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ARTICLE 1
PURPOSE, APPLICABILITY AND
SCOPE OF SUBCONTRACT WORK

1.1 Master Subcontract Agreement The Contractor and Subcontractor enter into this Master Subcontract Agreement with the intent and understanding that it will serve as a master agreement for all projects for which Contractor engages Subcontractor, so as to avoid negotiation and execution of separate agreements for each specific project. For each project on which the Contractor engages the Subcontractor, a Work Order will be executed by both parties that shall incorporate this Master Subcontract Agreement by reference, and will include all project-specific terms and conditions, Contract Documents, Scope of Work, insurance requirements and other project-specific requirements and information. The parties agree that this Master Subcontract Agreement, without further acknowledgement, signature, or agreement, will govern all projects for which a Work Order is issued.

1.2 Applicability The Contractor may from time to time and in its sole discretion issue to Subcontractor Work Orders in connection with projects on which the Contractor has been retained as a prime contractor. Issuance of one or more Work Orders to the Subcontractor shall not create an obligation on the part of the Contractor to the Subcontractor to award any additional Work Orders. Issuance of a Work Order is neither implied nor guaranteed by this Master Subcontract Agreement. There are no representations that any minimum amount of work will be subcontracted by the Contractor to the Subcontractor or that any funds or payments by the Contractor to the Subcontractor shall be made in the future.

1.3 Acceptance The Subcontractor shall be deemed to have accepted a Work Order incorporating the terms and conditions contained in this Master Subcontract Agreement in the following situations: (1) the Contractor and the Subcontractor sign a proposed Work Order; or (2) the Subcontractor commences work at the Project under a proposed Work Order.

1.4 Not Used

1.5 Subcontract Work The Contractor employs the Subcontractor as an independent contractor, to provide all labor, materials, equipment and services,

including competent supervision, shop drawings, samples, mock-ups, tools, equipment, scaffolding, and permits, necessary or incidental to complete the part of the Work which the Contractor has contracted with the Owner to provide on the Project as set forth in Work Order Exhibit AA to this Master Subcontract Agreement. When used concerning materials and equipment, the term “provide” shall mean to furnish and install ready for intended use.

The Project-specific scope of the Subcontract Work shall be defined in the Work Order, Exhibit “AA”.

The Contractor’s Work is the construction and services required of the Contractor to fulfill its obligations pursuant to the Prime Contract with the Owner (the “Work”). The Subcontract Work is a portion of the Work. The Subcontractor agrees to perform the Subcontract Work under the general direction of the Contractor and subject to the final approval of the Architect/Engineer, or other specified representative of the Owner, in strict accordance with and reasonably inferable from the Subcontract Documents.

1.6 Responsibilities The Subcontractor shall furnish its best skill and judgment in the performance of the Subcontract Work and shall perform its work to the satisfaction of the Contractor, the Owner and the Architect/Engineer, so the Contractor may fulfill its obligations to the Owner. To the extent the terms of the Prime Contract between the Owner and the Contractor apply to the work of the Subcontractor, then the Contractor assumes toward the Subcontractor all the obligations, rights, duties and redress that the Owner under the Prime Contract assumes toward the Contractor. In the identical way, the Subcontractor assumes toward the Contractor all the same obligations, rights, duties and redress that the Contractor assumes toward the Owner and Architect/Engineer under the Prime Contract. The Subcontractor shall furnish all of the labor, materials, equipment, and services, including but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of the Subcontract Work. The Subcontractor shall be responsible for taking field dimensions, providing tests, obtaining required permits and affidavits, ordering of materials and all

other actions as required to meet the Schedule of Work.

1.7 Qualifications The Subcontractor represents it is fully experienced and qualified to perform the Subcontract Work and it is properly equipped, organized, financed and, if necessary, licensed and/or certified to execute the Subcontract Work.

1.8 Subcontract Documents The Subcontract Documents consist of the following: (1) this Master Subcontract Agreement; (2) the Work Order, Exhibit AA, and all documents referenced therein; (3) the Prime Contract, consisting of the agreement between the Owner and Contractor and the other contract documents enumerated therein, including conditions of the contract (general, supplementary and other conditions), drawings, specifications, addenda issued prior to execution of the Prime Contract and Modifications issued subsequent to the execution of the Prime Contract, whether before or after the execution of this Master Subcontract Agreement or Work Order, and other contract documents, if any, listed in the Prime Contract, all of which are incorporated herein and constitute part of this Master Subcontract Agreement; (4) to the extent the Prime Contract contains or incorporates provisions, including but not limited to state or federal codes, rules and regulations expressly required to be made part of any subcontract agreement, such provisions are incorporated herein by reference and made part of this Master Subcontract Agreement (5) other documents listed in Article 14 of this Master Subcontract Agreement; and (6) mutually agreed upon Modifications to this Master Subcontract Agreement issued after execution of this Master Subcontract Agreement and (7) Modifications to the project-specific Work Order, including project-specific Change Orders and Construction Change Directives. These form the Subcontract Documents and are as fully a part of the Master Subcontract Agreement as if attached to this Master Subcontract Agreement or repeated herein. The Contractor and Subcontractor acknowledge and agree that the incorporation by reference of the Prime Contract, is not limited to those provisions relating to the scope, quality, character and manner of the work to be performed by the Subcontractor but includes and binds Subcontractor to, without limitation, all provisions relating to quality issues, quantity, timeliness of work, damages, administrative procedures, conditions precedent, audit

rights, indemnification, termination, confidentiality, and liabilities and obligations of subcontractors retained by the Contractor. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Master Subcontract Agreement or the project-specific Work Order, appears in Article 14.

1.8.1 When available with the bid package, a copy of the Prime Contract, consisting of the agreement between Owner and Contractor (from which compensation amounts may be deleted) and the other Subcontract Documents enumerated therein, are available for examination by the Subcontractor in electronic format with the bid package, information for which will be included in the project-specific Work Order, Exhibit AA. If the Prime Contract was not included with the bid package, it will be made available to the Subcontractor upon request.

1.9 Interpretation of Subcontract Documents

1.9.1 Conflicts In the event of any inconsistency, conflict or ambiguity between this Master Subcontract Agreement as modified and the project-specific Work Order, Exhibit AA as modified, the Work Order shall govern. In the event of any inconsistency, conflict or ambiguity between this Master Subcontract Agreement together with the project-specific Work Order, Exhibit AA, and any of the other Subcontract Documents, the Master Subcontract Agreement and Work Order shall govern, except that the document calling for the highest duty with respect to the Subcontract Work or indemnity provisions shall govern, it being the intent of the parties hereto that Contractor be fully indemnified by Subcontractor against any liability or potential liability Contractor might have on account of the Subcontract Work.

1.9.2 Conflicts in the Prime Contract In case of any inconsistency, conflict or ambiguity among the documents that compose the Prime Contract, such shall be subject to the requirements and procedures provided for by the Prime Contract and the Subcontractor shall immediately submit the matter to the Contractor for submission to the Owner for clarification. The Owner's clarifications are final and binding. Subject to the foregoing, among all the Subcontract Documents, the term or provision that is most specific or includes the latest date shall control. Information identified in one Subcontract Document

and not identified in another shall not be considered to be a conflict or inconsistency.

1.9.3 Except as may otherwise be provided by the Prime Contract, the drawings and specifications are complementary. If Subcontract Work is shown only on one but not on the other, the Subcontractor shall perform the Subcontract Work as though fully described on both consistent with the Subcontract Documents and reasonably inferable from them as being necessary to produce the indicated results.

1.9.4 Except as may otherwise be provided by the Prime Contract, in case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings or specifications, the Subcontractor shall immediately submit the matter to the Contractor for submission to the Owner for clarification. The Owner's clarifications are final and binding.

1.9.5 Except as may otherwise be provided by the Prime Contract, where figures are given, they shall be preferred to scaled dimensions.

1.9.6 Except as may otherwise be provided by the Prime Contract, any terms that have well-known technical or trade meanings, unless otherwise specifically defined in the Master Subcontract Agreement or Work Order, shall be interpreted in accordance with their well-known meanings.

1.9.7 Where, in Work Order Exhibit AA, a division, divisions or section of the specifications is referred to in describing the work to be performed under this Master Subcontract Agreement, the Subcontractor shall, unless otherwise specified, perform all of the work required by such division, divisions or sections, plus all additional related work of a similar nature generally performed by the trades or crafts employed or engaged by the Subcontractor in executing the principal work under this Master Subcontract Agreement, whether or not such additional or related work of a similar nature is specifically called for in the plans, in other divisions of the specifications, or in any other of the Subcontract Documents.

1.10 Subcontractor's Review of Subcontract Documents The Subcontractor shall make a careful

analysis and comparison of the drawings, specifications, other Subcontract Documents and information furnished by the Owner relative to the Subcontract Work. The Subcontractor shall notify the Contractor in writing within three (3) business days of the Subcontractor's discovery of any inconsistencies or omissions in the Subcontract Documents. Within three (3) business days of receipt of notice, the Contractor shall record the notice in its project control system and provide the Subcontractor with a timetable for instruction from the Owner or its representative. The Contractor shall instruct the Subcontractor as to the measures to be taken when such instructions are received and the Subcontractor shall comply with the Contractor's instructions. If the Subcontractor fails to perform the obligations of this paragraph, the Subcontractor shall pay such costs and damages to the Contractor as would have been avoided if the Subcontractor had performed such obligations. Nothing in this paragraph shall relieve the Subcontractor of responsibility for its own errors, inconsistencies and omissions.

1.11 Interpretations Should any question arise with respect to the interpretation of the drawings and specifications or any other Subcontract Documents, such questions shall be submitted, if necessary, by the Contractor to the Architect/Engineer for its interpretation and the Architect/Engineer's decision shall be final and binding. If there is no Architect/Engineer for this Project, the Contractor's decision shall be followed by the Subcontractor.

1.12 Site Visit The Subcontractor accepts responsibility for the inspection of conditions that could affect the Subcontract Work at the Project site, and based on that inspection, and not in reliance upon any opinions or representations of the Contractor, its officers, agents or employees, acknowledges its responsibility to satisfactorily perform the Subcontract Work without additional expense to the Contractor. The Subcontractor represents it has satisfied itself and has become fully acquainted with the nature and location of the Subcontract Work, the general and local conditions, particularly those bearing upon safety precautions, permits, inspections, code compliance, transportation, disposal, handling and storage of materials, availability of labor, water, electric power, utilities, roads, weather conditions, river stages or similar physical conditions, the conformation and condition of the ground, the soil structure and

reasonably foreseeable subsurface conditions, obstructions, actual levels, excavating, filling in, the character of equipment and facilities needed preliminarily to and during the prosecution of the Subcontract Work, the probability of new tax levies or increases in taxes, costs of materials, wage rates, work rules, all laws, ordinances and regulations applicable to the Subcontract Work and all other matters which in any way might affect the Subcontract Work, or its cost. The Subcontractor shall promptly report any discrepancies between its observations and the Subcontract Documents to the Contractor.

1.13 Subcontractor's Failure to Review If the Subcontractor fails to perform the reviews and comparisons required in Paragraphs 1.10 and 1.12, and as otherwise required by the Subcontract Documents, to the extent the Contractor is held liable to the Owner because of the Subcontractor's failure, the Subcontractor shall pay the costs and damages to the Contractor that would have been avoided if the Subcontractor had performed those obligations.

1.14 Identification of Sub-subcontractors and Suppliers Prior to commencement of the Subcontract Work, the Subcontractor shall provide to the Contractor, in writing, the names, addresses, and phone numbers of all sub-subcontractors and suppliers that will be supplying labor and/or materials in relation to the Subcontract Work under this Master Subcontract Agreement, including the names of each of their representatives. This same information shall be provided prior to adding or changing any sub-subcontractors or suppliers during the course of the Project. Failure of the Subcontractor to provide, in writing, any of this information to the Contractor shall be grounds for the Contractor to withhold progress payments from the Subcontractor, which funds shall be released once Subcontractor has cured the failure.

ARTICLE 2 SUBCONTRACT PRICE AND PAYMENTS

2.1 Subcontract Price The Subcontract Price to be paid by the Contractor, out of funds received from the Owner, to the Subcontractor for the satisfactory performance and completion of the Subcontract Work, is **(Subcontract Price may be set forth in Exhibit AA, Work Order)**.

2.2 Schedule of Values Subcontractor shall provide a detailed schedule of values, indicating labor, material and equipment costs for each activity, satisfactory to the Contractor and the Owner no more than fifteen (15) days from the date of execution of the Work Order, Exhibit AA. Failure to provide the schedule of values shall be grounds for the Contractor to withhold payment from the Subcontractor.

2.3 Progress Payments Applications Unless otherwise required by the Work Order, Exhibit AA, the Subcontractor shall submit progress payment applications to the Contractor no later than the 25th day of each month. Each progress payment application shall be for Subcontract Work performed up to the end of that month or such portion of the Subcontract Work that Contractor is permitted to requisition under the terms of the Prime Contract.. Payment applications shall be itemized and supported by substantiating data as required by the Contractor, indicating the Subcontract Work completed and, to the extent allowed under hereunder, materials suitably stored during the payment period. Subcontractor shall submit with each request for progress payments completed lien waivers and supplier affidavits, in a form satisfactory to the Owner and Contractor.

2.3.1 Failure to Submit Application In the event the Subcontractor does not submit to the Contractor a request for progress payment as directed, then the Contractor may, at its option, include in its request to the Owner for progress payment for Work performed during the preceding payment period, such amount as Contractor may deem proper for the Subcontract Work for the preceding payment period and the Subcontractor agrees to accept such approved portion thereof in lieu of the progress payment based upon the Subcontractor's estimate.

2.4 Retainage Unless statute or the Work Order, Exhibit AA, requires otherwise, retainage shall be Ten percent (10%) of Contractor's payment by the Owner for the Subcontract Work.

2.5 Time of Payments Progress payments to the Subcontractor for satisfactory performance of the Subcontract Work shall be made no later than ten (10) calendar days after receipt by the Contractor of payment from the Owner for the Subcontract Work.

2.5.1 To the fullest extent permitted by law, receipt of payment from the Owner for the Subcontract Work is a **condition precedent** to the Contractor's obligation to make payment to the Subcontractor, except to the extent such non-payment is solely attributable to the acts or omissions of the Contractor. Payment as used in this clause shall include retainage, progress payments, payment for change orders and extra work orders, and final payment. **The Subcontractor hereby acknowledges that it relies solely and exclusively on the credit of the Owner, not the Contractor, for payment for its work.**

2.5.2 Should Subparagraph 2.5.1 be deemed void and unenforceable as a contingent payment clause under the law of the state in which the Project is located, then if payment from the Owner for such Subcontract Work is not received by the Contractor, through no fault of the Subcontractor, the Contractor will make payment to the Subcontractor within a reasonable time for the Subcontract Work satisfactorily performed. This reasonable period of time shall be defined to be that period of time which will allow the Contractor to diligently pursue dispute resolution procedures for non-payment available under the Owner-Contractor Agreement or by Law to collect such sums as are justly payable to the Contractor and all Subcontractors. If such definition is not permitted by the law of the state in which the Project is located, then a reasonable period of time shall be defined as the maximum period of time allowed by law for payment to a subcontractor in the event of owner non-payment to a contractor.

2.6 Stored Materials Unless otherwise provided in the Subcontract Documents, and if approved in advance by the Owner, applications for payment may include materials and equipment not incorporated in the Subcontract Work but delivered and suitably stored at the site or at some other location agreed upon in writing. Approval of payment applications for such stored items on or off the site shall be conditioned upon submission by the Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to the Owner and the Contractor to establish the Owner's title to such materials and equipment, or otherwise to protect the Owner's and the Contractor's interest, including during transportation to the site.

2.7 Payment Utilization The Subcontractor shall pay for materials, equipment, and labor used in connection with performance of the Subcontract work through the period covered by previous payments received from the Contractor, and shall furnish releases, lien waivers, and satisfactory evidence of the payment by Subcontractor of all bills or indebtedness incurred by Subcontractor in the performance of the Subcontract Work. In the event there are any unpaid bills or indebtedness for such labor, materials, equipment or other expenses or indebtedness, Contractor may, in its discretion, withhold from any payment otherwise due Subcontractor an amount sufficient to pay such indebtedness or expenses, issue payment jointly to Subcontractor and any unpaid sub-subcontractor or supplier of material or labor or equipment, or make payment for such expenses or indebtedness for the account of the Subcontractor. If required by Contractor, Subcontractor shall furnish Contractor with sufficient evidence that the Project is free from all liens and claims arising out of the Subcontract Work, including, when requested by Contractor, the examination of the books and records maintained by Subcontractor showing payment of all bills and indebtedness incurred by Subcontractor in the performance of the Subcontract Work. If payment for material stored off site and not delivered to the site is requested and made, title to such material shall pass to the Contractor but the Subcontractor shall remain fully liable for all such material not delivered to the job site and shall be responsible for providing insurance for such stored material. The Contractor shall have the right at all times to directly contact the Subcontractor's sub-subcontractors and suppliers to ensure the same are being paid promptly by the Subcontractor for the labor or materials furnished for use in performing the Subcontract Work.

2.8 Deductions The Contractor may deduct from any amounts due or to become due to the Subcontractor any sum or sums owing by the Subcontractor to the Contractor; and in the event of any breach by the Subcontractor of any provision or obligation of this Master Subcontract Agreement, or in the event of the assertion by other parties of any claim or lien against the Owner, the Contractor, Contractor's Surety, or the premises upon which the Work was performed, which claim or lien arises out of the Subcontractor's performance of this Master Subcontract Agreement, the Contractor shall have the right, but is not required, to retain out of any payments

due or to become due to the Subcontractor an amount sufficient to completely protect the Contractor from any and all resulting loss, damage or expense, until the claim or lien has been adjusted by the Subcontractor to the satisfaction of the Contractor. This Paragraph shall be applicable even when the Subcontractor has posted a full payment and performance bond.

2.9 Withholding Notwithstanding any other provision, the Contractor may withhold any payment or payments due or to become due to the Subcontractor if and to the extent that the Contractor deems it necessary or desirable to protect itself against possible loss or damage due to:

1. defective Subcontract Work not remedied to the satisfaction of the Contractor and Owner;
2. third-party claims or reasonable evidence indicating probable third-party claims;
3. failure or reasonable evidence of a failure of the Subcontractor to make payments to its subcontractors or suppliers as required;
4. inability or reasonable doubt as to the ability, of the Subcontractor to complete the Subcontract Work within the required time or for the unpaid balance of the Subcontract Price;
5. damage to the Contractor or a separate subcontractor;
6. unsatisfactory prosecution of the Subcontract Work by the Subcontractor, including any default under the terms of the Subcontract Documents;
7. the Subcontractor's failure to provide the Contractor with insurance certificates in compliance with Article 6 of this Master Subcontract Agreement;
8. the Subcontractor's failure to provide the Contractor with a schedule of values and/or cost breakdown pursuant to Article 2.2 of this Master Subcontract Agreement;
9. The Subcontractor's failure to provide the Contractor with weekly-certified payroll records, small business or minority business reports, and/or other required labor reports including but not limited to EEO reports, utilization reports, apprentice reports and/or training documents, if required by Subcontract Documents; and
10. The Subcontractor's failure to provide lien and claim waivers for sub-subcontractors and suppliers.

2.10 Final Payment Final payment shall be paid to the Subcontractor conditioned upon approval by the Owner, Architect and the Contractor of the Subcontract Work, satisfactory evidence having been received by the Contractor that all labor, including customary fringe benefits and payments due under collective bargaining agreements, and all subcontractors and suppliers have been paid to date, Subcontractor's waiving its lien rights upon the final payment of a specific balance due, compliance with all conditions of Article 2 in its entirety, and satisfaction of required closeout procedures, written warranties, equipment manuals, and as-built drawings if required.

2.11 Final Payment Delay If the Owner or its designated agent does not issue a certificate for final payment or the Contractor does not receive such payment for any cause which is not the fault of the Subcontractor, the Contractor shall promptly inform the Subcontractor in writing. The Contractor shall also diligently pursue, with the assistance of the Subcontractor, the prompt release by the Owner of the final payment due for the Subcontract Work. At the Subcontractor's request and expense, to the extent agreed upon in writing, the Contractor shall institute reasonable legal remedies to mitigate the damages and pursue payment of the Subcontractor's final payment including interest.

2.11.1 To the fullest extent permitted by law, and subject to Subparagraph 2.5.2, the Contractor and Subcontractor acknowledge and agree that receipt by the Contractor of final payment from the Owner for such Work performed by Subcontractor is an express condition precedent to the obligation of Contractor to make, and the Subcontractor's right to receive, final payment. The parties acknowledge and agree that until the Contractor receives final payment under its contract with the Owner, the Contractor shall be under no obligation to make final payment to the Subcontractor regardless of the reasons or causes for the delay in the receipt of final payment from the Owner.

2.12 Contractor's Surety The liability of Contractor's surety, if any, under any surety payment bond posted for this Project is expressly understood to be co-extensive with that of the Contractor hereunder. The terms of this Master Subcontract Agreement shall in all respects be deemed incorporated into any such

payment bond as may have been posted and the question of whether or not any funds may be due or justly due to the Subcontractor, as may be referenced within any such bond, shall solely be determined by reference to this Master Subcontract Agreement. Any Surety issuing such payment bond shall be an intended beneficiary of the provisions of this Master Subcontract Agreement.

2.13 Interest No interest shall accrue or be due the Subcontractor on any funds or payments described in Article 2, including retainage, paid within the time periods set forth herein, nor shall interest accrue or be due the Subcontractor for any funds withheld to protect the interests of the Contractor or the Owner as set forth elsewhere in this Master Subcontract Agreement.

2.14 New York Wage Theft [Applicable only to Projects in New York State] If the Project is not subject to New York Labor Law Article 8 Prevailing Wage requirements, Subcontractor expressly acknowledges its obligation to fully comply with all applicable New York laws and requirements related to payment of wages to employees ("Wage-Related Laws"), including but not limited to: New York Labor Law Article 6, §§ 190-199-d "Payment of Wages"; New York Labor Law Article 25-8, §§861-861g "Construction Industry Fair Play Act"; and New York General Business Law Article 35-E, §§756-758, "Construction Contracts"; including § 756-f "Wage Theft and Enforcement". In the event Contractor has a reasonable concern that Subcontractor may not be complying with Wage-Related Laws, Subcontractor expressly agrees to provide, if and when requested by Contractor, certified payroll records with each payment application under the Agreement, and such other information and data required by these laws.

2.15 Subcontractor represents that it is financially solvent and able to pay its obligations as they become due on an ongoing basis. Contractor relies upon this representation in making payments to Subcontractor. If Subcontractor fails to make payments to its sub-subcontractors, vendors, and other project-related obligations, or Contractor identifies in writing a reasonable concern regarding the Subcontractor's ability to make payment when due, Subcontractor agrees to provide, when requested by Contractor, current financial information from Subcontractor, its vendors, sub-subcontractors and banks, in order to

verify the accuracy of this representation.

ARTICLE 3 SUBCONTRACTOR'S PROSECUTION OF THE WORK

3.1 Time and Schedule

3.1.1 Time is of the essence as to the prosecution of the Subcontract Work.

3.1.2 If requested, the Subcontractor shall provide the Contractor with scheduling information and Subcontractor's proposed schedule for the Subcontract Work. The Contractor may prepare the Schedule of Work for the Project.

3.1.3 Within seven (7) days of receiving the Schedule of the Work and any updates thereto the Subcontractor shall review such and notify the Contractor in writing of Subcontractor's acceptance or of any revisions the Subcontractor believes should be made. Any agreed upon revisions shall be the basis for a "no cost" Change Order. If the parties cannot agree upon revisions to the Schedule of Work, Contractor may issue a Written Authorization to Proceed pursuant to Paragraph 5.1 directing performance in accordance with the Schedule of Work as provided by Contractor. The Subcontractor's failure to provide written notice of acceptance or revisions within the seven (7) days shall constitute acceptance by the Subcontractor and a waiver of Subcontractor's right to assert a claim seeking an extension of the Subcontractor's time for performance or an adjustment of the Subcontract Price based on objections or revisions later raised by the Subcontractor.

3.1.4 Contractor shall have the right to modify the construction schedule, including suspending, delaying or accelerating, in whole or in part, the commencement or execution of Subcontract Work, or varying the sequence thereof, without compensation to the Subcontractor. In the event such a delay or suspension extends the overall time of performance, the time for the Subcontractor to complete its work shall be extended.

3.1.5 The Subcontractor shall commence the Subcontract Work promptly upon notice to proceed. The Subcontractor shall prosecute the Subcontract Work in a prompt and diligent manner as directed by

the Contractor and in accordance with the Schedule of Work without hindering the Work of the Contractor or any other subcontractor. The Subcontractor shall proceed with the Subcontract Work, making all necessary deliveries, so as to make timely progress and complete the same in accordance with the Schedule of Work and as directed by the Contractor. Whenever, in the Contractor's opinion, the Subcontract Work falls behind, through no fault of the Contractor, the Subcontractor shall increase its labor force and/or provide overtime, Saturday, Sunday and/or holiday work, and shall have each of its subcontractors do likewise, all at no additional cost to or compensation from the Contractor, in order to achieve compliance with the Schedule of the Work.

3.2 Meetings Prior to commencement of Subcontract Work, the Contractor shall conduct and the Subcontractor shall attend a preconstruction conference on site to identify storage areas, work limitations, and other items related to the Subcontract Work. In addition, at the Contractor's discretion, the Subcontractor shall attend all kick-off meetings, Project meetings, emergency meetings, close-out meetings and Owner/Architect walk-throughs. Failure to provide adequate representation at such meetings as directed by the Contractor shall be a material breach of this Master Subcontract Agreement.

3.3 Protection of the Work The Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of others from damage caused by the Subcontractor's operations or by others. Should the Subcontractor, its agents, servants or employees cause damage to the Work or property of the Owner, the Contractor or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor, or the Contractor may remedy the damage and deduct its cost from any amounts due or to become due the Subcontractor, unless such costs are promptly paid by insurance applicable to damages to property.

3.4 Delays Should the Subcontractor be delayed by an act or omission of the Contractor or by any other contractor or subcontractor on the Project, or by any cause beyond the Subcontractor's control and not due to any fault, act or omission on its part, then the time for completion of the work shall be extended for a period equivalent to the time lost by reason of any of the aforesaid causes, but only to the extent an extension

of time is actually allowed to the Contractor by the Owner under the terms of the Prime Contract. Subcontractor agrees to make no claim for damages for delay in the performance of this Master Subcontract Agreement occasioned by any act or omission to act of the Contractor or any of its representatives.

3.5 Submittals The Subcontractor shall be responsible for and shall prepare for performance of Subcontract Work, including, without limitation thereto, the submission of shop drawings, samples, tests, field dimensions, determination of labor requirements and ordering of materials as required to meet the Schedule of Work. Subcontractor shall notify Contractor when portions of the Subcontract Work are ready for inspection.

3.6 Progress Reports The Subcontractor shall furnish periodic progress reports of the Subcontract Work as requested including the progress of materials or equipment to be provided under this Master Subcontract Agreement that may be in the course of preparation or manufacture. Deliveries to the site shall be pre-arranged on at least twenty-four (24) hours notice

3.7 Coordination The Subcontractor shall cooperate with the Contractor, subcontractors and other contractors whose work may interfere with the Subcontract Work and participate in the preparation of coordinated drawings and work schedules in areas of congestion, specifically noting and advising the Contractor of any interference by other contractors or subcontractors.

3.8 Clean Up The Subcontractor shall at all times keep the building, premises, driveways and streets clean and free from waste material and rubbish caused by Subcontractor's operations, and shall broom clean each work area prior to discontinuing Subcontract Work in the area. The Subcontractor shall dispose of all of the Subcontractor's toxic and hazardous waste, including all containers, by removing the same from the Project site immediately in the manner required by law and regulations. Upon completion of the Subcontract Work, the Subcontractor shall remove from the Project and legally dispose of all temporary structures, debris and waste and clean all surfaces, fixtures, equipment and

materials pertaining to or affected by the Subcontract Work.

3.8.1 If the Subcontractor fails to commence compliance with cleanup duties within twenty-four (24) hours after written notification from the Contractor, the Contractor may implement such cleanup measures as it deems necessary without further notice to the Subcontractor and charge the cost of the same to Subcontractor, and in addition, fine the Subcontractor \$200.00 for each incident of non-compliance.

3.9 Hoisting The Subcontractor is responsible for providing all hoisting to perform its Subcontract Work.

3.10 Compliance With Laws The Subcontractor agrees to be bound by, and at its own costs comply with, all federal, state and local laws, ordinances and regulations applicable to the Subcontract Work, including but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety, immigration and all other laws with which the Contractor must comply. The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply with laws, including, but not limited to, any fines, penalties or corrective measures.

3.11 Permits, Licenses and Taxes The Subcontractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Subcontract Work, the furnishing of which is required by the Subcontract Documents. Subcontractor shall pay all taxes applicable to the performance of Subcontract Work.

ARTICLE 4

SAFETY PROGRAM AND PROCEDURES

4.1 General Subcontractor shall maintain a safety program for compliance with all applicable safety laws, ordinances, rules, regulations and orders of public authorities at all times during the performance of Subcontract Work. Not less than ten (10) calendar days before commencing Subcontract

Work, Subcontractor shall submit its site-specific safety program to the Contractor's Project Manager and/or Superintendent for approval. Such program shall implement safety measures, policies and standards conforming to those required or recommended by the Contractor, the Owner, governmental and quasi-governmental authorities having jurisdiction, including, but not limited to, requirements imposed by the Subcontract Documents. Such program shall be comprehensive and shall require the implementation of safety measures according to the best current industry practices pertaining to the Subcontract Work and the Project, including establishing safety rules, tie off and fall protection requirements, posting appropriate warnings and notices, erecting and/or maintaining appropriate safety barriers, and establishing proper notice procedures to protect persons and property at the site and adjacent to the site from injury, loss or damage.

4.2 Precautions The Subcontractor shall take necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss, to all employees on the Subcontract Work and all other persons who may be affected thereby; all the Subcontract Work and all materials and equipment to be incorporated therein, whether in storage on or off the site; and all other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Subcontract Work.

4.3 Safety Foreman The Subcontractor shall designate a responsible member of its organization present at the Subcontract Work site whose duty as Subcontractor's Safety Foreman shall be the prevention of accidents. This person shall be the Subcontractor's Superintendent unless otherwise designated by the Subcontractor in writing. Subcontractor's Safety Foreman shall attend all Project safety meetings.

4.4 Safety Performance The Subcontract Work shall be performed in accordance with the Occupational Safety and Health Act ("OSHA"), the New York State Department of Labor ("Department of Labor") requirements or such similar statute in the jurisdiction where the Project is located, and the immediate implementation of the requirements listed below. Prior to starting the Subcontract Work,

Subcontractor shall enforce the following safety requirements including, but not limited to, the following:

1. Hard hats and proper eye protection shall be worn by ALL personnel and visitors at all times.
2. Proper ear and foot protection shall be worn as the situation requires.
3. All electrical tools and equipment shall be properly grounded.
4. Removal of any machine guard is prohibited.
5. Scaffolding shall be erected and maintained with guard-rails and mid-rails, toe boards and proper floor boards.
6. Consumption of alcohol or the use of controlled substances is prohibited on the Project site; and
7. All moving vehicles and machinery shall be equipped with a warning device when operating in reverse.

4.5 Safety Fines OSHA and/or Department of Labor fines or penalties levied by governmental and quasigovernmental authorities having jurisdiction, including but not limited to OSHA and/or Department of Labor, and by the Owner as a result of Subcontractor's activities shall be deducted from the Subcontract Price. Any disregard of OSHA, Department of Labor, other state statutes or regulations, Owner-mandated or Contractor-mandated safety and health regulations for construction may be cause for immediate dismissal from the Project site. To the fullest extent permitted by law, the Subcontractor shall indemnify the Contractor from and against fines or penalties imposed by governmental and quasigovernmental authorities having jurisdiction and by the Owner as a result of safety violations, but only to the extent that such fines or penalties are caused by Subcontractor's failure to comply with applicable safety requirements.

4.6 Safety Violation Charity Policy In order to further promote jobsite safety, the Contractor will implement a safety violation charity policy. Safety-related fines assessed against the Subcontractor by the Contractor shall be donated to a charity selected by the Owner or Contractor. In the event the Subcontractor, or anyone for whom the Subcontractor is responsible, commits a safety infraction, the Contractor may impose an initial fine of \$100. Thereafter, the amount

of any subsequent fines shall double from the amount of the immediately prior fine. The Subcontractor's responsibility for any fines imposed under this policy shall be in addition to those fines provided for under Paragraph 4.5. Fines provided under Paragraph 4.6 shall be paid by the Subcontractor within thirty (30) days from the date they are imposed by Contractor. Any fines unpaid after thirty (30) days will be deducted from Subcontractor's next application for payment.

4.7 Safety Notices The Subcontractor shall comply with all applicable notices and orders of the Contractor and any public authority bearing on the safety of persons, property or their protection from damage, injury or loss.

4.8 Safeguards The Subcontractor shall erect and maintain, as required by existing conditions and the progress of the Subcontract Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the owners and users of utilities.

4.9 Hazardous Substances Hazardous substances, of which an employer is required by law to notify its employees of their use, shall not be used at the Project site by the Subcontractor, the Subcontractor's sub-subcontractors or anyone directly or indirectly employed by them, without prior written approval of the Contractor. The Subcontractor shall not use asbestos or polychlorinated biphenyl ("PCB") or lead, or materials containing those substances in the performance of the Subcontract Work except with written approval of the Contractor, the Owner and the Architect/Engineer. To the extent that the Contractor has rights or obligations under the Owner-Contractor agreement or by law regarding hazardous materials as defined by the Subcontract Document within the scope of the Subcontract Work, the Subcontractor shall have the same rights or obligations.

4.10 Accident Prevention Prevention of accidents at the site is the responsibility of the Contractor, the Subcontractor, and all other subcontractors, persons and entities at the site. Establishment of a safety program by the Contractor shall not relieve the Subcontractor or other parties of their safety responsibilities. The Subcontractor shall comply with the reasonable recommendations of

insurance companies having an interest in the Project, and shall stop any part of the Subcontract Work that the Contractor deems unsafe until corrective measures satisfactory to the Contractor are taken. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility for those practices. The Subcontractor shall notify the Contractor immediately following any accident involving personal injury, any property damage, or any incident or "near miss" that could have resulted in serious personal injury or property damage, whether or not such an injury or damage was sustained. A detailed written report shall be furnished to the Contractor within twenty-four (24) hours of such incident.

4.11 Removal of Personnel The Subcontractor shall remove from the Project any employee who creates an unsafe condition, or who performs work in an unsafe manner on the Project, or who fails any drug and/or alcohol test given in connection with this Project, or who violates the Contractor's Safety Procedures. The Subcontractor shall not assign the removed employee to any project on which the Contractor is working, for the period of time specified in the Contractor's Safety Program Protection Procedures.

ARTICLE 5 CHANGES IN THE WORK

5.1 Change Orders and Directives The Contractor and Subcontractor agree that the Contractor may add to or deduct from the amount of Subcontract Work covered by this Master Subcontract Agreement, and any changes so made to the Subcontract Work, or any other parts of this Master Subcontract Agreement, shall be by a written Change Order. A Change Order is a written instrument prepared by the Contractor and signed by the Subcontractor stating their agreement upon the change in the Subcontract Work and the value of such change. In addition, the Subcontractor agrees to proceed with the Subcontract Work, as changed, when so directed in a Written Authorization to Proceed issued by the Contractor so as not to delay the progress of the Subcontract Work and pending any determination of the value. If the Contractor requests a proposal of cost for a change, the Subcontractor shall promptly comply with such request. Contractor shall not make changes in Subcontract Work, whether additions, deletions or

other revisions in any manner except by written Change Order or Written Authorization to Proceed. All changes in the Subcontract Work made by Change Order or Written Authorization to Proceed shall be deemed a part of the Subcontract Work and shall be performed and furnished in strict accordance with all terms and conditions of this Master Subcontract Agreement and the Subcontract Documents, including the current Schedule of Work.

5.2 Impact of Changes The Subcontractor shall review each modification issued by the Owner and advise the Contractor in writing within three (3) business days of notice of the modification as to the impact, if any, on the Subcontract Work, including any adjustment in Subcontractor's time for performance or the Subcontract Price. Subcontractor's failure to do so will result in a waiver of claim for an adjustment in the Subcontract Price or an extension of time for the impact of the modification issued by the Owner.

5.3 No Notice to Surety No notice to the Subcontractor's surety shall be required for any such change, addition, or omission. The Subcontractor shall promptly arrange for an increase in the penal sum of any surety bond due to additions to the Subcontract Work, unless such increase is waived by the Contractor in writing.

5.4 Compensation Subcontractor shall not be entitled to receive extra compensation for extra work or materials or changes of any kind regardless of whether the same was ordered by the Contractor or any of its representatives unless a Change Order or Written Authorization to Proceed has been issued in writing by the Contractor. If extra work was ordered by the Contractor and the Subcontractor performed same but did not receive a written Change Order or Written Authorization to Proceed, the Subcontractor shall be deemed to have waived any claim for extra compensation therefore, regardless of any written or verbal protests or claims by the Subcontractor. The Subcontractor shall be responsible for any costs incurred by the Contractor for any changes of any kind made by the Subcontractor that increase the cost of the Work for either the Contractor or other subcontractors when the Subcontractor proceeds with such changes without a written Change Order or Written Authorization to Proceed.

5.5 Claims

5.5.1 Claims Relating to Owner The Subcontractor agrees to initiate all claims for which the Owner is or may be liable, including any act or omission, neglect, or default of Owner, its Architect/Engineer, or other prime contractors, in the manner and within the time limits provided in the Subcontract Documents for like claims by the Contractor upon the Owner and in sufficient time for the Contractor to initiate such claims against the Owner in accordance with the Subcontract Documents. Compliance with these requirements shall be a condition precedent to Subcontractor pursuing such claims and the Subcontractor's failure to comply with these requirements shall constitute a waiver of any claim for which the Owner is or may be liable.

5.5.2 Claims Relating to Contractor The Subcontractor shall give the Contractor written notice of all claims not included in subparagraph 5.5.1 within three (3) days of the Subcontractor's knowledge of the facts giving rise to the event for which claim is made. Compliance with this written notice requirement shall be a condition precedent to Subcontractor pursuing such claims and the Subcontractor's failure to comply with these requirements shall constitute a waiver of any claim hereunder. Subcontractor shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) days after giving notice, unless the parties agree upon a longer period of time. Failure of the Subcontractor to maintain and provide records of the costs of such claims to Contractor shall constitute a waiver of the claims. The Contractor shall respond in writing denying or approving, in whole or in part, the Subcontractor's claim no later than fourteen (14) days after receipt of the Subcontractor's documentation of claim. The Contractor's failure to respond shall be deemed a denial of the Subcontractor's claim. All unresolved claims, disputes, and other matters in question between the Contractor and the Subcontractor not relating to claims included in subparagraph 5.5.1 shall be resolved as provided for in Article 11.

5.5.3 Written notice of Claim under subparagraphs 5.5.1 or 5.5.2 shall be deemed effective when delivered by personal delivery, overnight courier, or via email to Contractor's designated Project Manager and Superintendent with electronic confirmation of

same, or three (3) calendar days after deposited for mail, postage paid, with the United States Postal Service to the address for Contractor. A Notice of Claim shall clearly state that Subcontractor is asserted a Claim and the alleged cause and nature of the Claim. Compliance with these written notice requirements shall be a condition precedent to Subcontractor pursuing such claims and the Subcontractor's failure to comply with these requirements shall constitute a waiver of any claim hereunder.

5.6 The Contractor shall not be obligated or liable to the Subcontractor for, and the Subcontractor hereby expressly waives any claims against the Contractor on account of, any damages, costs or expenses of any nature, including direct, indirect or impact damages, which the Subcontractor or its subcontractors may incur as a result of any delays, interferences, suspensions, changes in sequence, obstructions, hindrances, acceleration, loss of productivity, or the like, arising from or out of any act or omission, neglect, or default, of, or attributable to, the Contractor, any of its representatives, or Contractor's other subcontractors or suppliers, it being understood and agreed that the Subcontractor's sole and exclusive remedy in such event shall be an extension of time, but only in accordance with the provisions of this Master Subcontract Agreement.

5.7 Unknown Conditions If in the performance of the Subcontract Work the Subcontractor finds latent, concealed or subsurface physical conditions which differ materially from those indicated in the Subcontract Documents or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist, and not generally recognized as inherent in the kind of Subcontract Work provided for in this Master Subcontract Agreement, the Subcontractor shall notify the Contractor before those conditions are disturbed no later than seven (7) calendar days after its observance of the conditions, or such shorter period of time as may be required by the Prime Contract. The adjustment which the Subcontractor may receive in Subcontract Price and/or in the time for performance of the Subcontract Work shall be limited to the adjustment the Contractor receives from the Owner on behalf of the Subcontractor (exclusive of the Contractor's markup).

5.8 Determination by Owner or Architect/Engineer Notwithstanding any other provision, if work for which the Subcontractor claims additional compensation is determined by the Owner or Architect/Engineer not to entitle the Contractor to a Change Order, additional compensation or a time extension because such work is within the scope of the Subcontract Work as defined by Paragraph 1.1, then the Contractor shall not be liable to the Subcontractor for any additional compensation or time extension for such work, unless the Contractor agrees in writing to pay such.

5.9 The Subcontractor shall furnish all notices and information within the time required under the Prime Contract to enable the Contractor to timely assert a claim or a defense of the Subcontractor.

ARTICLE 6 INSURANCE and INDEMNITY

6.1 Insurance Prior to starting the Subcontract Work, the Subcontractor shall at its own expense procure and maintain in force, in form and with insurance companies having at least an A.M. Best rating of A- or as otherwise acceptable to the Contractor, Workers' Compensation Insurance, Employers Liability Insurance, Owners and Contractors Protective Liability Insurance, Comprehensive General Liability Insurance with contractual coverage covering this Master Subcontract Agreement and Automobile Liability Insurance, Property Insurance and such other insurance required by the Subcontract Documents for the Subcontractor Work. All required insurance shall be maintained without interruption from the date of commencement of the Subcontract Work throughout the warranty period as set forth in this Master Subcontract Agreement and/or Work Order. The following types and coverages shall be written for not less than the limits of liability set forth in the project-specific Work Order, Exhibit AA.

A. General Liability Comprehensive General Liability Insurance. Such coverage shall include: Premises-Operations, Contractor's Protective, Products-Completed Operations, Contractual Liability covering the liability assumed by this Master Subcontract Agreement, Personal Injury, Broad Form Property Damage (including Completed Operations), full Explosion, Collapse and Underground Coverage,

Broad Form Notice of Occurrence. Such coverage shall not include any exclusion for any type of work included in Subcontractor's scope of work, set forth in the Work Order, Exhibit AA, or for Subcontractor's own employees. The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least two (2) years after either 90 days following substantial completion of the work or final payment to the Contractor, whichever is earlier. Prior to the start of its work Subcontractor shall provide to Contractor a copy of the Completed Operations endorsement.

B. Umbrella Umbrella (Excess) Liability Insurance with limits to be excess of paragraphs 6.1.A, 6.1.D, and 6.1.E. Such coverage shall be on a primary and non-contributory basis and at least as broad as the primary coverage in 6.1.A, 6.1.D, and 6.1.E, with excess umbrella layers written on a strict following form basis over the primary umbrella. All such policies shall be endorsed to provide coverage obligations. Such coverage shall not include any exclusion for any type of work included in Subcontractor's scope of work, set forth in the Work Order, Exhibit AA, or for Subcontractor's own employees.

C. Owners and Contractors Protective Liability The Subcontractor shall procure and maintain, until Final Acceptance of the Subcontract Work, and at its own expense, Owners and Contractors Protective Liability Insurance issued to, and covering the liability for damage imposed by law upon Contractor with respect to all operations under the Subcontract by the Subcontractor or its sub-subcontractors or suppliers, including omissions and supervisory acts of Contractor.

D. Automobile Comprehensive Automobile Liability Insurance. Such coverage shall include all owned, non-owned, leased and hired automobiles.

E. Worker's Compensation and Employer's Liability Workers' Compensation authorized in the State where the Subcontract Work is being performed and Employer's Liability Insurance, including Broad Form All States Endorsement, Voluntary Compensation Endorsement, U.S. Longshoremens and Harbor workers' Compensation Act Endorsement, and Maritime coverage as required. If the Subcontractor is an "Owner/Operator",

Subcontractor shall provide Workers' Compensation coverage for itself.

F. Property Insurance/Builder's Risk When required by the Work Order, Exhibit AA, "All risk" property coverage covering the Subcontract Work and all materials and equipment on the Project site, in transit, or in storage to be used in the construction in amounts sufficient to protect the Subcontractor, unless and to the extent relieved from this obligation by the Contractor or by the terms of the Prime Contract, such insurance being made payable to the Owner, the Contractor and the Subcontractor are relieved of the obligation to provide such property insurance. The Subcontractor assumes sole responsibility for any deductible amounts that may be applied in an insurance claim settlement for damage to its Subcontract Work.

G. Professional Liability Insurance (Design) If the Subcontract Documents specifically require the Subcontractor to procure design services, the Subcontractor shall require its design professional(s) to maintain professional liability insurance with a company reasonably satisfactory to the Contractor, including contractual liability insurance against the liability assumed in this Master Subcontract Agreement, and including coverage for any professional liability caused by consultants of its design professional. The professional liability insurance shall contain prior acts coverage sufficient to cover all subcontract services rendered by the design professional. The Subcontractor shall require its design professional to furnish to the Subcontractor and Contractor, before the design professional commences its services, a copy of its professional liability policy evidencing the coverages required in this subparagraph. If at any time during the course of a project for which Subcontractor has agreed to procure design services, the available professional liability coverage is less than seventy-five percent (75%) of the required minimum limit of coverage, Subcontractor shall notify Contractor in writing within seven (7) days of learning such and advise Contractor as to how Subcontractor intends to address the deficiency. Thereafter, if the available professional liability coverage drops to fifty percent (50%) or less of the required minimum limit of coverage, Subcontractor shall notify Contractor in writing within seven (7) days of learning such and advise Contractor as to how Subcontractor intends to address the

deficiency. If so directed by Contractor, Subcontractor shall procure additional coverage in such amount as Contractor determines is appropriate.

H. Professional Liability Insurance If the Subcontract Documents require the Subcontractor to provide professional services, the Subcontractor shall maintain professional liability insurance with a company reasonably satisfactory to the Contractor, including contractual liability insurance against the liability assumed in this Master Subcontract Agreement, and including coverage for any professional liability caused by any professional consultants of Subcontractor. The professional liability insurance shall contain prior acts coverage sufficient to cover all professional services rendered by the Subcontractor or its consultants. Before commencing its professional services, the Subcontractor shall furnish to the Contractor a copy of its professional liability policy evidencing the coverages required in this subparagraph.

I. Pollution Liability When required by the Work Order, Exhibit AA, Pollution Liability Insurance covering liability for bodily injury, property damage and environmental damage resulting from sudden accidental pollution and related cleanup costs incurred by the Subcontractor or appropriate subcontractor, all arising out of the Subcontract Work.

J. Any and all additional insurance coverage and limits required by the Subcontract Documents and the laws of the state in which the Project is located.

6.1.1 Primary and Non-Contributing All insurance coverages required herein, including additional insured coverage, shall be primary and non-contributing with, and not in excess of, any other insurance available to the Contractor and other entities as required by the Prime Contract, as defined in the Master Subcontract Agreement and Work Order.

6.1.2 The carrying of the above coverages shall not relieve the Subcontractor of its obligations assumed under this Master Subcontract Agreement.

6.1.3 Sub-subcontractor Coverages The Subcontractor shall cause its subcontractors to procure and maintain insurance covering the same liabilities addressed in this Exhibit, in form and amounts, with

companies acceptable to the Contractor. The Subcontractor shall provide the Contractor with certificates of insurance for each sub-subcontractor. In addition, Subcontractor shall carry contingent liability coverages on its subcontractors in the above minimum limits to cover the Subcontract Work so subcontracted.

6.2 Limits Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella policy.

6.3 Endorsement The Subcontractor's Insurance required by Paragraph 6.1 shall be considered primary and non-contributing insurance. **Pike Construction Services, Inc. and the Owner** shall be named as additional insureds with respects to coverages in paragraph 6.1.A, 6.1.B, 6.1.D, and 6.1.I.

6.4 Cancellation The foregoing policies shall contain a provision that coverages afforded under the policies will not be canceled or not renewed until at least thirty (30) days' prior written notice has been given to the Contractor. Cancellation wording may not include the words "endeavor to" or "but failure to", etc.

6.5 Waiver of Subrogation The Contractor and Subcontractor waive all rights of subrogation against each other and against the Owner, the Architect/Engineer, separate contractors, and all other subcontractors for damages caused by fire or other perils to the extent covered by Builders' Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance. Subcontractor hereby agrees to waive rights of subrogation against Contractor and Owner, their agents, representatives, employees, and affiliates, which any insurer of Subcontractor may acquire from the Subcontractor by virtue of the payment of any loss under any policy of insurance required by Article 6 or under the project-specific Work Order, Exhibit AA. Subcontractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. Subcontractor's Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Contractor and Owner for all work performed by the Subcontractor, its employees, agents and sub-subcontractors.

6.6 Certificates of Insurance Certificates of Insurance acceptable to the Contractor shall be filed, in duplicate, with the Contractor prior to the commencement of Subcontract Work. If requested by Contractor, Subcontractor shall provide copies of applicable insurance policies.

6.6.1 Certificate Review Contractor shall have no duty to the Subcontractor or any of its insurers or their insurance agents to review any Certificates or copies of insurance furnished to Contractor or to determine whether the terms of each Certificate or policy of insurance comply with the insurance-related provisions of the Subcontract Documents. A failure of the Contractor to detect that a Subcontractor has not submitted Certificates, or proper Certificates, or is otherwise not in compliance with the insurance-related provisions of the Subcontract Documents shall not be considered a waiver or other impairment of any of Contractor's rights under such insurance-related provisions.

6.7 Indemnity To the fullest extent permitted by law and unless otherwise required by the project-specific Work Order Exhibit AA, the Subcontractor hereby agrees to defend, indemnify and save harmless the Owner, the Contractor, the Construction and/or Project Manager, the Architect and/or Engineers (the "parties"), and their agents, representatives, directors, officers and employees against any and all liability loss, damage, detriment, suit, claim, demand, cost, charge, attorneys' fees and expenses of whatever kind or nature which they may directly or indirectly incur, suffer or be required to pay by reason, or in consequence, of the carrying out of any of the provisions or requirements of this Master Subcontract Agreement where such loss or expense is incurred directly or indirectly by these parties, their employees, subcontractors or agents as a result of the work and operations. Under this Paragraph 6.7, Subcontractor has no liability or obligation to indemnify or hold harmless the Owner, the Contractor, the Construction and/or Project Manager, the Architect and/or Engineers against liability arising out of bodily injury to persons or damages to property contributed to, caused by or resulting from the negligence of these parties, their agents, representatives, directors, officers and employees. If a claim or action is made or brought against them for which the Subcontractor may be responsible hereunder, in whole or in part, then it shall be notified and shall be required to handle or pay for

the handling of the portion of the claim for which Subcontractor is responsible as a result of this paragraph.

6.7.1 No Limit On Indemnification In any and all claims against the Contractor or any of its agents or employees by any employee of the Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable, the indemnification obligation under this Paragraph 6.7 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

6.7.2 Other Obligations The obligations of the Subcontractor under this Paragraph 6.7 shall not extend to the liability of the Architect/Engineer, its agents or employees, arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (b) the giving of or failure to give directions or instructions by the Architect/Engineer, its agents or employees, provided such giving or failing to give is the primary cause of the injury or damage.

6.8 Failure to Name Contractor as Additional Insured Subcontractor acknowledges and agrees that it is necessary to name Contractor, and others required by the Subcontract Documents, as an additional insured for the amount and kind of insurance required herein. To the fullest extent permitted by law, the Subcontractor shall be liable to the Contractor for the full amount of any tort liability, attorney's fees and other costs incurred by Contractor and which would have been avoided had Subcontractor fulfilled its contractual obligation to name Contractor and required others as an additional insured.

ARTICLE 7 PERFORMANCE BOND and LABOR and MATERIAL PAYMENT BOND

7.1 Bonds If required by the Work Order Exhibit "AA", Subcontractor shall furnish to the Contractor, as named Obligee with others as Obligees at Contractor's option, surety bonds to secure the faithful performance of the Subcontract Work and to satisfy all Subcontractor payment obligations related to Subcontract Work. If bonds are required they shall

be furnished by a surety acceptable to the Contractor, in the full amount of the Subcontract Price, and on the forms attached as to Exhibit "AA" (Work Order Subcontract).

7.2 Failure to Provide Bonds In the event the Subcontractor shall fail to promptly provide any required bonds, the Contractor may terminate the Work Order Exhibit "AA" and enter into a subcontract for the balance of the Subcontract Work with another subcontractor. All Contractor costs and expenses incurred by the Contractor as a result of said termination, beyond those Contractor would have incurred in the absence of the termination, shall be paid by the Subcontractor.

7.3 Subcontractor Default Insurance Program (SDI) (option) If required by Work Order Exhibit AA, and as an alternative to requiring the Subcontractor to furnish performance and payment bonds, the Contractor may at its option elect to enroll the Subcontractor in the Contractor's SDI program providing insurance to indemnify Contractor for direct and indirect costs incurred as a result of a default in performance by the Subcontractor under the terms of this Master Subcontract Agreement. If the Contractor considers Subcontractor for enrollment in SDI, the Subcontractor shall provide the Contractor with any and all requested financial and prequalification information required for the SDI enrollment process and any updated information required thereafter, as further set forth in the project-specific Work Order, Exhibit AA.

7.3.1 Prequalification The Subcontractor shall provide the Contractor with requested financial and prequalification information in accordance with the standard prequalification package. Pike's collection of and review of such prequalification information does not and shall not be interpreted to accept the credit obligations of the Subcontractor and is solely for the benefit of Pike's ability to understand the suitability of the Subcontractor to perform the scope of work as required by the Contract Documents.

ARTICLE 8 WARRANTY AND CORRECTION OF WORK

8.1 Warranty Notwithstanding use of equipment during Construction, the Subcontractor

warrants all materials and equipment furnished under this Master Subcontract Agreement shall be new, unless otherwise specified, of good quality, in conformance with the Subcontract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of Substantial Completion of the Subcontract Work or a portion of the Subcontract Work as designated in writing by the Contractor or as may otherwise be provided for in the Work Order and or the Owner Contract. The Subcontractor further agrees to execute any special guarantees as provided by the terms of the Subcontract Documents prior to final payment.

8.2 Correction of Subcontract Work

8.2.1 If prior to Substantial Completion of the Subcontract Work, the Subcontract Work is found to be not in conformance with the Subcontract Documents, the Subcontractor shall promptly correct the Subcontract Work whether it had been fabricated, installed or completed, within seventy-two (72) hours after written notification from the Contractor of non-conformance. The Subcontractor shall be responsible for the costs of correcting such Subcontract Work, any additional testing, inspections, and compensation for services and expenses of the Architect/Engineer and the Contractor made necessary by the defective Subcontract Work.

8.2.2 In addition to the Subcontractor's obligations pursuant to this Paragraph, the Subcontractor agrees to correct all Subcontract Work performed under this Master Subcontract Agreement which proves to be defective in workmanship or materials within a period of one year from the date of Substantial Completion of the Subcontract Work or for a longer period of time as may be required by statute, the Work Order, or specific warranties in the Subcontract Documents. The Subcontractor shall begin correction of such work within seven (7) days after the receipt of notice from the Contractor of such defective or non-conforming Subcontract Work. Substantial Completion occurs as defined by the Owner's Contract Documents. In the absence of such definition, Substantial Completion of the Subcontract Work, or a designated portion, occurs on the date when Subcontract Work is sufficiently complete in accordance with the Subcontract Documents so the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended.

8.2.3 The Subcontractor's correction of Subcontract Work pursuant to this Paragraph 8.2 shall not extend the correction period required by the Subcontract Documents, but if any Subcontract Work is first performed after Substantial Completion, such correction period shall be extended by the time period between Substantial Completion and the performance of that portion of Subcontract Work. The Subcontractor's obligation to correct Subcontract Work within the correction period required by the Subcontract Documents as described in this Paragraph 8.2 does not limit the enforcement of the Subcontractor's other obligations with regard to the Master Subcontract Agreement and the Subcontract Documents.

8.2.4 If the Subcontractor's correction or removal of Subcontract Work destroys or damages completed or partially completed work of the Owner, the Contractor or any separate contractors or subcontractors, the Subcontractor shall be responsible for the cost of correcting such destroyed or damaged construction.

8.2.5 If portions of the Subcontract Work which do not conform with the requirements of the Subcontract Documents are neither corrected by the Subcontractor nor accepted by the Contractor, the Subcontractor shall remove such Subcontract Work from the Project site if so directed by the Contractor.

**ARTICLE 9
CONTRACTOR'S OBLIGATIONS**

9.1 Authorization Upon request, the Contractor shall give the Subcontractor written authorization to obtain direct from the Architect/Engineer or Owner's authorized agent, evidence of the amount and percentages of completion certified on Subcontractor's account.

9.2 Instructions The Contractor shall not issue or give any instruction, order or directions directly to employees or workmen of the Subcontractor other than to the persons designated as the authorized representative(s) of the Subcontractor.

9.3 Damages If the Subcontract Documents provide for liquidated damages or other damages for delay beyond the completion date set forth in the Subcontract Documents that are not specifically addressed as a liquidated damage item in this Agreement, and such damages are assessed, the Contractor may assess a share of the damages against the Subcontractor in proportion to the Subcontractor's share of the responsibility for the damages. However, the amount of such assessment shall not exceed the amount assessed against the Contractor. This paragraph shall not limit the Subcontractor's liability to the Contractor for the Contractor's actual damages caused by the Subcontractor.

9.4 Temporary Facilities and Services The Subcontractor shall furnish those temporary facilities and services required by the Subcontractor except for those to be provided by the Contractor set forth in the Work Order Exhibit AA to this Master Subcontract Agreement. Adequate storage areas, if available, shall be allocated by the Contractor for the Subcontractor's materials and equipment during the course of the Subcontract Work.

**ARTICLE 10
CONTRACTOR'S RIGHT TO PERFORM
SUBCONTRACTOR'S RESPONSIBILITIES
AND TERMINATION**

10.1 Failure of Performance

10.1.1 Notice to Cure If the Subcontractor is unable, refuses or fails to supply enough properly-skilled workers, proper materials, or maintain the

Schedule of Work, or fails to make prompt payment to its workers, subcontractors or suppliers, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Master Subcontract Agreement, the Subcontractor shall be deemed in default of this Master Subcontract Agreement. If the Subcontractor fails within twenty-four (24) hours after written notification to commence and continue satisfactory correction of the default with diligence and promptness, then the Contractor without prejudice to any other rights or remedies shall have the right to any or all of the following remedies:

.1 supply workers, materials, equipment and facilities as the Contractor deems necessary for the completion of the Subcontract Work or any part which the Subcontractor has failed to complete or perform after written notification, and charge the cost, including reasonable overhead, profit, attorneys' fees, costs and expenses to the Subcontractor;

.2 contract with one or more additional contractors to perform such part of the Subcontract Work as the Contractor determines will provide the most expeditious completion of the Subcontract Work, and charge the cost to the Subcontractor as provided under Paragraph 10.1.1.1; and/or

.3 withhold any payments due or to become due the Subcontractor pending corrective action in amounts sufficient to cover losses, damages and expenses including attorney's fees and litigation expenses and compel performance to the extent required by and to the satisfaction of the Contractor.

In the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice, but the Contractor shall give the Subcontractor notice promptly after the fact as a precondition of cost recovery.

10.2 Suspension by Contractor The Contractor may order the Subcontractor in writing to suspend, delay or interrupt all or any part of the Subcontract Work for such period of time as may be determined to be appropriate for the convenience of the Contractor. Subcontract Work when required to be phased or

interrupted shall not be deemed a suspension.

10.2.1 The Subcontractor shall notify the Contractor in writing ten (10) business days after receipt of the Contractor's order suspending, delaying or interrupting the Subcontract Work of the effect of such order upon the Subcontract Work. To the extent allowed the Contractor under the Prime Contract, the Subcontract Price or Schedule of the Work shall be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Master Subcontract Agreement caused by such suspension, delay or interruption.

10.2.2 No claim relating to suspension shall be allowed for any costs incurred more than ten (10) business days prior to the Subcontractor's notice to the Contractor as provided in Subparagraph 10.2.1.

10.2.3 Neither the Subcontract Price nor the time for performance of the Subcontract Work shall be adjusted under this Article for any suspension, delay or interruption to the extent that performance would have been suspended, delayed, or interrupted by the fault or negligence of the Subcontractor or by a cause for which the Subcontractor would have been responsible.

10.2.4 The Subcontract Price shall not be adjusted under this Article for any suspension, delay or interruption to the extent that performance would have been suspended, delayed or interrupted by a cause for which the Subcontractor would have been entitled only to a time extension under this Master Subcontract Agreement.

10.2.5 In the event the Subcontract Work suspended, delayed or interrupted is, for any reason, deleted from the Contractor's or the Subcontractor's scope of work, the Contractor shall be liable to the Subcontractor solely for the reasonable value of Subcontract Work properly performed by the Subcontractor (as reflected in the Subcontractor's schedule of values and breakdown of Subcontract Work) prior to such deletion, including reasonable overhead and profit on Subcontract Work performed, but only to the extent the Contractor receives payment from the Owner for such Subcontract Work as provided in Subparagraphs 2.5, 2.10, and all of 2.11. Pursuant to the Subcontractor's request, the Contractor may, in its discretion, pursue the Owner for any

shortfall in payment to Contractor for the reasonable value of Subcontract Work performed by Subcontractor prior to such deletion. Subcontractor shall be responsible for its proportionate costs and expenses associated with such action and shall provide whatever assistance Contractor requests in pursuit of such claim.

10.3 Suspension by Owner Should the Owner suspend its agreement with the Contractor or any part which includes the Subcontract Work, the Contractor shall notify the Subcontractor in writing and upon receiving notification the Subcontractor shall immediately suspend the Subcontract Work. In the event of Owner suspension, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor.

10.4 Termination for Convenience The Contractor may, at any time, terminate a project-specific Work Order or this Master Subcontract Agreement, in whole or in part, for the Contractor's convenience and without cause. Upon receipt of written notice from the Contractor of such termination for the Contractor's convenience the Subcontractor shall (1) cease operations as directed by the Contractor in the notice; and (2) take actions necessary, or that the Contractor may direct, for the protection and preservation of the Subcontract Work; and (3) except for the Subcontract Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and not enter into further subcontracts and purchase orders. In the event of termination for the Contractor's convenience, the Contractor may reimburse the Subcontractor for reasonable costs and a reasonable profit on such costs directly resulting from such action, but the Subcontractor shall not be entitled to prospective profits, overhead on Subcontract Work not performed, materials not furnished, nor other consequential losses.

10.5 Termination by Contractor If the Subcontractor at any time causes by any act or

omission a significant violation of the Contractor's safety policies, refuses or neglects to supply sufficient properly skilled workers or materials or equipment of the proper quality and quantity, or fails in any respect to prosecute Subcontract Work with promptness and diligence, or causes by any action or omission the stoppage, delay or interference with the Work, or materially fails in the performance of any of the covenants contained in this Article or elsewhere in this Master Subcontract Agreement, or becomes unable to meet its debts as they mature, or assigns or sublets Subcontract Work or any money due pursuant to this Master Subcontract Agreement without the Contractor's written consent, the Contractor may at its option, after serving written notice of such default with direction to cure the default in not less than forty-eight (48) hours and the Subcontractor fails to cure the default to the satisfaction of the Contractor, terminate the project-specific Work Order for the Project for which Subcontractor is in default or this Master Subcontract Agreement by delivering written notice of termination to the Subcontractor. Thereafter the Contractor may take possession of the plant and Subcontract Work, materials, tools, appliances and equipment of the Subcontractor at the Project site, and through itself or others provide labor, equipment and materials to prosecute Subcontract Work on such terms and conditions as shall be deemed by the Contractor as necessary, and shall deduct the cost, including without restriction all claims, charges, expenses, losses, costs, damages, and attorneys' fees, incurred as a result of the Subcontractor's failure to perform, from any money then due or thereafter to become due to the Subcontractor under this Master Subcontract Agreement.

10.5.1 If the Contractor so terminates the employment of the Subcontractor, the Subcontractor shall not be entitled to any further payments under the Work Order or this Master Subcontract Agreement and no sum shall be deemed due or to become due to the Subcontractor until Subcontract Work has been completed and accepted by the Owner, all Subcontract requirements have been fulfilled, and payment has been received by the Contractor from the Owner. In the event the unpaid subcontract earnings exceed the Contractor's cost of completion and any and all incidental costs, including administrative, legal and other professional fees, the difference shall be paid to the Subcontractor, but if such expenses exceed the

subcontract earnings, the Subcontractor agrees to pay the difference to the Contractor promptly.

10.5.2 Wrongful Exercise If it is determined or agreed that the Contractor wrongfully exercised any option under this Article, the Contractor shall be liable to the Subcontractor solely for the reasonable value of Subcontract Work performed by the Subcontractor prior to such action, including reasonable overhead and profit on the Subcontract Work performed, less prior payments made. Under no circumstances shall the Subcontractor be entitled to recovery of claimed lost future profits.

10.6 Termination by Owner Should the Owner terminate its contract with the Contractor or any part which includes the Subcontract Work, the Contractor shall notify the Subcontractor in writing and upon written notification, the project-specific Work Order shall be terminated. In the event the Owner terminates its contract with the Contractor, in addition to the foregoing the Contractor may terminate the Master Subcontract Agreement. Upon its receipt of notice of such termination the Subcontractor shall immediately stop the Subcontract Work, follow all of the Contractor's instructions, and mitigate all costs. In the event of Owner termination, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the Owner termination and to permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor.

10.7 Bankruptcy

10.7.1 Termination Absent Cure If the Subcontractor files a petition under the Bankruptcy Code, the Subcontractor agrees it is essential to the performance of this Master Subcontract Agreement and the overall completion of the Project that the Subcontract Work continue without interruption, and further that this Master Subcontract Agreement shall terminate if the Subcontractor or the Subcontractor's trustee rejects the Master Subcontract Agreement or, if there has been a default, the Subcontractor is unable

to give adequate assurance that the Subcontractor will perform as required by this Master Subcontract Agreement or otherwise is unable to comply with the requirements for assuming this Master Subcontract Agreement under the applicable provisions of the Bankruptcy Code.

10.7.2 Interim Remedies If the Subcontractor is not performing in accordance with the Schedule of Work at the time a petition in bankruptcy is filed, or at any subsequent time, the Contractor, while awaiting the decision of the Subcontractor or its trustee to either reject this Master Subcontract Agreement or to assume this Master Subcontract Agreement and provide adequate assurance of its ability to perform, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Schedule of Work. The Contractor may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided including, but not limited to, reasonable overhead, profit and attorney's fees. The Subcontractor shall be liable for the payment of the amount by which all such costs incurred exceed the unpaid balance of Subcontract earnings.

10.8 Contingent Assignment of Subcontract To the extent the Prime Contract calls for the Subcontractor to consent to the assignment of subcontract by Contractor to Owner if elected by Owner, such assignment shall be limited to the project-specific Work Order and the terms of the Master Subcontract Agreement as they relate to the particular project, and Subcontractor hereby consents to such an assignment. The assignment shall not be effective to the Master Subcontract Agreement as a whole, nor shall it be effective as to Work Orders issued to Subcontractor on other projects. The Contractor's contingent assignment of a project-specific Work Order and the terms of the Master Subcontract Agreement as they relate to the particular project, as provided in the Prime Contract, is effective when the Owner has terminated the Prime Contract for cause and has accepted the assignment by notifying the Subcontractor in writing. This contingent assignment is subject to the prior rights of a surety that may be obligated under the Contractor's bond, if any. The Subcontractor consents to such assignment and agrees to be bound to the assignee by the terms of the project-specific Work Order and the Master Subcontract Agreement as they relate to the particular project.

ARTICLE 11 DISPUTES RESOLUTION PROCESS

11.1 Initial Dispute Resolution If a dispute arises out of or relates to this Master Subcontract Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions between corporate officers of the Contractor and the Subcontractor. If the dispute cannot be resolved through direct discussions, the parties shall participate in mediation under the Construction Industry Mediation Rules of the American Arbitration Association before recourse to any other form of binding dispute resolution. The location of the mediation shall be Monroe County New York. Once a party files a request for mediation with the other party and with the American Arbitration Association, the parties agree to commence such mediation within thirty (30) calendar days of filing of the request. Either party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person to the other party and the mediator. Engaging in mediation is a condition precedent to any other form of binding dispute resolution.

11.2 Any controversy or claim not resolved through mediation shall be settled according to the disputes resolution procedures in the Prime Contract.

11.3 For a dispute which involves the Subcontract Work, in whole or in part, the Subcontractor shall have the right to participate in the assertion or defense of claims related to such work in the disputes resolution procedures and shall be bound by the outcome.

11.4 The Contractor shall pay the Subcontractor the amount of the proportionate share of any recovery due the Subcontractor on the basis of the ratio of the Subcontractor's claims to other claims that are asserted, less the expenses and attorneys' fees of the procedures, provided the Subcontractor's claims and other claims are substantially similar and reasonable justified as to merit and actual cost incurred as determined by the Contractor. The Subcontractor shall pay the Contractor its proportionate share of a recovery by the Owner against the Contractor involving the Subcontract Work or materials and pay the Contractor its proportionate share of the expenses and attorneys' fees incurred in defending such Owner claim against the Contractor.

11.5 If the Prime Contract does not provide a disputes resolution procedure, or if, in the sole judgment of the Contractor, the controversy, dispute or claim is principally between the Contractor and Subcontractor and is not governed by Subparagraphs 11.1 through 11.4, then such controversy, dispute or claim between the Contractor and Subcontractor shall be determined as hereinafter provided in Paragraph 11.9.

11.6 Completion of the dispute resolution procedure shall be a condition precedent to the right of the Subcontractor to commence or continue any legal action against the Contractor.

11.7 The Subcontractor agrees to continue performance of the Subcontract Work and shall proceed in accordance with the directives of the Contractor, under protest, in the event of a dispute or controversy. Failure to so proceed shall constitute a material breach of contract regardless of the ultimate decision on the dispute, it being understood and agreed that any controversy between the parties shall not be deemed a basis to delay or suspend the Subcontract Work, unless directed otherwise by the Contractor.

11.8 The Subcontractor hereby agrees to indemnify the Contractor for any and all costs, including attorneys' fees, of defending a claim by the Owner or any other party in the disputes resolution procedure if such claim relates to or arises from the Subcontract Work.

11.9 All claims, disputes and other matters in question between the Subcontractor and the Contractor arising out of or related to the Subcontract or the breach thereof, except as specifically governed by the foregoing provisions, and except for claims which have been waived by the making and acceptance of final payment, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining at the sole option of the Contractor. If a demand for arbitration is filed by the Subcontractor, the Contractor shall advise the Subcontractor, within thirty (30) days after the receipt of such a demand for arbitration, if the Contractor exercises the option to arbitrate or rejects arbitration; such election, once made, shall be binding. The filing of a demand for arbitration by the

Contractor shall be deemed an election to arbitrate and shall constitute the exercise of the option of the Contractor to proceed with arbitration. The Contractor may join or consolidate arbitration with the Owner, Architect, any other Subcontractor, or any other party having an interest in the proceeding. This agreement to arbitrate shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof.

ARTICLE 12 LABOR RELATIONS

12.1 It is understood that contracts will be awarded and labor will be employed on the Project herein described without discrimination as to whether employees of any contractor, subcontractor, or those employed by the prime contractors are members or non-members of any labor organization and the Subcontractor accepts this Master Subcontract Agreement with that understanding.

12.2 If in the judgment of the Contractor it becomes necessary to establish separate gates on the Project, the Subcontractor agrees to use, and shall cause its employees, subcontractors, suppliers and business visitors to use, such separate gate or gates at such times, and in such manner, as the Contractor may from time to time direct.

12.3 Subcontractor shall at all times supply a sufficient number of skilled workers to perform the Subcontract Work covered by this Master Subcontract Agreement with promptness and diligence. Should any workers performing Subcontract Work covered by this Master Subcontract Agreement engage in a strike or other work stoppage, or cease to work due to picketing or a labor dispute of any kind, which in the judgment of the Contractor will cause, or is likely to cause, unreasonable delay in the progress of construction, then, upon twenty-four (24) hours written notice, the Contractor shall have the right to declare the Subcontractor in default and take such steps as are necessary to finish the uncompleted portion of the Subcontract Work.

12.4 In such event, the Contractor shall have the right to take possession of, and use, all of the

Subcontractor's materials (exclusive of tools) intended for use on the Project. The cost of completion and any and all incidental costs, including administrative, legal and other professional fees, shall be charged against the Subcontractor's remaining interest in the Subcontract Price. If the Subcontractor's remaining interest in the Subcontract Price exceeds the cost of completion and any and all incidental costs, including administrative, legal and other professional fees, the Subcontractor shall be entitled to the difference. If, however, the cost of completion and any and all incidental costs, including administrative, legal and other professional fees exceeds the Subcontractor's remaining interest in the Subcontract Price, then the Subcontractor agrees to pay the Contractor such excess within thirty (30) days after written demand for such excess has been made upon him by the Contractor.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 Severability Should any part of this Master Subcontract Agreement be found to be invalid or illegal by reason of any existing or subsequently enacted legislation or by decision of a court of competent jurisdiction, it is agreed that such legislations or findings shall not affect the remainder of the Master Subcontract Agreement and the remaining paragraphs or parts shall remain in full force and effect.

13.2 Extent of Agreement This Master Subcontract Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements either written or oral. This Agreement may be amended only by written instrument signed by each and every party to this Master Subcontract Agreement. In the event the Subcontractor commences performance prior to the execution of this Master Subcontract Agreement, the Subcontractor acknowledges and agrees that it shall be bound by the terms and conditions of this Master Subcontract Agreement as of the date the Subcontract Work is commenced.

13.3 Governing Law All matters relating to the validity, performance, interpretation or construction of this Master Subcontract Agreement, or the breach of this Master Subcontract Agreement, shall be governed by the law in effect at the location of the Project.

13.4 Assignment The Subcontractor shall not assign this Master Subcontract Agreement or any Work Order without the prior written consent of the Contractor. Should the Subcontractor assign any or all part of any money due or to become due under this Master Subcontract Agreement, the instrument of assignment shall contain a clause to the effect that the assignee's right in and to any money due or to become due to the Subcontractor shall be subject to the claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the Subcontract Work.

13.5 Course of Conduct No course of conduct or dealings between the parties, nor any delay in the exercise or enforcement of any rights, remedies, or provisions of this Master Subcontract Agreement, shall operate as a waiver of any of the rights, remedies, or obligations of the parties.

ARTICLE 14 SCHEDULE OF EXHIBITS TO THE MASTER SUBCONTRACT AGREEMENT

The following Exhibits are attached to and are a part of this Master Subcontract Agreement.

Exhibit AA: Work Order; The Subcontractor's Scope of Work, including alternative or unit prices

(List any additional documents which are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be part of the Subcontract Documents)

IN WITNESS WHEREOF, the parties hereto have executed this Master Subcontract Agreement under seal the day and year first above written.

Subcontractor

By: _____

_____ (Name)

_____ (Title)

SAMPLE

Pike Construction Services, Inc.
Contractor

By: _____

_____ (Name)

_____ (Title)