

**1. SUBCONTRACTOR WORK.** Subcontractor agrees to furnish all labor, supervision, material, equipment, tools, scaffolds, hoisting equipment, supplies, transportation, storage, permits, fees, licenses, assessments, inspections, testing, insurance, workers compensation coverage and any taxes thereon and shall give timely notices to authorities necessary to perform and complete the work set out in Exhibit A attached to this Agreement (the "Work"), which Work is a portion of the work required of the Contractor pursuant to an agreement between the Owner and Contractor ("Prime Agreement"). Subcontractor shall perform its Work in a good and workmanlike manner in accordance with the contract documents. The contract documents consist of this Agreement, and Exhibits A to E attached hereto, the Prime Agreement between Contractor and Owner (including all general, special and supplemental conditions), the plans, specifications, addenda and other documents identified in Exhibit B attached to this Agreement and all subsequently and duly issued modifications thereto. The contract documents are available for examination by subcontractor during regular business hours at the office of the Contractor. Subcontractor represents that it has carefully examined and understands the contract documents relating to the Work, and has adequately investigated the nature and conditions of the project site. Subcontractor agrees to be bound to Contractor by the terms and conditions of the contract documents and assumes toward Contractor all the duties, obligations and responsibilities related to the Work to be performed by Subcontractor that Contractor has by the contract documents assumed toward Owner and others, including but not limited to the obligation to report to Contractor any design errors or omissions.

Subcontractor is in all respects an independent contractor with exclusive control over all details of its Work, its work methods, its compliance with applicable safety regulations, its safety policies and conditions that it imposes on its employees at the site.

**2. SUBCONTRACT PAYMENT.** Contractor shall pay Subcontractor the sum set forth above as the Subcontract Price, subject to addition and deletion by change order, for the satisfactory performance and completion of the Work and compliance with Subcontractor's duties and obligations under this subcontract.

**A. Schedule of Values.** Within ten (10) business days of execution of this subcontract, Subcontractor shall submit to Contractor for approval a detailed schedule of values showing a cost breakdown of the Subcontractor Price by the various line items, or parts, of the Work (with overhead or profit allocated to each item or part of the Work). Contractor shall use the schedule of values to check the accuracy of subcontractor's applications for payment.

**B. Progress Payments.** Subcontractor shall submit to Contractor a progress payment application on Contractor's form by the 25th day of the month for the Work performed to that date. Such application for payment shall be based on the schedule of values submitted by Subcontractor, which schedule, unless objected to by Contractor shall be the basis for reviewing Subcontractor's pay application. Upon verification that the Work was satisfactorily completed, proper proof of insurance, including workers compensation, submission of acceptable bonds (if required by Contractor), lien release on the attached form and submission of any other documents (such as lien waivers, affidavits, sub-tier lien waivers, etc.) required by the Owner, its lender or others for approval of payment, Contractor will on or before the 25th day of the following month make a progress payment to Subcontractor, less retainage of ( %), except that to the extent allowed by applicable law Contractor shall not be obligated to pay Subcontractor until five (5) days after Contractor has received payment from the Owner. Contractor may withhold payment for any Work that is not satisfactorily completed or which has not been approved by Owner, Architect or other persons authorized to approve payments to Contractor or if Contractor reasonably believes such funds are needed to protect Contractor from loss caused by any default by Subcontractor. If the Subcontractor's Payment Application is for more than the value of work completed for the payment period, the Contractor can reduce Subcontractor's Progress Payment Application and forward the reduced payment. The Subcontractor consents to the reduction if written notice is not given to Contractor within five (5) days after receiving payment. Unless otherwise agreed, in writing, Subcontractor is not entitled to payment for stored materials.

**C. Final Payment.** Final payment, consisting of the unpaid balance of the price, shall be made within 30 days of the last of the following to occur: (a) completion of the Work, including any punchlist work, by Subcontractor; (b) acceptance of Subcontractor's Work by the Architect and Owner; (c) final payment by Owner to Contractor; (d) furnishing satisfactory evidence that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials or other items furnished in connection with the Work; (e) delivery of all guarantees, warranties, o & m manuals, as-builts and other items required to be submitted by Subcontractor; (f) delivery of a general release in favor of Contractor and Owner conditioned on payment; and (g) Consent of Surety if applicable .

**D. Payment Not Acceptance of Work.** No payment shall be construed as acceptance of any part of Subcontractor's Work that is defective.

**E. Subcontractor Payments to its Subcontractors/Suppliers.** Payments to Subcontractor shall be held in trust by Subcontractor to be applied first to the payment of its laborers, suppliers, subcontractors and others responsible for the Work and all taxes and insurance applicable thereto; and Subcontractor agrees to so hold and apply the payments from Contractor. If not sooner paid, Subcontractor shall within seven (7) days of receipt of payment pay all of its suppliers or subcontractors for any material or labor supplied to the project that was included in the pay request. If Contractor believes that Subcontractor's ability to pay its suppliers or subcontractors is impaired, Contractor may (a) withhold payment under this Agreement until Contractor receives satisfactory evidence that adequate provisions have been made for the payment of vendors; or (b) issue joint checks payable to Subcontractor and its vendor(s). Further, in the event any of Subcontractor's vendors asserts a claim against Contractor or against the project, Contractor may pay the claim and offset such payment against amounts due Subcontractor under this or any other Agreement between Contractor and Subcontractor. Contractor has the right to contact Subcontractor's subcontractors and suppliers to determine if they are being paid in accordance with this Agreement and the terms of their agreements with Subcontractor. Nothing in this Agreement shall create any obligation from Contractor to any of Subcontractor's subcontractors or suppliers.

**F. Payment from Owner.** Contractor and Subcontractor agree that, to the extent allowed by applicable law, Owner's payment to Contractor is a condition precedent to any obligation of Contractor to pay Subcontractor.

**G. Sales Tax.** If Owner is a non-profit entity, Subcontractor may be required to submit with its pay applications detailed schedules

of any sales tax paid on materials purchased for the project, such certificates shall include all backup documentation to establish the tax paid.

**H. Request for Payment Review.** If Subcontractor believes that Contractor has not properly addressed a problem related to timely payment, the Subcontractor shall submit a "Request for Payment Review" in writing to: Chief Financial Officer, John S. Clark Company, LLC, P.O. Box 1468, Mount Airy, NC 27030.

**3. SCHEDULE/TIME OF THE ESSENCE.** Subcontractor agrees to begin the Work when notified by Contractor and shall complete the Work in accordance with the Project Schedule attached as Exhibit C to this Agreement, which schedule may be revised by Contractor as the Work progresses. The Contractor shall have the right to decide the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the timely and orderly conduct of Subcontractor's Work. Subcontractor shall attend a pre-construction meeting with Contractor's project manager and/or project superintendent to review the schedule of work and existing site conditions before beginning work.

Subcontractor acknowledges that time is of the essence. Subcontractor shall provide sufficient manpower to maintain the Project Schedule and shall ensure that its Work and the work of its subcontractors proceeds so that the entire Project may be completed in accordance with the Contract Documents and the Project Schedule. Within 14 days of Subcontract award, Subcontractor shall submit a schedule of major material delivery dates, which shall be updated at scheduled progress meetings and a list of all samples, shop drawings, and coordination drawings, if any, with target dates to allow tracking for schedule compliance.

**4. BONDS.** If a Performance or Payment Bond is not required when this Subcontract is executed, Contractor may at any time before final payment require such bond(s), which Subcontractor shall provide. Subcontractor shall be reimbursed without retainage for cost of the bond(s) simultaneously with the next progress payment. The reimbursement amount for the bond(s) shall not exceed the manual rate for such Subcontractor work.

Any bond(s) provided by Subcontractor shall secure Subcontractor's obligations under this Agreement, shall be in the full amount of this Agreement on a form provided by Contractor, through a surety acceptable to Contractor rated "A" or better by A.M. Best, and shall name the Owner and any other parties required by Contractor as dual or additional obligees.

In the event Subcontractor fails to promptly provide any requested bond(s), it shall be deemed a default by Subcontractor and Contractor may terminate this Agreement pursuant to paragraph 10.

**5. INSURANCE/WAIVER OF SUBROGATION.** Before commencing the Work, Subcontractor shall obtain and maintain at its own expense insurance coverage as set forth in Exhibit D attached to this Agreement with insurance companies acceptable to the Contractor. Subcontractor shall purchase insurance to cover: (a) claims arising out of or related to its Work, whether the Work is performed by Subcontractor or any of its consultants or subcontractors or anyone directly or indirectly employed by any of them, and (b) its indemnity obligations set forth below. Subcontractor shall name Contractor, Owner and Architect, and any other parties required by the Prime Agreement, as additional insureds on its general liability policy, automobile and umbrella/excess policies (if required). All insurance policies shall contain a provision that the coverages afforded thereunder shall not be canceled or not renewed, nor restrictive modifications added, until at least thirty (30) days prior written notice has been given to Contractor unless otherwise specifically required in the Prime Agreement. Certificates of Insurance, or certified copies of policies acceptable to Contractor shall be provided to Contractor before commencement of Subcontractor's Work. If Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, Contractor may purchase such coverage and charge the expense thereof to the Subcontractor, or terminate this Agreement pursuant to paragraph 10.

Upon written request, Contractor shall provide Subcontractor with either (1) a copy of the Builder's Risk policy of insurance, (2) a Certificate of Insurance identifying coverage, or (3) any other property insurance in force for the Project procured by Contractor. Subcontractor shall satisfy itself as to the existence and extent of such insurance prior to commencement of the Subcontractor's Work. Subcontractor shall be responsible for its pro-rata portion of any Builder's Risk or other property insurance deductible. If not covered under the Builder's Risk policy of insurance or any property or equipment insurance required by the Prime Agreement, Subcontractor shall procure and maintain at its own expense property and equipment insurance for portions of Subcontractor's Work stored off the site or in transit and for Subcontractor's tools and equipment located on the site.

The Contractor and Subcontractor waive all rights against each other and the Owner, the Architect, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk or any other property or equipment insurance except such rights as they may have to the proceeds of such insurance.

**6. CHANGES IN THE WORK.** Contractor may make changes to the Work, including additions or deletions. No change orders will be allowed unless there is a definite change in the scope of work for which Contractor receives a written Change Order from the Owner or unless there are specific items of work which Contractor wishes to add to the scope of this Agreement. Subcontractor shall submit a proposal to Contractor for any changes requested by Contractor, such proposal to reflect the direct savings and direct costs related to the changes in the Work, with the profit and overhead to be stated as a percentage of the costs, and any impact on the Project Schedule. Subcontractor shall submit back-up for the costs set forth in the proposal.

If Contractor and Subcontractor agree on the proposal, Subcontractor's price and time to perform the Work shall be adjusted accordingly by written Change Order. If the parties are unable to agree, or if there is insufficient time to determine a price for the changes in the Work, contractor may issue a Construction Change Directive directing Subcontractor to implement a change in the work and adjustments to the price and/or time shall be resolved in accordance with the provisions below, except that if the change in the Work was required by the Owner or Architect, Subcontractor shall only be entitled to an adjustment in price or time to the extent that

Contractor receives an adjustment in price or time from the Owner. **UNDER NO CIRCUMSTANCES IS SUBCONTRACTOR AUTHORIZED TO MAKE ANY CHANGES IN THE WORK, NOR IS CONTRACTOR LIABLE TO SUBCONTRACTOR FOR PAYMENTS FOR ANY CHANGES OR EXTRA WORK, UNLESS AGREED TO IN WRITING BY AN AUTHORIZED OFFICER OF CONTRACTOR BEFORE THE WORK IS PERFORMED OR THE CHANGES ARE MADE. NEITHER CONTRACTOR'S FIELD SUPERINTENDENT NOR PROJECT MANAGER ARE AUTHORIZED TO MAKE CHANGES TO THIS AGREEMENT OR AGREE TO CHANGE ORDERS. NO EMPLOYEE OR AGENT OF THE CONTRACTOR IS AUTHORIZED TO ORALLY DIRECT ANY EXTRA WORK.**

If Contractor and Subcontractor are unable to agree on an adjustment in the price, the price shall be adjusted on the basis of actual reasonable costs and/or savings in the performance of the work attributable to the change, and a reasonable allowance for overhead and profit. Such OH&P shall not exceed 10%, unless otherwise provided for in the Prime Contract. For the purpose of this paragraph, costs shall be limited to:

- A. cost of direct labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;
- B. cost of materials, supplies and equipment, including costs of transportation, whether incorporated or consumed;
- C. cost of sub-tier subcontractors;
- D. rental costs of machinery and equipment exclusive of hand tools, whether rented from Subcontractor or others; and
- E. costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work.

For purposes of this paragraph, cost shall not include the following:

- A. cost of salaries and other compensation of the Subcontractor's personnel stationed at the Subcontractor's principal office or offices other than on-site;
- B. costs of Subcontractor's principal office;
- C. overhead and general expenses;
- D. costs of Subcontractor's capital expenses, including interest on the Subcontractor's capital employed for the Work;
- E. costs of machine and equipment rental except as specifically provided above;
- F. costs due to the negligence or failure of the Subcontractor's to fulfill a specific responsibility of the Subcontractor and sub-tier subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- G. costs of Subcontractor's on-site supervision if Subcontractor is doing other subcontract work simultaneously

Proper documentation of the costs listed in subparagraphs A through E will be required, including timesheets, and invoices for materials, supplies and rental, equipment, including costs of transportation, which timesheets and invoices shall be provided daily to Contractor's site superintendent for verification and sign off. Timesheets and invoices not signed by Contractor's site superintendent will not be considered for payment.

**7. UNIT PRICES/ALLOWANCES/TIME AND MATERIALS WORK.** If unit prices or allowances apply to any of the Work to be performed under this Agreement, or if Subcontractor is to be paid on a time and materials basis for any of its Work, Subcontractor shall give written notice to Contractor before commencing the work subject to unit prices or allowances or that will be paid on a time and materials basis and shall provide Contractor daily reports, time sheets, invoices or other information required by the Prime Agreement detailing the work performed and materials supplied subject to unit prices or allowances or time and materials payment for verification and sign off by Contractor's site superintendent. Contractor will not be obligated to pay for any unit price, allowance or time and material work if Subcontractor fails to provide the notice or information required by this paragraph. Timesheets and invoices not signed by Contractor's site superintendent will not be considered for payment.

If unit prices are stated in the contract documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner, Contractor or Subcontractor, the applicable unit prices may be equitably adjusted. Any change in unit prices to be contingent on Contractor being able to secure such change under the Prime Agreement.

**8. INDEMNITY.** To the fullest extent allowed by the law, Subcontractor shall defend, indemnify and hold Contractor, Owner, Architect and any other persons Contractor is required to indemnify in the Prime Agreement harmless from all claims, damages, costs, expenses, attorneys fees, actions, causes of action, fines, charges or penalties which result from or arise out of (a) Subcontractor's, or any of its employees', agents', representatives' or subcontractors' failure to perform the Work in accordance with the contract documents or in a workmanlike manner or in accordance with any applicable standard of care or in a timely fashion or for failure to comply with any provision of this Agreement or the contract documents, (b) any damage to person or property caused by any act or omission of Subcontractor, its employees, agents, representatives or subcontractors, (c) any failure of Subcontractor, or its employees, agents, representatives or subcontractors to comply with any OSHA or other safety requirements or any general failure to provide its employees

with a safe work place or any unsafe work conditions created or caused by Subcontractor, its employees, agents, representatives or subcontractors, (d) Subcontractor's or its employees', agents', representatives' or subcontractors' use, handling or disposal of hazardous or non-hazardous materials; or (e) any failure by Subcontractor to pay any of its employees, subcontractors or suppliers. For any and all claims against the Owner, the Architect, the Contractor (including its affiliates, parents and subsidiaries) and other contractors or subcontractors, or any of their agents or employees, by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation under this subcontract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

Subcontractor waives any statute of limitations or statute of repose as to any claim for indemnity asserted against Subcontractor by Contractor, Owner or Architect, if the claim for indemnity is made against Subcontractor within ninety (90) days of service of Summons, Complaint, Third-party Complaint or other legal process on the person making the indemnity claim against Subcontractor.

**9. LIENS.** Subcontractor shall not permit liens to be asserted against the Project premises or against funds in the hands of the Owner or Contractor by any sub-tier subcontractor or supplier who furnishes labor, equipment or materials to the Project. Subcontractor shall, upon three (3) days' written notice from Contractor, supply a corporate surety bond or take such other action allowed by law to cancel or discharge any lien that is filed or asserted. If Subcontractor fails to promptly cancel or discharge the lien, Contractor may do so and the costs thereof, including reasonable attorney's fees and bond premiums, shall be charged to Subcontractor. Nothing in this section shall in any way limit Subcontractor from filing its own lien as allowed by law where the project is located.

In the event that any applicable law, statute, regulation or bond requires Subcontractor to take any action prior to receipt of a payment by Contractor, in order to preserve or protect the Subcontractor's rights, if any, with respect to mechanics liens or bond claims, then the Subcontractor may take that action prior to the expiration of the reasonable time for payment and such action will not be in violation of this Subcontract nor considered premature for purposes of preserving and protecting the Subcontractor's rights.

**10. SUBCONTRACTOR DEFAULT/CONTRACTOR'S REMEDIES.** If Subcontractor fails to prosecute its work in a timely or workmanlike manner, or fails to comply with any obligation or requirement or duty imposed on Subcontractor by the contract documents, Contractor may give Subcontractor written notice to cure its deficient performance. If Subcontractor does not commence reasonable efforts to cure its deficient performance within 48 hours of receipt of the notice, Contractor may take whatever action it deems necessary including, but not limited to, supplementing Subcontractor's forces, taking possession of all materials, tools, equipment and drawings needed to correct the deficiencies or to perform the Work and Contractor will charge the costs, plus reasonable profit and overhead, to Subcontractor. In addition, if Subcontractor fails to commence reasonable efforts to cure its deficient performance within 48 hours of receipt of the notice, Contractor may, upon giving a second written notice, terminate Subcontractor if Subcontractor fails to commence corrective action within 24 hours of receipt of the second notice. Whether Contractor takes corrective action or Subcontractor is terminated, Subcontractor shall be liable for all additional costs and expenses, including attorney's fees, plus reasonable overhead and profit, incurred by Contractor to complete Subcontractor's Work or cure Subcontractor's deficient performance. Contractor's remedies include, but are not limited to, withholding all sums that may otherwise be owed to Subcontractor under this or any other Agreement between Subcontractor and Contractor. If the additional costs and expenses, including attorney's fees, plus reasonable overhead and profit, incurred by Contractor to complete Subcontractor's Work are less than the unpaid balance under this Agreement, the balance remaining after deducting the additional costs and expenses, including attorney's fees, plus reasonable overhead and profit, incurred by Contractor to complete Subcontractor's Work shall be paid to Subcontractor within 30 days of the date final payment would have been due if Subcontractor had completed the Work. If the additional costs and expenses, including attorney's fees, exceed the unpaid balance under this Agreement, Subcontractor shall pay such excess amount to Contractor within 30 days of notification of the amount due. If the amount owed by Subcontractor is not timely paid, Subcontractor agrees to pay interest on the outstanding balance at the rate of 12% per annum and all costs of collecting, or attempting to collect the balance owed, including a reasonable attorney's fee.

**11. TERMINATION BY OWNER.** If Owner terminates the Prime Agreement or any part that includes Work covered by this Agreement, then Contractor shall notify Subcontractor in writing of the termination and this Agreement shall be terminated. Subcontractor shall immediately stop work and take such protective measures required by Contractor. Contractor's liability to Subcontractor shall be limited to the amount Contractor recovers from Owner on Subcontractor's behalf. Contractor agrees to cooperate with Subcontractor, at Subcontractor's expense, to pursue a claim against Owner, or to allow Subcontractor to pursue its claim in Contractor's name or Contractor may assign the claim to Subcontractor.

**12. TERMINATION BY SUBCONTRACTOR.** If, **through no fault of Subcontractor**, Contractor fails to make a progress payment within 30 days of the date such payment is due, Subcontractor may give Contractor written notice of the amount Subcontractor contends is past due and of Subcontractor's intent to terminate this Agreement. If Contractor does not pay the amount actually past due, **through no fault of Subcontractor**, within seven days of receipt of such notice, Subcontractor may terminate this Agreement. This is the only basis upon which Subcontractor may terminate this Agreement. Upon such termination, Subcontractor shall be entitled to recover from Contractor payment for all Work satisfactorily performed but not yet paid for, reasonable direct costs incurred by reason of such termination and reasonable profit and overhead on the work executed. But, if Owner has not paid Contractor for Work performed by Subcontractor through no fault of Contractor and Subcontractor terminates this Agreement pursuant to this provision, then Contractor's liability to Subcontractor shall be limited to the amount Contractor recovers from Owner on Subcontractor's behalf and Contractor agrees to cooperate with Subcontractor, at Subcontractor's expense, to pursue a claim against Owner, or to allow Subcontractor to pursue its claim in Contractor's name or Contractor may assign the claim to Subcontractor.

**13. SUSPENSION FOR CONVENIENCE.** Contractor may, without cause, order Subcontractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as Contractor may determine. In the event of a suspension ordered by Contractor, Subcontractor shall be entitled to an adjustment of the time for performance and the Subcontract price shall be adjusted to compensate Subcontractor for the costs incurred to demobilize and remobilize.

**14. TERMINATION FOR CONVENIENCE.** Contractor may at any time, without cause, terminate this Agreement for Contractor's convenience. Upon receipt of written notice from Contractor of such termination, Subcontractor shall cease operations as directed by Contractor in the notice, take actions necessary, or that Contractor may direct, for the protection and preservation of the Work, and except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In case of termination for Contractor's convenience, Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work executed.

**15. CLAIMS, DELAYS, DAMAGES**

**A. Claims.** Subcontractor shall give Contractor written notice of all claims or potential claims, whether for time extensions, additional compensation, or extra costs within seven (7) days of Subcontractor learning of the fact(s) or event(s) giving rise to the claim or potential claim. The claim shall be waived if notice is not timely given. (If Contractor accepts a claim despite the lack of timely notice, such acceptance shall not waive the requirement that timely written notice be provided for future claims.)

**B. Delay.** If Subcontractor's Work is substantially delayed through no fault of Subcontractor, the time for Subcontractor's Work shall be extended by Change Order only to the extent obtained by the Contractor under the Prime Agreement and only if notice is given in accordance with paragraph 15.A. Contractor shall not be liable to Subcontractor for any damages or additional compensation for delays caused by any person not a party to this Agreement.

**C. Damages.** Subcontractor will be liable for any costs, expenses, attorneys' fees or damages incurred by Contractor as a result of Subcontractor's failure or partial failure of performance hereunder, including but not limited to liquidated damages under the Prime Agreement. Subcontractor will also be liable to Contractor for all costs and damages incurred by Contractor because of Subcontractor's failure to maintain the progress of its Work in accordance with Contractor's Project Schedule. Any damages to the Contractor for delay caused by the Subcontractor shall be deducted by the Contractor from any balance otherwise due under this Agreement. This provision shall not limit Contractor's right to terminate Subcontractor pursuant to paragraph 10.

**16. CLEAN-UP.** Subcontractor will promptly clean (daily and more often if needed) and properly dispose of all trash and debris generated by its Work. If Subcontractor fails to perform necessary clean-up, Contractor may, after 24 hours written notice to Subcontractor, perform the necessary clean-up and deduct the cost of such clean-up from any amount due Subcontractor.

In addition, Subcontractor will be required to participate in a composite cleaning crew, based on manpower of subcontractors working on the site if and as directed by the John S. Clark Company, LLC Superintendent for clean-up of common trash (i.e. lunch wrappers, drink containers, etc.).

**17. SECURITY.** Subcontractor is responsible for security of its equipment, tools, and materials on site until installation and acceptance of the Work.

**18. COMPLIANCE WITH LAWS.** The Subcontractor agrees to be bound by, and at its own cost, comply with all federal, state and local laws, ordinances and regulations (hereinafter collectively referred to as "laws") applicable to Subcontractor's Work including, but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety, licensing, building codes and any other laws applicable to the Work. The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply therewith, including, but not limited to, any fines, penalties or corrective measures.

**19. SAFETY/HAZARDOUS MATERIALS.** Subcontractor shall maintain a safe working environment and comply with all federal, state and local OSHA and other safety laws and regulations. Subcontractor shall cooperate with Contractor's safety personnel and immediately follow any recommendations issued by Contractor's safety personnel and will take immediate action to abate any unsafe condition or violation of safety regulations of which Subcontractor's personnel become aware, regardless of whether such condition or violation is or has been made known to Contractor. Subcontractor acknowledges its responsibility to furnish its employees with a work site free from recognized hazards that can cause death or serious harm. Subcontractor further acknowledges that Contractor may not at all times have supervisory personnel at the site.

Therefore, Subcontractor agrees that it will at all times have on site, in a supervisory position, its own properly trained, knowledgeable and competent person as defined by 29 C.F.R. Part 1926, which person shall be solely responsible for initiating and maintaining Subcontractor's safety program on the site, inspecting that portion of the site on which Subcontractor's employees are working and any materials or equipment used by Subcontractors, and enforcing all applicable safety laws and regulations as they relate to or affect Subcontractor's

If Subcontractor encounters asbestos, polychlorinated biphenyl (PCB) or other hazardous substances at the site, Subcontractor shall immediately notify Contractor and take all steps required by the contract documents, including the Prime Agreement, and by law to protect persons and property from injury or damage, including stopping the Work in the affected areas and promptly advising the Contractor in writing of the conditions encountered at the site. If Subcontractor must stop work in any area of the Project because of hazardous substances located at the site, Subcontractor shall not resume its Subcontract Work in the affected area until (a) the hazardous substances have been removed or made harmless, (b) Contractor and Subcontractor agree in writing to commence the work in all or a portion of the area, (c) Owner orders the work to proceed in the affected area and the parties agree, or (d) the matter is resolved through arbitration as provided for in this Agreement. The Subcontractor shall not be required to perform work in areas containing asbestos, PCBs, or any other hazardous substances, without the Subcontractor's consent and proper protection of personnel as provided by OSHA and appropriate Federal, State and Local authorities.

Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances stored, used or consumed in the performance of the Work shall be submitted to Contractor by Subcontractor. MSD sheets obtained by Contractor from other subcontractors or sources shall be made available to Subcontractor by Contractor.

Subcontractor shall certify, and shall furnish adequate manufacturer's certification, that no new materials used in the construction of this work contain any form of asbestos.

**20. PLANS/SPECIFICATIONS.** As to the Work within the scope of this Agreement, Subcontractor shall have the same responsibility to review the plans and/or specifications and report any errors, omissions or discrepancies that Contractor has under the Prime Agreement and any failure by Subcontractor to report any errors, omissions or discrepancies shall have the same consequences for Subcontractor as there are for Contractor under the Prime Agreement. The Subcontractor further assures Contractor that it has reviewed the plans and specifications and found them to be in compliance with all local, state and/or federal codes.

**21. WORK/MATERIAL SUPPLIED BY OTHERS.** If Subcontractor's Work includes installation of materials or equipment furnished by others, Subcontractor shall examine the items to ensure their compliance with the contract documents and unload, handle, store and install the items with such skill and care as to ensure a satisfactory and proper installation. When Subcontractor's Work is performed on or over work performed or materials provided by other trades, Subcontractor shall be deemed (a) to have accepted the work or materials of others as being in conformance with the contract documents and any other applicable standards and (b) to have agreed that work performed or materials furnished by others will in no way prevent Subcontractor from providing an acceptable finished project with required warranties. If Subcontractor discovers that any work by others does not comply with the requirements of the contract documents or other applicable standards, it shall notify Contractor in writing within one (1) business day of such discovery.

**22. ENGLISH SPEAKING SUPERVISION.** Subcontractor shall at all times it has personnel on site have at least one (1) person in a supervisory capacity that is fluent in English to accept directions and communicate with Contractor and /or other Subcontractors/Suppliers.

**23. COORDINATION.** Subcontractor shall: (a) cooperate with Contractor and all others whose work may interfere with the Subcontractor's Work; (b) specifically note and immediately advise the Contractor of any interference with Subcontractor's Work; (c) participate in the preparation of coordination drawings and work schedules; (d) cooperate in the resolution and coordination of conflicts with other trades; and (e) attend project meetings as requested by Contractor's supervisory personnel.

**24. AUTHORIZED REPRESENTATIVE.** Upon the execution of this Agreement, Subcontractor shall designate in writing, one or more persons who shall be Subcontractor's authorized representative(s) on site and off site. Contractor may issue instructions, orders or directions to such authorized representative(s).

**25. PROVISION FOR INSPECTION.** Subcontractor shall notify Contractor when portions of Subcontractor's Work are ready for inspection and if Subcontractor's Work is performed under a permit issued specifically for Subcontractor's Work, Subcontractor shall coordinate inspections with the permitting authority. Subcontractor shall at all times furnish Contractor and its representatives facilities for inspecting materials at the site or any place where materials under this Agreement may be prepared, processed, manufactured or treated. Subcontractor shall, upon request, furnish to Contractor, full reports of the progress of the Subcontractor's Work irrespective of the location of such work.

**26. PROTECTION OF THE WORK.** Subcontractor shall take all necessary precautions to protect its Work and the work of others from damage caused by Subcontractor's operations and from the operations of other trades/subcontractors. If Subcontractor damages the Work or property of Owner, Contractor or others, Subcontractor shall promptly repair such damage to the satisfaction of the Contractor, or the Contractor may repair the damage at Subcontractor's expense. All areas of the project disturbed by Subcontractor's work shall be restored to the condition the area was in prior to the start of the Work.

Subcontractor is cautioned to protect all concrete floors from stains. After slab-on-grade installation, there shall be no eating, drinking, tobacco chewing, or mechanical lifts permitted inside the building. Any damage to concrete flooring attributable to Subcontractor's employees will be cleaned or replaced at Subcontractor's expense.

Smoking, if allowed on the job site, will be permitted only in designated areas. Under no circumstance will smoking be allowed in any enclosed structure or within any structure after slab-on-grade installation.

**27. ASSIGNMENT.** Subcontractor shall not assign this Agreement nor its proceeds nor subcontract the whole or any part of Subcontractor's Work without Contractor's prior written approval, which shall not be unreasonably withheld.

**28. SUB-TIER SUBCONTRACTORS/SUPPLIERS.** Subcontractor shall, upon request, provide the names, addresses, telephone numbers, e-mail addresses and name of contact persons for all proposed or actual sub-tier subcontractors, suppliers, surveyors, engineers, consultants or other independent contractors that provide any labor, service, equipment or material. Subcontractor shall require all of its sub-tier subcontractors and suppliers to provide the same information upon Contractor's request.

**29. WORKMANSHIP.** Every part of Subcontractor's Work shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike, and substantial manner, shall be a complete installation subject to the approval of Architect, Engineer, Owner and Contractor and shall comply with all local, state and federal guidelines, codes, regulations, ordinances, statutes and other laws, including but not limited to building, health, transportation, and fire codes. All materials used in Subcontractor's Work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the work, and shall be new and in good condition except such materials that are expressly provided in the Contract Documents to be otherwise.

- 30. SUBSTITUTIONS.** No substitutions shall be made in Subcontractor's Work unless allowed by the Contract Documents and then only if Subcontractor first receives all approvals required by the Contract Documents for substitutions. Subcontractor shall indemnify Contractor for any increased costs incurred by the Contractor as a result of such substitutions, whether or not Subcontractor has obtained approval thereof.
- 31. EMPLOYEE CONDUCT.** Profanity, alcohol use, illegal drug use or other offensive actions will not be tolerated at the project. Violators will be directed to leave the site. No radios or audio equipment will be permitted to be used on the project during work hours. Failure to comply will result in direction for the violator's replacement by other personnel.
- 32. WORK HOURS.** Work hours other than the normal 40 hour, 5-day work week shall be approved in advance by Contractor supervisory personnel.
- 33. USE OF CONTRACTOR'S EQUIPMENT.** Subcontractor, its agents, employees, subcontractors or suppliers shall not use Contractor's equipment without the express written permission of Contractor's designated representative. If Subcontractor or any of its agents, employees, suppliers or lower tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items owned, leased, or under the control of Contractor, Subcontractor shall be responsible for ensuring the safe operation of such machinery, equipment, etc. and shall be liable to Contractor for any loss or damage (including personal injury or death) which may arise from such use, except where such loss or damage shall be found to have been due solely to the negligence of the Contractor's employees operating such equipment.
- 34. WARRANTY.** Subcontractor warrants its work against all deficiencies and defects in materials and/or workmanship as required by the Prime Agreement. Subcontractor agrees to satisfy such warranty obligations which appear within the guarantee or warranty period established in the Prime Agreement without cost to Owner or Contractor. Subcontractor agrees that Contractor may assign to Owner Contractor's right to enforce Subcontractor's warranty obligation and Subcontractor agrees that Owner may enforce Subcontractor's warranty obligation directly against Subcontractor. If no guarantee or warranty is required of Contractor in the Prime Agreement, then Subcontractor shall guarantee or warranty its work as described above for the period of one year from the date(s) of substantial completion and acceptance or use by Owner of designated equipment, whichever is later. Subcontractor further agrees, if requested, to execute a separate written guaranty(s) or warranty form(s) for Subcontractor's Work and/or materials supplied. Any warranty items shall be corrected within 15 days after written notice from the Owner or Contractor, or in the event of an emergency, items must be corrected within 24 hours after notification. Contractor shall have the same remedy as in Item paragraph 35 if the work is not completed within the outlined time frame.
- 35. PUNCHLIST.** Upon substantial completion of its work, Subcontractor shall prepare a punchlist for its work and provide it to Contractor. All punchlist items, whether identified by Subcontractor, Contractor, Architect, Owner or other appropriate person, shall be completed by Subcontractor within 10 calendar days of notification of such items. If after written notice from the Contractor, and upon expiration of 10 calendar days after notification, the Subcontractor has not completed the punchlist items, the Contractor may without further notification, complete such punchlist items and the Subcontractor shall pay 110% of the cost incurred by the Contractor. If the Owner or Engineer assesses re-inspection costs for punch list reviews after a second inspection due to Subcontractor's deficiencies, such cost will be charged to Subcontractor.
- 36. ROYALTIES, PATENTS AND COPYRIGHTS.** Except as otherwise provided in the Prime Agreement, Subcontractor shall pay all royalties and license fees which may be due on any materials, processes, systems or other items included in Subcontractor's Work. Subcontractor shall defend all suits or claims for infringement of any copyright or patent rights arising out of the Subcontractor's Work, and shall hold Contractor and Owner harmless from loss on account of such suits or claims, and shall be liable to the Contractor and Owner for all loss, including all cost, expenses, and attorney's fees incurred in relation to such suits or claims.
- 37. CONFIDENTIALITY.** Subcontractor recognizes that many facets of Contractor's and Owner's operations are valuable business secrets. Accordingly, Subcontractor will treat all of Contractor's and Owner's data and information that become known or are made available to Subcontractor in a confidential manner. Regarding any of Owner's data or information, Subcontractor shall be bound to the same requirements as Contractor is in the Prime Agreement. The provisions of this Section shall survive the termination of this Agreement. Further, the provisions of this paragraph shall be expressly incorporated into all agreements with subcontractors entered into
- 38. DISPUTE RESOLUTION.** In the event any dispute arises between Contractor and Subcontractor concerning or relating to this Agreement, the Work or the project, the parties shall first attempt to resolve their dispute through mediation administered by the American Arbitration Association under its Construction Industry Mediation Procedures. If mediation fails to resolve the dispute, the parties shall submit their claims to binding arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

In the event Contractor is involved in a separate lawsuit, arbitration proceeding, or dispute resolution proceeding involving Subcontractor's Work, questions of law or fact concerning the Subcontractor's Work, or if complete relief cannot be afforded Contractor without Subcontractor's presence in that separate litigation, arbitration or dispute resolution proceeding, Subcontractor hereby consents to its consolidation or joinder in that separate proceeding, at Contractor's sole election. In the event that an arbitration or other dispute proceeding is pending between Contractor and Subcontractor at the time Contractor elects to join Subcontractor in such a separate proceeding, the parties agree that the pending arbitration or dispute proceeding between Contractor and Subcontractor shall be delayed, dismissed or stayed, at Contractor's election.

This agreement to arbitrate shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*

Subcontractor shall carry on the Subcontract Work and maintain the Project Schedule pending final resolution of any dispute resolution proceeding, unless this Agreement has been terminated or the Subcontract Work suspended in accordance with the contract documents, or the parties otherwise agree in writing to a partial or total suspension of the Subcontract Work. If Subcontractor is continuing to perform in accordance with the Subcontract, the Contractor shall continue to make payments as required by the Subcontract.

**39. ATTORNEY'S FEES.** Should either party employ an attorney to institute an action to enforce any of the provisions of this Agreement, to protect its interest in any matter arising under this Agreement, or to collect damages for the breach of this Agreement or to recover on a surety bond given by a party under this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees (including compensation for in-house or staff attorneys), costs, charges, and expenses expended or incurred herein.

**40. LAW AND EFFECT.** This Agreement shall be governed by the law of the State where the project is located.

**41. SEVERABILITY AND WAIVER.** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of 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 Agreement, or to exercise any right, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

**42. TITLES.** The titles given in this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

**43. ENTIRE AGREEMENT.** This Agreement is solely for the benefit of the signatories hereto and represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreement, either written or oral.

**44. AMENDMENTS.** This Agreement may be amended only by a writing signed by all parties.

**45. NO WAIVER.** No act or failure to act by Contractor or acquiescence in Subcontractor's failure to comply with any provision of this Agreement shall constitute a waiver of Contractor's right to enforce of any provision of this Agreement in the future, unless specifically agreed to in writing.

**46. NOTICES.** All notices required to be given by Subcontractor shall be delivered in person, or by registered or certified mail, or by an overnight contract carrier, or by electronic mail to the following persons, or such other persons that Contractor substitutes for the persons listed below. Notice shall be deemed given when received by the recipient.

General Counsel: Mr. William A. Blancato

Senior Vice President & Chief Financial Officer: Mr. D. Greg Marshall

SUBCONTRACTOR

CONTRACTOR

BY \_\_\_\_\_ (SEAL)

BY \_\_\_\_\_ (SEAL)

NAME  
(Authorized Officer)

NAME  
(Authorized Officer)

TITLE

TITLE

ATTEST:

BY \_\_\_\_\_ (SEAL)

NAME  
(Authorized Officer)

TITLE \_\_\_\_\_