SUBCONTRACT AGREEMENT
BETWEEN
CONTRACTOR AND SUBCONTRACTOR

TABLE OF ARTICLES

ARTICLE 1 AGREEMENT
ARTICLE 2 THE WORK OF THIS SUBCONTRACT
ARTICLE 3 COST OF THE WORK
ARTICLE 4 TIME TO COMPLETE THE WORK
ARTICLE 5 CHANGES IN THE WORK
ARTICLE 6 PAYMENTS
ARTICLE 7 INSURANCE, INDEMNITY AND BONDS
ARTICLE 8 SUBCONTRACTOR
ARTICLE 9 CONTRACTOR
ARTICLE 10 SUSPENSION, RIGHT TO CURE, AND TERMINATION
ARTICLE 11 CLAIMS AND DISPUTE RESOLUTION
ARTICLE 12 THE SUBCONTRACT DOCUMENTS
ARTICLE 13 DEFINITIONS
ARTICLE 14 TABLE OF EXHIBITS
ARTICLE 15 SUBCONTRACTOR AND CONTRACTOR SIGNATURES

ARTICLE 1: AGREEMENT

This Subcontract Agreement is made by and between the Contractor and Subcontractor (collectively the "Parties") as of the **[Day]** of **[Month]** in the year **20[___]** as follows:

CONTRACTOR: **HUEBER-BREUER CONSTRUCTION CO., INC.**
148 Berwyn Avenue
P.O. Box 515
Syracuse, NY 13205-0515

SUBCONTRACTOR: **[Subcontractor Name]**
[Subcontractor Address Line 1]
[Subcontractor Address Line 2]
[Subcontractor Address LIne 3]

For services in connection with the Subcontract Work for the following:

PROJECT: **[Project Name]**
[Project Address Line 1]
[Project Address Line 2]
[Project Address LIne 3]

The Owner and the Architect for the Project are as follows:

OWNER: **[Owner Name]**
[Owner Address Line 1]
[Owner Address Line 2]
[Owner Address LIne 3]

ARCHITECT: **[Architect Name]**
[Architect Address Line 1]
[Architect Address Line 2]
[Architect Address LIne 3]

Subcontractor and Contractor agree to the following Terms and Conditions:

ARTICLE 2: THE WORK OF THIS SUBCONTRACT

2.1 Subcontract Work: In consideration of the Contractor's agreement to make payments to the Subcontractor according to the terms of this Agreement, the Subcontractor agrees at its own sole cost and expense to perform the following scope of Work or Subcontract Work according to the Subcontract Documents:

[Insert Scope of Work]

2.1.1 Unless specifically stated above or elsewhere in this Agreement to be the responsibility of others, the Subcontractor will furnish without exception all that is required to perform and fully complete the above Subcontract Work according to the Subcontract Documents including but not limited to all of the following as they pertain to the Subcontractor's Work: labor, supervision, staff, administration, management, plant, equipment, layout, materials, tools, scaffolding, hoisting, transportation, unloading, handling, temporary facilities and utilities, shop drawings, product data, samples, and any and all items and incidentals as may be needed regardless of whether all items are expressly identified or detailed in the Subcontract Documents but which are reasonably inferable therefrom. The Subcontractor hereby agrees to timely and diligently prosecute the Subcontract Work as required to meet the Schedule for the Work according to Article 4 of this Agreement. The Subcontractor shall perform the Work under the general direction of the Contractor subject to the final approval of the Architect/Engineer and the Owner in strict accordance with the Subcontract Documents and as reasonably inferable therefrom.

2.1.2 Procore: Unless otherwise directed by the Contractor, all Subcontractor Schedule of Values, Subcontractor Invoices, submittals, RFI correspondence, change event documents, meeting minutes, meeting notifications, and other such Contract or Subcontract Documents as the Contractor directs, shall be transmitted through HB's Procore website. This Subcontractor shall create a login and password to access this Project in the Procore website. Contact HB's Project Coordinator for this Project if you need assistance.

ARTICLE 3: COST OF THE WORK

3.1 Cost of the Work: In consideration of the Subcontractor's satisfactory performance of the Subcontract Work in accordance with the Subcontract Documents, the Contractor shall make payments to the Subcontractor according to Article 6 of this Agreement and such payments in total shall equal the sum of:

"[Insert Amount in Words]" [($0,000)]

3.1.1: The above lump sum or cost of the Work, herein also referred to as the Subcontract Sum, is subject to additions and deductions as provided for in Article 5 of this Agreement.

3.2 Alternates: The Subcontract Sum includes the cost of accepted Alternates, if any, as described in the Subcontract Documents and as enumerated below or in **Exhibit [__]** attached hereto.

[Insert Alternates]

3.3 Unit Prices: This Agreement includes Unit Prices, if any, as described in the Subcontract Documents as enumerated below or an **Exhibit [__]** attached hereto.

3.4 Allowances: The Subcontract Sum includes the cost of specified Allowances, if any, as described in the Subcontract Documents and as enumerated below or in **Exhibit [__]** attached hereto.

3.5 Pending Alternates: The Subcontract Sum does NOT include the cost of Pending Alternates, if any, as described in the Subcontract Documents and as enumerated below or in **Exhibit [__]** attached hereto.

ARTICLE 4: TIME TO COMPLETE THE WORK

4.1 Commencement: The date of commencement for the Subcontract Work (including such activities as preparation of shop drawings, submittals, ordering of materials and equipment, fabrication, etc.) shall be the date upon which this Agreement is made as stated in Article 1 of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a Notice to Proceed (NTP) issued by the Contractor. The date of commencement may be different than the date upon which the Subcontractor begins Work on the Project site. Refer to Section 4.1.2 below.

"[Insert Date If Different Than Date of Agreement]"

4.1.1 Notice To Proceed: A "Notice to Proceed" (NTP) is a written instrument signed by the Parties for the purpose of expediting the Work until this Agreement can be properly prepared and executed. The NTP will include the Subcontract Sum, scope of this Subcontract Work, commencement date, and the Substantial Completion Date. The Contractor has the right, but not the obligation, to issue an NTP to the Subcontractor prior to the execution of this Agreement.

4.1.2 Commencement of Work on Site: Subcontractor's commencement of its Work on the Project site shall occur according to

the Contractor's schedule for the Work of this Project, whether issued before or after the execution of this Agreement. If there is no detailed construction schedule identifying the commencement of the Subcontractor's Work, then the Subcontractor's Work on the Project site shall commence when the prerequisite or sequentially preceding work of other trades is sufficiently complete to allow the Subcontractor's Work to begin or as otherwise directed by the Contractor. Thereafter, the Subcontractor shall timely and diligently prosecute the Work of this Agreement in a manner that will support and achieve the Project completion dates stated herein.

4.2 Time: The Subcontract Time shall be measured from the date of commencement to the date of Project Substantial Completion including authorized adjustments thereto.

4.3 Substantial Completion: Substantial Completion for the Project as defined in the Subcontract Documents shall be achieved not later than the following date:

[Insert Date]

4.3.1 Subcontractor's Substantial Completion: Substantial Completion of the Subcontractor's Work shall be: (1) according to the schedule attached to this Agreement or (2) according to the Contractor's schedule issued subsequent to the execution of this Agreement or (3) as required to achieve Substantial Completion for the Project by the above date under Section 4.3 and/or Milestone Dates listed in Section 4.5 below. The Contractor has no obligation to provide the Subcontractor with a Substantial Completion date specifically for the Subcontractor's Work and nothing in this Section limits the obligation of the Subcontractor to complete the Work of this Agreement within the Subcontract Time and according to Section 4.6 herein. "Subcontractor's Substantial Completion" means and occurs on the date the Work of this Subcontract or designated portion(s) thereof has been fully performed and completed according to the Subcontract Documents and there are only minor punch list items remaining, if any, and in no event shall the incomplete work prevent or limit the Owner's beneficial occupancy or use of the Project for the its intended purpose. Subcontractor's Substantial Completion is subject to the approval of the Architect and Contractor.

4.4 Final Completion: Final Completion for the Project as defined in the Subcontract Documents shall be achieved not later than the following date:

[Insert Date]

4.5 Milestones: As the Project may include multiple phases of construction or key goals in the progress of the Work, the following Milestones shall be Substantially Complete no later than the following dates. If no milestone dates are listed below but are provided for in the Prime Contract, then the Subcontractor is obligated to achieving those dates as though repeated in this Section. (*This does not limit the Contractor's right to establish and/or update milestone dates subsequent to the execution of this Agreement as provided for in Section 4.8 below.)*

"[Insert Mileston(s) and Associated Completion Date(s)]"

4.6 Attainable Schedule: The above completion dates are the essence of this Agreement. By executing this Agreement, the Subcontractor agrees and confirms that based on its best skill, knowledge and experience related to the Subcontract Work that the Subcontract Time is a reasonable period of time to perform the Work of this Subcontract according to the Subcontract Documents with due consideration given to site conditions, site access, lead time for deliveries, workforce labor hours, equipment, sequence of work, coordination with other trades, normal weather conditions for the Project location, and other such factors and conditions as could reasonably be expected on a project of similar type, size and complexity. In a similar way, Subcontractor's said agreement also considers and allows a reasonable amount of time for re-submittals and time needed for response to Requests for Information. Upon Subcontractor's receipt of a Notice to Proceed or the date of commencement fixed herein, the Subcontractor shall timely and diligently prosecute the Work with adequate skilled labor, plant, equipment, materials, and other resources acting in harmony and coordination with the actual progress of the Work, other Subcontractors, Project design professionals, inspectors, testing agencies, local authorities, Owner's representatives and the Contractor in a sequence and within a timeframe that will not delay the Work of other trades and in a manner that will support and achieve the above completion dates.

4.6.1 Contractor's Schedule Issued with the Subcontract: If a construction schedule prepared by the Contractor is issued with this Subcontract, then the Subcontractor agrees said schedule is reasonable and attainable according to Section 4.6 above and the Subcontractor shall timely and diligently prosecute the Work of this Subcontract to conform to the Contractor's schedule. The construction schedule may be regularly or periodically updated and/or modified as reasonably required to reflect and adjust to the actual progress of the Work as described in Section 4.8.1 below without additional compensation to the Subcontractor. The Subcontractor shall provide written scheduling information consistent with Sections 4.7 and 4.9 below for the purpose of updating and modifying the construction schedule.

4.7 Subcontractor's Schedule: The Subcontractor shall promptly provide the Contractor with written scheduling information pertaining to the Subcontractor's Work and/or provide a digitally prepared Gantt-Chart type schedule (or similar computerized bar chart schedule acceptable to the Contractor) showing dates and durations for each significant activity of the Subcontractor's Work in sufficient detail and phasing acceptable to the Contractor until the Subcontractor's schedule satisfactorily conforms to and supports the achievement of the above completion dates. The Subcontractor acknowledges that the Contractor can rely on the accuracy of the Subcontractor's schedule. The Subcontractor's schedule or schedule information shall include information regarding durations for shop drawings/submittals, fabrication, and deliveries of purchased and fabricated materials needed to support the critical path of Work and/or to support and maintain the Project completion dates. If necessary for the purpose of updating the construction schedule to reflect the current progress of the Work, the Subcontractor shall, if requested by the

Contractor, provide updated and/or modified written scheduling information to be incorporated into the updated Contractor's schedule. If the Prime Contract has more stringent requirements for scheduling, such as resource and/or cost loading, or regular or more frequent, detailed updates of the schedule, then the requirements of the Prime Contract shall govern.

4.8 Contractor's Schedule after Subcontract Execution: If a construction schedule is not issued with this Subcontract, then the Contractor has the right, but not the obligation, to prepare a construction schedule for the Project, in whole or in part, and, if requested by the Contractor, the Subcontractor shall cooperatively participate in the Contractor's preparation of the schedule in accordance with Sections 4.7 and 4.9 herein. The Contractor's schedule shall be prepared in consideration of and for the purpose of maintaining the Project completion dates stated herein. Upon Contractor's issuance of the construction schedule to the Subcontractor, the Subcontractor shall timely and diligently prosecute the Work of this Subcontract according to the Contractor's schedule. If in the Subcontractor's judgment the Contractor's schedule is cause for an increase in the Subcontractor's compensation, the Subcontractor shall give Notice to the Contractor according to Article 11 of this Agreement. In absence of Subcontractor's Notice objecting to the Contractor's schedule, the Subcontractor thereby agrees said schedule is reasonable and attainable according to Section 4.6 above and forfeits and waives any Claims or right to Claim for additional compensation on the basis of the Contractor's schedule.

4.8.1 Updating the Construction Schedule: The Contractor may make reasonable adjustments, in whole or in part, to the commencement or execution of the Subcontractor's Work, or may vary the sequence thereof, including interruptions and/or concurrence of activities, without additional compensation to the Subcontractor. The Subcontractor acknowledges that such adjustments are to be expected in projects of this type, size, complexity and overall schedule and Subcontractor has anticipated a certain amount of such adjustments in the schedule. Upon receipt of such schedule modifications, the Subcontractor shall timely and diligently prosecute the Subcontractor's Work in compliance with the modified schedule as directed by the Contractor and make adjustments in the Subcontractor's schedule, workforce, working hours, and other resources as may be needed. If in the Subcontractor's judgment the Contractor's schedule modifications are cause for an increase the Subcontract Sum, then the Subcontractor shall give Notice to the Contractor according to Section 4.8 above.

4.9: Scheduling Meetings: If requested by the Contractor, the Subcontractor's Project Manager and/or Superintendent and/or key personnel of its Sub-subcontractors shall attend scheduling coordination meetings during normal business hours at the Project site or at the Contractor's home office. The Subcontractor's representative(s) at these meetings must have the authority and knowledge to make informed decisions on behalf of the Subcontractor and must be knowledgeable in all aspects of their scope of Work including submittal/shop drawing status and schedule, progress of fabrication, material delivery schedule, installation durations and schedule, and the like. The frequency and duration of such meetings shall be as reasonably required by the Contractor for the purpose of developing, updating or modifying the construction schedule. The Subcontractor shall cooperatively participate in such meetings and shall timely and diligently provide information pertinent to the Subcontractor's Work and update or modify the Subcontractor's schedule as directed by the Contractor. These meetings may be in addition to or concurrent with other meetings required elsewhere in this Agreement (Article 8) and shall be attended as described in this Section with no additional compensation to the Subcontractor.

4.10 Unsatisfactory Prosecution of the Work: Whenever in the Contractor's judgment the Subcontractor's prosecution of the Work is inadequate and putting the Project completion dates in jeopardy, and the Subcontractor's inadequate prosecution of the Work is due to the Subcontractor's lack of resources/materials/equipment, inadequate labor or workforce, insufficient productivity, omissions or neglect, or for any other cause that is wholly or partially the responsibility of the Subcontractor, then within three (3) business days from and including Subcontractor's receipt of written Notice of its unsatisfactory prosecution of the Work, the Subcontractor shall submit to the Contractor a written copy of the Subcontractor's plan of remedial action or within three (3) days commence and diligently continue progress toward a remedial action plan that will substantially eliminate the delay. The Contractor shall not arbitrarily, maliciously or unreasonably assert its judgment in such matters and the Contractor's Notice to the Subcontractor shall give the specific reasons for asserting the Subcontractor's prosecution of the Work is unsatisfactory. The Subcontractor agrees to cooperate with the Contractor in taking action to eliminate or mitigate such delays. The Subcontractor's remedial action plan shall include one or all of the following to the satisfaction of the Contractor according to Sections 4.10.1 through 4.10.5 below:

.1: Increase the Subcontractor's workforce in such quantities, crafts and skill as will substantially eliminate the delay and/or cause its Sub-subcontractors to do the same.
.2: Increase Subcontractor's and/or Sub-subcontractor's (a) workforce or (b) number of working hours per day or (c) number of working days per week including Saturdays, Sundays and holidays or (d) amount of equipment being used to perform the work or (e) any combination of the foregoing sufficiently to substantially eliminate the delay.
.3: Reschedule Subcontractor's activities to achieve maximum practical concurrence of their performance and cause its Sub-subcontractors to do the same.
.4: Other remedial steps not identified above but which may be brought forth by the Subcontractor or Contractor as effective mitigating or remedial action.
.5: All of the above steps of remedial action are subject to the Contractor's approval, shall not hinder or delay the Work of other Subcontractors or the Contractor, and shall be incorporated into the Contractor's and/or Subcontractor's construction schedule. Upon Contractor's approval of the Subcontractor's remedial action plan, the Subcontractor shall timely and diligently prosecute the remedial plan at the Subcontractor's sole expense without additional compensation from the Contractor. If Subcontractor disagrees with the Contractor's judgment, then the Subcontractor shall submit written Notice of its disagreement to the Contractor in accordance with this Agreement.
.6: Subcontractor's failure to submit a remedial action plan in accordance with Section 4.10 above may be considered by the Contractor to be a material breach of this Agreement subject to Article 10 herein.

4.11: Delays to the Subcontractor: If the Subcontractor is materially delayed in the commencement or execution of the Work due to: (a) any act, omission or neglect of the Contractor or by any other Subcontractor or Contractor or (b) by unforeseeable supervening conditions entirely beyond the control of either party hereto such as but not limited to acts of God, fire, malicious vandalism, unavoidable casualties, public enemy, national emergencies, unusual delays in deliveries, and abnormal adverse weather conditions for the Project location or (c) by any other cause the Contractor determines in its sole judgment may be justifiable but in no way attributable or due to the Subcontractor's own act, omission or neglect, then the Contractor may extend the Subcontract Time for a period equivalent to the time lost by reason of any of the aforesaid causes or for such reasonable period of time as the Contractor determines, and the Subcontractor agrees to make no Claim against the Contractor for consequential damages or additional compensation on the basis of such extension of time.

4.12: Claims for Additional Time: Subcontractor's Claim or request for an extension of the Subcontract Time shall be made in writing to the Contractor according to Article 11 of this Agreement. If the cause of the delay is a continuing condition, only one Claim is necessary, but the Subcontractor shall report the termination of such cause in writing to the Contractor within three (3) business days after such termination. Thereafter the Subcontractor's Claim or right to claim for an extension of the Subcontract Time shall be waived or forfeited. In the case where ordered changes in the Work is causing or may cause a delay in the commencement or execution of the Subcontract Work, then a request for an extension of the Subcontract Time based on such cause shall be submitted in writing to the Contractor according to the provisions of this Section, or prior to commencing with the changes causing the delay, whichever is earlier; thereafter the Subcontractor's Claim or right to Claim for an extension of Subcontract Time shall be waived or forfeited.

4.12.1: Justifying Additional Time: Subcontractor's Claim or request for an extension of the Subcontract Time must set forth in detail the source and nature of each alleged cause of delay to the Subcontractor's Work, the date upon which each such cause of delay began and ended and the number of days of delay attributable to each of such causes.

ARTICLE 5: CHANGES IN THE WORK

5.1. **Request for Proposal (RFP):** The Contractor may notify the Subcontractor in writing of proposed changes consisting of additions, deletions, or other revisions to the scope of Work described in this Subcontract. Upon receipt of such proposed changes, and in consideration of incorporating such proposed changes into the Work, the Subcontractor shall promptly submit in writing to the Contractor a request for an adjustment, if any, in the Subcontract Sum and/or Subcontract Time in a form acceptable to the Contractor properly itemizing the related costs or in a format required by the Contractor when attached hereto as an Exhibit. If no adjustment is required in order to incorporate the proposed changes into the Work, then the Subcontractor shall promptly notify the Contractor in writing of same. Subcontractor's receipt of such proposed changes shall not be construed as authorization from the Contractor to interrupt, delay, modify or stop the Work and the Subcontractor shall not commence with such proposed changes in the Work unless ordered or authorized in writing by the Contractor according to other provisions of Article 5 herein. If the Subcontractor fails to timely and/or properly respond to an RFP, the Contractor may order the Subcontractor to proceed with the subject changes in the Work pursuant to other provisions of Article 5 or Article 10 of this Agreement.

.1: Any delay to the Subcontractor's Work, the Project, or the Work of other Subcontractors due to the Subcontractor's failure to timely submit properly prepared Claims or Change Order requests is the sole responsibility of the Subcontractor.
.2: In response to a Subcontractor's "Request for Information" (RFI), the Architect's or Engineer's or Contractor's response may include instructions which the Subcontractor interprets as a change in the Work for which the Subcontractor is entitled to additional cost and/or time. In such event, the Subcontractor shall within seven (7) business days from and including the date of the RFI response notify the Contractor in writing that, in the Subcontractor's opinion, the RFI response represents a change in the Work for which the Subcontractor is entitled to additional compensation and/or time and the Subcontractor shall state the basis for its Claim in such notification. After the seven (7) business days have expired, the Subcontractor thereby forfeits and waives its right to Claim for additional costs and/or time and Subcontractor shall comply with the instructions of the RFI at no additional cost to the Contractor.

5.2 Concealed or Unknown Conditions: If conditions encountered at the Project site are (1) subsurface or other physical conditions materially different from those indicated in the Subcontract Documents or (2) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in the Work of this Subcontract, the Subcontractor shall stop the affected Work after the condition is first observed and give prompt notification to the Contractor's Superintendent. The Subcontractor shall not proceed with the affected Work until the Contractor gives written instructions to the Subcontractor on how to proceed. Any change in the Subcontract Sum and/or Subcontract Time shall be determined as provided in this Article.

5.3 Unauthorized Changes: If the Subcontractor performs changes in the Work without the authorization of the Contractor as described in Article 5 of this Agreement, then the Subcontractor thereby waives or forfeits any claim, or right to claim, for an increase in the Subcontract Sum and/or Subcontract Time on the basis of such unauthorized changes. Unauthorized changes in the Work may be deemed by the Contractor to be defective or non-conforming Work and the Contractor may order the Subcontractor to remove and replace such Work in conformance with the Subcontract Documents at the Subcontractor's sole cost and expense.

5.4 Ordered Changes: Without invalidating this Agreement subsequent to its execution, a change in the Work consisting of additions, deletions, or other modifications to the Subcontractor's scope of Work may be ordered by the Contractor with any of the following instruments: (1) Change Order adjusting the Subcontract Sum and/or Subcontract Time or (2) a Change Order utilizing Allowance funds included in the Subcontract Sum or (3) by written authorization to the Subcontractor to proceed with changes in the Work on a Time and Material (T&M) basis or (4) Construction Work Directive or (5) by incorporation of a pending

Alternate price listed in Section 3.5 above or (6) an order for a minor change in the Work or (7) written notice to proceed with changes according to previously agreed Unit Prices. Upon receipt of such an order or authorization, the Subcontractor shall timely and diligently perform such changes in the Work.

5.5 Changes in Subcontract Sum & Time: An adjustment to the Subcontract Sum and/or Subcontract Time may be made only by Change Order properly executed by the Parties to this Agreement or by Construction Work Directive subsequent to the execution of this Agreement by the Parties.

5.6 Change Order: A Change Order is a written instrument prepared by the Contractor and signed by the Parties to this Agreement, or other properly authorized representatives of the Parties, and any other parties required by the Prime Contract, stating their Agreement upon the change in the Work and related adjustments in the Subcontract Sum and/or Subcontract Time. The terms and conditions of the Subcontract Documents shall be fully applicable to authorized changes in the Work unless otherwise expressly stated in the Change Order. If there is no adjustment to the Subcontract Time, then the Subcontractor agrees the changes can and will be incorporated with no changes to the schedule for the Work. The Contractor is not obligated to confirm whether the Subcontractor's proposed costs contain any errors or omissions regardless of Subcontractor's itemization of costs or disclaimers to the contrary unless such disclaimers or limits are specifically stated in the Contractor's written Change Order. By signing a Change Order, the Subcontractor agrees the adjustments in the Subcontract Sum and/or Time are full and complete compensation for the Subcontractor's Work as it relates to changes identified in the Change Order as prepared by the Architect/Engineer or Contractor.

5.7 Methods of Adjustment: The method for making an adjustment to the Subcontract Sum shall be selected by the Contractor from one of the following options:

.1: Mutual acceptance by the Subcontractor and Contractor of a lump sum cost properly itemizing labor hours, labor cost per hour, material and equipment costs all accompanied by sufficient substantiating data to permit evaluation by the Contractor and, when attached hereto as an Exhibit, in a format required by the Contractor; or
.2: Time and Material costs when authorized in writing by the Contractor as described in Section 5.12 of this Agreement; or
.3: Unit Prices stated in the Subcontract Documents or subsequently agreed upon; or
.4: Incorporation of pending Alternate costs enumerated in this Subcontract or elsewhere in the Subcontract Documents but not included in the Subcontract Sum; or
.5: Construction Work Directive as provided for in Section 5.14.

5.8 Labor Cost Component: If the Project that requires payment of Prevailing Wages as described in Section 8.6 of this Agreement, then labor rates used in calculating the labor cost component shall be according to the applicable Wage Schedule plus Subcontractor's OH&P. If the Subcontractor's employee is paid more than the minimum wage rate for the Public Works Project, then the Subcontractor shall obtain the Contractor's approval for the higher wage rate prior to performing changes in the Work and the higher wage rate shall equal the actual wages paid to the employee performing the Work plus allowable OH&P according to section 5.13 below.

5.8.1: If the Project does not require payment of Prevailing Wages, then the Subcontractor shall obtain the Contractor's approval for the billable wage rates (including taxes and benefits associated with the employee's wages plus allowable OH&P) used in calculating the labor cost component prior to performing changes in the Work. If requested by the Contractor, the Subcontractor shall submit reasonable substantiation of the wage rates paid to the employees performing changes in the Work and, when attached hereto as an Exhibit, the Subcontractor shall submit a completed Labor Billing Rate form for the Contractor's approval.

5.8.2: The Subcontractor shall cause its Sub-subcontractors and all other lower tier Sub-subcontractors to comply with Sections 5.8 and 5.8.1.

5.9 Material Cost Component: Material costs shall be documented with bona fide supplier quotations or invoices to substantiate material costs plus the allowable OH&P according to Section 5.13 below. The Subcontractor shall cause its Sub-subcontractors to comply with this Section.

5.10 Equipment Cost Component: Prior to using any billable equipment in performing Time & Material Work or changes in the Work, the Subcontractor shall obtain the Contractor's approval for the associated (rental or leased) rates to be used in determining the cost of the Work, including the cost of delivery and removal, and the Contractor's approval shall not be unreasonably withheld. The proposed equipment shall be appropriate both in type, size and expense to the task to be performed. In the case where the Subcontractor's equipment on the Project site is not appropriate to the task, the Contractor may direct the Subcontractor to rent and utilize appropriate equipment from a third party equipment rental company if such rental equipment is economically beneficial to the Contractor.

.1 The Contractor has the option to waive the below terms of equipment rental if there is prior agreement between the Parties pursuant to Section 5.10 above.
.2 Equipment rental rates for equipment owned by the Subcontractor, or owned, leased or rented from a Related Party, or its affiliates, or its subsidiaries shall not exceed 75% of the rates published in the latest edition of the Associated Equipment Distributors (AED) Green Book for the Project location or region. The edition date shall be no later than the date the equipment was first brought to the Project site. If the AED publication does not contain information related to the type of equipment being used, the maximum rate shall not exceed 75% of the current competitive rental rates from local third party equipment rental companies. The Subcontractor is responsible for obtaining and submitting the AED rental rates to the Contractor.
.3: The aggregate rentals chargeable for each piece of tools or equipment owned by the Contractor or a Related Party shall not

exceed 50% of the fair market value of such equipment at the time of its delivery to the Project site. If requested by the Contractor, the original purchase price and date of purchase of the equipment shall be substantiated with a copy of the purchase invoice for the equipment. Such aggregate limitations will apply and no further rental costs will be allowed even if the equipment is removed from the job site and replaced with a similar piece of equipment.
.4: Fair market value for used material and equipment as referred to in this Agreement shall mean the reasonable price a purchaser would pay for the used material or equipment at the time it was initially needed for the Work of the Project.
.5 Rental rates for equipment not owned by the Subcontractor or Related Party, or any of its affiliates, or subsidiaries, or rented from third party equipment companies, shall be charged at actual costs plus Subcontractor's allowable OH&P, provided such rental rates are consistent with those prevailing in the Project area. If requested by the Contractor, the Subcontractor shall provide bonafide rental invoices to substantiate the costs.
.6: Each piece of equipment to be rented shall have hourly, daily, weekly, and monthly rates and the most economical rate available based on the circumstances of actual need and usage of the equipment when stationed at the Project site. In the event the use of the equipment is interrupted, the cost of rental while the equipment is not in use will be considered a cost of the changes in the Work and chargeable thereto unless the cost to remove and redeliver the equipment is less than the rental cost while the equipment is not in use.
.7: Costs incurred for routine and ordinary maintenance (including preventative maintenance) are not included in rental costs and are chargeable to the cost of the Work. Repairs and/or replacement of a capital nature are considered to be included in the cost of the rental. Major repairs and overhauls are not considered routine and ordinary; consequently, such costs are intended to be covered by or included in the rental rate.
.8: If any of the above terms conflicts or is inconsistent with the terms of the Prime Contractor other Subcontract Documents, then the Subcontractor is obligated to those terms that are the least costly to the Contractor. However, the Contractor has the right to determine which terms shall have precedence and be the obligation of the Subcontractor.
.9: If any of the above rental terms creates a substantial inequity to either of the Parties, then those terms shall be equitably adjusted as mutually agreed by the Parties. Nothing in this Section limits the rights of either party to the terms of dispute resolution provided in this Agreement.
.10: The Subcontractor shall cause its Sub-subcontractors to comply with this Section.

5.11 Unit Prices: If Unit Prices are included in this Agreement or agreed to subsequent to the execution of this Agreement, then Unit Prices may be used as the method for adjusting the Subcontractor Sum. Unit Prices represent the full price for adding or deleting the associated unit of Work with no additional cost or mark-up whatsoever added by the Subcontractor. If Unit Prices are used and if the quantities originally contemplated are materially different in a proposed Change Order or Construction Change Directive so that the application of such unit prices to the quantities of Work proposed will cause substantial inequity to either party, then the applicable unit prices shall be equitably adjusted. If requested by the Contractor, Work performed utilizing Unit Prices shall be documented in the same manner as Time and Material Work.

5.12 Time and Material (T&M) Work: Unless otherwise agreed by the Contractor prior to performing T&M Work, the following procedures are required for Time and Material Work:

5.12.1 T&M Documentation: As a method for adjusting the Subcontract Sum, the Contractor may order the Subcontractor in writing to proceed with changes in the Work on a Time and Material (T&M) basis. Upon receiving such a written order, the Subcontractor shall proceed timely and diligently with the changes in the Work and keep daily, written records of all related trade classified labor hours and worker's names, materials installed, and equipment utilized. Such daily records shall include a reasonably detailed description of the Work performed, the area(s) in which the Work was performed, and the quantity of Work completed. The Subcontractor shall record this information on T&M forms (tickets) acceptable to the Contractor or in a format required by the Contractor when attached hereto as an Exhibit. If requested by the Contractor, the Subcontractor shall provide photographic documentation of the T&M Work performed. The Work recorded on a T&M form shall include only the Work performed on one day and shall not include Work performed over multiple days unless otherwise agreed to in writing by the Contractor. If the Subcontractor fails to keep records of changes in the Work as described in this Section, then the Subcontractor thereby waives or forfeits any Claim, or right to Claim, to an increase in the Subcontract Sum.

5.12.2 Project Superintendent's Signature: Time and Material forms completed with the information described in Section 5.10 herein shall be presented to the Contractor's Project Superintendent for his/her signature on the same day the T&M work is performed or at another time agreed to by Project Superintendent. The Contractor's Superintendent's signature serves only as verification of the Work performed as described on the T&M form and does not constitute or imply approval of costs relating to a Change Order. A copy of the T&M form shall be provided by the Subcontractor to the Superintendent for his/her records. In the event the Project Superintendent disagrees with the information presented on the T&M forms, the Project Superintendent will withhold his/her signature. When such a disagreement occurs, the Subcontractor shall by noon of the next succeeding business day notify the Contractor in writing of such disagreement and the Contractor and Subcontractor shall make a good faith effort to promptly reconcile the disagreement. However, such disagreement shall not be a cause or reason for the Subcontractor to interrupt, delay or stop the changes in the Work ordered by the Contractor and the Subcontractor shall continue to perform changes in the Work on a T&M basis as described in Section 5.12 herein and continue to present T&M forms to the Contractor's Superintendent. If the Subcontractor fails to present properly prepared T&M forms to the Project Superintendent as described in this Section, then the Subcontractor thereby waives or forfeits any Claim, or right to Claim, to an increase in the Subcontract Sum.

5.12.3 Time and Material Costs: Upon completion of changes in the Work performed on a T&M basis, the Subcontractor shall collect all signed T&M forms and any other related cost data (e.g., shop fabrication and other off-site expenses) and promptly submit to the Contractor a request for the Change Order with signed T&M forms and other related cost information submitted as substantiating data. The costs submitted shall be directly attributable to the changes and shall include as applicable the following subparagraphs:

.1: labor costs including employer's actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual employer's cost for union benefits, or if not union employees, other usual and customary fringe benefits actually paid (e.g., health, welfare, retirement, and other fringe benefits), and state workers' compensation insurance;
.2: costs of materials, supplies, and equipment whether incorporated into the Work or consumed;
.3: costs of renting machinery and equipment other than hand tools;
.4: overhead and profit as described in Section 5.13 of this Agreement.

5.13 Overhead and Profit: When calculating the cost of a Change Order, the allowable overhead and profit (OH&P) shall be added only to the net increase of costs (including/after applicable deductions) for construction labor, materials and equipment directly used and attributable to changes in the Work. Overhead and profit percentages in the aggregate which are added to the net cost for changes in the Work shall not be greater than the percentages allowed and defined elsewhere in the Subcontract Documents or the Prime Contract. In the absence of any limitations on overhead and profit percentages elsewhere in the Subcontract Documents or the Prime Contract, overhead costs shall include job site supervision, project management, administration, accounting, estimating, scheduling, small tools, temporary facilities and utilities, Subcontractor's general conditions and insurance. If mutually agreed by the Parties in advance of performing T&M Work, and not prohibited by other Subcontract Documents or the Prime Contract, the Subcontractor may include costs for job site supervision and other overhead costs directly attributable to the changes in the Work as may be justifiable in consideration of the nature and magnitude of the changes.

5.13.1: Unless otherwise agreed by the Contractor prior to performing changes in the Work, overhead and profit percentages are limited as follows:

.1 The Subcontractor shall add no more than fifteen percent (15%) OH&P to the cost of Subcontractor's self-performed Work;
.2 The Sub-subcontractors shall add no more than fifteen percent (15%) OH&P to the cost of Sub-subcontractor's self-performed Work;
.3 The Sub-subcontractor shall add no more than ten percent (10%) OH&P to the net cost increase submitted by its suppliers or its Sub-subcontractors;
.4 The Subcontractor shall add no more than ten percent (10%) OH&P to the net cost increase submitted by its Sub-subcontractors.
.5 The Subcontractor shall cause its Sub-subcontractors and suppliers to comply with these limits.
.6 The Subcontractor will not be permitted to add OH&P to the labor cost component of its specialty Sub-subcontractors who utilize (higher) service type wage rates (e.g., fire alarm contractors) that include a higher OH&P rate than stated above. Nevertheless, the Subcontractor and its Sub-subcontractors are obligated to comply with any limits specified in the Prime Contract.
.7 These OH&P limits apply to all methods of adjusting the Subcontract Sum.

5.13.2 OH&P on Allowances: Changes in the Work that are paid for using Allowances or Field Order Allowances included in the Subcontract Sum shall not have any OH&P added by the Subcontractor. Subcontractor acknowledges the Subcontract Sum already includes the Subcontractor's OH&P mark-up on such Allowances.

5.14 Construction Work Directive: A Construction Work Directive (CWD) is a written order prepared and signed by the Contractor directing the Subcontractor to proceed with Work described in the CWD prior to agreement on an adjustment, if any, in the Subcontract Sum and/or Subcontract Time. A CWD shall not be construed to mean or imply that the ordered Work constitutes a change in the Work unless expressly stated in the CWD. The Contractor may also by Construction Work Directive, without invalidating this Subcontract, order changes consisting of additions, deletions, or other revisions to the Work. An adjustment to the Subcontract Sum and/or Subcontract Time shall be determined by the Contractor and/or Architect consistent with the terms of this Agreement with a method for adjusting the Subcontract Sum according to Section 5.7 herein. Upon receipt of a CWD, the Subcontractor shall timely and diligently proceed with the ordered Work.

5.14.1 Payments for CWD Work: Pending final determination of whether the ordered Work constitutes a change in the Subcontractor's Work or the total cost of a Construction Work Directive, the Subcontractor may request payment for Work completed under the Construction Work Directive in its monthly Application for Payment. The Contractor shall within seven (7) business days of Contractor's receipt of the Subcontractor's properly prepared Application for Payment notify the Subcontractor in writing if payment, in whole or in part, for the CWD Work will be withheld and state the reason(s) for withholding payment. Contractor's determination on progress payments for completed CWD Work is subject to the right of either party to assert a Claim in accordance with this Agreement. In the absence of Contractor's written notification of withheld payment to the Subcontractor, the Contractor shall render payment for the requested amount according to the terms of this Agreement and that portion of the Construction Work Directive for which payment is received shall have the same effect as a Change Order adjusting the Subcontract Sum. The Contractor may also issue a Change Order to the Subcontractor for authorized payments related to the CWD.

5.14.2 Reason for CWD: A Construction Work Directive (CWD) is an interim instrument for maintaining the progress of the Work by ordering changes, or ordering Work to proceed, until the Contractor can determine whether or to what extent the ordered Work constitutes a change in the Subcontract Work and whether an adjustment in the Subcontract Sum and/or Time is warranted.

5.14.3 Disagreement: When no cost adjustment and/or time adjustment can be agreed upon by the Parties prior to the scheduled or planned performance of the subject CWD Work, then the Subcontractor shall nevertheless timely and diligently proceed with the ordered Work pursuant to the CWD pending final reconciliation of the disagreement and final determination of an adjustment, if any, in the Subcontract Sum and/or Subcontract Time. Failure to so proceed shall constitute a material breach of this Agreement regardless of the ultimate decision relative to the CWD, as it is understood and agreed by the Subcontractor that any controversy

between the Parties shall not be deemed a basis to delay or suspend the Subcontract Work, unless otherwise directed by the Contractor. In the case of such disagreement, the labor, materials and equipment utilized and directly attributable to the Work shall be recorded and presented by the Subcontractor according to other provisions of this Article for T&M Work. Unresolved disputes are subject to the dispute resolution process of Article 11 of this Agreement.

5.15 Tariffs**:** Subcontractor shall be entitled to request an equitable adjustment in the Price in accordance with Article 11, including but not limited to, any increased costs of materials, resulting from any change in law (by legislation, executive order, treaty of other similar means), or change in law that imposes tariffs on raw materials or finished goods. To be eligible for any adjustments under this Article, within 45 days of the agreement signature date, Subcontractor must provide Contractor with a complete itemized material price list and must include quotes for each item. If there is a request for an equitable adjustment at a later date and during the execution of the work, Subcontractor must provide documentation of the increase and must provide an updated itemized list and updated quotes. Consideration will only be provided if all the above requirements are met, if the item is on the list and a quote is provided, and only if there was a change in law (by legislation, executive order, treaty of other similar means), or change in law that imposes tariffs on raw materials or finished goods.

ARTICLE 6 PAYMENTS:

6.1 Progress Payments: In consideration of the Subcontractor's satisfactory completion of the Work, or portions thereof, and based upon Subcontractor's timely, complete and properly submitted application for payment according to the terms of this Agreement and the Subcontract Documents, the Contractor shall make payment to the Subcontractor within fifteen (15) calendar days of the Contractor's receipt of payment from the Owner (unless prompt payment terms are accepted according to Section 6.5 below) for that portion of the Subcontract Sum attributable to the completed Work less any retained amounts (refer to Section 6.4.1) and less any funds withheld to cover the cost of Work to be completed or corrected by the Subcontractor or to cover the cost of any Claims asserted against the Subcontractor. To the fullest extent permitted by law, Contractor's receipt of payment from the Owner for that portion of the completed Work attributable to this Subcontract is a condition precedent to Contractor's obligation to make payment to the Subcontractor subject to the limitations of Section 6.1.1 below and except to the extent such non-payment is solely attributable to the acts or omissions of the Contractor. The term "payment" as used in this Article shall include retainage, progress payments, payment for change orders, and final payment. No payment shall operate to release the Subcontractor or its surety, if any, from any obligation under this Agreement nor shall any payment be construed as an acceptance of defective, non-compliant or improper workmanship, materials, equipment, or systems.

6.1.1: Should any portion of Section 6.1 above 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 Contractor to the Subcontractor is delayed through no fault of the Subcontractor, the Contractor will make payment to the Subcontractor within a reasonable period of time for Subcontract Work satisfactorily performed and approved for payment. This reasonable period of time shall be defined to be that period of time which will allow the Contractor to diligently pursue payment which is timely or late from the Owner according to the terms of the Prime Contract, or to diligently negotiate resolution of payments disputed by the Owner, or to diligently pursue dispute resolution procedures for non-payment available under the Prime Contract or by law to collect such sums as are justly payable to the Contractor and Subcontractor.

6.1.2 Title to the Work: Title to all Work, whether completed or partially completed, and title to all materials and equipment, on account of which payment has been made to the Subcontractor under this Agreement, shall transfer to and vest in the Owner upon payment or incorporation into the Work, whichever is earlier. Transfer of risk remains with the Subcontractor until materials and equipment are incorporated into the Work according to Article 7 of this Agreement. In the event of Subcontractor's default pursuant to Article 10 of this Agreement, the rights of the Contractor or Owner are in no way limited by this Section in the Contractor's or Owner's pursuit to recover costs related to Subcontractor's default.

6.2 Schedule of Values: Within fourteen (14) days from the date of commencement or Notice to Proceed, the Subcontractor shall submit a schedule of values (SOV) into Procore showing the dollar value for all of the various components of the Subcontractor's Work, including Allowances and accepted Alternates, the aggregate of which shall equal the Subcontract Sum. The itemization of this schedule of values shall be of sufficient detail and organization as may be required by the Contractor to facilitate evaluation of the Subcontractor's applications for payment and such detail may include an itemization of labor and materials per phase, floor and/or area. The Subcontractor shall provide supporting data to substantiate the accuracy of the Subcontractor's schedule of values as the Contractor may require and Subcontractor's schedule of values is subject to the approval of the Architect and Owner. The Subcontractor's approved schedule of values shall be presented with each application for payment on a type written copy of AIA document G703 or an equivalent form acceptable to the Contractor.

6.3 Payment Application: Applications for Payment shall be entered in Procore according to the Subcontractor's approved schedule of values as described in Section 6.2 herein. The Owner will determine the Billing Period at the inception of the project, typically running for the calendar month. A Billing Period will be opened with a due date on or around the 20th of the month and will incorporate work anticipated to be completed through the end of that month. Once the Billing Period has been closed for that month, the subcontractor will not be able to enter their billing for the current period, they will have to wait until the next month's Billing Period is opened. The Project Manager will review all line items that have been billed and approve or send back to the subcontractor for revisions. Upon the Project Manger's approval of all line items, subcontractor will be sent the invoice via DocuSign for their signature. The process for submitting payment applications may be further elaborated or defined in Contractor's instructions subsequent to execution of this Agreement or the Subcontract Documents may require procedures that are different or inconsistent with this Section. In the event of any conflict or inconsistency, the Subcontractor shall request clarification from the Contractor. The Contractor shall promptly provide written clarification and give instructions to the Subcontractor for the payment

application process consistent with the payment terms of this Agreement and the Prime Contract and such instructions shall be binding and final.

6.3.1: Payment applications shall be submitted no more frequently than once per month for Work in progress without the written consent of the Contractor. In absence of the Contractor's consent, the Subcontractor agrees not to rely on more frequent payments for the performance of the Subcontract Work or for timely and complete payments of money owed in connection with this Project to its employees, Sub-subcontractors or suppliers.

6.3.2 Processing Requirements: Applications will not be reviewed, processed or considered for payment by the Contractor until:

.1 This Agreement is executed by the Parties and
.2 Contractor is in receipt of Subcontractor's certificate of insurance conforming to the requirements of Article 7 of this Agreement and
.3 The application is accompanied by a properly executed "Receipt of PROGRESS Payment - Release and Waiver of Liens and Claims" or other such form required by the Owner and
.4 When required by the Project, Subcontractor has submitted properly prepared NYSDOL Form WH-347 Certified Payroll Reports and OCSD-3 Workforce Employment Utilization Reports and
.5 When required by this Agreement, Contractor is in receipt of Subcontractor's Payment and Performance Bonds acceptable to the Contractor and
.6 Other documents required by the Subcontract Documents have been timely and properly submitted. The subcontractor is solely responsible for properly preparing and timely submitting its payment applications and all required supporting documents.

6.3.3 Stored Materials: Unless otherwise provided in the Subcontract Documents, and if permitted in advance by the Owner, applications for payment may include material and equipment not yet incorporated into the Subcontract Work but delivered and suitably stored at the site or at some other location agreed upon in writing by the Contractor. Approval of payment applications for such stored items on or off the Project site shall be conditioned upon Contractor's receipt of a properly executed copy of an "Affidavit for Stored Materials" attached hereto as an Exhibit unless other form of documentation is agreed to by the Contractor or required by the Subcontract Documents. Payments for stored materials and equipment are subject to the approval of the Architect and Owner.

6.3.4 Failure to Submit Application: In the event the Subcontractor does not timely or properly submit an application for payment to the Contractor according to the provisions herein for Work completed by the Subcontractor, then the Contractor may, at its option and without notice to the Subcontractor, include in its request for progress payment to the Owner a sum as it may deem proper for the Subcontractor's completed Work and the Subcontractor agrees to accept such amount as submitted by the Contractor in lieu of any amount subsequently requested by the Subcontractor for the same pay period. In the event the Subcontractor fails or neglects to submit a payment application for completed Work, no payment shall be due from the Contractor and no interest shall accrue on the value of the completed Work.

6.3.5 Billing for Change Orders: Subcontractor's application for payment may include approved Change Orders properly executed by both Parties to this Agreement. Payment applications that include billings for Change Orders not fully executed may be rejected by the Contractor and returned to the Subcontractor for correction and resubmission. Such rejection by the Contractor does not relieve the Subcontractor of its obligation to timely submit properly prepared payment applications according to the terms of this Article.

6.3.6 Evaluation: The Subcontractor's payment application is subject to the review and approval of the Contractor, Architect/Engineer and Owner within a timeframe stipulated in the Subcontract Documents or the Prime Contract plus reasonable time for the Contractor's evaluation. Upon completion of said evaluation, the Contractor shall give notice to the Subcontractor of the Contractor's rejection, in whole or in part, of such application for payment and state the reasons for its rejection. In the absence of such notification, the Subcontractor's application for payment will be processed for payment.

6.4 Retainage: The amount of retainage withheld from Progress Payments will be as stipulated in Section 6.4.1 below without limitation to Contractor's right to withhold payments to the Subcontractor according to other provisions of this Agreement. There will be no final payment of retainage until Subcontractor's application for Final Payment is approved and Contractor has received Final Payment from the Owner for that portion of the Work attributable to this Subcontract.

6.4.1 Retainage Amount: [ ] percent ([ ]%) of the approved or certified "Total Completed and Stored to Date" amount of the Subcontractor's payment application will be withheld from Progress payments to the Subcontractor. Additional amounts may be withheld, when applicable, according to other terms of this Agreement. Reduction of retainage amounts withheld prior to Final Completion shall only be permitted as provided for in the Prime Contract unless otherwise agreed by the Contractor.

6.5 Prompt Payment Discount: If Subcontractor's payment application is properly prepared and timely submitted according to the terms of this Agreement, and such application and current payment due amount is approved for payment, then the Subcontractor's requested payment amount will be paid by the Contractor on or about the 10th day of the following month with a 2% discount deducted from the approved current payment due amount irrespective of Contractor's receipt of payment for same from the Owner. If the Subcontractor fails to timely submit its Payment Application, then within fifteen (15) days following Contractor's receipt of an acceptable but overdue application for payment, the Contractor will make payment to the Subcontractor deducting a 2% discount from the approved current payment due amount irrespective of Contractor's receipt of any payment from the Owner for same. Provided the Subcontractor has satisfactorily fulfilled all conditions for final payment under the terms of this

Agreement, then final payment of withheld retainage may be paid with a 2% discount if payment is made by the Contractor within the time limits set forth in this paragraph.

If the prompt payment discount is declined, the Subcontractor acknowledges that it relies solely and exclusively on Owner's payment to the Contractor (as limited by Section 6.1.1 herein) for the Subcontractor's completed Work as a condition precedent to receiving payment from the Contractor. Payments to the Subcontractor under this Agreement are subject to a 2% discount if such terms are so indicated below with an "X" as "ACCEPTED".

[ ] Prompt Payment (2%) Discount Terms are ACCEPTED Subcontractor Initials _____

[ ] Prompt Payment (2%) Discount Terms are DECLINED Subcontractor Initials_____

6.6 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 as provided for in this Agreement; and in the event of any material breach by the Subcontractor of any provision or obligation of this Subcontract, 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 Subcontract Agreement, the Contractor shall have the right 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 loss, damage or expenses therefrom, until the Claim or lien has been satisfied or removed. This paragraph shall be applicable even when the Subcontractor has posted a full payment and performance bond.

6.7 Payments Withheld: Notwithstanding any other provisions of this Agreement or the Subcontract Documents, and without limitations to any other rights or remedies, and after five (5) business days from and including the date of notification from the Contractor to the Subcontractor, the Contractor shall have the right to reject without review or decline approval of any application for payment and may withhold any payments due or which may become due to the Subcontractor as the Contractor deems warranted in order to protect itself from loss or damage for any one or more of the following causes related to this Subcontract Agreement as enumerated below:

.1: Unsatisfactory prosecution of the Subcontract Work including but not limited to Subcontractor's inability, refusal or failure to provide adequate workforce, materials and/or equipment;
.2: Reasonable evidence that the Subcontract Work cannot be completed for the unpaid balance of the Subcontract Sum;
.3: Subcontractor's or its Sub-subcontractor's failure or reasonable evidence of failure to make timely and complete payments to its employees, workers, Sub-subcontractors or suppliers for labor, materials or equipment provided in connection with this Project for which the Subcontractor has been paid by the Contractor;
.4: Claims, liens (other than Subcontractor's liens), notices of unpaid, overdue balances or notices of intention to file a lien or claim, garnishments or attachments or notices of intention thereof related to this Project, filed against the Project or the Project site or any portion thereof against monies due in connection with this Subcontract or any of the Subcontractor's Sub-subcontractors;
.5: Damage to the Contractor, the Owner, another Subcontractor or party working on the Project site caused by the activities or neglect of the Subcontractor or its Sub-subcontractors;
.6: Reasonable evidence that the Subcontractor is unable to complete the Subcontract Work within the Subcontract Time due to Subcontractor's own actions and/or failure to act and/or lack of adequate resources;
.7: Defective or non-conforming Subcontract Work not remedied to the satisfaction of the Contractor and Owner;
.8: Subcontractor's failure to properly prepare and timely deliver required submittals (e.g., shop drawings, product data, samples, etc.) or improper submission of substitute material or equipment;
.9: Subcontractor's failure to comply or repeatedly violate the provisions of the Contractor's Health and Safety Manual or disregard the directives of the Contractor's Safety Manager or Safety Representative;
.10: Subcontractor's repeated failure to attend or be properly represented at required meetings;
.11: Subcontractor's failure to timely and diligently prosecute ordered changes in the Work;
.12: When requested by the Contractor, failure to properly prepare and timely submit Subcontractor's schedule or schedule information for the Subcontract Work or promptly submit a remedial action plan pursuant to Section 4.10 above;
.13: Subcontractor's repeated failure to comply with the Contractor's directives regarding site access and utilization;
.14: Failure to timely submit required closeout documents (refer to Section 8.13.3);
.15: Repeated failure to perform daily clean up of debris and waste caused by the activities of the Subcontractor or its Sub-subcontractors;
.16: Failure to properly prepare and timely report IDA Sales and Use Tax Exemptions;
.17: Failure to timely submit properly prepared Subcontractor's Certification pursuant to NYS Labor Law 220-a or Certified Payroll Reports or Workforce Employment Utilization Reports, when required for the Project;
.18: Failure to provide adequate and properly experienced Supervision at the Project site.

Payments made after Correction: When the above causes for withholding payment are removed or corrected to the satisfaction of the Contractor, then those payments withheld on account of those causes shall be remitted to the Subcontractor subject to other applicable provisions of this Agreement or the Subcontract Documents.

6.8 Joint Checks and Direct Payments: If requested by the Contractor, Subcontractor or its Sub-subcontractors or suppliers, the Contractor may make joint check payment to the Subcontractor's Sub-subcontractors or suppliers who are providing goods and/or services in connection with this Project for a per project, one time processing fee of $250 and automatically deduct such payment and fee from payments due or payments thereafter due to the Subcontractor. If the Subcontractor fails to make payments

for monies properly owed to its Sub-subcontractors or suppliers for goods and/or services provided in connection with this Project or it the Contractor has reasonable evidence to believe the Subcontractor is unable or unwilling to make such payments, the Contractor, on this basis or in its sole discretion, shall have the right but not the obligation to make joint check payment to such parties, creditors and/or lienors and automatically deduct such joint check payment plus a one-time processing fee of $250 from payments due or payments thereafter due to the Subcontractor. The Subcontractor hereby agrees to cooperate as necessary to facilitate such joint check payments and will promptly execute all documents required for such payment transactions. Unless such joint check payments are requested by the Subcontractor or were previously agreed to and incorporated into this Agreement, the Contractor shall not make such payments until: (a) after ten (10) days prior written Notice to the Subcontractor of intent to do so and (b) Subcontractor fails within the ten (10) day Notice period to cure or remove the condition that is the basis for such proposed joint payments.

Joint Check Agreement Required **[ ]**

6.9 Payment Utilization: The Subcontractor shall pay for materials, equipment, and labor used in connection with performance of this Subcontract throughout 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 Subcontractor's 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 each 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.

6.10 Release of Lien: Before any payment is made to the Subcontractor, the Subcontractor shall submit an executed copy of a "Receipt of PROGRESS Payment - Release and Waiver of Liens and Claims" for progress payments and "Receipt of FINAL Payment – Release and Waiver of Liens and Claims" for final payment, both of which may be attached hereto as Exhibits, or provide other such receipt of payment and waiver of lien documents as may be required by the Owner. If requested by the Contractor, the Subcontractor shall cause its Sub-subcontractors and material suppliers to provide such receipt of payment and waiver of lien documents for goods and services provided in connection with this Project. If the Subcontractor has not executed the foregoing documents, then to the fullest extent allowed by law, when any check for payment made by the Contractor to the Subcontractor (for goods and/or services provided in connection with this Subcontract) has been legally endorsed and paid by the bank upon which it was drawn, such transaction shall constitute Subcontractor's agreement to indemnify, defend and hold harmless the Indemnitees and Additional Insured parties named herein from and against any and all claims, demands, judgments, liens, costs and expenses (including but not limited to attorneys' fees) arising in relation to any indebtedness, claims and amounts due and owing to its Sub-subcontractors, suppliers, vendors, agents or any party or entity who has provided goods and/or services on behalf of the Subcontractor in connection with this project prior to said payment and Subcontractor also thereby represents, warrants and attests that there are no known liens filed and/or lien rights claimed in connection with or arising from performing Work pursuant to this Agreement for which the Indemnities or the Additional Insured parties might in any way be held responsible.

The "Payment Received" amount shown on the "Receipt of PROGRESS Payment" and "Receipt of FINAL Payment" forms are the current payment due amount shown on the Subcontractor's invoice. The "Payment Received" amount shall not include or reflect deductions taken due to applicable 2% discounts. Likewise, the "Total Payments" amount shall not include or reflect deductions taken due to applicable 2% discounts.

6.10.1: Any omission or misstatement with respect to the Subcontractor's obligations under Sections 6.9 and 6.10 above shall be deemed material and the Subcontractor agrees such omission or misstatement shall constitute grounds to vacate any lien filed by the Subcontractor or its Sub-subcontractors or suppliers until such time as the omission or misstatement is cured by payment in full to the lienor(s). The Subcontractor shall have this same provision in all of its Sub-subcontracts and purchase orders in connection with this Project.

6.10.2: In the event that any notice of lien is filed relating to the Subcontract Work, the Subcontractor shall promptly remove or discharge the same within five (5) business days after written notice from the Contractor. If after five (5) business days the Subcontractor in unable or has refused, neglected or failed to remove or discharge the lien, then immediately upon additional written notice from the Contractor to the Subcontractor, the Contractor shall have the right to remove or discharge same by bonding, payment or otherwise, in its sole discretion, on behalf of the Subcontractor. Subcontractor shall be liable to the Contractor for all related expenses, including attorney's fees, plus 15% overhead in connection Contractor's expenses incurred in removing or discharging said lien. It is agreed that such amount may be deducted from any payment to Subcontractor. If the Subcontractor shall have been fully paid, the Subcontractor shall pay to the Contractor such amount within thirty (30) days after Contractor's written demand or invoice for payment to the Subcontractor.

6.10.3: If the Subcontractor is unable or refuses, fails or neglects to satisfy, discharge or otherwise remove a lien according to Section 6.10.2 above, then the Subcontractor agrees and expressly appoints Contractor and any representative or agent of the Contractor to act as Subcontractor's attorney on the Subcontractor's behalf to discharge a lien, consent, stipulation or other

document in connection therewith and to appear on Subcontractor's behalf in court for the purpose of obtaining an order discharging a lien.

6.10.4: Subcontractor shall insert the same requirements as 6.10 – 6.10.3 above in any of its Sub-subcontracts or purchase orders in connection with this Project.

6.11 Final Payment: Final payment, consisting of the entire unpaid balance of the Subcontract Sum, shall be made when:

.1 The Subcontract Work is fully performed and satisfactorily completed according to the Subcontract Documents;
.2 There are no uncorrected deficiencies or incomplete punchlist work;
.3 The Subcontract Work has received final acceptance from the Contractor, Owner and Architect;
.4 When required by the Subcontract Documents, the Architect has issued a Certificate of Final Completion;
.5 The Contractor has received final payment from the Owner for that portion of the Work attributable to this Subcontract subject to the limitations of Section 6.1.1 above.

6.11.1: As conditions precedent to receiving final payment and to the extent applicable under this Agreement and the Subcontract Documents, the Subcontractor shall:

.1 Submit properly prepared payment applications conforming to Section 6.3 of this Article as follows: (1) submit an application for a final PROGRESS payment for amounts relating to the unpaid balance for completed Work less retainage according to Section 6.4 above and (2) submit an application for FINAL payment for amounts relating only to retainage withheld under Section 6.4 above.
.2 Submit a properly executed "Receipt of PROGRESS Payment – Release and waiver of Liens and Claims" or other such form required by the Owner attached to the application for the final Progress payment;
.3 Submit a properly executed "Receipt of FINAL Payment- Release and Waiver of Liens and Claims" or other such form required by the Owner;
.4 When required by the Project, submit final Certified Payroll Reports and Workforce Employment Utilization Reports;
.5 As required for the Work of this Subcontract, submit all record drawings, operation/care and maintenance manuals, final test/inspection certificates, extra stock, warranties, and perform all required instruction periods, and complete any and all closeout documents and procedures required by the Subcontract Documents;
.6 If payment and performance bonds have been furnished under this Subcontract, submit "consent of surety to final payment" acceptable to the Owner, Architect and Contractor;
.7 When required by the Project, submit a final IDA Sales and Use Tax Exemption Report; and
.8 Submit any and all documents required for Final Completion according to the Subcontract Documents.

6.12 Acceptance of Final Payment: Subcontractor's acceptance of the final payment for the Subcontract Work shall constitute a complete release and discharge of the Contractor and Owner from all Claims and of all liability to the Subcontractor for all things done or furnished in connection with the Project and every act or neglect of the Owner and Contractor relating to or arising out of this Subcontract excepting those Claims previously made in writing in compliance with this Subcontract and not settled at the time of acceptance of final payment. If the Subcontractor refuses to accept final payment due to an outstanding Claim or unresolved dispute, no interest shall accrue on the final payment amount and none shall be due to the Subcontractor for the period of time required to satisfy or resolve the claim or dispute. No payment final or otherwise shall operate to release the Subcontractor or its surety from any obligation under this Subcontract nor shall any payment be construed as an acceptance of defective, non-compliant or improper workmanship, materials or equipment.

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

ARTICLE 7: INSURANCE, INDEMNITY AND BONDS

7.1 Insurance Requirements: Prior to commencing Work or any other activities (e.g., mobilization, material or equipment deliveries, etc.) on the Project site or within ten (10) days of the date of commencement in Article 4 set forth above,, whichever is earlier, the Subcontractor shall submit to the Contractor satisfactory evidence that the Subcontractor has procured all insurance policies required by Article 7 of this Agreement. See Paragraph 7.6 for a description of what is acceptable satisfactory evidence. Subcontractor acknowledges that its purchasing costs and related expenses for the procurement and maintenance of the insurance policies required under this Subcontract Agreement are included in the Subcontract Sum. All insurance policies must be from insurers authorized to conduct business within the state where the project is located. The insurance companies must also have a Best Rating of "A-," and a financial size of "Class VII," or better.

7.1.1 Any insurance required of the Subcontractor shall protect the Subcontractor from Claims that may arise for which the Subcontractor may be legally liable, whether the operations are by the Subcontractor or by the Subcontractor's Sub-Subcontractor, supplier, or anyone providing goods and services in connection with this Project on behalf of the Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts the Subcontractor or any of them may be liable in fulfilling or discharging the obligations of this Subcontract.

7.1.2 The Subcontractor's policies of insurance for this Project, except workers compensation policy, shall provide coverage for and name as Additional Insured all parties listed in Paragraphs 7.1.5 and 7.1.6 below. Subcontractor shall notify the Contractor in writing, if its policies cannot or do not provide coverage for Additional Insureds prior to commencing Work on the Project site.

7.1.3 The Subcontractor will include in its agreements with its sub-subcontractors the same insurance obligations set forth in this Section, including providing coverage for and naming certain entities as additional insureds.

7.1.4 Primary/Non-Contributing Liability: All liability policies that the Subcontractor must furnish and maintain in accordance with Article 7 will be primary to any other insurance and will not seek contribution from any other insurance, including all self-insurance that may be available to the Additional Insureds. Any of the Subcontractor's liability policies, with the exception of Professional Liability if required, shall be expressly endorsed to state that coverage for the Additional Insureds identified in Paragraphs 7.1.2 and 7.1.3 is primary and that the insurer will not seek contribution from any other insurance available to the Additional Insureds, In addition, Subcontractor and its Insurers shall not seek payment or reimbursement for any deductibles provided under the Subcontractor's policies from any of the additional insureds. If the Subcontractor's policy limits are greater than the minimum limits of liability required in this Article for any of the types of insurance, then the full extent of those policy limits shall be available to the Contractor and Additional Insureds. Subcontractor's policies will not include any provisions excluding coverage to the Additional Insureds for any bodily injury claims arising out of or otherwise raising liability pursuant to the New York Labor Law.

7.1.5 Additional Insureds:

.1: the Contractor, **Hueber-Breuer Construction Co., Inc.**
.2: the contractor affiliate, Pompey Construction Services LLC
.3: the contractor affiliate, Berwyn Properties LLC
.4: the contractor affiliate, Berwyn Contractors LLC
.5: the Owner, **[Owner Name]**
.6: the Architect, **[Architect Name]**
.7: the Owner's, Architect's and Contractor's consultants, officers, members, partners, directors, employees, agents, and representatives
.8: [enumerate/insert other parties as agreed with the Owner] *(If no others, delete this clause)*

7.1.6 Other Additional Insureds: The Contractor reserves the right to add Additional Insureds to this Agreement at any time without additional cost to the Contractor or Owner. Contractor will add such Additional Insureds by means of a "no cost" Change Order to this Agreement and, upon receipt of said Change Order, the Subcontractor shall cooperate and promptly execute same.

7.2 Insurance Policies and Coverages: The Subcontractor shall purchase and maintain the following types of insurance policies and minimum limits of coverage for itself and the Additional Insureds:

7.2.1 Commercial General Liability (CGL): Provide CGL coverage with limits of insurance not less than $1,000,000 for each occurrence and $2,000,000 Annual Aggregate.

7.2.1.1 If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each Project.

7.2.1.2 The CGL coverage shall be written on Insurance Services Office (ISO) Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products-completed operations, and personal and advertising injury.

7.2.1.3 The CGL Policy shall not include any Exclusions or other provisions excluding or otherwise preventing coverage for claims against the additional insureds for bodily injury arising out of or otherwise raising liability pursuant to the New York Labor Law and for bodily injury to employees, workers, principals, officers and directors of the Subcontractor, its Sub-subcontractors, any individual or entity performing work for or supplying materials to the project. The CGL Policy shall also not include any Exclusions or other provisions limiting coverage to the Subcontractor for contractual indemnification for bodily injuries arising out of or otherwise raising liability pursuant to the Labor Law or for any bodily injuries of the employees, workers, principals, officers and directors of the Subcontractor, its Sub-subcontractors or any other individual or entity performing work for or supplying materials to the project. There shall be no exclusions for residential or EIFS work, if such work is part of the scope of the subcontract.

7.2.1.4 The Subcontractor's CGL policy shall include and provide for the Additional Insureds the same limits and the same coverage provided for the Subcontractor, and as required in this Subcontract Agreement. The additional insured coverage and provisions will include ongoing and completed operations and will not require privity between the Subcontractor and additional insureds.

7.2.1.5 The coverage for the Additional Insureds will apply as primary insurance before any other insurance or self-insurance and without any contribution from any insurance available to the Additional Insureds, as set forth in Section 7.1.1 above.

7.2.1.6 The Subcontractor will purchase an Owners & Contractors Protective Liability Policy ("OCPL") if the required coverage for Additional Insureds cannot be provided in the CGL Policy, or if the Prime Contract requires an OCPL Policy or if otherwise required in Paragraph 7.2.5 below. The details for the OCPL are set forth in Paragraph 7.2.5 below.

7.2.1.7 For the duration of the project, including warranty periods, or for the additional period set forth in Paragraph 7.2.1.8 below or otherwise set forth in this Subcontract Agreement, the Subcontractor will maintain the required CGL Policy providing coverage for itself and the Additional Insureds and that is written on an occurrence basis covering injuries and damages that occur during the policy period, regardless of when any related claims are made.

7.2.1.8 The Products and Completed Operations Coverage is to be maintained for the period of time for which the Contractor is potentially liable for work performed, which period is the longer of the time period set forth in the Contract Documents or the time period called for at law.

7.2.2 Automobile Liability Insurance

7.2.2.1 Business Auto Liability with limits of at least $1,000,000 for each accident.

7.2.2.2 Business Auto Liability, which must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles and motor vehicles for the full duration of the Project including warranty periods.

7.2.2.3 Subcontractor's Business Auto Liability Policy will name the Additional Insureds identified in Pars. 7.1.5 and 7.1.6 and will provide these Additional Insureds with the same limits and the same coverage provided for the Subcontractor, and as required in this Subcontract Agreement.

7.2.3 Commercial Umbrella/Excess Insurance

7.2.3.1 The Umbrella/Excess Insurance Policy limits must be at least $5,000,000

7.2.3.2 The Subcontractor's Umbrella/Excess Insurance Policy will name the Additional Insureds identified in Pars. 7.1.5 and 7.1.6 and will provide these Additional Insureds with the same limits and same coverage provided for the Subcontractor. This Umbrella/Excess Insurance Policy will provide coverage before and not seek contribution from any self-insured additional insured or from any insurance policy, whether written to be primary or excess, that is issued to or that otherwise names or qualifies an Additional Insured as an insured, other than the Subcontractor's CGL, Auto Liability and Employers Liability Policies.

7.2.3.3 The Subcontractor will maintain Umbrella/Excess coverage for itself and the Additional Insureds covering injuries and damages that occur during the policy period, regardless of when any related claims are made.

7.2.3.4 The Subcontractor shall maintain the Commercial Umbrella/Excess Insurance Policy as required in Section 7.3

7.2.4 Workers' Compensation & Employers' Liability Insurance

7.2.4.1 The Subcontractor shall purchase and maintain Workers' Compensation and Employers' Liability covering all employees including corporate officers, Partners, and Sole Proprietors for the duration of the Project including warranty periods.

7.2.4.2 Statutory limits of coverage apply to Workers' Compensation and Employers' Liability.

7.2.5 Owners and Contractors Protective Liability (OCPL) Insurance

7.2.5.1 When required by the Prime Contract and/or when indicated below with an "X", the Subcontractor will purchase and maintain an OCPL policy naming the Contractor and Additional Insureds as Named Insureds and naming the Subcontractor as the Designated Contractor. This OCPL policy must provide the same limits, coverage and priority of coverage as required in Article 7 for a CGL Policy. If only the Contractor can be named as the Named Insured, then the Policy will provide coverage for additional insureds and name the Additional Insureds identified in Paragraph 7.1.5 and 7.2.6.

[ ] OCPL Insurance is NOT Required [ ] OCPL Insurance IS Required

7.2.6 Special Coverages: If the scope or services of work under this subcontract includes design services, potential environmental hazards, or the use of unmanned aircraft including drones, the following insurance protection may be required:

Professional Liability with limits not less than $1,000,000 for each occurrence, $2,000,000 Annual Aggregate
[ ] Yes
[ ] No

Pollution Liability with limits not less than $1,000,000 for each occurrence, $2,000,000 Annual Aggregate

[ ] Yes
[ ] No

Aircraft Liability with limits not less than $1,000,000 for each occurrence, $1,000,000 Annual Aggregate

[ ] Yes
[ ] No

If liability coverage is provided on a, "claims made," basis, the policy shall include a retroactive date prior to commencement of services and subcontractor shall continually maintain such policy or shall purchase an "extended reporting period," endorsement providing coverage for at least three (3) years after project completion.

7.3 Continuation of Policies: Unless otherwise indicated in this Article 7, all the policies set forth in Paragraphs 7.2 above, will be maintained continuously in full force and effect for the period of time for which the Contractor is potentially liable for work performed, which period is the longer of the time period set forth in the Contract Documents or the time period called for at law.

7.4 Stored Materials: If the Subcontractor requests payment for material or equipment stored on or off site, then the Subcontractor shall provide "all risk" property insurance as evidenced by a separate certificate of insurance covering the material upon which payment is being requested or made on an agreed amount, replacement cost basis. Such policy shall cover at a minimum any loss to the stored material due to standard perils, including malicious mischief, vandalism, theft, fire, flood, earthquake, collapse by any cause and windstorm while the material or equipment is at an approved location. The Contractor and Owner shall be named insured and loss payee to this insurance. The Subcontractor shall provide a waiver of subrogation on any policy required for stored material. Payment requests for stored materials are subject to the terms and conditions of Article 6 (Payments) of this Agreement, which may require submission of an Affidavit for Stored Materials. Risk of loss shall remain with the Subcontractor until the stored material or equipment is incorporated into the Work unless otherwise provided under the Prime Contract.

7.5 Waiver of Subrogation: The Subcontractor agrees to waive any right to claims of subrogation and the Subcontractor shall cause its insurers to waive their right to make any claims of subrogation. This waiver of subrogation includes claims or right to claims against the Owner, Contractor and the Additional Insureds identified in Paragraphs 7.1.2 and 7.1.2 and their insurers for recovery of loss or damages to the extent such damages or loss are covered, or should be covered, by the insurance required of the Subcontractor in this Agreement or any other insurance procured by the Subcontractor which is applicable to the Project. This waiver of subrogation shall be provided by specific endorsement, if the policy itself does not otherwise provide the required language to this effect. The Subcontractor shall notify the Contractor in writing prior to the commencement of Work on the Project site if the waiver of subrogation is provided by specific endorsement and Contractor has the right to request and receive a copy of said endorsement as evidence of the waiver.

7.6 Evidence of Insurance:

7.6.1 Certificates of Insurance: For all policies required in this Article 7, the Subcontractor shall submit a certificate of insurance acceptable to the Contractor prior to commencement of the Subcontractor's Work or within ten (10) days of the date of commencement or Notice to Proceed. The certificate of insurance shall be written on the current edition of an ACORD 25 form or other form acceptable to the Contractor both in form and content in full compliance with the requirements of this Article. Refer to attached (ACORD 25) sample as an acceptable form of certificate. On the ACORD form, the Project name and location(s) shall be identified in the box/area for "Description of Operations." An NYSIF Certificate of Workers' Compensation is an acceptable form of certificate for workers compensation insurance in New York State. Subcontractor shall maintain insurance during the term of this subcontract and any extensions thereof and provide satisfactory evidence prior to renewal or replacement of each required policy. The Contractor's acceptance of any certificate of insurance or coverage provision in no way waives the Contractor's right to later assert the Subcontractor did not provide insurance in conformance with this Agreement if the Contractor subsequently discovers reasonable evidence that the required insurance or coverage was in fact not provided or in full force and effect during Subcontractor's operations under this Agreement.

7.6.2 When checked with an "x" below, Subcontractor shall provide a certified copy of the identified policies within 10 days of commencement of its work.

[ ] The CGL Policy required under Article 7

[ ] The WC/EL Policy required under Article 7

[ ] The Auto Liability Policy required under Article 7

[ ] The Umbrella/Excess Policy required under Article 7

7.6.3 Upon request from the Contractor, the Subcontractor shall provide the Contractor with any certificate of insurance, coverage provision, or certified copy of any insurance policy required of the Subcontractor under the terms of this Agreement.

7.6.4 The Insurance policies required under Article 7 will contain a provision/endorsement that coverages afforded under these policies will not be cancelled, amended or allowed to expire until at least thirty (30) days written notice has been given to the Contractor.

7.6.5 If any of the required Insurance Policies are required to remain in effect after final application for payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment if requested by the Contractor.

7.6.6 Payments Withheld: Subcontractor's application for payment will not be reviewed, processed or considered for payment and payments may be withheld until an acceptable certificate of insurance is received by the Contractor.

7.6.7 Subcontractor's Failure to Provide Insurance: If the Subcontractor fails to furnish the Contractor with acceptable documentation evidencing compliance with the insurance requirements of this Agreement, then the Contractor may procure such insurance (including Owners Contractors Protective insurance) for the Subcontractor and pay the premiums thereon. The Subcontractor shall repay the Contractor within thirty (30) days of Contractor's written demand or invoice to the Subcontractor for any such premium costs incurred by the Contractor to secure coverage on the Subcontractor's behalf or the Contractor may deduct the amount of such premiums from any payments due or which may become due to the Subcontractor. The Contractor has no obligation to obtain such insurance on behalf of the Subcontractor and the Contractor's refusal or failure to do so shall in no way limit or relieve the Subcontractor of its obligations to provide insurance according to the requirements of this Article. Subcontractor agrees to waive all rights of claims against the Additional Insureds for premiums, claims, penalties or other costs incurred as a result of Subcontractor's failure to provide the insurance required in this Article or other insurance as may be required by law. The Contractor reserves the right to consider the Subcontractor in material breach or default of this Agreement if any insurance provided by the Subcontractor is not in compliance with this Article or Subcontractor fails to provide all insurances required by this Article.

7.7 Property Insurance: Unless otherwise provided in the Subcontract Documents, either the Owner or the Contractor will provide Builders Risk type property insurance. Builders Risk Insurance is provided as indicated below with an "X".

[ ] Builders Risk by Owner [ ] Builders Risk by Contractor

7.7.1 Property Insurance by Owner: Unless otherwise provided in the Subcontract Documents, the Owner will purchase and maintain Builders Risk property insurance according to the terms and limits provided for in the Prime Contract. If Contractor is notified by the Owner of changes in its policies or coverages, the Contractor shall likewise notify the Subcontractor if the required property insurance policies are not in effect or if such policies are terminated or amended until Final Payment has been made to the Subcontractor. The Subcontractor's right to recover property damages under the Owner's Builders Risk policies is subject to the terms and limits set forth in the Prime Contract and the Owner's insurance policies. Without limitation to any rights by law, neither the Owner nor the Contractor has responsibility for or obligation to pay for damages or losses to the Subcontractor's property or Work not covered by the Owner's property insurance policies.

7.7.1.1 Waiver of Subrogation: When Builders Risk property insurance is provided by the Owner, The Contractor and Subcontractor waive all rights against each other and against the Owner, the Architect, separate contractors and all other Subcontractors for all damages caused directly by or resulting from fire or other perils to the extent covered by the Builders Risk policies, except such rights as they may have to the proceeds of such insurance. This waiver of subrogation shall apply even if each party agreed indemnify and hold each other harmless and even if each party had no insurable interest in the damaged property or resulting damage.

7.7.1.2 Limits by Prime Contract: The foregoing relating to Builders Risk coverage provided by the Owner is limited or modified only to the extent as provided in the terms of the Prime Contract.

7.7.2 Property Insurance by Contractor: When the Contractor is responsible for providing Builders Risk property insurance according to the Prime Contract, the Contractor will purchase and maintain property insurance written as a Builders Risk Policy or equivalent form upon the entire project for the full cost of replacement at the time of loss except those losses specifically excluded or limited by the policy or as limited by the terms of the Prime Contract. The Contractor shall be solely responsible for any deductible amounts or coinsurance penalties except, however, the cost of any deductibles or coinsurance penalties under the Builders Risk insurance shall be the responsibility of the Subcontractor (even if the Subcontractor has no insurable interest in the loss or damage) if the loss or damage was caused by the Subcontractor or anyone for whom the Subcontractor is legally responsible, or responsible for under the terms of this Agreement, including but not limited to the Subcontractor's employees, its Sub-subcontractors, its vendors, its suppliers and its agents or representatives. In the event the Contractor determines the Subcontractor's responsibility for the loss or damage is only partial, the amount of the deductible costs to be paid by the Subcontractor shall be equitably adjusted on a contributory percentage basis as reasonably determined by the Contractor. This insurance does not cover Subcontractor's materials or equipment store off site or in transit, Subcontractor's tools, equipment or other property of the Subcontractor or property of its Sub-subcontractors and suppliers not intended to be incorporated into the Work, or Work that is deemed non-conforming under the terms of the Subcontract Documents. The Contractor may deduct the amount of any such deductible costs, which are deemed owed and unpaid by the Subcontractor from payments due or thereafter due to the Subcontractor.

7.8 Indemnification: To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Contractor, all other additional insureds identified in Paragraphs 7.1.5 and 7.1.6 above , and Contractor's and other additional insureds' officers, members, directors, consultants, agents and employees and such other persons and entities who are in privity of estate, ownership or contract with the Contractor (such parties individually and collectively known as "Indemnitees") from and against any and all Claims, actions, lawsuits, administrative proceedings, alternative dispute resolution proceedings, damages, liens, liabilities and/or expenses including reasonable attorney and consultant fees in connection with the loss of life, personal injury, bodily injury, sickness, disease, damage to property other than the Work itself, or any alleged violation of any federal, state or local law, rule or regulation that arise from or out of the Work in, upon, at or for the Project site or arise wholly or in part from, out or by an act or omission of the Subcontractor, its Sub-subcontractors or Subcontractor's and Sub-subcontractors' agents, employees, workers, suppliers, invitees or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable, regardless of whether or not such claim, loss or expense is caused in part by an indemnitee. This obligation to defend, hold harmless and indemnify specifically includes and extends to an indemnitee who is solely negligence, unless such indemnification is prohibited or subject to limitation by law, in which case this provision will be construed to not require defense, hold harmless or indemnification of the solely negligent indemnitee or to otherwise be in compliance with the law. The obligation to defend, hold

harmless and provide indemnification shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section.

The Subcontractor shall also hold the Contractor harmless and indemnified from and against any and all loss, damage, liability or expense by reason of the filing of any notices of contract or liens, or the commencement of any legal proceedings against the Contractor.

The obligation to defend, hold harmless and indemnify, includes without implied limitation, the Contractor's reasonable attorneys' fees and expert consultants' fees for investigating, defending against and removing any of the claims, actions, suits, administrative proceedings, and alternative dispute resolution proceedings to which this indemnification paragraph applies, bond premiums and other expenses for removing liens or notices of contract consistent with Sections 6.10.2 and 6.10.3 of this Agreement.

This indemnification provision shall be broadly construed to include the defense, hold harmless, indemnity and protection of the Contractor and other Indemnitees from and against any and all damages and cost relating, but not limited to, Sections 7.8.1 through 7.8.8 below.

The Subcontractor will be responsible for payment of any fees and costs incurred by an indemnitee or anyone on the indemnitee's behalf for enforcement of the defense, hold harmless and indemnification obligations set forth in this Paragraph.

7.8.1 Patents: The Subcontractor agrees to indemnify, defend and hold harmless the Contractor from any and all manner of Claims or suits for infringements of patents or violation of patent rights, including all costs, attorney's fees, damages and expenses which the Contractor incurs in defending any actions that may arise under this clause of the Subcontract.

7.8.2 Labor Law: Under the Labor Law of New York certain non-delegable duties are imposed upon the Owner, certain Owner's agents, Contractor and Subcontractor to provide workers employed on the Project with a safe place to work and with proper ladder, scaffolding, netting, and other height and fall related safety and protective apparatus and otherwise to conduct the work in a safe manner. Subcontractor acknowledges that as between itself, Contractor and Owner the duty to comply with the Labor Law with respect to its own employees and any other persons using scaffolding, ladders and any other apparatus supplied by the Subcontractor is the primary duty of the Subcontractor. Subcontractor agrees that the obligation to defend, indemnify and hold harmless the Owner, certain owner's agents, and the Contractor set forth in Paragraph 7.8 above shall extend to any injury to persons caused by or in any way related to violation of the Labor Law.

7.8.3 Prevailing Wage Law: Subcontractor agrees to indemnify, defend and hold harmless the Contractor from any and all damages, losses or expenses arising from or relating to Claims that Subcontractor violated the prevailing wage law. Such damages, losses or expenses shall include, but not be limited to:

.1 Attorneys' fees;
.2 Interest payments at the rate of twelve percent (12%) per annum on any funds withheld from the Contractor on account of such Claims;
.3 The amount of wages, fringe benefits, interest or civil penalties assessed against the Contractor.

7.8.4 Safety Violations: To the fullest extent 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 its failure to comply with applicable safety requirements. Refer also to Section 8.21.2.

7.8.5 No Limitation to Claims by Employee Benefits: In any and all Claims against an Indemnitee by any employee of the Subcontractor or anyone directly or indirectly retained or engaged by it or anyone for whose acts it may be liable, the obligations under this Article shall not be diminished 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 benefits acts.

7.8.6 No Limitation Due to Insurance: The obligations under this Article shall not be limited in any way by the amount or type of insurance required to be provided to or for the benefit of an additional insured as described in Article 7 of this Subcontract.

7.8.7 Defense of Indemnitees: Subcontractor agrees to assume on behalf of any of the Indemnitees the defense (with counsel satisfactory to the party indemnified) of any action at law or in equity or other legal proceeding, which may be brought against any Indemnitee upon or by reason of such award or order that may be entered against each Indemnitee in any such action or proceeding.

7.8.8 Withholding of Payments Against Damages: In the event that any such Claim, loss, cost, expense, liability, damage or injury is sustained, suffered, or incurred by, or is made, asserted or threatened against any Indemnitee, Contractor shall in addition to all other rights and remedies, have the right to withhold from any payments due and to become due to Subcontractor an amount sufficient in its judgment to protect the interests of the Indemnitees from and against any and all such Claim, loss, cost, expense, liability, damage or injury, including legal fees and disbursements; or Contractor, in its discretion, may require Subcontractor to furnish a surety bond satisfactory to Contractor guaranteeing such protection, which bond shall be furnished by Subcontractor within fifteen (15) business days after written demand has been made thereto.

7.9 Payment & Performance Bonds: If Payment and Performance Bonds are required for this Subcontract as indicated below with an "X", then the Subcontractor shall within ten (10) days of the date of commencement or Notice to Proceed, deliver to the

Contractor a Performance Bond and Labor and Material Payment Bond for the full amount of the Subcontract Sum or as acceptable to the Contractor. The Surety for these bonds shall be acceptable to the Contractor and the Subcontractor shall obtain the Contractor's approval prior to procuring said bonds. The bonding Surety shall be licensed by the State of New York

[ ] BONDS per Section 7.9 are NOT Required [ ] BONDS per Section 7.9 ARE Required

ARTICLE 8 SUBCONTRACTOR

8.1 Commencing Work on Site: The Subcontractor shall not commence any work or activity on the Project site prior to:

.1 Executing this Agreement and
.2 Submitting a valid and current (not expired) insurance certificate acceptable to the Contractor according to Article 7 herein and
.3 Submitting a copy of Subcontractor's own safety and hazard communication program acceptable to the Contractor according to Article 8 of this Agreement. The Subcontract Time shall not be extended as a result of Subcontractors neglect, refusal or failure to comply with the aforesaid conditions precedent to commencing Work or any other activity on the Project site. (*If the Subcontractor is not engaged by this Agreement to perform labor or services at the Project site, then this Section shall have no force or effect.*)
.4 In the event the Subcontractor commences Work on the Project site prior to the execution of this Agreement, the Subcontractor acknowledges and agrees that it shall be bound by the terms and conditions of this Subcontract Agreement as of the date the Subcontract Work was commenced on site.

8.2 Mutual Obligations: To the extent the terms of the Prime Contract between the Owner and Contractor apply to the Work of the Subcontract, the Contractor assumes toward and holds the Subcontractor to all the same obligations, rights and remedies that the Owner under the Prime Contract assumes towards and holds the Contractor. In the identical way, the Subcontractor assumes towards and holds the Contractor to all the same obligations, rights and remedies that the Contractor assumes towards and holds the Owner and Architect/Engineer under the Prime Contract.

8.2.1 Emergencies: In an emergency affecting life, safety, health, the Work, the Project, the Work of Owner's contractors or Owner's property, the Subcontractor shall, with or without authorization from Contractor, take the action necessary to deal adequately with such emergency. Notice of any such action shall be given by Subcontractor to Contractor as soon as practical. Conversely, Contractor shall take action necessary to deal adequately with such emergency. Notice of any action shall be given by Contractor to the Subcontractor as soon as practical. In the event the emergency is not caused by the Subcontractor, in whole or in part, the Subcontractor shall be entitled to recover its cost for its emergency related actions. Likewise, if the emergency is related to or caused in whole or in part by the Subcontractor's acts, omissions or neglect, then the Contractor shall be entitled to recover its costs for its emergency related actions and may deduct such costs from payments due or thereafter due to the Subcontractor.

8.3 General: The Subcontractor agrees and warrants that:

.1 It is familiar and will comply with all Federal, State, County and Local laws, ordinances, Regulations, and codes applicable to the work of this Subcontract including the requirements of any other Governmental or Quasi-Governmental Authorities having lawful jurisdiction over this Project and
.2 It has adequate skilled workforce, plant and equipment available to perform the Subcontract Work according to the Subcontract Documents and Subcontract Time and
.3 It is fully experienced and qualified to perform the Subcontract Work and it is properly organized, financed and, if necessary, licensed and/or certified to execute the Subcontract Work and
.4 It has carefully examined and understands the Subcontract Documents and
.5 It has or will cause its Sub-subcontractors to agree to and warrant the same.

8.4 Competent Workforce: The Subcontractor shall employ a competent and skilled workforce to accomplish the Subcontract Work including but not limited to administration, project management, supervision and field personnel, and such personnel shall be experienced in the Work of this Subcontract. Sub-subcontractors employed by the Subcontractor shall be equally or more qualified. If requested by the Contractor, the Subcontractor shall substantiate to the Contractor's satisfaction that its workforce is sufficiently competent, skilled and experienced. If in the Contractor's reasonable judgment, any person or persons engaged by the Subcontractor to perform the Work of this Agreement is not properly qualified or whose behavior is unsuitable or otherwise materially inconsistent with this Agreement, then the Contractor may direct the Subcontractor to replace such personnel with qualified, skilled worker(s) and the Subcontractor shall promptly comply.

8.4.1 Supervision and Management: Unless otherwise mutually agreed by the Contractor and Subcontractor, the Subcontractor shall provide a designated Project Manager and Superintendent to oversee, coordinate and direct all aspects of the Subcontractor's Work. The Subcontractor's Superintendent or other appropriate supervisory representative acceptable to the Contractor shall be present on the Project site whenever the Subcontractor's workforce and/or the workforce of its Sub-subcontractors of any tier are present on the Project site. If the Subcontractor's workforces are present on the Project site without proper supervision, the Contractor's Superintendent may order the Subcontractor's workforces to vacate the Project site and, in such event, the Subcontractor is solely responsible for associated delays or expenses. The Subcontractor's Superintendent shall be competent, skilled and experienced in performing the work of his/her trade related to the Subcontract Work and in providing supervision of same. The Subcontractor's Project Manager shall be competent, skilled and experienced in managing the type of Work to be performed under this Subcontract. The Subcontractor shall not make any changes in the assignment of its Project Manager or Superintendent without the prior approval of the Contractor. If, in the Contractor's reasonable judgment, the

Subcontractor's Superintendent or Project Manager is unsuitable for the Work of this project due to insufficient qualifications or experience, unsatisfactory supervision or management of the Subcontractor's Work, or failure to work harmoniously with the Contractor, design professionals, Owner's representatives, or other Subcontractors, then the Contractor may request that the Subcontractor replace its Superintendent or Project Manager with a suitable substitute. The Subcontractor shall promptly comply with such a request of the Contractor.

8.4.2 Subcontractor's Superintendent: The Subcontractor's Superintendent assigned to the Project may be a foreman, journeyman, other such trade classification, or of no designated trade classification, and may also be engaged in performing the Work provided that the Superintendents performance of Work activities does not interfere with or unduly distract from the proper Supervision of the Subcontractor's activities on the Project site.

8.4.2 Means and Methods: Under the general direction of the Contractor, the Subcontractor shall supervise and direct its Work using the Subcontractor's best skill and attention. The Subcontractor is solely responsible for and shall have control over its construction means, methods, techniques, sequences and procedures for coordinating and performing all portions of the Work of this Subcontract. General directions given by the Contractor shall NOT be construed to mean or imply that the Contractor is in any way instructing, ordering, or directing the Subcontractor's means and methods for performing its Work. The means and methods employed by the Subcontractor shall comply with current OSHA Regulations and the safety requirements under this Article and conform to the highest standards of the Subcontract Documents, manufacturer's recommendations, and generally accepted construction industry standards and practices.

8.4.3 Conduct: The Subcontractor shall at all times enforce strict discipline and good order among the Subcontractor's workforce and the workforce of its Sub-subcontractors. The Subcontractor shall not permit employment in its workforce or the workforce of its Sub-subcontractors of unfit persons or persons not skilled in the tasks assigned to them.

8.4.3 Daily Reports: Whenever the Subcontractor's workforce is present on the Project site, the Subcontractor shall provide a written Daily Work Report to the Contractor's Superintendent in a form acceptable to the Contractor. This report shall be submitted at the end of each day the Subcontractor's workforce is present on the Project site and the report shall identify the number of workers, their trade classification, the type of work performed and areas of work completed or in progress, and make note of and describe deliveries of a significant amount of material or major equipment.

8.4.4 Equipment: The Subcontractor shall insure that all of its construction tools, equipment, temporary facilities and other items used in accomplishing the Work, whether purchased, rented, or otherwise provided by the Subcontractor or provided by others for whom the Subcontractor is responsible, are in a safe, sound, and good condition, must be capable of performing the function for which they are intended and must be maintained in conformance with applicable laws and regulations.

8.5 Identification of Sub-subcontractors and Suppliers: If requested by the Contractor, the Subcontractor shall promptly provide to the Contractor in writing the names, addresses, and phone numbers of Sub-subcontractors and suppliers that will be supplying labor and/or materials for significant or critical portions of the Subcontract Work, including the names of each of their representatives. This same information shall be provided prior to adding or changing any such 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 provided said information.

8.5.1 Independent Contractors: In the event the Subcontractor employs independent Contractors to discharge its obligations hereunder, the Subcontractor acknowledges and understands that it does so at its own risk and that federal, state, county, and/or local governmental authorities may dispute the independent contractor status and assess penalties, fines and cost should there be a determination to reclassify such workers. In such event the Subcontractor agrees that it will defend, indemnify and hold the Contractor and Owner harmless from any fines, cost, damages, penalties, attorney's fees, and causes of action, including, without limitation personal injury or property damage, arising out of or relating in any way to such a determination.

8.5.2 Independent Subcontractor: The relationship of the Subcontractor to the Contractor is that of an independent Subcontractor to the Contractor and not a relationship of employee and employer and the Subcontractor shall not in any manner be considered or deemed an employee of the Contractor in connection with the performance of the Work of this Agreement. The Subcontractor has no authority to commit the Contractor to any contract, obligation, debt, or other liability. None of the Subcontractor's employees will be deemed to be an employee of the Contractor. None of the benefits provided by the Contractor to its employees including, without limitation, compensation, insurance, unemployment compensation or workers' compensation, will be available to the Subcontractor or its Sub-subcontractors, or any other party or entity providing goods and/or services in connection with this Project on behalf of the Subcontractor or their respective employees, agents, and representatives.

8.5.3 Subcontractor's Employees: Subcontractor has sole responsibility for and to its employees proving Work in connection with this Project for paying wages and benefits, providing workers' compensation, withholding and/or paying applicable employment or unemployment taxes, and disciplining, hiring and firing such employees.

8.5.4 Subcontractor as Sole Proprietor: Any monies paid to a Subcontractor who is an individual or sole proprietor that is providing Work in connection with this Agreement will not be treated or deemed to be an employee of the Contractor and the Contractor is not responsible for any applicable federal, state or local withholding taxes for such Subcontractor. Such Subcontractor is solely responsible for filing all necessary federal, state and local taxes, including timely payment of estimated income taxes and self-employment taxes. By signing this Agreement, Subcontractor hereby voluntarily waives any rights to any benefits, including health benefits, welfare, pension, profit-sharing and/or any other employee benefits or other fringe benefits to

which he/she might be entitled to as an employee of the Contractor. Subcontractor further acknowledges that he/she is being compensated at a rate that is higher than Subcontractor would be compensated were he/she receiving the aforementioned benefits. Subcontractor confirms his/her sole compensation from the Contractor consists of the payments rendered for services provided in connection with this Project under the terms and scope of this Agreement, even if Subcontractor is subsequently reclassified as an employee of the Contractor by a court or government agency.

8.5.5 Indemnification: In the event that any governmental taxing or labor authority seeks to investigate the employment status of Subcontractor or its employees or agents, or to assess any tax, penalty or interest against Contractor thereon, Subcontractor agrees to indemnify Contractor for any amounts it is obligated to pay any such authority, together with any costs, including but not limited to attorneys' fees and the costs of litigation incurred by Contractor in responding to such claims.

8.6 NYS Prevailing Wages: If the Project Specifications require payment of prevailing wages to construction workers according to the New York State Department of Labor (NYSDOL) Prevailing Wage Schedule (Prevailing Wages) published for this Project as indicated below with an "X", then the Subcontractor shall submit one executed original document of the current New York State Labor Law, Section 220-a, Subcontractor's Certification or other such form currently required by the NYSDOL. Submittal of this Certification is a condition precedent to Subcontractor's right to receive the first progress payment from Contractor. It is the responsibility of the Subcontractor to review the current and complete Prevailing Wage Schedule and Section 220-a, Subcontractor's Certification at www.labor.state.ny.us. During the life of the Project the wage and supplemental rates noted in the Schedule may change. Subcontractor shall pay the wage rates and supplemental rates in effect at the time its work is performed as required by applicable laws. It is the Subcontractor's responsibility to anticipate changes in wages rates in the Schedule in relation to the construction schedule and duration of the Project. Subcontractor acknowledges that the Subcontract Sum includes such anticipated changes in wage rates for the Project duration as indicated in Article 4 of this Agreement. The amount payable to the Subcontractor shall not be increased because of changes to the Wage Schedule during the Contract Time. Subcontractor acknowledges that where more than one Schedule applies i.e., state vs. federal wage schedules, and conflicts between the two exist, Subcontractor will pay the higher wage rate and/or benefit amount. Subcontractor shall furnish to Contractor on a weekly basis, Subcontractor's weekly certified payroll reports on Form WH-347 or other form as currently required by the NYSDOL for the Project and comply with all other requirements of New York's Labor Law.

[ ] Payment of Prevailing Wages and Certified Payroll Reports ARE Required

[ ] Payment of Prevailing Wages and Certified Payroll Reports are NOT Required

8.7 MWBE/EEO/DBE and Legal Compliance: The Subcontractor agrees to be bound by, and at its own cost and expense comply with all federal, state and local laws, ordinances and regulations applicable to the Subcontract Work, including but not limited to, equal employment opportunity (EEO), minority business enterprise (MBE) and women's business enterprise (WBE), disadvantaged business enterprise (DBE), safety, immigration and all other laws with which the Contractor must comply. When MWBE and/or EEO and/or DBE participation goals are required for the Project as indicated below with an "X", the Subcontractor is solely responsible for obtaining all pertinent information regarding such participation goals and requirements from the Subcontract Documents and agrees to comply with same in the execution of this Agreement and in the performance of its Work. The Subcontractor shall be responsible for preparing, maintaining and submitting to the Contractor on a monthly basis NYS Form OCSD-3 "Workforce Employment Utilization Reports" or other such current form required by NYS. 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, or attorneys' fees. (*DBE participation shall be noted separately; if not noted, DBE participation is not required by this Subcontract.)*

[ ] MBE & WBE Participation Goals ARE Required [ ] MBE & WBE Participation Goals are NOT Required

8.7.1 Section 3: This language is required in all contracts for work that is being performed on Section 3 Projects. For more information about Section 3, consult NYSHCR's Section 3 Policy Manual available here: https://hcr.ny.gov/section-3-compliance

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure, to the greatest extent feasible, that training, employment, contracting, and other economic opportunities generated by Section 3 covered financial assistance shall be directed to low-income residents of the neighborhood where the financial assistance is spent, and to businesses that are either owned by low-income residents of the neighborhood where the financial assistance is spent, or substantially employ these persons.
The parties to this contract agree to comply with federal regulations in 24 CFR part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
The [Awardee/Subawardee/Contractor/Subcontractor(choose applicable)] agrees to agrees to notify potential contractors and subcontractors that are associated with Section 3 covered projects and activities about the requirements of Section 3, to include this Section 3 clause in every contract and subcontract subject to compliance with regulations in 24 CFR part 75, and to ensure that any subcontractors also include this Section 3 clause in their subcontracts for work performed on the project.
The [Awardee/Subawardee/Contractor/Subcontractor(choose applicable)] will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.
The [Awardee/Subawardee/Contractor/Subcontractor(choose applicable)] agrees to maintain hiring and contracting practices to the greatest extent feasible so that 25 percent of the total labor hours expended on the project are by Section 3 Workers, of which 5 percent are by Targeted Section 3 Workers as defined in 24 CFR part 75. As part of these practices,

[Awardee/Contractor/Subcontractor (choose applicable)] agrees to provide priority consideration to eligible residents and businesses in accordance with 24 CFR Part 75, as applicable. If the [Awardee/Subawardee/Contractor/Subcontractor(choose applicable)] is not able to meet this benchmark goal, it must provide a narrative of efforts taken and supporting documentation explaining why it was unable to meet that goal, despite greatest extent feasible efforts taken.
If applicable, the [Recipient/Subrecipient/Contractor/Subcontractor(choose applicable)] agrees to notify each labor organization or representative of workers with which the [Awardee/Subawardee/Contractor/Subcontractor (choose applicable)] has a collective bargaining or similar labor agreement or other understanding, if any, about its obligation to comply with the requirements of Section 3 and ensure that new collective bargaining or similar labor agreements provide employment, registered apprenticeship, training, subcontracting, or other economic opportunities to Section 3 Workers and businesses, and to post notices in conspicuous places at the work site advising the labor union, organization, or workers' representative of the contractor's commitments under this part.
The [Awardee/Subawardee/Contractor/Subcontractor(choose applicable)] agrees to comply with all monitoring, reporting, recordkeeping, and other procedures specified by New York State Homes and Community Renewal and the United States Department of Housing and Urban Development (HUD). The [Awardee/Subawardee/ Contractor/Subcontractor (choose applicable)] is responsible for providing Section 3 performance metrics and supporting documentation for all its subrecipients, contractors, and subcontractors, as applicable.
Noncompliance with HUD's regulations in 24 CFR part 75 and New York State Homes and Community Renewal's Section 3 policies may result in sanctions, penalties, termination of this contract for default, and debarment or suspension from future HUD assisted contracts

[ ] Section 3 Reporting IS Required

8.8 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 Subcontractor's Work except for the Building Permit and NYS Code Required Special Inspections and any other inspections specifically excluded elsewhere in the Subcontract Documents. Subcontractor shall pay all taxes applicable to the performance of Subcontractor's Work subject to tax exemption certificates provided by the Contractor or as otherwise exempted by this Agreement.

8.9 No Unauthorized Assignment: The Subcontractor will not assign this Agreement, nor any moneys due or to become due under this part of the Work to be performed hereunder, without the prior written consent of the Contractor. In the event the Subcontractor has failed to secure such prior written consent of the Contractor, then any such assignment or delegation of performance shall be deemed invalid, void and unenforceable. Further, the Subcontractor shall not sell, change, assign, escrow, or transfer, directly or indirectly, any ownership, stock, membership or control of the Subcontractor greater than a ten percent (10%) cumulative interest during the duration of the project, without the prior written consent of the Contractor. Any violation of this section shall be a material breach of this Agreement. In the event that Contractor provides such consent, a Subcontractor or any other assignee hereunder shall strictly comply will all the requirements of this Agreement, and further Subcontractors shall also remain fully liable for the Subcontractor's or other assignee's obligations under this Agreement, unless otherwise released in writing by Contractor.

8.10 Evaluation of Project Conditions: By signing this Agreement, the Subcontractor accepts responsibility for its inspection of conditions that could affect the Subcontract Work at the Project site and has not relied upon any opinions or representations of the Contractor, its officers, agents or employees, and, in consideration thereof, 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, transportation, disposal, handling and storage of materials, availability of labor, water, electrical power, utilities, roads, local prevailing weather conditions, or similar physical conditions, the character of equipment and facilities needed preliminarily to and during the prosecution of the Subcontract Work, the reasonable probability of new tax levies or increases in taxes, increases in cost of material, increases in wage rates, applicable work rules under collective bargaining agreements, 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. To the extent that the Subcontract Documents require the Subcontractor to obtain permits and inspections for its Work, the Subcontractor shall be responsible for becoming fully familiar with all that is required for such inspections and permits in the locality of the Project by authorities having jurisdiction and acknowledges all related costs are included in the Subcontract Sum. The Subcontractor also acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials and obstacles to be encountered, insofar as this information is ascertainable from: (1) inspection of the Project site; (2) reports of exploratory investigations including but not limited to borings and geotechnical reports made available to the Subcontractor; (3) the Subcontract Documents; and (4) any documents referenced by the Subcontract Documents or otherwise made available to the Subcontractor. Where conclusions reached by the Subcontractor are reasonable considering those facts which the Subcontractor knew of, then where conditions differ from such conclusions, such difference shall be a latent or unknown condition and the Subcontractor may request a Change Order by reason of such latent or unknown condition. The Subcontractor shall promptly report any discrepancies between its observations and the Subcontract Documents to the Contractor in accordance with Section 12.8 herein.

8.10.1 Field Verification: Unless otherwise stated elsewhere in the Subcontract Documents or Bidding Documents, or otherwise agreed by the Contractor, before proceeding with the Work, the Subcontractor shall take field measurements and verify site conditions and verify the spatial relationships pertaining to the Subcontractor's Work, and shall compare such measurements and conditions with the information available in the Subcontract Documents and other information available or provided to the Subcontractor and shall promptly report all discrepancies observed to the Contractor in writing in the form of an RFI or other written communication acceptable to the Contractor. The Contractor shall promptly advise the Subcontractor of the measures to be taken for the resolution of such discrepancies. The Contractor shall not be liable for consequential costs or delays directly attributable to Subcontractor's own failure to take reasonable precautions as described herein and to detect and promptly report

conflicts, inconsistencies or lack of coordination as the Subcontractor could reasonably be expected to know except for those costs or delays that would have otherwise been incurred had the Subcontractor properly taken the precautions described herein.

8.10.2 Site Utilization: The Subcontractor shall coordinate all of its operations with the Contractor, obtain approval from the Contractor and/or Contractor's Superintendent before using any portion of the Project site, confine its operations at the site to areas designated by the Contractor and shall not unreasonably encumber the site with any vehicles, materials or equipment. As parking on the Project site may be limited or unavailable, the Subcontractor shall consult the Bidding Documents and the Contractor's Superintendent for parking limitations or prohibitions. If the site utilization requirements in the Bidding Documents or other Subcontract Documents are different from this Agreement, then the more stringent or limiting requirements shall be required unless otherwise permitted by the Contractor. Site utilization requirements and limitations may be modified subsequent to the execution of this Agreement as deemed necessary by the Contractor to manage, facilitate, and maintain the progress of the Work.

8.10.2 No Exclusive Site: Subcontractor acknowledges it does not have exclusive use or access to the Project site for the Subcontract Work and that the Subcontractor has anticipated in its evaluation of site conditions as described in Section 8.10 above a certain amount of interferences occasioned by the activities of other Subcontractors, inspections, testing, coordination issues, delays in deliveries, and opening certain portions of the Project to traffic, delivery of materials, installation of utilities and roads, and similar interferences that could reasonably be expected on a project of similar size, complexity and schedule. The Subcontractor shall cooperate with the various subcontractors, agents, trades, suppliers, and vendors engaged by the Contractor or Owner to provide goods and services in connection with this Project, and the Subcontractor shall arrange the sequence of its Work to conform to and interface with the progressive operations of the Work so that the Work is diligently executed without unnecessary interruption in an efficient and professional manner. In the case of interference between the operations of this Subcontractor and that of others employed to provide goods and services for this Project, the Contractor will give instructions to the parties involved to remove the interference in consideration of the sequence of work necessary to promote the timely and proper completion of the Project. The Contractor's instructions in such case shall be final and binding and the Subcontractor shall proceed timely and diligently according to the Contractor's instructions.

8.10.3 Deliveries: Tractor trailer and other significant deliveries to the Project site shall be pre-arranged on at least twenty-four (24) hours prior notice to the Contractor's Superintendent unless the delivery is received and off-loaded at the Project site by the Subcontractor. The Contractor may refuse any delivery if the Subcontractor is not adequately represented on site and properly prepared to receive the delivery.

8.11 Labor Relations: It is understood that subcontracts will be awarded and labor will be employed on the Project herein described without discrimination as to whether employees of the Owner, any Subcontractor, employees of the Contractor, or any persons or entities providing goods and services in connection with this Project are members or non-members of any labor organization and the Subcontractor accepts this Subcontract Agreement with that understanding.

8.11.1 Separate Gates: In the event of a labor disruption such as picketing in the vicinity of the Project site, and in the judgment of the Contractor it becomes necessary to establish separate entrance/exit gates or driveways on or leading to the Project site, the Subcontractor agrees to use, and shall cause its employees, Sub-subcontractors, suppliers and business visitors to use, such separate gates or driveways at such times, and in such manner, as the Contractor may from time to time direct in writing to the Subcontractor. Subcontractor's failure to strictly comply with the Contractor's instructions on separate gate or driveway usage shall be considered a material breach of this Agreement. The Contractor shall provide such entrance/exit gates as it deems necessary and in compliance with applicable labor laws.

8.11.2 No Work Stoppage: Subcontractor shall at all times supply a sufficient number of skilled workers to perform the Subcontract Work covered by this Subcontract Agreement with promptness and diligence. Should any workers performing Subcontract Work covered by this Subcontract Agreement engage in a strike or other Work stoppage, delay 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 progress of construction, then, upon two (2) business days written notice, the Contractor shall have the right to declare the Subcontractor in default of this understanding and Agreement and take such steps as are necessary to finish the uncompleted portion of the Subcontract Work consistent with Article 10 of this Agreement.

8.11.3 Contractor's Right to Cure: In the event the Subcontractor stops, suspends or delays its Work due to a labor dispute, the Contractor shall have the right to take possession of, and use, all of the Subcontractor's materials and equipment intended to be incorporated into the Work. The cost of completion shall be charged against the Subcontractor's remaining interest in the Subcontract Sum. If the Subcontractor's remaining interest in the Subcontract Sum exceeds the cost of completion, the Subcontractor shall be entitled to the difference. If, however, the cost of completion exceeds the Subcontractor's remaining interest in the Subcontract Sum, then the Subcontractor agrees to pay the Contractor such excess within thirty (30) days after written demand or invoice for same from the Contractor to the Subcontractor.

8.12 Project Meetings: The Contractor may at its option call for meetings with the Subcontractors working on the Project as it deems necessary for the proper coordination, supervision and management of the Work. Such meetings shall be held at the Project site during normal business days and hours (Mon-Fri; 7:00 a.m. – 3:30 p.m.). Subcontractor shall anticipate such meetings will occur at least once per week for the Project duration. The Subcontractor's representative(s) at Project meetings must have the authority and knowledge to make decisions on behalf of the Subcontractor in all aspects of the Subcontractor's scope of Work including but not limited to changes in the Work and Change Orders, workforce, shop drawing/submittal status and schedule, progress of fabrication, material/equipment delivery schedule, installation durations and schedule, and the like. Unless otherwise excused by the Contractor, attendance is mandatory for all Subcontractors who are notified and directed to attend. To ensure active participation from each Subcontractor, the following disciplinary program will be implemented:

1st Offense: Written notice of failure to have the mandatory representation at all Project meetings.

2nd Offense: Written notice of failure to attend, along with a required fine of $200.00 to the Subcontractor.

Fines must be paid within 30 days of their occurrence, by check or by a deductive change order against the current Agreement amount. All fines collected will be donated to a charity of Hueber-Breuer Construction Co.'s choice. In addition, the Subcontractor's repeated failure to be properly represented at such meetings, shall be deemed a material breach of this Agreement.

8.12.1 Pre-Mobilization Conference: Prior to Subcontractor's mobilization on the Project site, the Contractor may, at its option, conduct a pre-mobilization conference and the Subcontractor shall attend such conference on site to identify storage areas, work limitations, and other items related to this scope of Work including site utilization pursuant to Section 8.10.1 above. Attendance is mandatory by the Subcontractor's designated Superintendent assigned to the Project.

8.12.2: Pre-Installation Conferences: Whether or not specifically required by the Subcontract Documents, the Contractor at its option may conduct Pre-Installation Conferences prior to the execution of the Subcontractor's Work or any portion thereof as the Contractor deems warranted for the purpose of safety, coordination, timeliness, quality control and quality assurance. Such meetings shall be attended by Subcontractor's Project Manager, Subcontractor's Superintendent assigned to the Project, Subcontractor's safety representative, and any of its Sub-subcontractors and/or suppliers who are providing goods and/or services in connection with the subject Work. Suppliers located beyond the Project area ("out of town") may participate in such meetings by telephone if agreed by the Parties.

8.12.3 Superintendent's Meetings: If requested by the Contractor, the Subcontractor's Superintendent shall be required to attend regular, periodic or special meetings at the Project site for the purpose planning and coordinating the activities on the job site.

8.12.4 Scheduling Meetings: Refer to Section 4.9 above.

8.12.5: Other Meetings: In addition, the Subcontractor shall attend other meetings such as kick-off meetings, emergency meetings, close-out meetings and Owner/Architect site visits, if in the Contractor's judgment the Subcontractor's participation or presence is beneficial or reasonably warranted.

8.13 Submittals: The Subcontractor is responsible for and shall prepare for the performance of Subcontractor's Work, including, without limitation thereto, the submission of shop drawings, manufacturer's product data, color selectors, samples, mock-ups, certifications, sample warranties, and similar submittals, including record documents and extra stock, required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work of this Subcontract or in the work of any other subcontractor or Owner's contractors for this Project. The approval of any Subcontractor submittal shall not be deemed to authorize any changes, deviations, or substitutions in the requirements of the Subcontract Documents unless express written approval of such is obtained from the Contractor. Unless otherwise directed by HB, all submittals, other than samples and color charts, shall be transmitted through HB's Procore website. Contact HB's Project Coordinator for this Project if you have questions about how to do this.

8.13.1 Submittal Procedures: The Subcontractor shall prepare, organize and deliver required submittals as required by the Subcontract Documents and the Contractor's instructions. The Contractor's instructions may be attached hereto as an Exhibit or issued to the Subcontractor subsequent to the execution of this Agreement. Submittals delivered to the Contractor which are not in compliance with the Subcontract Documents and the Contractors instructions may be returned to the Subcontractor for resubmittal without review and the Subcontractor will be responsible for consequential delays.

8.13.1.1 All subcontractors are responsible to review their own submittals and vendor supplied submittals for compliance with the Contract Documents.
8.13.1.2 Submittals must be marked or stamped "Reviewed and Approved" by the Subcontractor before (HB) can forward to the Architect/Engineer for their review.
8.13.1.3 Subcontractors are responsible to provide shop drawings and subsequent corrections or modifications as required through-out the entire submittal review process without any additional compensation. Revise and resubmit actions posted by the Architect/Engineer or Contractor due to non-compliance with the Contract Documents or coordination requirements with other trades or building components are not compensable. Changes made to the Contract Documents after the preparation of the submittal and so noted by the Architect or Engineer may be processed as a Change Order by following proper procedures noted within this Agreement.
8.13.1.4 Submittal approval does not relieve the Subcontractor of any responsibility from any Contract requirements. If there are any deviations from the Contract Documents, it must be clearly shown or marked for the Architect/Engineer's explicit approval.

8.13.2 Substitutions: Submission of Substitutions for specified materials and equipment will not be permitted or approved unless submitted in strict compliance with the Subcontract Documents or unless expressly permitted in writing by the Contractor. Substitutions which are not submitted accordingly will be returned to the Subcontractor without review and the Subcontractor will be responsible for consequential delays.

8.13.3 Record Document Submittals: Closeout or record documents include such items as record/as-built drawings, record copies of reviewed/approved submittals, test and inspection certificates, air balance reports, field measured equipment

performance data, instruction periods, extra stock and similar items required by the Subcontract Documents. Record documents shall be delivered to the Contractor in the quantity and format required by the Subcontract Documents and the Contractor's instructions at least thirty (30) days prior to the date of Substantial Completion unless otherwise directed by the Contractor. Submission of such closeout documents shall be accompanied by an itemized transmittal identifying all submitted documents and such transmittal shall also identify documents which are required but omitted from the initial submission. Omitted items required for Substantial Completion, such as final life safety test/inspection certificates and final/approved air balancing reports, shall be delivered to the Contractor at least two (2) business days prior to the date of Substantial Completion. Other field performance documentation that is not available and not required for Substantial Completion shall be delivered to the Contractor within twenty (20) days from the date such field performance tests or from the date of Substantial Completion, whichever is earlier.

8.13.4 Resubmittals: Submittals that are rejected or require resubmittal shall be corrected or revised and resubmitted to the Contractor not more than ten (10) days after the submittal is returned to the Subcontractor for correction or revision, or within other such period of time as may be required or justifiable given the nature of the resubmittal and its relation to the schedule of the Work. The Subcontractor shall promptly notify the Contractor if the resubmittal will require more than ten (10) days or whether the resubmittal time will or may delay the schedule of the Work. The Subcontractor is responsible for delays caused by rejection of its submittals due to its own errors, omissions or inconsistencies in the submittals or for any reason due to a material non-conformance with the Subcontract Documents including Subcontractor's failure to provide submittals according to Section 8.13.1 above.

8.13.5 Professional Design Services: The Subcontractor shall not be required to provide professional design services that constitute the practice of architecture or engineering unless such services are specifically required by the Subcontract Documents and this Agreement or unless the Subcontractor needs to provide such services for its construction means, methods, techniques, sequences, procedures or for safety in the execution of its own Work. In such event, the Subcontractor shall provide design and other professional services in full compliance with applicable law(s). When such professional services are required, the Subcontractor shall cause such services or certifications to be provided by a design professional(s) lawfully licensed in the state where the Project is located, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings and other such documents prepared by the design professional(s). The Contractor and Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services performed or provided by such design professionals, provided and to the extent that all performance and design criteria have been specified that the Subcontractor must satisfy. The Project Architect or Engineer will review, approve or take other appropriate action on such Submittals prepared by the Subcontractor's design professional only for the limited purpose of checking for conformance with information given and the design concept expressed in the Subcontract Documents. The Subcontractor shall not be responsible for the adequacy of the performance and design criteria specified in the Subcontract Documents.

8.13.6 Request for Information (RFI): Unless otherwise directed by HB, RFIs shall be submitted to HB through HB's Procore website. Contact HB's Project Coordinator for this Project if you have questions about how to do this.

8.14 Coordination: The Subcontractor shall cooperate with the Contractor and Subcontractors whose work may interfere with the Subcontractor's 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 the work of other subcontractors, building components, systems, or existing conditions.

8.15 Progress Reports: The Subcontractor shall furnish periodic progress reports of the Subcontractor's Work as requested by the Contractor including the progress of materials or equipment to be provided under this Subcontract Agreement that may be in the course of preparation or manufacture.

8.16 Acceptance of Preceding Work or Conditions: If the proper performance of the Subcontractor's Work depends upon certain quality or satisfactory workmanship, material or equipment provided by others or upon certain ambient or *insitu* conditions, then the Subcontractor shall examine such workmanship, material, equipment and ambient or *insitu* conditions prior to proceeding with its Work. The Subcontractor shall promptly report in writing to the Contractor any conditions, discrepancies or defects the Subcontractor observes, or could reasonably be expected to observe, that would prevent the proper execution of the Subcontractor's Work. Subcontractor's performance of its Work constitutes its acceptance of the workmanship, materials, equipment, *insitu* or ambient conditions as suitable and proper to receive or perform its Work except as to latent defects or conditions not then reasonably discoverable.

8.17 Materials or Equipment Furnished by Others: If the scope of the Subcontract Work includes installation of materials or equipment furnished by others, the Subcontractor is responsible for exercising proper care in receiving, handling, storing, and installing such items, unless otherwise provided in the Subcontract Documents. The Subcontractor shall examine the items provided and report to the Contractor in writing and items it discovers that are defective or do not conform to the requirements of the Subcontract Documents. The Subcontractor shall not knowingly proceed to install nonconforming items without instructions to do so from the Contractor. Loss or damage due to acts or omissions of the Subcontractor shall, upon two (2) business days' written notice to the Subcontractor, be deducted from any payments due or to become due to the Subcontractor. The Subcontractor is similarly obligated and liable for installing materials or equipment it could reasonably be expected know or to have discovered was defective or nonconforming. Subcontractor is responsible for following the manufacture's requirements for installation of such materials or equipment.

8.18 Examination of Work: Work in progress is subject to examination by the Contractor, Architect/Engineer, Owner or Owner's representative at all times and wherever the Work is carried on. The Subcontractor shall cooperate with and not hinder the party conducting the examination and, at no additional cost to the examining party, facilitate the Party's safe access to the Work by

providing incidental labor, ladders, lifts, safety harnesses and the like as required to perform such examinations. The examining party shall not be required by the Subcontractor to operate lifts, handle ladders or operate equipment/facilities required for access to the Work subject to examination. Examinations conducted off-site at the place of production or manufacture shall be during the hours of production or manufacturing unless other hours are mutually agreed to by the parties involved. Unless otherwise specified in the Subcontract Documents, the cost of travel, lodging and other per diem expenses associated with off-site examination shall be the responsibility of the party conducting the examination. Such examination of the Work shall not unduly interfere with the progress of the Work and only to the extent needed to perform the examination.

8.18.1 Corrections Prior to Substantial Completion: Without additional cost to the Contractor, the Subcontractor shall promptly repair or replace non-conforming Work to the extent necessary to bring the Work into full compliance with the Subcontract Documents. Non-conforming Work includes any portion of the Work that does not comply with the Drawings, Specifications or approved submittals, unless such deviation was previously approved in writing by the Contractor, and also includes defects in workmanship, materials, manufacture or installation, or deficient performance of equipment or systems. The Subcontractor is responsible for the repair or replacement of any consequential damages resulting from said non-conforming Work in accordance with Section 8.22.3 below. When an authorized party or representative observes non-conforming or defective materials, equipment, production or workmanship, the Contractor has the right to order the Subcontractor to stop the Work until such non-conforming or defective Work is corrected or replaced. The time needed to correct or replace non-conforming Work in no way relieves the Subcontractor's obligation to maintain the construction schedule. If in the Contractor's judgment the Subcontractor's non-conforming Work is adversely affecting the operations of the Contractor or Owner, or is adversely impeding the progress of the Work, then upon written notice from the Contractor, the Subcontractor shall immediately proceed with correcting or replacing the non-conforming Work. If the Subcontractor refuses or fails to correct or replace non-conforming Work, then without limitation to of any other rights or remedies of the Contractor, the Contractor may, but is not obligated to, perform the corrective work by any reasonable means necessary and deduct related costs from payments due or thereafter due to the Subcontractor consistent with Section 10.4 herein.

8.18.2: Removal of Non-Conforming Work: If portions of the Subcontract Work which do not conform with the requirements of the Subcontract Documents are neither corrected or replaced by the Subcontractor nor accepted by the Contractor, the Subcontractor shall at its own expense promptly remove such non-conforming Subcontract Work from the Project site if so directed by the Contractor.

8.18.3 Special Inspections: When the Subcontract Work is subject to NYS Code Required Special Inspections as identified in the Subcontract Documents, such inspections shall be performed by a qualified third party or design professional and such services will be paid for by the Owner. The Subcontractor shall cooperate with the party conducting the Special Inspections and at no additional cost to the Contractor facilitate the inspector's safe access to the Work being inspected as described in Section 8.18 above and, when applicable, provide or permit the inspector to take material samples for testing in quantities determined by the design professional of record. If such inspections or testing reveal that the Subcontractor's Work does not comply with the Subcontract Documents, then the Contractor has the right and may order the Subcontractor to correct or replace the non-conforming Work at the Subcontractor's sole cost and expense and the Subcontractor shall pay the entire cost of re-testing and/or re-inspection including related cost incurred by the Contractor. The Contractor may deduct such costs from payments due or payments thereafter due to the Subcontractor. Subcontractor's refusal or failure to correct non-conforming Work is subject to remedies available to the Contractor according to Section 8.18.1 above.

8.18.4 Notice of Readiness: The Subcontractor shall give to the Contractor timely prior notice of its readiness for Special Inspections, such prior notice not being less than (2) full business days. Delays to the Work caused by the Subcontractor's neglect or failure to provide sufficient prior notice is the responsibility of the Subcontractor. If any such Work, without written permission of the Contractor, should be covered up prior to such testing or inspection, the Subcontractor, at its sole cost and expense shall, if directed by the Contractor, uncover the same for testing or inspection and reconstruct same after the tests or inspections are conducted with satisfactory results.

8.19 Protection of Persons & Property: 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 performing the Subcontractor's Work and all other persons who may be affected thereby; all the Subcontract Work and all materials and equipment to incorporated therein, whether in storage on or off the site; and all other property of the Owner, the Contractor, and at the Project site or adjoining 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. Should the actions, omissions or neglect of the Subcontractor or anyone for whom the Subcontractor is liable cause damage to the work or property of others, the property of the Owner, the Contractor, or the property or properties adjoining the Project site, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor or, consistent with Article 10 of this Agreement, the Contractor may remedy the damage and deduct its related cost from any payments due or to become due to the Subcontractor. The Subcontractor agrees to save and hold harmless the Contractor from any damages to its Work or property on the Project site caused by other Subcontractors or anyone providing goods and services in connection with this Project, but the Contractor will assist in the Subcontractor's recovery of such damages consistent with this Section.

8.20 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 own operations. If Subcontractor does not attend to and maintain such cleaning, then the Contractor shall give written notice to the Subcontractor of its neglect or failure in this regard and of Contractor's intent to perform such clean-up on Subcontractor's behalf and charge the cost thereof to the Subcontractor. If Subcontractor does not diligently commence the clean-up within one (1) business day following written notice and continuously or diligently perform the clean-up to completion, the Contractor may cause such cleaning to be done by its own workforce or by others and charge the cost

of same to the Subcontractor. If a dispute arises between separate Subcontractors as to their responsibility for cleaning up and the Subcontractors involved fail to perform the clean-up work, the Contractor may perform the clean-up and proportionally charge the costs to the responsible Subcontractors as the Contractor determines to be fair and equitable. In the event that the accumulation of Subcontractor's debris or waste material poses an immediate safety hazard, the Contractor may take action consistent with an emergency condition as described in Section 8.2.1 and charge the cost of the clean-up to the Subcontractor. If Subcontractor disagrees with the Contractor's determination in matters regarding clean-up, the Subcontractor may submit a written Notice of its disagreement to the Contractor according to Article 11 of this Agreement.

8.21 Dumpsters: The responsibility for providing dumpsters for removal of construction waste shall be according to the Bidding Documents and Subcontractor's specific scope of Work.

8.22 General Safety: Subcontractor shall at all times during the performance of its Work comply with, enforce and maintain current OSHA Regulations and a safety program that meets or exceeds compliance with the Contractor's Health and Safety Manual (available for examination upon request) and all applicable safety laws, ordinances, rules, regulations and orders of public authorities. In instances where the Subcontractor's safety program exceeds the requirements of the Contractor's Health and Safety Manual, then the Subcontractor's safety program shall be followed in those instances. Before commencing any activities on the Project site, Subcontractor shall submit to the Contractor's Safety Manager and obtain approval for its site-specific safety measures, written company 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 adjoining to the Project site from injury, loss or damage.

.1: Subcontractor's Safety Representative: The Subcontractor shall designate a responsible member of its organization present at the Project site whose duty as Subcontractor's Safety Foreman shall be the prevention of accident. 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.
.2: Responsibility for 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 Sum. Any disregard of OSHA, Department of labor, 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 its failure to comply with applicable safety requirements.
.3: Compliance with 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 of their protection from damage, injury or loss. Failure to so comply shall be considered a material breach of this Agreement.
.4: Safety Warnings and Barriers: The Subcontractor shall erect and maintain, as required by existing conditions and 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.
.5: 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 (Prime Contract) or by law regarding hazardous materials as defined by the Subcontract Work, the Subcontractor shall have the same rights or obligations.
.6: Accident Prevention: Prevention of accidents at the Project site is the responsibility of the Contractor, the Subcontractor, and all other Subcontractors, persons and entities at the Project 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 and shall be considered a material breach of this Agreement. The Subcontractor shall notify the Contractor immediately, or as soon as practical, following any accident involving personal injury requiring first aid or treatment by a professional healthcare provider, any property damage in excess of $500 value, 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 no later than the end of the next succeeding business day of such incident.
.7: Unsuitable Employees: When ordered by the Contractor, 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 and drug and/or alcohol test given in connection with this Project, or who violates provisions of the Contractor's Health and Safety Manual or safety program. The Subcontractor agrees not to assign that employee to this or any of the Contractor's other Projects for the period of time specified in the Contractor's Health and Safety Manual.
.8: Snow Removal for Safety: Unless otherwise stated in the Bidding Documents, this Agreement, or elsewhere in the Subcontract Documents, the Subcontractor shall at its own expense provide labor and equipment for snow removal and deicing as needed for access to its own Work including but not limited to Subcontractor's own field office, storage trailers, lay down areas

and path of travel for its own workforce or the workforce of its Sub-subcontractors to access any area on the Project site beyond or outside of the building perimeter. Snow moved by the Subcontractor for this purpose may only be deposited or left on the Project site in a location designated by the Contractor's Superintendent. If required to prevent an unreasonable encumbrance or obstruction on the Project site, the Contractor's Superintendent may direct the Subcontractor at its own expense to remove its snow from the Project site and legally dispose of same. Unless otherwise stated in the Bidding Documents or elsewhere in the Subcontract Documents, the Contractor shall be responsible for snow removal at construction entrances and temporary construction roads and areas designated for contractor parking that are intended for general use by all Subcontractors.

8.23 Warranty: The Subcontractor guarantees and warrants to the Contractor that all materials and equipment furnished under this Subcontract Agreement are new, unless otherwise specified and permitted by the Subcontract Documents, and are in conformance with the Subcontract Documents unless non-conforming Work was previously accepted in writing from the Contractor and guarantees all of its Work against defective workmanship, materials, systems, and performance for a period of not less than twelve (12) months following the date of Substantial Completion, or for a longer period of time as may be required by specific warranties in the Subcontract Documents or, in the case of partial occupancy, for twelve (12) months from Substantial Completion of portions thereof designated in writing by the Contractor. Subcontractor's warranty obligations exclude remedy for damage or deficient performance caused by abuse by others, modifications not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear. The Subcontractor's warranty obligations under this Agreement shall be deemed in full force and effect upon the date of Substantial Completion except for any portion of the Subcontractor's Work determined to be incomplete at the time of Substantial Completion, in which case a separate and later warranty date shall be established for such items of Work at the time of satisfactory completion and acceptance by the Owner and Contractor according to the terms of the Subcontract Documents. Warranty dates which become effective after the date of Substantial Completion shall be for a period of not less than twelve (12) months from the effective start date of said warranty. This warranty is in addition to and does not limit or exclude the terms and conditions of any other warranties or guarantees specified elsewhere in the Subcontract Documents. If other Subcontract Documents or the Prime Contract requires different warranty terms that are more stringent, require shorter or more specific response times, or longer periods of coverage, then the more stringent terms, shorter or specific response time, or longer coverage shall take precedence and be required of the Subcontractor.

8.23.1: Under the guarantee of Section 8.23 above and without additional cost to the Contractor, the Subcontractor shall promptly correct and restore to a "like new" condition any defects or failure of any part of its Work including any defects or failures pertaining to workmanship, materials, manufacture or installation, or deficient performance of equipment or systems. The Subcontractor shall be responsible for consequential damages in accordance with Section 8.23.3 below. The Contractor or Owner shall upon its discovery of such failures or defects give prompt notice of same to the Subcontractor and the Subcontractor shall promptly commence and diligently complete correction of such defects or failures in its Work. If the Subcontractor fails to promptly correct such non-conforming work, then the corrective Work may be carried out by the Contractor pursuant to Section 10.4 of this Subcontract Agreement. If the defect or failure is in the Contractor's reasonable judgment urgent in nature or has a materially adverse effect on the operations of the Owner, is to a material degree impeding the continuation of any Work, creates an emergency condition, or if not immediately corrected will or may cause further damage to the Work, then the corrective work shall be performed by the Subcontractor immediately following notice of such condition. If the Subcontractor is unable, refuses, neglects, or fails to immediately perform such urgent corrections, then the Contractor may without further notice take reasonable action to perform the corrective work, or engage others to perform the corrective work, and deduct its related costs from payments due or which may become due to the Subcontractor. If the Subcontractor has already been paid in full, then the Subcontractor agrees to pay the Contractor for its directly incurred costs within thirty (30) days of Contractor's written demand or invoice for payment to the Subcontractor.

8.23.2: During the warranty period, the Subcontractor shall be responsible for receiving notices pursuant to Section 8.23.1 above and correction of same even if such warranty work is to be performed by its Sub-subcontractors, suppliers or representatives of equipment manufacturers. The Subcontractor is responsible for insuring its Sub-subcontractors, suppliers and representatives respond to and satisfactorily complete warranty work according to the terms of this Agreement and neither the Contractor nor the Owner is obligated to contact its Sub-subcontractors or suppliers for warranty work. Promptly after receiving a notice of required warranty work, the Subcontractor shall schedule the corrective work with the Contractor, or with the Owner if so directed by the Contractor, and notify the Contractor upon completion of the corrective work and provide a written description of the corrective work performed.

8.23.3: If the Subcontractor's correction or removal of defective or non-conforming Subcontract Work, whether before or after Substantial Completion, destroys or damages completed or partially completed work of the Owner, the Contractor, or any other subcontractors, the Subcontractor shall be responsible for the cost of correcting, repairing or replacing such destroyed or damaged construction.

8.24 Social Media: No Subcontractor, Sub-subcontractor, Supplier, Consultant, Architect, Engineer, Vendor or anyone else involved in or working on a construction project for the Contractor, shall post anything about the project on any form of social media without the prior express written approval of the Contractor.

ARTICLE 9 CONTRACTOR

9.1 Contractor's Cooperation: The Contractor shall cooperate with the Subcontractor in scheduling and coordinating the Work of the Project to enable the Subcontractor to properly plan and schedule the Subcontractor's Work. The Contractor shall expedite responses to the Subcontractor's submittals and requests for information.

9.2 Job Site Communications: The Contractor shall not give instructions, orders or directives, except in the case of emergency or unsafe conditions, directly to the Subcontractor's employees, Sub-subcontractors or workers unless such persons are designated by the Subcontractor as its authorized representatives. Unless other representatives of the Subcontractor are agreed to by the Contractor, the Subcontractor's Superintendent shall be present on the Project site to receive such communications whenever the Work of the Subcontractor is being performed. If Subcontractor's Superintendent or other authorized representative is not present on the Project site while the Subcontractor's Work is being performed, the Contractor may give general directions to the Subcontractor's workforce as the Contractor deems necessary or appropriate, and in such case, the Contractor's directions shall not be deemed to be Contractor's instructions for means and methods for performing the Subcontractor's Work and the Contractor shall have no liability to the Subcontractor for consequences or effects of such direct communication.

9.3 Bench Marks & Layout Controls: Unless otherwise stated in the Bidding Documents or elsewhere in the Subcontract Documents, the Contractor will provide control lines and elevation benchmarks for the Subcontractor's layout of its Work. For site and building foundation related Work, the Contractor will provide demarcation stakes/markers for the property lines, building corner off-set stakes, and elevation bench marks. The Subcontractor shall protect such stakes and benchmarks from damage or movement due to the operations of the Subcontractor. For building interior layout, the Contractor will provide control lines and elevation benchmarks for the Subcontractor's layout of its Work. The Subcontractor shall be able to rely on the accuracy of the Contractor's controls for layout. The Contractor, in its sole judgment, shall determine the number and location of such layout controls. Additional controls for layout of the Subcontractor's Work shall be the responsibility of the Subcontractor utilizing the controls established by the Contractor. The Subcontractor is solely responsible for the layout of its own Work utilizing Contractor's control lines and elevation benchmarks.

9.4 Working Hours: The Contractor will establish and enforce job site working hours. Working hours on the Project site are 7:00 a.m. to 3:30 p.m., Monday through Friday unless otherwise stipulated by the Contractor or mutually agreed by the Parties and such working hours may be referred to as normal or regular working hours. Subsequent to the execution of this Agreement, the Contractor may modify these working hours as needed to maintain the Project schedule under the terms of Article 4 of this Agreement or as needed to accommodate changing site conditions, coordination of the Work, or for any reason the Contractor reasonably deems warranted. The Subcontractor shall obtain prior approval from the Contractor at least 48 hours in advance of working outside of these hours. Contractor's approval to work outside of the designated working hours does not constitute or imply the Subcontractor is entitled to compensation for overtime pay; additional cost for overtime work can only be approved as provided for under Article 5 of this Agreement.

9.5 Liquidated Damages: Liquidated Damages shall not be assessed against the Subcontractor unless and except as provided for in the Primes Contract or elsewhere in the Subcontract Documents or this Agreement as indicated below with an "X". The Contractor shall make no demands for liquidated damages in any sum in excess of the amount specifically named in this Subcontract Agreement or the Prime Contract. Liquidated Damages shall not be assessed for delays not caused by the Subcontractor and, when assessed, shall not exceed the Subcontractor's proportionate share of responsibility, as determined by the Contractor, for such delays. To this extent only, the Subcontractor accepts responsibility for Liquidated Damages. The provisions of this Section in assessing Liquidated Damages against the Subcontractor is not intended as the Contractor's sole and exclusive remedy for the Subcontractor's untimely performance or delays and does not preclude or limit any Claim the Contractor may have toward the Subcontractor for compensable damages under the terms of this Agreement or by law or in equity.

[ ] Liquidated Damages are NOT included in this Subcontract.

[ ] Liquidated Damages ARE included in this Subcontract per Section 9.5 above.

9.6 Waiver of Breach: The failure of Contractor at any time to require performance of any provision hereof with respect to a particular matter shall in no way affect the right of the Contractor to enforce such provision at a later date with respect to another matter; nor shall the waiver by the Contractor of any breach of any provision hereof be interpreted or inferred to be a waiver of the provision itself.

ARTICLE 10 SUSPENSION, RIGHT TO CURE, AND TERMINATION

10.1 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.

.1 The Subcontractor shall give Notice to the Contractor in writing seven (7) 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 Sum or Subcontract Time shall be adjusted by Change Order for any increase in the time or cost performance of this Subcontract Agreement caused by such suspension, delay or interruption.
.2 No Claim relating to suspension shall be allowed for any costs incurred more than seven (7) days prior to the Contractor's Notice to the Subcontractor as provided in Section 10.1.1 above.
.3 Neither the Subcontract Sum nor the schedule 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.
.4 The Subcontract Sum 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 Subcontract Agreement.

.5 In the event the Subcontract Work is suspended, delayed or interrupted or 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 performed by the Subcontractor 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. Pursuant to the Subcontractor's request, the Contractor may, in its sole direction, 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.

10.2 Termination for Convenience: The Contractor may, at any time, terminate this 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 as the Contractor may direct, for the protection and preservation of the Subcontract Work; and (3) except for the Subcontract Work specifically directed to be performed or completed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and do not enter into further Sub-subcontracts and purchase orders. In the event of termination for the Contractor's convenience, the Contractor may reimburse the Subcontractor for reasonable cost and reasonable profit on such costs directly resulting from such action, but the Subcontractor shall not be entitled to loss of future profits, overhead on Subcontract Work not preformed, materials not furnished, or other indirect or consequential losses.

10.3 Default of Subcontractor: In addition to any other causes that may be stated elsewhere in this Agreement or the Subcontract Documents**,** the Contractor shall have the right, but not the obligation, to declare the Subcontractor in default of this Agreement if, in the judgment of Contractor or by de facto evidence, the Subcontractor:

.1: is unable, refuses, fails or neglects to supply sufficient and properly skilled workers, supervision, equipment, and materials of the proper quantity and quality; or
.2: fails in any material degree to timely and diligently prosecute the Work and maintain the schedule for the Work in compliance with this Agreement; or
.3: persistently violates any aspect of the Contractor's Health and Safety Manual, OSHA regulations or commits a serious and/or willful safety violation resulting in loss of life, serious personal injury, or significant property damage; or
.4: fails to make timely and full payment to its workers, Sub-subcontractors or suppliers, or fails to discharge liens filed by them according to this Agreement; or
.5: disregards or violates any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or
.6: fails in the performance of any material obligation or duty of this Agreement and thereby commits a material breach thereto; or
.7: becomes insolvent, enters bankruptcy either voluntarily or involuntarily, has a receiver appointed or makes an assignment for the benefit of creditors; or
.8: materially changes its financial condition, transfers any material assets, changes control or management without the Contractor's prior written consent; or
.9: has any lien, encumbrance, bond claim, dispute, delay or other claim asserted, filed or threatened under the Subcontractor's scope of Work or that arises out of Subcontractor's involvement in the Project, and Subcontractor has not promptly cured, removed, satisfied or paid same; or
.10: upon Contractor's written directive, fails to remove or otherwise remedy any defective, non-compliant or unapproved Work.

10.4 Notice of Default and Right to Cure: If the Contractor finds the Subcontractor in default of this Agreement for any of the causes stated in Section 10.3 above or any other cause provided in this Agreement or the Subcontract Documents, then the Contractor may serve to the Subcontractor written Notice of such default with direction to cure the default in not less than five (5) business days or within five (5) business days commence and diligently continue progress toward curing the default to the satisfaction of the Contractor or within five (5) business days submit a written plan of recovery satisfactory to the Contractor. If the Subcontractor fails to cure the default or diligently continue progress toward curing the default to the satisfaction of the Contractor after the period of five (5) business days has expired, then immediately upon additional written Notice to the Subcontractor of its failure to cure the default, the Contractor shall have the right, but not the obligation, to enforce any and all remedies under this Agreement, without prejudice to any other rights or remedies, including any or all of the following contractual remedies described in Sections 10.4.1 through 10.5.2 below.

10.4.1: In the event the Subcontractor is found to be in material breach and default of this Agreement, then the Subcontractor, and its Surety if applicable, shall be deemed liable to the Contractor for any and all resulting losses, costs, expenses, incidental damages, consequential damages, indirect damages, completion damages, correction damages, remediation damages, cleanup costs, repairs, delay damages, including but not limited to liquidated damages when applicable, extended field office overhead, extended home office overhead, additional general requirements costs, additional supervision, Contractor's reasonable overhead and profit on its own work, its general requirements and the work of its subcontractors relating to the cure of Subcontractor's default, and related attorney and consultant expenses (herein collectively referred to as "Damages");

10.4.2: The Contractor may investigate the causes of Subcontractor's breach or default and correct same in any reasonable way or manner whatsoever without terminating this Agreement, including, but without limitation to, supplementing the Subcontractor's workforce with Contractor's own workforce and/or the workforce of others, and supplying materials, equipment and facilities as the Contractor deems appropriate and necessary, and deduct all such costs incurred by the Contractor in curing the Subcontractor's default, including reasonable overhead and profit, legal expenses and other Damages attributable to such default from payments due or thereafter due to the Subcontractor;

10.4.2.1: In the event the Contractor supplements the Subcontractor's Workforce, the Subcontractor shall cooperate with and facilitate the supplementary workforce to the full extent necessary for proper and complete performance of the Subcontract Work including use of Subcontractor's equipment, materials and facilities.

10.4.3: The Contractor may withhold payments due or thereafter due to the Subcontractor to induce the Subcontractor to perform and cure the default to the extent required by and to the satisfaction of the Contractor and in amounts sufficient to cover losses, legal expenses and other related Damages.

10.5 Termination for Cause: Upon and included with Contractor's written Notice of Subcontractor's failure to cure its default, the Contractor shall have the right, but not the obligation, to terminate further performance of the Subcontractor under this Agreement and to complete the Subcontractor's Work with such persons, firms or companies as the Contractor deems appropriate and deduct from payments due or thereafter due to the Subcontractor all costs and Damages related to curing the Subcontractor's default, including reasonable overhead and profit and attorney's expenses. The date of termination shall be the date of the Contractor's Notice.

10.5.1: Upon Contractor's written Notice of termination to the Subcontractor, unless otherwise directed in the termination Notice, the Subcontractor shall:

.1: Immediately discontinue all further operations and activities under this Agreement and shall immediately quit and vacate the Subcontractor's workforce from the Project site leaving untouched all installed Work, Work in progress, and materials and equipment on site intended to be incorporated into the Work and the Contractor may utilize same for completion of the Subcontractor's unfinished Work;
.2: Enter into no further orders of equipment, supplies, materials or facilities related to the Subcontract Work;
.3: Terminate Sub-subcontracts, purchase orders and other agreements related to the Subcontract Work;
.4: As directed by the Contractor, transfer title and deliver to the Contractor all fabricated and unfabricated parts, completed Work, Work in progress, and such other materials produced or acquired by the Subcontractor in connection with the Subcontract Work, and take such action as may be necessary or as the Contractor may direct for the protection and preservation of the Work relating to this Agreement;
.5: Deliver to the Contractor all plans, specifications, drawings, surveys, test/inspection certificates, permits, submittals, shop drawings and other such documents related to the Subcontract Work as the Contractor may require.

10.6 Costs Exceeding the Subcontract Sum: If the Contractor's incurred Damages resulting from Subcontractor's default or failure to perform exceeds the total sum which would have been payable under this Agreement if the same had been satisfactorily completed by the Subcontractor, then the subcontractor and its Surety, if any, shall be liable to the Contractor for any such excess or difference in costs and shall reimburse the Contractor within thirty (30) days of Contractor's written demand or invoice from the Contractor to the Subcontractor for same. For the purpose of this calculation, in no event shall the unpaid balance due the Subcontractor: (1) exceed the reasonable value of the Work performed by the Subcontractor; (2) be calculated solely by reference to the Subcontractor's schedule of values unless agreed by Contractor; (3) exceed the Subcontract Sum when taken together with all of the Contractor's costs for completing the Subcontractor's Work.

10.7 Accounting of Expenses: The Contractor shall furnish to the Subcontractor an accounting of all costs and expenses incurred by the Contractor in curing the Subcontractor's default or failure to perform when such costs are deducted from payments due or payments thereafter due to the Subcontractor and, likewise, for payment of excess costs demanded by the Contractor according to Section 10.6 above.

10.8 Termination of Prime Contract: If the Prime Contract has been terminated, whether for cause or for convenience, Contractor's liability to Subcontractor shall be limited solely to the amount Contractor recovers from Owner on the Subcontractor's behalf.

10.9 Wrongful Termination: If Contractor wrongfully exercises any option under this Article, Contractor shall be liable to Subcontractor only for the reasonable value of the Work performed prior to the time of such wrongful action together with reasonable overhead and profit on the Work performed less prior payments made. Under no circumstances shall the Subcontractor be entitled to recovery of claimed lost future profits or other consequential losses.

ARTICLE 11 CLAIMS AND DISPUTE RESOLUTION

11.1 Claims: A Claim is a demand or assertion by Subcontractor seeking payment of money, extension of time or other relief with respect to, involving, concerning or related to this Subcontract. An event or cause giving rise to a Claim may include but are not limited to the following: (1) Request for Proposal (RFP); (2) Construction Work Directive (CWD); (3) withholding payment for completed CWD Work; (4) an RFI response or review comments on a Subcontractor's submittal containing instructions for changes in the Work; (5) interpretation of the Subcontract Documents with which the Subcontractor disagrees; or (6) any matter relating to the schedule, execution or progress of the Work. The responsibility for initiating, advancing and preserving Claims according to the terms of this Article shall rest with the party making the Claim.

11.1.2 Conditions for Valid Claim: No Claim by the Subcontractor against the Contractor and/or Owner in connection with the Subcontract Documents shall be valid unless such Claim is made in strict accordance with the provisions of this Article.

11.1.3 Claims Under the Prime Contract: A Subcontractor's Claim which will affect or become part of a Claim which the Contractor is required to make under the Prime Contract within a specified period of time shall be delivered to the Contractor in

sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract but not less than two (2) business days preceding the time by which the Contractor's claim must be submitted to the Owner, Architect and/or Construction Manager or any other parties required by the Prime Contract, provided Subcontractor has been allowed a reasonable period of time to prepare its portion of the Claim. If the Subcontractor fails to timely submit such Claims, the Subcontractor thereby waives or forfeits any Claims, or right to Claim, for an increase in the Subcontract Sum and/or Subcontract Time, or in the case where a modification to the Prime Contract deletes Work of this Agreement, then the Subcontractor shall be bound to the same consequences as those to which the Contractor is bound under the Prime Contract.

11.1.4 Notice of Claim: Claims by the Subcontractor must be initiated by written "Notice of Claim" or "Notice of Potential Claim" to the Contractor within seven (7) business days after occurrence of the event giving rise to such Claim or within seven (7) business days after Subcontractor first recognizes, or could reasonably be expected to recognize, the condition giving rise to the Claim, whichever is earlier; provided, however, that the Subcontractor shall use its best efforts and cooperate with the Contractor in any effort to mitigate the alleged or potential damages, delay or adverse consequences arising out of the condition or event which is the cause of such a Claim. If the Subcontractor's Claim is not submitted to the Contractor within said seven (7) business day period, the Subcontractor's Claim, or right to Claim, is forfeited and waived. The Notice of Claim or Potential Claim shall clearly describe the specific nature and basis of the Claim, and the impact or damages which may occur or have occurred as a result thereof, to the extent the impact or damages and consequential costs or delays attributable thereto can be assessed at the time of Notice. If the impact or damages cannot be fully assessed as of the date of the Notice, the Notice shall be amended at the earliest possible date and the aforementioned seven (7) business day period may be extended by the Contractor as may be justifiably needed to for the Subcontract to properly evaluate the impact of the condition or occurrence which is the cause of the Claim and to obtain pricing from its Sub-subcontractors or suppliers. The Subcontractor shall request such an extension of time in the Notice or in a separate written request to the Contractor and the Contractor shall promptly respond to the Subcontractor's request and shall not unreasonably withhold its agreement thereto. Upon full assessment of consequential costs and/or delays related to the Notice, the Subcontractor shall submit a request for an adjustment to the Subcontract Sum and/or Time in accordance with Article 5 of this Agreement. Any Claim or portion of a Claim that has not been made the specific subject of a Notice strictly in accordance with this Article shall be waived and forfeited. The Parties acknowledge that it is imperative that the Contractor have timely, specific notice of any potential problem, occurrence or condition that may result in damages relating to additional cost or time in order that such damages can be mitigated promptly and economically.

11.1.5 Delivery of Notices: Written Notices shall be deemed to have been duly served if delivered by the Party serving Notice to the address of the intended recipient identified in Article 1, or to the last business or email address known to the Party giving Notice, and to the attention of the representative who signed this Agreement, or to an owner, or to an officer of the corporation or member of the firm or entity for which it was intended, or a representative duly appointed by the Parties to receive such Notices. Such written Notices shall be delivered by: (a) U.S. Postal Service certified mail, with signed return receipt; (b) express overnight mail (Federal Express, UPS or the like); (c) hand delivery with receipt signed by the receiving party; or (d) via electronic mail (email deliveries to the Parties' website addresses or other electronic venues or social media will not be accepted or recognized as valid). The Party serving Notice is solely responsible for retaining and preserving receipts verifying such deliveries including electronic verification of its email transmission as evidence that Notice was so delivered. Notices sent via email without the sender receiving notification from the internet provider (e.g., Microsoft Exchange) that the delivery has failed or was undeliverable shall be deemed duly served, even if the email is unopened or unread by the recipient. Facsimile transmissions will not be accepted and are not a valid means of serving Notice. Notices delivered by means other than the preceding may be deemed invalid and related Claims may be forfeited, waived and released. For Notices relating to a Claim, the date of the Notice shall be the date the Party receives the Notice of Claim and time limits on such Notices shall be calculated from the time the Notice is received by the intended party.

11.1.6 Claims for Additional Costs: Except as otherwise provided in this Agreement, in calculating the amount of any Claim recoverable by the Subcontractor, the following standards and limits will apply:

.1 No indirect or consequential damages will be allowed including lost future or anticipated profits or interest on the Subcontractor's capital employed for the Work.
.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of labor efficiency, or on a comparison of planned workforce to actual workforce, or any other analysis that is used to calculate indirect damages.
.3 No damages will be allowed for home office overhead or other home office charges.
.4 No calculation of damages shall be based on the Subcontractor's schedule of values.
.5 No profit will be allowed on any Claim except as expressly recoverable under the terms of this Agreement.
.6 Claims for additional costs are limited to those costs shown to be directly attributable to those changes, events or conditions which are the cause of the Claim except as expressly recoverable under the terms of this Agreement.

11.1.7 Initial Decision on Claim: Claims, disputes and other matters arising under the Subcontract Documents and relating to the execution or progress of the Work or the interpretation of the Subcontract Documents including Claims for an adjustment to the Subcontract Sum or an extension of the Subcontract Time, shall initially be decided by the Contractor and/or Architect and/or Owner, who will render its and/or their decision in writing within a reasonable period of time. The Subcontractor shall diligently and timely proceed with the Work in accordance with the initial decision. In the event the Contractor disagrees with the decision of the Architect and/or the Owner; the Contractor nevertheless has an obligation to promptly communicate their initial decision to the Subcontractor. In all cases, with respect to such Claims, the Contractor's communication of the initial decision shall also be considered the decision of the Architect and Owner for the purposes of this Article.

11.2 Disagreement with Initial Decision: The determination of the Contractor, Architect, or Owner made pursuant to Section 11.1.7 shall be final, binding and conclusive upon the Subcontractor, unless the Subcontractor, within seven (7) business days after receiving written Notice of Contractor's decision or determination, prepares and delivers to the Contractor a written Notice of the Subcontractor's contention that said decision is contrary to the provisions of this Agreement and the Subcontractor shall, in said written Notice, set forth and identify each such provision of the Subcontract Documents on which it relies and, within said Notice, state that the Subcontractor reserves its right to Claim in connection with the matters covered by said decision or determination and request that the matter be advanced to the Dispute Resolution process. Any such disagreement with an initial decision, contested Claim, difference or dispute arising in connection with this Agreement shall be referred to herein as a "Disputed Claim".

11.2.1 Dispute Resolution Process: Pursuant to Section 11.2.1 above, the Contractor and Subcontractor do hereby agree that the dispute resolution procedures set forth below shall be the exclusive remedy for resolution of Subcontractor's Disputed Claim(s) in connection with this Agreement.

11.2.2 Dispute Resolution Between Contractor and Subcontractor: If, in the sole judgment of the Contractor, the Disputed Claim is principally between the Contractor and Subcontractor and is not appropriately governed by the dispute resolution proceedings of the Prime Contract, then such Disputed Claim shall be resolved according to the dispute resolution procedures set forth below. Contractor's decision in this matter shall be final and binding upon the Subcontractor.

11.2.4 Direct Discussions: In the event the Subcontractor disagrees with the initial decision on Subcontractor's Claim pursuant to Section 11.1.7 (Disputed Claim) and duly notifies the Contractor of its disagreement in accordance with Section 11.1.8, the Parties shall endeavor to reach resolution of the Disputed Claim(s) through good faith direct discussion between the Parties' representatives who shall possess the necessary authority to resolve such matter(s) and who shall record the date of its first discussions. Such Direct Discussions may include the participation of the Architect/Engineer and/or Owner at the sole discretion of the Contractor. If the Parties' representatives are not able to resolve such matter(s) within seven (7) business days from the date of initial discussions, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not achieved. Upon receipt of such Notice, the senior executives of the Parties shall meet within seven (7) business days to endeavor to reach resolution. If the matter remains unresolved after fifteen (15) days from the date the senior executives are notified of this unresolved matter, the party advancing the Claim shall duly serve written Notice to the other party of its demand for resolution of the Disputed Claim according to the mediation procedures in Section 11.2.5.

11.2.5 Mediation: If Direct Discussions do not result in resolution of the Disputed Claim, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. With respect to such mediation, the parties shall, within fifteen (15) days after demand for mediation is filed or served on the other party, agree on a mediator. The mediator who is (a) a reputable person actively engaged in the construction industry or as a lawyer in the practice of construction law for a continuous period of not less than ten years and (b) is in no way affiliated or has business dealings with either party or any other party involved in the mediation, and (c) is located in Onondaga County, NY or within reasonable proximity to the Project location. If the parties are unable to agree upon a mediator, a mediator having the aforementioned qualifications shall be appointed by the American Arbitration Association office located nearest the Project location. The mediation shall be convened within thirty (30) days after the mediator is selected. Either party may terminate the mediation at any time after the first session, but the decision to terminate shall be duly served in writing as a Notice by the terminating party to the non-terminating party and to the mediator. The costs of the mediation shall be shared equally by the Parties but each party shall bear the cost of their own travel and attorneys' fees; provided, however, that if the Disputed Claim is not resolved pursuant to such mediation, the provisions of this Agreement or applicable law shall govern the payment of attorneys' fees and costs and expenses of mediation and arbitration hereunder. A Disputed Claim(s) not resolved by mediation shall be decided by Alternative Dispute Resolution according to Section 11.2.6 below.

11.2.6 Alternative Dispute Resolution (ADR): Disputed Claims not resolved by mediation shall be decided by Alternative Dispute Resolution (ADR) provision(s). Subcontractor agrees to proceed in the method and manner provided for ADR unless Contractor directs otherwise in writing. The decision, determination or award from any ADR shall be final and enforced in a court of competent jurisdiction, with venue in Onondaga County of the State of New York.

11.3 Dispute Resolution Between Owner and Contractor/Subcontractor: In the event of a dispute between the Owner and the Contractor together with the Subcontractor, the Subcontractor's disagreement with the initial decision shall be subject to the Dispute Resolution process of the Prime Contract.

11.3.1 Subcontractor's Interest in a Dispute under the Prime Contract: For a dispute between the Owner and Contractor which involves the Subcontractor's 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 dispute resolution procedures and shall be bound by the outcome.

11.3.2 Proportionate Share: The Contractor shall pay the Subcontractor the amount of the proportionate share of any recovery due to the Subcontractor on the basis of the ratio of the Subcontractor's claims to other claims that are asserted, less a proportionate share of expenses and attorneys' fees related to dispute resolution proceedings, provided the Subcontractor's claims and other claims are substantially similar and reasonably justified as to merit and actual cost incurred as determined by the Contractor. In no case shall the Subcontractor be entitled to payments exceeding the amount the Contractor recovers from the Owner for the Subcontractor's portion of the Work or Disputed Claim.

11.3.3 Indemnification Against Claims: The Subcontractor hereby agrees to indemnify the Contractor for any and all costs, including attorneys' fees, related to defending a Claim by the Owner or any other party in the disputes resolution procedure if such Claim relates to or arises from the Subcontractor's Work.

11.4 Court Venue: This Subcontract shall be construed pursuant to the laws of the State of New York. Subcontractor agrees that it will not commence any action, whether in law or in equity, against Contractor or Contractor's sureties because of any matter whatsoever arising out of the alleged breach or performance of the Subcontract in any court other than the Supreme Court of the State of New York, venue in the County of Onondaga, and the Subcontractor expressly waives any and all rights that said Subcontractor might have by reason of any bond provision, if any, or by reason of any other cause whatsoever to bring said action in any other court. The rights herein given the Contractor shall also be deemed for the direct benefit of its sureties, if any, with the same force and effect as if they were parties hereto.

11.4.1 Contractor's Surety: The rights herein given by this Agreement to the Contractor shall also be deemed for the direct benefit of its sureties, if any, with the same force and effect as if they were parties hereto.

11.5 Limitations on Claims: To the extent allowed by law, no action or proceeding in law or equity shall lie with or be maintained by the Subcontractor, or any of its lower tier Sub-subcontractors, arising out of this Subcontract or the performance of its Work hereunder or by reason of any act, omission, neglect, or breach of this Agreement by the Owner or Contractor unless such action be commenced within one (1) year after the date the Subcontractor last performed Work on the Project site, exclusive of warranty Work and no such action shall be commenced unless preserved in accordance with the terms of Article 11 of this Agreement and unless timely notice as required by the Subcontract Documents is given, whichever period of time is shorter. Compliance with such requirements shall be conditions precedent to the Subcontractor's right to the dispute resolution process herein or to commence an action for any such damage or Claim.

11.6 Trial by Jury: To the extent allowed by applicable law, the Subcontractor hereby waives trial by jury in any matter to be resolved by litigation, to which the Subcontractor may be a party arising out of or in any way pertaining to this Agreement, and in any such action, the judge, without the assistance of a jury, shall be the finder of fact. The Subcontractor agrees and understands that this waiver constitutes a waiver of trial by jury of all claims against all parties to such actions, proceedings or litigation, including claims against parties who are not parties to this Agreement. This waiver is knowingly, willingly and voluntarily agreed to by the Subcontractor and the Subcontractor hereby represents that no representations of fact or opinion have been made by any individual to induce this waiver of trial by jury or to in any way modify or nullify its effects. The Subcontractor further represents that it has had the opportunity to discuss this waiver with independent legal counsel.

11.7 Work Continuation and Payment: Unless otherwise agreed in writing, the Subcontractor shall continue the Subcontract Work and maintain the Project Schedule in accordance with the Contractor's directives, under protest, during any Claim process, dispute mitigation or resolution proceedings. Failure to so proceed shall constitute a material breach of this Agreement 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. If the Subcontractor continues to timely and diligently perform the Work, the Contractor shall continue to make payments in accordance with this Agreement.

ARTICLE 12: SUBCONTRACT DOCUMENTS

12.1 Subcontract Documents: The Subcontract Documents consist of (1) this Agreement when properly executed by the Parties and any documents referred to or enumerated herein or Exhibits attached hereto. (2) the Prime Contract consisting of the Agreement between the Owner and Contractor and any other documents enumerated or referred to therein; (3) Drawings, Specifications and/or Project Manuals prepared for this Project including Addenda issued prior to this Agreement; (4) modifications to the Prime Contract subsequent to the execution of the Agreement between the Owner and Contractor, whether issued before or after the execution of this Agreement (Contractor shall inform Subcontractor of any changes to the Prime Contract that materially alters or affects Subcontractor's scope of Work); (5) modifications to this Subcontract issued after execution of this Agreement. These documents collectively constitute the Subcontract Agreement between the Contractor and Subcontractor and are as fully a part of the Subcontract as if attached hereto or repeated herein and supersedes any prior representations, negotiations, inducements, Notice To Proceed agreements, or understanding of any kind or nature between the parties of this Agreement, whether oral or written, relating to this Project. The Subcontract Documents may only be modified in writing according to the provisions of Article 5 herein for making such modifications or changes.

12.1.2 Addenda: Addenda are written or graphic instruments issued by the Architect, Engineer or Contractor before the execution of this Agreement which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections. Addenda are included in this Agreement by reference only and by signing this Agreement the Subcontractor acknowledges receipt of Addenda listed in Article 14 of this Agreement.

12.1.3 Copies of Documents: Unless otherwise agreed by the Contractor, electronic copies of the Subcontract Documents will be made available in a PDF format to the Subcontractor; no paper copies of the Subcontract Documents will be provided to the Subcontractor. A copy of the Prime Contract (with financial, proprietary, and other confidential information redacted) will be available to the Subcontractor upon request. Unless otherwise stated elsewhere in the Subcontract Documents, ACAD or digital files of the Drawings will only be made available for the Subcontractor's use for the preparation of coordination drawings or shop drawings subject to the permission and requirements of the design professional who prepared the drawings. In signing this Agreement, the Subcontractor acknowledges and agrees that it is the Subcontractor's sole and independent responsibility to obtain and examine the Subcontract Documents prior to executing this Agreement.

12.2 Freely & Mutually Negotiated Agreement: Subcontractor and Contractor understand, agree and acknowledge that this Subcontract has been freely entered by both Parties as though in effect jointly written, and that both Parties had opportunity to negotiate in good faith its terms and to obtain the assistance of legal counsel in reviewing its terms prior to execution, and that in the event of any legal action, controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Subcontract or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against either party by virtue of either party having drafted this Subcontract or any portion thereof.

12.3 Successors and Assigns: The Contractor and Subcontractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Subcontract Documents. Subcontractor shall not assign the Subcontract as a whole without written consent of the Contractor, nor shall the Subcontractor assign any monies due or to become due to it hereunder without the consent of the Contractor. If Subcontractor attempts to make such an assignment without such consent, such purported assignment shall constitute a material breach of this Agreement. Notwithstanding the foregoing, Subcontractor shall nevertheless remain legally responsible for all obligations under the Subcontract. In the event of assignment of this agreement to other parties or entities, the Subcontractor, its heirs, successors, executors, administrators, representatives and assigns do hereby agree to the full performance of this Subcontract and shall be bound to all of the obligations hereto provided and to the extent that the Contractor and Owner or its assigns fulfills its obligations under this Agreement.

12.4 Assignment of Subcontract to Owner or Lender: Without limiting the foregoing Section, Subcontractor acknowledges and agrees that the Contractor may, without the consent of the Subcontractor, assign this Subcontract to the Owner or the Owner's Lender providing construction financing for the Project, if the Owner or Lender assumes the Contractor's rights and obligations under the Subcontract Documents with regard to the Work to be performed after such assignment. The Contractor's contingent assignment of this Subcontract Agreement to the Owner is effective when the Owner or Lender has terminated the Prime Contract and has accepted assignment by notifying the Subcontract in writing of such assignment. This contingent assignment is subject to the prior rights of a surety that may be obligated under the Contractor's bond, if any. Subcontractor consents to such assignment and agrees to be bound to the assignee and their successors by the terms of this Subcontract.

12.5 Requirements of Owner's Lender: When the Owner secures financing from a lender or lenders for the Project, whether before or after the execution of this Agreement, the Subcontractor shall comply with the requirements of the lender(s) consistent with reasonable commercial lending practices for a project of similar scope, size and duration including, but not limited to:(a) a subordination of the Subcontractor's lien rights (including a lien on removables and fixtures) to any liens of the lender(s) securing any obligations arising from this Project; (b) a contingent assignment of this Agreement to the lender(s) in the event of a default by the Contractor and/or Owner under this Agreement or under the documents creating the loan(s), provided that the Subcontractor shall not be required to perform additional Work for the lender(s) unless the lender(s) has assumed responsibility for payment of such additional Work; (c) Subcontractor shall also agree to such modifications to this Agreement as such lender(s) may reasonably require, provided the Subcontractor's costs or time of performance are not increased unless this Agreement is equitably adjusted.

12.6 Partial Invalidity: If any portion of this Agreement is declared unlawful or invalid by a court of competent jurisdiction or by existing or subsequently enacted legislation, the remaining portions shall remain binding and in full effect.

12.7 Survival: All provisions of this Subcontract which by their nature survive termination of this Subcontract or final completion of the Work, including, without limitation, all warranties, indemnities, indemnity obligations, and obligations to arbitrate disputes shall remain in full force and effect after final completion or any termination of this Agreement.

12.8 Contractual Relationship: The Subcontract Documents do not constitute or imply any contractual relationship of any kind between the Subcontractor and (1) the Owner or (2) the Architect or (3) any persons or entities other than the Contractor.

12.9 Review of the Subcontract Documents: Prior to proceeding with the Work or any shop drawings or submittals, the Subcontractor shall, with its best skill, knowledge and expertise relating to its Work timely and thoroughly study and compare the Drawings, Specifications, other Subcontract Documents and the Project site conditions. The Subcontractor shall cause its Sub-Subcontractor(s), if any, to perform the same study and comparison.

12.10 Clarifications: The Subcontractor is not responsible to ascertain whether the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but the Subcontractor warrants that it has used its best skill, knowledge and expertise in the Subcontract Work in its study and comparison of the Drawings and Specifications. If the Subcontractor observes that portions of the Drawings or Specifications or Project site conditions are at variance therewith, then the Subcontractor shall within three (3) business days notify the Contractor of said variance in writing by submitting an RFI or other such written notice acceptable to the Contractor. The Contractor shall promptly respond by giving appropriate instructions or clarifications to the Subcontractor to eliminate the variance or provide interim instruction on how to proceed until the variance can be eliminated. If the Subcontractor fails to timely and thoroughly study and compare the Subcontract Documents and deliver notice as described in this Section, the Subcontractor shall be responsible for any consequential delays attributable to the Subcontractor's said failure. If the Subcontractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without giving such notice to the Contractor and allowing reasonable time for Contractor's response, then the Subcontractor shall assume full responsibility for its actions which are at such variance and shall bear all costs attributable thereto.

12.11 Interpretation and Order of Precedence: Whenever the Subcontractor discovers a conflict, inconsistency or ambiguity between or within the Subcontract Documents and/or relating to the Project site conditions, the Subcontractor shall promptly notify the Contractor in accordance with Section 12.10 above. The Contractor, and/or Architect/Engineer, and/or Owner or Owner's Representative, will determine the order of precedence or interpretation consistent with the overall intent of the Subcontract Documents. Such interpretations are final and binding as if originally provided for in the Subcontract Documents and shall not be a cause for an increase in the Subcontract Sum or Subcontract Time except when such interpretations can reasonably be determined by the Contractor to constitute a change in the Subcontractor's Work. In such case, the Contractor's response to the Subcontractor shall be accompanied by or promptly followed by a Request for Proposal (RFP) to the Subcontractor. If Subcontractor disagrees with the interpretation and the Contractor does not issue an RFP, the Subcontractor may submit a request for an adjustment in the Subcontract Sum and/or Time in accordance with Articles 5 and 11.

12.11.1 In the event of a conflict between this Subcontract Agreement and the Prime Contract, the requirements of the Prime Contract shall have precedence and be required of the Subcontractor, unless the requirements of this Agreement are more stringent, or requires a greater quantity, or requires better or costlier quality. The Subcontractor acknowledges it has reviewed the Prime Contract and Subcontract Documents related thereto to know which contains the greater burden to the Subcontractor prior to signing this Agreement and Subcontractor acknowledges the Subcontract Sum includes the cost of the greatest or costliest burden to the Subcontractor.

12.12 Complementary Documents: The drawings and specification 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

12.13 Specification Divisions: Where a division or divisions of the specifications is referred to in describing the Work to be performed under this Subcontract Agreement, the Subcontractor shall, unless otherwise specified, perform all of the Work required by such division or divisions, plus all additional related Work of a similar nature generally performed by the trades or crafts employed or engaged by the Subcontractor in executing the principle Work under this Subcontract, 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.

12.14 Industry Terms: Any words or phrases in the Subcontract Documents that have well-known technical, trade or construction industry meanings unless otherwise specifically defined in this Agreement, shall be interpreted in accordance with their well-known meanings and in accordance with Section 12.11 herein.

12.15 Modifications to Subcontract During Negotiation between the Parties: This Agreement may be modified by the Parties with handwritten modifications prior to or in the course of negotiation and execution of this Agreement, but such modifications are valid and enforceable only if initialed by both Parties in the margin adjacent to the handwritten modification. Otherwise, subsequent to the execution of this Agreement, the typewritten text remains in full force and effect as originally written unless the Subcontractor within seven (7) business days of receipt of the executed Agreement notifies the Contractor in writing of its disagreement. In the event of such disagreement and upon notice duly served to the Contractor, the Agreement will be deemed to be not executed and the Parties shall enter into or continue good faith negotiations until full and complete agreement is achieved or withdraw and cancel the Agreement without cost to either party.

12.16 Headings: The headings, footers, titles or captions of paragraphs, Articles and Sections, or lack of such headings, footers, titles or captions, bold and italicized text, underlining and numbering, Hueber-Breuer logo, and HB Contract No., are intended for organization, convenience and reference purposes only and in no way define, limit or describe the scope, meaning, or intent thereof or of this Subcontract or in any way affect the meaning of the Subcontract terms and conditions and no such significance is intended or implied and no such significance shall be construed or inferred.

12.17 Time Limits: In all matters where time limits are given in this Agreement, if a shorter period of time is imposed or required elsewhere in the Subcontract Documents or the Prime Contract, then the shorter period of time shall be required of this Subcontract Agreement as though originally stated herein.

12.18 Conditions Precedent: This Subcontract shall not become effective until the following conditions have been fully satisfied:

.1 Execution of the Prime Contract if such Contract was not executed prior to the execution of this Agreement;
.2 This Agreement and/or Subcontractor approved by the Architect and/or Owner when required by the Subcontract Documents or Prime Contract;
.3 When applicable, Contractor's receipt of satisfactory surety bonds in conformance to this Agreement;
.4 This Subcontract signed by an officer or authorized representative of the Contractor and Subcontractor.
.5 In the event the Subcontractor commences Work on the Project site prior to the execution of this Agreement, the Subcontractor acknowledges and agrees that it shall be bound by the terms and conditions of this Subcontract Agreement as of the date the Subcontract Work was commenced on site.

ARTICLE 13 DEFINITIONS

The following definitions pertain to this Agreement unless specifically modified or otherwise defined herein:

13.1: The **"Project"** as identified in Article 1 is the building, property, facility, or other alterations or improvements, inclusive of site alterations or improvements, which are to be performed and constructed pursuant to the Prime Contract. The Project may also include improvements undertaken by the Owner or others retained by the Owner.

13.2: The terms **"Project site", "worksite", "job site", "site"** all mean and refer to the geographical location of the Project identified in Article 1 of this Agreement and within the contract boundaries or locations delineated in the Subcontract Documents.

13.3: For the purposes of this Subcontract, the **"Work"** is defined as stated in Article 2 of this Agreement.

13.4: The terms **"Subcontract"** and **"Agreement"** are used interchangeably herein and mean or refer to this Subcontract Agreement between the Contractor and Subcontractor.

13.5: The **"Contractor"** is the person or entity identified in Article 1 of this Agreement and means the Contractor or Contractor's representative. When the Prime Contract identifies the Contractor of this Agreement as the Construction Manager, then for the purposes of this Agreement, the terms "Contractor" and "Construction Manager" are equivalent.

13.6: The **"Subcontractor"** is a person or entity identified in Article 1 of this Agreement who has entered into this Agreement with the Contractor to perform a portion of the Work as described in Article 2 of this Agreement. The term **"Subcontractor"** is referred to throughout this Subcontract as if singular in number and means the Subcontractor or an authorized representative of the Subcontractor.

13.7: A **"Sub-subcontractor"** is a person or entity who has a direct or indirect contract with the Subcontractor of this Agreement to perform a portion of the Work of this Subcontract or any person or entity who is directly or indirectly engaged by the Subcontractor to provide goods and/or services in connection with this Project. The term **"Sub-subcontractor"** is referred to throughout this Subcontract as if singular in number and means the Sub-subcontractor or authorized representative of the Sub-subcontractor. The Subcontractor is an authorized representative of the Sub-subcontractor.

13.8: The **"Drawings"** are the graphic and pictorial portions of the Subcontract Documents showing the design, location and dimensions of the Work, generally including plans elevations, sections, details, schedules and diagrams. Drawings also include sketches, details or plans prepared by the Contractor for planning, coordination or clarification of the Work.

13.9: The **"Specifications"** and **"Project Manual"** are equivalent terms and are that portion of the Subcontract Documents consisting of written requirements for materials, equipment, standards and workmanship for the Work, and performance of related services.

13.10: An **"Article"** is a division or part of this Subcontract as listed in the Table of Articles on the cover or first page of this Agreement and consists of Sections or paragraphs. When an Article number is referred to in this Agreement without specific reference to this Agreement, then by implication, the reference is to an Article of this Agreement.

13.11: A **"Section"** is a numbered paragraph under or within an Article of this Agreement. When a Section number is referred to in this Agreement without specific reference to this Agreement, then by implication, the reference is to a Section of this Agreement.

13.12: The **"Parties"** are collectively the Contractor and Subcontractor.

13.13: A **"business day"** is a day falling on a Monday through Friday that is not an official federal or state holiday in the Project location.

13.14: A **"day"** is a calendar day unless otherwise noted. Time limits or durations herein measured in **"days"** or **"calendar days"** means consecutive calendar days including holidays and weekends.

13.15: The terms **"product", "products"** and **"goods"** includes materials, systems, equipment, and any other items to be incorporated into or consumed in the process of performing the Work.

13.16: The term **"services"** includes any labor, work, or act of employment or representation, whether on or off the Project site, performed in connection with this Project.

13.17: The term **"provide"** means to furnish and install.

13.18: The term **"furnish"** means to supply and deliver to the Project site materials, systems, equipment, product, and/or other items so specified.

13.19: The terms **"install"** and **"furnish all labor"** means to perform all operations connected with installation of the Work including, but not limited to, unloading product to be installed, supplying all necessary equipment, rigging, tools, fasteners and devices to perform or install the Work unless otherwise limited in Article 2 of this Agreement. These terms also include clean-up of all associated rubbish, waste and debris. When specified, start-up, test and place into operation.

13.20: The term **"timely"** means to commence and perform a task or activity within a timeframe required to conform to or support the Project schedule or Project completion dates and within a proper sequence according to the Subcontract Documents and construction industry standards without hindering the work of others or in any way impeding the progress of the Work.

13.21: The term **"diligently"** means to prosecute a task or activity with adequate workforce, materials, equipment and other resources as needed with continuous regularity of sufficient duration and frequency so as to timely complete said task or activity without interruption, other than interruptions which are scheduled or planned, or interruptions allowing the work of other trades to proceed in their proper sequence, or other interruptions beyond the Subcontractor's reasonable control.

13.22: "Substantial Completion" shall be as defined in the Subcontract Documents or the Prime Contract. If not defined in any of those documents, then for the purposes of this Agreement, "Substantial Completion" means and occurs on the date when construction for the Project is sufficiently complete in accordance with the Subcontract Documents so that the Owner may legally occupy or utilize the Project, or designated portion thereof, for the use for which it is permanently or temporarily intended without unscheduled disruption and, when required by the Subcontract Documents, the date on which the Architect issues a certificate of Substantial Completion. Punch list items, incomplete Work, or remaining corrective Work at the time of Substantial Completion shall be of a nature and scope that can and shall be completed within thirty (30) days from the date of Substantial Completion, or as otherwise scheduled or limited by conditions beyond the Subcontractor's reasonable control, and prior to Final Completion. Subcontractor shall diligently prosecute the correction of deficiencies in its Work and satisfactory completion of all punch list items.

13.23: "Final Completion" shall be as defined in the Subcontract Documents or Prime Contract. If not defined in any of those documents, then for the purposes of this Agreement, "Final Completion" means and occurs on the date when: (1) construction for the Project has been fully performed and satisfactorily completed in its entirety according to the Subcontract Documents and this Subcontract; (2) the Work of this Subcontract has received final acceptance from the Contractor, Owner, and Architect; (3) the Owner may legally occupy or utilize the Project for its intended purpose; (4) all deficiencies and punch list work are satisfactorily corrected or completed; (5) all final closeout and record documentation and instruction periods have been satisfactorily completed; and (6) the Architect has issued a certificate of Final Completion, if the Subcontract Documents requires Architect's certificate of Final Completion. (Refer to Article 6 for conditions precedent to final payment.)

13.24: A **"Notice"** is a written instrument or document delivered to either Party to this Agreement according to Section 11.1.4 herein.

13.25: "Related Party" shall mean a parent company, subsidiary, affiliate or other entity having common ownership or management with the Subcontractor; any entity in which any stockholder in or management employee of the Subcontractor owns any interest in excess of ten percent (10%) in the aggregate; or any person or entity which has the right to control the business of the Subcontractor. The term "Related Party" also includes any member of the immediate family of any person identified above.

THIS SPACE INTENTIONALL LEFT BLANK; SEE THE NEXT PAGE FOR ARTICLE 14.

ARTICLE 14 TABLE OF EXHIBITS

14.1 The Exhibits listed below are a part of this Agreement, whether attached hereto or included by reference, as though originally contained or repeated herein. Any Modification issued after execution of this Subcontract shall be incorporated into this Agreement by Change Order or other valid change instrument according to the terms of this Agreement.

Drawing Log
Specification Log
Addendums/Pre-Bid Documents
Contract Project Schedule
Capital Improvement Form ST-124
Tax Exempt Form ST-120.1
Hold Harmless Agreement
Partial Release of Lien-Electronic via DocuSign
Final Release of Lien-Electronic via DocuSign

Project Specific

THIS SPACE INTENTIONALLY LEFT BLANK; SEE THE NEXT PAGE FOR ARTICLE 15.

ARTICLE 15 SUBCONTRACTOR AND CONTRACTOR SIGNATURES

SUBCONTRACTOR: On behalf of the Subcontractor, the undersigned (for the Subcontractor) attests that the Subcontractor has read and carefully examined this entire Agreement, has had the opportunity to obtain and carefully review with its best skill and expertise all of the Subcontract Documents enumerated herein or included by reference, has had opportunity to obtain legal assistance in reviewing its terms and conditions, has freely and in good faith negotiated its terms and by signing below so enters into this Agreement and is an owner, officer or partner of the Subcontractor or is a representative of the Subcontractor duly authorized by said party or parties to execute this Agreement on behalf of the Subcontractor.

CONTRACTOR: On behalf of the Contractor, the undersigned (for the Contractor) attests that the Contractor has in the same manner reviewed and negotiated the terms of this Agreement in good faith with the Subcontractor and that he/she is a representative of the Contractor duly authorized to execute this Agreement.

This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which when taken together shall constitute one original. Execution shall be as indicated below with an "X".

[ ]Valid execution and delivery of this Agreement may be accomplished by transmitting this complete Subcontract Agreement including attachments via electronic mail (email) between the Parties with electronically scanned original signatures and initials. SIGNING AND EMAILING THE SIGNATURE PAGE ONLY, OR PARTIAL COPY OF THIS AGREEMENT, IS NOT A VALID MEANS OF ELECTRONIC EXECUTION.

[ ] Original copies of this Agreement with (ink) signatures and initials are required for the valid execution of this Agreement. Each party will retain a complete executed document with original signatures and initials.

**** END OF TERMS AND CONDITIONS****

CONTRACTOR:	SUBCONTRACTOR:
Hueber-Breuer Construction Co., Inc.	**[Subcontractor Name]**
[HB PM Name]	_____
Printed Name	*Printed Name*
[HB PM Title]	_____
Title	*Title*
_____	_____
Signature	*Signature*
Signed Initials (PM): _____	Signed Initials: _____
Signed Initials (PE): _____	

x Notary Public Signature Verification IS Required
for the valid execution of this Agreement

The following is to be completed by a Notary Public for the Subcontractor when required for the execution of this Subcontract:

STATE OF: COUNTY OF:

On this _____ day of _____ in the year _____, the individual named above, who is signatory to this Agreement, appeared before me and is personally known to me or proved to me on the basis of satisfactory evidence to be said individual and before me did sign/execute this Agreement.

_____
Notary Public Signature