

EXHIBIT "E"  
SUBCONTRACT TERMS  
ARTICLE I  
THE CONTRACT DOCUMENTS

1.1 The Contract Documents which shall govern this Subcontract and the Subcontract Work (referred to herein as the "Work") consist of this Subcontract and Exhibits listed or referred to herein and any and all other documents which form or govern the Agreement between the Contractor and Owner or, if Contractor is a subcontractor, between the Owner and prime contractor and between the prime contractor and Contractor, and any items defined as "Contract Documents" or "Subcontract Documents" in such Agreements. If Contractor is a subcontractor to a prime contractor as identified in the introductory section of this Subcontract, the term "Owner" as hereinafter used in this Subcontract shall be construed, depending on the context of such reference, to mean "Owner and Prime Contractor" or "Owner or Prime Contractor".

1.2 The Contract Documents include, without limitation, general, supplementary and other Conditions of the Contract, Drawings, Plans, Specifications, the Project Manual, accepted alternates, all Addenda issued prior to execution of this Subcontract, schedules, and all Modifications issued subsequent hereto. Subcontractor agrees to be bound to Contractor by all of the terms of the Contract Documents and, with respect to the Work, to assume toward Contractor all of the obligations and the responsibilities that Contractor by those instruments assumes toward the Owner or other third parties. Subcontractor further agrees that Contractor shall, in addition to other rights and remedies provided by the Subcontract, have the same rights and remedies against Subcontractor that the Owner or any other third party has against Contractor under the Contract Documents. In the event that the Subcontractor has performed any of the Work prior to the date of this Subcontract, pursuant to authorizations to proceed, letters of intent or otherwise, this Subcontract and the Contract Documents shall govern such prior Work to the same extent as though such Work was performed after the date hereof.

1.3 All drawings, specifications and other items defined herein as Contract Documents that have been prepared for the Project and furnished to Contractor by or on behalf of the Owner or other third party are without any representation or warranty by Contractor as to the acceptability, accuracy or suitability thereof for the Work and Subcontractor accepts all risks in respect of any and all defects, deficiencies, errors and omissions therein.

1.4 The Subcontractor shall perform no portion of the Work at any time without Contract Documents and, where required, approved Shop Drawings, Product Data, Catalog Cuts, Samples or other approved submittals. The Contractor, Owner and Architect may render interpretations and decisions concerning the proper execution or progress of the Work, and any such interpretation, if given in good faith and made in reference to one or more terms or provisions of the Contract Documents, shall resolve and take precedence over any ambiguity or other inconsistency within, between or among the Contract Documents.

1.5 The Subcontractor shall keep at the Project site, for the Contractor's ready reference, one up-to-date copy of the Contract Documents, in good order and marked currently to record all changes made during construction.

1.6 The minimum quality and fitness of products and workmanship shall be based on the requirements that all Work shall conform with the quality levels established by the Contract Documents and any decisions as to the acceptability of products or workmanship shall rest with the Contractor and such other parties as provided by the Contract Documents. What is or has been usual or customary in a given trade or on other projects shall not limit, qualify or reduce the standards of quality, fitness and/or performance of products and workmanship established by or inferable from the Contract Documents.

1.7 The Contract Documents shall be deemed to include and require all items and aspects of labor, material, equipment, services and transportation incidental to or necessary for the proper execution and completion of the Work as it relates to the Project. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not specifically covered in the Contract Documents or which is subject to question and interpretation because of conflicts, duplications or ambiguities may, at Contractor's option, be required of Subcontractor if it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the results intended by this Subcontract.

1.8 This Subcontract and the other Contract Documents shall be read to complement each other. In the event of an irreconcilable conflict within or between the terms thereof, the term(s) which give greater rights to the Contractor or describe the Work hereunder in more qualitative or quantitative respects shall govern, at the sole option of Contractor, without regard to the party or person who drafted the instrument containing such term.

1.9 The captions, titles and Paragraph headings used in this Subcontract are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Subcontract or any Paragraph, article or provision therein.

1.10 This Subcontract and the Contract Documents contain the entire integrated agreement between the parties. Any executory agreement hereafter made shall be ineffective to change, modify or discharge this Subcontract in whole or in part, unless such executory agreement is in writing and signed by both Contractor and Subcontractor. All verbal or written negotiations, agreements and representations made or conducted by or between either party prior to the date of this Subcontract are hereby voided and shall not serve to supplement, vary, modify or contradict the terms hereof.

## ARTICLE 2 THE WORK

2.1 The Work to be performed by Subcontractor is described generally in the introductory section of this Subcontract above entitled "SUBCONTRACT WORK", and shall be subject to such additional detailed descriptions as may be set forth in an Exhibit hereto or elsewhere in the Contract Documents.

2.2 Subcontractor has examined the Contract Documents, acknowledges the Contract Documents to be suitable for said Work and sufficient for their intended purposes, and agrees to perform the Work and complete same in full and strict accordance therewith and to the entire satisfaction of Contractor, Owner and Architect.

2.3 Subcontractor shall coordinate and schedule its Work to insure it is accomplished as an integrated whole with the work of Contractor and all other subcontractors and contractors. Any labor, materials, equipment, machinery or services necessary to accomplish such integration shall be undertaken by Subcontractor as part of the Work and at no additional cost to Contractor notwithstanding the omission thereof from any drawing or other Contract Document.

2.4 All of Subcontractor's workmanship, materials, submissions, and samples shall be subject to the approval of Owner, Contractor and Architect but such approval, if and when given, shall neither relieve Subcontractor of its obligations hereunder nor mitigate its liability to Contractor for failure to perform in accordance with the Contract Documents.

2.5 The Subcontractor's scope of work is to be furnished and installed complete including all labor, material, freight and applicable taxes as required by the contract documents.

2.6 If Subcontractor's Subcontract Work includes furnishing design services, the following additional Subcontract terms shall apply.

2.6.1 The Subcontractor shall provide for the Contractor, in accordance with the terms of the Subcontract, professional (i.e. – design) services described therein, which the Contractor is required to provide the Owner in respect of the Project. The part of the Project for which the Subcontractor is to provide such services is hereinafter called "This Part of the Project". Design services provided by the Subcontractor shall be procured from licensed, independent design professionals retained by the Subcontractor or furnished by licensed employees of the Subcontractor, or as permitted by the law of the place where the Project is located.

2.6.2 The Subcontractor is an independent contractor for this part of the Project, responsible for methods and means used in performing the Subcontractor's design services under this Subcontract, and is not an employee, agent, or partner of the Contractor or its other subcontractors or consultants.

2.6.3 The Subcontractor's design services shall be performed according to this Subcontract and in the same manner and to the same extent that the Contractor is bound to perform such services for the Owner.

2.6.4 The Subcontractor shall designate, when necessary, a representative authorized to act in the Subcontractor's behalf with respect to This Part of the Project.

2.6.5 The Subcontractor shall evaluate the Owner's criteria and other available information and provide in writing for the Contractor's review and approval a preliminary schedule and cost estimate for the Subcontractor's Work. The schedule and estimate shall be updated periodically and it shall be the responsibility of the Subcontractor to adhere to approved schedules and estimates.

2.6.6 The Subcontractor's design services shall be performed in a manner, sequence, and timing so that they will be coordinated with those of the Contractor and others furnishing design services for the Project. The Subcontractor shall recommend to the Contractor that appropriate investigations, surveys, tests, analyses, and reports be obtained as necessary for the proper execution of the Subcontractor's design services.

2.6.7 The Subcontractor shall provide progress copies of drawings, reports, specifications and other necessary information to the Contractor for coordination and review. All aspects of the Work designed by the Subcontractor shall be coordinated by the Subcontractor and the Subcontractor shall also become familiar with the work designed by the Contractor and others providing design services as necessary for the proper coordination of the Project design.

2.6.8 The Subcontractor's design services shall be performed as expeditiously as is consistent with professional skill and care in the orderly progress of the Work. Upon request of the Contractor, the Subcontractor shall submit for the Contractor's approval a schedule for the performance of the Subcontractor's design services which may be adjusted as the Project proceeds and shall include allowances for a period of time required for the Owner's and Contractor's review and for approval of submissions by authorities having jurisdiction over the Project.

2.6.9 When authorized by the Contractor, the Subcontractor shall prepare Drawings and/or Specifications setting forth in detail the requirements of the construction of This Part of the Work, all of which are to be approved by the Contractor and Owner. The Subcontractor shall prepare the Drawings and/or Specifications in such format as the Contractor may reasonably require and with any or all of the following levels of detail:

2.6.9.1 Schematic Design Documents consisting of drawings, outline specifications and other conceptual documents illustrating the basic components of the design of the Subcontractor's Work and their relationship to other Project elements.

2.6.9.2 Design Development Documents consisting of further definition of design elements, including drawings outline specifications and other documents to fix and describe the size and character of the Subcontractor's Work including their relationship to other Project elements.

2.6.9.3 Construction Documents setting forth in detail the requirements for construction of the Subcontractor's Work consisting of drawings and specifications that comply with codes, laws and regulations enacted at the time of their preparation.

2.6.10 The Subcontractor shall assist the Contractor as necessary in connection with the Owner's responsibility for filing the documents concerning This Part of the Project required for the approval of governmental entities having jurisdiction over the Project.

### ARTICLE 3 COMMENCEMENT AND COMPLETION

3.1 Subcontractor shall commence the Work when and as directed by Contractor and diligently and continuously prosecute and coordinate such Work with such workers, materials and equipment to insure that Contractor, other subcontractors and third parties will not be delayed, interrupted, hindered or disrupted by Subcontractor's activities or operations and to insure completion of the Project within the time specified by any construction schedule dates and/or milestones now or hereafter established in accordance with this Subcontract or other Contract Documents.

3.2 Time is of the essence in this Subcontract and any breach of same shall go to the essence thereof. Subcontractor, in agreeing to complete the Work within the times and sequences herein mentioned, has taken into consideration and made allowances for all hindrances, delays and adverse working conditions which are or may be incident to his Work. If, in the sole opinion of the Contractor, the Subcontractor is behind schedule in its Work or is failing, without cause, to maintain progress of its Work to conform to the general progress of all work for the Project, Subcontractor shall, at its own expense, perform any overtime work, use extra labor, and undertake all other means necessary to bring its Work back on schedule

3.3 To foster the expeditious and efficient construction of the Project, a Project schedule may be developed by Contractor or other third parties to schedule and coordinate the times required for one of more areas, phases or types of work on the Project. Subcontractor shall participate and cooperate in scheduling the times and sequences required in Subcontractor's area of Work and shall perform such Work in accordance with any such schedule and all revisions thereto. Subcontractor shall continuously monitor the construction schedule and advise Contractor of the status of Subcontractor's progress in respect to such schedule at any time Contractor requests Subcontractor to do so. In addition, Contractor, Owner and Architect shall have free and open access to the site of the Project or any other location where any part of the Work may be fabricated or assembled and may observe, test and inspect any element of the Work during the course of construction, fabrication or assembly. Subcontractor shall fully cooperate in connection with all such observations, tests and inspections. Further, Subcontractor shall afford Contractor's separate subcontractors reasonable opportunity for introduction and storage of their materials and equipment for execution of their work.

3.4 Subcontractor shall immediately notify Contractor of any circumstance which may affect the times and sequences in the schedule, and shall submit all notices, claims and requests for extensions of time in writing to Contractor sufficiently in advance to allow Contractor to forward such requests as required by and in compliance with the procedures and time limitations as set forth in the Contract Documents; but in no event shall such request be submitted later than ten days after the commencement of the delay or other event giving rise to the notice; otherwise Subcontractor shall not be granted an extension of time or other relief and any right to such extension or other relief otherwise given to Subcontractor by the Contract Documents shall be deemed waived.

3.5 Subcontractor shall prepare and submit periodic work reports and other documentation as Contractor may require for the Project. A representative of Subcontractor shall attend all meetings scheduled by Contractor or other third parties for the purpose of scheduling and coordinating activities on this Project, and any such representative attending any such meeting shall be conclusively deemed to have the authority to bind Subcontractor during the course thereof.

3.6 If, in Contractor's sole opinion, Subcontractor refuses or neglects to supply adequate and competent supervision, or a sufficiency of properly skilled workmen or of materials or equipment of the proper quality or quantity, or fails in any respect to prosecute the Work with promptness and diligence or fails to perform or fulfill any other obligations provided by the Contract Documents, Contractor may upon giving 24 hours written notice to Subcontractor, without prejudice to any other remedy Contractor may have, provide any such labor or materials and take such other steps as Contractor may, in its sole discretion, deem advisable, necessary or expedient to correct or otherwise address such refusal, neglect or failure. Contractor may deduct the cost thereof from any money due or thereafter to become due from Contractor to Subcontractor, which costs shall include a reasonable allowance for Contractor's overhead and profit. In the event of any such refusal, neglect or failure by Subcontractor, Contractor shall also be at liberty to terminate the employment of Subcontractor for default as provided by Article 11 of this Subcontract.

3.7 If the Contractor, in good faith, believes the Subcontractor is responsible for any delay in the prosecution or completion of any Work or causes a disruption of any time, sequence or scheduled work activity of Contractor, Owner or other contractors, Subcontractor shall pay Contractor for all costs and damages suffered by Contractor as a result of such delay or disruption including, without limitation, any actual or liquidated damages assessed against Contractor by the Owner. In the event that any such delay or disruption is caused by the acts, omissions or neglect of the Subcontractor and the concurrent acts, omissions or neglect of Contractor, other subcontractors, or other third parties, Subcontractor agrees to pay Contractor a proportionate share of damages suffered, incurred by or assessed or claimed against Contractor, including liquidated damages, as allocated by Contractor in good faith, between and among Subcontractor and other responsible parties.

3.8 It is contemplated that Subcontractor's performance under this Subcontract may be delayed, accelerated suspended, hindered or disrupted (a) by acts or omissions of the Owner, Contractor, Architect, other subcontractors and other parties involved with the Project, or (b) by other circumstances not caused by or within the control of Subcontractor and recognized by the Contract Documents as excusable conditions justifying extension of the time afforded for performing and completing Subcontractor's Work. In such cases, Subcontractor may request an extension of time for performance and completion of the Subcontractor's Work. The extension of time to which Subcontractor may be entitled under this Paragraph shall under no circumstances exceed the extension of time granted to Contractor. Furthermore, such time extension shall be Subcontractor's sole and exclusive remedy in respect of its Work being delayed, accelerated suspended, hindered or disrupted. Accordingly, Subcontractor shall not be entitled to recover any damages or additional compensation of any type whatsoever as a consequence thereof, notwithstanding the nature of the circumstances giving rise thereto or the extent or duration thereof, any and all such circumstances and consequences being within the contemplation of the parties, unless Contractor receives additional compensation relating to Subcontractor work from Owner.

3.9 Contractor may schedule and direct Subcontractor to perform additional overtime work not due to Subcontractor's acts, omissions or delays, in which case Contractor shall pay the cost of the premium time only, with overhead and profit if Owner pays, and Subcontractor agrees to accept such portion in complete settlement of any and all claims for damages, loss, cost or expense caused by or in any way related to overtime conditions or directives. Subcontractor shall bear at its own expense any additional rental or other charge for overtime use of machinery or equipment owned by or leased to Subcontractor or its Sub-subcontractors. Subcontractor's books shall be kept in a manner facilitating Contractor's audit of such adjustments.

3.10 Subcontractor shall, as directed by Contractor and without adjustment in the Subcontract Amount or Time, cease work at any point and transfer Subcontractor's men, machinery and equipment to such points and execute such portions of the Work in preference to other portions as Contractor may prescribe.

3.11 Contractor is not obligated to notify Subcontractor when to begin, cease or resume work, or to superintend the Work so as to relieve Subcontractor of responsibility for any consequence of neglect or carelessness by him or his subordinates. All materials and labor shall be furnished at such time as shall be for the best interests of the Contractor and all subcontractors concerned to the end that the combined work of all may be properly and fully completed in accordance with scheduling and coordination requirements for the Project. Unless Contractor receives additional compensation relating to Subcontractor's work from Owner.

#### ARTICLE 4 PAYMENT

4.1 As full consideration for complete and timely performance of the Work and for all obligations and conditions undertaken and risks assumed by Subcontractor in connection therewith, Subcontractor shall be paid the Subcontract Amount stated in the introductory section of this Subcontract, except as may be amended by Change Order as provided herein.

4.2 The Subcontract Amount includes all allowances stated in the Contract Documents for the Subcontractor's Work, if any. Items covered by these allowances shall be supplied for such amounts and by such persons as the Contractor may direct. Unless otherwise provided in the Contract Documents, allowances shall cover the cost to the Subcontractor, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes; allowances do not cover the Subcontractor's costs for unloading and handling on the site, labor, installation, overhead, profit and other expenses associated with items covered by the allowances; rather, such costs are included in the Subcontract Amount and no additional compensation shall be paid to Subcontractor therefor. Whenever the actual cost of the materials and equipment delivered at the Site is more than or less than the allowance, the Subcontract Amount shall be adjusted accordingly by Change Order.

4.3 Subcontractor shall, with the execution of this Subcontract and before the first request for a Progress Payment, submit to Contractor a Schedule of Values of the various parts of the Work aggregating the total sum of this Subcontract made out in such detail and subdivided into such categories as Contractor may prescribe. The Schedule of Values, as approved by Contractor, shall be used as a basis for requests for payments, unless

later found by Contractor to be in error. Upon execution Subcontractor shall also furnish Contractor with Federal Tax Identification Number or Subcontractor's Social Security Number and, a verified list of sub-subcontractors and material suppliers intended to be used by Subcontractor for any part of the Work.

4.4 Subject to the conditions for payment provided by this Subcontract and other Contract Documents and provided Subcontractor is not in breach of this Subcontract, Progress Payments will be made to Subcontractor on a monthly basis for Work performed through the preceding month. The amount of an interim or final payment to Subcontractor shall not exceed the value of labor and materials incorporated by Subcontractor in the Work as of the date of the request for payment, less retainage thereon to be withheld therefrom as provided in the introductory section hereof, and less the aggregate of previous pay requests. Furthermore, the amount of a payment shall not exceed the percentage of completion allowed to Contractor by Owner for the Work of Subcontractor, less the retainage specified herein.

4.5 Payments shall not become due to Subcontractor unless and until Contractor receives payment for such Work from Owner and the amount due shall not exceed the amount actually received by Contractor as applicable to Subcontractor's Work. Such receipt of payment by Contractor is intended as a condition precedent to Contractor's duty to pay Subcontractor and Subcontractor accepts the risk of such contingency.

4.6 Subcontractor shall submit all requests for payments on Contractor's Request for Payment forms (provided by Contractor) and with accompanying documentation acceptable to Contractor. Request shall be submitted sufficiently in advance to permit Contractor to include each such request, as approved, in Contractor's requests for payment or by such other deadlines as Contractor may prescribe.

4.7 Where the Contract Documents permit payment to include the value of materials, machinery or equipment not incorporated into the Work, but delivered and suitably stored on or off the site of the Project, Subcontractor shall, in addition to the other requisites of the Contract Documents, make any provisions necessary, including insurance covering loss or damage to the material, to ensure and protect Contractor's or Owner's title and right of possession and access to any such materials for which payment is approved.

4.8 Subcontractor shall pay for all materials, machinery, equipment and labor used in, or in connection with, the performance of this Subcontract through the period covered by previous payments received from Contractor, and no interim or final payments shall become due until Subcontractor has furnished affidavits, waivers, releases, certificates, or other evidence, in substance and form satisfactory to Contractor, to establish Subcontractor's payment to or discharge of claims and liens in respect of such materials, machinery, equipment and labor. Contractor may require that Subcontractor's payment obligations shall extend through and include the period covered by the current request for Progress Payment upon the existence of any cause or grounds for withholding of payments, as provided in Paragraph 4.9 or elsewhere in the Contract Documents.

4.9 Payments otherwise due to Subcontractor may be withheld by Contractor upon the existence or reasonable belief of Contractor concerning the existence or probability of (i) uncorrected defective or non-conforming Work, (ii) claims or liens filed, (iii) Subcontractor's failure or neglect to make payments properly due to its sub-subcontractors or for materials, machinery, fuel or labor, or applicable taxes, fees and fringe benefits or (iv) reasonable doubt that the Subcontract can be completed for the balance then unpaid, (v) any other breach of this Subcontract or (vi) any other conditions specified as grounds for such withholding by the Contract Documents. If the said causes are not removed, Contractor may, upon written notice, rectify the same at Subcontractor's expense and may make joint or direct disbursement to unpaid claimants from payments withheld; the right of Contractor to make such joint or direct payment shall not be construed to create a duty to do so. Contractor may offset against any sums due Subcontractor the amount of any liquidated or unliquidated obligations of Subcontractor to Contractor, whether or not arising out of this Subcontract.

4.10 No payment to Subcontractor shall operate as an approval of Subcontractor's work or material, or any part thereof, or as a release of Subcontractor from any of its obligations under this Subcontract.

4.11 All payments made to the Subcontractor prior to the date of this Subcontract for Work performed pursuant to a Letter of Intent or other written interim authorization given by Contractor, if any, shall be applied against the Subcontract Amount.

4.12 Final retention payment of the unpaid balance of the Subcontract Amount shall not become due until and unless (i) separate billing by Subcontractor (ii) all Work for the Project is fully completed and performed in accordance with the Contract Documents and is satisfactory to and approved by Owner, Contractor and Architect, (iii) delivery by Subcontractor of all manuals, "as-built" drawings, guarantees, and warranties for

material, machinery and equipment furnished by Subcontractor, and testing and/or inspection results or reports, (iv) delivery to Contractor of satisfactory evidence that all labor and material accounts incurred by Subcontractor in connection with his work have been paid in full, (v) other submittals have been provided as provided by Paragraph 4.8, (vi) Subcontractor has fulfilled all other requirements which are prescribed by this Subcontract or the Contract Documents to serve as conditions to final payment, and (vii) Contractor has received full and final payment from Owner for such Work, which receipt of payment is a condition precedent to Contractor's duty to pay Subcontractor.

4.13 Acceptance by Subcontractor of any sum tendered by Contractor as final payment shall constitute a waiver of all claims by the Subcontractor in respect of this Subcontract or the Work, except those claims authorized by this Subcontract, previously made in writing and in a timely manner, and specifically identified by the Subcontractor as unresolved in the request for final payment.

## ARTICLE 5 BONDS AND INSURANCE

5.1 If the introductory section of this Subcontract requires Bonds to be provided as a condition to this Subcontract, Subcontractor shall provide to Contractor, as named obligee, a Payment Bond and a Performance Bond in respective penal sums equal to the Subcontract Amount, on forms and with surety acceptable to Contractor. The premium costs incurred for such bonds shall be included in such Subcontract Amount.

5.2 If Bonds are not required as of the date of this Subcontract, the Contractor may nevertheless, by written notice to Subcontractor at any time before final completion and acceptance of Subcontractor's Work, require Subcontractor to provide Performance and/or Payment Bonds as described in the preceding Paragraph of this Subcontract, in such penal sums as Contractor may designate which shall not be greater than the value of Work remaining to be performed, completed or corrected as of the date of the notice. If Subcontractor is not then in default under this Subcontract and no cause exists for withholding of payment to Subcontractor pursuant to Paragraph 4.9, the premium costs for such bonds, excluding overhead and profit, will be added to the Subcontract Amount by Change Order; otherwise, such costs shall be paid by Subcontractor without increase in the Subcontract Amount.

5.3 Subcontractor shall have no right receive any payments under this Subcontract until and unless payment and performance bonds as called for in Paragraphs 5.1 or 5.2 are properly executed and furnished to Contractor, regardless of the status of the Work or performance by Subcontractor.

5.4 Subcontractor shall maintain at its own cost, such insurance as will protect it from claims under the worker's compensation laws of the state in which the Work is being performed and also Commercial General Liability and property damage insurance in such amounts and with such coverages to fulfill Subcontractor's obligations with regard to the indemnification requirements and any claim, damage, loss or expense described in this Subcontract. Liability insurance shall be carried on an occurrence basis. Amounts of insurance and coverages provided shall be required by the Contract Documents or as otherwise agreed between the parties separately, in writing. Such insurance shall provide coverage regardless of the negligent acts of any of the Owner, Contractor, Architect, Subcontractor and sub-subcontractors and any of their respective officers, directors, consultants, agents and employees, and shall be endorsed to include the Owner, Contractor, Architect, and their respective officers, directors, consultants, agents and employees as additional insureds. Prior to commencing the Work, Subcontractor shall cause a Certificate of Insurance to be executed by one or more companies acceptable to Contractor and shall file a copy thereof with Contractor. Should Contractor request a copy of the actual policy from Subcontractor, the actual policy or copy thereof will be supplied to Contractor. Contractor may withhold payment to Subcontractor pending receipt of such Certificate in satisfactory form.

5.5 Should Subcontractor fail or neglect to provide the required insurance, Contractor shall have the right, but not the duty, to provide such insurance and deduct the cost thereof from any money due to Subcontractor any and all premiums paid by Contractor for and on account of said insurance. The policy or policies shall further provide that the insurance will not be canceled or changed prior to at least 30 days after written notice by certified mail of such cancellation or change has been received by Contractor.

5.6 The insurance carriers shall have no right of subrogation against the Owner, Contractor, Architect, Subcontractor and sub-subcontractors and their respective officers, directors, consultants, agents and employees.

## ARTICLE 6 CHANGES

6.1 The Work to be performed under this Subcontract may be modified in any respect by changes, additions or deletions directed by Contractor, and the Subcontract Amount and time for completion may be adjusted accordingly, by written Change Order in accordance with this Subcontract.

6.2 The Contractor will provide Subcontractor with notice and a written description of the desired change in the form of drawings or otherwise. The Subcontractor shall submit a firm Change Order Request proposal for any changes in the Subcontract Amount and Subcontract Time resulting from the proposed change to the Contractor within such time period as the Contractor may prescribe. The Subcontractor's price proposal for the change shall not be modified or withdrawn thereafter except as otherwise agreed by Contractor. Subcontractor shall promptly proceed with the Work in the event Contractor directs the Subcontractor to perform the change in the Work by a written directive and not a signed Change Order and without agreeing to Subcontractor's firm proposal, the Subcontractor shall nevertheless proceed to perform the change as directed.

6.3 The Contractor will have authority to order minor changes in the Work not involving an adjustment in the Subcontract Amount or an extension of time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written directive and shall be binding on the Subcontractor. The Subcontractor shall carry out such written directive promptly and in the manner directed by the written directive.

6.4 No alterations, increases or decreases shall be made in the Work as shown or described by the Contract

Documents except as specifically authorized or directed by a change order or written directive signed by the Contractors Project Manager's. Subcontractor shall have no claim for additional, extra or changed Work unless such Work is undertaken in pursuance of written Change Order signed by Contractors Project Manager's. Any Work performed without such Change Order or written directive will be at Subcontractor's sole risk and expense.

6.5 Except as otherwise provided by Paragraph 6.2 in respect of changes in the Work proposed by Contractor, Owner or other third parties, in all circumstances whereby Subcontractor desires to preserve the right to claim or recover an increase in the Subcontract Amount, recovery of costs or damages or extension of time, Subcontractor shall, as a condition precedent, give Contractor written notice thereof (i) within ten (10) days after the first occurrence of the event giving rise to such claim, or (ii) at least ten (10) days before the date when Contractor is required by the terms of the Contract Documents to provide the same or similar notice to Owner or other third party, whichever occurs first. The notice shall particularly set forth the event(s) or fact(s) supporting and giving rise to such claim, the cost thereof and the time extension requested, if any. In no event shall Subcontractor prevail upon any monetary claim or request for extension of time in connection with any individual or cumulative changes, matters, circumstances or conditions addressed by any Change Order executed between the parties. It is further expressly agreed that under no circumstances shall any failure or delay in giving such notice be excused, and no reservation of rights to make or submit a claim at a later date shall be effective to preserve the claim if not timely and properly made in accordance with this Paragraph. The provisions of this Paragraph shall not be deemed to grant to Subcontractor rights and/or remedies otherwise excluded by this Subcontract, including without limitation the right to recover damages for delays and hindrances.

6.6 In determining the sums payable to Subcontractor for changes in Work, costs for labor, machinery, fuel and materials shall be at prevailing rates in the Project area. Unless otherwise provided in the Contract Documents, labor costs shall mean wages paid for labor under applicable collective bargaining agreements, or under a salary and wage scale agreed upon by Contractor and Subcontractor, and shall include such welfare and other benefits, if any, as may be payable with respect thereto in accordance with any applicable salary and wage scale. In no case shall compensation for changes in Work or other claims include an allowance for overhead and profit in excess of a percentage amount acceptable by the Owner.



6.7 Subcontractor shall, in respect of changes ordered by Contractor as provided for herein, including but not limited to disputed Work directives, submit labor and time card records and other records to the Contractor's Project Manager for review on a daily basis. Such records shall accurately describe all Work performed in compliance with the order or directive. Signature of any representative of Contractor upon such records shall be solely for the purpose of confirming review thereof and shall not constitute an agreement by Contractor to make payment to Subcontractor, nor shall it constitute notice as required in 6.5 above.

6.8 If Owner, Contractor or Architect disputes the validity or amount of a Change proposal or claim submitted by Subcontractor or if a dispute exists between Subcontractor and Contractor concerning whether Work entitles Subcontractor to additional compensation but Contractor nevertheless directs Subcontractor to proceed with the disputed work, Subcontractor shall promptly commence, prosecute and complete such Work pending resolution of the dispute.

6.9 Only Contractor's Project Manager shall have the authority on behalf of Contractor under this Subcontract to make economic decisions affecting Subcontractor, to authorize changes in the Work and to issue Change Orders or otherwise modify the terms of this Subcontract. Superintendent has the authority on behalf of the Contractor to direct the action of Subcontractor. Subcontractor acknowledges that Contractor may rely on the authority of any on-site or off-site managerial or supervisory employee or officer of the Subcontractor to bind the Subcontractor. Contractor reserves the right in his sole decision to change the Project Manager or Superintendent.

#### ARTICLE 7 WARRANTY AND CORRECTION OF DEFECTS

7.1 Subcontractor warrants to the Owner, Contractor and Architect that all materials, machinery and equipment furnished and incorporated pursuant to this Subcontract shall be new unless otherwise specified, and that all Work under this Subcontract shall be and remain of good quality, free from faults, liens, security interests and defects and in strict conformance with the Contract Documents. All Work not conforming to these standards shall be considered defective. The Subcontractor agrees to indemnify and hold Owner, Contractor and Architect harmless from any losses, costs or other damages or expenses (including attorneys' fees) resulting from any breach of the foregoing warranty. Nothing herein shall in any way limit the right of Owner, Contractor or Architect to assert claims for damages resulting from patent or latent defects in the Work for the period of limitations prescribed by law. The Subcontractor shall bear all expenses incurred in connection with the inspection, removal, repair, correction, handling and transportation of defective or nonconforming Work or Work whose acceptance has been revoked. In addition, at Contractor's sole option, Subcontractor shall: (i) bear the costs of replacement materials, equipment and labor and all damages incurred by Contractor and (ii) pay Contractor for all expenses incurred in and delay caused by remedying defective or otherwise nonconforming Work. The provisions of this Paragraph shall survive the making and acceptance of final payment and/or termination of this Subcontract.

7.2 The Subcontractor shall, at its sole expense, promptly and properly repair, replace or otherwise correct any Work that is (i) rejected by Owner, Contractor or Architect, or (ii) known, observed or discovered at any time by Subcontractor, Contractor, Owner or Architect to be defective or failing to conform to the Contract Documents. Furthermore, if, within one year after final completion and acceptance of the Project, or such longer period as established in respect of Contractor's obligations under the Contract Documents, the Work or any portion thereof is found to be not in accordance with the requirements of the Contract Documents, Subcontractor shall correct it promptly after receipt of written notice from Contractor to do so. The period within which Subcontractor shall be obligated to correct Work shall be extended with respect to portions of Work, including corrective work, first performed after final completion and acceptance of the Project. Subcontractor's obligations under this Paragraph shall survive completion and acceptance of the Work and Project and termination of this subcontract.

7.3 If Subcontractor fails to correct any defective or nonconforming Work as required or persistently fails to carry out Work in accordance with the Contract Documents, Contractor may, in addition to any other right or remedy afforded by this Subcontract, issue a written order to Subcontractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, Contractor's right to stop the Work shall not give rise to a duty on the part of Contractor to exercise such right for the benefit of Subcontractor or other persons or entities.

7.4 Nothing contained in this Article shall be construed to establish a period of limitation with respect to obligations of Subcontractor under this Subcontract. Paragraph 7.2 relates only to the specific obligation of Subcontractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents including, without limitation, the warranty and other obligations set forth in Paragraph 7.1, may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Subcontractor's obligations other than the correction of the Work nor to the time within which defects or deficiencies in the Work must first be observed or experienced.

7.5 All rights and remedies afforded to Contractor by this Article as against Subcontractor may be assigned to the Owner.

## ARTICLE 8 GENERAL OBLIGATIONS

8.1 Subcontractor shall at his own expense (i) take all necessary precautions to protect the work of other trades from any damage caused by Subcontractor's operations, and (ii) watch over, care for and protect from damage or injury by any cause whatsoever, all of Subcontractor's Work, complete or otherwise, and all of his materials, supplies, tools, machinery and equipment at or near the Project. Subcontractor agrees, without loss or damage to Contractor, to make good any loss or damage to any and all such Work, materials, supplies, tools, machinery and equipment up to the final acceptance of the entire Project by the Owner, but excluding damage covered by or from third party or damage that is covered by Builders Risk Insurance.

8.2 Subcontractor shall take all reasonable safety precautions with respect to his Work, shall comply with such safety measures and accident reporting procedures as may be initiated by Contractor or authorized third parties and with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property in accordance with the requirements of the Contract Documents. Subcontractor shall provide Contractor with a copy of all necessary material safety data sheets (MSDS) related to this project. It shall be the Subcontractor's responsibility to ensure that their employee's have the required MSDS information on the Project Site for their use.

8.3 Subcontractor shall be responsible for unloading and hoisting all of its materials, supplies, tools, machinery and equipment in order to ensure the timely completion of Subcontractor's Work, and shall provide all temporary facilities and services necessary to complete the Work in accordance with the Contract Documents and as required by weather and other work conditions at the Project site. The Contractor shall not be responsible for providing any temporary facilities or services necessary for the Subcontractor to perform the Work, except as may be specifically noted otherwise herein or otherwise separately agreed in writing.

8.4 Subcontractor shall not subcontract, assign or transfer this Subcontract or any part thereof or amounts due or to become due hereunder without the written consent of Contractor.

8.5 Subcontractor shall give all notices and comply with the requirements of all applicable insurance policies and all codes, laws, ordinances, rules, regulations and orders of any public authority, bearing on the performance of the Work under this Subcontract, whether now existing or hereafter promulgated. Subcontractor shall secure and pay for all permits, fees (i.e. tap), and licenses separate from general building permit that are necessary for the execution of the Work, and shall pay all local, state and federal taxes in connection with the Work, and agrees that all costs thereof are included in the Subcontract Amount. There shall be no increase in the Subcontract Amount resulting from any new or additional taxes or contributions. When required by Contractor, Subcontractor will furnish satisfactory evidence showing that all such payments have been made. If Subcontractor performs any Work contrary to such requirements, codes, laws, ordinances, rules and regulations Subcontractor shall assume full responsibility therefor, and shall bear all costs and damages attributable thereto.

8.6 To the fullest extent permitted by law, Subcontractor shall indemnify, hold harmless and defend Contractor, Owner and Architect, and all of their officers, directors, agents and employees and consultants, from and against all claims, damages, fines, penalties, losses and expenses, including attorney's fees, and interest arising out of or resulting from the performance of Subcontractor's Work or the use of any products, materials, machinery or equipment furnished by Subcontractor, and caused in whole or in part by any negligent act or omission or non-performance hereunder by Subcontractor or anyone directly or indirectly employed by

him or anyone for whose acts he may be liable, regardless of whether it is caused in part by any negligent act or omission of a party indemnified hereunder. By way of illustration only, and without limiting the scope of the foregoing, Subcontractor's obligations under this Paragraph shall extend to claims, damages and expenses attributable to (a) bodily injury, sickness, disease, or death, (b) patent or other intellectual property infringement, (c) injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (d) actual or alleged violations of laws or regulations governing safety or environmental hazards or toxic substances. Furthermore, Subcontractor's obligations under this Paragraph 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 benefit acts. The obligations of Subcontractor under this Paragraph shall not apply to Architect, its agents or employees for any negligent act or omission of Subcontractor in whole or in part caused by or arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or failure to give directions or instructions by Architect, its agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.

8.7 To the fullest extent permitted by law, Subcontractor will save and keep the Project structures and improvements, the real estate within which the Project is situated, the interests of the Owner and all other persons in such Project and real estate and the contract proceeds or other monies now due or hereafter to become due and payable by the Owner to Contractor free from all mechanic's and other liens and from any claim against contract proceeds or to establish the personal liability of the Owner or other third party by reason of the Work or any labor, materials or other things used therein and hereby, for itself and all of its sub-subcontractors, material suppliers and all other persons for whom Subcontractor is responsible, and unconditionally waives any and all rights to any such liens or claims. If Subcontractor fails to remove any lien or claim against the Owner or contract proceeds by any of its sub-subcontractors, material suppliers or others for whom it is responsible, by bonding or otherwise as directed by Contractor, Contractor may retain sufficient funds out of any money due or thereafter to become due by Contractor to Subcontractor to pay the same and all costs incurred by reason thereof and may pay or bond said lien and costs out of any funds at any time in the hands of Contractor and otherwise owing to Subcontractor.

8.8 Subcontractor will clean up and haul off the premises, or to a place on the premises specifically designated by Contractor, all debris occasioned by the Work done hereunder and will leave the Project and premises clean and free of equipment, machinery, materials, temporary facilities and debris. Any trash, debris, or liquid that poses a possible threat of fire or safety shall be removed from the premises immediately. If, after 24 hours notice by Contractor to Subcontractor, Subcontractor has not diligently proceeded with clean-up as outlined in this Paragraph, then Contractor may proceed with such clean-up work at Subcontractor's cost and expense.

8.9 Subcontractor shall submit to Contractor, within fourteen (14) days of the Effective Date, or as otherwise scheduled or prescribed by Contractor, complete shop drawings, data, catalog cuts, samples and other appropriate submittals as required by the Contract Documents. Approval thereof by Contractor and/or Architect shall not relieve Subcontractor of its obligation to perform the Work in strict accordance with the Contract Documents, nor of its responsibility for the proper matching and fitting of the Work with contiguous work. Failure of Subcontractor to make submittals of shop drawings, product data and similar items in a timely fashion and as required to assure timely completion of the Work shall be cause for termination of this Subcontract as provided by Article 11.

8.10 Notwithstanding the dimensions given on the Plans, Specifications and other Contract Documents, it shall be the obligation and responsibility of Subcontractor to perform such inspections, measurements and tests as will insure the proper matching and fitting of all items and components of the Work covered by the Subcontract with other elements of the Work and with contiguous work of others. Subcontractor shall verify measurements, lines and grades of existing conditions and structures at the site, and when indicated dimensions are not in agreement with field measurements, shall notify the Contractor immediately, in writing, requesting clarification. Unless General Contractor agrees to provide layout, Subcontractor is responsible for his own layout and for the protection and preservation of all installed engineering data and layout points and shall take all necessary precautions to insure that said data or points are not damaged, destroyed, altered or changed. Re-engineering, if required, shall be performed at Subcontractor's expense. Subcontractor shall be responsible for all cutting and patching required in the prosecution of the Work.

8.11 Subcontractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the Work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads or other forms of access, and

uncertainties of weather, river stages, tides or similar physical conditions of the site, the conformation and conditions of the ground with the character and content of all other contracts related to the Project, and the character of machinery, equipment and facilities needed preliminary to and during prosecution of the Work. Subcontractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials, obstacles and other conditions which may be encountered. Contractor assumes no responsibility for any conclusions or interpretations made by Subcontractor on the basis of the information made available by the Owner, Contractor or Architect.

8.12 Except as may otherwise be specifically provided by this Subcontract to the contrary, Subcontractor shall take directions and orders regarding the performance of this Subcontract only from Contractor and shall be solely responsible to Contractor for all construction means, methods, techniques, sequences and procedures utilized in performance of the Work. Contractor shall have the right to withhold payment for Work resulting from directions or orders from third parties that are not communicated to Subcontractor directly by Contractor's authorized personnel.

8.13 Subcontractor shall pay all royalties and defend any suit or proceeding brought against Contractor, Owner or Architect (and hold them harmless) so far as based on a claim that any machinery, equipment or any part thereof, or software furnished under this contract constitutes an infringement in its normal intended use of any patent right.

8.14 The Subcontractor shall limit use of the site to areas defined by Contractor and to the construction limits for its Work and storage to allow for work of other contractors and third parties and shall assume full responsibility for the protection and safekeeping of materials, machinery and products provided under the Subcontract and stored on the site or elsewhere during fabrication, storage and shipping. Subcontractor shall, at no cost to Contractor, move any stored products which interfere with operations of the Contractor or other contractors or subcontractors as directed by Contractor and obtain and pay for the use of additional storage or work areas needed for the Subcontractor's operations.

8.15 If the Contractor determines that any Work requires special inspection, testing, or approval he may perform or order Subcontractor to perform such special inspection, testing or approval. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Subcontract documents, the Subcontractor shall bear all costs thereof by deductive Change Order or direct reimbursement to Contractor as appropriate.

## ARTICLE 9 DISPUTES

9.1 Any decision or determination by the Owner or Architect under the Contract Documents that in any manner and by whatever means becomes binding upon Contractor shall also become equally binding upon Subcontractor insofar as it relates to or affects Subcontractor's Work or other obligations assumed or to be fulfilled by Subcontractor, including without limitation any amounts and payments to which Subcontractor may be entitled or for which Subcontractor may be liable. Any award, judgment or agreement in settlement of a dispute concerning such matters and resulting from arbitration, litigation or negotiations in which the Owner and Contractor are parties or participants shall be as binding upon Subcontractor and its Surety as though Subcontractor and its Surety were named and joined in such proceeding, provided that Subcontractor has been given prior notice that a decision or determination will be made relating to or offsetting Subcontractor's work.

9.2 If demanded by Contractor, claims, disputes and other matters in controversy arising out of or related to this Subcontract, or the performance or breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, but as modified by this Article. In that event, Subcontractor consents to the consolidation and joinder of arbitration proceedings with the arbitration of other claims and controversies arising out of or related to the project. The arbitrators may decide only the issues presented to them and may not vary or disregard any terms of this Subcontract or the Contract Documents. Any arbitration award shall be binding upon the parties and judgment may be entered upon the arbitration award in accordance with applicable law in any court having jurisdiction thereof. An arbitration award or court judgement shall be as binding upon Subcontractor's sureties as if such sureties were named and joined in the proceeding and, at Contractor's option, such sureties may be joined as parties therein. If Contractor does not demand arbitration, claims, disputes and other matters in controversy

arising out of or related to this subcontract, or the performance or breach thereof, shall be resolved through litigation in a court of competent jurisdiction.

9.3 No dispute shall interfere with the progress of the Work, and Subcontractor shall proceed with all Work, including disputed work, despite the existence of, and without awaiting the resolution of, any such dispute.

9.4 In any instance or proceeding whereby any claim, dispute or other matter in controversy between Contractor and Subcontractor involves, arises from or gives rise to a similar claim, dispute or other matter in controversy as between the Contractor and Owner or another third party, if requested by Contractor, Subcontractor shall furnish and present evidence, documentation and other information to support its claim, defense or other position in respect thereof and shall pay or reimburse Contractor for all costs, fees and expenses, including attorneys' fees associated with the negotiation, settlement, arbitration, litigation or other means undertaken to resolve such matter. It is expressly understood that as to any and all Work performed or agreed to be performed by the Subcontractor and as to any and all actual or alleged damages incurred by Subcontractor in connection with the Project, Contractor shall under no circumstances be liable to Subcontractor to any greater extent than Owner or other third party is found liable to Contractor.

9.5 In any instance whereby Contractor claims the right under the terms of this Subcontract, to be indemnified by or recover any monies from Subcontractor, Contractor shall be entitled to, in addition, recover from Subcontractor (i) interest on any sums due from Subcontractor at the rate of eighteen percent (18%) per annum or the highest rate permitted by law whichever is greater to accrue from the date due until paid, notwithstanding any dispute or uncertainty concerning the means or standards by which the amount of monetary recovery is to be ascertained, (ii) reasonable attorney's fees incurred by Contractor for all investigation, negotiation, litigation, arbitration and other such services commonly performed by attorneys, and (iii) all court costs, fees paid to experts, arbitration fees and like expenses.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 Subcontractor shall not employ workers, materials, machinery or equipment which may cause strikes, work stoppages, sympathy strikes or any other interruption of or interference with work or any disturbances by workers employed by Subcontractor, Contractor, the Owner or other contractors or subcontractors on or in connection with the Work or the Project or at the location thereof. Subcontractor agrees that all disputes as to jurisdiction of trades shall be adjusted in accordance with any plan for the settlement of jurisdictional disputes which may be in effect either nationally or in the locality in which the Work is being done and Subcontractor shall be bound and abide by all such adjustments and settlements of jurisdictional disputes, provided that the provisions of this Paragraph shall not be in violation of or in conflict with any provisions of law applicable to the settlement of such disputes. Subcontractor agrees that Subcontractor and Subcontractor's employees, agents, Sub-subcontractors and suppliers shall work in harmony with all other subcontractors and their employees, agents, sub-subcontractors and suppliers in the interest of timely and orderly completion of the Project. In the event that, in the sole opinion of Contractor, Subcontractor has refused or failed to comply with any provisions of this Paragraph, then Contractor shall be at liberty to terminate the employment of Subcontractor for default as provided in Article 11.

10.2 No action or failure to act by the Owner, Contractor or Architect shall constitute a waiver of any right or duty afforded any of them under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

10.3 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation or Subcontractor's Authorized Representative for whom it was intended, or if delivered at or sent by registered or certified mail, or if transmitted and received by facsimile telephone transmission (FAX), to the current business address or fax telephone number supplied by Subcontractor.

10.4 Should either party to the Subcontract suffer injury or damage to person or property (other than to the Work) because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within ten (10) days after the injury or damage was made known to the party making claim. This Paragraph shall not apply to injury or damage to

property caused by or resulting from breach of warranty or duty to correct defective work as provided in Article 7.

10.5 Subcontractor acknowledges the right of the Contractor to assign all or any portion of this Subcontract to the Owner or other third party as may be provided by the Contract Documents. Contractor shall furnish written notice of such assignment to Subcontractor and upon Subcontractor's receipt thereof, the assignee shall succeed to the rights and obligations of Contractor under this Subcontract and under any surety bond furnished by Subcontractor, without recourse by Subcontractor against Contractor, except as such notice of assignment may otherwise provide.

10.6 If required by Contractor, any litigation permitted under the terms of this Subcontract shall only be initiated in the state and county where the Contractor's office that is primarily responsible for the Project is located.

10.7 Subcontractor agrees not to use, remove existing, employ or incorporate into the work any hazardous or toxic materials that can or may create any damage to the health or safety of any workers or persons using or occupying the project which the Subcontractor is performing its work.

10.8 Subcontractor's initial on site supervision will not be replaced for the duration of this project unless directed otherwise by the Contractor.

10.9 All workers shall dress in accordance with OSHA regulations and professional standards, i.e. hard hats, long pants, shirts and safety shoes will be required by everyone on this project.

#### ARTICLE 11 TERMINATION

11.1 Contractor shall have the right at any time, upon 24 hours prior written notice to Subcontractor, to terminate this Subcontract in whole or in part and require Subcontractor to cease work thereunder, such termination shall be rightful as against Subcontractor whether undertaken because of Subcontractor's default or for the convenience of the Owner or Contractor. If termination is for default, the respective rights and obligations of the parties shall be as provided in Paragraph 11.2; if termination is for the convenience of Contractor or Owner, or if the Subcontract is terminated upon Contractor's belief that Subcontractor is in default but it is subsequently determined that Subcontractor was not then in default, the rights and obligations of the parties shall be as provided in Paragraph 11.3 hereof.

11.2 If Subcontractor at any time (i) refuses or neglects to supply adequate and competent supervision or a sufficiency of properly skilled workmen or of materials of the proper quality or quantity, or (ii) fails in any respect to prosecute the work with promptness and diligence or otherwise in accordance with the Contract Documents, or (iii) fails in the performance of any agreement or obligation on its part herein contained or provided by the Contract Documents, or (iv) otherwise delays the work of Contractor, other subcontractors or other third parties, or (v) is otherwise in default as defined by the provisions of the Contract Documents as applicable to the right of the Owner or other third party to terminate its contract with Contractor, or if any of the above stated events or conditions of default shall exist under any uncompleted separate or additional subcontract between Subcontractor and Contractor, whether for this Project or any other project, then Contractor may terminate the employment of Subcontractor on the Project upon the grounds of Subcontractor's default, whereupon Contractor shall have the right in addition to such other rights and remedies as may be afforded to Contractor under this the Contract Documents, or by law, to enter upon the premises and take possession of Subcontractor's materials of any kind whatsoever, and to employ or contract with one or more persons or use its own forces to finish the Work and/or to correct or take other action to bring the Work into conformity with the requirements of the Contract Documents. In such case Subcontractor shall not be entitled to receive any payment under this Subcontract which might otherwise be due it until the Work shall be finished and payment in full therefore shall be made by Owner to Contractor, at which time, if the unpaid balance of the amount to be paid under this Subcontract shall exceed the expenses incurred by Contractor in completing and correcting Subcontractor's Work, plus any costs and damages sustained by Contractor by reason of such failure or lack of performance by Subcontractor, including reasonable attorney's fees, costs of administration, and a reasonable allowance for overhead and profit, such excess shall be paid by Contractor to Subcontractor, but if such expense plus costs and damages shall exceed such unpaid balance, Subcontractor and its sureties shall be liable to Contractor for such deficiency. A determination of default made by

Contractor in good faith under the belief that a default exists under the terms hereof, shall be conclusive on the fact of such default and on Contractor's right to proceed as provided in this Paragraph.

11.3 If this Subcontract is terminated for the convenience of Contractor, or if terminated upon Contractor's belief that Subcontractor is in default but Subcontractor is not then in default, then Contractor shall pay to Subcontractor an amount limited to the unpaid Subcontract value of authorized and approved Work performed by Subcontractor prior to notice of termination, adjusted for amounts and damages, if any, for which Subcontractor is liable or which the Contractor is entitled to retain and withhold pursuant to the terms of this Subcontract. Recovery by Subcontractor of lost anticipated profit, overhead, or other direct, indirect or consequential damages relating to portions of Work not performed under the uncompleted portions of this Subcontract are hereby specifically excluded. The payment provided by this Paragraph shall constitute Subcontractor's exclusive remedy in the event of such termination. A termination caused by disapproval of Subcontractor by Owner or other third party shall not entitle Subcontractor to recover termination expenses under this Paragraph.

ARTICLE 12  
ADDITIONAL PROVISION