

**This Agreement**, made as of the **SDS** day of **SDS** in the year **SDS** by and between CONTRACTOR and **SDS** (See Subcontract Data Sheet for this Item and all other Items marked SDS) (hereinafter called the Subcontractor).

**Witnesseth**, that the Subcontractor and Contractor agree as follows:

**Description of Work**

**ARTICLE I.** The Subcontractor shall perform and furnish all the work, labor, services, materials, plant, equipment, tools, scaffolds, appliances and other things necessary for **SDS** (Hereinafter called the Work) for and at the **SDS** (Hereinafter called the Project), located on premises at **SDS** (Hereinafter called the Premises), as shown and described in and in strict accordance with the Plans, Specifications, General Conditions, Special Conditions and Addenda thereto prepared by **SDS** (Hereinafter called the Architect) and with the terms and provisions of the General Contract (hereinafter called the General Contract) between Contractor and **SDS** (Hereinafter called the Owner) dated **SDS** and in strict accordance with the Additional Provisions, page(s) **SDS** annexed hereto and made a part hereof.

**Plans & Specifications**

**ARTICLE II.** The Plans, Specifications, General Conditions, Special Conditions, Addenda and General Contract hereinabove mentioned, are available for examination by the Subcontractor at all reasonable times at the office of Contractor; all of the aforesaid, including this Agreement, being hereinafter sometimes referred to as the Contract Documents. The Subcontractor represents and agrees that it has carefully examined and understands this Agreement and the other Contract Documents, has investigated the nature, locality and site of the Work and the conditions and difficulties under which it is to be performed and that it enters into this Agreement on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of Contractor, or of the Owner, or of any of their respective officers, agents, servants, or employees.

**Contract Documents**

With respect to the Work to be performed and furnished by the Subcontractor hereunder, the Subcontractor agrees to be bound to Contractor by each and all of the terms and provisions of the General Contract and the other Contract Documents, and to assume toward Contractor all of the duties, obligations and responsibilities that Contractor by those Contract Documents assumes toward the Owner, and the Subcontractor agrees further that Contractor shall have the same rights and remedies as against the Subcontractor as the Owner under the terms and provisions of the General Contract and the other Contract Documents has against Contractor with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full. The terms and provisions of this Agreement with respect to the Work to be performed and furnished by the Subcontractor hereunder are intended to be and shall be in addition to and not in substitution for any of the terms and provisions of the General Contract and the other Contract Documents.

This Subcontract Agreement, the provisions of the General Contract and the other Contract Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, any provision of this Subcontract Agreement irreconcilably conflicts with a provision of the General Contract and the other Contract Documents, the provision imposing the greater duty or obligation on the Subcontractor shall govern.

Contractor hereby advises, and the Subcontractor hereby acknowledges, that Contractor in administering this subcontract will be utilizing an information systems infrastructure to process, deliver, and share and/or, at times, to apply electronic signatures to execute certain project documentation through electronic means. As part of the implementation of this infrastructure, the Subcontractor will be given individual, secure log on codes to access the Contractor systems presenting this electronic information. The Subcontractor hereby agrees that such electronic access and the ability of the subcontractor to print out such electronic documents will be in lieu of requiring the delivery of the contents of such electronic documents on printed or paper based media directly to Subcontractor by Contractor or through means of outside third-party services. Delivery of such electronic documents to Subcontractor will be deemed to have occurred when access to the document is made available to Subcontractor in the infrastructure.

At times, Contractor may, through this electronic infrastructure system, initiate Subcontract Change Order documents that will require that the Subcontractor review and approve or reject each such document applying its electronic signature to the approved document on the Contractor software and thereafter, Contractor will apply the electronic signature of its authorized personnel to execute the approved document and electronically deliver the fully executed document to the Subcontractor. The Subcontractor agrees and acknowledges that granting its on-line approval and electronically executing a Subcontract Change Order also affixes the Subcontractor's electronic signature to such document and in so doing it is agreeing that each such document, when electronically countersigned by Contractor, are valid and authentic and enforceable obligations of both parties and to honor and be bound by such documents as if they had been prepared on hard copy and contained the manually applied autograph signatures of the Subcontractor's and Contractor's authorized personnel. Subcontractor hereby agrees to establish, continuously use and maintain a robust and effective Security System/ID and Passwords to protect its identity when addressing and/or signing any electronic contract related documentation issued or exchanged pursuant to this Article.

Optionally, Contractor may use paper documents, where the Subcontractor reviews the proposed paper document and, if it approves, it manually affixes its autograph signature to the paper document and physically returns the signed paper document to Contractor who completes the execution by applying either its autograph or electronic signature to the Subcontract Change Order and a copy of the executed Subcontract Change Order showing the presence of both signatures is physically delivered to the Subcontractor and such Subcontract Change Order shall likewise be deemed by both parties to be valid and authentic and enforceable obligations of both parties.

Contractor may from time to time issue policies or directives applicable to electronic communications, electronic infrastructure and electronic data and Subcontractor shall comply with such policies and directives whether issued as part of this Subcontract or hereafter, and the cost and expense of such compliance shall be borne by the Subcontractor.

**Time of Performance & Completion**

**ARTICLE III.** The Subcontractor shall commence the Work when notified to do so by Contractor and shall diligently and continuously prosecute and complete the Work and coordinate the Work with the other work being performed on the Project, in accordance with those project schedules as may be issued from time to time during the performance of the Work and any other scheduling requirements listed in this Agreement, so as not to delay, impede, obstruct, hinder or interfere with the commencement, progress or completion of the whole or any part of the Work or other work on the Project, and in such a manner as necessary or requested by Contractor from time to time to ensure that Contractor satisfies its obligations in a timely manner under the General Contract.

**Planning & Scheduling**

The Subcontractor shall participate and cooperate in the development of schedules and other efforts to achieve timely completion of the Work providing information for the scheduling of the times and sequence of operations required for its Work to meet Contractor's overall schedule requirements, shall continuously monitor the project schedule so as to be fully familiar with the timing, phasing and sequence of operations of the Work and of other work on the Project, and shall execute the Work in accordance with the requirements of the project schedule including any revisions thereto. Subcontractor shall abide by all requirements of the General Contract relating to the submission of schedule and other information related to the performance of Subcontractor's Work not less than 14 days prior to the time when Contractor is required to provide such materials to Owner under the General Contract, except where Contractor directs otherwise. Subcontractor shall, at no additional cost, provide updates, additional or further detailed schedules and other information as frequently and in whatever form Contractor may request, including but not limited to (1) manpower and cost loaded schedules; (2) information related to its operations as a whole, including but not limited to identifying lower tier subcontractors and suppliers and the status of payments to such subcontractors and suppliers; (3) unions and related benefit funds associated with labor used in the performance of the Work; (4) credit sources and banks providing financing or loans in connection with the performance of the Work or Subcontractor's operations as a whole and any covenants and requirements imposed upon Subcontractor in connection therewith and the status of Subcontractor's compliance with such covenants and requirements; and (5) the status of orders, fabrication and delivery of materials and arrangements for the provision of labor. The foregoing information shall include names and contact information, and Subcontractor acknowledges and agrees that Contractor may contact any persons or entities as it deems necessary to verify or obtain such information.

Subcontractor shall establish and maintain a reasonable accounting system by which records are kept that enable Contractor to readily identify all of Subcontractor's expenses, costs, payments (including to its workers, subcontractors and suppliers, unions, and benefit funds), obligations, budgets, and other financial information related to the Work or this Subcontract. Such records shall include, but not be limited to, all accounting records, written policies and procedures, subcontract files for all tiers, payment vouchers, ledgers, cancelled checks, contract amendments, change order information, insurance documents, and other similar information. Contractor shall have the right to audit, examine, and make copies of all such records (whether written, electronic or another format) as Contractor may determine, and Subcontractor shall facilitate and cooperate with Contractor's efforts in this regard. Subcontractor shall impose similar obligations on its subcontractors and vendors to ensure that comparable records kept and Contractor has the right to audit, examine and copy those records.

**Delays by Subcontractor**

Should the progress of the Work or of the Project be delayed, disrupted, hindered, obstructed, or interfered with by any fault or neglect or act or failure to act of the Subcontractor or any of its officers, agents, servants, employees, subcontractors or suppliers so as to cause any additional cost, expense, liability or damage to Contractor including legal fees and disbursements incurred by Contractor (whether incurred in defending claims arising from such delay or in seeking reimbursement and indemnity from the Subcontractor and its surety hereunder or otherwise) or to the Owner or any damages or additional costs or expenses for which Contractor or the Owner may or shall become liable, the Subcontractor and its surety shall and does hereby agree to compensate Contractor and the Owner for and indemnify them against all such costs, expenses, damages and liability.

**Overtime**

If the progress of the Work or of the Project be delayed by any fault or neglect or act or failure to act of the Subcontractor or any of its officers, agents, servants, employees, subcontractors or suppliers, then the Subcontractor shall, in addition to all of the other obligations imposed by this Agreement upon the Subcontractor in such case, and at its own cost and expense, work such overtime as may be necessary to make up for all time lost in the completion of the Work and of the Project due to such delay. Should the Subcontractor fail to make up for the time lost by reason of such delay, Contractor shall have the right to cause other Subcontractors to work overtime and to take whatever other action it deems necessary to avoid delay in the completion of the Work and of the Project, and the cost and expense of such overtime and/or such other action shall be borne by the Subcontractor.

Contractor, if it deems necessary, may direct the Subcontractor to work overtime and, if so directed, the Subcontractor shall work said overtime and, provided that the Subcontractor is not in default under any of the terms or provisions of this Agreement or of any of the other Contract Documents and the direction to work overtime was not due in whole or in part to any fault or failure of Subcontractor, Contractor will pay the Subcontractor only for such actual additional wages paid, if any, at rates which have been approved by Contractor plus taxes imposed by law on such additional wages, plus workers' compensation insurance, liability insurance and levies on such additional wages if required to be paid by the Subcontractor to comply with Subcontractor's obligations under this Agreement. Subcontractor acknowledges that in the event that it may intend to pursue a claim of inefficiency, loss of productivity or other similar or related request for additional compensation, Subcontractor may rely only on evidence indicating the actual inefficiency, loss of productivity or other similar consequence as it occurred on the Project and agrees that no reports, analyses, data, industry or academic studies or any other evidence that do not exclusively rely on and pertain to the Work performed at the Project shall be used or in any way considered, in whole or in part, in connection with the resolution of such a claim, whether by Contractor or any forum for dispute resolution.

**Price**

**ARTICLE IV.** The sum to be paid by Contractor, out of funds received from the owner, to the Subcontractor for the satisfactory performance and completion of the Work and of all of the duties, obligations and responsibilities of the Subcontractor under this Agreement and the other Contract Documents shall be **SDS** (Hereinafter called the Price) subject to additions and deductions as herein provided.

The Price includes all Federal, State, County, Municipal and other taxes imposed by law and based upon labor, services, materials, equipment or other items acquired, performed, furnished or used for and in connection with the Work, including but not limited to sales, use and personal property taxes payable by or levied or assessed against the Owner, Contractor or the Subcontractor. Where the law requires any such taxes to be stated and charged separately, the total price of all items included in the Work plus the amount of such taxes shall not exceed the Price.

**Progress Payments**

On or before the last day of each month the Subcontractor shall submit to Contractor, in the form required by Contractor, a written requisition for payment showing the proportionate value of the Work installed to that date, from which shall be deducted: a reserve of **SDS**; all previous payments; all amounts and claims against Subcontractor, by Contractor or any third party, for which Subcontractor is responsible hereunder; and all charges for services, materials, equipment and other items furnished by Contractor to or chargeable to the Subcontractor; and the balance of the amount of such requisition, as approved by Contractor and the Architect and for which payment has been received by Contractor from the Owner, shall be due and paid to the Subcontractor within 10 days after the date Contractor receives payment for all or a portion thereof from the Owner. Contractor shall have the right, at its sole discretion, to issue payments to Subcontractor by way of joint checks to Subcontractor and suppliers and/or vendors of Subcontractor, and Subcontractor agrees to cooperate fully in facilitating the making of such joint payments.

**Payments in General**

The obligation of Contractor to make a payment under this Agreement, whether a progress or final payment, or for extras or change orders or delays to the Work, is subject to the express condition precedent of payment therefor by the Owner. If Contractor has provided payment or performance bonds or a combination payment and performance bond, the obligation of Contractor and its Surety under any of those bonds to make any payment (whether a progress payment or final payment) to a claimant on that bond is similarly subject to the express condition precedent of payment therefor by the Owner.

The Subcontractor shall submit with its first requisition for payment a detailed schedule showing the breakdown of the Price into its various parts for use only as a basis of checking the Subcontractor's monthly requisitions.

Contractor reserves the right to advance the date of any payment (including the final payment) under this Agreement if, in its sole judgment, it becomes desirable to do so.

The Subcontractor agrees that, if and when requested to do so by Contractor, it shall furnish such information, evidence and substantiation as Contractor may require with respect to the nature and extent of all obligations incurred by the Subcontractor for or in connection with the Work, all payments made by the Subcontractor thereon, and the amounts remaining unpaid, to whom and the reasons therefor.

**Final Payment**

Final payment to the Subcontractor shall be made only with funds received by Contractor from the Owner, the Construction Lender or the Owner's Agent as final payment for Work under the General Contract. Final payment to Contractor by the Owner shall be an express condition precedent that must occur before Contractor shall be obligated to make final payment to the Subcontractor. In addition, final payment by Contractor to the Subcontractor shall not become due and payable until the following other express conditions precedent have been met: (1) the completion and acceptance of the Work by Contractor and the Architect; (2) provision by the Subcontractor of evidence satisfactory to Contractor that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished, or incurred for or in connection with the Work; (3) execution and delivery by the Subcontractor, in a form satisfactory to Contractor of a general release running to and in favor of Contractor and the Owner; and (4) complete and full satisfaction of all claims, demands and disputes, and all obligations and responsibilities of Subcontractor, arising out of or related to the Subcontract, including those as between Contractor and Subcontractor as well as those between Subcontractor and any third party. Should there be any such claim, obligation or lien or unsatisfied obligation or responsibility whether before or after final payment is made, the Subcontractor shall pay, refund or deliver to Contractor (1) all monies that Contractor and/or the Owner shall pay in satisfying, discharging or defending against any such claim, obligation or lien or any action brought or judgment recovered thereon and all costs and expenses, including legal fees and disbursements, incurred in connection therewith; and (2) such amounts as Contractor or Owner shall, in their sole discretion, determine to be an amount sufficient to protect Contractor and Owner therefrom (in lieu of payment of such amounts, Subcontractor may, at Owner's and Contractor's sole discretion, deliver a bond satisfactory to Contractor and Owner). Such refund and payment shall be made within ten (10) days of request by Contractor to Subcontractor for same. The final payment shall be due within forty (40) days after all of these express conditions precedent have been met or within 10 days after Contractor receives payment from the Owner if that occurs earlier than the 40 days.

**Liens by Others**

If any claim or lien is made or filed with or against Contractor, the Owner, the Project, the Premises or the Project funds by any person claiming that the Subcontractor or any subcontractor or other person under subcontract to Subcontractor, or any person or entity employed or engaged by or through Subcontractor at any tier, has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work, or if any such claim or lien is filed or presented, or if Contractor, in good faith, believes that such a claim or lien may be filed or brought, or if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, Contractor or the Owner might become liable and which is chargeable to the Subcontractor, or if the Subcontractor or any subcontractor or other person under subcontract to Subcontractor, or any person or entity employed or engaged by or through Subcontractor at any tier causes damage to the Work or to any other work on the Project, or if the Subcontractor fails to perform or is otherwise in default under any of the terms or provisions of this Agreement, Contractor shall have the right (A) to retain from any payment then due or thereafter to become due an amount which it deems sufficient to (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon, (2) make good any such nonpayment, damage, failure or default, and (3) compensate Contractor and the Owner for and indemnify and hold them harmless against any and all losses, liability, damages, costs and expenses, including legal fees and disbursements, which may be sustained or incurred by either or both of them in connection therewith; and (B) to demand that Subcontractor provide, within ten (10) days of Contractor's request therefore, proof to the satisfaction of Contractor and Owner that such non-payment, claim or lien has been fully satisfied, dismissed and discharged. Upon the failure of Subcontractor to fulfill the requirements of a demand issued by Contractor pursuant to subsection (B) above, Contractor may, in such manner as Contractor may in its sole discretion determine, secure the satisfaction, dismissal and discharge of such claim, by payment or otherwise, and Subcontractor shall within ten (10) days of demand therefore, be liable for and pay to Contractor all amounts (including legal fees and disbursements) incurred or suffered by Contractor or Owner arising out of or related thereto. Contractor shall, in addition, have the right to apply and charge against the Subcontractor so much of the amount retained as may be required for the foregoing purposes. Subcontractor further agrees to indemnify, hold harmless and defend Contractor and Owner, upon demand, for any and all such claims, liens, and the costs, expenses (including legal fees and disbursements), damages and liabilities arising out of or related thereto. Subcontractor acknowledges (1) that discharge of such liens or claims by bond imposes liability upon a surety and Contractor, and (2) that Contractor is not required to discharge such lien or claims by bond when exercising its rights hereunder. Subcontractor agrees that should there be any amounts due or which may become due to Subcontractor in connection with any other subcontracts between Contractor and Subcontractor or other obligations that Contractor may have to Subcontractor, Contractor shall be entitled to withhold payment under such other subcontract or obligations to the extent that Contractor believes that the unpaid balance of this Subcontract may not be adequate to satisfy Subcontractor's obligations to Contractor hereunder.

**Effect of Payment**

No payment (final or otherwise) made under or in connection with this Agreement shall be conclusive evidence of the performance of the Work or of this Agreement, in whole or in part, and no such payment shall be construed to be an acceptance of defective, faulty or improper work or materials nor shall it release the Subcontractor from any of its obligations under this Agreement; nor shall entrance and use by the Owner constitute acceptance of the Work or any part thereof. The failure of Subcontractor to fully perform and satisfy any or all obligations set forth in this Article IV shall constitute a default, entitling Contractor to take action as described in Article XI.

Subcontractor acknowledges and agrees that to the extent that payments received by Subcontractor include amounts for Work performed by subcontractors to Subcontractor or services or materials provided to Subcontractor by suppliers, vendors, workers employed by or through Subcontractor, all such payments received by Subcontractor shall be deemed to have been received by Subcontractor as trustee with those entitled to receive payment from Subcontractor as beneficiaries of such amounts, and Subcontractor shall hold such funds separately and utilize such amounts only for the purpose of making payment to these beneficiaries. In the event that Subcontractor subsequently determines that a beneficiary is not entitled to receipt of payment, Subcontractor shall return such unpaid funds to Contractor.

**Extension of Time & Delays**

**ARTICLE V.** Should the Subcontractor be delayed, obstructed, hindered or interfered with in the commencement, prosecution or completion of the Work by any cause including but not limited to any act, omission, neglect, negligence or default of Contractor or of anyone employed by Contractor or by any other contractor or subcontractor on the Project, or by the Architect, the Owner or their contractors, subcontractors, agents or consultants, or by damage caused by fire or other casualty or by the combined action of workers or by governmental directive or order in no way chargeable to the Subcontractor, or by any extraordinary conditions arising out of war or government regulations, or by any other cause beyond the control of and not due to any fault, neglect, act or omission of the Subcontractor, its officers, agents, employees, subcontractors or suppliers, then except where the General Contract has specific requirements at variance with the foregoing, in which case the requirements of the General Contract shall govern, the Subcontractor shall be entitled to an extension of time for a period equivalent to the time lost by reason of any and all of the aforesaid causes; provided, however, that the Subcontractor shall not be entitled to any such extension of time unless the Subcontractor (1) notifies Contractor in writing of the cause or causes of such delay, obstruction, hindrance or interference within forty eight (48) hours of the commencement thereof and (2) demonstrates that it could not have anticipated or avoided such delay, obstruction, hindrance or interference and has used all available means to minimize the consequences thereof. Subcontractor acknowledges that provision of such notice is an essential condition precedent to Subcontractor's rights in connection with any such delays, obstructive hindrances or interferences to Contractor's ability to fully identify, and expeditiously, address and avoid such cause or causes, and, accordingly, Subcontractor expressly waives all rights with respect to any such cause or causes for which notice hereunder was not provided. Notwithstanding the foregoing, if the General Contract is at variance with granting such time extension, then the provisions of the General Contract shall control.

The Subcontractor agrees that it shall not be entitled to nor claim any cost reimbursement, compensation or damages for any delay, obstruction, hindrance or interference to the Work except to the limited extent that Contractor has actually recovered corresponding cost reimbursement, compensation or damages from the Owner under the Contract Documents for such delay, obstruction, hindrance or interference, and then only to the extent of the amount, if any, which Contractor on behalf of the Subcontractor, actually received from the Owner on account of such delay, obstruction, hindrance or interference. Notwithstanding any term or provision herein to the contrary, Subcontractor expressly waives and releases all claims or rights to recover lost profit (except for profit on work actually performed), recovery of overhead (including home office overhead), and any other indirect damages, costs or expenses in any way arising out of or related to the Agreement, including the breach thereof by Contractor, delays, charges, acceleration, loss of efficiency or productivity disruptions and interferences with the performance of the work.

It shall be an express condition precedent to any obligation on the part of Contractor to make payment of any such cost, reimbursement, compensation or damages to the Subcontractor hereunder that Contractor shall first be determined to be entitled to such compensation on behalf of the Subcontractor and then receive such payment from Owner, and Subcontractor expressly acknowledges that Contractor is not obligated or required to pursue Subcontractor claims as against Owner if Contractor, in its sole discretion, after review of Subcontractor's claim, has deemed the claim to lack merit in whole or in part.

The Subcontractor agrees that it shall contribute a fair and proportionate share of the costs of advancing the claims of the Subcontractor for delay, including but not limited to legal and other professional fees.

**Freight Charges & Shipments**

**ARTICLE VI.** The Subcontractor in making or ordering shipments shall not consign or have consigned materials, equipment or any other items in the name of Contractor. Contractor is under no obligation to make payment for charges on shipments made by or to the Subcontractor but may, at its option, pay such charges, in which case the Subcontractor shall reimburse Contractor for the amount of such payments plus a service charge of twenty-five percent (25%) of the amount so paid.

**Dimensions**

**ARTICLE VII.** Notwithstanding the dimensions on the Plans, Specifications and other Contract Documents it shall be the obligation and responsibility of the Subcontractor to take such measurements as will ensure the proper matching and fitting of the Work covered by this Agreement with contiguous work.

**Shop Drawings**

The Subcontractor shall prepare and submit to Contractor such shop drawings as may be necessary to describe completely the details and construction of the Work. Approval of such shop drawings by Contractor and/or the Architect shall not relieve the Subcontractor of its obligation to perform the Work in strict accordance with the Plans, Specifications, the Additional Provisions hereof and the other Contract Documents, nor of its responsibility for the proper matching and fitting of the Work with contiguous work and the coordination of the Work with other work being performed on the site, which obligation and responsibility shall continue until completion of the Work.

The Subcontractor's submission of a shop drawing to Contractor shall constitute the Subcontractor's representation, upon which Contractor may rely, that the Subcontractor has reviewed the submission for accuracy and compliance with all Contract Documents and that wherever engineering is required to be performed, same has been performed by a qualified and licensed engineer. Furthermore, the review of the Shop Drawing by Contractor shall not constitute an undertaking by Contractor to identify deficiencies in the submission, that being an undertaking within the sole responsibility of the Subcontractor.

**Contiguous Work**

Should the proper and accurate performance of the Work hereunder depend upon the proper and accurate performance of other work not covered by this Agreement, the Subcontractor shall carefully examine such other work, determine whether it is in fit, ready and suitable condition for the proper and accurate performance of the Work hereunder, use all means necessary to discover any defects in such other work, and before proceeding with the Work hereunder, report promptly any such improper conditions and defects to Contractor in writing and allow Contractor a reasonable time to have such improper conditions and defects remedied. Should Subcontractor fail to comply with the requirements of this Article, Subcontractor shall bear all costs incurred by Contractor, Owner and other subcontractors, and shall not be entitled to extensions of time and adjustments in Price, that could have been avoided by Subcontractor's compliance with the requirements of this Article

**Interpretation of Plans & Specifications**

**ARTICLE VIII.** The Work hereunder is to be performed and furnished under the direction and to the satisfaction of both the Architect and Contractor. The decision of the Architect as to the true construction, meaning and intent of the Plans and Specifications shall be final and binding upon the parties hereto. Contractor will furnish to the Subcontractor such additional information and Plans as may be prepared by the Architect to further describe the Work to be performed and furnished by the Subcontractor and the Subcontractor shall conform to and abide by the same.

The Subcontractor shall not make any changes, additions and/or omissions in the Work except upon written order of Contractor as provided in Article IX hereof.

**Change Orders, Additions & Deductions**

**ARTICLE IX.** Contractor reserves the right, from time to time, whether the Work or any part thereof shall or shall not have been completed, to make changes, additions and/or omissions in the Work as it may deem necessary, upon written order to the Subcontractor. The value of the work to be changed, added or omitted shall be stated in said written order and shall be added to or deducted from the Price.

The value of the work to be changed, added or omitted shall be determined by the lump sum or unit prices, if any, stipulated herein for such work. If no such prices are stipulated, such value shall be determined by whichever of the following methods or combination thereof Contractor may elect:

- (a) By adding or deducting a lump sum or an amount determined by a unit price agreed upon between the parties hereto.
- (b) By adding (1) the actual net cost to the Subcontractor of labor in accordance with the established rates, including required union benefits, premiums the Subcontractor is required to pay for workmen's compensation and liability insurance, and payroll taxes on such labor, (2) the actual cost to the Subcontractor of materials and equipment and such other direct costs as may be approved by Contractor less all savings, discounts, rebates and credits, (3) an allowance of **SDS** for overhead on items (1) and (2) above, and (4) an allowance of **SDS** for profit on items (1), (2) and (3) above.

Should the parties hereto be unable to agree as to the value of the work to be changed, added or omitted, the Subcontractor shall proceed with the work promptly under the written order of Contractor from which order the stated value of the work shall be omitted, and the determination of the value of the work, if not resolved in the normal course, shall be addressed pursuant to the dispute resolution procedures in accordance with Article XVIII.

In the case of omitted work Contractor shall have the right to withhold from payments due or to become due to the Subcontractor an amount which, in Contractor's opinion, is equal to the value of such work until such time as the value thereof is determined by agreement or by the Architect as hereinabove provided.

All changes, additions or omissions in the Work ordered in writing by Contractor shall be deemed to be a part of the Work hereunder and shall be performed and furnished in strict accordance with all of the terms and provisions of this Agreement and the other Contract Documents. Subcontractor accepts the responsibility to keep its surety informed of all such modifications to its contract. The obligations of Subcontractor and Subcontractor's Surety shall not be reduced, waived or adversely affected by the issuance of such change orders, additions or deductions even if Subcontractor fails to inform Surety of same and Contractor shall not be required to obtain consent of the Surety to such modifications.

Subcontractor shall provide Contractor with written notice of any circumstance or direction given by Contractor which Subcontractor may regard as a change, addition and/or omission or which may otherwise serve as the basis for a request for an increase in Price or extension of time within 5 days of the receipt of the direction or the occurrence of the event giving rise to such a request. Such written notice shall provide a full explanation of the circumstances or direction and the extent of the increase and extension sought, including a detailed breakdown and analysis supporting such request. Failure of the Subcontractor to provide such written notice shall constitute a waiver of Subcontractor's right to any such increase or extension.

Subcontractor acknowledges that the General Contract may include provisions whereby Contractor is required to provide notice, information, reports and analyses in the event that Contractor intends to pursue or which may affect Contractor's right's to an extension of time or increase in Contractor's price to the Owner, whether by way of change order or otherwise, and that the failure to provide such notice, information, reports and analyses may result in a waiver or forfeiture of the right to such an extension or increase. Accordingly, Subcontractor agrees that Subcontractor shall provide all such notices, information, reports and analyses to Contractor, in the same form, content and manner as Contractor is required to provide to Owner under the General Contract in the event that Subcontractor intends to pursue an extension of time or increase in Price. Subcontractor shall provide all such notices, information, reports and analyses to Contractor not later than 3 business days prior to the time by which Contractor must submit corresponding notice, information, reports and analyses to Owner so that Contractor can pursue like extensions and /or increases in Contractor's price from the Owner. Subcontractor acknowledges that its failure to comply with the terms of this paragraph may result in the loss of or prejudice to Contractor's ability to receive adjustments and extensions time from Owner. Subcontractor therefore agrees that it shall be deemed to have waived and forfeited all such rights in the event that it fails to provide notice, information, reports and analyses to Contractor as required by this Article. The terms and provisions of the paragraph are neither intended to relieve Subcontractor of the obligation to provide timely notices, information, reports and analyses, nor to extend shorter durations, required by the Contract Documents.

Notwithstanding the forgoing, the Subcontractor agrees that it shall not be entitled to nor claim any cost reimbursement, compensation, damages or extensions of time attributable to any changes, additions and/or omissions directed by Contractor except to the limited extent that Contractor has actually recovered corresponding cost reimbursement, compensation, damages or extensions of time from the Owner under the Contract Documents for such changes, additions and/or omissions and then only to the extent of the amount, if any, which Contractor on behalf of the Subcontractor, actually received from the Owner on account of such delay, obstruction, hindrance or interference. The preceding sentence shall not apply in a situation in which Contractor directed the performance of changes, additions and/or omissions by Subcontractor notwithstanding express language in the General Contract clearly indicating that Contractor is not entitled to recover a corresponding cost reimbursement, compensation, damages or extensions of time from the Owner.

**Inspection  
& Defective  
Work**

**ARTICLE X.** The Subcontractor shall at all times provide sufficient, safe and proper facilities for the inspection of the Work by Contractor, the Architect, and their authorized representatives in the field, at shops or at any other place where materials or equipment for the Work are in the course of preparation, manufacture, treatment or storage. The Subcontractor shall, within twenty-four (24) hours after receiving written notice from Contractor to that effect, proceed to take down all portions of the Work and remove from the premises all materials whether worked or unworked, which the Architect, Contractor, Owner or any of its design consultants shall condemn as unsound, defective or improper or as in any way failing to conform to this Agreement or the Plans, Specifications or other Contract Documents, and the Subcontractor, at its own cost and expense, shall replace the same with proper and satisfactory work and materials and make good all work damaged or destroyed by or as a result of such unsound, defective, improper or nonconforming work or materials or by the taking down, removal or replacement thereof.

**Failure to  
Prosecute, etc.**

**ARTICLE XI.** Should the Subcontractor at any time, whether before or after final payment or completion of the Work, refuse or neglect to supply a sufficiency of skilled workers or materials of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any act or omission the stoppage, impede, obstruct, hinder or delay of or interference with or damage to the work of Contractor or of any other contractors or subcontractors on the Project, or fail in the performance of any of the terms and provisions of this Agreement or of the other Contract Documents, or should the Architect, Contractor, Owner or any of its design consultants, determine that the Work or any portion thereof is not being performed in accordance with the Contract Documents, or should there be filed by or against the Subcontractor a petition in bankruptcy or for an arrangement or reorganization, or should the Subcontractor become insolvent or be adjudicated a bankrupt or go into liquidation or dissolution, either voluntarily or involuntarily or under a court order, or make a general assignment for the benefit of creditors, or otherwise acknowledge insolvency, then in any of such events, each of which shall constitute a default hereunder on the Subcontractor's part, Contractor shall have the right, in addition to any other rights and remedies provided by this Agreement and the other Contract Documents or by law, at one time or in phases at Contractor's discretion, after three (3) days written notice to the Subcontractor mailed or delivered to the last known address of the latter, (a) to perform and furnish through itself or through others any such labor or materials for all or any portion of the Work and to deduct the cost thereof from any monies due or to become due to the Subcontractor under this Agreement, (b) to terminate the employment of the Subcontractor for all or any portion of the Work, and/or (c) enter upon the premises and take possession, for the purpose of completing all or any portion of the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon as Contractor may select, all of which the Subcontractor hereby authorizes Contractor to employ and/or communicate with any person or persons in connection with the completion of the Work and/or to provide all the labor, services, materials, equipment and other items required therefor. In case of Contractor taking action under this Article, including termination of the employment of the Subcontractor, the Subcontractor shall not be entitled to receive any further payment under this Agreement until the Work shall be wholly completed to the satisfaction of Contractor, Owner and the Architect 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 the difference to Contractor. Such cost and expense shall include, not only the cost of completing the Work to the satisfaction of Contractor and the Architect and of performing and furnishing all labor, services, materials, equipment, and other items required therefore, but also all losses, damages, costs and expenses, (including legal fees and disbursements incurred in connection with 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), and disbursements sustained, incurred or suffered by reason of or resulting from the Subcontractor's default. Should Contractor take action by effectuating the provisions of this paragraph, and should it subsequently be determined that such action, including a termination effectuated by the terms of this Article, was improper, such termination shall be treated as a termination for convenience pursuant to Article XX below. Subcontractor hereby transfers and assigns to Contractor the all rights under agreements that Subcontractor may have with subcontractors to Subcontractor, suppliers and vendors in connection with the Work or the Project, which transfers and assignments may be accepted at Contractor's sole discretion in the event that Contractor has taken action under this Article. Subcontractor agrees to fully cooperate with Contractor in pursuing Contractor's rights hereunder and that Contractor shall not be required to defer or delay action taken pursuant to this Article during the pendency of any review, investigation, evaluation or assessment by Subcontractor or its surety.

It is recognized that if the Subcontractor institutes or has instituted against it a case under Title 11 of the United States Code (Bankruptcy Code), such event could impair or frustrate the Subcontractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Contractor shall be entitled to request of Subcontractor or its trustee or other successor adequate assurances of future performance. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Contractor, in addition to any other rights and remedies provided by this Agreement or by law, to terminate this Agreement. Pending receipt of adequate assurances of performance and actual performance in accordance herewith, Contractor shall be entitled to perform and furnish through itself or through others any such labor, materials or equipment for the Work as may be necessary to maintain the progress of the Work and to deduct the cost thereof from any monies due or to become due to the Subcontractor under this Agreement. In the event of such bankruptcy proceedings, this Agreement shall terminate if the Subcontractor rejects this Agreement or if there has been a default and the Subcontractor is unable to give adequate assurance that it will perform as provided in this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

Subcontractor, in addition to any other rights available to Contractor hereunder, agrees to indemnify, hold harmless and defend Contractor from and against any and all claims, demands, suits, damages, judgments, liabilities, costs and expenses (including legal fees and disbursements) arising out of or related to Subcontractor's breach of any term of the Agreement.

**Loss or Damage to Work**

**ARTICLE XII.** Contractor shall not be responsible for any loss or damage to the Work to be performed and furnished under this Agreement, however caused, until after final acceptance thereof by Contractor and the Architect, nor shall Contractor be responsible for loss of or damage to materials, tools, equipment, appliances or other personal property owned, rented or used by the Subcontractor or anyone employed by it in the performance of the Work, however caused.

**Builder's Risk Insurance**

Contractor or Owner shall effect and maintain All-Risk Builder's Risk insurance in accordance with the Contract Documents upon all Work, materials and equipment incorporated in the Project and all materials and equipment on or about the Premises intended for permanent use or incorporation in the Project or incident to the construction thereof, the capital value of which is included in the cost of the Work, but not including any contractors' machinery, tools, equipment or other personal property owned, rented or used by the Subcontractor or anyone employed by it in the performance of the Work.

A loss insured under Contractor or the Owner's All-Risk Builder's Risk insurance shall be adjusted by the Contractor or the Owner as fiduciary and made payable to Contractor or the Owner as fiduciary for the Insureds, as their interests may appear. Contractor or the Owner shall pay Subcontractors their just shares of insurance proceeds received by Contractor or the Owner, and by appropriate agreements, written where legally required for validity, and shall require Subcontractors to make payments to their subcontractors in a similar manner.

**Cleaning Up**

**ARTICLE XIII.** The Subcontractor shall, at its own cost and expense, (1) keep the Premises free at all times from all waste materials, packaging materials and other rubbish accumulated in connection with the execution of its Work by collecting and depositing said materials and rubbish in locations or containers as designated by Contractor from which it shall be removed by Contractor from the Premises without charge, (2) clean and remove from its own Work and from all contiguous work of others any soiling, staining, mortar, plaster, concrete or dirt caused by the execution of its Work and make good all defects resulting therefrom (3) at the completion of its Work in each area, perform such cleaning as may be required to leave the area "broom clean", and (4) at the entire completion of its Work, remove all of its tools, equipment, scaffolds, shanties and surplus materials. Should the Subcontractor fail to perform any of the foregoing to Contractor's satisfaction, Contractor shall have the right to perform and complete such work itself or through others and charge the cost thereof to the Subcontractor.

**Ethics & Compliance**

**ARTICLE XIV.** The Subcontractor shall obtain and pay for all necessary permits and licenses pertaining to the Work and shall comply with all Federal, State, Municipal and local laws, ordinances, codes, rules, regulations, standards, orders, notices and requirements, including but not limited to those relating to safety, storm water management, discrimination in employment, fair employment practices, immigration laws or equal employment opportunity, and whether or not provided for by the Plans, Specifications, General Conditions, or other Contract Documents, without additional charge or expense to Contractor and shall also be responsible for and correct, at its own cost and expense, any violations thereof resulting from or in connection with the performance of its Work. Each requisition for payment shall constitute a representation and warranty that Subcontractor is in compliance with applicable law.

The Subcontractor shall at any time upon demand furnish such proof as Contractor may require showing such compliance and the correction of such violations. The Subcontractor agrees to save harmless and indemnify Contractor from and against any and all loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, costs and expenses, including legal fees and disbursements, caused or occasioned directly or indirectly by the Subcontractor's failure to comply with any of said laws, ordinances, rules, regulations, standards, orders, notices or requirements or to correct such violations therefore resulting from or in connection with the performance of Work.

The Immigration and Nationality Act as amended by the Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for employers to knowingly hire persons who are not authorized to work in the United States. For all employees, employers are required to complete an Employment Eligibility Verification form I-9 which requires the prospective employee to produce documentation that establishes identity and employment eligibility. For more information visit [www.uscis.gov](http://www.uscis.gov), or speak to your attorney. Each subcontractor is solely responsible for properly completing Employment Eligibility Verifications for their own employees.

Subcontractor acknowledges represents and warrants that Subcontractor is aware of and understands IRCA, that Subcontractor is in compliance with IRCA, and that Subcontractor is not knowingly employing workers who are not authorized to work in the United States. Subcontractor agrees that Subcontractor will not employ any worker under this subcontract for whom Subcontractor has not completed and maintained I-9 verification. Subcontractor agrees that if Subcontractor acquires knowledge (constructive or otherwise, including receipt of a "no match" letter from Social Security Administration) indicating that one of Subcontractor's workers on this project may not be authorized to work in the United States, despite Subcontractor having conducted a facially valid I-9 verification, that Subcontractor will exercise due diligence as required by law to confirm authorization status and take appropriate action which may include termination of employment. Subcontractor represents and warrants that they will not subcontract to or utilize labor sources that it knows or has reason to know violate IRCA.

Contractor has a longstanding reputation for honesty and integrity in its business dealings and for its corporate policies promoting lawful and ethical behavior. Contractor is committed to upholding that reputation and has adopted a Standard of Business Conduct Policy Statement which governs the actions of all of its employees. Pursuant to that Policy Statement, Contractor employees are prohibited from accepting bribes or kickbacks in any form and, further, are prohibited from accepting goods or services provided by a subcontractor, supplier or vendor for the personal benefit of the employee, his or her relatives, or any entity in which the employee or his or her relatives has a personal interest. This prohibition includes, but is not limited to; work performed on an employee's residence and applies regardless of whether the beneficiary of the goods or services pays for them. Therefore, if the Subcontractor offers or provides a bribe or kickback to any employee, or offers or provides goods or services to any employee, his or her relatives, or any entity in which the employee or his or her relatives has a financial interest, the Subcontractor will be considered to be in material breach of this Subcontract. Subcontractor undertakes the commitment to advise Contractor of any action by any entity or person associated with the project that Subcontractor believes violates any applicable law, rule or regulation. Subcontractor's violation of any of the foregoing shall be considered as Subcontractor's failure to perform its obligations under the terms and conditions of this Agreement. Such failure shall be considered adequate and justifiable grounds for Contractor to effectuate its rights and remedies under the provisions of Article XI of this Agreement.

The provisions of this Article must be incorporated into any subcontract Subcontractor enters into in connection with the performance of the Work.

**Labor to be Employed**

**ARTICLE XV.** The Subcontractor shall not employ workers, means, materials or equipment or assign work in any manner which may cause strikes, work stoppages or any disturbances by workers employed by the Subcontractor, Contractor or other contractors or subcontractors on or in connection with the Work or the Project or the location thereof. The Subcontractor agrees that all disputes as to jurisdiction of trades shall be adjusted in the manner or by a process that Contractor may require, including, if Contractor so requires, in accordance with any plan for the settlement of jurisdictional disputes to which Contractor may be bound in connection with the Project which may be in effect either nationally or in the locality in which the Work is being done. Subcontractor agrees that it shall assign work consistent with any such plan and shall be bound and abide by all such adjustments and settlements of jurisdictional disputes, provided that the provisions of this Article shall not be in violation of or in conflict with any provisions of law applicable to the settlement of such disputes. Should the Subcontractor fail to carry out or comply with any of the foregoing provisions, Contractor shall have the right, in addition to any other rights and remedies provided by this Agreement or the other Contract Documents or by law, after three (3) days written notice mailed or delivered to the last known address of the Subcontractor, to terminate this Agreement or any part thereof or the employment of the Subcontractor for all or any portion of the Work, and, for the purpose of completing the Work, to enter upon the Premises and take possession, in the same manner, to the same extent and upon the same terms and conditions as set forth in Article XI of this Agreement.

The Project or General Contract may be subject to Federal prevailing wage requirements, such as the Davis-Bacon Act or the Walsh-Healy Act, or other similar laws, statutes or requirements at a state or local level. Subcontractor shall strictly comply with all applicable prevailing wage laws, statutes or requirements and shall maintain such records as necessary to establish the amount of wages and other compensation paid to workers in connection with the Project and shall submit to Turner, as a condition for payment, certified payrolls in the form prescribed by any such laws, regulations or requirements. Subcontractor expressly agrees that the indemnification obligations set forth in Article XIV of this Agreement shall apply to any violations by Subcontractor of any such laws, statutes or regulations and the failure to maintain records as required herein.

**Taxes & Contributions**

**ARTICLE XVI.** The Subcontractor for the Price herein provided, hereby accepts and assumes exclusive liability for and shall indemnify, protect and save harmless Contractor and the Owner from and against the payment of:

1. All contributions, taxes or premiums (including interest and penalties thereon) which may be payable under the Unemployment Insurance Law of any State, Federal Social Security Act, Federal, State, County and/or Municipal Tax Withholding Laws, or any other law, measured upon the payroll of or required to be withheld from employees, by whomsoever employed, engaged in the Work to be performed and furnished under this Agreement.
2. All sales, use, personal property and other taxes (including interest and penalties thereon) required by any Federal, State, County, Municipal or other law to be paid or collected by the Subcontractor or any of its subcontractors or vendors or any other person or persons acting for, through or under it or any of them, by reason of the performance of the Work or the acquisition, ownership, furnishing or use of any materials, equipment, supplies, labor, services or other items for or in connection with the Work.
3. All pension, welfare, vacation, annuity and other union benefit contributions payable under or in connection with labor agreements with respect to all persons, by whomsoever employed, engaged in the Work to be performed and furnished under this Agreement.

In furtherance of, and in addition to the agreements, duties obligations and responsibilities of the Subcontractor with respect to the payment of sales, use, personal property and other taxes set forth in Articles IV and XVI of this Agreement, the Subcontractor agrees to reimburse and otherwise indemnify Contractor and the Owner for any expenses, including legal fees and litigation arising from, or related to the Subcontractor's failure to pay any sales, use, personal property or other taxes based upon labor, services, materials, equipment or other items acquired, performed, furnished or used for or in connection with the Work.

**Patents**

**ARTICLE XVII.** The Subcontractor hereby agrees to indemnify, protect and save harmless Contractor and the Owner from and against any and all liability, loss or damage and to reimburse Contractor and the Owner for any expenses, including legal fees and disbursements, to which Contractor and the Owner may be put because of claims or litigation on account of infringement or alleged infringement of any letters patent or patent rights by reason of the Work or materials, equipment or other items used by the Subcontractor in its performance.

**Disputes**

**ARTICLE XVIII.** The parties recognize that problems and disputes between them may occur and that it is preferable for them to reach an amicable resolution of same without the need to resort to formal dispute resolution procedures. In that regard, they each pledge to participate in good faith in voluntary and non-binding Alternate Dispute Resolution (ADR) procedures in the form of a mediation conducted by a neutral mediator, or such other form as the parties otherwise agree, as a condition precedent to addressing the dispute in any other forum unless Contractor agrees in writing to waive this condition precedent. The procedure for requesting such an ADR shall begin with a written notice of request for ADR delivered by one party hereto to the other. Within 14 days following the receipt of such notice, lead representatives of Subcontractor and Contractor shall meet in an effort to resolve the dispute. In the event that the dispute remains unresolved after the lead representatives meeting, a meeting shall take place between the President of Subcontractor and the General Manager or Operations Manager of Contractor within 20 days thereafter. In the event that the dispute remains unresolved after the President/Manager meeting, the parties shall proceed with ADR procedures described in the Article. However, in the event that such disputes are not resolved by mediation or another ADR procedure as Contractor and the Subcontractor may agree then such disputes shall be resolved any of following forums selected at Contractor's sole discretion either (1) the forum pursuant to which disputes between the Owner and Contractor are to be resolved under the terms of the General Contract, (2) arbitration administered by the American Arbitration Association under the rules pertinent to construction disputes then applicable or (3) in litigation. Furthermore, the Subcontractor agrees that Contractor shall have the exclusive right to join the Subcontractor as a party in any dispute resolution procedure (including without limitation ADR procedures, binding arbitration or other judicial or non-judicial proceeding) in which Contractor may be involved arising out of or in connection with the Project, together with such other subcontractors or parties as may be appropriate, where in the judgment of Contractor the issues in dispute are related to the work or performance of the Subcontractor. In the event that relevant law limits or precludes Contractor's sole discretion in selecting the forum, then the dispute shall be resolved in litigation, unless the Subcontractor is to be joined by Contractor in a proceeding with Owner, in which case the forum shall be as stated in the General Contract. Furthermore, the Subcontractor expressly agrees to waive its right to trial by jury in any dispute involving Contractor and or Contractor's surety. Subcontractor further agrees that in the event that it suffers damages, cost or expenses or otherwise intends to pursue a recovery that arises out of or relates to the performance of work by another subcontractor to or under Contractor, Subcontractor's sole remedy shall be as against that responsible subcontractor and Subcontractor shall not pursue a remedy from Contractor.



Subcontractor shall continue with the diligent performance of Work pursuant to this Subcontract and follow and abide by directions and instructions issued by Contractor during the pendency of any dispute, including dispute resolution procedures, ADR procedures, arbitration or litigation.

All claims, suit or demands by Subcontractor as against Contractor or Owner shall be brought within the earlier of one year following Subcontractor's achieving substantial completion for the Subcontractor's Work or within one year of Contractor's notice of default in the event that Contractor has taken any action in accordance with Article XI, and Subcontractor hereby agrees that all relevant statutes of limitations shall be deemed reduced to such time period, to the fullest extent permitted by law.

**Mechanics'  
Liens &  
Claims**

To the fullest extent permitted by law, Subcontractor for itself and for its subcontractors, laborers and materialmen and suppliers and all others directly or indirectly acting for, through or under it or any of them covenants and agrees that no liens or claims, whether a mechanics' lien or an attested account or otherwise, will be filed or maintained against the Project or Premises or any part thereof or any interests therein or any improvements thereon, or against any monies due or to become due from the Owner to Contractor or from Contractor to the Subcontractor, for or on account of any work, labor, services, materials, supplies, equipment, or other items performed or furnished for or in connection with the Work, and the Subcontractor for itself and its Subcontractors, laborers, and materialmen and suppliers and all others above mentioned does hereby expressly waive, release and relinquish all rights to file or maintain such liens and claims and agrees further that this waiver of the right to file or maintain such liens and claims shall be an independent covenant and shall apply as well to work, labor and services performed and materials, supplies, equipment and other items furnished under any change order or supplemental agreement for extra or additional work in connection with the Project as to the Original Work covered by this Agreement.

If any subcontractor, laborer, materialman or supplier of the Subcontractor or any other person directly or indirectly acting for, through or under it or any of them files or maintains a lien or claim, whether a mechanics' lien or an attested account or otherwise, a mechanic's lien or claim against the Project or Premises or any part thereof or any interests therein or any improvements thereon or against any monies due or to become due from the Owner to Contractor or from Contractor to the Subcontractor, for or on account of any work, labor, services, materials, supplies, equipment or other items performed or furnished for or in connection with the Work or under any change order or supplemental agreement for extra or additional work in connection with the Project, the Subcontractor agrees to cause such liens and claims to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within ten (10) days from the date of the filing thereof, and upon its failure to do so Contractor shall have the right, in addition to all other rights and remedies provided under this Agreement and the other Contract Documents or by law, to cause such liens or claims to be satisfied, removed or discharged by whatever means Contractor chooses, at the entire cost and expense of the Subcontractor (such cost and expense to include legal fees and disbursements). The Subcontractor agrees to indemnify, protect and save harmless Contractor and the Owner from and against any and all such liens and claims and actions brought or judgments rendered thereon, and from and against any and all loss, damages, liability, costs and expenses, including legal fees and disbursements, which Contractor and/or the Owner may sustain or incur in connection therewith.

**Assignment &  
Subletting**

**ARTICLE XIX.** To the fullest extent permitted by law, Subcontractor agrees that it shall not assign, sell, transfer, delegate or encumber any rights, duties or obligations arising under this Agreement including, but not limited to, any right to receive payments hereunder, without the prior written consent of Contractor in its sole discretion and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. In the event Subcontractor assigns, sells, encumbers or otherwise transfers its right to any monies due or to become due under this Agreement as security for any loan, financing or other indebtedness (hereafter "Assignment"), notification to Contractor of such Assignment must be sent by certified mail, return receipt requested, to the Purchasing Manager in charge of the business unit responsible for the construction of the Project and the Assignment shall not be effective as against Contractor until Contractor provides its written consent to such Assignment. Subcontractor agrees that any such Assignment shall not relieve the Subcontractor of any of its agreements, duties, responsibilities or obligations under this Agreement and the other Contract Documents and shall not create a contractual relationship or a third party beneficiary relationship of any kind between Contractor and such assignee or transferee. Subcontractor further agrees that all of Contractor's defenses and claims arising out of this Agreement with respect to such Assignment are reserved unless expressly waived in writing by a duly authorized corporate officer. Subcontractor hereby agrees to indemnify and hold harmless Contractor from and against any and all loss, cost, expense or damages Contractor or Owner has or may sustain or incur in connection with such Assignment.

**Termination  
for Convenience**

**ARTICLE XX.** Contractor shall have the right at any time and for any reason, by written notice to the Subcontractor, to terminate this Agreement without cause and require the Subcontractor to cease work hereunder. In the event of such a termination for convenience, the Subcontractor shall be entitled to payment pursuant to the terms of the Agreement only for all Work performed as of the date of termination, together with reasonable costs of demobilization and such other reasonable costs as may be encountered by the Subcontractor and directly attributable to such termination provided that such amount shall be reduced by all amounts for which Subcontractor is liable or responsible hereunder. However, the Subcontractor shall only be entitled to profit on that portion of the Work actually performed and approved for payment to the date of termination together with retainages held upon payments made prior thereto. Subcontractor waives any claim for loss of anticipated profits or other damages in the event Contractor exercises this clause.

**Guarantees**

**ARTICLE XXI.** The Subcontractor hereby guarantees the Work to the full extent provided in the Plans, Specifications, General Conditions, Special Conditions and other Contract Documents.

The Subcontractor shall expeditiously remove, replace and/or repair at its own expense and at the convenience of the Owner any faulty, defective or improper Work, materials or equipment existing or discovered within one (1) year from the date of the acceptance of the Project as a whole by the Architect and the Owner or for such longer period as may be provided in the Plans, Specifications, General Conditions, Special Conditions or other Contract Documents.

Without limiting the generality of the foregoing, the Subcontractor warrants to the Owner, the Architect and Contractor, and each of them, that all materials and equipment furnished under this Agreement will be of first class quality and new, unless otherwise required or permitted by the other Contract Documents, that the Work performed pursuant to this Agreement will be free from defects and that the Work will strictly conform with the requirements of the Contract Documents. Work not conforming to such requirements, including substitutions not properly approved and authorized, shall be considered defective. All warranties contained in this Agreement and in the Contract Documents shall be in addition to and not in limitation of all other warranties or remedies required and/or arising pursuant to applicable law. Failure of Subcontractor to honor and satisfy the foregoing and any other warranties or guarantees required of the Subcontractor under the Contract Documents, shall constitute a default by Subcontractor.

**Accident  
Prevention &  
Other Policies**

**ARTICLE XXII.** The Subcontractor agrees that the prevention of accidents to workmen and property engaged upon or in the vicinity of the Work is its responsibility. The Subcontractor agrees to comply with all Federal, State, Municipal and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety as shall be applicable to the Work, including, among others, the Federal Occupational Safety and Health Act of 1970 and the Clean Water Act, as amended, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder, and with the safety standards established or imposed during the progress of the Work by Contractor. When so ordered, the Subcontractor shall stop any part of the Work which Contractor deems potentially unsafe, noncompliant or in violation until corrective measures satisfactory to Contractor have been taken, and the Subcontractor agrees that it shall not have nor make any claim for damages growing out of such stoppages. Should the Subcontractor neglect to take such corrective measures, Contractor may do so at the cost and expense of the Subcontractor and may deduct the cost thereof from any payments due or to become due to the Subcontractor. Failure on the part of Contractor to stop unsafe practices shall in no way relieve the Subcontractor of its responsibility therefor.

This Subcontractor acknowledges the receipt of "Contractor's "Corporate Safety, Health and Environmental Policy", "Substance Abuse Policy", "Equal Employment Opportunity" policy and "Policy Statement on Harassment." Subject to applicable law this Subcontractor further agrees to be bound to these policies as a part of the supplemental and special conditions to the contract for construction of the project, including any amendments or modifications of such policies that Contractor may issue at any time. Subcontractor further acknowledges that Contractor endeavors to employ on its projects robust programs with respect to safety and storm water management, as well as compliance with relevant laws and regulations, including, without limitation, OSHA and the Clean Water Act. Such programs may include aggressive measures and requirements, such as reporting, training of personnel and inspections that may be considerably above and beyond minimum standards. Subcontractor agrees to comply with any and all requirements Contractor may impose in connection with such programs and policies, whether as part of this Subcontract or hereafter, and the cost and expense of such compliance shall be borne by the Subcontractor.

In the event that hazardous substances of a type of which an employer is required by law to notify its employees are being used or stored on the site by the Subcontractor, the Subcontractor's subcontractors and anyone directly or indirectly employed or otherwise retained by them or either of them, the Subcontractor shall immediately provide written notice of the chemical composition thereof (including, without limitation, a copy of the applicable Material Safety Data Sheet) to Contractor in sufficient time to permit compliance with such laws by Contractor, other subcontractors and other employers on the site. In the event that the Subcontractor encounters on the site material reasonably believed to be hazardous substances (including, without limitation, asbestos or polychlorinated biphenyl) which has not been rendered harmless, the Subcontractor shall immediately stop Work in the area affected and immediately report the condition to Contractor in writing. Work in the affected area shall resume when such hazardous substances have been rendered harmless or removed as determined by Contractor in its sole and absolute discretion. To the extent of Subcontractor's responsibilities hereunder, Subcontractor does indemnify and save harmless Contractor from and against any and all loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, cost and expenses, including legal fees and disbursements, caused or occasioned directly or indirectly by the Subcontractor in regard to such hazardous substances.

**Assumption of  
Liability &  
Indemnity**

**ARTICLE XXIII.** Throughout this Agreement, the "Indemnified Party(ies)" means Contractor, the Owner, any party required to be indemnified pursuant to the General Contract, and any of their respective officers, agents, servants, or employees, and affiliates, parents and subsidiaries. The Subcontractor hereby assumes the entire responsibility and liability for any and all physical and economic, actual or potential damage or injury of any kind or nature whatever (including death, business interruption or loss of use resulting therefrom) to all persons and entities, whether employees of any tier of the Subcontractor or otherwise, or to all property or as a result of a perceived risk of such damage or injury (including actions taken to avoid or contain such actual or potential damage or injury, whether required or incurred by a public authority or otherwise); caused by, resulting from, arising out of or occurring in connection with the execution of the Work, or in preparation for the Work, or any extension, modification, or amendment to the Work by change order or otherwise. Should any claims for such physical and economic, actual or potential damage or injury (including death resulting therefrom) be made or asserted, whether or not such claims are based upon an Indemnified Party's alleged active or passive negligence or participation in the wrong or upon any alleged breach of any statutory duty or obligation on the part of an Indemnified Party, the Subcontractor agrees to indemnify and save harmless the Indemnified Party from and against any and all such claims and further from and against any and all loss, cost, expense, liability, damage, penalties, fines or injury, including legal fees and disbursements, that the Indemnified Party may directly or indirectly sustain, suffer or incur as a result thereof and the Subcontractor agrees to and does hereby assume, on behalf of the Indemnified Party, the immediate defense of any action at law or in equity which may be brought against the Indemnified Party upon or by reason of such claims and to pay on behalf of the Indemnified Party, upon demand, the amount of any judgment that may be entered against the Indemnified Party in any such action. In the event that any such claims, loss, cost, expense, liability, damage, penalties, fines or injury arise or are made, asserted or threatened against the Indemnified Party, Contractor shall have the right to withhold from any payments due or to become due to the Subcontractor an amount sufficient in its judgment to protect and indemnify the Indemnified Party from and against any and all such claims, loss, cost, expense, liability, damage, penalties, fines or injury, including legal fees and disbursements, or Contractor in its discretion may require the Subcontractor to furnish a surety bond satisfactory to Contractor guaranteeing such protection, which bond shall be furnished by the Subcontractor within five (5) days after written demand has been made therefor.

Nothing in this Agreement shall be deemed to relieve the Subcontractor of its immediate duty to defend any and all Indemnified Parties, as specified in this Agreement, pending a determination of the respective liabilities of the Subcontractor, and the Indemnified Parties, by legal proceeding or agreement.

In furtherance to but not in limitation of the indemnity provisions in this Agreement, Subcontractor hereby expressly and specifically agrees that its obligation to indemnify, defend and save harmless as provided in this Agreement shall not in any way be affected or diminished by any statutory or constitutional immunity it enjoys from suits by its own employees or from limitations of liability or recovery under worker's compensation laws.

IN THE EVENT THAT THE LAW OF THE STATE IN WHICH THE PROJECT IS LOCATED (OR OTHER APPLICABLE LAW) LIMITS THE INDEMNITY OBLIGATIONS OF THE SUBCONTRACTOR, THEN THE INDEMNITY OBLIGATIONS OF THE SUBCONTRACTOR SHALL BE ENFORCED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND THIS ARTICLE SHALL BE CONSTRUED TO CONFORM TO SUCH LAW.

**Insurance****ARTICLE XXIV. Insurance.****A. Required Insurance**

Before commencing the Work, the following insurance coverages from insurance companies satisfactory to Contractor shall be in place and maintained until completion and final acceptance of the Work:

1. WORKERS' COMPENSATION in accordance with laws of the State in which the Work is situated, and EMPLOYERS' LIABILITY INSURANCE in the amount of \$1,000,000.
2. COMMERCIAL GENERAL LIABILITY INSURANCE INCLUDING COMPLETED OPERATIONS, CONTRACTUAL LIABILITY INSURANCE AGAINST THE LIABILITY ASSUMED HEREINABOVE, and including INDEPENDENT CONTRACTOR'S LIABILITY INSURANCE if the Subcontractor sublets to another all or any portion of the Work, Personal Injury Liability, Broad Form Property Damage (including completed operations), and Explosion, Collapse and Underground Hazards, with the following minimum limits:(Coverage shall be equivalent to current ISO Occurrence Form). No exclusions or restrictions for Crane usage will be permitted.

\$ SDS /Occurrence

\$ SDS General Aggregate

Subcontractor has elected to obtain the above insurance coverages set forth in paragraphs 1 and 2 above in the manner set forth in the Subcontractor Election A, B or C (with Subcontractor Election B having a further coverage option that is stated in, and may be elected by checking, Sub-Part B-1 ) that is checked below (Note: only one of Subcontractor Election A, B or C is to be selected, however Subpart B-1 may also be selected but only if Subcontractor Election B is selected):

SDS Subcontractor Election A). The above insurance coverages shall be provided by insurance companies selected by the Subcontractor. Contractor shall have the right, without limitation, to reject any insurance company selected by Subcontractor that has an A.M. Best rating of less than A or Standard and Poor's rating of less than AA or a Moody's rating of less than Aa. This insurance coverage shall include Products and Completed Operations coverage which Subcontractor agrees to maintain for a period equal to the statute of repose in the state in which the project is located. Subcontractor further agrees that it shall require each of its sub-subcontractors to provide the above insurance coverages subject to the terms and conditions set forth below. All costs are included in the Price and are to be paid by the Subcontractor.

or

SDS Subcontractor Election B). The above insurance coverages shall be provided through a consolidated insurance program that insures Subcontractor and its eligible lower tier subcontractors, which program has been made available to Subcontractor by Contractor, as described and with limits of liability, terms and conditions set forth in the Contract Documents, including, but not limited to, the CCIP Manual, and Subcontractor agrees to all terms and conditions therein, and makes all representations and warranties, associated therewith. Subcontractor acknowledges and agrees i) that insurance costs will be incurred to provide the above insurance coverages under the consolidated program; ii) that as opposed to Subcontractor including such insurance costs in the Price and paying such costs directly, the Price does not include insurance costs for the above insurance coverages, iii) that it is more convenient and efficient for Contractor to pay such insurance costs on Subcontractor's and Subcontractor's eligible lower tier subcontractor's behalf, and iv) that Contractor is authorized by Subcontractor to pay such insurance premiums on Subcontractor's behalf and Subcontractor's eligible lower tier subcontractor's behalf.

SDS Sub-Part B-1 to Subcontractor Election B. By checking this further election, Subcontractor agrees that it has selected Subcontractor Election B with respect to providing the above insurance coverages for eligible lower tier subcontractors engaged by or through Subcontractor to the extent permitted by the Contract Documents (including the CCIP Manual), however, Subcontractor agrees that as to Subcontractor itself, the above insurances will be provided by Subcontractor in accordance with the terms and conditions of Subcontractor Election A above. Accordingly, Subcontractor itself shall be deemed an "Excluded Party" with respect to the consolidated insurance program as described in the Contract Documents (including the CCIP Manual). Any other "Excluded Party" lower tier subcontractors (if applicable) with respect to the consolidated insurance program arranged by Contractor shall be required to procure their own insurance coverages at their expense. For Subcontractor's lower tier subcontractors that are not an "Excluded Party", the above insurance coverages shall be provided through the consolidated insurance program as described in Subcontractor Election B to the extent permitted by the Contract Documents (including the CCIP Manual).

Subcontractor represents and warrants that all amounts, information and data that Subcontractor and its lower tier subcontractors has provided or will provide in connection with CCIP applications and other related forms and documents, including estimated payroll and insurance costs, are, or shall be when submitted, true and accurate. Subcontractor represents and warrants that the amount of estimated unburdened payroll (payroll without benefits or overtime, unless the overtime portion is included as required by the regulations of the State in which the project is located) actually used by Subcontractor and its eligible lower tier subcontractors in calculating the Price is \$ SDS ("Initial Payroll Estimate" or "Estimated On-Site Payroll") (if Sub-Part B-1 is elected, this amount only pertains to Subcontractor's eligible lower tier subcontractors). Subcontractor further agrees that all such amounts, data and information, including the estimated unburdened payroll amount used to calculate the Price, shall be to subject to audit and verification if Contractor or the CCIP Administrator elects to do so and Subcontractor agrees to cooperate fully and provide documents and other records requested in connection with such

audit and verification and to cause its lower tier subcontractors to do the same. Subcontractor acknowledges that such amounts, information and data or such other amounts as verified in accordance with the CCIP Manual or through audit may be used to calculate final and interim cost adjustments to the Price and/or payments to Subcontractor (at Contractor's discretion) as described in the CCIP Manual. Contractor and the CCIP Administrator shall not be required to use any amount greater than the foregoing "Estimated On-Site Payroll" as the unburdened payroll amount when calculating such adjustments for Subcontractor and its lower tier subcontractors as described in the CCIP Manual.

or

**SDS** Subcontractor Election C). The above insurance coverages shall be provided through an Owner Controlled Insurance Program (OCIP) as described and with limits of liability set forth in the Contract Documents and Subcontractor agrees to all terms, and makes all representations and warranties, associated therewith.

Subcontractor acknowledges that if any of the above insurance coverages are provided through a consolidated program arranged pursuant to Subcontractor Election B, Subcontractor Election B-1 or Subcontractor Election C, such coverage will not apply to any operations off of the premises (as defined in the CCIP Policy or Manual or OCIP Policy or Manual) and Subcontractor shall provide and maintain the above insurance coverages with respect to off-premises operations. Subcontractor further agrees that in the event that the insurance coverage provided by a consolidated insurance program (Subcontractor Election B or C) is cancelled prior to the completion of the Work, subcontractor shall provide the insurance coverage (set forth in paragraphs 1 and 2). Subcontractor further acknowledges and represents i) that it was not required to select any particular election provided for above and was free to choose Subcontractor Election A if it preferred to apply for and obtain insurance itself, ii) that Subcontractor has reviewed the other Subcontractor Elections available for this Project and has chosen the election selected above, and iii) that Subcontractor has satisfied itself that the Subcontractor Election checked above is preferable to Subcontractor for reasons of convenience, economics and/or coverage afforded.

3. COMMERCIAL AUTOMOBILE LIABILITY INSURANCE covering all owned, non-owned and hired automobiles used in connection with the Work, with the following minimum limits:

Combined Single Limit \$ **SDS**/accident

4. ALL RISK CONTRACTOR'S EQUIPMENT INSURANCE COVERAGE shall be provided by all Subcontractors utilizing a crane or other equipment in connection with the performance of the Work and insured to the full value of equipment.

B. Insurance Conditions

The following terms and conditions are applicable to all insurance:

Before commencing the Work, the Subcontractor shall furnish a certificate(s), satisfactory to Contractor from each insurance company showing that the above insurances (1, 2 Subcontractor Election A, 3 and CGL operations off of the premises under 2 Subcontractor Election B and C, and 4) are in force, stating policy numbers, dates of expiration, and limits of liability thereunder, and further providing that should any of the described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Subcontractor shall advise Contractor of the amount of any Deductible or Self-Insured Retention that exists on any policies of insurance on the face of the certificates provided. Subcontractor shall be responsible for and agrees to pay and/or reimburse Contractor for any such Deductible or Self-Insured Retention.

The Subcontractor shall name the Indemnified Parties and such other entities as may be reasonably requested as additional insureds under the policies of insurance listed in paragraph A maintained by the Subcontractor (with the exception of Workers Compensation insurance), whether during the performance of the Work or any time thereafter. The coverage to be provided to the additional insureds shall be for all liability arising out of the Work. Subcontractor will submit a certificate of insurance and a copy of endorsements to the insurance policies listing all parties required to be named by Subcontractor as additional insureds. Subcontractor hereby waives all rights of recovery from Contractor and the Indemnified Parties, including but not limited to rights of subrogation, with respect to any matter, claim or suit that is required to be covered by insurance to be maintained by Subcontractor pursuant to the Contract Documents.

It is expressly agreed by and between Subcontractor and Contractor that all insurance, whether issued on a primary or excess basis, afforded the additional insureds shall be primary insurance to any other insurance available to the additional insureds and that any other insurance carried by the additional insureds shall be excess of all other insurance carried by the Subcontractor and shall not contribute with the Subcontractor's insurance. Subcontractor further agrees that the amount of insurance available to Contractor and the additional insureds shall be for the full amount of the loss up to policy limits of liability and shall not be limited to the minimum requirements of this Subcontract. Subcontractor further agrees to provide endorsements on its insurance policies that shall state the foregoing; however, Subcontractor's failure to provide such endorsement shall not affect Subcontractor's agreement hereunder.

If the Subcontractor fails to procure and maintain such insurance, if required, Contractor shall have the right, but not the obligation, to procure and maintain said insurance for and in the name of the Subcontractor and the Subcontractor shall pay the cost thereof and shall furnish all necessary information to make effective and maintain such insurance or at Contractor's option, Contractor may offset the cost incurred by Contractor against amounts otherwise payable to Subcontractor hereunder. Subcontractor further agrees that in the event of such failure to procure and maintain such insurance, Subcontractor shall be liable for all amounts which would have been payable pursuant to the insurance required by this Subcontract. If, in Contractor's discretion, Contractor is concerned that any insurance company selected by Subcontractor has, at any time, faced diminished financial strength or that the insurance company may no longer provide the same level of financial strength (such as a decline in an A. M. Best, Standard and Poor's or Moody's rating), Contractor may require that Subcontractor provide replacement insurance coverage through an insurance company satisfactory to Contractor.

IN THE EVENT THAT THE LAW OF THE STATE IN WHICH THE PROJECT IS LOCATED (OR OTHER APPLICABLE LAW) LIMITS THE ADDITIONAL INSURED COVERAGE THAT CONTRACTOR MAY REQUIRE FROM SUBCONTRACTOR, THEN SUBCONTRACTOR SHALL BE REQUIRED TO OBTAIN ADDITIONAL INSURED COVERAGE TO THE FULLEST EXTENT OF COVERAGE AND LIMITS ALLOWED BY APPLICABLE LAW AND THIS CONTRACT SHALL BE READ TO CONFORM TO SUCH LAW.

**Bonds**

**ARTICLE XXV.** The Subcontractor shall furnish to Contractor a performance bond in the amount of \$ **SDS** and a separate payment bond in the amount of \$ **SDS** the form and contents of such bonds and the Surety or Sureties thereon to be satisfactory to Contractor. Such bonds shall be furnished to Contractor within ten (10) calendar days after Subcontractor has executed this Agreement or within such other time period agreed to by Contractor in writing. In the event Subcontractor fails to furnish such bonds to Contractor within the time period as hereinabove provided, such failure shall constitute a default under this Agreement in which event Contractor shall have all of the rights and remedies provided in Article XI hereof with respect to default on the part of Subcontractor including, without limitation, the right to terminate this Agreement.

Without limiting the responsibilities of Subcontractor and its Surety under the terms of this Agreement, Subcontractor and its Surety hereby agree to promptly pay all lawful claims of subcontractors, materialmen, laborers, persons, firms or corporations for labor or services performed or materials, supplies, machinery equipment, rentals, fuels, oils, tools, appliances, insurance and other items furnished, used or consumed in connection with the prosecution of the Work provided for in said Subcontract and any and all modifications thereof, and shall indemnify and save harmless Contractor of and from all liability loss, damage and expense, including interest, costs and attorney fees, which Contractor and/or its Surety may sustain by reason of Subcontractor's or its Surety's failure to do so.

Subcontractor and its Surety hereby agree to execute and deliver to Contractor when requested in connection with the issuance of change orders under this Agreement, Rider "A" amendments (or other documents as Contractor may require) increasing the amount (Penal Sum) of the Payment and Performance Bonds furnished by the Subcontractor. The reasonable premiums or other charges paid by the Subcontractor for the procurement of the Rider "A" amendments will be paid as a change to this Agreement.

**Severability**

**ARTICLE XXVI.** In the event that any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal or otherwise unenforceable pursuant to applicable laws by an authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of provisions of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**Business Enterprise Compliance**

**ARTICLE XXVII.** In the event that the Project or General Contract is subject to any federal, state, or local program(s) requiring Contractor or its subcontractors to meet certain goals or commitments with regard to the award of subcontracts or supply contracts to small and/or disadvantaged businesses, including but not limited to minority owned, woman owned, veteran owned and local businesses, then the provisions of this Article shall apply. Subcontractor acknowledges that: a) the Federal Small Business Program applies if the General Contract is a direct federal government contracts (*i.e.*, contracts awarded by a federal executive agency); b) the Disadvantaged Business Enterprise Program applies to projects that are funded in whole or in part with federal funds, including those funded through a grant awarded to the Owner; c) there are state and local programs that may apply to public projects that are funded by a state or local government; and d) these programs have different eligibility requirements as well as different methods of counting small business, minority, and other designated categories of participation at all subcontracting levels. Subcontractor agrees that it shall fully understand and comply with the rules and regulations of all such programs to the fullest extent applicable to the General Contract, Subcontract or this Agreement.

A. If Subcontractor is or otherwise satisfies the qualifications or requirements of any of the following, or if Subcontractor has in any way represented or given Contractor reason to believe that such is the case: (a) a small business under the Federal Small Business Program (*i.e.*, a small business, a small disadvantaged business (SDB), a HUBZone small business, a service-disabled veteran-owned small business (SDVOSB), a veteran-owned small business (VOSB), or a women-owned small business (WOSB)) (hereinafter collectively referred to as an "SBE"); (b) a Disadvantaged Business Enterprise (DBE), Minority Owned Business Enterprise (MBE), or Woman Owned Business Enterprise (WBE), or the functional equivalent under federal, state, or local law (hereinafter collectively referred to as a "DBE"); or (c) a category or status designated by state or local authorities which otherwise classifies or designates certain business entities, collectively referred to as Local Business Enterprises (LBEs); then Subcontractor acknowledges, represents, agrees and warrants that: (i) Subcontractor in fact has such status and has obtained all required federal, state, or local certifications of such status; (ii) Contractor is relying upon such representation and status to fulfill any and all SBE, DBE or LBE goals or commitments Contractor has made to the Owner and/or a government agency or as otherwise required of Contractor; (iii) Subcontractor shall maintain its status as an SBE, DBE or LBE throughout the performance of the subcontract or purchase order; (iv) Subcontractor immediately shall notify Contractor if there is a change in Subcontractor's status as an SBE, DBE or LBE; (v) Contractor has engaged Subcontractor based on Subcontractor's representation that Subcontractor shall perform in such a manner that 100% of Subcontractor's Work and 100% of the Subcontract value shall be eligible for credit towards Contractor's goals and commitments with regard to the award of subcontracts to SBEs, DBEs and/or LBEs; (vi) Subcontractor shall perform in such a manner that Contractor shall be eligible to receive credit towards Contractor's goals and commitments regarding the award of subcontracts to SBEs, DBEs, and/or LBEs for 100% of the Subcontract value; (vii) Subcontractor will not engage in any effort or take any action that would prevent Contractor from receiving 100% credit; (viii) Subcontractor shall engage in a genuine commercially useful function as defined by law and shall not act as a pass-through to sub-subcontractors, suppliers, or vendors who are not SBEs, DBEs or LBEs; (ix) Subcontractor will not engage in any effort to create the appearance of SBE, DBE or LBE legitimacy or participation when in fact it does not exist; and (x) if Subcontractor awards any of its work through sub-subcontract, purchase order, or otherwise, to an SBE, DBE or LBE, then Subcontractor will do so only in a manner that does not affect the ability to receive credit as described above for 100% of the Subcontract value, including awarding same only to SBE, DBE or LBE sub-subcontractors, suppliers, or vendors if and to the extent necessary to achieve this result.

B. If Subpart A. of this Article is not applicable to Subcontractor, then Subcontractor acknowledges and agrees that the obligations and commitments assumed by Contractor with regard to the award of subcontracts to SBEs, DBEs and/or LBEs, have likewise been assumed by Subcontractor pursuant to this Agreement, including but not limited to meeting or exceeding the same percentage or other requirements or goals for each separate category of SBE, DBE and/or LBE employment in connection with the performance of the Work and satisfying all obligations and responsibilities with respect to reporting and documenting same.

