



Subcontractor No. _____

Phase No. _____

Date _____

SUBCONTRACT AGREEMENT

CONTRACTOR: **Evans General Contractors, LLC**
2710 Old Milton Parkway
Suite 200
Alpharetta, GA 30009

Project Manager: [insert]
Email: [insert]
Phone: [insert]
Fax: [insert]

SUBCONTRACTOR: **Great Subcontractor Co.**
123 Main Street
Any Town, USA 12345

Project Manager/Contact: John Doe
Email: j.doe@greatsubco.com
Phone: 123-456-7891
Fax: 123-456-7891

Tax Identification Number: 12-3456789

WORK: **General Description**

SUBCONTRACT PRICE: **Five Hundred Thousand Dollars and No Cents (\$500,000.00)**

PROJECT: **German Mfg. GA Facility**
123 Main Inds. Street
Any Town, USA 12345

OWNER: **German Mfg.**
123 Main Inds. Street
Any Town, USA 12345

ARCHITECT: **Great Arch. Co.**
123 Main Street
Any Town, USA 12345

MONTHLY BILLING DATE: **20th day of each month**

BONDS
 Required
 Not Required

Should Subcontractor fail to provide a Tax Identification Number above, federal law requires Contractor to withhold additional amounts from any payments owed under this Subcontract Agreement.

Contractor and Subcontractor, with offices at the addresses shown above, enter into this Subcontract Agreement for themselves, their successors and assigns (to the extent an assignment is permitted and authorized per the terms of this Subcontract Agreement) for Subcontractor to provide labor, materials, equipment and/or services in connection with the above-referenced Project for which Contractor has entered into a contract (hereinafter the "Prime Contract") with the above-referenced Owner, Contractor and Subcontractor agreeing as follows:

1. THE WORK.

1.1 Contractor contracts with Subcontractor, as an independent contractor, for Subcontractor to perform, provide, and furnish all labor, supervision, services, design, materials, equipment, tools, documentation, hoisting, transportation, loading and unloading, storage and protection of materials, insurance, taxes, temporary facilities, and all other things necessary to complete the work described in **Exhibit A** in accordance with, as indicated by, and as reasonably inferable from the Subcontract Documents, including all things (whether labor, services, materials, etc.) required, or useful, for completion of the Work in accordance with applicable laws, regulations, codes or other binding governmental requirements and, also, per industry standards to achieve the intended result (the "Work").

1.2 Subcontractor agrees to perform and be responsible for all design and engineering services required by the Subcontract Documents to be performed by Subcontractor for completion of the Work, however, Subcontractor shall not be required to perform, or be responsible for, design or engineering services provided by others under contract with Contractor or Owner. To the fullest extent permitted by law, Subcontractor agrees to defend, indemnify, and hold harmless Owner and Contractor (as well as anyone to whom Contractor is obligated to provide a defense and indemnification, and their agents, servants and employees) from and against any claim, damage, loss, or expense including, but not limited to, attorney's fees and expenses of litigation arising out or resulting from Subcontractor's, Subcontractor's sub-subcontractors/suppliers', or any of their agents' or employees' performance of design and engineering services.

2. SUBCONTRACT DOCUMENTS.

2.1 Subcontractor shall perform Subcontractor's duties and obligations as set forth in the Subcontract Documents. The Subcontract Documents are defined as, and consist of: this Subcontract Agreement and all exhibits attached hereto; the Prime Contract and all exhibits attached thereto and all documents included and incorporated therein and/or binding upon Contractor thereunder including, but not limited to, general conditions and special conditions, and any modifications, amendment, and changes thereto; Project drawings; Project plans; Project specifications; other Project instruments of service (including, but not limited to, studies, surveys, models, sketches, digital

models, and other similar materials); and properly executed and/or approved addenda, changes, and/or modifications to the foregoing including, but not limited to, change orders and change directives.

2.2 The Subcontract Documents are available for review and inspection at Contractor's office; however, the copy of the Prime Contract available to Subcontractor shall be redacted to the extent appropriate to preserve confidential information. Subcontractor acknowledges the Subcontract Documents have been made available to Subcontractor prior to entering into this Subcontract Agreement; and Subcontractor acknowledges, represents, and warrants:

- A. Prior to entering into this Subcontract Agreement, Subcontractor has carefully examined the Subcontract Documents and fully understands the Subcontract Documents including, without limitation, the schedule for completion of the Work and the Project as specified in the Subcontract Documents;
- B. Prior to entering into this Subcontract Agreement, Subcontractor analyzed and compared the Subcontract Documents for the purpose of discovering any errors, inconsistencies or omissions in the Subcontract Documents and to ensure that the Subcontract Documents are in compliance with applicable laws, statutes, ordinances, building codes, rules and regulations; and except as Subcontractor has notified Contractor prior to entering into this Subcontract Agreement, Subcontractor knows of no error, inconsistency, or omission. Subcontract shall bear all costs associated with Subcontractor's failure to detect an error, inconsistency, or omission in the Subcontract Documents applicable to its Work that is not reported to Contractor prior to Contractor and Subcontractor entering into this Subcontract Agreement; and Subcontractor expressly waives Subcontractor's right to assert a claim for an adjustment to the Progress Schedule and/or an adjustment to the Subcontract Price related thereto in complying with Contractor's instructions regarding the same;
- C. Subcontractor shall bear all costs, expenses, and damages associated with and arising from the performance of the Work contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations;
- D. Subcontractor has investigated the nature and condition of the Project;
- E. Subcontractor has familiarized itself with any and all conditions that may affect the Work and the schedule for its completion;
- F. The Subcontract Documents are sufficient for Subcontractor to complete the Work;
- G. Subcontractor enters into this Subcontract Agreement based upon its own investigation and evaluation and

not in reliance upon any representation made by Contractor or any other party; and

- H. Contractor may distribute revisions to the Subcontract Documents (“Update(s)”) through a variety of methods including, but not limited to: email, hand delivery, and posting to an accessible electronic database/server such as sharefile or Viewpoint for Projects (“VFP”). Subcontractor agrees and acknowledges Subcontractor has access to Contractor’s VFP account and agrees to visit the VFP site each time Contractor posts an Update thereto. Subcontractor shall have five (5) calendar days, unless a shorter response time is required by the Prime Contract, from the date Contractor distributes an Update to review and make a written claim for an adjustment to the terms of this Subcontract Agreement including, without limitation, the Subcontract Price, related to the Updates. Subcontractor’s failure to make a written claim to Contractor in accordance with the foregoing timing requirement shall be deemed Subcontractor’s acceptance of the Update without adjustment the terms of this Subcontract Agreement including, without limitation, the Subcontract Price. It is Subcontractor’s duty to review the Subcontract Documents, and to keep itself informed of any Updates thereto, before and during Subcontractor’s performance of the Work.
- 2.3 In performing the Work, Subcontractor agrees to stand in the place of Contractor and assumes all of Contractor’s duties, obligations, and responsibilities under the Prime Contract that Contractor owes to Owner with respect to the Work. Accordingly, Subcontractor (a) agrees to be bound unto the Contractor by the terms of the Prime Contract except that nothing herein shall be construed to be a binding agreement to arbitrate any dispute arising hereunder or otherwise between Contractor and Subcontractor, notwithstanding any provision to the contrary contained in the Prime Contract; and (b) shall be bound by the interpretations and decisions of an Architect, Engineer, and/or the Owner to the same extent Contractor may be bound thereby under the Prime Contract.
- 2.4 Subcontractor shall require Subcontractor’s sub-subcontracts, suppliers, and other vendors comply with the Subcontract Documents and shall include the same in all sub-subcontracts, purchase orders and other contracts and agreements relating to the Project into which Subcontractor enters.
- 2.5 To the extent there is a conflict between this Subcontract Agreement and any other Subcontract Document, this Subcontract Agreement shall control except that if a provision of this Subcontract Agreement irreconcilably conflicts with a provision of the Prime Contract, the provision imposing the greater duty on Subcontractor shall govern.

2.6 No change or modification of this Subcontract Agreement shall be valid or binding upon Contractor and Subcontractor, nor shall any waiver of any term or condition be deemed a waiver of such term or condition in the future, unless such changes or modification or waiver shall be in writing and signed by both the Subcontractor and Contractor.

3. SUBCONTRACT PRICE.

3.1 As full compensation for Subcontractor’s complete performance of the Work in strict conformance with it and the Subcontract Documents and Subcontractor’s compliance with all of Subcontractor’s duties, obligations, and responsibilities under this Subcontract Agreement to Contractor’s satisfaction; Contractor shall pay Subcontractor in current funds the Subcontractor Price stated above, subject to adjustment as expressly provided in this Subcontract Agreement. Notwithstanding the foregoing, in conformance therewith, to the extent Subcontractor is to perform the Work on a unit price basis, the Subcontract Price shall be computed in accordance with the unit prices set forth in **Exhibit B**, based upon actual quantities determined in accordance with the Subcontract Documents. Subcontractor agrees, represents, and warrants the Subcontract Price includes all costs of Subcontractor’s performance of the Work as set forth in the Subcontract Documents including, but not limited to, the costs of any and all labor, supervision, services, materials, equipment, tools, documentation, hoisting, transportation, loading and unloading, storage and protection of materials, insurance, taxes, temporary facilities, and all other things necessary to complete the Work as well as Subcontractor’s overhead and profit.

4. CONDITIONS OF PAYMENT.

- 4.1 Subcontractor shall not be entitled to payment in any amount until Subcontractor has returned to or provided Contractor with: (a) an executed copy of this Subcontract Agreement including, to the extent applicable, completed/filled-in exhibits and (b) a certificate of insurance evidencing Subcontractor’s compliance with the insurance requirements contained in this Subcontract Agreement.
- 4.2 Where the Subcontract Price is a fixed price, within ten (10) calendar days of Subcontractor entering into this Subcontract Agreement, Subcontractor shall submit to Contractor, before submitting its first Payment Application, defined below, or other invoice or billing statement, a schedule of values allocating the Subcontract Price including, but not limited to, associated overhead and profit to the various divisions and/or items of the Work (“Schedule of Values”). Contractor shall have the right to direct the form and of the Schedule of Values and to dictate the documentation and data required of Subcontractor to substantiate the Schedule of Values’ accuracy and validity. Once approved by Contractor, the Schedule of Values shall be used to determine amounts billable by Subcontractor.

4.3 By the 20th of every month in which Subcontractor performs a portion of the Work, or by such other date directed by Contractor, Subcontractor shall submit to Contractor an application for payment for the completed portion of the Work as well as properly supplied and stored materials, provided that and to the extent the Prime Contract allows for payment for stored materials ("Payment Application"). To the extent applicable, Subcontractor's Payment Application shall be prepared in accordance with the Schedule of Values. Contractor shall have the right to direct the form of the Payment Application and to dictate the documentation (including lien waivers and releases) and data required of Subcontractor to substantiate the Payment Application's accuracy and validity. Subcontractor acknowledges Contractor may alter the supporting-documentation requirements (may require additional supporting documents not previously requested from Subcontractor for a prior Payment Application) for Payment Applications during Subcontractor's performance of the Work. Contractor shall have the right to require Subcontractor to change any Payment Application to the extent Contractor disagrees with the percentage of the Work completed by Subcontractor or with the amount of units, labor, or materials provided by Subcontractor or as otherwise necessary to be in conformance with the Prime Contract's requirements. Subcontractor is permitted to submit only one Payment Application per month except to the extent permitted otherwise by Contractor in Contractor's sole discretion. Contractor has the right to reject, or delay until the following month the review, consideration, and approval of any Payment Application submitted by Subcontractor after the foregoing deadline.

4.4 Subcontractor acknowledges Contractor is utilizing the Textura-CPM™ payment management system on the Project and, as such, will utilize the Textura-CPM™ payment management system to administer the payment process under this Subcontract Agreement. Accordingly, Subcontractor's Schedule of Values, Pay Applications, and other required supporting and substantiating documentation shall be uploaded to, entered into, and/or submitted through the same. Subcontractor shall be responsible for any and all fees charged by Textura-CPM™ for the administration of the payment process under this Subcontract Agreement. To the best of Contractor's knowledge, Textura-CPM™ charges a fee equal to, calculated at, 0.18% (18 basis points) of a contract's amount, with a minimum fee of \$50.00 and a maximum fee of \$2,500.00 for administration of the payment process on subcontracts.

4.5 To the fullest extent permitted by law, Contractor has no obligation or duty to make payment to Subcontractor for the Work except to the extent Contractor is paid for the same under the Prime Contract. Accordingly, Contractor's payment obligations to Subcontractor for Subcontractor's performance of the Work are conditional and contingent upon Contractor receiving payment for the Work under the

Prime Contract; and, with receipt of payment from the Owner on account of the Work being a condition precedent to payment by Contractor to Subcontractor, Contractor is only obligated to pay Subcontractor for the Work to the extent, the pro-rata percentage and proportion, Contractor is paid for Subcontractor's Work under the Prime Contract notwithstanding whether a payment bond has been furnished by Contractor (which bond shall in no event obligate the surety thereunder to make payments not due hereunder) and notwithstanding any provisions in the Prime Contract to the contrary (which, without regard to any other provisions herein, shall not be deemed to be incorporated into this Subcontract Agreement for the purpose of determining Contractor's obligations and duties to pay Subcontractor for the Work or for the purpose of determining the timing of such payments by Contractor to Subcontractor). To the fullest extent permitted by law, Subcontractor accepts all risks, financial and otherwise, that Contractor will not receive payment for any and all of Subcontractor's Work under the Prime Contract and releases and waives any claim Subcontractor may have against Contractor for payment for any and all of Subcontractor's Work to the extent Contractor does not receive payment for the same under the Prime Contract. Without limiting the foregoing, Subcontractor acknowledges that the Owner may have the right under the Prime Contract to determine the percentage of the Work completed or the amounts of, number of units, of materials supplied and agrees to be bound by the Owner's determination to the same extent as Contractor is bound by any such determination under the Prime Contract.

4.6 In addition to Contractor's withholding and deduction rights detailed in other provisions of this Subcontract Agreement and the Subcontract Documents, Contractor has the right to withhold from any payment due Subcontractor under this Subcontract Agreement, and any other agreement or contract between Contractor and Subcontractor, an amount sufficient: (a) to defend satisfy and discharge any asserted claim that Subcontractor (or any person providing or performing any portion of the Work) has failed to make payment to for labor, materials, equipment, supplies furnished in connection with the Work, including, but not limited to a failure to pay Subcontractor's sub-subcontractors or suppliers, if any; (b) to defend satisfy and discharge any asserted claim that Subcontractor (or any person providing or performing any portion of the Work) has caused damage to the Work or to any other work on the Project; (c) to complete the Work if it appears to Contractor that the remaining unpaid balance of the Subcontract Price (exclusive of backcharges) is insufficient to cover the cost of completing the Work; (d) to reimburse Contractor for any backcharges incurred as a result of any act or omission by Subcontractor under this Subcontract Agreement; (e) to protect Contractor from Subcontractor's failure to perform the Work as required under the Subcontract Documents, including items of disputed Work; (f) to protect Contractor from

Subcontractor's failure to adhere to and comply with the Progress Schedule; (g) to make good, repair, replace, and restore the Work, or any portion thereof being rejected, nonconforming, or defective and all other portions/items of the Project damaged or destroyed by any faulty, defective, improper or non-conforming portions of the Work or the correction, repair, restoration, or replacement thereof; (h) to protect Contractor from Subcontractor's failure to perform the Work as required under the Subcontract Documents; (i) to protect Contractor from the possible consequences arising out of any third-party claims filed (or potential third-party claims of which Contractor has notice, filed or not, for which Contractor believes are likely to be filed) relating to, or arising out of, the Work or Subcontractor and any other breach or default by Subcontractor under this Subcontract Agreement; and (j) to secure Contractor with respect to any breach or default by Subcontractor or its affiliates, parent company and subsidiaries under any other agreement or contract with Contractor.

4.7 Subcontractor shall hold payments received for the performance of the Work under this Subcontract Agreement as a trust fund to be applied first to the payment of Subcontractor's indebtedness to any person (whether a sub-subcontractor, supplier, laborer, or other) responsible for performance of the Work and Subcontractor's other obligations and duties under this Subcontract Agreement including, but not limited to, payment of all taxes owed and insurance premiums for insurance coverages required hereunder. Contractor shall have the right to contact any and all of Subcontractor's employees, sub-subcontractors, suppliers, and any other person to determine Subcontractor's compliance with Subcontractor's payment obligations.

4.8 Contractor's acceptance of Subcontractor's Payment Application shall not constitute an acknowledgment or acceptance of the Work represented therein as being complete, free from defect, or otherwise satisfactory and/or in compliance with the Subcontract Documents. Payment to the Subcontractor shall in no way relieve the Subcontractor of liability for any defect pertaining to, related to, or arising out of, Subcontractor's Work or any breach of this Subcontract Agreement or failure to comply with the Subcontract Documents; and payment shall not be construed as acceptance of defective, faulty, or improper work or materials.

4.9 In addition to its other obligations and duties hereunder, upon Contractor's demand and as Contractor may require, Subcontractor shall provide evidence and documentation regarding the progress and value of the Work performed and the identity, nature, and extent of all of Subcontractor's obligations and liabilities incurred in connection with the Work and all payments made by Subcontractor on account thereof. Furthermore, in Contractor's sole discretion, Contractor has the right to issue one or more checks which are payable jointly to Subcontractor and any third-party

performing a portion of Subcontractor's Work, whether directly for Subcontractor or one with whom Subcontractor has an agreement or contract including, but not limited to, Subcontractor's sub-subcontractors and/or suppliers. However, under no circumstances is Contractor obligated to make any joint or direct payment; and, in no event shall any joint payment or direct payment be construed to create any (a) contract between Contractor and any third party, (b) obligations from Contractor to such third-party, or (c) rights in such third-party against Contractor.

4.10 To the extent Subcontractor is not a resident of, or registered foreign entity in, the State in which the Project is located, Contractor shall withhold payment, or a percentage thereof, as required by law or as Contractor otherwise deems necessary to protect Contractor for adverse tax liabilities associated with the Work.

5. PROGRESS PAYMENTS.

5.1 Without limiting Contractor's right to direct the form of Subcontractor's Payment Application and, also, to dictate the documentation and data required to substantiate the same prior to receipt of Contractor's approval; at a minimum Subcontractor's Payment Application(s) requesting a progress payment (any request for payment except for a request for final payment of the full unpaid balance of the Subcontract Price) shall be accompanied by the following documents: (a) a sworn statement providing information regarding Subcontractor's sub-subcontractors and suppliers in the form attached hereto as **Exhibit C**; (b) a conditional interim/progress lien waiver in the form attached hereto as **Exhibit D** relating to and concerning the current Payment Application under consideration; and (c) an unconditional interim/progress lien waiver or sworn statement of payment received in the form attached hereto as **Exhibit E** relating to and concerning Subcontractor's prior Payment Application, if any.

5.2 Within ten (10) calendar days of Contractor's receipt of payment under the Prime Contract, Contractor shall pay to Subcontractor all corresponding amounts due under Subcontractor's Payment Application, subject to Contractor's withholding and deduction rights under the Subcontract Documents including, but not limited to, this Subcontract Agreement.

5.3 Retainage shall be withheld from any progress payment becoming due under the terms of this Subcontract Agreement. The amount of retainage withheld from a progress payment shall equal the greater of (a) ten percent (10%) of the progress payment due or (b) the amount of retainage withheld from Contractor by Owner under the Prime Contract with respect to Subcontractor's Work on Owner's corresponding payment to Contractor.

6. FINAL PAYMENT.

6.1 Without limiting Contractor's right to direct the form of Subcontractor's Payment Application and, also, to dictate the documentation and data required to substantiate the

same prior to receipt of Contractor's approval; at a minimum Subcontractor's Payment Application(s) requesting final payment of the full unpaid balance of the Subcontract Price shall be accompanied by the following documents: (a) a sworn statement providing information regarding Subcontractor's sub-subcontractors and suppliers in the form attached hereto as **Exhibit C**; (b) a conditional final lien waiver in the form attached hereto as **Exhibit F** relating to and concerning the current Payment Application under consideration; (c) an unconditional interim/progress lien waiver or sworn statement of payment received in the form attached hereto as **Exhibit E** relating to and concerning Subcontractor's prior Payment Application, if any.

6.2 Final payment, the unpaid balance, of the Subcontract Price shall be made within thirty (30) calendar days (or sooner, to the extent required by law) of the occurrence of the last of the following: (a) Subcontractor's full completion of the Work to the satisfaction of Contractor, Architect, and Owner; (b) Contractor, Architect, and Owner's unqualified acceptance of the Work; (c) full final payment by Owner to Contractor under the Prime Contract on account of the Work; (d) Subcontractor furnishing evidence as Contractor requires that there are no claims, obligations, liens, or liabilities outstanding or unsatisfied for labor, services, materials, equipment, taxes, or other items performed, furnished, or incurred in connection with the Work; (e) delivery of all guarantees, warranties, bonds, instruction manuals, performance charts, diagrams, as-built drawings and similar items, close-out documents, required of Subcontractor or Subcontractor's sub-subcontractors and/or suppliers, including all stamps, approvals, certifications required by law and the Subcontract Documents; (f) Subcontractor providing Contractor a Payment Application for final payment with all required supporting documentation; (g) all close-out documents required under the Subcontract Documents; and (h) the consent of Subcontractor's surety, to the extent Subcontractor is required to provide performance and/or payment bonds under this Subcontract Agreement. The foregoing items (a) through (h) are all express conditions precedent to Contractor's obligation to make final payment to Subcontractor under this Subcontract Agreement notwithstanding whether a payment bond has been furnished by Contractor (which bond shall in no event obligate the surety thereunder to make payments not due hereunder) and notwithstanding any provisions in the Prime Contract to the contrary (which, without regard to any other provisions herein, shall not be deemed to be incorporated into this Subcontract Agreement for the purpose of determining Contractor's obligations and duties to pay Subcontractor for the Work or for the purpose of determining the timing of such payments by Contractor to Subcontractor).

6.3 To the fullest extent permitted by law, Subcontractor's acceptance of final payment shall constitute a waiver and

release by Subcontractor of all Subcontractor's claims, complaints, causes of action, demands, damages, and losses of any kind or nature whatsoever, whether known or unknown, actual or potential, whether arising in law or in equity, which Subcontractor may have, may have had, or may in the future obtain, arising out of, relating to, or associated with the Work, this Subcontract Agreement, and any and all events taking place at the Project. This waiver and release is intended to be a general waiver and release in the broadest form. Subcontractor expressly waives any and all laws and statutes, of all jurisdictions whatsoever, which may provide that a general waiver and release does not extend to claims not known or suspected to exist at the time of receiving final payment.

6.4 Final payment to Subcontractor shall be made in exchange for an unconditional final lien waiver or sworn statement of payment received in the form attached hereto as **Exhibit G**.

7. PROGRESS SCHEDULE.

7.1 Time is of the essence for the performance of the Work. Subcontractor acknowledges any and all provisions of the Subcontract Documents, particularly the Prime Contract, setting-forth milestone or completion dates and any stated consequences resulting to Contractor for the failure to complete the Project on time, whether special, liquidated, or other type or category of damages.

7.2 Subcontractor agrees to commence the Work upon Contractor's direction and to complete the Work in strict accordance with the Progress Schedule, and all subsequent updates and revisions thereto, a portion of which will include a schedule for completion of the Work, and in such order and sequence as Contractor may direct and as will assure the timely completion of the entire Project under the Subcontract Documents. The current version of the Progress Schedule is attached hereto as **Exhibit H**. Subcontractor acknowledges Contractor's right to control and dictate the Progress Schedule and Contractor's right to revise and update the Progress Schedule. Without limiting the foregoing, Subcontractor shall: (a) furnish during all time of the performance of the Work sufficient qualified and competent personnel, qualified supervision, and adequate, conforming and useable materials, equipment, plans, tools and all other things necessary to achieve and maintain a rate of progress in accordance with the Progress Scheduled; (b) order all materials required for the Work's performance so as to avoid delay and minimize the risk that the Progress Schedule will not be achieved; (c) within fifteen (15) calendar days of entering into this Subcontract Agreement, provide Contractor with a list of the major materials and equipment regarding to complete the Work and, for each listed item, provide the name and contact information for the supplier/manufacturer of the same and, also, the date the same is to arrive on-site at the Project; (d) upon request, provide Contractor a copy of any purchase order or agree for the procurement of major materials

and/or equipment; (e) have a Subcontractor-representative attend Contractor's weekly progress meetings during the course of Subcontractor's performance of the Work and, also, such meetings each of the two weeks preceding Subcontractor's commencement of the Work, and as otherwise requested by Contractor.

7.3 Subcontractor shall provide Contractor with scheduling information as requested by Contractor for consideration and use in preparation and/or updating the Progress Schedule including, but not limited to, submitting to Contractor a detailed schedule for the Work (the "Subschedule") that demonstrates Subcontractor's plan to achieve the requirements of the Progress Schedule within ten (10) calendar days of entering into this Subcontract Agreement, for the attached/current Progress Schedule, and within five (5) calendar days of receipt of a revised/updated Progress Schedule from Contractor. Without limiting the foregoing, Subcontractor's Subschedule shall contain information showing the time required to prepare and approve submittals, to fabricate and deliver materials and equipment, and to complete the Work, in accordance with the Progress Schedule and shall include Subcontractor's buyout of, and the delivery and installation of, all major materials and equipment necessary for performance and completion of the Work. Subcontractor shall notify Contractor immediately upon determination of that Subcontractor shall not be able to deliver/perform the Work in accordance with any part of the Progress Schedule.

7.4 Subcontractor waives all rights and claims against Contractor resulting from modification or change of the Progress Schedule; and Subcontractor agrees to comply with the Progress Schedule, including all modifications and changes thereto, without entitlement to an increase to the Subcontract Price including, but not limited to, the provision of weekend, overtime, or off-hour shift work as required to meet milestones and deadlines for the Work, or portions thereof, as set forth therein. Subcontractor expressly waives its right to claim or seek recovery of consequential damages arising out of or related to Subcontractor's performance of the Work or this Subcontract Agreement including, but not limited to, the Progress Schedule or any modification, change, or extension of the Progress Schedule. Subcontractor shall not be entitled to payment or compensation of any kind under this Subcontract Agreement, or otherwise, for direct, indirect or impact damages (including but not limited to the cost of delay, deceleration, or acceleration) arising out of, because of, or resulting from any hindrance, delay, or modification, change, or extension of the Progress Schedule relating to the Work, or changes thereto, from any cause whatsoever, whether such hindrance or delay was foreseeable or unforeseeable or avoidable or unavoidable.

7.5 To the fullest extent permitted by law, in recognition of the difficulty in determining the effect and impact of a delay in

Subcontractor's performance of the Work, Subcontractor shall be fully responsible for all costs and expenses Contractor incurs, or which are claimed by Owner through Contractor, or both, which are attributable to Subcontractor's failure to strictly comply with the Progress Schedule as it pertains to the Work. Furthermore, to the extent Subcontractor, in Contractor's sole determination, delays completion of the Project whether due to a failure to maintain the Progress Schedule, due to the manner in which Subcontractor performed the Work, or otherwise; Subcontractor shall be responsible to Contractor for the same. Such responsibility shall include, but not be limited to, responsibility for any liquidated damages or other damages assessed against Contractor by Owner or any other third-party as a result of thereof. Contractor shall have the right to deduct the amount/cost of such damages from any amounts due Subcontractor under this Subcontract Agreement or any other agreement between Contractor and Subcontractor.

8. COMPLIANCE.

8.1 Subcontractor represents Subcontractor (and Subcontractor's sub-subcontractors/suppliers, and any of their agents or employees, to the extent applicable) is fully licensed and authorized to perform (holds and/or will obtain all necessary licenses, permits, easements, encroachment agreements or other authorizations required) the Work as set forth in the Subcontract Documents under all applicable laws, statutes, ordinances, building codes, rules or regulations; and Subcontractor acknowledges Subcontractor's responsibility for all permits, fees, licenses, assessments, inspections, easement/access/authorization costs, and taxes necessary to complete the Work in accordance with the Subcontract Documents.

8.2 Subcontractor (and Subcontractor's sub-subcontractors/suppliers, and any of their agents or employees, to the extent applicable) shall comply with all statutes, ordinances, rules, regulations, and orders of any governmental or quasi-governmental authority having jurisdiction over the Work or the performance thereof including, but not limited to, those relating to safety (including, but not limited to, the Occupational Safety and Health Act (OSHA) of 1970, as amended, and the Construction Safety Act, as amended, and any successor statutes, laws, rules and regulations thereto), wages, discrimination, equal employment opportunity and immigration (including, but not limited to, the Immigration Reform and Control Act of 1986, as amended, the Immigration and Nationality Act, as amended, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and any successor statutes, laws, rules and regulations thereto as well as the completion of I-9 forms). Such obligation includes Subcontractor (and Subcontractor's sub-subcontractors/suppliers, and any of their agents or employees, to the extent applicable)

providing any and all notices required thereby in accordance therewith.

8.3 Subcontractor shall promptly correct, or have corrected, any violations of any such statutes, ordinances, rules, regulations, and orders of any governmental or quasi-governmental authority having jurisdiction over the Work or the performance thereof committed by Subcontractor, Subcontractor's sub-subcontractors and suppliers, and their agents, servants or employees. Also, upon request, Subcontractor shall provide to Contractor a copy of any and all documents establishing Subcontractor's (and Subcontractor's sub-subcontractors/suppliers', or any of their agents' or employees', to the extent applicable) compliance with Subcontractor's foregoing duties and obligations as set forth in this Article 8.

8.4 To the fullest extent permitted by law, Subcontractor agrees to defend, indemnify, and hold harmless Owner and Contractor (as well as anyone to whom Contractor is obligated to provide a defense and indemnification, and their agents, servants and employees) from and against any claim, damage, loss, or expense including, but not limited to, attorney's fees and expenses of litigation arising out or resulting from Subcontractor's, Subcontractor's sub-subcontractors/suppliers', or any of their agents' or employees' failure to fulfill the duties and obligations as set forth in this Article 8 and from and against any citations, assessments, fines, or penalties resulting therefrom.

9. PERFORMANCE OF THE WORK.

9.1 Subcontractor represents it is a sophisticated contractor which possesses a high level of experience and expertise in the business administration, construction and supervision of work of the size, complexity and nature of the Work and will perform the Work with the care, skill and diligence of such a contractor, and Subcontractor shall use Subcontractor's best skills, efforts, and judgment in the performance of the Work. Subcontractor shall perform the Work in a good and workmanlike manner strictly in accordance with the Subcontract Documents. Subcontractor shall perform the Work under the general direction of Contractor and to the satisfaction of Contractor, Architect, and Owner; provided, however, Subcontractor shall not thereby be relieved of Subcontractor's duty to supervise Subcontractor's Work or to perform the Work in accordance with the Subcontract Documents. In performance of the Work, Subcontractor agrees to comply with Contractor's Stipulations. Contractor's Stipulations are attached hereto as **Exhibit I**.

9.2 Subcontractor shall coordinate the performance of the Work with Owner, Contractor, and all others with whom coordination is necessary for completion of the Work and the Project including, but not limited to, all of Contractor's other subcontractors and suppliers, all governmental authorities and agencies with jurisdiction over the Project, and any and all third-parties impacted by the Project. As part of its duty to coordinate, Subcontractor shall take all

possible precautions to protect its Work and the work, materials, and supplies of Contractor any other subcontractor or tradesmen working on the Project. To the extent Subcontractor damages its Work or the work of others, Subcontractor shall be responsible for the correction of the same by performance of the necessary corrective work or by paying therefor. Contractor shall have the right to deduct the cost of any necessary corrective work from any amounts due Subcontractor under this Subcontract Agreement or any other agreement in place between Contractor and Subcontractor.

9.3 Subcontractor shall be responsible for the accurate layout of Subcontractor's work and, also, shall be responsible for dimensions related to items of the Work and shall make any corrections or changes to dimensions to make the Work properly fit and result in the perfect alignment of finished surfaces, at no additional cost and within the Subcontract Price. Subcontractor shall be responsible for the accuracy of Subcontractor's work and for any loss or damage caused by Subcontractor's failure to properly set out, layout, measure, or otherwise perform the Work correctly.

9.4 Subcontractor shall provide quality materials and workmanship conforming to the Subcontract Documents and good industry practices and shall make the Work available for observation and inspection at Contractor's or Owner's request. Within twenty-four (24) hours after receiving written notice from Contractor, Architect, and/or Owner, Subcontractor shall proceed to take down and remove all portions of the Work which Contractor, Architect, and/Owner shall have condemned as unsound, improper, or in any way failing to conform with the Subcontract Documents; and Subcontractor shall redo or perform the Work in a proper and satisfactory manner and to make good all Work and all other portions/items of the Project damaged or destroyed thereby. Contractor's, or another's, failure to discover and notify Subcontractor of a defective or non-conforming portion of the Work, at the time the Work or any portion thereof is performed or completed, shall not relieve Subcontractor of its responsibility for redoing or replacing the defective or non-conforming Work and all damages resulting therefrom. Should Owner elect to accept defective or non-conforming Work, Contractor may require an appropriate and equitable adjustment in the Subcontract Price.

9.5 If Subcontractor encounters conditions at the Project that are (a) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Subcontract Documents and, consequently, impact Subcontractor's performance of the Work or (b) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Subcontract Documents and, consequently, impact Subcontractor's performance of the Work, Subcontractor shall promptly provide notice to Contractor before the conditions are disturbed and in no

event shall such notice be provided later than three (3) calendar days after Subcontractor first encounters/observes the conditions. Contractor shall promptly investigate such conditions reported to Contractor and shall provide Subcontractor instruction as to how to proceed with performance of the Work. Should Subcontractor fail to report differing conditions as required by this Section 9.5, Subcontractor shall have no claim or right of recovery or redress against Contractor related to the same; Subcontractor's failure to report the differing conditions constituting a waiver by Subcontractor, and Subcontractor shall accept full responsibility and liability for and all risk associated with the continued performance of the Work.

10. SUBMITTALS.

10.1 Subcontractor shall prepare or obtain and promptly submit to Contractor all drawings, shop drawings, erection drawings, schedules, samples, product data, catalog cuts, laboratory and inspection reports, engineering calculations, and other documents and things as may be required by the Subcontract Documents or as otherwise necessary for the proper performance of the Work ("Submittal(s)") in accordance with the Progress Schedule and, to the extent not addressed in the Progress Schedule, in sufficient time to prevent and avoid any delay in the delivery and installation thereof and the progress of the Work and the construction of the Project. Preparation and submission of Submittals shall be at Subcontractor's cost and expense and shall not be a basis for a claim to increase the Subcontract Price. Approval of Submittals by Contractor, Architect, or Owner shall not relieve Subcontractor of Subcontractor's obligation to perform the Work in strict accordance with the Subcontract Documents unless Subcontractor shall have conspicuously and specifically noted any deviation of the Submittal from the requirements of the Subcontract Documents on the Submittal and obtained the express written consent of Contractor to deviate from the Subcontract Documents.

11. SAFETY.

11.1 Subcontractor shall perform the Work in a safe and reasonable manner so as to avoid injury, loss or damage to persons or property. Subcontractor agrees that Subcontractor shall be responsible for the prevention of accidents to workers engaged upon or in the vicinity of the Work through the establishment of a Project-specific safety program. Subcontractor shall establish and implement safety measures, policies, and standards conforming to those required or recommended by governmental, quasi-governmental, and other authorities having jurisdiction over the Project and by Contractor and Owner including, without limitation, any requirements imposed by the Subcontract Documents. Subcontractor shall provide all safety equipment and devices for their employees and agents (and shall require the same of Subcontractor's sub-subcontractors) as required by OSHA for the proper completion of the Work, with OSHA-compliant equipment

and devices. Subcontractor shall provide a designated competent person as required by OSHA standards on-site at all times during the performance of the Work.

11.2 All lifting equipment brought on-site by Subcontractor (or Subcontractor's sub-subcontractors, to the extent applicable) shall have a current annual certification from a registered accredited third-party inspector; Contractor shall not allow any lifting equipment lacking such a certification to be unloaded at the Project and, if unloaded, shall have the right to demand its immediate removal from the Project. All operators of lifting equipment shall have a current operator's certification card for the particular piece of equipment. If the Work requires the use of crane signalmen, all signalmen involved in the performance of the Work must have a current crane signalmen certification card.

11.3 At a minimum, Subcontractor shall conduct weekly jobsite safety meetings for Subcontractor's employees and agents and Subcontractor's sub-subcontractor's employees and agents. Such meetings will deal with safety subjects appropriate to jobsite operations being conducted and other legally required safety subjects, and Subcontractor shall submit documentation of these meetings to Contractor on the same day, such documentation to include a sign-in sheet of attendees. Subcontractor shall cause Subcontractor's employees and agents and Subcontractor's sub-subcontractor's employees and agents attend all safety meetings as required and directed by Contractor.

11.4 Subcontractor shall stop immediately any part of the Work Contractor deems unsafe until corrective safety measures satisfactory to Contractor have been taken; however, Contractor's failure to stop Subcontractor's unsafe practices shall not relieve Subcontractor of Subcontractor's responsibility therefor. Subcontractor shall correct promptly (and in all cases within twenty-four (24) hours) all violations of any unsafe practices of Subcontractor and shall correct promptly (and in all cases within twenty-four (24) hours) all violations of safety statutes, ordinances, rules, regulations, or orders committed by Subcontractor and Subcontractor's sub-subcontractors/suppliers, or any of their agents or employees, to the extent applicable.

11.5 A copy of Subcontractor's written safety program, including the names of Subcontractor's competent person or persons designated by Subcontractor and certification for Subcontractor's employee training in accordance with Section 1926.21 of the Occupational Safety and Health Standards for the Construction Industry and a copy of all current material safety data sheets (MSDS) applicable to Subcontractor's Work (for any substances being used or created on the jobsite for which MSDS are required), if any, will be provided to Contractor prior to Subcontractor beginning Work on the Project; and Subcontractor shall maintain a separate copy of the same on-site at the Project at all times during the course of Subcontractor's performance of the Work. Upon request, Subcontractor

shall provide to Contractor a copy of any and all documents establishing Subcontractor's (and Subcontractor's sub-subcontractors/suppliers', or any of their agents' or employees', to the extent applicable) compliance with Subcontractor's duties hereunder including, without limitation, all certificate cards. Subcontractor shall report to Contractor any accident involving damage to property or injury to person which occurs in the performance of the Work; such report shall be made within one (1) calendar days of the accident, must be in writing, and must contain or have as an attachment thereto any and all accident reports required by any governmental, quasi-governmental or other authority having jurisdiction over the Work.

11.6 To the fullest extent permitted by law, Subcontractor agrees to defend, indemnify, and hold harmless Owner and Contractor (as well as anyone to whom Contractor is obligated to provide a defense and indemnification, and their agents, servants and employees) from and against any claim, damage, loss, or expense including, but not limited to, attorney's fees and expenses of litigation arising out or resulting from Subcontractor's, Subcontractor's sub-subcontractors/suppliers', or any of their agents' or employees' failure to fulfill the duties and obligations as set forth in this Article 11 and from and against any citations, assessments, fines, or penalties resulting therefrom.

12. CLEANUP.

12.1 Subcontractor shall at all times during performance of the Work keep the portion(s) of the Project on which Subcontractor is performing the Work clean and free from waste materials, packaging, and debris resulting from the Work by collecting and removing the same on a daily basis or as otherwise directed by Contractor. Upon completion of its Work, or as directed by Contractor, Subcontractor shall remove all Subcontractor's tools, equipment, scaffolds, temporary structures, and surplus materials. Subcontractor shall, prior to the Owner's final inspection of the Project, participate in the final clean and preparation of the Work and the Project for the Owner's approval. Upon completion of its Work in each area of the Project, Subcontractor shall sweep and make the Work and the immediate area, vicinity, of the Project "broom clean".

12.2 The foregoing cleaning requirements are a minimum duty of Subcontractor and may be expanded upon by other Subcontract Documents. If Subcontractor does not perform cleaning and cleanup in accordance herewith, Contractor shall give Subcontractor a verbal notice to comply. If Subcontractor fails to comply immediately, Contractor has the right to perform the cleaning and clean-up; and Subcontractor shall be responsible to make payment to Contractor for Contractor's incurred costs. Subcontractor also agrees to accept pro-rata responsibility, as determined by Contractor in good faith, for cleaning and clean-up of unclean conditions which the Contractor is unable to assign to a particular responsible subcontractor. Contractor shall

have the right to deduct the cost of any necessary cleaning and clean-up work from any amounts due Subcontractor under this Subcontract Agreement or any other agreement between Contractor and Subcontractor.

13. GUARANTEES AND INDEMNIFICATION REGARDING THE WORK.

13.1 Subcontractor warrants and guarantees the Work to the full extent required by the Subcontract Documents and by other applicable law. Subcontractor further warrants that all materials and equipment furnished hereunder will meet the requirements of the Subcontract Documents and warrants that such materials and equipment are both merchantable and fit for the purpose for which they are to be used under the Subcontract Documents. Subcontractor further warrants that the material and equipment furnished hereunder will be of good quality and new unless otherwise required or permitted by the Subcontract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Subcontract Documents; and all statutes, ordinances, rules, regulations, and orders of any governmental or quasi-governmental authority having jurisdiction over the Work. Subcontractor shall promptly advise (but in no event later than seven (7) calendar days after first observance of the condition) Contractor in writing of any condition Subcontractor encounters that may in any way affect the Subcontractor's proper performance of the Work or Subcontractor's obligation to fully warrant the Work. Failure to so notify Contractor shall constitute a waiver of any claim by Subcontractor that the warranty or guarantee for any Work is limited by any condition that was known or reasonable discoverable by Subcontractor.

13.2 Without limiting the foregoing in any respect or imposing a time limitation thereon, and without limiting any other responsibility or liability of Subcontractor with respect to the Work, Subcontractor shall, at Subcontractor's expense, make good, repair, replace, and restore any faulty, defective, improper or non-conforming portions of the Work discovered within one (1) year of the date of acceptance of the Project by the Architect and/or Owner, or within such longer period as may be provided for in the Subcontract Documents and other applicable law. Subcontractor shall also, at Subcontractor's expense, make good, repair, replace, and restore and all other portions/items of the Project damaged or destroyed by any faulty, defective, improper or non-conforming portions of the Work or the correction, repair, restoration, or replacement thereof. Subcontractor shall commence any and all such warranty/guarantee work within seven (7) calendar days of Subcontractor's receipt of notice from Contractor that the same is required, and Subcontractor shall diligently pursue all such warranty/guarantee Work through to completion in as expeditious a manner as possible. If Subcontractor fails to comply with its warranty/guarantee obligations under this Article 13,

Contractor has the right to perform the required warranty/guarantee Work; and Subcontractor shall be responsible to make payment to Contractor for Contractor's incurred costs therefor, and Contractor shall have the right to deduct the cost of the required warranty/guarantee Work from any amounts due Subcontractor under this Subcontract Agreement or any other agreement between Contractor and Subcontractor.

13.3 Without limiting any other obligations of Subcontractor under this Article 13, and without limiting any other responsibility or liability of Subcontractor with respect to the Work, upon completing the Work, or at such earlier time as directed by Contractor, Subcontractor shall execute and deliver to Contractor a Subcontractor Warranty Form, the same being attached hereto as **Exhibit J**.

13.4 Should Owner or any other person assert a claim or institute a lawsuit, civil action, or other proceeding against Contractor or Contractor's agents, employees, or servants (or against anyone to whom Contractor is obligated to provide a defense and indemnification, and their agents, servants and employees) involving the manner or sufficiency of the performance of the Work (jointly herein referred to as a Claim); to the fullest extent provided by law and at Contractor's option, Subcontractor shall either (a) assume the defense of the Claim at Subcontractor's sole expense, or (b) pay Contractor, on demand, the expenses incurred in defending the Claim including, but not limited to, attorney's fees, expert witness fees, court costs, and similar costs. To the fullest extent permitted by law, Subcontractor agrees to defend, indemnify, and hold harmless Owner and Contractor (as well as anyone to whom Contractor is obligated to provide a defense and indemnification, and their agents, servants and employees) from and against any claim, damage, loss, or expense including, but not limited to, attorney's fees and expenses of litigation arising out, resulting from, or related to any Claim. To the fullest extent permitted by law, Subcontractor is bound by the obligations of defense and indemnification in this Article 13 regardless of the nature of the Claim, legal theory upon which the Claim is based, and Contractor's or other indemnitee's negligence; except Subcontractor shall not be obligated to indemnify an indemnitee if the Claim arises in negligence and is finally adjudicated to have arisen solely from the negligence of such indemnitee.

14 CHANGES TO THE WORK.

14.1 Contractor reserves the right to make changes to the Work, without notice to any surety and without invalidating this Subcontract, by written order ("Change Order"). Subcontractor shall perform the changed Work in accordance with the terms of this Subcontract Agreement and any Change Order. Agreement on any Change Order shall constitute a final and full settlement of all claims and matters relating to the change in the Work which is the subject of the Change Order, including all costs and

expenses (however categorized) and any and all adjustments to the Subcontractor Price and Progress Schedule. In no event shall Subcontractor be entitled to recover compensation or damages of any type or nature whatsoever on account of such changed Work (or impacts caused or resulting therefrom) except as expressly allowed in a Change Order.

14.2 With respect to any Change Order, the Subcontract Price shall be adjusted only by the net amount of any direct savings and direct costs (plus an allowance for overhead and profit at the maximum rate of ten percent 10%) attributable to the change in the Work which is the subject of the Change Order, and the time for performance of the Work, modification to the Progress Schedule, shall be adjusted only to the extent required by the change in the Work which is the subject of the Change Order, subject to the following limitations: (a) for a Change Order involving a change to the Prime Contract, the Subcontract Price and adjustment to the Progress Schedule shall be limited to the amount and extent of adjustments allowed Contractor under the Prime Contract for the same (less, for the Subcontract Price adjustments, any mark-up or similar adjustment allowed Contractor under the Prime Contract); (b) where the Work impacted by the Change Order is unit-price Work, the Subcontract Price adjustment shall be limited to such unit prices; and (c) the amount allowable for overhead and profit shall be calculated based upon the net amount of the Subcontractor's direct savings and costs. For purposes of this provision, direct savings and direct costs are limited to the actual amount of the following: (a) cost of materials, including tax and delivery; (b) costs of labor, including social security and fringe benefits required by a labor agreement; (c) insurance premiums, bond premiums, and actual rent, or the equivalent cost for equipment owned by Subcontractor. Except for a Change Order not involving a change to the Prime Contract, any cost or expense not recoverable by Contractor from Owner under the Prime Contract as a change shall not be recoverable by Subcontractor hereunder.

14.3 Should the parties be unable to agree upon the terms of a Change Order, Contractor may elect to issue Subcontractor a Construction Change Directive. A Construction Change Directive is a written order directing Subcontractor to perform a change in the Work or other item of Work which may, or may not, represent a change in the Work. In a Construction Change Directive, Contractor may propose an adjustment to the Subcontract Price, Progress Schedule, or both. Upon receipt of a Construction Change Directive, Subcontractor shall proceed with the subject item of Work. If Subcontractor agrees with the Construction Change Directive, and the proposed adjustment to the Subcontract Price, Progress Schedule, or both set forth therein; Subcontractor shall indicate the same by signing the Construction Change Directive, in which case the parties shall enter into a Change Order on said terms for the subject item of Work. If Subcontractor does not agree with the

Construction Change Directive, and the proposed adjustment to the Subcontract Price, Progress Schedule, or both set forth therein, Subcontractor shall: (a) notify Contractor of the same within five (5) business days of receipt of the Construction Change Directive; (b) unless other documentation is required under the Subcontract Documents, keep and present an itemized accounting of Subcontractor's direct savings and direct costs (as defined in Section 14.2) incurred in performing the subject item of Work, with supporting data; and (c) present Subcontractor's foregoing-detailed accounting to Contractor within five (5) business days of Subcontractor's completion of the subject item of Work for Contractor's review and determination as to whether Subcontractor is entitled to a change to this Subcontract Agreement other than as proposed in the Construction Change Directive. In the event Subcontractor does not agree with the Construction Change Directive and fails to comply with the foregoing requirements, Subcontractor's compliance-failure shall be deemed a waiver of Subcontractor's right to make a claim for adjustment of the Subcontract Price and/or Progress Schedule for the subject item of Work.

14.4 In no event shall Subcontractor proceed with changed Work without a Change Order or Construction Change Directive issued by Contractor under this Article 14, and Contractor shall not be liable to Subcontractor for any costs or expenses incurred by Subcontractor or delays encountered by Subcontractor absent a Change Order or Construction Change Directive. Notwithstanding the foregoing, Contractor may direct Subcontractor to perform incidental changes in the Work that do not involve adjustments in the Subcontract Price or Progress Schedule.

15 INDEMNIFICATION, INSURANCE, AND BONDS

15.1 To the fullest extent permitted by law, Subcontractor agrees to defend, indemnify and hold harmless Contractor and Owner, and their agents, employees and servants, and all other parties Contractor is required under the Prime Contract to defend, indemnify and hold harmless, from and against any claim, cost, expense or liability (including attorney's fees, expert witness fees and all other expenses of similar nature) arising out of, resulting from, or occurring in connection with the Work including, without limitation, any breach of this Subcontract Agreement and any acts or omissions of the Subcontractor or Subcontractor's sub-subcontractors or their agents, employees or servants or others for whom Subcontractor may be liable whether deemed negligent, accidental or intentional and whether or not caused in part by the active or passive negligence or other fault of a party indemnified hereunder; provided, however, Subcontractor's indemnity hereunder shall not arise if the claim, cost, expense or liability is caused by the sole active negligence of a party indemnified hereunder. To the fullest extent permitted by law, Subcontractor's foregoing obligations shall be binding upon Subcontractor regardless of the nature of the claim

asserted and even if an indemnitee is alleged, or proven, to have acted negligently.

15.2 In any and all claims against a party indemnified hereunder by any employee of Subcontractor, anyone directly or indirectly employed, retained, hired, consulted, or otherwise utilized by Subcontractor or anyone for whose acts Subcontractor may be liable, the foregoing indemnification obligation shall not be limited in any way by any limitation on the amount or type of damage, compensation, or benefit payable by or for Subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.

15.3 Subcontractor shall defend, indemnify and hold harmless Contractor and Owner, from and against any claim, loss, expense or liability (including attorney's fees, expert witness fees, court cost, and similar costs) arising out of or resulting from infringement or alleged infringement of any patent rights attributable to the Work, except to the extent that Owner may have assumed responsibility therefore under the Prime Contract.

15.4 Subcontractor hereby agrees that One Hundred Dollars and No/Cents (\$100.00) of the Subcontract Price constitutes the separate consideration for Subcontractor's indemnity obligations as set forth in this Subcontract Agreement and which may otherwise arise by law or equity as a result of Subcontractor's performance of the Work. Such amount shall be deemed paid out of Subcontractor's first Payment Application paid under this Subcontract Agreement.

15.5 To the extent the Prime Contract requires Contractor to require Contractor's subcontractors to procure and maintain insurance of certain types and limits, Subcontractor agrees to procure and maintain such insurance on such limits. In addition thereto, and without limiting the foregoing requirement of compliance with the Prime Contractor's terms regarding subcontractor-insurance, and also in the absence of any subcontractor-insurance requirements in the Prime Contract, Subcontractor agrees to procure and maintain the following insurance:

- A. Commercial General Liability (CGL) Insurance on Insurance Services Office (ISO) Form CG 00 01, or comparable form providing equivalent coverage on an "occurrence" basis acceptable to Contractor, including products and completed operations; broad form property damage coverage including explosion, collapse and underground hazards coverage; bodily injury; and personal and advertising injury with limits no less than \$1,000,000 per occurrence, and with a deductible not to exceed \$25,000. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be twice the required per occurrence limit. Subcontractor's CGL policy must include blanket contractual liability coverage, protective liability (including independent contractors

and subcontractors) and defense outside of all limits, and Subcontractor's CGL carrier must be rated "A-VII" or better in the A.M. Best Rating Guide. Subcontractor shall have Contractor, Owner, and all other persons required by Contractor added as additional insureds under Subcontractor's CGL policy using ISO Forms CG 20 10 11 85 or CG 20 10 10 01 **and** CG 20 37 10 01 or comparable form acceptable to Contractor; and the coverage provided to the additional insureds shall be as broad as Subcontractor's coverage under Subcontractor's CGL policy. Subcontractor must comply with the foregoing requirements for the duration of Subcontractor's performance of the Work and through the expiration of the last-expiring statute of repose, or legal equivalent, applicable to any claim which may be brought relating to Subcontractor's Work.

- B. Automobile Liability Insurance on ISO Form Number CA 00 01 covering Symbol 1 (any auto), or comparable form providing equivalent coverage for any auto (including, but not limited to, all owned, leased, hired, and non-owned autos) acceptable to Contractor, with limits no less than \$1,000,000 per accident for bodily injury and property damage liability.
- C. Workers' Compensation and Employer's Liability Insurance as follows: (a) Workers' Compensation as required by statute for the state or states where Subcontractor's Work is to be performed including, without limitation, bodily injury, occupational illness and disease coverage; (b) Applicable Federal (e.g. Longshoremen's) as required by statute; and (c) Employer's Liability Insurance protecting Subcontractor against common law liability in the absence of statutory liability, for personal injury arising out of the employment or master-servant relationship, with limits no less than \$1,000,000 per accident/disease.
- D. Professional Liability Insurance, if Subcontractor's Work includes provision of any design services/responsibility or provision of professional services including, without limitation, structural, electrical, plumbing, mechanical and fire suppression/sprinkler system design or surveying work, written on a claims-made with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. Such policy shall include coverage for attorney's fees and investigation and shall have a policy retroactive date that coincides with or precedes the Subcontractor's Work on the Project (including subsequent policies purchased as renewals or replacements). Subcontractor shall keep such insurance in force for the duration of Subcontractor's performance of the Work and through the expiration of the last-expiring statute of repose, or legal equivalent, applicable to any claim which may be

brought relating to Subcontractor's provision of professional services.

- E. Contractors' Pollution Legal Liability Insurance on an occurrence basis, including coverage for transportation and disposal of waste/hazardous substances (including disposal site) with a microbial matter or similar endorsement (including bodily injury and property damage) that provides coverage for mold and other indoor air quality exposures with limits no less than \$1,000,000 per occurrence or claim, \$2,000,000 policy aggregate, and with a deductible not to exceed \$10,000. Subcontractor shall keep such insurance in force for the duration of Subcontractor's performance of the Work and through the expiration of the last-expiring statute of repose, or legal equivalent, applicable to any claim which may be brought relating to Subcontractor's Work or 10 years, whichever is longer.
- F. Umbrella/Excess Liability Insurance over Employer's Liability Insurance, Commercial General Liability Insurance, and Automobile Liability Insurance coverages afforded by the primary policies described above, with limits no less than \$5,000,000 each occurrence over the specified limits and in the aggregate annually per project site, and with a deductible not to exceed \$10,000. Such policy shall name Contractor, Owner, and other persons to be indemnified under the Subcontract Agreement as additional insureds with coverage for the acts and omissions of Contractor, Owner, and other persons to be indemnified under the Subcontract Agreement to the same extent as if Contractor, Owner, and other persons to be indemnified under the Subcontract Agreement were the named insured under such policy and shall be primary to any policy or policies carried by or available to Contractor, Owner, and other persons to be indemnified under the Subcontract Agreement.

15.6 If Subcontractor maintains broader coverage and/or higher limits than the minimums required under this provision, Contractor requires and shall be entitled to the broader coverage and/or higher limits maintained by Subcontractor. All of Subcontractor's insurance shall be primary to any policy or policies carried by or available to Contractor, Owner, and other persons to be indemnified under the Subcontract Agreement; and, accordingly, any insurance carried by Contractor shall be excess of Subcontractor's insurance. Except for Subcontractor's Workers' Compensation Insurance and Professional Liability Insurance, to the extent required, Subcontractor's insurance shall include Contractor, Owner, and other persons to be indemnified under the Subcontract Agreement as additional insured to the maximum extent allowed by law (this general requirement not reducing or limiting more specific obligation stated in this Subcontract Agreement).

15.7 Subcontractor, for itself and its insurers, waives all rights against Contractor, Owner, and other persons to be indemnified under the Subcontract Agreement for recovery of damages to the extent such damages are covered by any insurance whether maintained by Subcontractor, for Subcontractor's benefit, or otherwise. Such a waiver (a waiver of subrogation) shall be part of Subcontractor's insurance policies, added by endorsement if necessary.

15.8 Subcontractor shall furnish a certificate of insurance, in form satisfactory to Contractor, showing Subcontractor has in place the required insurance. Said certificate of insurance shall also provide, and confirm, that Subcontractor's insurance shall not be cancelled or changed except upon thirty (30) calendar days prior written notice to Contractor or as otherwise required by the Prime Contract. Subcontractor acknowledges and agrees no payment shall be owed Subcontractor by Contractor under this Subcontract Agreement until the required certificate of insurance is provided to, and accepted by, Contractor, the same being a condition precedent to Contractor's payment obligations under this Subcontract Agreement. For Subcontractor's reference only, an exemplar certificate of insurance is attached hereto as **Exhibit K**.

15.9 Subcontractor's materials and equipment which will become an integral part of the completed Project, either on the site or in the building, are covered by a Builder's Risk and Extended Coverage insurance policy containing certain deductibles and exclusions taken out either by Contractor or Owner at no expense to Subcontractor; however, to the extent a claim is made under such policy, Subcontractor shall be responsible to pay a proportionate share of any deductible. Except to the extent of any proceeds received by Contractor for the benefit of Subcontractor under the Builder's Risk policy, Contractor shall not be liable or responsible for any loss or damage to the Work, and Subcontractor shall be responsible for the correction or restoration of any such loss or damage to the Work or to the work of Contractor or any other of Contractor's subcontractors, resulting from the operations or activities of Subcontractor, or its sub-subcontractors, agents, employees or servants hereunder. It is Subcontractor's responsibility to carry its own Risk Insurance against all losses not covered by the Builder's Risk policy, a copy of which will be made available for Subcontractor's inspection at Contractor's home office upon request. Notwithstanding any coverage available under the Builder's Risk policy, during performance and until final acceptance of the Work by Contractor and Owner, Subcontractor shall be responsible for and obligated to protect its finished and unfinished Work, all materials, equipment and other things against damage, loss or injury. In the event of damage, loss or injury, Subcontractor shall promptly replace or repair such Work, material and equipment.

15.10 Contractor shall not be liable or responsible for loss or damage to the equipment, tools, facilities, scaffolds or

other personal property owned, rented or used by Subcontractor, or its agents, employees or servants, in the performance of the Work. Subcontractor shall maintain such insurance and shall take such protective action as Subcontractor deems desirable with respect to such property.

15.11 Subcontractor's compliance with its insurance obligations under this Subcontract Agreement shall not in any manner limit or qualify the liability and obligations of Subcontractor. The acceptance of any certificate of insurance evidencing the insurance coverages and limits required in this Subcontract Agreement does not constitute approval or agreement by Contractor that the insurance requirements have been met or that the insurance policies shown therein are in compliance with Subcontractor's obligations under this Subcontract Agreement. All of Subcontractor's sub-subcontractors and suppliers must carry insurance equal in kind and amount required of Subcontractor under this Subcontract Agreement.

15.12 Subcontractor ___shall___ shall not [select one] furnish, within ten (10) calendar days of Subcontractor's assent to the terms of this Subcontract Agreement as provided in Section 19.9, a performance bond and payment bond, each in an amount equal to the Subcontract Price, with surety(ies) satisfactory to Contractor. Subcontractor acknowledges the Subcontract Price includes the initial price for such payment and performance bonds. Subcontractor agrees that no payment shall be due hereunder until such conforming bonds are received by Contractor. Subcontractor's surety under any bond required under this Subcontract Agreement shall be bound by the dispute resolution terms provided for herein including, but not limited to, terms pertaining to forum and venue to the same extent as Subcontractor and expressly consents to the jurisdiction of any such court and to the authority of any such arbitrator. The penal sum of such bonds shall automatically be adjusted to equal the amount of any Change Order without need for further notice to Subcontractor's surety(ies).

16 DEFAULT AND TERMINATION

16.1 Subcontractor shall be in default under this Subcontract Agreement should Subcontractor at any time: (a) fail to supply the labor (including, but not limited to, adequate and competent supervision, and skilled workmen), materials, equipment, and other things required to perform the Work in accordance with the Progress Schedule and in accordance with the terms of the Subcontract Agreement governing the same; (b) fail to perform or fulfill any obligation, duty, covenant, condition or other term of this Subcontract Agreement; (c) cause stoppage, delay of, or interference with the Project; or (d) become insolvent, file for bankruptcy (voluntary or involuntary), or be placed into receivership or have a similar condition and control placed over Subcontractor. After a default occurs, Subcontractor agrees it shall be considered to be in default until such time

as Contractor determines, in Contractor's discretion, and provides written notice to Subcontractor that Subcontractor is no longer in default.

16.2 Should Subcontractor default on its obligations under this Subcontract Agreement, Contractor shall, after giving Subcontractor notice of default and forty-eight (48) hours within which to cure, without prejudice to any other right to remedy available to Contractor under this Subcontract Agreement, have the right to exercise any one or more of the following remedies: (i) require Subcontractor work overtime (including Saturday and Sunday work), add additional shifts, and otherwise expedite performance of the Work to overcome any delay or failure to adhere to the Progress Schedule; (ii) remedy, or attempt to remedy, Subcontractor's default by whatever means Contractor deems necessary or appropriate, and deducting the cost thereof (plus an allowance for administrative costs equal to Fifteen Percent (15%) of such costs) from any monies due or to become due to Subcontractor hereunder; (iii) after giving Subcontractor an additional forty-eight (48) hours' notice (at any time following the expiration of the initial forty-eight (48) hours' notice and cure period), terminate this Subcontract, without thereby waiving or releasing any rights or remedies against Subcontractor or Subcontractor's surety(ies), and by itself or through others take possession of the Work, and all materials, equipment, facilities, plant, tools, scaffolds and appliances of Subcontractor relating to the Work, for the purpose of completing the Work and securing to Contractor the payment of Contractor's costs (plus an allowance for administrative costs equal to Fifteen Percent (15%) of such costs) and any other damages under this Subcontract Agreement and for the breach thereof, it being intended that Contractor shall, for the stated purposes, be the assignee and have a security interest in such property of Subcontractor, and Contractor may file, at any time, this Subcontract Agreement as a financing statement under the applicable law; and (iv) recover from Subcontractor all losses, damages, penalties and fines, whether actual or liquidated, direct or consequential and all reasonable attorney's fees, expert witness fees, court costs, and similar costs suffered or incurred by Contractor by reason of or as a result of Subcontractor's default. Subcontractor shall not be entitled to further payment for the Work when Subcontractor is in default. Should Contractor terminate this Subcontract Agreement due to Subcontractor's default, Subcontractor shall assign all purchase orders, sub-subcontracts, and other contracts or agreements relating to the Work to Contractor to the extent Contractor requests such assignments. Subcontractor agrees to incorporate such provisions in Subcontractor's agreement with suppliers and sub-subcontractors to effectuate this provision. Nothing herein shall create any duty on the part of Contractor to accept the assignment of any purchase order, sub-subcontract, or other contract or agreement hereunder.

16.3 Should the Work be completed by the exercise of the first or second foregoing remedies under 16.2, and after acceptance of the Work by Owner and payment therefore by Owner, Contractor shall pay Subcontractor any balance of the Subcontract Price in accordance with the other terms of the Subcontract, provided Subcontractor has otherwise satisfied all other conditions precedent to receipt of final payment under this Subcontract Agreement; however, if the cost of completion of the Work, plus the allowance for administrative burden, together with any other damages or losses sustained or incurred by Contractor shall exceed the undisbursed balance of the Subcontract Price, Subcontractor and its guarantors, surety(ies) shall pay the difference within fifteen (15) calendar days of written demand from Contractor.

16.4 The foregoing remedies under Section 16.2 shall be considered separate and cumulative and shall be in addition to every remedy given hereunder or under the Prime Contract or now or hereafter existing at law or in equity. Subcontractor's guarantor(s) and/or surety(ies) agree to be bound to Contractor with respect to such remedies notwithstanding any conflicting provision in another document.

16.5 Should any termination for default under Section 16.2 (iii) be determined to be invalid, improper or wrongful, such termination shall be deemed to have been a termination for convenience as provided in Section 16.9 below.

16.6 Except as limited herein, Subcontractor shall have the rights and remedies available at law or in equity for a breach of this Subcontract Agreement by Contractor. However, any default by Contractor shall be deemed waived unless Subcontractor shall have given Contractor written notice thereof within three (3) calendar days after the occurrence of such default. Subcontractor shall not be entitled to stop the Work or terminate this Subcontract Agreement on account of Contractor's failure to pay an amount claimed due hereunder so long as Subcontractor shall not have adequately substantiated the amount due or so long as a good faith dispute exists as to the amount due. Subcontractor shall not be entitled to stop the Work on account of a default by Contractor unless such default shall have continued uncured for more than seven (7) calendar days after Contractor's receipt of written notice of such default from Subcontractor, specifying in detail the nature of the default and the steps necessary to cure the claimed default.

16.7 Subcontractor shall not be entitled to terminate this Subcontract Agreement except for a substantial and material breach by Contractor, which shall have continued uncured for at least thirty (30) calendar days after (a) Subcontractor shall have stopped work in accordance with the requirements hereof, and (b) Contractor shall have received thirty (30) calendar days written notice of Subcontractor's intention to terminate this Subcontract Agreement.

16.8 If Owner terminates the Prime Contract or stops Contractor's work on the Project for a reason other than the sole default of Contractor, Contractor may terminate this Subcontract Agreement or stop the Work for the same reason, and Subcontractor's rights and remedies, including the basis for payment of any unpaid portion of the Subcontract Price, shall be limited to the corresponding rights and remedies available to Contractor under the Prime Contract. If Owner terminates the Prime Contract, this Subcontract Agreement shall be assigned to the Owner pursuant to the terms of the Prime Contract if the Owner requests and accepts the assignment.

16.9 Without notice to any guarantor(s) or surety(ies), if any, and in addition to Contractor's other rights hereunder, Contractor may terminate this Subcontract Agreement for Contractor's convenience upon providing Subcontractor written notice of the same. If terminated for convenience, Subcontractor shall be entitled to be paid all costs of the Work provided hereunder prior to receipt of notice of the termination, including reasonable and necessary costs of termination, and said payment being a final payment shall be made upon Subcontractor's compliance with, and in accordance with, the provisions of this Subcontract Agreement. Without limiting the foregoing or any other provision of this Subcontract Agreement, in no event shall Subcontractor be entitled to consequential damages or loss of profits on portions of the Work not yet performed.

16.10 Subcontractor agrees and acknowledges that Contractor entering into this Subcontract Agreement may be subject to Owner's or the Project Architect's or Engineer's approval; and, should any necessary approval be withheld by Owner or the Project Architect or Engineer, this Subcontract Agreement shall be treated as *void ab initio* and Contractor shall have no liability to Subcontractor for any Work performed in furtherance of the Project's construction as a result thereof.

17 DISPUTES

17.1 If a claim is filed in court or arbitration against Contractor pertaining to the Project, the Work, or any other claim impacting Subcontractor's right to payment for the Work; Contractor shall be entitled to join Subcontractor in that proceeding and Subcontractor expressly agrees to its joinder therein. If Contractor is prohibited (by law, court order, or any other reason) from joining or elects not to join Subcontractor in such a proceeding pertaining to the Project, the Work, or any other claim impacting Subcontractor's right to payment for the Work; Subcontractor hereby expressly agrees to remain bound by the outcome of any such litigation, arbitration, or other proceedings to the same extent Contractor is bound thereby; and this includes without limitation Subcontractor being bound by any decision or outcome reached on any pass-through claim, whether up-stream or down-stream in nature. Furthermore, without limiting the foregoing, Subcontractor agrees that it may be joined in a mediation,

litigation, or arbitration involving common issues of law or fact between Contractor and any person or entity. The foregoing agreement to mediate or arbitrate and other agreement to mediate or arbitrate with an additional person or entity duly consented to by the parties to this Subcontract Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

17.2 Subcontractor shall continue to perform the Work, and all its obligations under this Subcontract Agreement, pending resolution of any dispute between Subcontractor and Contractor, or that otherwise arises out of the Work or this Subcontract Agreement.

17.3 Each and every claim, such as for, but not limited to a Change Order for extra work or an extension of time which pertains to a claim, Contractor may submit to Owner under the Prime Contract must be made by Subcontractor to Contractor within the earlier of five (5) calendar days from Subcontractor's receipt of a request from Contractor to perform changes in the Work or the time frame applicable to claims of Contractor against Owner under the Prime Contract.

17.4 Except to the extent Subcontractor is required to give earlier notice of Subcontractor's claim under 17.3 above, Subcontractor shall have five (5) calendar days from any event giving rise to a claim, of any sort, against Contractor, whether arising under this Subcontract Agreement or otherwise, to give written notice of the event to Contractor. That written notice must state that Subcontractor intends to make a claim against Contractor for the event, and the failure to give such notice of the event and Subcontractor's claim shall constitute a waiver of Subcontractor's right to any recovery (monetary or for a modification of the Progress Schedule) therefor.

17.5 All claims, disputes or other matters in question between Contractor and Subcontractor arising out of or relating to the Work, this Subcontract Agreement, or breach thereof, shall initially be decided by Contractor. Contractor shall document Contractor's decision in writing and provide said decision to Subcontractor. Subcontractor shall be deemed to be in agreement with, and expressly agrees to be bound by, Contractor's decision unless Subcontractor, within thirty (30) calendar days of receipt of Contractor's decision, files a demand for arbitration with the American Arbitration Association (AAA) in accordance with AAA's Construction Industry Arbitration Rules. Upon such a filing, and before moving forward with arbitration, Contractor and Subcontractor shall endeavor to settle the dispute by mediation which shall be conducted pursuant to AAA's Construction Industry Mediation Rules, but which need not be conducted by AAA; and the parties agree arbitration shall be stayed to allow sufficient time for the parties to mediate. In the event that the parties do not reach agreement at mediation, and notwithstanding the foregoing requirement for Subcontractor to file a demand for

arbitration with AAA to dispute and challenge Contractor's decision, Contractor may elect whether the claim, dispute or other matters in question shall be decided by binding arbitration or litigation. If Contractor elects to arbitrate the claim, dispute or other matters in question, the arbitration filed by Subcontractor shall proceed in accordance with AAA's Construction Industry Arbitration Rules and shall be conducted Fulton County, Georgia. If Contractor elects to litigate the claim, dispute or other matters in question, Forsyth County, Georgia, shall be the venue and forum, except to the extent Subcontractor is joined in litigation between Contractor and a third-person; and Subcontractor expressly consents to the jurisdiction of the courts of Forsyth County, Georgia. In any litigation or arbitration, Contractor shall be entitled to recover Contractor's reasonable attorney's fees and expenses of litigation or arbitration (including costs associated with experts and the cost of the time devoted to such dispute resolution by Contractor's employees at their standard billing rate).

18 LIENS AND CLAIMS

18.1 Subcontractor shall keep the Project and the lands upon which it is situated free from all mechanic's liens, claims on bonds, and all other claims and/or liens by reason of Subcontractor's Work or of any materials or other things used by Subcontractor, Subcontractor's agents, employees, materialmen, suppliers and sub-subcontractors.

18.2 Subcontractor shall defend, indemnify and hold harmless Contractor, Contractor's sureties and Owner from any lien, claim of lien, bond claim, or claim of any other nature (whether in law or equity) filed or maintained by any laborer, materialmen, sub-subcontractor, supplier, entity or other person directly or indirectly acting for, through or under Subcontractor, against the Project or any portion thereof or any interest therein, or against any monies due or to become due from Owner to Contractor, or from Contractor to Subcontractor, or which may be payable under any bond provided by Contractor relating to the Project. Without limiting the generality of the foregoing Subcontractor shall cause any such lien, claim of lien, bond claim, or claim of any other nature (whether in law or equity) to be satisfied, removed or discharged by bond, payment or otherwise within ten (10) calendar days from the filing.

18.3 If Subcontractor fails to remove, by bond, payment or otherwise, any lien, claim of lien, bond claim, or claim of any other nature (whether in law or equity) or otherwise fails to cause the withdrawal of the same as required by 18.2, Contractor may retain sufficient funds out of any money due or thereafter to become due by Contractor to Subcontractor to pay same and all costs incurred by reasons thereof, and may pay said lien, claim of lien, bond claim, or claim of any other nature (whether in law or equity) out of any funds at any time in Contractor's hands owing to Subcontractor, whether under this Subcontract Agreement or otherwise.

19 MISCELLANEOUS

19.1 Subcontractor agrees to adhere to Contractor's policy of non-discrimination and will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Furthermore, Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

19.2 Subcontractor shall defend, indemnify and hold harmless Contractor and Owner, from and against any claim, loss, expense or liability (including attorney's fees, expert witness fees, court cost, and similar costs) arising out of or resulting from infringement or alleged infringement of any patent rights attributable to the Work, except to the extent that Owner may have assumed responsibility therefore under the Prime Contract.

19.3 Subcontractor shall not assign this Subcontract Agreement, or any monies due or to become due hereunder, or sub-subcontract any part of the Work without the prior written consent of Contractor. No assignment by Subcontractor of any right hereunder shall be effective and any such attempt shall be null and void. If Contractor provides written consent to an assignment of this Subcontract Agreement, in whole or in part, Subcontractor shall not be relieved of Subcontractor's duties and obligations hereunder and shall be and remain fully responsible and liable for the acts and omissions of Subcontractor's assignees. Nothing herein shall prevent any guarantor or surety of Subcontractor from enforcing any right hereunder after the guarantor/surety's acknowledgment of its obligation as guarantor or surety. Any attempted enforcement of such rights in the absence of an express written acknowledgment shall constitute an admission by any guarantor or surety of the guarantor/surety's obligations under its agreement of guarantee or suretyship.

19.4 Subcontractor shall not directly or indirectly employ personnel, means, materials or equipment which is likely to cause strikes, slowdowns, or similar interruptions or disturbances by workers employed by Subcontractor, Contractor or other of Contractor's subcontractors providing labor and materials in connection with the Project. Subcontractor shall exercise control over all Subcontractor's agents, employees and servants engaged in the performance of the Work by Subcontractor; provided, however, Subcontractor shall, to the extent permitted by law, remove or cause to be removed from the Project-site any such agent, employee or servant whose presence is determined by Contractor to be detrimental to the orderly

completion of the Work, Contractor having the authority to demand the immediate and permanent removal of any person from the Project-site. Should Subcontractor employ workers who cause or participate in such strikes, slowdowns or similar interruptions or disturbances, such employment shall be deemed within the control of Subcontractor, and Contractor shall have the rights and remedies for default as provided in this Subcontract Agreement.

19.5 All written notices required to be given by this Subcontract Agreement's terms shall be deemed given if, to the Subcontractor, delivered via email to Subcontractor's Project Manager listed on the face of this Subcontract Agreement and if, to the Contractor, delivered via email to Contractor's Project Manager listed on the face of this Subcontract Agreement and to Contractor's General Counsel, Jared W. Heald, whose email address is jheald@evans-gc.com. Should Subcontractor fail to give notice to both Contractor's Project Manager and General Counsel, the notice shall be deemed defective and of no effect. Either party may designate a different recipient(s) for recipient of notices by providing notice of the same in accordance with this term.

19.6 This Subcontract Agreement, including the documents incorporated herein by reference, embodies the entire agreement between Contractor and Subcontractor and supersedes all prior negotiations, agreements and understandings relating to the subject matter hereof and shall be upon the parties hereto and their legal representatives, successors and assigns, subject to this Subcontract Agreement's terms and conditions. This Subcontract Agreement and the Prime Contract are intended to supplement and complement each other and should be read to be harmonious to the extent possible; however, to the extent a provision or term in this Subcontract Agreement irreconcilably conflicts with a provision or term of the Prime Contract, the provision imposing the greater duty upon Subcontractor shall govern. If any portion of this Subcontract Agreement is held legally invalid or unenforceable, Subcontractor and Contractor

consent and agree that such portion or portions are absolutely and completely severable from all other portions of this Subcontract Agreement, and such other remaining provisions shall constitute the parties' complete agreement. No modification or amendment of this Subcontract Agreement shall be valid or binding upon the parties unless in writing and signed by the party against whom enforcement of the modification or amendment is sought. Furthermore, it is expressly agreed the parties that any waiver of a right or condition under the Subcontract Agreement must be in writing and signed by the waiving-party, and such waiver shall not be deemed a continual or future waiver of the subject right or condition.

19.7 This Subcontract Agreement shall be deemed to be executed in Alpharetta, Georgia, and shall be governed by and interpreted in accordance with the laws in the State of Georgia, excepting its conflicts of law, unless (i) a dispute arises involving the correlative rights and duties of Owner under the Prime Contract and (ii) the Prime Contract stipulates that the law of another state govern, in which event, the Prime Contract will take precedence over this paragraph. Notwithstanding the foregoing, to the extent applicable, the Federal Arbitration Act shall govern and control over any inconsistent provision of Georgia law.

19.8 Except to the extent directed otherwise by Contractors, Subcontractor shall not communicate (verbal, written or otherwise) directly with the Owner. All communications should be directed to Contractor.

19.9 Subcontractor's assent to the terms of this Subcontract Agreement shall be evidenced by Subcontractor's signature hereon or Subcontractor's commencement of the Work. Notwithstanding anything in the foregoing, Contractor may withhold payment until receipt of this Subcontract Agreement executed by Subcontractor.

19.10 This Subcontract Agreement may be executed in counterparts, each of which, a wet-ink signature or a copy thereof, shall be deemed to be an original, shall be enforceable, and shall constitute one and the same agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Subcontract Agreement, thereby representing the undersigned have full authority to bind their respective party to the same, this _____ day of _____, _____.

Evans General Contractors, LLC, Contractor

By: _____ (signature)
_____ (printed name)
_____ (title)

Great Subcontractor Co., Subcontractor

By: _____ (signature)
_____ (printed name)
_____ (title)