



7475 Wisconsin Avenue, 9th Floor
Bethesda, Maryland 20814

Job No.: {Projects.Number}
Cost Code: {Budget.BdgtCode}

SUBCONTRACT AGREEMENT

THIS SUBCONTRACT AGREEMENT, made this {Contracts.ContractDate}, by and between **Coakley & Williams Construction, Inc. ("Contractor")** and {ToCompany.Name}, with offices at {ToContact.DisplayAddress} ("**Subcontractor**").

WHEREAS, Contractor and {LegalDocInfo.Owner} ("Owner") have entered into a contract dated _____ for the construction of {Projects.Name} ("Project"), in accordance with the Contract Documents listed in Exhibit "A" attached hereto and made a part hereof and available for Subcontractor's review during normal working hours at Contractor's office; and

WHEREAS, Contractor desires to subcontract certain work specified in the Contract Documents, and Subcontractor desires to perform said work at the prices and upon the terms and conditions hereinafter expressed.

NOW, THEREFORE, in consideration of the mutual agreements herein expressed, the parties do contract as follows:

ARTICLE 1 SCOPE OF WORK

1.1 Subcontractor's Work. Subcontractor shall perform all work and furnish all labor, materials, equipment, scaffolding, hoisting, transportation, tools, supervision, supplies, applicable taxes, freight, insurance and all other things necessary for the proper construction and completion of the work described in Exhibit "B" attached hereto and made a part hereof and all other work incidental thereto ("Scope of Work"), in strict accordance and in full compliance with the Contract Documents and this Subcontract Agreement. Except as may be specifically provided by the terms of this Subcontract Agreement, Subcontractor shall assume all obligations, risks and liabilities which Contractor has assumed towards Owner in Contractor's contract with Owner.

1.2 Timely Submittals. Subcontractor shall timely prepare and submit to Contractor all submittals, including shop drawings, manufacturers' literature, samples and material lists, as may be necessary to describe completely the details and construction of Subcontractor's Work. Such submittals shall be made in sufficient time so as not to delay the Project and to allow Contractor to furnish such submittals to Owner within the times required under the Contract Documents. Any deviation from the Contract Documents shall be clearly identified in the submittals, and so stated, in writing, in separate correspondence. Approval of such submittals shall not relieve Subcontractor of its obligation to perform Subcontractor's Work in strict accordance with the Contract Documents, nor of its responsibility for the proper matching and fitting of Subcontractor's Work with contiguous work.

1.3 Status. If requested by Contractor, Subcontractor shall furnish periodic progress reports on Subcontractor's Work including information on the status of materials and equipment, which may be in the course of preparation or manufacture.

1.4 Layout, Dimensions and Measurements. Subcontractor shall be solely and fully responsible for any and all layout and the dimensional integrity of Subcontractor's Work. Subcontractor shall advise Contractor should Subcontractor need to coordinate any dimensions with the work of other trades, and shall notify Contractor in writing of any dimensional discrepancies in the Contract Documents that will affect Subcontractor's Work. Notwithstanding the dimensions given in the plans, specifications and other Contract Documents, it shall be the obligation and responsibility of Subcontractor to take such measurements, including but not limited to field measurements, as will ensure the proper matching and fitting of Subcontractor's Work and contiguous work.

1.5 Substitutions. Subcontractor shall identify and list in a written submission to Contractor all proposed substitutions, if any, of products or materials in place of those specified in the Contract Documents. Such submission shall: (a) be in letter format; (b) be separate and distinct from any shop drawings, manufacturers' literature, samples or material lists; and (c) include all information required to evaluate the proposed substitution. By submitting requests for substitutions, Subcontractor represents and certifies that: (1) Subcontractor has investigated the proposed substitution and determined that it is equal to or superior in all respects to that specified; (2) Subcontractor will provide the same warranty for the substitution that Subcontractor would for that specified; and (3) the cost data presented is complete and includes all related costs. Notwithstanding the foregoing, approval of any proposed substitutions is at the sole discretion of Contractor, and no substitutions shall be made by Subcontractor, unless Subcontractor obtains a change order for such substitution.

ARTICLE 2

REPRESENTATIONS, INVESTIGATION AND INTERPRETATION

2.1 **Representations and Investigation.** Subcontractor represents that it is fully qualified and has the expertise and resources to perform Subcontractor's Work in accordance with this Subcontract Agreement and the Contract Documents. Subcontractor warrants that prior to the execution of this Subcontract Agreement, it has satisfied itself by its own independent investigation that: (1) the materials, techniques, means and methods for performing Subcontractor's Work are sufficient and adequate for the Project; (2) the conditions involved, including those related to the site, locality, weather, labor and economy, have been taken into account in pricing and planning Subcontractor's Work; and (3) all information furnished by Contractor or others related to Subcontractor's Work is correct and accurate. Any failure by Subcontractor to independently investigate and become fully informed of the matters described in this Section 2.1 will not release Subcontractor from its responsibilities under this Subcontract Agreement, and Subcontractor agrees not to submit and expressly waives any claims resulting from such failure.

2.2 **Interpretation.** The provisions of this Subcontract Agreement, the contract between Contractor and Owner, and the other Contract Documents are all intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, there is an irreconcilable conflict between or among the terms of this Subcontract Agreement and the Contract Documents, or among the Contract Documents, the provision imposing the higher standard or greater responsibility on Subcontractor shall prevail.

2.3 **Inconsistencies and Omissions.** Should inconsistencies or omissions appear in the Contract Documents, Subcontractor shall notify Contractor and identify the inconsistency or omission, in writing, within three (3) days of Subcontractor's discovery thereof. Upon receipt of Subcontractor's notice, Contractor shall instruct Subcontractor as to the measures to be taken, if any, and Subcontractor shall comply with Contractor's instructions. If Subcontractor performs any work when it knows or should have known that the Contract Documents contain an inconsistency or omission, Subcontractor shall be solely responsible for such work, the cost of correction, and the consequences thereof.

ARTICLE 3 **PAYMENT**

3.1 **Subcontract Price.** Contractor agrees to pay Subcontractor for the satisfactory and timely performance of Subcontractor's Work the total sum of {Contracts.OrigValue} DOLLARS ("Subcontract Price") in accordance with the provisions of this Subcontract Agreement, with such Subcontract Price being subject to additions and deductions by change order or other provisions of this Subcontract Agreement. Subcontractor warrants and represents that the Subcontract Price is adequate compensation for Subcontractor's Work, and includes all costs, expenses (including but not limited to those associated with bonds and taxes), charges, overhead, and profit to enable Subcontractor to satisfactorily and timely perform Subcontractor's Work.

3.2 **Progress Payments.** Progress payments will be due Subcontractor in the amount of ninety percent (90%) of Subcontractor's Work in place which Contractor and Owner have approved and for which Owner has paid Contractor. For the purpose of determining progress payments, Subcontractor shall furnish Contractor before its first application for progress payment, a Schedule of Values on AIA Form G703 for Contractor's review and approval. If Contractor disapproves of Subcontractor's Schedule of Values, Contractor shall establish a reasonable breakdown which shall serve as the basis for Subcontractor's progress payments. Subcontractor's retainage may be reduced by Contractor to the extent that Owner reduces retainage to Contractor for Subcontractor's Work, provided, however, that Contractor shall have no obligation to reduce retainage if, in its reasonable opinion, Contractor believes Subcontractor is not in full compliance with its contractual obligations.

3.3 **Stored Materials.** Unless otherwise provided in the Contract Documents, Subcontractor will be paid its progress payments in the amount of ninety percent (90%) of the value of stored materials that Contractor and Owner have approved and for which Owner has paid Contractor. Approval of payment for such stored items on or off site shall be based on submission by Subcontractor of evidence satisfactory to Contractor and Owner that Owner's and Contractor's interest in such materials and equipment, including transport to the site, is protected. Risk of loss, however, shall not pass to Contractor or Owner until such materials and equipment are incorporated into the construction and accepted by Owner. Stored materials shall be: (1) stored and labeled so that they are clearly identified as dedicated to the Project and (2) available for inspection by Contractor, Owner, and Owner's lender, if any, during normal business hours. Retainage withheld on Subcontractor's stored materials may be reduced in the same manner set forth in the last sentence of Section 3.2 above.

3.4 **Form of Application for Progress Payment.** All applications for progress payments shall be on a form satisfactory to Contractor, typed, with all amounts, totals and descriptions filled out, and shall include Contractor's job number in the upper right hand corner. Any non-compliant applications for progress payments shall be rejected and returned to Subcontractor for resubmission. All progress and the final application for payment must be electronically submitted to ap@coakleywilliams.com for processing.

3.5 Time and Conditions for Payment. Subcontractor shall submit progress payment applications in a form satisfactory to Contractor no later than the twenty-fifth (25th) day of each payment period for Subcontractor's Work performed up to and including the last day of the payment period, indicating Subcontractor's Work completed and, to the extent allowed under Section 3.3 above, materials suitably stored during the preceding payment period. Notwithstanding any other provisions in this Subcontract Agreement or Contract Documents to the contrary, progress payments shall be made by Contractor to Subcontractor on or about the tenth (10th) day following Contractor's receipt of payment from Owner for Subcontractor's Work. However, it is specifically understood and agreed that payment to Subcontractor is dependent, as a condition precedent, upon Contractor receiving contract payments for Subcontractor's Work, including final payment and retainage, from Owner. Notwithstanding any other provisions of this Subcontract Agreement and Contract Documents to the contrary, Subcontractor expressly waives all right of action against Contractor or its surety until said monies are actually received by Contractor from Owner. Subcontractor understands and agrees that it is relying on the creditworthiness of Owner and not Contractor for payment. Contractor has the right, but not the obligation, without the consent of the Subcontractor's surety to advance the date of any payment to Subcontractor if Contractor believes it is in its best interests to do so. Moreover, in the event Contractor at any time elects to make payment to Subcontractor prior to Contractor's receipt of payment from Owner, said payment shall neither be construed as a course of conduct between Contractor and Subcontractor nor shall said payment be deemed to have waived the provisions in this Master Subcontract Agreement which make the Owner's payment to Contractor a condition precedent to Contractor's obligation to pay Subcontractor.

3.6 Failure of Subcontractor to Make Payment. Subcontractor shall ensure that all of its subcontractors, employees, vendors, consultants and suppliers are paid all amounts, including all applicable taxes and benefits, due in connection with this Subcontract Agreement. Contractor may withhold any progress payments, or any portion thereof, until Subcontractor submits evidence satisfactory to Contractor that all amounts due in connection with this Subcontract Agreement have been paid. Further, in its sole discretion, Contractor may pay any and all persons who have not received payment due in connection with this Subcontract Agreement, whether or not a lien has been filed. Subcontractor shall immediately reimburse Contractor for any amounts paid by Contractor, deducted from payments owed to Contractor, paid under Contractor's payment bond or any other Contractor payments relating to a failure of Subcontractor to make payment, and Subcontractor shall indemnify Contractor for all costs associated therewith. If Subcontractor fails to reimburse or indemnify Contractor for such payments and costs, Contractor shall have the right to withhold such amounts from Subcontractor's progress payments.

3.7 Partial Lien Waivers and Affidavits. When required by Contractor, Subcontractor shall provide, in a form satisfactory to Contractor and Owner, partial lien or claim waivers and affidavits from Subcontractor and its subcontractors, vendors, consultants and suppliers for all prior payments to Subcontractor as part of each application for progress payment other than the initial request. No progress payments shall be released to Subcontractor without such fully executed partial lien or claim waivers and affidavits.

3.8 Payment Not Acceptance. Payment to Subcontractor is specifically agreed not to constitute or imply acceptance by Contractor or Owner of any portion of Subcontractor's Work.

3.9 Transfer of Title. All materials and work covered by progress payments received by Subcontractor shall become the property of Contractor or, if the Contract Documents so provide, the property of Owner. This provision does not affect Subcontractor's sole responsibility and liability for all such materials and work until final acceptance by Owner.

3.10 Right to Withhold Payment. Contractor may withhold amounts otherwise due under this Subcontract Agreement or due under any other contractual arrangement between the parties to compensate Contractor for costs, losses or damages Contractor has incurred or may incur for which Subcontractor may be responsible hereunder or otherwise. Appropriate adjustments to withholding shall be made when the exact amounts owed hereunder are determined.

3.11 Final Payment. Final payment, subject to withholdings permitted hereunder, shall be made after: (1) Subcontractor's Work has been completed and approved by Owner, including all punchlist work; (2) evidence satisfactory to Contractor that Subcontractor has satisfied all payrolls, bills for materials and equipment, and all known indebtedness connected with Subcontractor's Work; (3) all contract deliverables required under this Subcontract Agreement and the Contract Documents have been furnished to Contractor; (4) the entire Project is certified complete by Owner; and (5) Contractor has been paid in full for the entire Project. Prior to final payment, Subcontractor shall provide Contractor a final release of liens and claims for Subcontractor's Work, as well as any other evidence Contractor or Owner may require to demonstrate that there are no other liens or claims whatsoever outstanding related to Subcontractor's Work.

ARTICLE 4 SCHEDULE OF SUBCONTRACTOR'S WORK

4.1 Time of Performance. Subcontractor will proceed with Subcontractor's Work in a prompt and diligent manner, in accordance with Contractor's directives and Contractor's schedule, revised if necessary, as the work progresses. Time is of the essence in the performance of Subcontractor's obligations under this Subcontract Agreement. Subcontractor shall not be entitled to additional compensation for compliance with schedule revisions or adjustments, except to the extent that Contractor's contract with Owner entitles Contractor to additional compensation and such compensation is obtained from Owner.

4.2 Subcontractor's Schedule. If requested by Contractor, Subcontractor shall submit to Contractor a detailed schedule for performance of Subcontractor's Work, in a form acceptable to Contractor, which shall comply with all scheduling requirements of the Contract Documents and of Section 4.1 above. Contractor may, at its sole discretion, direct Subcontractor to make reasonable modifications and revisions in said schedule. Subcontractor shall be responsible for any additional supervision and general conditions costs and all costs of stand-by trades or other subcontractors if Subcontractor elects to, or is required, due to its failure to maintain scheduled performance, to work hours and days other than those specified as normal working hours in the Contract Documents or by Contractor.

4.3 Subcontractor Delays. If, in the opinion of Contractor, Subcontractor is behind schedule due to Subcontractor's failure to comply with its obligations under this Subcontract Agreement and the Contract Documents, Subcontractor shall, upon notice by Contractor and at Subcontractor's sole expense, employ appropriate action to overcome such schedule delays, including but not limited to, working overtime and adding multiple work shifts, manpower and equipment, and Subcontractor shall be liable for any costs, including additional supervision and general conditions costs, incurred by Contractor and any other subcontractor as a result thereof. If Subcontractor fails to take appropriate action, Contractor shall have the right to take whatever actions it deems appropriate to overcome such schedule delays, and Subcontractor shall be responsible for bearing all costs associated with such actions, including any costs incurred by Contractor or other subcontractors impacted by such delays. In the event that concurrent delay by the Owner, Contractor, and/or Subcontractors causes delay to completion of the Contractor's work, Contractor shall make a good faith apportionment of that delay between the parties causing or contributing to the delay and Subcontractor shall be responsible for its portion of the damages based on that apportionment.

4.4 Time Extensions. Should Subcontractor's performance be delayed, impacted or disrupted by causes unforeseen by and beyond the reasonable control of Subcontractor, Subcontractor's sole remedy shall be an extension of time to Subcontractor's time of performance and Subcontractor shall not be entitled to additional compensation for such delays, impacts or disruptions, unless Contractor's contract with Owner entitles Contractor to additional compensation and such compensation is obtained from Owner for such delays, impacts or disruptions. In submitting a request for time extension, Subcontractor shall, at a minimum, provide the following information: (1) documentation showing that the delayed, impacted or disrupted activities are on the critical path of the schedule for Subcontractor's Work; (2) evidence that the delay, impact or disruption was unforeseen by and beyond the reasonable control of Subcontractor; and (3) documentation showing that Subcontractor complied with all applicable notice and claims submission requirements of this Subcontract Agreement and the Contract Documents. All requests for time extensions shall be submitted in sufficient time to enable Contractor to meet its notice and claims submission requirements to Owner under the Contract Documents, but in no event later than five (5) days from when Subcontractor's performance was delayed, impacted or disrupted. Subcontractor's failure to strictly comply with the provisions of this Section 4.4 shall result in a rejection and waiver of Subcontractor's request for time extension.

4.5 Priority and Sequencing of Work. Subcontractor acknowledges that Subcontractor's Work: (1) will be performed concurrently with the work of other subcontractors and Owner's other contractors; (2) is dependent upon the progress of the work of other subcontractors and Owner's other contractors; (3) may not be performed in a continuous manner due to the activities of other subcontractors and Owner's other contractors; and (4) that the Subcontract Price and its schedule fully accounts for and considers the fact that Subcontractor will be working under such conditions. Subcontractor will coordinate Subcontractor's Work, including but not limited to, procurement, submittals, shop drawings, fabrications, equipment delivery, testing, inspections, installation and project closeout, with the work of Contractor, other subcontractors and Owner's other contractors to prevent or mitigate delays or interferences in the completion of any part or all of the Project. Contractor shall have the right to decide the time, order and priority in which various portions of Subcontractor's Work shall be performed and all other matters relative to the timely and orderly conduct of Subcontractor's Work.

ARTICLE 5 SUBCONTRACTOR'S LIABILITY

5.1 Scope. Subcontractor shall be liable to Contractor for all costs, damages and losses Contractor incurs as a result of Subcontractor's failure to fulfill its obligations under this Subcontract Agreement and the Contract Documents. Subcontractor's failure to fulfill its obligations shall include the failure of its suppliers, vendors, consultants or subcontractors of any tier to perform. Subcontractor's liability shall include, but not be limited to: (1) damages and other delay costs payable by Contractor to Owner; (2) Contractor's increased performance costs, such as extended field and home office overhead, inefficiencies resulting from Subcontractor-caused delays or nonconforming work, and costs paid to other subcontractors resulting from such delays and nonconforming work; (3) warranty and rework costs; (4) liability to third parties, including other subcontractors of Contractor; (5) excess costs of re-procurement; and (6) attorney's fees and related costs of resolving disputes with Subcontractor or other persons related to Subcontractor's failure to perform its obligations.

5.2 Use of Equipment Owned by Others. If Subcontractor or any of its agents, employees, suppliers, vendors, consultants or subcontractors uses any machinery, equipment, tools, scaffolding, hoists, lifts or similar items belonging to or under the control of Contractor or other subcontractors or suppliers, Subcontractor assumes all risks and liabilities relating to such use. Subcontractor shall be liable to and indemnify Contractor for any loss or damage, including personal injury or death, which may arise from such use, except where such loss or damage is due solely to the negligence of Contractor, Contractor's employees or other contractors.

5.3 Owner Damages. If Owner assesses liquidated or other damages against Contractor, then Contractor may assess against Subcontractor the portion of Owner's damages that represents Subcontractor's share of the responsibility. The amount of such assessment against Subcontractor for Owner's damages shall not exceed the amount assessed against Contractor by Owner plus the portion of costs and attorney's fees Contractor incurred in defending against Owner's claim for damages arising out of or in relation to Subcontractor's Work.

5.4 Liens. If any lien, claim or encumbrance is filed on or against the Project by Subcontractor, Subcontractor's laborers, material men, suppliers, consultants, vendors or subcontractors, Contractor shall have the right to pursue any of the following or combination thereof: (1) to require Subcontractor within five (5) days of receiving notice by Contractor to have such lien, claim or encumbrance discharged, by payment, posting a bond, or otherwise; (2) to retain, out of any payment due or thereafter to become due, an amount for any damages, costs or expenses that Contractor and Owner may incur related to such lien, claim or encumbrance; (3) to discharge such lien, claim or encumbrance using amounts due or thereafter to become due to Subcontractor; or (4) to require Subcontractor to indemnify and hold harmless Contractor and Owner for any damages, costs or expenses, including attorney's fees, that Contractor and Owner may incur related to such lien, claim or encumbrance. Contractor shall have the right to exercise its remedies under Article 17 of this Subcontract Agreement, including but not limited to terminating Subcontractor for default, if Subcontractor fails to comply with Contractor's requirements or directions under this Section 5.4.

ARTICLE 6
CHANGES TO SUBCONTRACTOR'S WORK

6.1 Changes. Contractor may, at any time, either unilaterally or by direction of Owner, and without notice to sureties, make changes, including additions and deletions, in Subcontractor's Work. Any such changes shall be in writing and Subcontractor shall perform the work as changed and directed by Contractor. Subcontractor further understands that Contractor will be forwarding to Subcontractor changes that are being proposed by either Owner or Contractor, but which are not yet authorized by Contractor. Subcontractor shall not perform any proposed change unless and until it is given a written authorization from Contractor to do so.

6.2 Subcontractor's Duty to Notify. Subcontractor agrees to notify Contractor in writing, no later than five (5) days of its receipt of any change or proposed change, as to whether such change or proposed change will have a price, time or other impact on Subcontractor's Work, as well as the specific quantification of such impact. Any requests by Subcontractor for an adjustment in price, time or other provisions of this Subcontract Agreement, shall be submitted to Contractor, in writing, in sufficient time for Contractor to comply with its obligations to Owner under applicable provisions of the Contract Documents, but in no event later than five (5) days after the occurrence of the event giving rise to such request. If Subcontractor fails to so notify Contractor for any change or proposed change, Contractor may, at its sole discretion: (1) reasonably estimate the impact of the change or proposed change, which estimate shall be the maximum relief due Subcontractor for such changed work or (2) retain another subcontractor to perform the changed work.

6.3 Owner-Related Changes. If Owner issues a change or proposed change affecting Subcontractor's Work ("Owner-Related Changes"), Subcontractor agrees, if directed by Contractor, to meet with Contractor and Owner to review and discuss such change. Contractor has final authority to settle all Owner-Related Changes, whether or not Subcontractor is a party to any negotiations. Notwithstanding any other provisions in this Subcontract Agreement or the Contract Documents to the contrary, Subcontractor agrees that its recovery for Owner-Related Changes shall be limited to the relief Contractor recovered from Owner directly allocable to the changed portion of Subcontractor's Work. Subcontractor's allocable share shall be determined by Contractor, after allowance for Contractor's general conditions, field and home office overhead and profit.

6.4 Pricing of Changes. The pricing of Subcontractor's Work to be changed, including additions and deletions, shall be subject to any limitations or requirements in the Contract Documents. Subcontractor shall provide itemization and supporting data as requested by Contractor to permit proper and full evaluation by Contractor or Owner as to the reasonableness of the price of the changed work.

6.5 Requirement for Written Change Orders. Subcontractor expressly acknowledges and agrees that no act, omission, conduct or course of dealing by or between Contractor and Subcontractor shall waive, alter, modify or change the requirement that all Change Orders must be in writing and signed by Contractor. Such written Change Orders are the sole and exclusive methods for adjusting the Subcontract Price and Subcontractor's time of performance for changed work, and such adjustments to the Subcontract Price and Subcontractor's time of performance cannot be made by implication or constructive change order.

ARTICLE 7
INSPECTION AND ACCEPTANCE

7.1 Inspection of Work. Subcontractor shall provide appropriate facilities at all reasonable times for inspection by Contractor or Owner of Subcontractor's Work, whether at the Project site or at any place where such work or materials may be in preparation, manufacture, storage, or installation. Contractor's or Owner's inspection of the Work shall in no way relieve Subcontractor of its obligations under this Subcontract Agreement and its duty to ensure that all Work complies fully with the Contract Documents.

7.2 Correction of Defective Work. Subcontractor shall promptly replace or correct any work or materials which Contractor or Owner shall reject as failing to conform to the requirements of this Subcontract Agreement or the Contract Documents. If Subcontractor does not promptly replace or correct rejected work, Contractor shall have the right to do so and Subcontractor shall be liable to Contractor for the cost, losses and damages thereof. If, in the opinion of Owner, it is not expedient to correct or replace all or any part of rejected work or materials, then Contractor, at its option, may deduct from the payments due, or to become due, to Subcontractor, such amounts as, in Owner's judgment, will represent the greater of the following: (1) the difference between the fair value of the rejected work and materials and the value thereof, if it complied with this Subcontract Agreement and the Contract Documents; or (2) the cost of replacement or correction.

7.3 Remedy for Wrongful Rejection. If rejection was pursuant to Owner's direction, Subcontractor's remedy for wrongful rejection of Subcontractor's Work shall be limited to the relief Contractor receives from Owner for such wrongful rejection. If Owner was not involved in said rejection, Contractor shall be liable for Subcontractor's substantiated increased costs caused by the wrongful rejection of Subcontractor's Work.

7.4 Acceptance. Subcontractor's Work shall be accepted by Owner according to the terms of the Contract Documents. However, unless otherwise agreed in writing, entrance and use by Owner or Contractor shall not constitute acceptance of Subcontractor's Work. Furthermore, acceptance of Subcontractor's work shall not relieve Subcontractor of its obligation to ensure that its work conforms with the requirements of the Contract Documents, nor shall acceptance be deemed to relieve Subcontractor of its obligation to correct, or replace or pay for defective or non-conforming work.

**ARTICLE 8
CLEANUP AND CLOSEOUT**

8.1 Cleanup. Subcontractor shall, at its own expense, clean and remove from the Project all rubbish and debris resulting from the performance of Subcontractor's Work and, at the completion of Subcontractor's Work in each area of the Project, perform such cleaning as may be required. Such removal and cleaning shall be done in a manner that will not impede the progress of the Project or other trades. If Subcontractor fails to clean up and remove its rubbish and debris within twenty-four (24) hours of receiving written notice to do so, then Contractor without further notice to Subcontractor shall have the absolute right to perform such work and hold Subcontractor responsible for all costs incurred, including Contractor's administrative costs and profit.

8.2 Punchlist. Subcontractor shall perform any and all punchlist work within fourteen (14) days of receipt of a punchlist from Contractor. If Subcontractor fails to complete all punchlist items and fails to provide written justification of its failure to complete such items by such date, then Contractor without further notification to Subcontractor shall have the absolute right to perform all incomplete work and hold Subcontractor responsible for all costs incurred, including Contractor's administrative costs and profit.

8.3 Project Closeout. Subcontractor shall comply with all Project closeout requirements in the Contract Documents and, if required by the Contract Documents, shall provide, as directed by Contractor, all documentation of as-built conditions, and commissioning, startup, testing, and operation and maintenance requirements associated with Subcontractor's Work.

**ARTICLE 9
WARRANTY**

9.1 Scope of Warranty. Subcontractor warrants to Owner and Contractor that all materials and equipment furnished shall be new, unless otherwise specified in the Contract Documents, and that all of Subcontractor's Work shall be of good quality, free from faults and defects and in strict conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty shall be in addition to, and not in limitation of, any other warranty or remedy required by law or by the Contract Documents.

9.2 Term. Subcontractor warrants Subcontractor's Work for the same period as Contractor warrants the work to Owner under Contractor's contract with Owner. If a specific warranty period is not specified, Subcontractor warrants Subcontractor's Work for a period of one year from the date of Substantial Completion of the entire Project, notwithstanding when Subcontractor may have purchased any material or equipment.

**ARTICLE 10
LAWS, PERMITS, FEES AND PATENTS**

10.1 Compliance. Subcontractor shall give all notices required by and comply with all federal, state, municipal and local laws, ordinances, rules and regulations relating to Subcontractor's Work, including, but not limited to: tax laws, social security acts, unemployment compensation acts, and workers' or workmen's compensation acts, civil rights acts, labor and employment laws, and occupational safety and health laws and regulations. Subcontractor shall secure and pay for all permits, fees, licenses and arrange inspections necessary for Subcontractor's Work. Subcontractor shall be duly licensed to operate under the laws of the applicable jurisdictions.

10.2 Waiver of Claim. Subcontractor waives any and all claims for additional compensation because of any increase in taxes, contributions or premiums unless Owner pays Contractor for such increases incurred by Subcontractor.

10.3 Patents and Royalties. Subcontractor agrees to pay all royalty and license fees owed related to Subcontractor's Work. Subcontractor agrees to defend all suits or claims for infringement of any patent rights, due to the inclusion of patented materials in Subcontractor's Work, that may be brought against Contractor or Owner, and agrees to indemnify and hold harmless Contractor and Owner for any damages, costs or expenses, including attorney's fees, that Contractor and Owner may incur on account thereof.

**ARTICLE 11
SAFETY & HEALTH ADMINISTRATION**

11.1 Responsibility of Subcontractor. Subcontractor is responsible for the safety of the general public and its workers/laborers engaged on or in the vicinity of the Project related to Subcontractor's Work. Prior to the commencement of any/all work under this Agreement, the Subcontractor shall submit to Contractor a copy of its corporate safety manual or program. Subcontractor agrees to comply with the Contractor's Site Specific Safety Plan, all federal, state, municipal and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety, as may be applicable to Subcontractor's or the Subcontractor's subcontractors' Work. Subcontractor specifically acknowledges that the site safety standards and requirements of Contractor or Owner may be more stringent than those established by applicable law, and specifically agrees to comply with such more stringent standards.

11.2 Required Documentation. Subcontractor is responsible to prepare and submit in writing to the Contractor an "Activity Hazard Analysis" form (AHA's / JHA's) for all definable features of construction work signed by the Subcontractor's site competent person and reviewed with workers. Subcontractor is responsible to prepare and submit in writing a list of its subcontractors and/or those individuals on site that the Subcontractor is responsible for by trade. Subcontractor will submit its company/corporate Workers Compensation Experience Modification Rating (EMR). If the Subcontractor's applicable EMR exceeds a rating of 1.1, a site safety plan will be developed specific for those operations of Subcontractor on site. The Subcontractor is responsible for submitting these documents, including its applicable EMR rating, to the Contractor prior to the commencement of any/all work under this agreement...

11.3 Cleanup & Housekeeping. Subcontractor shall, at its own time and expense, clean and remove from the Project all rubbish and debris resulting from the performance of Subcontractor's Work and, at the completion of Subcontractor's Work in each area of the Project and perform such cleaning each work day (or 8 hour period). Such removal and cleaning shall be done in a manner that will not impede the progress of the Project or other trades such as lower tiered subcontractors. If Subcontractor fails to clean up and remove its rubbish and debris within twenty-four (24) hours of receiving verbal notice to do so, the Contractor without further notice to Subcontractor shall perform such work and hold Subcontractor responsible for all costs incurred, including Contractor's administrative costs and profit.

11.4 Work Stoppage(s) Ordered by Contractor. When ordered by the Contractor, the Subcontractor shall stop any part of Subcontractor's Work which Contractor deems unsafe until corrective measures, satisfactory to Contractor, have been taken, and Subcontractor agrees that it shall not have nor make any claim for damages arising out of such work stoppages. Should Subcontractor fail to take such corrective measures, Contractor has the right, but not the obligation, to declare Subcontractor in default and/or take corrective measures at the cost and expense of Subcontractor and may deduct the cost and expense thereof from any payments due or to become due to Subcontractor. Failure on the part of Contractor to stop unsafe practices shall not be deemed an acceptance or acquiescence by Contractor of Subcontractor's means or methods of construction, and shall in no way relieve Subcontractor of its responsibility.

11.5 Hold Harmless. Subcontractor agrees to indemnify and hold Contractor harmless, pursuant to Article 15, for all damages, costs and attorney's fees arising out of, or relating to, Subcontractor's violation of this Article 11.

ARTICLE 12 **LABOR POLICY**

12.1 Project Personnel and Superintendent. Subcontractor and its subcontractors, vendors, consultants or suppliers shall not employ anyone to perform Subcontractor's Work whose employment may be objected to by Contractor or Owner. Subcontractor shall employ at the jobsite a competent, English speaking, full-time supervisor, satisfactory to Contractor, and with full authority to act on Subcontractor's behalf. Subcontractor's supervisor shall be fluent in the primary language of the workers of Subcontractor, and shall, when required by Contractor, attend progress meetings. Contractor shall have the right to require Subcontractor to replace its supervisor, or any other employee, if, in the opinion of Contractor or Owner, such individual is objectionable for any reason.

12.2 Work Stoppage. Should any workers performing Subcontractor's Work engage in a strike or any other stoppage or cease to work due to picketing or a labor dispute of any kind, said circumstances shall be deemed a failure by Subcontractor to perform Subcontractor's Work and shall be subject to the terms set forth in Article 17 of this Subcontract Agreement.

12.3 Equal Employment Opportunity. Subcontractor shall not discriminate against any employee or employment applicant because of race, ethnicity, religion, sex, color, national origin, age, disability, handicap or any other basis prohibited by federal, state or local laws. Subcontractor shall allow access to its books, records and accounts by representatives of Contractor or Owner for purposes of investigations to ascertain compliance with the provisions of this Section 12.3. These requirements shall be in addition to any similar Equal Employment Opportunity provisions in the Contract Documents. If Subcontractor fails to comply with the Equal Employment Opportunity provisions of this Subcontract Agreement or the Contract Documents, Subcontractor may be terminated for default as specified under Article 17 of this Subcontract Agreement.

ARTICLE 13 **PERFORMANCE AND PAYMENT BONDS**

13.1 Bonds. Unless specifically excluded from Subcontractor's Scope of Work under Exhibit "B", Subcontractor shall at its own expense furnish to Contractor performance and payment bonds, in a form and from a surety acceptable to Contractor, in the full amount of the Subcontract Price. Contractor's receipt of such performance and payment bonds from Subcontractor shall be a condition precedent to the disbursement of any payments due and owing to Subcontractor under this Subcontract Agreement.

13.2 Additional Security. If Subcontractor has not been required to furnish bonds, Contractor may, at any time, instruct Subcontractor, in writing, to provide performance and payment bonds within ten (10) days, in a form and from a surety acceptable to Contractor, in an amount up to the then current full value of the Subcontract Price. Contractor will reimburse Subcontractor the amount of the bond cost. In the event Subcontractor cannot provide such bonds, Contractor may request other security as it deems appropriate, at its sole discretion, or it may terminate Subcontractor for default under Article 17 of this Subcontract Agreement.

ARTICLE 14 **INSURANCE**

14.1 Policies. The Subcontractor shall procure, at its sole cost and expense, the insurance coverages set forth below, and shall maintain such coverages in full force and effect as specified in this Article 14. The Subcontractor shall include the Contractor and Owner and Owner's Financial Institutions and any other entity as required under the Owner Contract as an additional insured(s) for all insurance policies described below except Workers' Compensation and Professional Liability. The insurance coverage afforded under the policies described herein shall be primary and non-contributing with respect to any insurance carried independently by the Contractor and Owner. All such insurance policies shall provide for cross-liability and severability of interests for the insured (whether named or otherwise) for all coverage's provided hereunder. In addition, all such insurance policies shall include a waiver of subrogation endorsement in favor of the additional insureds. The insurance specified below shall be placed with insurance companies having a minimum A.M. Best Rating of A-VII, licensed to do business where work is located, shall be written on an occurrence basis, and shall have a provision of notifying the Contractor thirty (30) days prior to the cancellation or non-renewal of any such policies.

The Subcontractor shall promptly furnish the Contractor with certificates of insurance evidencing the insurance required hereunder, required "Safety & Health" documentation (Article 11), and shall not commence any services and/or work under this Agreement until such documentation is obtained by Contractor. The insurance required by this article section shall be written for not less than the following limits.

The insurance required by this article section shall be written for not less than the following limits.

a(1). Commercial General Liability. Limits of Liability:

Each Occurrence:	\$1,000,000.00
General Aggregate:	\$2,000,000.00
Products-Completed Operations:	\$2,000,000.00

Including coverage for Independent Contractors Liability, Contractual Liability, Personal Injury Liability, Broad Form Property Damage, including but not limited to completed operations, damages or injury arising from defective work, including costs to repair or replace damaged work, damage to property below ground, Explosion Collapse, Shoring, Grading and Underground Hazards. Contractor, Owner and any other entity as required under the Owner Contract shall be named as an Additional Insured (Form CG2010, Form B, 11/85 edition modified, or its equivalent) for ongoing work and completed operations (completed operations coverage will be in effect for a minimum period of five (5) years after Substantial Completion). Coverage provided by this policy shall be primary and non-contributory with respect to any other insurance that may be available to the additional insureds. Except with respect to bodily injury and property damage included within the products and completed operations hazards, the Aggregate Limit, where applicable, shall apply separately to Subcontractor's work under this Subcontractor. Subcontractor agrees to waive any and all rights of subrogation against the additional insured. When applicable, Subcontractor will evidence that Commercial General Liability policy does not exclude coverage for any residential/habitational work and/or operations.

a(2). General Liability Insurance Requirements for Elevator Subcontractors. Limits of Liability:

Each Occurrence:	\$1,000,000.00
General Aggregate:	\$2,000,000.00
Products-Completed Operations:	\$2,000,000.00

Including coverage for Independent Contractors Liability, Contractual Liability, Personal Injury Liability, Broad Form Property Damage, including but not limited to completed operations, damages or injury arising from defective work, including costs to repair or replace damaged work, damage to property below ground, Explosion Collapse, Shoring, Grading and Underground Hazards. Contractor, Owner and any other entity as required under the Owner Contract shall be named as an Additional Insured (Form CG2010, Form B, 11/85 edition modified, or its equivalent) for ongoing work and completed operations, evidences separately, and in place for a minimum of one (1) year or the length of Subcontractor warranty period (whichever is the longer period of time) after Substantial Completion. Coverage provided by this policy shall be primary and non-contributory with any other insurance that may be available to the additional insureds. Except with respect to bodily injury and property damage included within the products and completed operations hazards, the Subcontractor will provide a separate "per project" Aggregate liability Limit. Subcontractor agrees to waive any and all rights of subrogation against the additional insured.

b. Auto Liability. Limits of Liability:

Combined Single Limit	\$1,000,000.00
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Including coverage for all owned, leased, hired, and non-owned autos used by Subcontractor, its employees, agents, subcontractors and suppliers. Owner, Contractor and any other entity as required under the Owner Contract shall be named as Additional Insured. Subcontractor agrees to waive any and all rights of subrogation against the additional insureds. If Subcontractor is a transporter of hazardous materials, Subcontractor's auto liability insurance shall have all pollution exclusions deleted.

c. Workers Compensation and Employers Liability Insurance as required by any applicable law, regulation or statute. Subcontractor agrees to waive any and all rights of subrogation against the Owner and Contractor. Workers Compensation and Employers Liability Insurance with limits of:

Each Accident	\$500,000.00
Disease Each Employee	\$500,000.00
Disease Policy Limit	\$500,000.00

d. Excess Umbrella. Limits of Liability:

Each Occurrence	\$5,000,000.00
Aggregate	\$5,000,000.00

Coverage is to be provided on a follow form basis over the General Liability, Auto and Employers Liability coverages. Owner, Contractor and any other entity as required under the Owner Contract shall be named as additional insured for ongoing and completed operations. Subcontractor agrees to waive any and all rights of subrogation in all aforementioned policy coverage against the additional insureds. Completed operations coverage will be in effect for a minimum period of five (5) years after Substantial Completion. When applicable, Subcontractor will evidence that Umbrella Liability policy does not exclude coverage for any residential/habitational work and/or operations

e. Pollution Liability. If the scope of the work includes (i) installation, demolition, removal or remediation work involving any hazardous material, including but not limited to asbestos containing materials, silica, lead, PCBs, contaminated soil,

mold/fungi, or other items identified as hazardous materials by Federal, State, or Local Laws, (ii) plumbing, heating, fire suppression, ventilating or air conditioning systems, (iii) drywall or insulation, (iv) building foundations; or (v) building enclosure systems involving the watertight integrity of the building (including, without limitation, vapor or moisture barriers, roofing or flashing, exterior windows, curtainwall components or systems, plaster or stucco or exterior stone, masonry, waterproofing, or caulking), Subcontractor shall procure, maintain and pay for Contractor's Pollution Liability insurance including contractual liability coverage. Such insurance shall have limits of not less than:

Each Claim	\$2,000,000
Annual Aggregate	\$2,000,000

Contractor's Pollution Liability coverage will include the following:

- Coverage for Completed Operations extending or renewed for five (5) years after final acceptance of the Project by the Owner or such longer period as the Contract Documents may require of the Subcontractor. Copies of the Contractor's Pollution Liability Policy shall be provided annually.
- Coverage for bodily injury including death, sickness, disease, mental anguish or shock sustained by any person; property damage including physical injury to or destruction of property; cleanup costs; offsite disposal locations; ongoing operations, completed operations, transportation and disposal of hazardous materials and pollutants, defense costs including cost charges and expenses incurred in the investigation and adjustment of claims for compensatory damages.
- The definition of Pollutant and/or Pollution Condition shall include any form of fungus, including mold, microbial matter, legionella, bacterial matter and the like. The definition shall include natural resource damage, silt and sedimentation damage. There will be no exclusions or limitations regarding damages/injury from the existence, removal or abatement of lead paint or asbestos.

f. When applicable, if scope of work includes or involves professional services or design work, Subcontractor shall be required provide the Professional Liability:

Professional Liability

Each Claim	\$3,000,000
Annual Aggregate	\$5,000,000

14.1.1 The certificate shall identify a waiver of subrogation in favor of the Contractor and Owner under the General Liability, Auto Liability, Workers Compensation and Excess Umbrella Liability.

14.1.2 Certificate of Insurance shall be filed with the Contractor prior to commencement of Subcontractor's work.

14.2 Notice and Right to Pay Premiums. Contractor's receipt of certificates of insurance from Subcontractor shall be a condition precedent to the receipt of any payments due and owing to Subcontractor under this Subcontract Agreement. Insurance policies shall provide for notification to Contractor of non-payment of any premiums and give Contractor the right to make the premium payment there under within a reasonable time. Any premium payments made by Contractor shall be deducted from amounts due Subcontractor under this Subcontract Agreement. Insurance policies shall provide for thirty (30) days prior written notice to Contractor of cancellation.

**ARTICLE 15
INDEMNIFICATION**

15.1 Subcontractor's Indemnity. To the extent Subcontractor is negligent, Subcontractor shall protect, defend, indemnify and hold harmless Contractor and Owner, jointly and severally, and (if required by Contractor's contract with Owner), Owner's architect (the "Indemnified Parties") together with all of the Indemnified Parties' affiliates, parents, subsidiaries, officers, directors, and employees, from and against all claims, damages, costs, fines, losses, suits of liability, and expenses, including but not limited to attorney's fees (hereinafter collectively referred to as "Claims and Damages"), arising out of or resulting from Subcontractor's Work, provided that: (1) any such Claims or Damages are attributable to, arise out of, or result from: (a) bodily injury, sickness, disease or death; or (b) injury to or destruction of tangible property (other than Subcontractor's Work itself); and (2) any such Claims or Damages are caused, in whole or in part, by any wrongful or negligent act of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable.

15.2 Subcontractor Obligations. Subcontractor specifically obligates itself: (a) to comply with all patents, trademarks, or copyrights applicable to work under the Subcontract Agreement; (b) to pay for all materials furnished and work and labor performed under this Subcontract, and to satisfy the Contractor and Owner thereof whenever demand is made; (c) to obtain and pay for all permits, licenses and official inspections made necessary by the Work, and to comply with all laws, ordinances and regulations bearing on the Work and the conduct thereof. Subcontractor agrees to protect, defend and indemnify the Contractor and the Owner against and save them harmless from, any and all claims, liens, suits, losses, damages, costs, expenses and attorney fees suffered or incurred on account of any breach of the aforesaid obligations (except for liens or claims by Subcontractor for amounts due and payable under the terms of this Subcontract Agreement), and any other provisions or obligations of this Subcontract, including provisions of Articles 10 and 11.

15.3 Limitation on Liability. Subcontractor's obligations under Section 15.1 above shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor under Worker's Compensation Acts, disability benefit acts, or other employee benefits acts, or by any insurance that may be procured by Subcontractor or by any Indemnified Party, and Subcontractor expressly waives any limitations of liability or protections afforded under such acts or insurance.

ARTICLE 16
TERMINATION FOR CONVENIENCE

16.1 Procedure. Upon three (3) days advance written notice to Subcontractor, Contractor shall have the right to terminate this Subcontract Agreement, without cause, for convenience, when Contractor determines that it is in its own best interest to so terminate this Subcontract Agreement.

16.2 Subcontractor's Remedy. If Contractor exercises its right to terminate for convenience as a result of Owner terminating Contractor's contract with Owner for convenience, Subcontractor's remedy for such termination shall be as provided in Contractor's contract with Owner, and shall be limited to the relief actually received by Contractor from Owner for the terminated portion of Subcontractor's Work. If Contractor exercises its right to terminate for convenience for reasons other than Owner's termination of Contractor for convenience, Subcontractor's remedy for such termination shall be the payment of a prorated portion of the Subcontract Price for all Subcontractor's Work properly performed up to the date of termination, reduced by amounts previously paid by Contractor to Subcontractor and any amounts which Contractor may withhold or deduct pursuant to the terms of this Subcontract Agreement. Notwithstanding the foregoing, in no event shall Subcontractor be entitled to recover: (a) profit or unabsorbed overhead in connection with work not actually performed or future work; (b) amounts that would result in Subcontractor receiving payments that it would not be entitled to receive under this Subcontract Agreement if Subcontractor was not terminated for convenience; and (c) amounts that would cause the total payments received by Subcontractor to exceed the Subcontract Price, as may be adjusted pursuant to this Subcontract Agreement.

ARTICLE 17
FAILURE OR INABILITY TO PERFORM SUBCONTRACTOR'S WORK

17.1 Contractor's Rights. If, in the opinion of Contractor, Subcontractor shall at any time: (1) refuse or fail to provide sufficient properly skilled workmen or materials of the proper quality or quantity; (2) fail in any respect to prosecute Subcontractor's Work according to the current schedule; (3) cause, by any action or omission, the stoppage or delay of, or interference with, the work of Contractor or of any other subcontractor or Owner's separate contractors; (4) submit a false or misleading lien or claim waivers; (5) fail to make payments to subcontractors, employees, vendors, consultants or suppliers; or (6) otherwise fail to comply with provisions of this Subcontract Agreement or the Contract Documents, then, after serving three (3) days' written notice, unless the condition specified in such notice shall have been eliminated within such three (3) days, Contractor may, at its option and without prejudice to any other right it may have under this Subcontract Agreement or by law, take any of the following actions or combination thereof:

- a. without voiding the other provisions of this Subcontract Agreement and without notice to the sureties, take such steps as are necessary to overcome the condition;
- b. terminate this Subcontract Agreement, in whole or in part, for default; or
- c. seek specific performance of Subcontractor's obligations hereunder, it being agreed by Subcontractor that specific performance may be necessary to avoid irreparable harm to Contractor or Owner.

If Contractor takes any of the foregoing actions, or exercises any other right it may have under this Subcontract Agreement or by law as a result of Subcontractor's failure or inability to perform Subcontractor's Work, Subcontractor shall be liable to Contractor for all costs, losses and damages, including Contractor's administrative costs, profit, interest, and attorney's fees.

17.2 Demand for Assurance. In the event Contractor becomes concerned about Subcontractor's ability to continue performance or comply with its obligations under this Subcontract Agreement and the Contract Documents, Contractor may demand adequate assurance from Subcontractor that it has the means and ability to timely complete Subcontractor's Work or comply with its obligations in accordance with this Subcontract Agreement and the Contract Documents. Failure to provide or fulfill such assurance within five (5) days of receipt of the demand shall entitle Contractor to exercise its rights under Section 17.1 above.

17.3 Contractor's Rights upon Termination for Default. In the event of termination for default under Section 17.1 above, Contractor may, at its option, take any of the following actions or combination thereof: (1) enter the premises and take possession, for the purpose of completing Subcontractor's Work, of all supplies, materials and equipment to be incorporated into the Project, and of all Project records and files, whether in hard or electronic format; (2) require Subcontractor to assign to Contractor any or all of Subcontractor's subcontracts and purchase orders relating to Subcontractor's Work; or (3) either itself or through others complete the work by whatever method Contractor may deem expedient. In case of termination for default, Subcontractor shall not be entitled to receive any further payment until Subcontractor's Work shall be fully completed and accepted by Owner. At such time, if the unpaid balance of the Subcontract Price, as may be adjusted, to be paid exceeds the expense incurred by Contractor, including Contractor's administrative costs, profit, interest, and attorney's fees, such excess shall be paid by Contractor to Subcontractor. If the expense incurred by Contractor exceeds such unpaid balance, then Subcontractor shall pay Contractor the difference.

17.4 Recourse against Contractor. If Contractor wrongfully terminates Subcontractor for default, Contractor shall be liable to Subcontractor for the amount Contractor would have paid if Contractor would have terminated Subcontractor for convenience in accordance with Article 16 of this Subcontract Agreement. Subcontractor's remedy hereunder shall be exclusive, and nothing hereunder shall prevent Contractor from withholding or deducting amounts otherwise due to Subcontractor under other provisions of this Subcontract Agreement.

17.5 Bankruptcy of Subcontractor. If Subcontractor institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate Subcontractor's ability to perform its obligations under this Subcontract Agreement and the Contract Documents. Accordingly, should such event occur:

a. Subcontractor, its trustee or other successor, shall furnish, upon request of Contractor, adequate assurance of the ability of Subcontractor to perform all future material obligations under this Subcontract Agreement and the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

b. Subcontractor shall file an appropriate action within the bankruptcy court to seek assumption or rejection of this Subcontract Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If Subcontractor fails to comply with its foregoing obligations, Contractor shall be entitled to request the bankruptcy court to reject this Subcontract Agreement, declare this Subcontract Agreement terminated and pursue any other recourse available to Contractor under this Article 17. The rights and remedies under this Section 17.5 shall not be deemed to limit the ability of Contractor to exercise any other rights and remedies provided by this Subcontract Agreement or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Contractor to terminate Subcontractor under any applicable provision of this Subcontract Agreement.

ARTICLE 18 CLAIMS AND DISPUTE RESOLUTION

18.1 Claims for Relief. If Subcontractor believes that it is entitled to relief against Contractor for any event arising out of or relating to the Project, it shall provide written notice to the attention of the individual who signed this agreement on behalf of the Contractor within five (5) days after the occurrence giving rise to the claim for relief of the basis for its claim for relief, unless this Subcontract Agreement provides another time period or a shorter time period is necessary for Contractor to comply with its obligations to Owner under applicable provisions of the Contract Documents. All such notices shall include sufficient information to advise Contractor of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. If directed by Contractor, Subcontractor shall, within five (5) days after receipt of Contractor's directive, certify the completeness and accuracy of its claim as a condition precedent to its consideration by Contractor or Owner. Failure to submit such written notice or certification shall constitute a conclusive presumption that Subcontractor is not entitled to a price or time adjustment for the event giving rise to the claim. Subcontractor's failure to strictly comply with the provisions of this Section 18.1 shall result in a rejection and waiver of Subcontractor's claim for relief.

18.2 Claims Relating to Owner. If Subcontractor submits a claim to Contractor arising out of or relating to issues that Contractor, in its sole discretion, believes are caused by or are the contractual responsibility of Owner ("Owner-Related Claims"), then Contractor agrees to present such claim to Owner. Subcontractor recognizes and agrees that such Owner-Related Claims shall be submitted and resolved pursuant to the requirements of the contract between Contractor and Owner and that Subcontractor shall be bound to Contractor to the same extent that Contractor is bound to Owner for such Owner-Related Claims. Nothing herein shall require Contractor to submit or certify a claim of Subcontractor when Contractor cannot do so in good faith. Subcontractor agrees, at its sole expense, to furnish all documents, statements, witnesses and other information required by Contractor for investigating and presenting Subcontractor's claims and to pay or reimburse Contractor for all expenses and costs, including Contractor's legal and expert fees, incurred in connection with presenting Subcontractor's claims. If Contractor's claim submission to Owner involves more than one subcontractor, Subcontractor agrees that it shall contribute a fair and proportionate share of the expenses and costs, including Contractor's legal fees, of advancing the claims. Contractor has final authority to settle all Owner-Related Claims and, notwithstanding any other provisions in this Subcontract Agreement or the Contract Documents to the contrary, Subcontractor agrees that its recovery for Owner-Related Claims shall be limited to the relief Contractor has recovered from Owner for Subcontractor's claim, whether or not Subcontractor is a party to such proceedings involving such claims. Subcontractor agrees that it shall exhaust through Contractor the remedies available under Contractor's contract with Owner for Owner-Related Claims, including the initiation of litigation or arbitration, as applicable, against Owner through Contractor.

18.3 Claims Relating to Contractor. For any claim, dispute or controversy that is not an Owner-Related Claim, Subcontractor and Contractor will first attempt to resolve such claim, dispute or controversy at the field level through direct discussions between the project management staff of both Contractor and Subcontractor. If the dispute is not resolved, then either party may exercise the rights afforded by Section 18.4 below.

18.4 Litigation. Subject to Section 18.3 above, any claim, dispute or controversy between Subcontractor and Contractor that is not an Owner-Related Claim shall be resolved through litigation, with the parties specifically and irrevocably waiving any right to a trial by jury. Except as provided below, each party shall be responsible for bearing their own costs and expenses (including but not limited to attorneys' fees) associated with any claim, dispute or controversy between them. Notwithstanding the preceding sentence, Subcontractor shall remain obligated to pay Contractor's costs and expenses, including but not limited to attorneys' fees, for any event that is covered by an indemnity or hold harmless provision, or any other clause in this Agreement where Subcontractor has assumed the obligation to pay Contractor's costs, expenses, and/or attorneys' fees.

18.5 Work Continuation and Payment. Unless the parties mutually agree otherwise in writing, Subcontractor shall continue to perform Subcontractor's Work in accordance with Contractor's directives and this Subcontract Agreement pending the resolution of any claim, dispute or controversy. If Subcontractor continues to perform Subcontractor's Work in accordance with Contractor's directives and this Subcontract Agreement, Contractor shall honor its payment obligations in accordance with this Subcontract Agreement.

ARTICLE 19 MISCELLANEOUS PROVISIONS

19.1 Assignment and Transfer. Subcontractor agrees that it will not assign or transfer this Subcontract Agreement in whole or in part, or any payment due there under, without the prior written consent of Contractor and Subcontractor's surety, if any. Subcontractor agrees that Contractor shall have the right, upon written notice to Subcontractor, to assign or transfer Contractor's responsibilities and obligations under this Subcontract Agreement, in whole or in part, to any other entity, including Owner or any entity affiliated with or related to Contractor. If Contractor exercises its right to assign or transfer, Subcontractor shall be fully obligated to the assignee or transferee to perform each and every obligation, whether express or implied, arising out of or related to this Subcontract Agreement.

19.2 Acceptance of Subcontract Terms. If Subcontractor fails to execute and return this Subcontract Agreement within ten (10) days of Subcontractor commencing Subcontractor's Work, this Subcontract Agreement shall be deemed accepted in its entirety, and the terms and conditions of this Subcontract Agreement shall apply to Subcontractor's Work. Contractor's receipt of an executed copy of this Subcontract Agreement from Subcontractor shall be a condition precedent to the disbursement of any payments due and owing to Subcontractor under this Subcontract Agreement.

19.3 Subcontractors. Subcontractor agrees that all of its suppliers, vendors, consultants and subcontractors will be subject to all terms and conditions of this Subcontract Agreement and the Contract Documents. Contractor's consent to any subletting shall not be deemed to create any contractual relationship between Contractor and any vendor, consultant, subcontractor or supplier to whom Subcontractor's Work or any portion thereof is sublet. In the event that this Subcontract Agreement is terminated for any reason by Contractor, Subcontractor agrees to assign its subcontracts and purchase orders to Contractor upon Contractor furnishing written notice to Subcontractor and the applicable supplier, vendor, consultant or subcontractor that Contractor accepts such assignment.

19.4 Audit Rights. Contractor shall have the right to require an audit of Subcontractor's books and records, whether in hard paper or electronic form, at any time during construction and within three (3) years after final completion of the Project, in order to verify the actual cost of Subcontractor's Work, including but not limited to, changed work, that was performed on a cost-plus, time-and-material, or similar basis. The audit shall be conducted by Contractor's personnel or by a representative of Contractor during normal business hours upon reasonable advance written notice to Subcontractor. Contractor shall have the right to copy Subcontractor's books and records which are the subject of the audit. This right to audit is in addition to any other Contractor or Owner audit rights which may exist under Contractor's contract with Owner.

19.5 Notices. All notices shall be addressed in writing to the parties at the addresses set forth herein and either: (1) delivered personally; (2) sent by certified mail; (3) sent by a recognized overnight delivery or courier service with delivery receipt required; or (4) sent by facsimile with facsimile confirmation, to be followed on the same day by any of the other methods specified in this Section 19.5. Notice shall be considered effective as of the date received.

19.6 Advertising. Subcontractor, its vendors, consultants, subcontractors or suppliers shall not place any signs, billboards or posters on any portion of the Project site, building, property or fences (temporary or permanent) adjacent to or surrounding the same, except upon prior written permission received from Contractor and Owner, and then only of a size, material, color and type and at a location approved by Contractor and Owner.

19.7 Severability and Waiver. The partial or complete invalidity of any one or more provisions, or portions thereof, of this Subcontract Agreement shall not affect the validity or continuing force and effect of the remaining portion of such provision or any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Subcontract Agreement, or failure to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or rights related to further performance.

19.8 Complete Agreement. This Subcontract Agreement represents the entire and integrated agreement between the parties hereto, and supersedes all prior negotiations, representations or agreements, either written or oral. No other agreements, representations, warranties or other matters, oral or written, shall bind the parties. The entire Subcontract Agreement includes this document and Exhibits A and B. Any modifications to this document, Exhibit A and/or Exhibit B are only included and made a part of the agreement if included in an Exhibit C attached herewith. This Subcontract Agreement includes an Exhibit C if initialed here by both parties.

Subcontractor

Contractor

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have hereunto executed this Subcontract Agreement, on the day and year written above.

{ToCompany.Name}
Subcontractor

COAKLEY & WILLIAMS CONSTRUCTION, INC.
Contractor

By: _____
Signature Date

By: _____
Signature Date

Print Name

Gregory E. Harraka
Senior Vice President

Title