The Contractor shall in no instance be liable to any assignee of the Subcontractor for any amount in excess of the net sums owing Subcontractor hereunder after first deducting any amounts for which the Subcontractor may otherwise be obligated or indebted to Contractor;
4. By making an assignment of the proceeds hereof, the Subcontractor agrees to assume full liability for the conveyance to assignees of any payments mistakenly, inadvertently, or otherwise made or addressed to Subcontractor, and the Subcontractor agrees to defend and hold harmless the Contractor from any claim or action of any assignee related to this Agreement.

D. Unit Price Measurement. If the terms of the scope provide for the payment of Work performed on a unit price basis, the unit of measurement for payment shall be one for which certified verification of weights or quantities can be furnished at the time of delivery or readily agreed upon. In the event the parties fail to agree on the actual quantities performed, Contractor shall have the right to measure the quantity of Work-in-place and make final settlement on the basis of such measurement. Unless stated otherwise in the scope, unit prices are inclusive of all costs, overhead, general and administrative expenses, profit, supervision, extended performance cost factors, and all other direct and indirect expenses relating to completion of the Work to be performed by Subcontractor.

E. Progress Payment. Receipt of payment by the Contractor from the Owner for the Work is a condition precedent to payment by the Contractor to the Subcontractor. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Contractor, for payment of the Work. Progress payments received from the Owner for the Subcontractor for satisfactory performance of the Work shall be made no later than seven (7) days after receipt by the Contractor of payment from the Owner for the Work as reflected in Contractor's application for payment.

For unsatisfactory or otherwise disputed items of Work in Subcontractor's application for payment, Contractor shall be entitled to withhold up to one hundred fifty percent (150%) of the disputed amount. Upon subsequent notice from Subcontractor that the Work in dispute has been completed in accordance with the Contract Documents, Contractor shall within ten (10) days accept or reject the disputed Work in writing and, if accepted, the Subcontractor shall be permitted to request payment for such Work in its next application for payment. In circumstances where the Contractor has billed the Owner and been paid for the disputed Work for which it withheld payment, Contractor shall within ten (10) days of acceptance of the disputed Work release and pay to the Subcontractor the previously withheld funds as well as that portion of retainage relating to the disputed Work.

F. Final Payment. Receipt of final payment by the Contractor from the Owner for the Work of Subcontractor is a condition precedent to payment by the Contractor to the Subcontractor. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Contractor, for payment of Subcontractor's Work. Full and final payment, including specifically retainage, is not due and owing to Subcontractor, and will not be made by Contractor, until all of the following are complete:

1. Receipt of the Subcontractor's final waiver and release of all claims and liens related to the Work, except for unsettled claims specifically identified in writing on such required waiver and release document;
2. Receipt from Subcontractor of affidavits of payment, payroll affidavits, receipts, vouchers, and/or releases of claims and liens from lower-tier subcontractors, vendors and suppliers, if and when required by Contractor and in a form satisfactory to Contractor;

3. Satisfaction of required close-out procedures, including submission to and acceptance of Final Operation and Maintenance Manuals, manufacturer's startup service and required startup and testing reports by the Architect/Engineer, Contractor and Owner;
4. Change Orders are signed and returned;
5. Spare parts and materials, special tools, touch-up paint, and warranties are accepted by the Architect/Engineer, Contractor and Owner;
6. Work has been accepted by the Architect/Engineer, Contractor, and Owner;
7. Subcontractor has provided a written warranty for the term required by the Prime Contract. If no express term is so specified, the term of the written warranty shall be no less than one (1) year from final completion and acceptance of the Project by the Owner;
8. Consent of the Subcontractor's surety to final payment, if required;
9. Submission of as-built drawings, if and as required by the Contract Documents;
10. Certification that insurance required by this Agreement to remain in effect beyond final payment is in effect and will not be canceled or allowed to expire without at least thirty (30) days' written notice to the Contractor;
11. Completion and acceptance of punch list Work;
12. Subcontractor has provided a fully executed Affidavit of Compliance with prevailing wage law, if applicable, on the form provided by Contractor; and
13. Complete and full satisfaction of all claims, demands and disputes arising out of or related to this Agreement, including those between Contractor and Subcontractor as well as those between Subcontractor and any third party.

Provided all of the foregoing items are complete, Contractor shall make final payment to Subcontractor within seven (7) days after receipt by the Contractor of final payment from the Owner. Final payment to Subcontractor shall not constitute nor imply acceptance of any portion of the Work, nor shall it release or waive Subcontractor's liability for incomplete Work or defective Work not corrected (whether known or unknown), non-compliance with the Contract Documents, or warranties and other obligations of Subcontractor that survive final payment. Final payment shall constitute a waiver of all claims by Subcontractor relating to its Work, this Agreement.

G. Joint Check / Direct Payment. Subcontractor agrees Contractor shall have the right to determine the manner in which payment shall be made. Contractor reserves the right to make any payment or portion thereof to Subcontractor, including payments due hereunder, through a check made payable to the joint order of Subcontractor and such of Subcontractor's workmen, suppliers, Subcontractors, or creditors having potential lien rights against the Work.

H. Right of Offset. The Contractor may deduct from amounts due or to become due to the Subcontractor pursuant to this Agreement, any sums due or to become due to the Contractor from the Subcontractor whether or not sums are in any way related to this Agreement. Contractor may apply such deducted funds to any account, related or unrelated to this Agreement, wherein the obligations of the Subcontractor have not been discharged as determined by the Contractor, and wherein the Contractor's interests are directly or indirectly involved.

I. Financial Assurances. If at any time the Contractor shall determine in its reasonable opinion that the Subcontractor's financial condition has become impaired, unstable or unsatisfactory, the Subcontractor shall furnish evidence of its financial ability to complete the Work to the Contractor within three (3) days after written demand thereof is mailed or delivered to Subcontractor. In the event Subcontractor fails or refuses to furnish such evidence satisfactory to Contractor, the Contractor shall have the option to terminate this Agreement, or to initiate such other action as the Contractor may deem necessary for the protection or preservation of its interests and/or the prevention of delay in the efficient and orderly progress of Work on the project, including but not limited to that portion of the Work to be performed by Subcontractor hereunder. Contractor reserves the right to conduct an audit of

Subcontractor's books and records pertaining to the Work at any time and for any reason, at Contractor's expense, as reasonably necessary to assure Subcontractor's compliance with this Agreement.

J. Change in Ownership or Control. Subcontractor shall notify the Contractor at least thirty (30) days in advance of any change in the beneficial ownership, directly or indirectly, of ten percent (10%) or more of its voting stock, voting power and/or ownership interests. Upon request of the Contractor, Subcontractor shall provide detailed information regarding such change in ownership or control as well as evidence of Subcontractor's financial ability to complete the Work as required under Section 3(I) above. In the event of a change in ownership or control or impairment in financial status of Subcontractor under Sections 3(I) or 3(J) above, the Contractor may, in its discretion, require the Subcontractor to furnish a performance and payment bond at its own expense to guarantee its faithful performance of the Agreement if not already furnished pursuant to Section 28. If Subcontractor is unable or unwilling to furnish a performance and payment bond meeting the requirements of Section 28 of this Agreement, Subcontractor shall provide (i) a parent guaranty or (ii) a standby letter of credit sufficient to guarantee Subcontractor's performance of its obligations under the Subcontract from an entity and upon terms acceptable to Contractor in Contractor's sole discretion. Failure to provide the financial assurances set forth in this Section shall be deemed an event of default hereunder.

SECTION 4 - TIME AND SCHEDULE

A. Time is of the Essence. Time is of the essence of this Agreement. No extension of time for performing the Subcontractor's Work will be valid without Contractor's written consent and approval, and then only if and to the extent an extension of time is granted to Contractor under the Prime Contract for the specific aspect of the Work in question. It shall be the Subcontractor's continuing obligation to provide sufficient resources to the project to fully conform and comply with Contractor's schedule, including all updates. Subcontractor's Work must be performed within the duration set forth in this Agreement and on the Project Schedule for the activity or activities that describe the Subcontractor's Work. Not every aspect of the Subcontractor's Work will be individually scheduled. The initial schedule of the Work and any updates will be available to Subcontractor at the Contractor's jobsite trailer.

B. Scheduling. Subcontractor shall provide Contractor with scheduling information in a form acceptable to Contractor and shall conform to Contractor's progress schedules, including any changes made by Contractor in the scheduling of Work. Subcontractor shall coordinate its Work with that of all other contractors, subcontractors and suppliers so as not to delay or damage their performance.

Contractor shall have complete control of the premise in which the Work is to be performed and shall have the right to decide the time and order in which various portions of the work shall be installed and the relative priority of the Work of Subcontractor and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the Work of Subcontractor. All Work performed by Subcontractor shall be in accordance with Contractor's Project Schedule as periodically updated.

The Subcontractor agrees to keep itself thoroughly informed as to the progress of the project, to begin Work within the time set forth in any notification by the Contractor, and to prosecute its Work continuously and uninterrupted with all possible speed in accordance with the Contractor's then applicable and updated Project Schedule at such times and in such order as Contractor considers necessary to keep the same sufficiently in advance of successive activities and to avoid any delay in the completion of the project.

The Contractor shall prepare the initial master schedule for performance of the project as a whole and update that schedule from time to time as the Work proceeds. To the extent Subcontractor wishes to provide Contractor any input on the initial master schedule, such input must be provided in writing to Contractor before this Agreement is signed. Such input must include an analysis of the anticipated man hours. If such input is timely provided, Contractor will attempt but is not bound to incorporate such input to the extent Contractor's overall plan for the Work is not materially affected. Subcontractor understands some of its Work will need to be installed out of sequence with its production Work and plan, and has made accommodations for such in the Subcontract Price.

C. Coordination of Work. The Subcontractor shall work and coordinate with all other subcontractors and vendors to establish routes, clearances, and elevations of all piping, fittings, equipment, and other materials, to avoid conflict. Subcontractor shall have its superintendent and/or foreman attend weekly

coordination and planning meetings held by Contractor, at which time Subcontractor shall submit, for coordination and approval, unless instructed otherwise, its proposed daily Work schedule for the next defined (e.g. 3-week) period. Failure of Subcontractor to attend regularly scheduled meetings shall not relieve Subcontractor of its responsibility to perform its Work in accordance with, and strictly comply with, instructions given during the meeting. Subcontractor shall coordinate all required testing and inspections of its Work both with the Contractor's Superintendent and the designated testing agency, as required. Subcontractor shall coordinate as needed, including at all meetings related to its Work, to accommodate and satisfy the needs and requirements of the AHJ.

D. Daily Logs. Subcontractor agrees to and shall provide daily progress reports/daily logs to Contractor indicating production achieved and any issues preventing or impeding work from progressing as planned. Subcontractor's foreman shall submit to Contractor a "Daily Report" of Subcontractor's activities through Contractor's Approved Software. The Daily Report shall include, but not be limited to, weather conditions, activities performed, number of workers, hours worked, material deliveries and returns, equipment onsite, safety training, inspections of equipment and tools by competent person, detail of any accidents or issues, etc.

E. No Damages for Delay. In the event Subcontractor's Work is delayed for any reason, including acts of Contractor, Subcontractor's sole remedy shall be an extension of time equal to the period of delay, and then only expressly provided Subcontractor has given Contractor written notice of the commencement of delay within 72 hours of its occurrence. In the event Contractor, in its sole discretion, should seek compensation from the Owner as a result of any delay, Subcontractor shall cooperate fully with Contractor and, provided it does so, shall be entitled to an equitable portion of any amount recovered by Contractor on account of impact to Subcontractor's Work, minus a proportionate share of the cost of pursuing said claim. This provision shall not be construed to require the Contractor to pursue a delay claim against the Owner or any other party, and Contractor will be liable to Subcontractor only if and to the extent Owner is liable to Contractor for such delay and actually pays Contractor damages for such delay.

F. Overtime. This Subcontractor must be prepared to work all necessary overtime and premium time hours to complete the Work as scheduled. No change orders will be issued for overtime or premium time hours for the Subcontract to maintain the agreed to Project Schedule. The Contractor retains the right to recover any costs associated with any Subcontractor-caused delay that requires overtime and premium hours worked by Contractor or any other subcontractor. If the Contractor directs the Subcontractor to work to overcome a delay not caused by the Subcontractor, then a change order will be issued for premium portion of the overtime or premium time the Subcontractor can demonstrate is necessary to comply with the Contractor's direction.

G. Work Week. Contractor has assumed a 40-hour workweek for its cost to staff and maintain the Project. It is the responsibility of the Subcontractor to complete its Work within this allotted time. Contractor may, at its option, keep the site open for longer workdays and weekends for Subcontractor to accelerate its schedule at its own cost. If Subcontractor is required to work overtime or weekends to maintain the then-current Project Schedule due to fault of its own, Subcontractor is responsible to pay Contractor for the Contractor's General Conditions via the billable rates in the Prime Contract to allow it to work outside the standard workweek.

H. Timely Deliveries. The Subcontractor agrees to accept full responsibility for expediting and securing timely delivery of its materials, supplies, tools, machines, equipment and plant to the site of the Work. In the event the lack thereof should delay construction, the Subcontractor hereby agrees the Contractor may undertake to expedite delivery by any means available and the entire cost thereof shall be chargeable to the Subcontractor and deduct the cost thereof from monies otherwise due under this Agreement.

I. Acceleration. In the event Subcontractor fails to maintain its part of Contractor's schedule, it shall, without additional compensation, accelerate the Work as Contractor may direct until the Subcontractor's Work is in accordance with such schedule. In addition, Subcontractor shall be responsible for all costs incurred by the Contractor as a result of this acceleration.

J. Remedies for Delay. If Subcontractor is behind in the Work, Contractor may at its sole discretion:

(1) direct Subcontractor to furnish additional supervision, labor, materials or equipment to expedite performance of the Work, and Subcontractor shall do so at its expense; (2) supplement Subcontractor's forces with other subcontractors or Contractor's own personnel, and charge the cost thereof to Subcontractor; and/or (3) require Subcontractor, at Subcontractor's expense, to work overtime or additional shifts (including weekends and holidays), or otherwise accelerate its Work, so as to complete the Work in accordance with the schedule.

K. Float. The Contractor shall own the float in the Project Schedule, and in each activity within the schedule, both as the schedule originally is developed and as it is updated and revised by Contractor during construction. Contractor shall be entitled to manage and use such float in its sole discretion to provide for the orderly and efficient progress of the Work.

L. Liquidated Damages. If the Prime Contract provide for liquidated or other damages for delay beyond the completion date set forth in the Contract Documents, and such damages are assessed, the Contractor may assess a share of the damages against the Subcontractor in proportion to the Subcontractor's share of the responsibility for the delay. However, the amount of such assessment shall not exceed the amount assessed against the Contractor. Nothing herein shall limit the Subcontractor's liability to the Contractor for the Contractor's actual delay damages caused by the Subcontractor's delay.

SECTION 5 - SUBSTITUTIONS

For the purposes of interpreting and applying this Section, the term "substitution" means any substitute for, modification of, or deviation from the requirements of the Contract Documents. The Subcontractor warrants and agrees it has thoroughly familiarized itself with all of the Contract Documents and analyzed how its Work may in any way affect or be affected by the Work of the Contractor or other subcontractor or vendors. The Subcontractor shall make no substitution without prior written approval of both the Owner and the Contractor. Such approval will not be granted unless the Subcontractor applies in writing, setting forth in full the effect of the proposed substitution upon the Work of the Contractor or any other subcontractor or vendor. The Subcontractor hereby agrees to pay or reimburse the Contractor for any increase whatever in the cost of any of the Work as a result of any substitution it made regardless of approval. The Subcontractor agrees and represents its price for this Agreement is not based on any substitution unless specifically written otherwise in the scope of this Agreement.

SECTION 6 - SUBMITTALS

This Agreement includes all shop drawings, submittals, product information and as-built drawings related to the Work of Subcontractor. The Subcontractor shall include a cover letter with each submittal, which letter shall include a signed statement certifying that the submittal is complete and accurate. The cover letter shall identify each sub-section of the project's Specifications for the material being furnished and certify the Subcontractor complies with the sub-section(s) or list the specific deviation of the sub-section(s). The Subcontractor shall not be relieved of responsibility for errors and omissions in shop drawings, product data, samples, or other submittals by the Contractor's and/or the Architect's approval thereof. Shop drawings must strictly comply with the requirements of the Contract Documents unless specific variances are called to the attention of the Contractor and Architect and such variances are approved in writing. Subcontractor shall be solely responsible for any Deferred Submittals required relating to its scope of Work.

SECTION 7 - EXISTING CONDITIONS

A. Investigation. Subcontractor acknowledges it was its responsibility, prior to entering into this Agreement, to investigate and familiarize itself with all laws, ordinances, and regulations applicable to its Work on the Project, with the availability of personnel, workmen, material, supplies, equipment, power, utilities, fuel and other requirements for the performance of the Work and, with respect to each of the foregoing, the cost and suitability thereof; with the prevailing wage scales, benefits and working conditions; with the character and content of all other contracts related to the project, the Prime Contract; and arrangements for supplies and material to be furnished by the Contractor for the use of Subcontractor; with all options, site considerations and restrictions, lease agreements, royalties, prevailing weather and climatological conditions and history; and any other factors which may affect Subcontractor's Work under this Agreement. The Subcontractor hereby warrants and agrees that it has investigated all such matters and has familiarized itself therewith to the extent it, in its sole discretion, deems necessary. Subcontractor further agrees Contractor shall not be liable to Subcontractor on any

claim for additional payment or additional time or any other relief if such claim directly or indirectly results from Subcontractor's failure to investigate and familiarize itself sufficiently with the conditions under which the Work is to be performed, including the foregoing but without restriction thereto, or from any misunderstanding thereof on the part of the Subcontractor.

B. Inspection of Prior Work. Before completing any Work, Subcontractor must inspect the work of others upon which the Subcontractor's Work will be applied, align, affixed, abut, or of which is the foundation for Subcontractor's Work. If the Subcontractor encounters surfaces or work which it considers unsatisfactory and which may affect the Subcontractor's Work, or if the Subcontractor encounters any other condition whatsoever upon which it may base a claim for extra compensation, extra time, or any other type of claim, it shall be its duty to give written notice to the Contractor prior to commencing any aspect of the Work involving said conditions in order to allow the Contractor to inspect said conditions and to make such arrangements and take such steps as Contractor deems necessary. In the absence of such notice to the Contractor, Subcontractor shall be fully and solely responsible and liable for any and all expense, loss, or damage resulting from said condition, including but not limited to the cost of rework, and Contractor shall be relieved of all liability in connection therewith.

C. Review of Contract Documents. The Contract Documents consist of this Agreement between Contractor and Subcontractor and all attachments, exhibits, addenda, modifications and revisions thereto, together with the Prime Contract as incorporated in Section 31(A) below. Subcontractor shall review all Contract Documents prior to starting its Work, and shall immediately report to Contractor all reasonably identifiable errors, omissions and inconsistencies in the Contract Documents. If inconsistencies or omissions appear in the Contract Documents, Subcontractor will notify Contractor in writing within three (3) working days after Subcontractor discovers any such inconsistency or omission. Upon receipt of that notice, Contractor will instruct Subcontractor as to the measures to be taken and Subcontractor will comply with Contractor's instructions. If Subcontractor proceeds with its Work without reporting known inconsistencies, errors and omissions, all costs of rework and other extra costs incurred in connection with such errors, omissions and inconsistencies shall be borne by Subcontractor. The Subcontractor shall be responsible for all notes and details pertaining to its scope of Work, regardless of what area of the plans (architectural, civil, structural, mechanical, plumbing, electrical, etc.) the notes and/or details are found.

SECTION 8 - PROTECTION OF WORK

Subcontractor shall make its Work accessible at all reasonable times for inspection by the Contractor. Subcontractor shall, at the first opportunity, inspect all material and equipment delivered to the jobsite by others to be used or incorporated in the Subcontractor's Work and give prompt notice of any defect therein. Subcontractor assumes full responsibility to protect its Work until final acceptance by the Architect, Owner and Contractor, and to protect the work of others while performing its own Work. Unless otherwise specified, Subcontractor shall be responsible for providing weather protection for all parts of the buildings, structures or excavations pertaining to its Work to prevent damage by inclement weather such as wind, rain, water, snow, cold and heat. Subcontractor shall provide at its sole expense complete enclosures, if necessary, to protect its Work. Neither the Contractor nor the Owner shall be responsible for Subcontractor's lost or stolen tools and equipment. Subcontractor is to provide proper security for its tools, equipment and material at all times on site.

SECTION 9 - INSPECTION AND QUALITY CONTROL

Subcontractor is solely responsible for the quality of its Work. Subcontractor shall provide all testing, certifications, procedures and inspections pertaining to its Work as required under the Contract Documents, generally accepted industry practices and any additional quality control requirements set forth in the scope. Subcontractor shall submit a project-specific Quality Assurance / Quality Control plan to Contractor within two weeks of executing this Agreement. Subcontractor agrees to perform all remedial Work without adjustment to the Subcontract Price of the time of performance.

A. Non-Delegable. Subcontractor expressly acknowledges it has the non-delegable duty of quality control with respect to its Work, and shall not be relieved of obligations to perform its Work in strict accordance with the requirements of this Agreement, and the incorporated Contract Documents by tests, inspections or approvals required or performed by others, including Contractor. Contractor may, for its own quality assurance purposes or to satisfy a requirement to Owner, perform or arrange for the

performance of tests or inspections of Subcontractor's Work, and Subcontractor expressly acknowledges it may not rely on such activities as quality control of its Work and so relies at its own and sole risk. Subcontractor shall not construe any act or omission to act of Contractor as approval or acceptance of defective or non-conforming Work of Subcontractor (whether known or unknown), with the sole exception in circumstances where both the defective or non-conforming Work (identified as such) and the express approval or acceptance thereof by Contractor are specifically and expressly set forth in a Change Order executed by Contractor.

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

C. Site Visits. Subcontractor shall schedule and facilitate regular site visits by material manufacturers to ensure installation complies with their recommendations, maintaining warrantability, and shall provide manufacturer reports to Contractor. Subcontractor shall comply with manufacturer recommendations, all applicable codes, regulations, AHJ requirements and Contract Documents, adhering to the more stringent requirements in case of conflicts, and ensuring all Work meets or exceeds standards set by the Contract Documents and requirements of the AHJ. Subcontractor shall promptly notify the Contractor of any discrepancies between the Contract Documents and manufacturer's written instructions via a properly-submitted RFI.

SECTION 10 - BACK CHARGES

A. From Contractor. To the extent Contractor seeks any claim or back charge against Subcontractor under this Agreement, Contractor shall be entitled to include a markup and all administrative costs incurred.

B. From Subcontractor. Alleged charges from Subcontractor to Contractor or any other subcontractor or vendor on the project will not be honored or paid by Contractor unless the charges are authorized and approved by a representative of Contractor or the other subcontractor or vendor charged at the time the Work is being performed for which a charge is to be submitted. Subcontractor acknowledges and expressly agrees that such charges, to be valid and entitle Subcontractor to additional compensation, must comply strictly with the provisions regarding disputes and Claims.

SECTION 11 - CHANGES AND RISK

A. Change Order Required. Changes in the Work (including additions, deductions and alterations of scope) may be accomplished, after execution of (and without invalidating) this Agreement, by Change Order. Adjustment to the Subcontract Price shall be by agreement between the Contractor and Subcontractor in a signed Change Order, with the Schedule of Values controlling to the extent applicable. If no agreement on price can be reached, Subcontractor nonetheless is obligated to perform (or in the case of a deductive change order, not perform) the Work as changed, promptly and at the Contractor's direction, without waiver of its right to an equitable adjustment of the Subcontract Price.

B. Proceeding at Risk. Subcontractor shall make no changes in the Work covered by this Agreement without written direction from the Contractor in a signed written change estimate or other written directive. Subcontractor shall not be compensated for any change which is made without any such written direction. Should the Subcontractor proceed to make changes in the Work without a signed written Change Order or other written directive from Contractor, Subcontractor acknowledges and expressly agrees it proceeds at its own risk and cost and shall not be entitled to payment of monies or an adjustment to the Subcontract Price. This provision is intended to make clear, except in the case of emergencies, all changes or additions to the Subcontractor's Work shall be agreed to in writing in advance of performing the changed or additional Work as an express condition precedent to the Subcontractor's right to receive any additional compensation. No changes in the Work covered by this provision shall exonerate any surety or any bond given in connection with the Work of Subcontractor.

C. Change Estimates. The Subcontractor agrees to submit cost estimates and Change Order proposals in complete and full detail on the form provided by Contractor. These Change Order proposals and cost estimates are due within seven (7) days of request.

D. Duty to Perform. If Subcontractor is performing disputed Work pursuant to this Section, the time and material cost associated with such Work must be tracked and submitted to Contractor on a daily basis. Failure to provide any time and material tickets on a daily basis shall be deemed consent and a representation by the Subcontractor that Work was not performed that day, and/or the cost of the Work that was performed is not recoverable from Contractor. Any signature by Contractor employee on a daily time and material ticket shall mean Contractor is acknowledging receipt of the time and material ticket only, and such signature shall not be construed in and of itself as an admission that Contractor is accepting any such time or cost as extra Work or that the cost associated with such time or material is otherwise due Subcontractor.

E. No-Cost Changes. The Contractor may direct the Subcontractor to perform incidental changes in the Work that do not involve adjustments in the Subcontract Price or time. Incidental changes shall be consistent with the scope and intent of the Contract Documents, as they relate to the Work of Subcontractor. The Contractor shall initiate an incidental change in the Work by issuing a written order to the Subcontractor. Such written notice shall be carried out promptly and is binding on the Subcontractor.

F. Deductive Changes. In the event of a Change Order or Construction Change Directive deleting a portion of the Subcontractor's Work, Contractor shall have the right to withhold from periodic progress payments to Subcontractor an amount which Contractor, in its reasonable judgment, determines to be the value of such Work. Such amount may be held by Contractor until the value of such Work, if disputed by Subcontractor, is determined by the dispute resolution procedure in this Agreement.

SECTION 12 - DEFAULT

Except as to the scheduling of the Work of Subcontractor, which shall be within the authority and responsibility of Contractor, Subcontractor shall perform its Work using its best skill, care, diligence and judgment in supervising and executing its Work, employing such means and methods as in its best judgment and in accordance with industry standards shall most timely and effectively provide satisfactory progress and completion of its scope of Work. These obligations denote a minimum standard of performance, and in reconciling these obligations with the specific requirements of this Agreement and the Contract Documents for the project, the more rigorous and higher standard of performance shall govern.

A. Default Events. If Subcontractor or any of Subcontractor's subcontractors, suppliers, rental companies, materialmen or laborers of any tier at any time commit any of the acts or omissions below in connection with any part of this Agreement or the Work, it shall constitute a default (Default) under this Agreement:

1. refuses or neglects to supply a sufficient number of properly qualified Workers or a sufficient quantity of materials of proper quality to adequately perform the Work;
2. abandons the Work or fails in any respect to promptly and diligently prosecute the Work;
3. fails to promptly pay lower-tier subcontractors, suppliers, materialmen, rental companies or laborers of any tier;
4. fails to proceed with the Work as directed by Contractor, or in the sequence directed by Contractor, or fails to accelerate its Work as necessary to recovery or maintain schedule for delays caused by the Subcontractor;
5. declares bankruptcy or makes a general assignment for the benefit of creditors or files for bankruptcy, assigns assets for the benefit of creditors, becomes insolvent or is unable to pay its obligations as they mature;
6. fails to perform any of the terms, conditions, and/or obligations set forth in the Contract Documents, as reasonably determined in good faith by Contractor, Owner, Architect, any design consultant or any AHJ over the project;
7. fails to perform the Work in accordance with this Agreement, or fails to perform any term, covenant or condition of this Agreement ;
8. fails to defend and indemnify Contractor from any citations, fines, penalties or assessments by

governmental agencies for immigration, safety, labor or health violations arising from or relating to Subcontractor's Work;

9. fails to provide adequate assurances of performance and financial security in response to a demand by Contractor pursuant to Section 3(l);
10. fails to comply with the requirements pursuant to Section 3(j) regarding a change in ownership and control;
11. disregards any laws, ordinances, rules, regulations or orders of any AHJ over the project; or
12. defaults in the performance of any contract or agreement with Contractor, whether related to the project, or otherwise.

B. Opportunity to Cure. Upon notice of Default from Contractor, Subcontractor shall, within seventy-two (72) hours, fully and completely cure such Default. If such Default is impossible to cure within seventy-two (72) hours, Subcontractor must commence to cure and provide Contractor within seventy-two (72) hours with a written plan and timeline for cure of the Default. Contractor may, in its sole discretion, allow the Subcontractor to continue with its plan for cure. However, if the Contractor allows the Subcontractor to continue with its plan for cure, the Subcontractor shall remain in default until such Default is fully cured, and no additional notice of default will be required if Subcontractor fails to meet the plan for cure. If Subcontractor either fails to cure a Default within the seventy-two (72) hours, or at any time fails to meet the obligations of a cure plan, Contractor has the right to exercise any one or more of the rights and/or remedies set forth in this Agreement. The failure by the Contractor, without prejudice to any other rights or remedies, to give 72 hours' notice and opportunity to cure, will not excuse Subcontractor's Default or breach of this Agreement or in any way limit Contractor's remedies for such Default or breach. If a Default is not capable of being cured, it shall become a Default immediately upon occurrence.

SECTION 13 - REMEDIES FOR NON-PERFORMANCE

In the event of any Default under Section 12, or as set forth in this Section 13, then Contractor may, at its sole option, and without limitation of other remedies available at law or in equity, exercise one or more of the remedies for Subcontractor's non-performance set forth below. Contractor's remedies are separate and cumulative, and the exercise of one remedy shall not restrict Contractor, at the same time or thereafter, from exercising any other remedy set forth in this Agreement, or any right or remedy provided by any applicable law. In the event of Default by Subcontractor, the Contractor shall be entitled to remedy such Default by whatever means Contractor may in its discretion deem necessary or appropriate, including expressly but not limited to the following:

A. Withhold Payment. Notwithstanding anything to the contrary contained in or applicable to this Agreement, and without any limitation as to time, Contractor shall not be obligated to make payments to Subcontractor and may, at its option, withhold or, on account of subsequently discovered evidence, nullify, the whole or part of any payment due or to become due to Subcontractor as the Contractor may deem sufficient to completely protect and indemnify the Contractor and the Owner from any and all resulting loss, damage and/or expense, including attorney's fees and litigation costs, on account of:

1. defective Work or materials not remedied;
2. third-party claims or liens filed against Subcontractor or reasonable evidence indicating probable filing of such claims;
3. failure of Subcontractor to make payments properly to or on behalf of its subcontractors or suppliers of any tier or for materials, equipment, union trust funds, labor or fringe benefits;
4. reasonable doubt that the Work under this Agreement can be completed, and the outstanding payment obligations of the Subcontractor to lower tiers for services furnished in performance of the Work can be satisfied, for the balance of the Subcontract Price then unpaid;
5. reasonable doubt that the Work under this Agreement can be completed within the time required herein or in accordance with the Project schedule and that the balance of the Subcontract Price then unpaid would be sufficient to cover the actual or liquidated damages

resulting from the anticipated delay;

6. penalties assessed against Contractor or Subcontractor on account of Subcontractor's failure to comply with state, federal or local laws and regulations;
7. unsatisfactory prosecution of, or persistent failure to carry out, the Work in accordance with the Contract Documents;
8. any failure of the Subcontractor to effect timely compliance with any of the technical, administrative or operational requirements of the Contract Documents, including subsequent instructions, job schedules and "Job Information and Policy Brochure" instruments issued pursuant to this Agreement and/or adopted by reference hereto;
9. unsatisfactory construction, repair, replacement and/or restoration of damaged, faulty or deficient Work, materials, supplies, machines, equipment or plant, or rejection of any aspect of the Work as not conforming with this Agreement or the Contract Documents;
10. failure of Subcontractor to obtain the approvals required by any AHJ over the Project;
11. any person asserting, or indicating he will assert, any lien, claim, demand, or charge against the land, improvements or funds relating to the Project, or against the Owner, Contractor, or any surety, arising from Subcontractor's performance of the Work;
12. Subcontractor performing Work at the Project prior to providing Contractor with the required Certificates of Insurance in a form acceptable to Contractor;
13. failure of Subcontractor to maintain the required insurance coverages under this Agreement for the term specified;
14. failure of Subcontractor to submit waivers of lien rights and/or releases of claims as required in this Agreement, or failure to provide certified payroll data when requested by Contractor;
15. any default of, breach by, or failure of Subcontractor to comply with any provision, covenant or requirement of this Agreement or the Contract Documents;
16. failure to provide financial information and assurances as required under Section 3(I);
17. Failure to comply with the requirements of Section 3(i) in the event of a change in ownership and control; and
18. any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Agreement.

If the offending condition is not remedied by the Subcontractor within a reasonable period of time, then Contractor may, at its option, proceed to make application of the withheld funds in whatever manner the Contractor may determine as being in the best interest of itself, the Owner and/or the project. When the reason(s) for withholding payment is/are rectified, such amounts as are then due and owing shall be paid or credited to Subcontractor. Contractor's withholding of payment for any reason described above does not constitute a basis for Subcontractor to stop or suspend Work in any way. Subcontractor agrees to continue in full performance of its obligations and, at the same time, to cure any default or other failure in its performance.

B. Take Possession. Contractor is entitled to take possession, for the purpose of completing all or any portion of the Work, of all Subcontractor materials, equipment, scaffolding, tools, appliances, manuals, drawings or other items thereon as Contractor may select, all of which Subcontractor authorizes Contractor to employ in connection with completion of the Work.

C. Supplement Work. Contractor is entitled to provide and/or supplement any labor and materials within Subcontractor's scope of Work, through its own forces or through others, as Contractor shall determine necessary to cure such Default and deduct the cost thereof, including reasonable overhead, profit, attorneys' fees, costs and expenses, from any money then due or thereafter to become due to Subcontractor under this Agreement or any other contract.

D. Termination. Contractor is entitled to terminate this Agreement for Default, without thereby waiving

or releasing any rights or remedies against Subcontractor or its sureties, in which case Subcontractor:

1. assigns and transfers to Contractor all right, title and interest in all agreements with lower-tier subcontractors and suppliers pertaining to the Work, and all equipment, tools, materials or personal property of any kind located on a project site at the time of termination; and
2. irrevocably designates Contractor as its attorney-in-fact with the right, but not the obligation, to exercise all assigned rights of Subcontractor and take all such actions deemed necessary by Contractor to exercise its rights under this Agreement in the name of Subcontractor.

In case of Contractor taking action under this provision, the Subcontractor shall not be entitled to receive any further payment until the Work shall be wholly completed to the satisfaction of Contractor and Owner, and shall have been accepted by them, at which time, if the unpaid balance of the amount to be paid under this Agreement shall exceed the cost and expense incurred by Contractor in completing the Work, such excess shall be paid by Contractor to the Subcontractor; but if such cost and expense shall exceed such unpaid balance, then the Subcontractor and its surety, if any, shall pay or reimburse the difference to Contractor within seven (7) days of written demand by Contractor. Such cost and expense shall include (1) the cost of completing the Work to the satisfaction of Contractor and the Owner in excess of the unpaid balance of the Subcontract Price (after satisfying all unpaid lower-tier obligations of Subcontractor); (2) any liquidated damages which may become due Owner under the Prime Contract; and (3) all losses, damages, costs and expenses (including reasonable overhead and profit), legal fees and disbursements incurred as a result of Subcontractor's default or incurred in connection with re-procurement, in defending claims arising from such Default, and in seeking recovery of all such cost and expense from the Subcontractor and/or its surety. In the event termination pursuant to this paragraph is deemed to be wrongfully exercised by Contractor, then such termination shall be considered a termination for convenience for all purposes, and Section 17 shall govern.

SECTION 14 - DISPUTES AND CLAIMS

A. Notice. Any allegation by Subcontractor of a default by Contractor or of disputed or changed Work entitling Subcontractor to additional time or compensation (Claim) shall be deemed waived unless Subcontractor provides Contractor written notice thereof within three (3) days after the occurrence of such alleged default or disputed/changed Work. If any dispute shall arise between Contractor and Subcontractor regarding performance of the Work, or any alleged change in the Work, Subcontractor shall if directed by the Contractor in writing timely perform the disputed Work. To the extent Subcontractor claims additional time or compensation for the disputed Work, it shall, within three (3) days after commencement of the disputed work give written notice to Contractor outlining the estimated time and cost impact, to the extent they can be determined at the time, and detailing the factual and contractual basis of the claim. This provision is material to this Agreement and Subcontractor acknowledges and expressly agrees that its failure to give written notice of and supporting detail for the claim within such three (3) day period constitutes a waiver by Subcontractor of the right to receive any additional time or compensation under this Agreement for the disputed Work, regardless of whether Contractor suffers any prejudice as a result of such failure.

B. Duty to Continue Performance. Unless otherwise agreed in writing, Subcontractor shall continue to diligently prosecute its Work, shall not postpone its Work, and shall maintain the Project Schedule pending resolution of any dispute with or Claim against Contractor. Any failure of Subcontractor to continue diligent and timely prosecution of its Work, including the disputed Work and pending final resolution of the dispute or Claim, including exhaustion of all applicable dispute resolution procedures, shall be deemed a material breach of this Agreement by the Subcontractor, entitling Contractor to all remedies provided hereunder, as well as other remedies which may exist as a matter of law. Expressly conditioned on such performance, Contractor shall continue to make payments for undisputed Work in accordance with the Contract Documents.

C. Submission Requirements. Claims affecting either the Subcontract Price or Project Schedule must be in writing and contain sufficient narrative detail and supporting documentation to justify all claimed costs and delays. All Claims shall be dated, signed and certified by an officer or duly authorized representative of Subcontractor. Any Claim not submitted in the timeframe outlined in Section 14.A shall be deemed waived and forever released by Subcontractor.

D. Waiver of Consequential Damages. Contractor will not be liable to Subcontractor for any punitive, special, consequential, incidental, or indirect damages of any kind or nature, whether under contract, tort or otherwise, even if Contractor has been advised of the possibility of such damages.

E. Limitation of Liability. Contractor's total cumulative liability under this Agreement will be limited to the amount owed by Contractor to Subcontractor under this Agreement.

SECTION 15 - CLAIMS RESOLUTION

A. Arbitration. Subcontractor agrees to binding arbitration as the agreed form of dispute resolution for any claims arising under this Agreement. The arbitration shall be administered by the American Arbitration Association (AAA) pursuant to the AAA's Construction Industry Arbitration Rules then in effect, unless the parties agree otherwise. Subcontractor agrees that if the Contractor is compelled to Arbitrate (or engage in another specified non-judicial method of resolution) under the Prime Contract, the Subcontractor may be joined by Contractor in any such action or proceeding involving the project that is the subject of this Agreement.

B. Attorneys' Fees. In any dispute resolution proceeding between the parties to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs and expenses, including those incurred on appeal.

C. Waiver of Jury Trial. Each party hereby waives the right to a trial by jury in any action or proceeding arising out of or related to this Agreement. Each party acknowledges this waiver is made knowingly, intentionally and voluntarily, is a material inducement to enter into this Agreement, and each party is relying, and will continue to rely, on this waiver in the performance of its respective obligations under this Agreement. Each party further acknowledges it has been represented by legal counsel (or has had the opportunity to be so represented) in the making of this waiver.

D. Choice of Law. This Agreement shall be governed by the substantive laws of the State of Utah, without regard to conflicts of law provisions.

E. Forum Selection. The parties agree in the event either (1) Contractor in its sole discretion elects litigation as the means of dispute resolution, or (2) Subcontractor commences litigation (in response to which Contractor elects not to compel arbitration), then the District Court in and for the County of Utah, State of Utah, shall have exclusive jurisdiction over any disputes or Claims arising from or relating to this Agreement and, absent written consent of both parties, any action brought in a different forum shall be null and void without prejudice to the parties.

F. Contract Interpretation. The parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, in any dispute over its meaning or application, this Agreement shall be construed neither against nor in favor of either party, shall not be interpreted against Contractor as the drafting party, but shall be construed in a neutral manner. All of the provisions that comprise this Agreement shall be interpreted together and in harmony with one another. In case of a conflict, the more stringent requirement shall control. In the event of a conflict between this Agreement and the other Contract Documents, this Agreement shall govern.

G. Severability. The partial or complete invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or continuing force or effect of any other provision.

H. Statute of Repose. Subcontractor agrees, for purposes of the statute of repose applicable to any claim or cause of action by Contractor or Owner against Subcontractor (including but not limited to breach of contract, negligence, indemnification and contribution), "substantial completion of the improvement to the real property" shall be the later of (1) when the Contractor achieves substantial completion of the Work of the entire Project as defined in the Prime Contract between Owner and Contractor, (2) the date the Architect certifies as the date of substantial completion of the entire Project, or (3) when the Work on the entire Project is sufficiently complete in accordance with the Contract Documents that the Owner can occupy or utilize the entire Project for its intended use. Subcontractor waives the right to plead, argue or assert the statute of repose bars or prohibits any claim or cause of action by Contractor or Owner that is or would be timely if "substantial completion of the improvement to the real property" is defined as set forth above. Notwithstanding the foregoing, if the Prime Contract provides for substantial completion by

phase or building on the Project, then such phase or building shall be substituted for the "entire Project" in items (1) through (3) above. Subcontractor agrees Owner is an intended third-party beneficiary and may rely on and enforce the terms of this Section 15H.

SECTION 16 - SUSPENSION OF WORK

The Contractor may order the Subcontractor in writing to suspend all or any part of the Work for such period of time as may be determined to be appropriate for the convenience of the Contractor. Phased Work or interruptions of the Work for short periods of time shall not be considered a suspension. The Subcontractor, after receipt of the Contractor's order, shall notify the Contractor in writing in sufficient time to permit the Contractor to provide timely notice to the Owner in accordance with the Prime Contract of the effect of such order upon the Work. The Subcontract Price or progress schedule shall be adjusted by Change Order for any increases in the time or cost of performance of the Subcontractor's Work caused by such suspension. Subcontractor shall provide notice of claims for costs incurred due to suspension no later than 7 days after receiving Contractor's order to stop Work. The Subcontract Price shall not be adjusted for any suspension to the extent that performance would have been suspended by a cause for which the Subcontractor would have been entitled only to a time extension under this Agreement.

SECTION 17 - TERMINATION FOR CONVENIENCE

Contractor may at any time and for any reason terminate Subcontractor's services for Contractor's convenience. In the event of termination for convenience, Subcontractor shall recover only the actual cost of Work completed to the date of termination plus a reasonable amount not to exceed ten percent (10%) of such cost for overhead and profit collectively, to the extent and only if such amounts are paid by Owner. The foregoing shall expressly be subject to all proper offsets or back charges against Subcontractor as provided in this Agreement. Further, to the extent Subcontractor's actual costs to the date of termination exceed the scheduled value of such costs (in the latest approved Application for Payment or Schedule of Values), based on the percent and aspects of the Work completed prior to termination, the Subcontractor's compensation shall be capped at the earned scheduled value of the Work completed. Subcontractor shall not be entitled to any claim or lien against Contractor or Owner for any additional compensation or damages in the event of such termination. If the Prime Contract sets out a formula for determining compensation in the event of termination for convenience, Contractor shall have the right in its sole discretion, but not the obligation, to use that formula in lieu of the formula set forth in this paragraph.

SECTION 18 - INDEMNIFICATION

To the fullest extent permitted by law, Subcontractor shall, with respect to Work that is covered by or incidental to this Agreement, indemnify, defend and hold harmless Contractor, Owner, Architect and any other party as required by written contract and their agents, officers, directors, shareholders and representatives (Indemnified Parties) from and against all of the following as separate and cumulative obligations:

A. Personal Injury / Property Damage. To the fullest extent permitted by law, the Subcontractor agrees to indemnify defend and save the Indemnified Parties harmless from any and all claims, suits, losses, damages or expenses on account of injuries to or the death of any and all persons whomsoever, and any and all property damage arising or growing out of or in any manner connected with the Work performed by or for the Subcontractor's account under this Agreement, or caused or occasioned in whole or in part by reason of the presence of the person or property of the Subcontractor, its employees, agents or suppliers, to the extent arising in whole or in part out of the negligence of the Subcontractor, its Subcontractors, anyone directly or indirectly employed by them or anyone for whom they may be liable. The Subcontractor shall (1) defend at its own expense, in the name of or on behalf of the Indemnified Parties, all claims or suits or injury to persons or damage to property arising or growing out of the Work carried on under this Agreement, or (2) pay to Contractor, within thirty (30) days of receipt of an invoice, the reasonable allocated share of the Contractor's defense fees and costs, on an ongoing basis during the pendency of the claim.

B. Professional Indemnity (if applicable). If the Subcontractor shall be providing professional services, to the fullest extent permitted by applicable law, the Subcontractor agrees to indemnify and hold the Indemnified Parties harmless from and against any liabilities, claims, damages and costs (including reasonable attorney's fees) to the extent caused by the negligence of Subcontractor in performance of

services under this Agreement. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by an applicable statute of repose or statute of limitations.

C. Unsafe Working Conditions. To the fullest extent permitted by law, the Subcontractor shall indemnify and save the Indemnified Parties harmless from any and all claims, suits, damages or expenses incurred by its employees, or by employees of subcontractors, vendors or agents of the Subcontractor, when such claims, suits, losses, damages or expenses shall have been incurred or alleged to have been incurred from an unsafe place to work or such similar type of complaint attributable to the actions, inactions, or other conduct of Subcontractor, its Subcontractor, anyone directly or indirectly employed by them or anyone for whom they are liable, unless the Contractor shall have been given written notice of the unsafe condition prior to any accident caused or alleged to have been caused by such unsafe place to work. The Subcontractor, as well as its lower-tier subcontractors and vendors, waive immunity of Workman's Compensation Acts or similar laws and assume liability for actions brought by their own employees.

D. Payment of Obligations. Subcontractor shall promptly pay for all labor, materials, equipment and/or services provided by others in performance of the Work. Subcontractor shall indemnify and, upon tender, immediately defend Contractor and its sureties against all claims, demands, liens, costs and expenses, including attorneys' fees, resulting from Subcontractor's failure to make such payment. If the Contractor is compelled to expend monies in defending, discharging or otherwise disposing of any claim or lien or other demand in excess of retained or withheld funds, the Subcontractor shall, upon demand, reimburse the Contractor for the excess amount so expended, including reasonable attorney's fees and costs incurred by Contractor incident to such defense, discharge or disposition, and/or incident to Contractor's collection from Subcontractor of such excess.

E. Compliance with Agreement. To the fullest extent permitted by law, the Subcontractor shall pay all the expenses and the costs of attorneys' fees incurred by the Indemnified Parties in the enforcement of the conditions and obligations of this Agreement, of any bond furnished in the connection therewith, for the performance or non-performance of the Work thereunder or similar type of claim attributable to the actions, inactions, or other conduct of Subcontractor, its lower-tier subcontractors and suppliers, anyone directly or indirectly employed by them or anyone for whom they may be liable. Such expenses and costs of attorney's fees shall be recovered for the investigation, defense or the bringing of any such action by the Contractor, Owner or Architect thereunder whether such claim or allegation is valid or not.

F. Patents. The Subcontractor shall indemnify, hold harmless and defend Contractor from any claimed liability or liabilities, including court costs, expenses and attorney's fees related to or arising out of any patented or unpatented invention, article or appliance, manufactured, furnished or used, or alleged to be manufactured, furnished or used, in the performance of the Subcontractor's Work.

G. Attorneys' Fees. Subcontractor's defense and indemnity obligations under this Section shall include the duty to reimburse all reasonable attorneys' fees and expenses incurred by Contractor or other indemnified parties for any legal action or proceeding to enforce Subcontractor's defense and indemnity obligations.

SECTION 19 - INSURANCE

Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability. These insurance requirements and the obligations of indemnification provided for in this Agreement shall also apply to anyone hired by the Subcontractor for Work under this Agreement. By appropriate agreement, the Subcontractor shall require each of its subcontractors, vendors and suppliers to be bound to the terms of the insurance requirements set forth in this Section.

All insurance policies required by this Agreement shall for each project describe, on the Certificate of Insurance or Subcontractor Insurance Compliance Statement, the deductible or self-insured retention amounts for each policy. The insurance companies must have an A.M. Best rating of A-VII or better in the most recent Best's Key Rating Guide.

Coverages shall be maintained without interruption from date of commencement of Subcontractor Work until the date of any coverage required to be maintained after final payment as set forth herein.

Insurance coverages carried by Subcontractor shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent or the insurance requirements to be fulfilled by Subcontractor.

Certificates of Insurance acceptable to Contractor shall be filed with Contractor prior to commencement of the Subcontractor's Work. If Contractor directs, Subcontractor shall furnish to Contractor copies of the actual insurance policies or renewals or replacements thereof which Subcontractor proposes to use to satisfy the insurance requirements herein.

These Certificates of Insurance and the policies required by this Agreement shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Contractor. If any insurer does not make available such endorsement(s), as an alternative, Subcontractor or Subcontractor's insurance agent or broker shall provide a written statement that the agent or broker will endeavor to provide the required Notices of Cancellation. Acceptance of such alternative notice is subject to the sole discretion of the Contractor.

If any of the foregoing insurance coverages are required to remain in force after final payment, an additional Certificate of Insurance (or copy of appropriate insurance policies at Contractor's request) evidencing continuation of such coverage shall be submitted with the final application for payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by Subcontractor with reasonable promptness. Approval, disapproval or failure to act by the Contractor regarding any insurance of Subcontractor shall not relieve Subcontractor of full responsibility or liability for damages and/or accidents. If the project is covered by a Wrap-up policy, the Subcontractor shall provide all of the following required insurance coverages that are not provided by the Wrap-up policy.

A. Workers' Compensation and Employer's Liability:

- | | |
|------------------------|-------------------------------------|
| 1. State: | Statutory |
| 2. Employers Liability | \$ 1,000,000 Each Accident |
| | \$ 1,000,000 Disease, Policy Limit |
| | \$ 1,000,000 Disease, Each Employee |

A waiver of subrogation in favor of Contractor and Owner shall be attached to the policy.

B. Commercial General Liability (Occurrence Form):

1. Combined Bodily Injury and Property Damage
 - \$1,000,000 Each Occurrence
 - \$1,000,000 Personal and Advertising Injury
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate
 - \$50,000 Fire Damage Legal Liability
 - \$10,000 Medical Expense
2. The following coverages must be included:
 - a. Premises Operations
 - b. Independent Contractor's Protective
 - c. Explosion, Collapse, and Underground
 - d. Contractual (including the contract obligations specified in the Indemnification Section of this Agreement)
 - e. **No exclusions for the following:**
 - If applicable to the Work, Residential Construction exclusions for condominium, townhouse, multifamily or apartment construction
 - Subsidence or other earth movement exclusions
 - Exterior Insulation and Finish Systems (EIFS)
 - Damage to work performed by subcontractor or vendors on your behalf or exclusions for claims arising out of defective materials or construction type endorsements.
3. General Aggregate Limit applies separately to each project (i.e., the general aggregate limit

applies on a "per project" basis.)

4. Contractor and Owner, and their subsidiaries, directors, officers, employees and agents shall be named and included as Additional Insureds. The additional insured coverage shall be primary and non-contributory with any insurance maintained by Contractor and Owner, their subsidiaries, directors, officers, employees and agents. The additional insured coverage shall provide ongoing operations and completed operations coverage.
5. Subcontractor shall provide additional insured coverage on a primary and non-contributory basis for both ongoing operations and completed operations. Ongoing operations coverage shall be provided on ISO form CG 20 38 (edition 04 13 or later) or CG 20 10, and completed operations coverage shall be provided on ISO form CG 20 37 (edition 04 13 or later), or endorsement(s) providing equivalent or broader coverage. Coverage shall extend to Contractor and all other persons or organizations required to be named under this Agreement, including without limitation the Owner, Architect, and others identified in the Prime Contract.
6. The additional insured endorsement(s) meeting the requirements of this provision shall be attached to the Certificate of Insurance.
7. Subcontractor shall maintain the products/completed operations coverage required herein, including additional insured status, in full force and effect until the statute of limitation or statute of repose, whichever is longer, applicable to this Work, has lapsed.
8. Liability insurance shall extend to and cover Subcontractor both for on-premises and off-site activities in connection with each project.
9. Waiver of Subrogation in favor of Additional Insureds.

C. Pollution Liability Policy – Occurrence Form

\$1,000,000 or higher as determined by the Contractor.

Contractor and Owner shall be named as an additional insured and a waiver of subrogation shall be applicable for all additional insured.

Coverage shall include contractual coverage to cover the contract obligations specified in the Indemnification provisions of this Agreement. Coverage on a claims made basis is not acceptable unless approved by the Contractor.

D. Business Auto Policy:

1. Combined Bodily Injury and Property Damage
\$1,000,000 Combined Single Limit
Contractor and Owner, shall be included as an additional insured and a waiver of subrogation shall be applicable for all additional insureds.
2. The following coverages must be included:
 - a. Owned Automobiles
 - b. Non-Owned and Hired Automobiles
 - c. If hauling of hazardous waste is part of the Subcontractor's Work, Automobile Liability Insurance with a \$1,000,000 combined single limit per occurrence for bodily injury and property damage applicable to all hazardous waste hauling vehicles, and include MCS 90 endorsement and the ISO form or equivalent for Pollution Liability Broadened Coverage for Business Automobile.

E. Umbrella Policy:

1. \$1,000,000 Each Occurrence/\$1,000,000 Aggregate
2. All coverages and terms required under the Commercial General Liability, Automobile Liability

and Employer's Liability (including, but not limited to, additional insured coverage) must be included on the Umbrella Liability policy.

F. Professional Liability Policy.

If Subcontractor or any party hired by Subcontractor is providing professional services both those parties shall provide and maintain Professional Liability Insurance coverage. The policy coverage shall be effective (retroactively, if applicable) from the date of commencement of all professional activities in connection with the scope of Subcontractor's Work.

1. Subcontractor and its subcontractors and suppliers of every tier shall have proof of professional liability coverage in the amount of \$1,000,000 per claim with a maximum deductible of \$25,000 to be paid by Subcontractor.
2. The Subcontractor and its subcontractors and suppliers of every tier shall maintain such insurance through the applicable statute of repose.

G. Unmanned Aerial Systems Liability Insurance ("Drone" Insurance).

If, as part of the performance of the Work, Subcontractor operates any "Unmanned Aerial System" or "UAS", or hires any such operations through a vendor or sub-Subcontractor, Subcontractor shall provide and maintain liability insurance for operation of the UAS. For purposes of this Section G, "UAS" includes all elements required for flight, including, but not limited to, ground control stations, data links, dashboards, applications, survey equipment and the unmanned aerial vehicle.

1. This liability insurance shall be provided by either a separate aviation policy or an endorsement to the general liability policy required hereunder, provided that the limit of liability shall be no less than \$1,000,000 per occurrence.
2. Contractor, Owner, and any other party as required by Contractor shall be included as additional insureds and a waiver of subrogation apply in favor of all additional insured parties.

H. Builder's Risk. Subcontractor shall be responsible for the deductible in the event of the losses experienced singularly by this Subcontractor, or proportionately if several entities are involved. Waivers of subrogation against Owner and Contractor are required for all property insurer or procurer and provided by Subcontractor.

I. Wrap-Up Policy. If the Project is under a Contractor's or Owner's Project Wrap-Up Insurance Program, then Subcontractor shall be responsible for payment of the deductible for any covered claim arising from its Work in accordance with the Insurance Manual issued for the project. Subcontractor shall be responsible for payment of the deductible in proportion to its percentage of responsibility of the entire loss (covered under the wrap-up insurance program), as calculated prior to the application of the deductible. This Project will be administered under an Wrap-Up insurance program, and enrollment is required prior to commencing onsite Work. The Wrap-Up Administrator will contact Subcontractor's insurance provider to agree on the premium, which is due to Contractor as a credit.

SECTION 20 - LABOR RELATIONS

Subcontractor shall do whatever is reasonably necessary in the prosecution of its Work to assure harmonious labor relations at the Project and to prevent strikes or other labor disputes.

A. Compliance with Labor Agreements. Subcontractor shall maintain labor relations policies in conformity with the directions of the Contractor and shall comply with those labor agreements applicable to the Work performed under this Agreement, to the extent required by the Contractor.

B. Continuation of Work. The Subcontractor further agrees that in the event of any strike, picket, sympathy strike, work stoppage, or other form of labor dispute at the construction site, regardless of whether that dispute or picket relates to the Contractor, the Subcontractor, the Owner, or any other contractor, subcontractor or vendor on the construction site, the Subcontractor will continue to perform its Work without interruption or delay. In the event Subcontractor fails to continue the performance of the Work without interruption or delay because of such picket or other form of labor dispute, the Contractor

may terminate the services of the Subcontractor after giving twenty-four (24) hour written notice of an intent to do so, or the Contractor may invoke any of the other rights set forth in this Subcontract.

C. Work Stoppage. Additionally, should the Subcontractor be party to one or more labor agreements, it shall take all reasonable action to avoid any work stoppage and, in the event a work stoppage should occur, it shall, within twenty-four (24) hours, take any and all legal action provided for, or permitted by, such labor agreements in order to expedite resumption of work on this project. It is contemplated hereby that Subcontractor shall, if necessary, utilize to the fullest extent possible all rights that allow for the hiring of replacement employees should the hiring hall be unable or unwilling to meet the needs of the Subcontractor. Whenever the Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Work or the project, Subcontractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contractor.

D. Access to Site. Access to the construction site will be limited. During the performance of Work required by this Agreement, the Subcontractor, its employees, suppliers and visitors will only use such entrance or entrances to the construction site as may be designated from time to time by the Contractor. In the event Subcontractor or any of its employees, suppliers or visitors should fail to use the designated entrance(s) and thereby cause the Contractor to incur additional cost, Subcontractor agrees to be fully responsible for such additional costs. If directed by Contractor to do so, Subcontractor shall honor, and shall direct its employees and subcontractors and suppliers of every tier, including but not limited to any striking personnel, to honor any and all "reserved gate" or "dual gate" arrangements.

SECTION 21 - LABOR ONLY SUBCONTRACTS

It is hereby agreed by Subcontractor, if furnishing labor only for the finishing, installation or erection of materials furnished by Contractor, the following costs, without restriction thereto, are to be fully recovered by Contractor from the Subcontractor:

1. The full cost of materials required to replace those spoiled by Subcontractor through faulty workmanship or negligence, or damaged by any other cause not the fault of the Contractor;
2. The full cost of materials wasted by Subcontractor;
3. The full cost of removing rejected materials when not properly and promptly removed by the Subcontractor, together with the cost of removing, patching or replacing the work of others necessitated by such rejection;
4. The full cost of reworking, finishing or altering any Work of Subcontractor not accepted by the Owner or its authorized representative; and
5. Costs resulting from damage by Subcontractor to materials or Work of Contractor or others.

SECTION 22 - INDEPENDENT CONTRACTOR STATUS

The Subcontractor certifies that it is, or that prior to the commencement of Work under this Agreement it will become an "independent contractor" and "employing unit" subject, as an employer for purposes of, and shall comply with, all applicable laws and regulations with respect to such status. The Subcontractor agrees the Contractor shall have no control over the obligations for or to the Subcontractor, its employees, agents, or suppliers during the term of this Agreement, other than on the project site as the site is defined in the Specifications. Contractor shall communicate to Subcontractor on site through its designated foreman or supervisor (required under Section 23A below), and Subcontractor shall be responsible for arranging, directing, controlling and supervising its employees and labor force to fulfill its performance obligations on the Project, including determining the rate or method of pay, arranging individual work schedules, specifying daily assignments, hiring and firing, determining and modifying conditions of employment, and providing the necessary facilities, safety (and other) equipment, tools and materials for the Work.

Contractor will not in any way be liable as an employer of, or on account of, any of the employees of Subcontractor, and nothing herein shall be construed to create an employment relationship between Contractor and Subcontractor. If and to the extent Contractor incurs multi-employer liability as to Subcontractor, it shall be considered a breach of this Agreement and Subcontractor shall reimburse on demand any resulting costs or expenses imposed on and incurred by Contractor. As a separate and

independent obligation, Subcontractor agrees to defend Contractor against any claim or assertion of an employer-employee relationship between Contractor and Subcontractor's workmen, and to indemnify and hold Contractor harmless from and against any expense, cost, damages or liability incurred by or imposed upon Contractor by reason of a claim, assertion or finding of such an employer-employee relationship.

SECTION 23 - MANAGEMENT OF PERSONNEL

All of Subcontractor's employees shall have the requisite skill and experience and required licenses to perform the Work assigned to them.

A. Full-Time Supervision. The Subcontractor shall provide full-time supervision of all workmen in its employment when Work is being performed at the jobsite. All Subcontractor representatives, including superintendents and foremen, must possess sufficient English proficiency to effectively communicate with the Contractor's management team. If the Subcontractor employs personnel who do not speak English fluently, the Subcontractor is responsible for providing adequate bilingual management on-site at all times to facilitate clear communication.

B. Employee Conduct. Subcontractor shall employ only competent, well-disciplined workers to perform the Work hereunder and agrees to immediately remove and replace any employee(s), including Subcontractor's superintendent, whom Contractor, Owner or Architect deems unsatisfactory. Subcontractor is solely responsible for the conduct of its employees and any lower-tier individuals or entities at all times. Misconduct, destruction or theft of property, unsafe practices, violation of any federal, state, or local laws or regulations, violation of Contractor's substance abuse, safety or other job-site policies while engaged in performance of the Work, shall be cause for Contractor to prohibit entrance to the project site by such employee(s) or lower-tier(s) and/or to direct Subcontractor immediately to remove such employee(s) or lower-tier(s) from the project.

SECTION 24 - CLEAN-UP

The Subcontractor will make arrangements to remove from the work area all cartons, crates and boxes at the end of each day. All boxes or cartons shall be flattened prior to depositing into the dumpsters. The Subcontractor is solely responsible for transporting its own debris to the Contractor-provided dumpsters and consolidating materials to optimize dumpster capacity. This debris will be deposited in dumpsters furnished by the Contractor. Work areas are to be maintained in a broom clean condition, and Subcontractor shall specifically inform its superintendent or foreman of this requirement. Should Subcontractor fail or refuse to perform the cleanup, the Contractor shall, without notice, either perform or cause this work to be performed by others and the entire cost thereof, plus handling charges for removal to the dump, will be assessed against the Subcontractor. The decision of the Contractor shall be final in determining when the safety and good order to the project requires the clean up to be performed. Further, in circumstances where more than one subcontractor may have contributed to the need for cleanup, the Contractor's allocation of cleanup costs and responsibility, made in its sole discretion, shall be binding on the Subcontractor and other entities involved.

SECTION 25 - SAFETY

Prevention of accidents at the site is the responsibility of the Contractor, Subcontractor, and all other subcontractors, persons and entities at the site. Subcontractor shall be bound by the Contractor's Safety and Health Manual. Hard hats, safety glasses, reflective vests, and proper work boots shall be worn at all times. If the task requires hand protection, gloves shall be worn and provided by the Subcontractor. Establishment of a safety program by the Contractor shall not relieve the Subcontractor of its safety responsibilities. The Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by any AHJ over the Project or Subcontractor, and by the Contractor and Owner, including, but not limited to, requirements imposed by the Contract Documents.

A. Compliance with Laws. The Subcontractor shall strictly observe and comply with all applicable safety laws, rules and regulations, including applicable federal and/or state OSHA standards, and with the accident prevention program required under the applicable provisions of the Contract Documents and/or as directed by the Contractor, whichever is most stringent. Whenever the Contract Documents shall require any special safety, first aid, or emergency treatment facilities, it is agreed that same shall be provided by the Subcontractor for his own use; or that, when such alternative is made available by the

Contractor, the Subcontractor shall cooperate with Contractor and with other subcontractors or vendors for the provision thereof; and the entire cost thereof shall be prorated among the participants in proportion to the number of employees engaged on the project each month by the respective participants.

B. Safety Meetings. The Subcontractor will be required to have its Superintendent and/or Foreman attend weekly coordination and planning meetings held by the Contractor, at which time the Subcontractor shall submit, for coordination and approval, its proposed daily Work schedule for the next three-week period. Failure of Subcontractor to attend regularly scheduled meetings will not relieve the Subcontractor of its responsibility to perform Work or comply with instruction given out during the meeting. Coordination with other trades will be the responsibility of each Subcontractor. Subcontractor agrees to hold weekly safety meetings and to participate in the Contractor's safety meetings. It is the policy of the Contractor to work in the safest manner possible consistent with good construction practices. To fulfill the requirements of this policy, an organized and effective safety program must be carried out at each location where the work is performed. Subcontractor agrees to participate in and/or conduct daily morning safety huddles, in which job hazards are reviewed with Contractor, as required.

C. Use of Equipment and Materials. All equipment used must conform to the latest requirements of federal and/or state OSHA. All safety mechanisms and backup alarms must be fully operational throughout the duration of the Work. Subcontractor shall comply with the OSHA Globally Harmonized System of Classification and Labelling of Chemicals (GHS) that requires any and all suppliers or manufacturers to supply a Safety Data Sheet (SDS) for products and materials used on the project. Failure to meet these criteria will be cause for the Contractor's Superintendent to stop the Work of Subcontractor until the failure has been remedied.

D. Safety Violations. To the fullest extent permitted by law, Subcontractor shall indemnify, hold harmless and defend Contractor from any citations, fines or penalties attributable to the actions, inactions, or other conduct of Subcontractor, its lower-tier subcontractors and vendors, anyone directly or indirectly employed by them or anyone for whom they may be liable, which are assessed to Contractor by federal and/or state OSHA, or any other state or local agency or AHJ over workplace health or safety, relating to or arising from Subcontractor's Work performed hereunder. In the event of any such citations, fines or penalties issued to Contractor relating to or arising from Subcontractor's Work, unless Contractor and Subcontractor agree to contest the citation, fine or penalty, at Subcontractor's sole expense, the amount of the citation, fine or penalty shall be paid promptly by Subcontractor upon demand by Contractor and if such payment is not made promptly, Contractor may issue such payment and deduct the amount paid from any amounts due Subcontractor hereunder. Should Contractor and Subcontractor agree to contest any citation, fine or penalty, any resulting or remaining liability shall be paid promptly by the Subcontractor upon demand from the Contractor and if such payment is not made promptly, Contractor may issue such payment and deduct the amount paid from any amounts due Subcontractor hereunder.

E. Safety Devices/Controls. The Subcontractor agrees that if in the performance of its Work it becomes necessary, convenient or advisable to remove, replace or interfere with any safety devices or controls installed by the Contractor or another subcontractor or vendor, it will replace or restore such devices or controls at its own expense. In the event such devices or controls are not so restored, Subcontractor agrees to reimburse the Contractor for doing so on Subcontractor's behalf.

F. Incident Reporting. Subcontractor shall verbally or otherwise notify Contractor immediately of any project-related incident. No later than 24 hours after the occurrence of any safety-related incident in which an actual injury requiring first aid occurs, or an injury requiring first aid could have occurred but for proper functioning of safety equipment, the Subcontractor shall notify the Contractor in writing with a description of the nature, affected personnel, location and timing of the incident. The Contractor shall issue a warning for the first failure to report such an incident. The Contractor may impose, and the Subcontractor agrees to pay, a fine for any subsequent failures to report such an incident.

G. Cranes. Subcontractor shall not mobilize, use or employ any crane (whether mobile, truck-mounted or fixed) with or exceeding a 3-ton rated capacity for lifting or hoisting on the Project until such equipment (including accessory gear) has been certified, as evidenced by current and valid documentation, with the following:

1. Annual testing and examination by a currently licensed third-party certifying agency,

including proof load testing;

2. Visual inspection shall be completed, by a qualified person, of the crane's controls, rigging and operating mechanism prior to the first operation on any work shift, with any unsafe conditions being disclosed and corrected, and any defective components creating an imminent safety hazard being replaced, repaired or adjusted, prior to use.
3. Periodic inspections at intervals not less than quarterly or 750 hours of operating time, whichever first occurs, to check all functional mechanisms and for excessive wear and other operational and safety deficiencies, of the crane, rigging equipment and all accessory gear; and
4. Daily visual inspections by the operator or other qualified person to ensure safe and reliable operation of the equipment.

H. Food & Tobacco - No food, beverages, smoking, chewing tobacco, sunflower seeds, or gum are permitted inside the building at any time. Smoking is prohibited within 25 feet of entrances, operable windows, or outdoor air intakes. All breaks, including meals, must occur in designated areas. The Subcontractor is responsible for providing drinking water for its employees. Subcontractor's employees shall consume meals exclusively in designated areas.

SECTION 26 - EARLY OCCUPANCY

Whenever it may be useful or necessary to the Contractor to do so, the Contractor shall be permitted to occupy and/or use any portion of the Work which has been either partially or fully completed by the Subcontractor before final inspection and acceptance thereof by the Owner, but such use and/or occupation shall not relieve the Subcontractor of its guarantee of said Work and materials nor of its obligation to make good at its own expense any defect in materials and workmanship which may occur or develop prior to Contractor's release from responsibility to the Owner; provided, however, the Subcontractor shall not be responsible for the maintenance of such portion of the Work as may be used and/or occupied by the Contractor nor for any damage thereto that is due to or caused by negligence of the Contractor during such period of use. In the event the Owner occupies or uses, prior to final inspection and acceptance, any portion of the Work performed by the Subcontractor, the maintenance and warranty obligations with respect to such Work shall be governed by the applicable provisions of the Contract Documents.

SECTION 27 - WARRANTY

A. Airtight Defects Subcontractor warrants to Owner, Architect and Contractor that all materials and equipment furnished shall be new, free from faults and defects, of good quality, and in strict conformance with the Contract Documents. Subcontractor hereby warrants its Work will be performed in a workmanlike manner, free from all deficiencies and defects, and in strict conformance with the Contract Documents. Work, materials or equipment not conforming to these warranties shall be considered defective. The warranties and remedies provided in this Section A are cumulative and are in addition to, and not in lieu of, any other warranties and remedies provided by this Agreement or applicable law and shall survive completion of the Work and final payment.

B. Correction of Work. Independent of paragraph A above, Subcontractor agrees, for the warranty period required by the Prime Contract, to promptly correct, replace and make good any defective materials, equipment and/or workmanship to the approval and acceptance of Contractor, Owner and Architect. This correction of Work warranty shall commence upon substantial completion of the Project, provided that the warranty for any element not yet completed as of the date of substantial completion shall commence on the final acceptance date. During such warranty period, Subcontractor agrees to repair at its sole cost and expense any defects or imperfections without the requirement of any proof of cause from the Contractor or Owner. Subcontractor's warranty shall apply to all Work re-done pursuant to this Agreement, and shall last as to each re-done element of the Work until the later of expiration of the original warranty period or one year after acceptance by Owner of any re-done Work.

C. Remedy for Failure to Correct. Should Subcontractor refuse or neglect to proceed at once with the correction of rejected or defective materials, equipment and/or workmanship after receiving notice to do so, Contractor shall have the right and power to have the defects remedied or changes made at the expense of Subcontractor, and Subcontractor agrees to pay to Contractor on demand any and all loss

and/or expenses incurred by Contractor in remedying such defects and/or making such changes, together with all other damages Contractor sustains as a result thereof. The Subcontractor's obligation to correct defective Work as required herein does not limit nor alter the Subcontractor's other warranties or obligations under this Agreement.

SECTION 28 - SURETY AND BONDS

Unless specifically waived herein by Contractor, Subcontractor shall furnish, without expense to the Contractor and within fifteen (15) days of the date of execution of this Agreement, a performance bond and payment bond, each for the full amount of this Agreement. The Payment and Performance bonds shall be drawn in favor of the Contractor and shall be executed by a surety company acceptable to the Contractor (in its sole discretion) and on forms furnished by the Contractor or approved by the Contractor's home office. The surety company executing the bonds must appear as an approved surety in the current Circular 570, as amended, of the U.S. Treasury Department with a dollar underwriting limitation at least equal to the bond amount, and be duly licensed to transact business in the state where the project is located. No payment whatsoever shall be due to the Subcontractor until the provisions of this Section have been met to the Contractor's satisfaction.

The surety on any bond issued to Subcontractor expressly agrees that each such bond specifically incorporates and is subject to this Agreement. Further, the language of any bond shall never be construed to expand Contractor's obligations in the event of a Default by Subcontractor beyond the requirements of this Agreement, nor to afford surety greater rights than are available to Subcontractor under this Agreement. Specifically, provisions in any bond that impose or purport to impose conditions precedent to the surety's duties and obligations shall never be interpreted to impose on Contractor obligations greater than those defined in this Agreement in responding to a Subcontractor Default and/or triggering the surety's payment and performance obligations under the bond.

No change, alteration or modification in the terms and conditions of this Subcontract, or in the terms or manner of payment shall in any way exonerate or release, in whole or in part, any surety on any bond furnished by or on behalf of the Subcontractor. If required to do so by the Contractor, prior to commencement of any Work required hereunder, Subcontractor shall obtain and furnish to Contractor a copy or counterpart of this Agreement which shall have been endorsed in writing by an authorized representative of the surety company, specifically approving this Agreement.

SECTION 29 - EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

A. Non Discrimination. The Subcontractor, in performing the Work required by this Agreement, shall not discriminate against or harass any applicant, employee or other worker or individual on the site, or minority or disadvantaged business because of belief, race, creed, color, religion, sex, age, national origin, or ethnic background, physical or mental handicap or disability, sexual orientation, or status as a protected veteran. Unless this Agreement is exempted by the rules, regulations or orders of the Secretary of Labor, Subcontractor agrees to comply with the provisions of paragraphs (1) through (7) of Part 202 of Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973 (29 USC § 793), as amended; The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 USC § 4212), as amended; the Americans with Disabilities Act of 1990, as amended; Title VII of the Civil Rights Act of 1964, as amended; and the equal opportunity provisions of 41 CFR § 60-4.3, all of which are by reference incorporated herein. Subcontractor shall include the above provisions in all subcontracts and purchase agreements issued for Work to be performed at the site under this Agreement.

B. Affirmative Action. The Subcontractor, in performing the Work required by this Agreement, shall comply with any and all applicable governmental requirements to take affirmative action to recruit, employ and advance in employment (1) women and minorities to ensure equal opportunity and a workforce that generally reflects the gender, racial, and ethnic profile of the available labor pool, (2) qualified individuals with physical or mental disabilities at all levels of employment, and (3) qualified protected veterans, which affirmative action requirements include and are set forth in 41 CFR § 60-741.4, 41 CFR § 60-300.5, 41 CFR § 60-1.4, 41 CFR § 60-1.40, 41 CFR § 60-2.10 through 2.17, 41 CFR § 60-4.4 and 41 CFR § 60-741 Subpart C.

SECTION 30 - NOTICES

A. Form / Timing. Written notice, where required by terms of this Agreement, may be accomplished by personal delivery of said notice or by use of a commercial delivery service, facsimile transmission, the

United States Mail, through Procore management system, or a .pdf of a signed written notice complying with the terms of this Agreement attached to an email sent to the designated representative of Contractor. An email alone without a signed written attachment, or a text message, or an email to a person not the designated representative of Contractor shall not be valid notice. Notice shall be deemed received on the date actually received as evidenced by return receipt, reception report, email date or other written indication of date received. Notice by U.S. mail shall be deemed received on the third (3rd) day after the properly-addressed notice is deposited in the U.S. Mail.

B. Change of Address. Subcontractor shall promptly notify Contractor in writing in the event of a change of its address or other contact information appearing on this Agreement.

SECTION 31 - SPECIAL PROVISIONS

A. Incorporation of Prime Contract. (As to each project under a Work Order, the applicable Prime Contract is incorporated as provided in this Section.) The Subcontractor agrees to be bound by and shall strictly comply with the Prime Contract between the Contractor and the Owner, including, without limitation, all terms, conditions, specifications, drawings, amendments, modifications, addenda, and all other documents listed in or referenced by the Prime Contract, all of which are incorporated into and made part of this Agreement, insofar as they relate in any way, directly or indirectly, to the Work furnished or to be furnished by Subcontractor. Contractor hereby assumes toward the Subcontractor all the rights and remedies the Owner has against Contractor under the Prime Contract, and Subcontractor hereby assumes toward the Contractor all the obligations and duties the Contractor has to the Owner under the Prime Contract, to the extent related to the Subcontractor's Work. Where reference is made to Contractor in the Prime Contract, and the Work or Specifications therein pertain to the Subcontractor's Work, then such references shall be interpreted to apply to and reference Subcontractor instead of Contractor. Paragraph 15A "Dispute Resolution: Arbitration" of this Agreement shall supersede the terms of this paragraph and govern the resolution of disputes between Contractor and Subcontractor regardless of dispute resolution procedures in the Prime Contract.

B. Right of Rejection. The Owner has the right to reject any proposed Subcontractor. This Agreement issued pursuant to it is conditioned, as to each project, upon Owner acceptance of the Subcontractor. The Contractor reserves the right to reject any proposed lower-tier subcontractor or supplier of Subcontractor.

C. No Waiver. The failure of Contractor, from time to time, to insist on full performance of any term or provision hereof shall not be construed as a waiver of such nonperformance by Contractor for insisting on full performance of such at any other time. Waiver by Contractor of any breach hereof shall not constitute a waiver of any subsequent breach of the same or any other provision hereof.

D. Communications. All communications between Subcontractor and Owner or Architect shall be conducted through Contractor.

E. Effective Date. The effective date of this Agreement is intended by both parties to be the date indicated at the beginning of this Agreement. The dates appearing by the signatures at the end of this document merely indicate the dates that the signatures were affixed.

F. Headings. The Section headings used in this Agreement are for the ease of reference only and shall not be considered a part of nor affect the interpretation or meaning of this Agreement.

G. Subcontract Modifications. No alteration to the form terms and conditions of this Agreement shall be incorporated without a separate attachment that is signed by an officer authorized representative both of Contractor and Subcontractor. Any alterations or interlineations of this form document shall not be incorporated into this Agreement, and absent a separate attachment signed by an officer authorized representative of both companies, all terms and conditions of Contractor's original form 703 Master Subcontractor Agreement shall be binding without exception.

H. Entire Agreement. This Agreement represents the entire and integrated agreement between Contractor and the Subcontractor and supersedes any prior written or oral representations and/or negotiations. This Agreement is solely for the benefit of Contractor and Subcontractor, and shall not be construed to create a contractual relationship between persons or entities other than Contractor and Subcontractor.

I. **Video/Audio Recording and Photos on the Project Site.** The Subcontractor acknowledges the Project is located on private property. Accordingly, Subcontractor is prohibited from making or taking any video, audio, photograph, picture, aerial photography (including drone) or other recorded image of the Project, or any portion thereof, without first obtaining written consent and approval of the Contractor, which may be withheld and/or conditioned as determined by Contractor in its sole discretion. Subcontractor agrees to make any video, audio, photograph, picture, aerial photography (including drone) or other recorded image (approved or otherwise) immediately available to Contractor for inspection and viewing upon Contractor's request. Video, audio and photographs are further subject to the following:

1. **Video & Audio.** If Subcontractor desires to video or audio record any work or condition on the Project, it must first submit in writing a request to the Contractor outlining the specific purpose of the video/audio recording. If a video/audio recording is approved by the Contractor, it is the Subcontractor's responsibility to disclose to any subject of (or any person captured by) the video that a video/audio recording is taking place. Video/audio recording of any person without consent is strictly prohibited and will result in the offending representative or agent of the Subcontractor being removed from the Project.
2. **Photographs.** Contractor recognizes photographs are a legitimate means of documenting certain conditions in the field to support an RFI, field observation report or other official Project record. Subcontractor shall submit any photograph showing an unsafe condition immediately to Contractor, so Contractor may timely address, correct and eliminate the unsafe condition.

SIGNATURE PAGE FOLLOWS

DANA GUNNELL - REFERENCE COPY

IN WITNESS WHEREOF, the parties hereto have executed this agreement for themselves, their heirs, executors, successors, administrators and assigns, on the day and year first written above.

Contractor

Stephen Gunnell

13585742-5501

Date

(Printed name of authorized agent)

Contractor's License #

Subcontractor

Date

(Printed name of authorized agent)

Contractor's License #

(Scanned signatures are acceptable and shall be legal and binding)

Subcontractor is (check as applicable):

☐ Company is incorporated

Federal Tax I.D. No. _____

☐ Company is not incorporated

Social Security No. _____

DANA GUNNELL - REFERENCE COPY

For projects in which Sales and Use taxes are not collected as part of the permit process, Tax Identification numbers are required:

State Sales Tax I.D. number: _____

City, County or Project Tax I.D. number: _____

Local District Sales Tax Name and I.D. Number: _____

Note: Please provide copies of all sales tax licenses listed above