



SCOTT + REID

General Contractors

GENERAL PROVISIONS OF SUBCONTRACT AGREEMENT

FOR USE IN OKLAHOMA ONLY

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ARTICLE 1
The Contract Documents and Scope of Work

1.1 The Contract Documents for this Subcontract Agreement (also referred to herein as, the “Subcontract”, the “Agreement”, or the “Subcontract Agreement”) consist of these General Provisions of the Subcontract Agreement, the Subcontract Agreement, including any exhibits or attachments, the contract between the Contractor and Owner (“Prime Contract”) any terms or conditions set forth therein relating to the Work, the drawings, plans, and specifications, issued prior to execution of this Subcontract Agreement and any modifications, change orders, or amendments issued in writing after the execution of the Agreement, all constituting the “Contract Documents”.

1.1.1 Contractor may, at its election, hire Subcontractor from time to time to perform certain Work on various projects as defined by specific Work Orders. In such case and to avoid having to renegotiate the terms and conditions for such Work, these General Provisions will be utilized by the Parties to establish the terms, conditions and obligations of the Parties and shall control unless such terms are specifically modified in the respective Work Orders issued by the Contractor for each project. The Work Orders may, among other things, define the project, its location, the price and scope of the work, and the payment terms. The Subcontractor will perform the Work and will furnish all labor, material, tools, taxes, insurance, equipment, services and supplies as described in such individual Work Orders and as set forth in the General Provisions.

1.1.2 Contractor shall be under no obligation to contract with Subcontractor for any future projects, nor shall Subcontractor be required to accept any future work from Contractor, but if they do enter into an agreement in the future, these General Provisions shall prevail unless specifically modified in writing.

1.1.3 If this Subcontract Agreement is signed before Contractor signs the Prime Contract, this Agreement shall constitute a pre-bid agreement which cannot be canceled by Subcontractor and shall become binding upon award of the Prime Contract to Contractor. If no such Prime Contract is signed by Owner and Contractor, this Subcontract Agreement shall have no further effect.

1.1.4 These General Provisions and Subcontract Agreement are for use only for Projects located in the state of Oklahoma. If the Project is located in another state, Contractor requires, and Subcontractor agrees that, Subcontractor will execute a different form of General Provisions and Subcontract Agreement specific to the state that the Project is located in.

1.2 Subcontractor acknowledges that it has inspected the Project site and has satisfied itself as to the condition of the site, including all risks, hazards, and difficulties in connection therewith. Subcontractor has thoroughly reviewed the Contract Documents and, except to the extent expressly called out to Contractor in writing, believes that there are no ambiguities affecting its Work. If Subcontractor discovers any ambiguities in the Contract Documents, Subcontractor shall immediately in writing call these to the attention of Contractor. If any part of the Work depends on the work of Contractor, the Owner or any other subcontractor, Subcontractor will inspect and immediately report in writing to Contractor any defects or inadequacies discovered in such work which adversely affect or may adversely affect Subcontractor’s Work. If there appear to be any defects, variations or discrepancies of dimensions, quantities or other matters set forth in the plans, specifications or other portions of the Prime Contract, Subcontractor shall immediately notify Contractor in writing of same. Subcontractor will perform all field measurements required for its Work prior to proceeding with such Work. Subcontractor shall immediately notify Contractor in writing of any discrepancy between the measurements set forth in the Contract Documents and the field measurements taken by Subcontractor. Upon receipt of such notice, Contractor will provide written instructions on how to proceed. The failure of the Subcontractor to undertake the obligations of this Paragraph 1.2 or to provide notice to the Contractor written notice within twenty-four (24) hours of Subcontractor’s discovery of any defect, inadequacy or discrepancy, shall be deemed a waiver of any Subcontractor claim relating to same.

1.3 If the Prime Contract states a hierarchy of controlling documents in the event of a conflict, the hierarchy stated in the Prime Contract shall control. If the Prime Contract does not state a hierarchy of controlling documents, then the Subcontract Agreement and these General Conditions shall control over the remainder of the Contract Documents. In the event of a conflict between any of the remaining Contract Documents the most stringent requirement shall control. If Subcontractor commences any Work on the Project, including but not limited to mobilization, Subcontractor shall be deemed to have accepted all terms and conditions set forth in the Prime Contract, Subcontract Agreement and General Provisions, irrespective of whether such documents have been executed by Subcontractor.

1.4 Contractor reserves the absolute right to delete labor, materials, sections of the specifications or any other part, portion or section of the Work from this Subcontract Agreement. In such instance of deleted work, Contractor will provide Subcontractor with a written Change Order setting forth the deleted work and the amount to be deducted from the Subcontract Price. The amount to be deducted from the Subcontract Price shall be the amount specified for the Work on the Schedule of Values or, if no amount is expressly indicated or inferable from Subcontractor’s Schedule of Values, then the amount specified in Subcontractor’s bid, or, if no amount is expressly indicated or inferable from Subcontractor’s bid, then the amount Contractor could reasonably pay for the deleted Work.

1.5 Subcontractor agrees to the electronic delivery of the fully executed Subcontract and other Contract Documents in a .pdf or other electronic file format (which may include email). To the extent the Contract Documents require a Change Order or other document be signed by one or both Parties to this agreement for the document to be

considered effective, Contractor and Subcontractor consent to their signatures being evidenced by handwritten signatures or, by digital or electronic or digital signatures pursuant to the Uniform Electronic Transaction Act or, in the event the Uniform Electronic Transaction Act is found not to apply, any other applicable federal, state, or local statute or ordinance permitting the use of electronic or digital signatures.

1.6 As used throughout this Agreement, the term "day" shall mean a calendar day unless otherwise specifically stated in the Prime Contract.

ARTICLE 2 Payments

2.1 Progress Payments. Unless the Subcontractor is otherwise advised by Contractor, Payment shall be made by Contractor to Subcontractor monthly as the Work is performed in accordance with the following procedures:

2.1.1 On the 20th day of each month (or three (3) days before the date on which Contractor has agreed to submit its application for payment to the Owner, if such date would be earlier in the month) Subcontractor shall submit to Contractor an itemized estimate or invoice of materials incorporated into the Work or suitably stored on the site, and Work completed through the date of the estimate. As it relates to stored materials, Contractor, Architect and/or Owner shall have the right to receive from Subcontractor such data, vouchers, receipts, invoices or other documents or information as they may require verifying the information contained in Subcontractor's estimate. Estimates submitted after the submission date of any month or otherwise not in substantial conformance with the payment procedures set forth herein may be held by the Contractor until the next submission date for processing and until Subcontractor substantially complies with such procedures. If satisfactory to Contractor, the estimate will be incorporated into the Contractor's application for payment and forwarded to the Owner and/or Architect for approval. Subcontractor acknowledges and agrees that Contractor shall have no obligation to pay Subcontractor for Work performed or materials furnished unless Subcontractor strictly complies with the payment procedures contained herein and that Subcontractor's failure to strictly adhere to such procedures shall give rise to the Contractor's right to withhold payment. Subcontractor further acknowledges and agrees that Contractor's acceptance and payment of Subcontractor's previous estimates not in strict compliance with the payment procedures contained herein shall not be deemed as a waiver of such procedures, relieve Subcontractor of its obligation to strictly adhere to such procedures with each future estimate, or prevent the Contractor from withholding payment until Subcontractor strictly adheres to such payment procedures.

2.1.2 To the extent that the Owner recognizes and accepts the Subcontractor's estimate, Contractor will pay Subcontractor the percent of Subcontractor's estimate approved for payment by the Owner, less retainage of ten percent (10%), provided that Contractor is not required to make payments in an amount that would not leave a sufficient balance to cover all obligations of Subcontractor to complete the Work. The Contractor may, at its sole discretion, reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Contract Documents. Any exercise of this option, however, shall not be a waiver of (i) any of the Contractor's rights to retainage in connection with other payments to the Subcontractor (ii) any other right or remedy that the Contractor has under the Contract Documents, at law or in equity.

2.1.3 Title for all materials and Work covered by estimates shall pass to the Contractor (or to the Owner, if the Prime Contract so provides) when the materials are delivered to the site or when the Subcontractor is paid for such materials and Work, whichever is first. However, this provision shall not be considered as relieving Subcontractor from the sole responsibility for all materials and Work for which payments have been made, the restoration of any damaged work, the cost for replacement or damage of the materials due to theft, or the maintaining of insurance thereon which shall continue until Final Completion. Should Contractor elect to submit a claim for any theft or damage to Subcontractor's Work under any applicable Builder's Risk Policy, Subcontractor shall be responsible for the payment of the amount of the deductible.

2.1.4 As an express CONDITION PRECEDENT to Subcontractor's right to receive payment from Contractor for Work performed pursuant to this Subcontract Agreement, with each estimate for payment, Subcontractor and all of its sub-subcontractors and suppliers shall execute and deliver to Contractor with Subcontractor's request for partial payments, a Conditional Waiver and Release on Progress Payment conditioned only on receipt of payment and releasing all claims and causes of action the releasing Party may have or claim to have against Contractor and Owner through the date of the execution of said release, SAVE and EXCEPT for those claims which the releasing Party shall specifically list on said release and describe in a manner sufficient for Contractor to identify such claim with certainty. With each subsequent request for partial payment, Subcontractor and all its supplier and sub-subcontractors shall execute and deliver to Contractor an Unconditional Waiver and Release and Progress Payment fully and unconditionally releasing all claims and causes of action the releasing Party may have or claim to have against Contractor and Owner through the date of the immediately preceding application for payment. All waivers and releases provided by the Subcontractor, its suppliers and sub-subcontractor shall be on a form agreeable to Contractor and in compliance with applicable laws. Subcontractor is obligated to pay all its subcontractors and suppliers for all Work performed on the Project.

2.2 Final payment will be paid within thirty (30) days of the completion of all punch list work by Subcontractor, acceptance of and payment for the entire Prime Contract by the Owner, provided Subcontractor has invoiced for its retainage, but not before Contractor's receipt of an executed Conditional Waiver and Release on Final Payment from the Subcontractor and its sub-subcontractors and suppliers, as well as Subcontractor's compliance with the requirements of Section 2.5 regarding lien releases and the delivery of any warranties, guarantees, as-built drawings, test

reports, and other close-out documents required by the Contract Documents. In the event Subcontractor is unable to obtain full and final releases from all its sub-subcontractors and suppliers, Contractor may hold all retainage until all time periods for asserting lien and/or bond claims by such sub-subcontractors and suppliers have fully expired, and upon such expiration of time Contractor may release the retainage to Subcontractor.

2.3 Subcontractor acknowledges that, to the fullest extent permitted by law, actual receipt of payment from the Owner to Contractor for any payment (including, without limitation, progress payments, retention, final payment, and payments for changes, extras and claims) for the Work for which Subcontractor is seeking payment shall be an express CONDITION PRECEDENT to Subcontractor's right to receive any such payment. To the fullest extent permitted by law, the foregoing pay-if-paid provision within this Subcontract Agreement (hereinafter referred to as the "Pay-If-Paid" provision) is intended to SHIFT THE RISK OF OWNER'S NON-PAYMENT, from the Contractor to the Subcontractor. Subcontractor hereby knowingly and expressly assumes the risk of the Owner's nonpayment. Subcontractor further acknowledges that to the fullest extent permitted by law, Subcontractor will be paid no more than the amount that Contractor receives from the Owner for the Work and that Subcontractor will be paid no more than the amount, in terms of percentage of Work completed, that Contractor receives from Owner for the Work. In the event the Owner refuses to pay Contractor for any or all portions of Contractor's Payment Application, Subcontractor agrees that Contractor may decide as to how much of the withheld payment is attributable to the Work and Subcontractor is bound by such decision.

2.4 In the event the Pay-If-Paid provision of this Subcontract Agreement is found to be unenforceable for any reason, Contractor agrees that Subcontractor will be paid within a reasonable time following Contractor's receipt of payment from the Owner for the labor and materials provided by Subcontractor. In the event Contractor experiences any problem receiving payment from the Owner, and in the event the Pay-if-Paid provision is unenforceable, Subcontractor agrees to provide Contractor a reasonable length of time to pursue, at Contractor's discretion, any dispute resolution procedure provided in the Prime Contract by law against Owner to enforce Contractor's rights under the Prime Contract and Subcontractor agrees that a period of at least one hundred eighty (180) days following submission of Subcontractor's pay request to Contractor is a reasonable length of time for Subcontractor to wait for payment from Contractor, or fifteen (15) days from Contractor's receipt of payment from the Owner, whichever is sooner, provided Subcontractor has fulfilled all other conditions of payment as set forth herein. Subcontractor further agrees that in the event the Owner fails to pay Contractor, Contractor shall have the exclusive right to develop strategies and exercise such methods it deems appropriate to attempt to recover payment from Owner. Subcontractor agrees that whatever strategy Contractor chooses to employ shall be deemed reasonable.

2.5 At Subcontractor's request, Contractor will provide to Subcontractor information relating to Owner's financial integrity and its ability to pay for the Work under the Contract Documents. Subcontractor's failure to request such financial information or Subcontractor's receipt of such financial information about Owner shall be deemed Subcontractor's satisfaction that Owner has the financial wherewithal and ability to meet Owner's obligations under the Contract Documents. Subcontractor accepts the risk of Owner's failure to pay for the Work Subcontractor performs under the Contract Documents.

2.6 Contractor shall have both the express and legal right of set-off for any sums due Subcontractor under this Agreement or any other agreement between Contractor and Subcontractor against sums owed or claimed to be owed to Contractor by Subcontractor under this Agreement or any other agreement between Contractor and Subcontractor. Contractor may withhold amounts otherwise due under this Agreement or any other agreement between Contractor and Subcontractor to cover Contractor's reasonable estimate of any costs or liability Contractor has incurred or may incur, including fees, costs and expenses for attorneys and consultants, for which Subcontractor may be wholly or partially responsible under this Agreement or any other agreement between Contractor and Subcontractor. Further, payments otherwise due Subcontractor may be withheld by Contractor on account of defective Work not remedied, claims filed, evidence indicating probability of filing of claims, failure of Subcontractor to make payments to its subcontractors, laborers, vendors or suppliers, a doubt that the Work can be completed for the balance then unpaid or within the Contract Time, evidence indicating that Subcontractor is not in good standing with the Oklahoma Secretary of State or the state in which Subcontractor is organized, Contractor's reasonable belief that Subcontractor lacks financial viability to perform under this Agreement, or upon Contractor's belief that it has incurred or is likely to incur damages due to Subcontractor's Work or lack of Work or for any other reason not expressly set forth herein that is included in the Prime Contract whether or not the Owner has actually withheld such funds from the Contractor related to Subcontractor's Work. For purposes of this provision, the phrase "any other agreement between Contractor and Subcontractor" shall be deemed to include any agreement between Subcontractor and Contractor or any joint venture or other entity in which Contractor and/or Subcontractor have an ownership interest for this project or any other project. Where the term "Contractor" is used in this Paragraph 2.6 but only for the purposes of this paragraph, it is understood that such reference shall include Contractor as well as any affiliated company, including, but not limited to, parent companies, other entities sharing common ownership with Contractor, joint ventures, and other partnerships in which Contractor has an interest.

2.7 Contractor reserves the absolute right, but shall be under no obligation, to pay suppliers or laborers of Subcontractor directly and Contractor may deduct same from Subcontractor's Subcontract balance. Contractor maintains the absolute right, in its sole discretion, to issue joint checks at any time made payable to Subcontractor's suppliers,

laborers, vendors or subcontractors and Subcontractor, or to issue checks at any time directly to a supplier, laborer, vendor or subcontractor of Subcontractor, with any such payments constituting payment to Subcontractor under this Agreement.

2.8 Subcontractor shall, at all times, assume responsibility for its personnel assigned to the Project and agrees to strictly comply with all Applicable Laws and obligations as employer with respect to said personnel. Subcontractor shall likewise ensure that each sub-subcontractor entered into in accordance with this Agreement contains language to the effect that such sub-subcontractor shall strictly comply with all Applicable Laws and obligations as employer with respect to all personnel assigned to the Project. If required by the Contract Documents, Subcontractor shall pay its workmen not less than the scale of wages prescribed in the Contract Documents, or not less than the scale prescribed by law in case the Contract Documents provide no such scale, and Subcontractor agrees to make payments at the times prescribed by the Contract Documents or by law. If scale wages are not required on the Project, Subcontractor shall pay its workmen not less than the minimum wages required by applicable labor laws. Should Subcontractor fail to observe this material covenant, Contractor shall have the option to either pay amounts owed such workmen and charge such amount against the Subcontract balance or proceed with termination pursuant to Article 7 of this Subcontract Agreement. Subcontractor agrees that if any governmental agency for whom Work is to be performed or if Contractor, at its discretion, requires certified payrolls, Subcontractor shall provide completed certified payroll reports acceptable to Contractor on such form and format required by the Contractor or such governmental agency. Subcontractor shall provide certified payroll reports with such frequency as may be required by the Contractor, such governmental agency or by Applicable law, as defined herein. If Subcontractor fails to provide the required certified reports, Contractor may, in its sole and absolute discretion, may withhold funds that are otherwise due the Subcontractor pursuant to this Agreement. Subcontractor agrees to indemnify, defend and hold harmless from Subcontractor's failure to comply in any manner with the terms of this Section 2.8.

2.9 Subcontractor shall not assign or transfer this Subcontract or any part or interest herein, including, but not limited to, the right to the proceeds therefrom, without express written consent from Contractor, such consent to be granted or withheld in Contractor's sole discretion. In the event Subcontractor assigns or transfers this Subcontract or any part or interest herein without the express written consent of Contractor, Subcontractor must provide both written and oral notice of the assignment or transfer within twelve hours of the assignment or transfer. Subcontractor and Contractor agree that in any instance in which Contractor may agree to any assignment of the proceeds of this Agreement, even if erroneous or inadvertent, Contractor shall in no manner be liable to any assignee of Subcontractor in any amount in excess of net sums owing Subcontractor hereunder, after deducting any amounts for which Subcontractor may be obligated or indebted to Contractor under this Agreement or under any other agreement, including, but not limited to, claims received by Contractor from Subcontractor's subcontractors, laborers, suppliers or employees. In such instance of assignment, Subcontractor waives any claims against Contractor resulting from Contractor's continued payment to the assignees of Subcontractor, notwithstanding any notice of termination of such assignment. By making an assignment of the proceeds of the Subcontract, Subcontractor agrees to assume full liability for conveyance to assignees of any payments mistakenly, inadvertently or otherwise made or addressed to Subcontractor. **TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS CONTRACTOR FROM ANY CLAIM OR CAUSE OF ACTION OF ANY ASSIGNEE RELATED TO THIS SUBCONTRACT.**

ARTICLE 3

Obligations of Subcontractor; Releases and Affidavits of Payment; Liens

3.1 **Subcontractor Obligations.** The Subcontract Sum includes, and Subcontractor shall pay for, all labor; materials; tools; equipment; supplies; state, federal, local and all other applicable taxes; transportation; storage facilities; offices; telephones; submittals; shop drawings; insurance; competent supervision; safety programs; temporary facilities and all other things necessary, customary, or reasonably inferable from the Contract Documents as necessary for performance the of the Work covered by this Subcontract Agreement. Subcontractor shall promptly pay its sub-subcontractors, laborers, and suppliers upon receipt of payment from Contractor, subject to the Contractor's right to withhold payment as provided herein. As part of the Subcontract Sum, Subcontractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work. All required certificates, tests, test reports, and the like shall be furnished by Subcontractor upon Contractor's request. Subcontractor agrees that this Subcontract shall be construed as a "Lump Sum" contract, as the same is defined in Texas Tax Code Section 3.291 and/or other applicable tax laws, for purposes of sales and use tax treatment. The Subcontract Sum includes any and all applicable and/or necessary taxes, including, but not limited to, state and local sales and use tax. Subcontractor shall be solely responsible for payment of all such taxes.

3.2 Subcontractor agrees and covenants that all monies received by Subcontractor for performance of this Subcontract Agreement shall first be used for the payment of all labor and materials used in the Work. Subcontractor shall ensure that all its sub-subcontractors, laborers, suppliers and employees are at all times timely paid all amounts due in connection with the Work. Subcontractor acknowledges and agrees that any failure to make timely payments to its sub-subcontractors, laborers, materialmen and suppliers in accordance with their respective agreements shall constitute a material breach of this Subcontract Agreement.

3.3 As a **CONDITION PRECEDENT** to the payment of any Pay Application, Subcontractor shall submit such documentation as may be required by the Prime Contract and/or by this Agreement as evidence of the amounts

claimed. Notwithstanding any requirements of the Prime Contract, Contractor may further require Subcontractor to (i) produce a sworn affidavit listing all sub-subcontractors, materialmen and suppliers that have furnished labor, material or subcontracted work to Subcontractor on the Project, along with the amount of each subcontract, purchase order or other contract; (ii) produce all additional documents that Contractor, Owner, or Owner's lender may require as a condition to receipt of payment; (iii) produce waivers of mechanics lien rights (and/or bond claim rights) by Subcontractor and by all persons supplying labor or materials or equipment to Subcontractor on the job through the date of the pay application, such waivers being expressly conditioned upon the receipt of payment for the current pay application and unconditional for amounts received in previous pay application on a form agreeable to Contractor and in compliance with applicable laws and/or provide such other evidence as Contractor may reasonably require as evidence that charges for labor and material have been paid.

3.4 Subcontractor shall neither purchase materials nor incur other debts in Contractor's name without Contractor's prior written authorization.

3.5 Payment to Subcontractor is specifically agreed not to constitute or imply acceptance by Contractor or Owner of any portion of the Work that fails to comply with the Contract Documents or is in any way unacceptable to Owner or Contractor.

3.6 Contractor may withhold amounts otherwise due under this Subcontract Agreement or any other agreement between the Parties, to cover estimates of costs of liability Contractor has incurred or may reasonably incur for which Subcontractor may be wholly or partially responsible under this Agreement or any other agreement between the Parties.

3.7 Samples, Submittals and Shop Drawings. Subcontractor shall deliver directly to Contractor copies of shop drawings, cuts, samples, material lists, and other submissions, including mock-ups and temporary structures required to be approved by Contractor, the Owner or their representatives ("Submittals") in accordance with the Contract Documents and all timeframes established by the Prime Contract, or if no such timeframe is set out in the Prime Contract, within sufficient time so as not to delay performance of the Project and within sufficient time for Contractor to submit the same within the time stated in the Contract Documents. Submittals shall be submitted by Subcontractor in such quantities as may be required by the Contract Documents or, if no quantities are specified, in sufficient quantities as may be requested by Contractor. Contractor's review or approval of any Submittals shall not alter the requirements of the Contract Documents for quality, quantity, finish, dimension, design or configuration or constitute acceptance by Contractor of any method, material or equipment not ultimately acceptable to Owner or relieve Subcontractor from responsibility for errors of any sort or from the necessity of furnishing any Work required by the Contract Documents. Should Subcontractor fail to provide Submittals using the appropriate software mechanism as may be required by the Prime Contract or the Contractor, the Contractor may withhold payment of any amounts that may otherwise be due to the Subcontractor until such Submittals have been properly submitted. After approval, Subcontractor shall furnish final copies for field use as may be requested by Contractor.

3.8 Accounting and Cost Control Records. The Subcontractor shall be accountable for all materials, equipment, and labor being utilized in connection with the Work and shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management of this Agreement. Subcontractor shall retain and preserve all Project documentation for at least ten (10) years after final payment or longer if required by the Prime Contract or Applicable Law. Contractor and/or Owner shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy Subcontractor's Project documentation, including any drawings, proposals, purchase orders, vouchers, memoranda and other data relating to this Agreement or the Project, at any time.

3.9 Layout. Subcontractor shall be responsible for performing its own layout on the Project. Subcontractor shall lay out and shall be strictly responsible for the accuracy of its Work and for any loss or damage to other contractors or subcontractors engaged in work on the site of the Project by reason of Subcontractor's failure to set out or perform its Work correctly. Subcontractor shall exercise prudence so that actual final conditions and details shall result in alignment of finish surfaces that are within industry standard tolerances or within those set forth in the Contract Documents, whichever are greater. Should it become necessary that Contractor perform such layout due to Subcontractor's failure to fulfill its obligation hereunder, Subcontractor will be charged the cost of such layout.

3.10 Use of Materials. If Subcontractor is only required to provide labor on the Project, Subcontractor agrees to use Contractor's materials without waste and agrees to reimburse Contractor for any material ruined or damaged because of its negligence or carelessness. Material furnished by Contractor shall be considered as delivered to Subcontractor when placed at the curb line of the building on the job site in which it is to be used or the place designated by Contractor. The quantities of material used by the Subcontractor shall be reported to the Contractor daily.

3.11 Lien Notices. Subcontractor shall deliver to Contractor within forty-eight (48) hours of Subcontractor's receipt all lien notices or claims related to the Prime Contract, this Subcontract or any other claims or filings received by Subcontractor from any sub-subcontractor of any tier, any laborer, mechanic, or materialmen performing work upon or furnishing materials for the work (a "Lien Claimant"), under applicable lien laws. If Subcontractor wishes to dispute a lien or bond claim filed by any Lien Claimant, Subcontractor shall promptly advise Contractor thereof in writing and 1) provide security to Contractor in such form that is reasonably satisfactory to Contractor covering 125% of the value of such claim or 2) file in the county where such lien claim is asserted a statutory bond in compliance with 42 OK Stat §

42-147.1 (with a copy to Contractor) in an amount sufficient to cause such lien or bond claim to be removed as a matter of record. If Subcontractor fails to provide such security, post such bond, or otherwise fails to cause such lien claim to be discharged within five (5) days after the assertion or filing of such lien claim, then Contractor shall be authorized to take whatever action it deems necessary to remove such lien claim including, but not limited to, providing a bond to indemnify against the claim or satisfying the claim through settlement or payment. Subcontractor shall be liable for all costs arising from such claim including, but not limited to, bond premiums, interest, attorneys' fees and claims paid. Such costs may, at Contractor's option, be deducted from Subcontractor's remaining Subcontract Sum, be withheld from any payment due Subcontractor or be payable on demand to Contractor.

3.12 Arbitration to Determine Validity of Lien. If Subcontractor or any of its subcontractors, laborers, vendors or suppliers assert or file a lien or bond claim against the Project, Contractor may initiate an arbitration to determine the validity of such lien or bond claim by providing written notice to the entity or individual asserting the lien or bond claim. Arbitration pursuant to this section shall be limited to determining whether the lien or bond claim is invalid and subject to judicial removal under the Title 42 of the Oklahoma Statutes or other Applicable Law, as defined herein.

3.12.1 Contractor and Subcontractor have three (3) days from the date Contractor provides notice under Section 6.1.4.2 to select an arbitrator. If either Party should fail to timely select an arbitrator, the selection of the Party providing a choice shall so serve. A final hearing to determine the validity of the lien or bond claim shall be held no later than the 20th day after Contractor provides notice as set forth in Section 6.1.4.2.

3.12.2 Should the lien or bond claim be found invalid and subject to judicial removal, Contractor may move for confirmation of the arbitrator's award in any court of competent jurisdiction.

3.12.3 Subcontractor shall obtain the written consent of all its subcontractors, laborers, vendors or suppliers to participate in the arbitration described above and provide this written consent to Contractor immediately upon demand.

ARTICLE 4

Changes, Extras and Delays

4.1 Changes. Subcontractor may be directed in writing by Contractor, without invalidating this Agreement, to make changes in the Work (consisting of additions, deletions, or other provisions) with the Subcontract Sum and the Subcontract Time being adjusted. However, in no event shall Subcontractor be entitled to an increase in the Subcontract Sum or Subcontract Time greater than such amount or period which the Contractor deems reasonable and appropriately justified under the terms of the Prime Contract. Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to Contractor a proposed written change order ("PCO") on Contractor's PCO form attached to the Agreement as Exhibit E, with written copies of any claim or adjustment to the Subcontract Sum and Subcontract Time for such revised Work in the manner consistent with, and in accordance with the requirements of the Contract Documents including the Prime Contract. As an express CONDITION PRECEDENT to payment or other relative adjustment, no PCO shall be valid unless Contractor's designated representative has signed and approved same prior to the performance of any changed or revised Work. Notwithstanding anything contained herein to the contrary, if it is determined that the Contractor is not entitled to additional compensation from the Owner for any revised or changed Work for which Subcontractor claims an adjustment to the Subcontract Sum or Subcontract Time is to be due, Contractor shall not be liable to Subcontractor for any adjustment to the Contract Sum or Contract Time for such Work.

4.1.1 If Subcontractor requests a written PCO but there is a dispute as to any part of the change, including but not limited to, the price of and time to complete such changed Work, Contractor shall be entitled to issue a written directive to Subcontractor to perform such change and Subcontractor shall be obligated to proceed with such change without either Party admitting liability for the change or waiving its rights under this Subcontract Agreement. Subcontractor shall file with the Contractor within three (3) days before commencing performance of said Work, its written itemized estimate for the cost and time needed to perform the alleged extra Work or changes to be made. Contractor agrees to submit Subcontractor's itemized estimate to Owner for payment. If Subcontractor fails to submit the itemized estimate for cost or time associated with the change before commencing the changed work, Subcontractor waives all claims associated with the change and agrees to perform the change at no additional cost or time.

4.2 Claims Relating to Owner. Subcontractor agrees to make any claims for which Owner is or may be responsible, whole or in part, ("Owner Claims") in the manner provided in the Prime Contract or elsewhere in the Contract Documents, whichever manner is stricter. Subcontractor will provide written notice of any Owner Claims prior to beginning Subcontractor's Work that is the subject of the claim, and within two (2) days of Subcontractor's first knowledge of the event giving rise to the claim; otherwise, such claims shall be deemed waived. Contractor may, in its sole discretion, permit Subcontractor to prosecute Owner Claims, in the name of Contractor, for the use and benefit of Subcontractor, in the manner provided in the Contract Documents for like claims by Contractor upon Owner, at Subcontractor's sole cost and expense. Subcontractor agrees that satisfaction, if any, of Subcontractor's claims by Owner shall be Subcontractor's exclusive and sole remedy for such claims.

4.2.1 Subcontractor agrees to make any claim, including those related to any increases to the Subcontract Sum or Subcontract Time as provided in Article 4, to Contractor in the same manner as provided in the Prime Contract for like claims of Contractor upon Owner, and in such time as will enable Contractor to present such claims to Owner for recognition, review, and assessment. If the Prime Contract is silent with respect to any notice provisions, then Subcontractor shall give Contractor written notice of the claim within three (3) days of the event giving rise to the delay.

Such written notice will contain a request for a specific time extension. Any claim for extension of time not presented by Subcontractor in accordance with this Section 4.4 shall be deemed waived

4.3 Claims Relating to Contractor. Subcontractor shall give Contractor written notice of all claims not included in Paragraph 4.2 of this Subcontract Agreement (“Contractor Claims”) within three (3) days of the beginning of the event for which such claim is made and prior to commencing with any work related to the claim; otherwise, such claims shall be deemed waived. All unresolved Contractor Claims, disputes, and other matters in question between Contractor and Subcontractor not relating to claims included in Paragraph 4.2 of this Subcontract Agreement shall be resolved in the manner provided in Article 14 herein.

4.4 Delays and Time Extensions. If the progress of Subcontractor's Work is substantially delayed due to no fault or responsibility of the Subcontractor, then the Subcontract Time may be extended by Change Order but only to the extent an extension is obtained by Contractor from Owner under the Prime Contract. If any third party assesses a delay claim which is the total or partial responsibility of Subcontractor, Contractor may assess the proportional amount of the delay claim against Subcontractor. The Subcontractor's proportional share for such delay claim may be deducted from the Subcontract Sum, amounts that would otherwise be due the Subcontractor on the Project or shall promptly be paid by Subcontractor upon its receipt of written demand from the Contractor.

4.4.1 Subcontractor shall give Contractor written notice of any claim for an extension of the Subcontract Time within three (3) days of the event giving rise to the delay along with a request for a specific time extension. If the claim is for a continuing delay, Subcontractor will provide an estimate of the total time extension needed. Once the cause of the continuing delay is resolved, Subcontractor will submit a specific time extension. Any claim for extension of time not properly presented by Subcontractor within the written notice period is waived.

4.4.2 Contractor shall not be liable to Subcontractor for any damages or additional compensation due to acceleration or delays in its Work unless Contractor has recovered damages on behalf of Subcontractor from any person causing said delay. It is understood and agreed by Subcontractor that, apart from the recovery provided herein, Subcontractor's SOLE AND EXCLUSIVE REMEDY FOR DELAY shall be an extension of the Subcontract Time. Except as expressly provided herein, an extension of the Subcontract Time shall be Subcontractor's sole remedy for delay, inefficiencies or loss of productivity incurred because of delay, or because of schedule amendments.

4.5 Liquidated Damages. If the Contract Documents, provide for liquidated or other damages for delay beyond the Substantial Completion and/or Final Completion date set forth in the Contract Documents, and such damages are so assessed, then Contractor may assess the same against Subcontractor in proportion to Subcontractor's share in responsibility for such delay. Such damages may, be deducted from the Subcontract Sum, be withheld from payments due Subcontractor, or be paid by Subcontractor to Contractor upon demand. The liquidated or other damages for delay provided herein are intended to compensate Owner for Subcontractor's failure to timely perform the Work. Subcontractor acknowledges that the damages suffered by Owner and/or Contractor because of its delay are difficult or incapable of estimation, the amount of liquidated damages is a reasonable forecast of just compensation, and the liquidated damages are not a penalty. The liquidated damages set forth herein are those damages which may accrue to the Owner and shall not be construed as a limitation or waiver of any remedy or damages to which Contractor may otherwise be entitled to because of Subcontractor's delays in completing the Work.

ARTICLE 5

Payment and Performance Bonds

5.1 The Subcontract Agreement will set forth whether payment or performance bonds are required from Subcontractor. Notwithstanding, Contractor shall have right to require such bonds at any time during the progress of the Work. If payment or performance bonds are required at any time, they shall be for the full amount of the Subcontract Sum, including all addendums or extras. Such bond is to be in a form satisfactory to Contractor and by a surety legally authorized to write such bonds in the state where the Project is located. Premiums associated with securing such bonds will added to the Subcontract Sum by Change Order. The failure of the Subcontractor to promptly provide payment or performance bond as set forth herein shall constitute a material breach of this Subcontract Agreement.

5.2 In the event that Contractor asserts a claim against any bond provided pursuant to this Article 5, Subcontractor and Subcontractor's Surety acknowledge that the Contractor, at its discretion and upon twenty-four (24) hours prior written notice to Subcontractor, may take any reasonable action to ensure that the progress of the Work and the Project is not stopped, hindered or delayed during the pendency of such claim. Contractor shall have the right, among other things, to: 1) correct, replace or otherwise remedy any defect, deficiency, or delay in the Subcontractor's performance by any reasonable and expedient means; 2) take over or supplement Subcontractor's Work and materials and; 3) employ such additional labor, equipment and materials as may be necessary to cure the default and achieve compliance with the Subcontract Agreement and the Contract Documents. Such action on the part of the Contractor will be without prejudice to the Subcontractor or the Subcontractor's Surety. Nothing herein shall give rise to any duty on the part of the Contractor to the Subcontractor or the Subcontractor's Surety.

ARTICLE 6

Indemnification and Insurance

6.1.1 INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SUBCONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND CONTRACTOR, OWNER, ARCHITECT, AND THEIR RESPECTIVE AFFILIATED ENTITIES, PARTNERS, OFFICERS, DIRECTORS,

AGENTS AND EMPLOYEES (THE "INDEMNITEES" AND INDIVIDUALLY AN "INDEMNITEE"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, TO THE EXTENT ARISING OUT OF, RESULTING FROM, OR ATTRIBUTABLE TO 1) THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE OR OTHER APPLICABLE LAW BY SUBCONTRACTOR OR ANY SUB-SUBCONTRACTOR OF ANY TIER AND/OR 2) BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ANY OF WHICH ARISE OR ARE ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR SUBCONTRACTOR'S NEGLIGENT PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF SUBCONTRACTOR OR ANY SUB-SUBCONTRACTOR, OF ANY TIER, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF SUBCONTRACTOR, ITS SUB-SUBCONTRACTORS OR ANYONE FOR WHOSE ACTS SUBCONTRACTOR MAY BE LIABLE AND PROVIDED THAT SUBCONTRACTOR SHALL NOT BE REQUIRED TO INDEMNIFY OR DEFEND AN INDEMNIFIED PARTY FROM ITS OWN NEGLIGENCE.

6.1.2 INDEMNITY - LIEN CLAIMS. IN ADDITION TO THE INDEMNIFICATION SET FORTH ABOVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND PROVIDED THAT CONTRACTOR HAS PROPERLY PAID AND/OR WITHHELD PAYMENT IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS INDEMNIFIED PARTIES FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE ARISING OUT OF OR RELATING TO ANY ALL LIEN OR BOND CLAIMS, OR CLAIMS OF RIGHT TO ENFORCE SUCH LIEN OR BOND CLAIMS AGAINST THE CONTRACTOR, THE JOBSITE, THE IMPROVEMENTS TO BE ERECTED THEREON, OR ANY SURETY BOND PROVIDED BY CONTRACTOR TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY THE ACTS OR OMISSION OF THE SUBCONTRACTOR, ITS SUB-SUBCONTRACTORS OR ANYONE FOR WHOSE ACTS SUBCONTRACTOR MAY BE LIABLE.

6.1.3 Nothing herein shall be construed to require Subcontractor to indemnify any of the Indemnified Parties for a claim subject to indemnification caused by or resulting from any Indemnified Party's own negligence. It is agreed that with respect to any legal limitations now or hereafter in effect and affecting the validity and enforceability of the indemnification obligations in this Agreement, such legal limitations are made a part of the indemnification obligations to the minimum extent necessary for this Agreement to conform to the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect. This indemnification provision is intended to comply with Title 15 of the Oklahoma Statutes and shall be read as broadly as permitted to satisfy that intent.

6.1.4 Neither final payment by Contractor nor acceptance of the Work performed by Subcontractor shall constitute a waiver of the foregoing indemnities and the provisions of this Article 6 shall survive the termination or Final Completion of this Subcontract and shall not be limited in any way by the amount or type of insurance obtained by Contractor, Owner, any other Indemnified Party, or any of their consultants, contractors, subcontractors or suppliers. In all contracts between Subcontractor, any of its Sub-subcontractors of any tier, or suppliers, Subcontractor shall require such Sub-subcontractor or supplier to indemnify, defend and hold harmless the Indemnified Parties to the same extent that Subcontractor must indemnify, defend and hold harmless the Indemnified Parties pursuant to this Article 6.

6.1.5 The indemnification obligations of Subcontractor expressly include, without limitation, all expenses of litigation and arbitration, court costs, fees and expenses of attorneys, expert witnesses, and consultants, arbitrator's fees and administrative fees and all other costs and expenses of arbitration and/or litigation, arising out of or in connection with, or alleged to arise out of or in connection with any claim subject to indemnification and/or the litigation or arbitration of such claim, whether or not the claims made for loss, injury, damage or property damage are determined to have merit, and regardless of whether the defense of Contractor is maintained by Contractor or assumed by Subcontractor. If Contractor elects to tender defense to Subcontractor, Subcontractor shall be bound and obligated to assume the defense of Contractor in the indemnified claims.

6.1.6 It is understood and agreed by Subcontractor that if Contractor tenders the defense of an indemnified claim to Subcontractor and, in Contractor's judgment, Subcontractor fails or neglects to assume or adequately maintain the defense thereof, Contractor may compromise and settle or defend any such suit or action, and Subcontractor shall be bound and obligated to reimburse Contractor for the amount expended by it in settling or compromising any such claim, or in the amount expended by Contractor in paying any judgment rendered therein, together with all reasonable attorneys' fees and cost of arbitration or litigation incurred by Contractor by reason of its defense, settlement or compromise of such indemnified claims.

6.2 Insurance. Prior to starting the Subcontract Work, Subcontractor shall procure and maintain in such form and with such limits constituting the greater of 1) those coverages and policy limits set forth herein or 2) those project specific coverages and policy limits required of Subcontractor in the Prime Contract, or as set forth in Exhibit G. To the extent of any inconsistencies of the coverage requirements set forth herein and in the Prime Contract, the Subcontractor shall be deemed to provide the greater of such coverage. To the extent that Subcontractor's coverage or policy limits provide more extensive coverage and/or higher policy limits than those required by the Prime Contract or those set forth in this Agreement, in the event of a loss, Contractor shall be entitled to utilize the greater policy limits or coverages notwithstanding any minimum coverage or policy limits set forth herein.

6.2.1 Minimum Insurance Coverages and Policy Limits. Unless such greater coverage or policy limits are required by the Prime Contract or on Exhibit G attached hereto, Subcontractor shall procure and maintain in force the following minimum insurance coverages: (1) statutory Worker’s Compensation Insurance for all of Subcontractor’s employees at the Project site, (2) Employers Liability Insurance with \$1,000,000 coverage (each section), (3) Commercial General Liability Insurance (including XCU coverage by subcontractors involved in utility work, excavation, mechanical, electrical and/or plumbing work), (4) Automobile Liability Insurance, (5) Excess Liability (Umbrella) Coverage of \$5,000,000 and (6) such other insurance, to the extent required by the Contract Documents for the Subcontract Work. Subcontractor is prohibited from using any forms that vary from the requirements under ISO Form No. CG 00 01 12 04, or its substantial equivalent, and Subcontractor shall notify Contractor immediately in the event its carrier changes the exclusion pertaining to “Employer’s Liability” from anything other than that found under ISO Form No. CG 00 01 12 04. Subcontractor shall immediately rectify any inferior coverage so that such coverage meets the stated requirements. The failure of Subcontractor to immediately remedy the inferior coverage and provide Contractor with a copy of the whole insurance policy as evidence that Subcontractor possesses the requisite coverage shall be a material breach of this Agreement.

The Subcontractor’s Commercial General and Automobile Liability Insurance, as required by this provision shall be written for not less than limits of liability as follows:

(a)	Commercial General Liability	Each Occurrence
	\$1,000,000	General Aggregate (per project)
	\$2,000,000	Products/Completed Operations Aggregate
	\$2,000,000	Personal and Advertising Injury
	\$1,000,000	
(b)	Comprehensive Automobile Liability	Combined Single Limit
	\$1,000,000	
(c)	Excess Liability (Umbrella)	
	\$5,000,000	

Any such amount required and listed above shall not act as a cap on the amount carried by Subcontractor. Should Subcontractor carry in excess of the required amount, the additional insured shall have access to the full limits available to Subcontractor.

6.2.1 The Commercial General Liability Policy and Automobile Liability Policy shall contain necessary endorsements listing the Owner, Contractor, and such other parties as may be required by the Contractor, the Prime Contract, and/or the Contract Documents as additional insureds with coverage on a primary basis for the additional insureds (not contributory), and the additional insured endorsement for the General Liability Policy must also include products/completed operations coverage.

6.2.1.1 The required Excess Liability coverage shall be provided in addition to Commercial General Liability and Comprehensive Automobile Liability coverage, shall be excess over the Commercial General Liability, Automobile Liability and Employers Liability coverages, and shall follow form over the additional insureds on the underlying policies and shall be on a primary basis (not contributory) for the additional insureds.

6.2.1.2 All policies shall be written through a company duly authorized to transact that class of insurance in the state where the project is located, shall be with insurance companies acceptable to Contractor with an A.M. Best rating of A – VII or better.

6.2.1.3 To the fullest extent permitted by law, Contractor shall be insured by Subcontractor through Subcontractor’s insurance carriers with respect to liability arising out of or in connection with Subcontractor’s Work for Contractor. To this end, the Commercial General Liability shall be endorsed to name Contractor, Owner, Owner’s agents, and such other parties as may be required by the Contractor, the Prime Contract, and/or the Contract Documents, as Additional Insureds, to be evidenced on Form No. CG 20 10 11/85, or its equivalent, or a form substantially the same as such, which may be used but must be submitted and approved by Contractor. The Automobile Liability Policy shall be endorsed to name the Owner, Contractor, and such other parties as may be required by the Contractor, the Prime Contract, and/or the Contract documents as additional insureds and the Excess Liability policy shall follow form over the additional insureds on the underlying General Liability and Automobile policies.

6.2.1.4 All policies obtained by Subcontractor or caused to be obtained by Subcontractor shall be endorsed to be primary and non-contributory to any insurance which may be maintained by or on behalf of Contractor. The Business Automobile Policy should be written using symbol 1 or in combination with symbols 7, 8 or 9 to include liability coverage for owned, non-owned and hired automobiles. The Commercial General Liability policy shall be on an “occurrence” basis and shall include “Limits Apply Per Project.”

6.2.1.5 Subcontractor shall maintain all insurance coverages required by this Subcontract Agreement in force for a period of one (1) year after Final Completion of the Work and Subcontractor’s completed operations, which includes Additional Insured coverage on a primary and non-contributory basis as required herein and a waiver of subrogation as required herein, coverage shall be kept in force for at least ten (10) years after Final Completion of the Work, or the applicable statute of repose, whichever is longer, to protect Contractor for claims asserted against Contractor due to defects in Subcontractor’s Work.

6.2.2 All policies providing coverage for Work under this Subcontract Agreement shall contain a waiver of subrogation endorsement in favor of Owner, Contractor and their employees. Subcontractor shall execute a joint agreement to be filed with the Worker's Compensation Commission stating Subcontractor is an independent contractor.

6.2.3 Prior to starting the Subcontract Work, Subcontractor shall deliver to Contractor an original Accord Certificate of Insurance and copies of endorsements acceptable to Contractor which evidences the coverages and endorsements required herein and which states that the coverages afforded under the policies will not be canceled, terminated or materially modified unless at least thirty (30) days prior written notice is given to the Contractor. If Subcontractor subcontracts any portion of the Subcontract Work, Subcontractor shall deliver to Contractor for each of Subcontractor's subcontractors and/or employee leasing/staffing companies, an original Accord Certificate of Insurance which evidences the same coverages, limits and endorsements required herein and Subcontractor shall require each of its subcontractors and/or employee leasing/staffing companies to provide the same indemnifications to Contractor that Subcontractor is providing in this Subcontract Agreement. Upon request from Contractor, Subcontractor shall deliver a certified copy of all policies of insurance, in whole, required herein.

6.2.4 Unless otherwise expressly agreed to in writing by the Contractor, Subcontractor understands that it is prohibited from using any forms that vary from the requirements under ISO Form No. CG 00 01 12 04 and Subcontractor covenants and agrees that it will notify Contractor immediately in the event of a general liability policy change defining an "insured contract" any way other than as found under ISO Form Number CG 00 01 12 04. Subcontractor shall immediately rectify any inferior coverage so that such coverage meets the stated requirements. The failure of Subcontractor to immediately remedy the inferior coverage and provide Contractor with evidence that Subcontractor possesses the requisite coverage shall be a material breach of this Agreement.

6.2.5 Professional Errors & Omissions Insurance. In the event any of Subcontractor's Work entails the design or engineering of any portion of the Work, Subcontractor shall, in addition to the other insurance provided above, obtain and maintain during the Project, professional errors and omissions insurance in the amount of not less than \$1,000,000 or such other limits as may be required by Contractor or Owner.

6.2.6 The insurance provisions in this Agreement, including, but not limited to, any additional insured provisions are intended to comply with Title 36 of the Oklahoma Statutes and shall be read as broadly as permitted to satisfy that intent. It is agreed that with respect to any legal limitations now or hereafter in effect and affecting the validity and enforceability of the additional insured obligation under this Article 6, such legal limitations are made a part of the additional insured obligation to the minimum extent necessary to bring Article 6 into conformity with the requirements of such limitations, and as so modified, the naming of additional insured obligation shall continue in full force and effect.

6.3 Builders Risk Insurance. Contractor may or may not carry Builder's Risk Insurance. Subcontractor acknowledges that the decision to carry such insurance is solely Contractor's and that Contractor is NOT obligated to carry such insurance for the benefit of Subcontractor. Subcontractor agrees that it will assume the responsibility to determine whether Builder's Risk Insurance is in force. Upon written request of Subcontractor, Contractor shall provide Subcontractor with a copy of the Builder's Risk policy of insurance or any other property or equipment insurance in force for the Project and procured by Contractor or Owner. If Owner or Contractor has purchased Builder's Risk Insurance and Subcontractor receives any payment pursuant to a claim made under such policy, then Subcontractor shall pay the same percentage of the deductible that its share of the payment received bears to the total payment made. If Owner or Contractor has not purchased Builder's Risk Insurance for the full insurable value of Subcontractor's Work less a reasonable deductible, then Subcontractor may procure such insurance as will protect the interest of Subcontractor in the Work, at Subcontractor's expense. If not covered under the Builder's Risk Policy of insurance or any other property or equipment insurance required by the Contract Documents, Subcontractor shall procure and maintain, at Subcontractor's own expense, property and equipment insurance for those portions of the Subcontractor's Work which have not been accepted.

6.4 Waiver of Subrogation. Subcontractor waives all rights against Contractor, and any of Contractor's agents and employees, Owner, the Architect, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk or any other property or equipment insurance obtained by Subcontractor. The policy of insurance obtained by Subcontractor shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to Contractor, and its agents and employees, the Owner, the Architect, separate contractors, and all other subcontractors, even though such parties would otherwise have a duty of indemnification, contractual or otherwise, and/or did not pay the insurance premium directly or indirectly.

ARTICLE 7

Scheduling, Time of Performance, Default and Remedies

7.1 **TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS SUBCONTRACT AGREEMENT.**

7.2 Schedule. Subcontractor shall perform the Work in accordance with the Project Schedule promulgated by the Owner or Contractor. Subcontractor shall cooperate with Contractor to coordinate, schedule and perform Subcontractor's Work to avoid conflicts or interference with the Owner's operations and the work of other trades, to comply with the Project Schedule and to ensure efficiencies with the Project and the Subcontractor's Work. Subcontractor shall be liable to Contractor for failure to adhere to Contractor's schedule related to the Subcontractor's Work, including

amendments thereto. Subcontractor has taken into account and made allowance for delays which should be reasonably anticipated or foreseeable, including, but not limited to, delays caused by inclement weather conditions. If requested by Contractor, Subcontractor shall submit detailed schedules for the performance of this Work in a form acceptable to Contractor, which shall comply with all scheduling requirements of the Contract Documents.

7.2.1 Contractor's Right to Modify Project Schedule and Sequence. As construction progresses, Contractor may revise the Project Schedule and/or the sequential order and duration of various construction activities to account for unanticipated delays, occurrences and other factors which act to alter the original Project Schedule including those activities contemplated by, or reasonably inferable from, this Agreement. It may be necessary for Subcontractor to prosecute its Work in such sequence as the progress of the other subcontractors and the Project Schedule reasonably dictates. Scheduling and sequencing of the Work shall be the exclusive right of Contractor.

7.3 Delays in the Performance of the Work. To the extent that the Subcontractor believes that any delay in the Work arises from the acts, errors or, omissions of other subcontractors, the actions of the Owner or the Contractor, Subcontractor shall promptly, and in no case more than three (3) days after the commencement of the event giving rise to the alleged delay, notify the Contractor in writing of its claim in connection with the alleged delay. The failure of the Subcontractor to notify the Contractor in accordance with this Section shall constitute a waiver of any claim arising from the same.

7.3.1 Subcontractor Delays. If Contractor believes Subcontractor is behind schedule with the Work, Subcontractor shall, at its own expense, increase the number of shifts, personnel, overtime operations, days of work, equipment or any other remedies the Contractor may deem necessary to comply with the Schedule and complete the Work. Subcontractor shall pay all costs resulting from its failure to provide needed labor or materials to meet the Schedule. Contractor shall be entitled to direct Subcontractor to perform such work to recover the Project Schedule and shall be entitled to withhold all payments due, or to become due, under the Agreement until the Project Schedule has been fully recovered. Upon Contractor's request, Subcontractor shall submit to Contractor for Contractor's approval a schedule demonstrating how the required rate of progress needed to recover the schedule will be implemented and monitored. Contractor may accelerate Subcontractor's performance by directing Subcontractor to increase the number of shifts, personnel, overtime operations, days of work, equipment or any other remedies the Contractor may deem necessary to comply with the Schedule and complete the Work. Provided that Subcontractor is not in default under any of the provisions herein, including, but not limited to, the Subcontractor's duty to perform the Work in accordance with the most recent Project Schedule, Subcontractor may assert a claim for the actual, proven incremental portion of such wages paid at rates which have been approved by Contractor, taxes imposed by law on the incremental portion of such additional wages, worker's compensation, levies, and liability insurance on such additional wages when required to be paid by Subcontractor.

7.4 Performance and Termination for Default. Contractor shall have the right, upon written notice to Subcontractor to terminate Subcontractor's right to proceed, in whole or in part should Subcontractor, at any time:

- (a) fail to correct, replace and/or re-execute faulty or defective Work and/or materials furnished under this Subcontract Agreement;
- (b) fail to complete or diligently proceed with the Work within the time required by Contractor;
- (c) fail to correct or repair any damage to the Work caused by Subcontractor, or those for whom Subcontractor is responsible, or fail to protect its Work;
- (d) refuse or fail to provide sufficient, properly skilled workers, adequate supervision and/or materials;
- (e) damage Contractor, Owner or other subcontractor, or cause Contractor to be unable to perform its contractual obligations; or
- (f) otherwise be in default of any provision of this Agreement or the Contract Documents.

7.4.1 When any of the reasons described in Section 7.5 exist, the Contractor may, without prejudice to any other rights or remedies set forth in the Agreement and after giving the Subcontractor forty-eight (48) hours written notice and Subcontractor's failure within such forty-hours (48) hours to correct such default or neglect with diligence and promptness or, if such failure cannot be cured within such forty-eight (48) hours, provide a plan acceptable to Contractor for commencement and correction of such default or neglect terminate the employment of the Subcontractor.

7.4.2 In event of such termination, Subcontractor shall not be entitled to any further payments hereunder, whether due or not, and Contractor shall have the right to retain the entire Subcontract Sum, earned or not, due or yet to become due, until the Final Completion of the Project. The Contractor may finish the Work by whatever method chooses and Subcontractor shall be liable to Contractor for all costs of completion. Subcontractor shall be liable for all costs incurred due to its default, including but not limited to, Contractor's costs of completion, supervision, correction and other costs resulting from Subcontractor's default. In the event the costs of completion exceed the balance of the Subcontract Sum, the difference shall be immediately paid by Subcontractor to Contractor. Contractor may but shall not be obligated to notify the Subcontractor's Surety, if any, of any anticipated default of the Subcontractor and Surety agrees that it shall not be prejudiced by the same. For purposes of this Agreement, Subcontractor's failure to perform shall include the failure of its lower tier subcontractors and suppliers to perform. If the Contractor terminates the Subcontract for cause which is later found in error or wrongful, then the termination shall be considered a termination for convenience under the provisions of Paragraph 7.9.

7.5 Other Remedies for Default Other than Termination. Upon twenty-four (24) hours' prior written notice to Subcontractor, Contractor shall have the right to correct, replace or otherwise remedy any defect, deficiency or delay in Subcontractor's performance should Subcontractor at any time:

- (a) fail to correct, replace and/or re-execute faulty or defective Work and/or materials furnished under this Subcontract Agreement;
- (b) fail to complete or diligently proceed with the Work within the time required by Contractor;
- (c) fail to correct or repair any damage to the Work caused by Subcontractor, or those for whom Subcontractor is responsible, or fail to protect its Work;
- (d) refuse or fail to provide sufficient, properly skilled workers, adequate supervision and/or materials;
- (e) damage Contractor, Owner or other subcontractor, or cause Contractor to be unable to perform its contractual obligations; or
- (f) otherwise be in default of any provision of this Agreement or the Contract Documents.

The Contractor may utilize any reasonable and expedient means, including taking over or supplementing the Work and materials and employing such additional labor, equipment and materials as may be necessary to cure the default and achieve compliance with the Agreement and the Contract Documents without prejudice to (1) the Subcontractor or Subcontractor's Surety; or (2) Contractor's other rights and remedies at law or arising out of the Agreement. Contractor shall be entitled to deduct all costs directly or indirectly resulting from Subcontractor's default from the Subcontract Sum, including, but not limited to, Contractor's costs of completion, supervision, correction and other costs resulting from Subcontractor's default. In the alternative, such costs will be payable by Subcontractor and/or its surety on demand from the Contractor.

7.6 Contractor's Remedies Arising from An Emergency. If Subcontractor should neglect, fail or refuse to perform any portion of its Work which, by its nature, would constitute an emergency or, by its actions, errors or neglects, creates a situation that may cause injury to persons or property, then Contractor shall have the right, at its sole discretion, and after providing any reasonable form of notice to Subcontractor, to perform such Work without prejudice to any other remedy it may have pursuant to this Agreement. Contractor shall be entitled to deduct all costs because of such emergency from the Subcontract Sum, including, but not limited to, Contractor's costs of completion, supervision, correction and other costs. If the costs exceed the Subcontract Sum, Subcontractor shall pay such costs incurred upon the demand of Contractor.

7.7 In the event of elimination or reduction of the Work by reason of termination or modification of the Prime Contract by the Owner, or a modification of the Contract Documents, or a change in the Work, either in accordance with the terms of the Contract Documents or by default by the Owner, Subcontractor shall not be entitled to recover from Contractor more than its equitable portion of any sums actually received by Contractor for Work completed.

7.8 Contractor shall have the absolute right to terminate Subcontractor, in whole or in part, for its convenience for any reason. Upon such receipt of such notice of termination, the Subcontractor shall (a) cease operations as directed by the Contractor in the notice; (b) take all necessary actions to protect and preserve its Work; and (c) except as otherwise directed by Contractor, terminate all existing sub-subcontracts and purchase orders applicable to the Work. If there has been a termination of the Prime Contract for the Owner's convenience, Subcontractor shall be paid the amount due for its Work and costs incurred by reason of such termination but only to the extent that Contractor has received payment for such Work and costs from the Owner. If the Prime Contract has not been terminated, Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, but not for overhead or profit on the Work not performed or executed.

7.9 Termination (whether for cause or convenience) of Subcontractor shall not be made the basis of any legal action to secure additional compensation or damages. In the event of termination of Subcontractor, Contractor may accept assignment or assume any of Subcontractor's sub-subcontracts and purchase orders specifically related to the Work. Additionally, if the Subcontractor is terminated for cause, Contractor shall have the right to exclude the Subcontractor from the Project site and take possession of all materials and equipment, thereon owned by the Subcontractor or paid for by Contractor which are on the Project site, in transit to, or specially manufactured for said Work for use in the completion of the Agreement. Subcontractor's warranty obligations shall survive termination of this Agreement for any reason.

7.10 Bankruptcy Proceedings or Insolvency of Subcontractor. Should Subcontractor become a debtor in voluntary or involuntary bankruptcy proceedings, make a general assignment for the benefit of creditors, or if a receiver is appointed because of its insolvency, it is recognized that such events could seriously impair or frustrate Subcontractor's performance of the Work. Accordingly, it is agreed that should Subcontractor become a debtor in bankruptcy, either voluntarily or involuntarily, Subcontractor shall notify Contractor in writing within twenty-four (24) hours of such bankruptcy petition. Further, Contractor shall be entitled to request of Subcontractor or its successors, trustees, or receivers, adequate assurances of future performance of this Agreement. Any failure to provide such assurances within three (3) days of such request shall entitle Contractor, in addition to any other rights and remedies provided in this Agreement, or by law. Pending receipt of such adequate assurances of such future performance and until actual performance of the Work is resumed by, or on behalf of, Subcontractor or its successors, trustees, or receivers, Contractor may, at its option, proceed with the Work on a temporary basis and may deduct the cost, plus reasonable overhead and profit, from the Subcontract Sum or any amounts due or which may become due to Subcontractor. If Contractor elects to

proceed, Subcontractor and its Surety agree that they will not be prejudiced by Contractor proceeding. Subcontractor further agrees that if Contractor is required to return, refund, or otherwise make any payments to Owner due to any preference action or similar bankruptcy proceeding, Subcontractor shall be required to promptly return any such funds previously paid to Subcontractor to Contractor. In the event of Subcontractor's bankruptcy, this Agreement shall terminate if Subcontractor rejects this Agreement or if Subcontractor is unable to give adequate assurance that it will perform in accordance with this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under applicable provisions of the Bankruptcy Code. It is understood that the obligations set forth in the preceding sentence are a continuation of the agreement and acceptance of risk set forth in Paragraph 2.1.4 of this Subcontract Agreement.

7.11 Right to Receivership. Contractor shall have the right, and Subcontractor hereby consents, to the appointment of a receiver by any court with jurisdiction, without bond (or, if local rules require, a bond of nominal amount) to take charge of the Work and all of Subcontractor's equipment, material, tools and other appliances on or near the Project site and associated with the Work at any time when Subcontractor is in default and such default has not been remedied or cured to the satisfaction of Contractor. In such event, Subcontractor shall not be entitled to receive any further payment hereunder until the Work is completed. If the unpaid balance of the Subcontract Sum shall exceed the expense of finishing the Work, including compensation to the receiver, if any, such excess shall be paid to Subcontractor. If such expense shall exceed such unpaid Subcontract balance, Subcontractor shall pay the difference to Contractor. The remedies set forth herein shall be cumulative of and not in lieu of any other remedies available to Contractor at law or in equity.

7.12 Remedies Cumulative. No right or remedy of Contractor contained in this Agreement is exclusive of any other right or remedy, but every such right or remedy shall be cumulative and shall be in addition to and not a limitation of any duties, obligations, rights and remedies provided herein or otherwise imposed or available by law.

ARTICLE 8

Compliance with Laws, Permits and Notices

8.1 Subcontractor shall give notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work under this Agreement including, but not limited to: The Occupational Safety and Health Act of 1970; Fair Labor Standards Act; and other applicable labor laws; building codes; federal, state and local tax laws; local building ordinances; and Workers' Compensation Acts ("Applicable Laws"). Subcontractor shall also defend and hold harmless Contractor and Owner from all liability, damages, fines, and costs arising out of Subcontractor's failure to comply with all Applicable Laws.

8.2 Subcontractor warrants and represents to Contractor that Subcontractor is not at the present time employing on any project and will not in the future employ or knowingly allow any of its subcontractors or suppliers to employ or continue in its employment any individual who is not legally authorized to work in the United States of America, or otherwise commit any violation of the Immigration Reform and Control Act of 1986, the Immigration and Nationality Act or any other federal, state or local statute, rule or regulation relating to the employment of illegal aliens. As a condition to its being awarded this Agreement and being permitted to perform the Work, Subcontractor shall use due diligence to verify the work status of any and all individuals seeking employment with Subcontractor, and shall maintain all records, documents and other means to verify that such individual is a citizen or national of the United States of America, an alien lawfully admitted for permanent residence, or an alien who is authorized under the Immigration Reform and Control Act of 1986 or by the Attorney General of the United States of America to be hired, recruited or referred for such employment and shall maintain such records for the period of time required by law.

8.3 Insofar as the Contractor has any obligation for affirmative action or otherwise under applicable Equal Employment Opportunity Rules and Regulations and various other state and federal non-discrimination laws as they apply to the various forms of non-discrimination in employment, and as they apply to the employment of handicapped persons, as well as that of Vietnam Era Veterans, then this obligation shall also extend to the employment practices of the Subcontractor.

8.4 Employee Background Check Confirmation. In the event the Work is being performed subject to application of Title 70 of the Oklahoma Statutes or as may otherwise be required by the Prime Contract, Subcontractor swears and affirms that Subcontractor has obtained, reviewed, and verified the national criminal history record information from a law enforcement or criminal justice agency for each employee of the Subcontractor and the national criminal history record information from the Oklahoma State Bureau of Investigation for each employee of Subcontractor who (a) have or will have continuing duties related to the contracted services, (b) have or will have direct contact with students. Subcontractor further swears and affirms no employees who meet the requirements of (a) or (b) above have been convicted of any offense identified in Oklahoma Statute Section 70-6-101.48. Subcontractor shall submit to Contractor, upon request, the names and records of all employees working onsite.

8.5 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS CONTRACTOR AND ANY PARTIES REQUIRED TO BE INDEMNIFIED PURSUANT TO THIS AGREEMENT FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE RESULTING FROM ANY AS A RESULT OF THE FAILURE ON THE PART OF SUBCONTRACTOR TO ADHERE TO AND COMPLY WITH ALL THE REQUIREMENTS OF ARTICLE 8, INCLUDING ANY FINES, PENALTIES OR OTHER SANCTIONS THAT MAY BE LEVIED OR ASSESSED

AGAINST CONTRACTOR AND THE INDEMNIFIED PARTIES , ITS AGENTS, SERVANTS AND EMPLOYEES BY ANY GOVERNMENTAL OR REGULATORY AGENCY OR BUREAU ARISING FROM SUCH VIOLATION.

ARTICLE 9

Protection of Work, Safety and Warranties

9.1 **Protection of Work.** Subcontractor shall effectively secure and protect its materials and Work at its expense and shall be responsible for the protection and safety of its materials, equipment and Work, whether or not installed and whether or not accepted by the Contractor and/or the Owner. Subcontractor shall repair and/or replace, at the Contractor's option and at Subcontractor's expense, any and all Work which is stolen, damaged or otherwise fails to comply with the Contract Documents, regardless of the cause of such theft or damage, and regardless of whether or not such damage or theft is covered by Contractor's Builder's Risk Insurance or other insurance. Subcontractor shall be responsible for its proportionate share of any deductible related to a loss covered by Builder's Risk or other insurance provided on the Project. In the event of a covered loss, Contractor shall have the right to make a reasonable determination regarding the Subcontractor's proportionate share of any loss and deduct such amount from the Subcontract Sum.

9.2 **Protection of Other's Work.** Subcontractor shall take necessary precautions to protect its Work, the finished work of the Contractor and other trades, and the Owner from damages caused by its operations. Subcontractor shall promptly reimburse Contractor and/or other subcontractors for damages by Subcontractor or anyone under Subcontractor's control or authority. If Subcontractor deems that the surface to which its Work is to be applied or affixed is unsatisfactory or unsuitable, written notification of said condition shall be given to Contractor before proceeding or taking any remedial action; otherwise Subcontractor shall be responsible and liable for all expense, loss, delay, or damages resulting from Subcontractor's failure to comply with this paragraph.

9.3 **Hazardous Materials.** Subcontractor must comply with the Hazardous and Toxic Substance Act and all laws regarding the use, control and reporting of hazardous materials, Subcontractor must submit to Contractor two (2) copies of Subcontractor's Hazard Communications Program and Safety Data Sheets for any hazardous material Subcontractor may be using on the Project. Subcontractor is responsible for complying with all OSHA requirements included in the Hazardous and Toxic Substance Act, including, but not limited to, providing information to any workman on the Project who may request such information. Subcontractor is responsible for verifying that all information included within the Hazard Communications Program and Material Safety Data Sheets is current and in compliance with OSHA at all times.

9.4 **Safety.** Safety is of the utmost importance. Subcontractor agrees to comply with all rules imposed by this Agreement, under the Prime Contract, by the Contractor, or Applicable Law, including but not limited to drug screening of workers and specialized safety training. Subcontractor shall take all necessary precautions for the safety of all persons on the Project and shall comply with all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injuries to persons or damage to property on or about or adjacent to the Project. Contractor does not owe any duty to ensure that Subcontractor performs its Work in a safe manner or is otherwise in accordance with Applicable Law. Subcontractor acknowledges and agrees that Contractor does not retain any actual or constructive control over the means, manner or method in which the Subcontractor or its employees or laborers perform the Work. Subcontractor shall be responsible for constant supervision and monitoring of all its employees and laborers. Contractor has no responsibility for the direction of Subcontractor's safety or the safety of those under the Subcontractor's control. Subcontractor agrees to maintain a familiarity with conditions existing over the entire premises on which the Work is located so that it will be aware of any dangerous conditions, whether hidden or apparent. Subcontractor's constant supervision of the Work and immediate correction in the case of unsafe conditions includes, but is not limited to, cleaning of the Project site; wearing of hard hats and protective eyewear; keeping railings, barricades and covers in the proper place and in good repair; wearing all necessary protective equipment; keeping scaffolding and ladders in good repair and in proper use; using power tools properly grounded and in good repair, including electrical extension cords; and providing proper warning to Contractor, its employees, subcontractors and suppliers of any unsafe conditions on the Project. Subcontractor represents and warrants that it has not been designated as an Extra-Hazardous Employer by the Texas Workers Compensation Commission and agrees to immediately notify Contractor in writing if Subcontractor becomes so designated. Subcontractor's designation as an Extra-Hazardous Employer shall constitute a material default of this Agreement.

9.5 **Warranties.** Subcontractor warrants its Work to Contractor on the same terms, and for the same period, as Contractor warrants the Work to the Owner under the Contract Documents, but in no event shall such warranty be for any term less than twelve (12) months from the Date of Final Completion of the Work. Subcontractor warrants that its labor and materials will not be defective, will comply with the Contract Documents, will be new (unless the Contract Documents specifically state otherwise), and that the Work will be suitable for its intended use and will be constructed and installed in a good and workmanlike manner in accordance with the best construction practices. Subcontractor's warranty shall apply to all Work and material performed by or on behalf of Subcontractor, unless the Contract Documents contain a stricter standard in which case the stricter standard shall control. Upon written demand of Contractor or Owner, Subcontractor shall immediately honor all warranties and correct any defective Work or materials. In the event this Agreement is terminated for any reason, Subcontractor's warranties, guarantees and indemnities shall survive such termination and remain in full force and effect for the period prescribed in the Contract Documents.

ARTICLE 10
Defective Work

10.1 Subcontractor shall promptly remedy, repair, and/or make good any defective or non-complying materials and/or workmanship to the entire approval and acceptance of Contractor and Owner. Should Subcontractor refuse or neglect to proceed at once with the correction of rejected or defective materials and/or workmanship after receiving written notice to do so, it is agreed that Contractor may have the defects remedied or changes made at the Subcontractor's expense. Should the Subcontractor fail to proceed at once with the remedying or repairing any defect, Contractor will be entitled to withhold any amount which Contractor deems necessary to cover such costs from the Subcontract Sum from any payment due or to become due to Subcontractor. In the alternative, Contractor may remedy or repair such defective Work and Subcontractor shall pay Contractor the costs of repairs upon demand. The remedies described above shall not be exclusive but shall be in addition to all others provided by this Agreement and by law.

ARTICLE 11
Clean-up and Environmental Compliance

11.1 Subcontractor acknowledges that the performance of the Work will result in an indeterminate amount of Waste and Debris, as each are defined below. Subcontractor agrees to retrieve, pick up and remove and place at a location designated by Contractor all such Waste and Debris each day during the course of the Work and upon Final Completion of its Work. Subcontractor shall clean up to the satisfaction of the Contractor, the Owner, and their respective representatives, all dirt, grease, marks, and the like on the walls, ceilings, floors, fixtures, and all other surfaces on the Project caused by the Work. Subcontractor shall retain title to and full legal responsibility for any substances brought on the Project by, or on behalf of, Subcontractor and to all Waste and Debris generated in the performance of the Work. Subcontractor shall keep all Waste generated from the performance of the Work separate from all other Waste generated at the job site. Subcontractor shall, in compliance with all Applicable Laws, arrange directly (i) with third party transporter(s) for transportation, from the Project location, of all the Waste generated in the performance of the Work, and (ii) with third party disposal facility(ies) for disposal of all Waste generated in the performance of the Work. In the event that Contractor upon written notice to Subcontractor, contracts with a transporter(s) and/or disposal facility(ies) or arranges for the removal of Waste, Subcontractor shall deposit all Waste as directed by Contractor. At Contractor's sole discretion, Subcontractor shall deposit its Debris in dumpsters or other receptacles designated by Contractor. If Subcontractor refuses or fails to perform the Debris and Waste removal and cleaning, the Contractor shall have the right and power to proceed with cleaning and removal and Subcontractor will, upon demand, pay to Contractor the actual cost cleaning and removal. In the alternative, Contractor may withhold an amount to cover such cost from any payments that become due or any other amounts Contractor may owe Subcontractor or deduct such costs from the Subcontract Sum.

11.2 For purposes of this Agreement, "Waste" shall be defined as commercial products or chemicals which are, unused or left-over from performance of the Work, including the containers of same; liquids, gels or other products used in the performance of the Work the residue or unused remainder of which is located on the Project site ; and includes "Hazardous Substances," which shall mean all pollutants, contaminants, chemicals, and any other carcinogenic, ignitable, corrosive, reactive, toxic, or otherwise hazardous substances subject to regulation, control or remediation under applicable environmental laws. For purposes of this Agreement, "Debris" shall be defined as all left-over construction material, scrap, boxes, crates, packing materials, plastic coverings, wood, metal, carpet, flooring steel and other rubbish not incorporated into the Work that is not Waste as defined above.

11.3 Should the Work include "demolition" or "renovation", as those terms are defined in regulations promulgated by the State of Texas, at U.S. Environmental Protection Agency, at 40 CFR 61.141 et seq., Subcontractor shall be deemed for all purposes the "owner" and "operator" of the site of the Work and shall satisfy all legal obligations, including without limitation, advance notice requirement applicable to such demolition or renovation, and shall demonstrate to Contractor that such obligations have been and will be satisfied.

ARTICLE 12
Use of Contractor's Equipment and Materials

12.1 The Subcontractor shall be responsible for unloading and hoisting all its materials, supplies, tools, and equipment to ensure timely completion of the Work, and in such manner as to not impede the Work or progress of any other subcontractor.

12.2 The Subcontractor, its agents, employees, subcontractors, or suppliers shall not use Contractor's equipment without the express written permission from Contractor. If Subcontractor makes use of Contractor's equipment and/or materials, it shall pay for such services, unless otherwise provided in this Subcontract Agreement, and shall indemnify, defend and hold harmless Contractor from any and all damages arising out of Subcontractor's use of Contractor's equipment.

ARTICLE 13
Restrictions on Assignments, Supervision and Cooperation with Others

13.1 Subcontractor's responsibilities and obligations under this Subcontract Agreement constitute non-delegable personal services. Subcontractor shall not assign responsibility for performance or sub-subcontract this Agreement or any part thereof without first obtaining written consent of Contractor. Subcontractor shall not assign or attempt to assign any funds accrued or to be accrued under this Agreement without first obtaining Contractor's consent

and no such assignment shall be binding on Contractor unless and until accepted in writing by Contractor. Contractor shall not be obligated in any manner to execute or honor any joint check or factoring agreement, assignment of receivables or other similar agreements entered into between Subcontractor and any third party. Subcontractor warrants that it has sufficient financial resources to perform its obligations under this Subcontract Agreement and that joint check agreements are not a condition for Subcontractor to obtain services or materials from its subcontractor, suppliers or materialmen. TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CONTRACTOR FROM ANY CLAIM ARISING FROM CONTRACTOR'S ISSUANCE OF JOINT CHECKS TO SUBCONTRACTOR AND ITS SUB-SUBCONTRACTORS, LABORERS AND/OR SUPPLIERS AND HEREBY WAIVES ANY CLAIM ARISING FROM CONTRACTOR'S ISSUANCE OF JOINT CHECKS.

ARTICLE 14

Disputes, Arbitration and Litigation

14.1 Disputes. If the Prime Contract provides for specific dispute resolution procedures between the Contractor and its subcontractors related to the performance of the Work, then the dispute resolution provisions of the Prime Contract will apply. Otherwise, should any dispute or controversy arise between Contractor and Subcontractor concerning any matter involving or arising out of the Agreement, the following procedures shall apply:

- (a) Such dispute or controversy shall be submitted by one Party to the other in writing;
- (b) The parties, utilizing personnel and representatives authorized to make decisions on their behalf, shall make a good faith attempt to settle such dispute either formally or informally; and
- (c) If such dispute cannot be settled between the parties, then the written orders or direction of Contractor shall be followed by Subcontractor without waiver of Contractor or Subcontractor's claims, disputes, or demands arising from the Contractor's issuance of such orders or the Subcontractor's adherence to the same.

Subcontractor shall continue to perform its obligations pursuant to this Agreement during the pendency of any dispute arising between the Contractor and Subcontractor unless it is otherwise expressly permitted to suspend its performance in accordance with this Agreement or by Applicable Law.

14.2 Arbitration. Unless otherwise required by the Prime Contract, any disputes or controversies not resolved or settled by the Parties shall be submitted to arbitration for a final and binding determination. Unless otherwise agreed to by the Parties, Arbitration shall be conducted in accordance with the Construction Industry Dispute Rules and Mediation Procedures established by the American Arbitration Association in effect as the date of the filing and judgment upon the award by the Arbitrator(s) may be entered by any court having jurisdiction. Unless a specific locale is established by the Prime Contract, the locale of any arbitration shall be Dallas County, Texas.

14.2.1 Consolidation or Joinder. Subject to applicable arbitration rules, either Party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a Party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve related questions of law or fact, and (3) the arbitrations employ reasonably similar procedural rules and methods for selecting arbitrator(s). Either Party may include by joinder persons or entities substantially involved in a common question of law or fact and whose presence is required if complete relief is to be accorded in arbitration, provided that the Party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

14.2.2 If, for any reason, it is determined that the dispute is not subject to arbitration, unless a specific locale is established by the Prime Contract, the venue of any such litigation shall be any court of competent jurisdiction in Tulsa County, Oklahoma. In the event any dispute is required to be resolved through litigation, DUE TO THE SPECIALIZED NATURE OF CONSTRUCTION LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY. The law applicable to any arbitration or litigation concerning or relating to this Agreement shall be the laws of the State of Oklahoma. Disputes involving the Owner shall be resolved in accordance with the dispute resolution procedures set forth in the Prime Contract. In the event there is a prior pending dispute between Contractor and Owner or a should any dispute arises between them, then Contractor and Subcontractor agree to voluntarily abate any claims, arbitration proceedings, or litigation until Contractor's dispute with Owner is resolved. If such claim or dispute concerns or touches on the performance of the Subcontractor, Contractor may join the Subcontractor in any such proceeding.

14.3 Attorney Fees and Legal Expenses. The Prevailing Party, as defined herein, in any claim or dispute arising out of or related to this Agreement shall be entitled to recover as part of any award for damages its reasonable attorneys' fees, expert witness fees, and other expenses reasonably incurred in preparation for or during mediation, arbitration or litigation and any confirmation proceeding or appeal, in addition to such other relief to which the Prevailing Party is entitled. The "Prevailing Party" shall mean the Party receiving affirmative relief in such form or amount that is substantially similar to the recovery or award sought in any final and binding dispute resolution proceeding as may be determined by the final finder of fact. In the event there is not a Prevailing Party, as determined by the final finder of fact, then each Party shall be responsible for their own legal expenses.

14.4 Any arbitration demand or lawsuit regarding any dispute arising from or in any way connected with this Agreement or the Work hereunder, shall be filed with the American Arbitration Association or, if applicable, in the appropriate court of law no later than the expiration of five (5) years from the date of the event giving rise to the claim.

If the contractual limitations period set forth herein is held to violate 12 OK Stat § 12-95 and Remedies Code or other Applicable Laws, then this provision shall be reformed to the shortest possible statute of limitations and/or repose.

14.5 Subcontractor shall include the requirements of this Article 14 in all sub-subcontracts it may enter into for any portion of the Work.

ARTICLE 15 **Miscellaneous Provisions**

15.1 **Captions.** Captions or paragraph headings included in this Subcontract Agreement are for reference purposes only and shall not modify or limit the statements contained herein.

15.2 **Interpretations.** All words in this Subcontract Agreement shall be deemed to include any number or gender as the context or sense of this Subcontract Agreement requires. The Parties agree that this Subcontract Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably.

15.3 **Notice.** All notices required under this Subcontract Agreement shall be sent via certified mail return receipt requested to the address set forth in the Agreement, via facsimile number listed on the Agreement, via hand delivery to the office set forth in the Agreement, or via email to the address set forth in the Agreement. Notwithstanding anything herein to the contrary, email notifications shall be sufficient for any notices required under the Contract Documents regarding notice of Subcontractor's defaults and deficiencies under the terms of this Agreement. Subcontractor and all of its subcontractors, laborers, vendors and suppliers agree to maintain a fully valid and operational email address at all times during the performance of the Work. Verbal notification to Contractor by Subcontractor will not satisfy the notice requirements herein. To the extent that any notice provision of this Agreement violates Applicable Law in that it is too strict or restrictive, the provision shall be automatically modified to the minimum extent necessary to meet the standards mandated by Applicable Law and shall not be void.

15.4 **Severability.** In the event one or more of the provisions of this Agreement or any application thereof shall be invalid, unenforceable, or illegal, including, but not limited to, application of any indemnification obligation pursuant to Title 15 of the Oklahoma Statutes, the validity, enforceability and legality of the remaining provisions and any other application thereof shall not in any way be impaired thereby.

15.5 **Entire Agreement and Amendment.** This Agreement contains and includes the entire understanding of the parties. Any oral agreements, prior proposals, understandings, and correspondence are hereby superseded by this Agreement. In addition, Subcontractor waives any claim for fraudulent inducement with respect to this Agreement. This Agreement may be amended only by an instrument in writing signed by the Parties hereto.

15.6 **Labor Disputes.** Contractor has no control nor seeks any control over the labor relations policy of Subcontractor. Subcontractor agrees that, in the event that any labor dispute or strike impacts the performance of the Work, its employees will either cross any established picket lines or enter the job site through a different entrance. In the event that such labor dispute directly involves Subcontractor's personnel, Subcontractor shall establish a separate entrance to the job site as directed by Contractor. Failure of Subcontractor to man the job with a sufficient number of skilled workmen during a labor dispute shall not be a defense to Contractor's remedies under this Agreement. Subcontractor agrees that Contractor may take all remedies provided in the Agreement, including but not limited to Article 7 or Article 10 should Subcontractor delay the job as the result of a labor dispute of any nature.

15.7 **Independent Contractor.** Subcontractor shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder and any provision in the Agreement which may appear to give Contractor the right to direct Subcontractor as to the details of doing the work or as to the exercise of a measure of control over the Work shall be deemed to mean that Subcontractor shall follow the desires of Contractor in the results only.

15.8 **Privacy.** To the fullest extent permitted by law, until Subcontractor's obligations under this Agreement are completely fulfilled, Subcontractor agrees not to perform any Work directly for Owner or any of its tenants or deal directly with the Owner's representative in connection with the Project, unless otherwise approved in writing by Contractor. All Work for this Project performed by Subcontractor shall be processed and handled exclusively by and through Contractor.

15.9 **Smoking.** Subcontractor shall ensure that Subcontractor and all of its subcontractors, laborers, suppliers, vendors and employees are at all times in compliance with Owner's and/or Contractor's no smoking policy on the Project. If any person is found in violation of this policy they will be subject to disciplinary actions.

15.10 **Confidentiality.** Subcontractor acknowledges that certain of the Contractor's valuable, confidential and proprietary information, including information regarding clients of Contractor, may come into Subcontractor's possession. Accordingly, Subcontractor agrees to hold all information it obtains from or about Contractor in strictest confidence, not to contact clients of Contractor for the duration of the performance of the Work, not to use such information other than for the performance of the Work, and to cause any of its employees, subcontractors, suppliers, vendors or laborers to whom such information is transmitted to be bound to the same obligation of confidentiality to which Subcontractor is bound. Subcontractor shall not communicate Contractor's information in any form to any third party without Contractor's prior written consent. In the event of any violation of this provision, Contractor shall be entitled to preliminary and permanent injunctive relief as well as an equitable accounting of all profits or benefits arising out of such violation, which remedy shall be in addition to any other rights or remedies to which Contractor may be entitled.

Further, Contractor shall be bound to the Owner to preserve Owner's confidential information as the Contractor is bound to the Owner as provided in the Prime Contract.

15.11 Request for Documents. If Subcontractor is presented with a request for documents by any entity, governmental or administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in Subcontractor's possession by reason of this Agreement, Subcontractor shall immediately give written notice of same to Contractor so that Contractor will have the opportunity to contest such process by any means available to it before the records or documents are submitted to a court or other third party. Subcontractor shall not be obligated to withhold the delivery of such documents beyond the time ordered by the court or governmental or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

15.12 No general or limited partner, manager, member, officer, director, employee or shareholder of Contractor shall be personally liable for the performance of Contractor's obligations under this Agreement. The liability of Contractor for Contractor's obligations under this Agreement shall be limited to the amount of the Subcontract Sum, and Subcontractor shall not look to any of Contractor's other assets for enforcement or satisfaction of any such obligation, nor shall Subcontractor seek recourse for such enforcement or satisfaction against any general or limited partner, manager, member, officer, direction, employee or shareholder of Contractor.

15.13 Supervision of Work. Subcontractor shall be solely responsible for, and have control over all portions of the Work in accordance with this Agreement. Should it be necessary in Contractor's reasonable opinion, for Contractor to use its own supervisors to manage Subcontractor's laborers, suppliers, subcontractors, vendors or employees on the site, Subcontractor will be charged each day that such supervision is made necessary.

Agreed and Accepted:

[SUBCONTRACTOR LEGAL NAME]

SCOTT & REID GENERAL CONTRACTORS, INC.

Subcontractor Signature

Contractor Signature
President

By: _____

Date: _____

Title: _____

Date: _____