

ADDENDUM NUMBER: 10
PROJECT: **UNC Charlotte Residence Hall Phase XIV - Early Site Packages**

DATE: **April 14, 2015**
OWNER: **UNC Charlotte**
ARCHITECT: **FWA Group**

NOTICE TO BIDDERS:

This addendum is issued prior to receipt of bids, proposals, and its contents do hereby become a part of the pricing documents for the above referenced project.

All subcontractor bidders are responsible for assuring that their subcontractors and vendors are properly apprised of the contents of this Addendum.

All information contained in this Addendum supersedes and takes precedence over any conflicting information in the original pricing documents.

All bidders must acknowledge receipt of this Addendum in the space provided on the Form of Proposal for their bid package.

GENERAL REVISIONS TO BID INFORMATION

1 Bid Date - Remains the Same

Bid Date: **April 21, 2015**

Bid Time: **2:00 PM**

Location: **UNC Charlotte, Cone Center, Room #111**

REVISIONS TO BID PACKAGE MANUAL

1 Provide Missing Subcontractor Document Exhibit - Subcontract Agreement
(Indicated in Bid Package Manual as to be forthcoming)

REVISIONS TO DESIGN DOCUMENTS

1 N/A

END OF ADDENDUM

**Bid Package Manual
Subcontractor Document Exhibits**

SUBCONTRACT AGREEMENT

ConsensusDocs® 750

STANDARD AGREEMENT BETWEEN CONSTRUCTOR AND SUBCONTRACTOR



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ARTICLE 1 AGREEMENT

Job Number: [____]

Account Code: [____]

This Agreement is made this [____] Day of [____] in the year [____], by and between the
CONSTRUCTOR, Rodgers Builders, Inc.

and the

SUBCONTRACTOR, [____]

Tax identification number (TIN) [____]

Contractor License No., if applicable [____]

for services in connection with the SUBCONTRACT WORK for the following

PROJECT UNC Charlotte Phase XIV Residence Hall

Notice to the Parties shall be given at the above addresses. The Date of Commencement is the date of this Agreement above.

The OWNER is The University of North Carolina at Charlotte, and the DESIGN PROFESSIONAL for the Project is The FWA Group.

ARTICLE 2 SCOPE OF WORK

2.1 PARTIES' RELATIONSHIP The Parties each agree to proceed with the Subcontract Work on the basis of mutual trust, good faith, and fair dealing. The Parties shall each endeavor to promote harmony and cooperation.

2.2 SUBCONTRACT WORK The Constructor contracts with the Subcontractor as an independent contractor to provide all labor, materials, equipment, and services necessary or incidental to complete the work for the Project described in ARTICLE 1 and as may be set forth in further detail in Exhibit A, in accordance with, and reasonably inferable from, that which is indicated in the Subcontract Documents, and consistent with the Progress Schedule, as may change from time to time. The Subcontractor shall perform the Subcontract Work under the general direction of the Constructor and in accordance with the Subcontract Documents.

2.3 CONSTRUCTOR'S WORK The Constructor's Work is the construction and services required of the Constructor to fulfill its obligations pursuant to its agreement with the Owner (the Work). The "Subcontract Work" is a portion of the Constructor's Work.

2.3.1 ETHICS The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest and discloses promptly any to the other Party; and (b) warrants that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, subcontractors or others for whom they may be liable, to secure preferential treatment.

2.4 SUBCONTRACT DOCUMENTS The Subcontract Documents include this Agreement, the prime agreement, special conditions, general conditions, specifications, drawings, addenda issued and



acknowledged prior to execution of this Agreement, amendments, laboratory testing to determine the nature of encountered hazardous materials, other documents listed in this Agreement, and modifications issued in accordance with this Agreement. The Constructor shall provide to the Subcontractor, prior to the execution of this Agreement, copies of the existing Subcontract Documents to which the Subcontractor will be bound. The Subcontractor shall provide copies of applicable portions of the Subcontract Documents to its proposed subcontractors and suppliers. Nothing shall prohibit the Subcontractor from obtaining copies of the Subcontract Documents from the Constructor at any time after the Subcontract Agreement is executed.

2.4.1 DOCUMENTS IN ELECTRONIC FORM If the Owner requires that the Owner, Design Professional, Constructor and Subcontractors exchange documents and data in electronic or digital form, prior to any such exchange, the Owner, Design Professional, and Constructor shall agree in ConsensusDocs 200.2 or a written protocol governing all exchanges, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. The Subcontractor shall provide whatever input is needed to assist the Constructor in developing the protocol and shall be bound by the requirements of the written protocol. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

2.5 CONFLICTS In the event of a conflict between this ConsensusDocs 750 Standard Agreement as modified and the other Subcontract Documents, the ConsensusDocs 750 shall govern.

2.6 DEFINITIONS

2.6.1 "Agreement" means this ConsensusDocs 750 Standard Agreement Between Constructor and Subcontractor, as modified by the Parties, and exhibits and attachments made part of this agreement upon its execution.

2.6.1.1 The following exhibits are as follows:

Exhibit A: The Subcontract Work, [_____] pages.

Exhibit B: The Drawings, Specifications, General and Other Conditions issued by the Design Professional and dated [_____] , addenda dated [_____] , and other information.

Exhibit C: Progress Schedule, [_____] pages.

Exhibit D: Alternates and Unit Prices and Estimated Quantities, [_____] pages.

Exhibit E: Temporary Services, [_____] pages.

Exhibit F: Insurance Provisions, [_____] pages.

Exhibit G: Labor Relations, [_____] pages.

2.6.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.6.3 The term "Day" shall mean calendar day.



2.6.4 "Laws" mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Subcontract Work with which the Constructor and Subcontractor must comply that are enacted as of the Agreement date.

2.6.5 The "Parties" are collectively the Constructor and the Subcontractor.

2.6.6 Wherever the term "Progress Schedule" is used in this Agreement, it shall be read as Project Schedule when that term is used in the Subcontract Documents.

2.6.7 A "Subcontract Change Order" is a written order signed by the Constructor and the Subcontractor after execution of this Agreement, indicating changes in the scope of the Subcontract Work, the Subcontract Amount or Subcontract Time, including substitutions proposed by the Subcontractor and accepted by the Constructor.

2.6.8 "Subcontract Time" means the time period on the Progress Schedule between commencing and completing the Subcontract Work.

2.6.9 "Worksite" means the geographical area of the Project location as identified in ARTICLE 1 where the Work is to be performed.

ARTICLE 3 SUBCONTRACTOR'S RESPONSIBILITIES

3.1 OBLIGATIONS The Constructor and the Subcontractor are hereby mutually bound by the terms of this Agreement. To the extent the terms of the prime agreement apply to the Subcontract Work, then the Constructor hereby assumes toward the Subcontractor all the obligations, rights, duties, and redress that the Owner under the prime agreement assumes toward the Constructor. In an identical way, the Subcontractor hereby assumes toward the Constructor all the same obligations, rights, duties, and redress that the Constructor assumes toward the Owner and Design Professional under the prime contract. In the event of an inconsistency among the documents, the specific terms of this Agreement shall govern.

3.2 RESPONSIBILITIES The Subcontractor shall furnish its diligent efforts to perform the Subcontract Work in an expeditious manner and to cooperate with the Constructor so that the Constructor may fulfill its obligations to the Owner. The Subcontractor shall furnish all of the labor, materials, equipment, and services, including but not limited to competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of the Subcontract Work, all of which shall be provided in full accord with and reasonably inferable from the Subcontract Documents. The Subcontractor shall provide the Constructor a list of its proposed subcontractors and suppliers, and be responsible for taking field dimensions, providing tests, obtaining required permits related to the Subcontract Work and affidavits, ordering of materials, and all other actions as required to meet the Progress Schedule.

3.3 INCONSISTENCIES AND OMISSIONS The Subcontractor shall examine and compare the drawings, specifications, other Subcontract Documents, and information furnished by the Owner relative to the Subcontract Work. Such examination and comparison shall be solely for the purpose of facilitating the Subcontract Work and not for the discovery of errors, inconsistencies, or omissions in the Subcontract Documents nor for ascertaining if the Subcontract Documents are in accordance with Laws. The Subcontractor shall not have liability for errors, omissions, or inconsistencies discovered under this subsection unless the Subcontractor knowingly fails to report a recognized problem to the Constructor. Should the Subcontractor discover any errors, inconsistencies, or omissions in the Subcontract Documents, the Subcontractor shall promptly report such discoveries to the Constructor in writing. Following receipt of written notice, the Constructor shall promptly instruct the Subcontractor as to the measures to be taken, and the Subcontractor shall comply with the Constructor's instructions. If the Subcontractor performs work knowing it to be contrary to Laws without notice to the Constructor and



advance approval by appropriate authorities, including the Constructor, the Subcontractor shall assume responsibility for such work and bear all associated costs, charges, fines, penalties, fees, and expenses necessarily incurred to remedy the violation. The Subcontractor may be entitled to additional costs or time because of clarifications or instructions arising out of the Subcontractor's reports described in this section. Nothing in this section shall relieve the Subcontractor of responsibility for its own errors, inconsistencies, and omissions.

3.4 WORKSITE VISITATION Before commencing the Subcontract Work, the Subcontractor shall conduct a visual inspection of the Worksite to become generally familiar with local conditions and to correlate Worksite observations with the Subcontract Documents. If the Subcontractor discovers any discrepancies between its Worksite observations and the Subcontract Documents, such discrepancies shall be promptly reported to the Constructor.

3.5 INCREASED COSTS OR TIME The Subcontractor may assert a claim if the Constructor's clarifications or instructions in responses to requests for information are believed to require additional time or cost. If the Subcontractor fails to perform the reviews and comparisons required in sections 0 and 3.4, to the extent the Constructor is held liable to the Owner because of the Subcontractor's failure, the Subcontractor shall pay the costs and damages to the Constructor that would have been avoided if the Subcontractor had performed those obligations.

3.6 COMMUNICATIONS Unless otherwise provided in the Subcontract Documents and except for emergencies, the Subcontractor shall direct all communications related to the Project to the Constructor.

3.7 SUBMITTALS

3.7.1 The Subcontractor promptly shall submit for approval to the Constructor all shop drawings, samples, product data, manufacturers' literature, and similar submittals required by the Subcontract Documents. Submittals shall be submitted in electronic form if required. The Subcontractor shall be responsible to the Constructor for the accuracy and conformity of its submittals to the Subcontract Documents. The Subcontractor shall prepare and deliver its submittals to the Constructor in a manner consistent with the Progress Schedule and in such time and sequence so as not to delay the Constructor or others in the performance of the Work. The Subcontractor's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Subcontract Documents. The approval of any Subcontractor submittal shall not be deemed to authorize changes, deviations, or substitutions in the requirements of the Subcontract Documents unless express written approval is obtained from the Constructor and Owner authorizing such change, deviation, or substitution. Such approval shall be promptly memorialized in a Subcontract Change Order within seven (7) Days following approval by the Constructor and, if applicable, provide for an adjustment in the Subcontract Amount or Subcontract Time. If the Subcontract Documents do not contain submittal requirements pertaining to the Subcontract Work, the Subcontractor agrees upon request to submit in a timely fashion to the Constructor for approval any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by the Constructor, Owner, or Design Professional.

3.7.2 The Constructor, Owner, and Design Professional are entitled to rely on the adequacy, accuracy, and completeness of any professional certifications required by the Subcontract Documents concerning the performance criteria of systems, equipment, or materials, including all relevant calculations and any governing performance requirements.

3.8 DESIGN DELEGATION

3.8.1 If the Subcontract Documents (a) specifically require the Subcontractor to procure design services, and (b) specify all design and performance criteria, the Subcontractor shall provide those



design services necessary to satisfactorily complete the Subcontract Work. As permitted by the laws, rules, and regulations in the jurisdiction where the Project is located, the Subcontractor shall procure such services and any necessary certifications from licensed design professionals. The signature and seal of Subcontractor's design professional shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Subcontract Work designed or certified by the Subcontractor's design professional. The Constructor shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications, or approvals performed by the Subcontractor's design professional.

3.8.2 If the Subcontractor's design professional is an independent professional, the design services shall be procured pursuant to a separate agreement between the Subcontractor and the design professional. The agreement between the Subcontractor and the Subcontractor's design professional shall not include any limitation of liability, except to the extent that consequential damages are waived pursuant to subsection 5.4.1, or exclusion from participation in the multiparty proceedings requirement of section 11.4. The Subcontractor's design professional(s) is [____]. The Subcontractor shall notify the Constructor in writing if it intends to change its procured design professional. The Subcontractor shall be responsible for conformance of its design with the information given and the design concept expressed in the Subcontract Documents. The Subcontractor shall not be responsible for the adequacy of the performance or design criteria required by the Subcontract Documents.

3.8.3 The Subcontractor shall not be required to provide design services in violation of any applicable law.

3.9 TEMPORARY SERVICES The Subcontractor's and Constructor's respective responsibilities for temporary services are set forth in Exhibit [____].

3.10 COORDINATION The Subcontractor shall: (a) cooperate with the Constructor and all others whose work may interface with the Subcontract Work, (b) specifically note and immediately advise the Constructor of any such interface with the Subcontract Work, and (c) participate in the preparation of coordination drawings and work schedules in areas of congestion.

3.11 SUBCONTRACTOR'S REPRESENTATIVE The Subcontractor shall designate a person, subject to the Constructor's approval, who shall be the Subcontractor's authorized representative. This representative shall be the only person to whom the Constructor shall issue instructions, orders, or directions, except in an emergency. The Subcontractor's representative is [____], who is agreed to by the Constructor. If the Subcontractor changes its representative, the Subcontractor shall immediately notify the Constructor in writing.

3.12 TESTS AND INSPECTIONS The Subcontractor shall schedule all required tests, approvals and inspections of the Subcontract Work at appropriate times so as not to delay the progress of the work. The Subcontractor shall give proper written notice to all required Parties of such tests, approvals, and inspections. Except as otherwise provided in the Subcontract Documents the Subcontractor shall bear all expenses associated with tests, inspections, and approvals required of the Subcontractor by the Subcontract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity approved by the Constructor and Owner. Required certificates of testing, approval, or inspection shall, unless otherwise required by the Subcontract Documents, be secured by the Subcontractor and promptly delivered to the Constructor.

3.13 WARRANTIES The Subcontractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Subcontract Documents, and free from defective workmanship and materials. Upon request by the Constructor, the Subcontractor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. The Subcontractor



further warrants that the Subcontract Work shall be free from material defects not intrinsic in the design or materials required in the Subcontract Documents. The Subcontractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by others, or abuse. The Subcontractor's warranties shall commence on the date of Substantial Completion of the Work or a designated portion.

3.14 CLEANUP

3.14.1 The Subcontractor shall at all times during its performance of the Subcontract Work keep the Worksite clean and free from debris resulting from the Subcontract Work. Prior to discontinuing the Subcontract Work in an area, the Subcontractor shall clean the area and remove all its rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The Subcontractor shall make provisions to minimize and confine dust and debris resulting from its construction activities. The Subcontractor shall not be held responsible for unclean conditions caused by others.

3.14.2 If the Subcontractor fails to commence compliance with cleanup duties within two (2) business Days after written notification from the Constructor of non-compliance, the Constructor may implement appropriate cleanup measures without further notice and shall deduct the reasonable costs from any amounts due or to become due the Subcontractor in the next payment period.

3.15 SAFETY

3.15.1 The Subcontractor is required to perform the Subcontract Work in a safe and reasonable manner. The Subcontractor shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect:

3.15.1.1 employees and other persons at the Worksite;

3.15.1.2 materials and equipment stored on or off the Worksite for use in performance of the Subcontract Work; and

3.15.1.3 all property and structures located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

3.15.2 The Subcontractor shall give all required notices and comply with all applicable rules, regulations, orders, and other lawful requirements established to prevent injury, loss, or damage to persons or property.

3.15.3 The Subcontractor shall implement appropriate safety measures pertaining to the Subcontract Work and the Project, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers, and establishing proper notice procedures to protect persons and property at the Worksite

3.15.4 and adjacent to the Worksite from injury, loss, or damage.

3.15.5 The Subcontractor shall exercise extreme care in carrying out any of the Subcontract Work which involves explosive or other dangerous methods of construction or hazardous procedures, materials, or equipment. The Subcontractor shall use properly qualified individuals or entities to carry out the Subcontract Work in a safe and reasonable manner so as to reduce the risk of bodily injury or property damage.



3.15.6 Damage or loss not insured under property insurance and to the extent caused by the negligent acts or omissions of the Subcontractor, or anyone for whose acts the Subcontractor may be liable, shall be promptly remedied by the Subcontractor. Damage or loss to the extent caused by the negligent acts or omissions of the Constructor, or anyone for whose acts the Constructor may be liable, shall be promptly remedied by the Constructor.

3.15.7 The Subcontractor is required to designate an individual at the Worksite in the employ of the Subcontractor who shall act as the Subcontractor's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Subcontractor in writing to the Constructor, the designated safety representative shall be the Subcontractor's project superintendent. Such safety representative shall attend Worksite safety meetings as requested by the Constructor.

3.15.8 The Subcontractor has an affirmative duty not to overload the structures or conditions at the Worksite and shall take reasonable steps not to load any part of the structures or Worksite so as to give rise to an unsafe condition or create an unreasonable risk of bodily injury or property damage. The Subcontractor shall have the right to request, in writing, from the Constructor loading information concerning the structures at the Worksite.

3.15.9 The Subcontractor shall give prompt written notice to the Constructor of any accident involving bodily injury requiring a physician's care, any property damage exceeding five hundred dollars (\$500.00) in value, or any failure that could have resulted in serious bodily injury, whether or not such an injury was sustained.

3.15.10 Prevention of accidents at the Worksite is the responsibility of the Constructor, the Subcontractor, and all other subcontractors, persons, and entities at the Worksite. Establishment of a safety program by the Constructor shall not relieve the Subcontractor or other Parties of their safety responsibilities. The Subcontractor shall establish its own safety program implementing safety measures, policies, and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by the Constructor and the Owner, including, but not limited to, requirements imposed by the Subcontract Documents. The Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project, and shall stop any part of the Subcontract Work which the Constructor deems unsafe until corrective measures satisfactory to the Constructor shall have been taken. The Constructor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility therefor. The Subcontractor shall notify the Constructor immediately following a reportable incident under applicable rules, regulations, orders, and other lawful requirements, and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by the Constructor. To the fullest extent permitted by law, each Party to this Agreement shall indemnify the other Party from and against fines or penalties imposed as a result of safety violations, but only to the extent that such fines or penalties are caused by its failure to comply with applicable safety requirements. This indemnification obligation does not extend to additional or increased fines that result from repeated or willful violations not caused by the Subcontractor's failure to comply with applicable rules, regulations, orders, and other lawful requirements.

3.16 PROTECTION OF THE WORK The Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of others from damage caused by the Subcontractor's operations. Should the Subcontractor cause damage to the Subcontract Work or property of the Owner, the Constructor, or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Constructor, or the Constructor may, after forty-eight (48) hours written notice to the Subcontractor, remedy the damage and deduct its cost from any amounts due or to become due the Subcontractor, unless such costs are recovered under applicable property insurance.



3.17 EMERGENCIES In an emergency affecting the safety of persons or property, the Subcontractor shall act to prevent threatened damage, injury, or loss. Any change in the Subcontract Amount or the Progress Schedule from actions of the Subcontractor in an emergency situation shall be as determined in ARTICLE 7.

3.18 PERMITS, FEES, LICENSES, AND TAXES The Subcontractor shall give timely notices to authorities pertaining to the Subcontract Work, and shall be responsible for all permits, fees, licenses, assessments, inspections, testing, and taxes necessary to complete the Subcontract Work in accordance with the Subcontract Documents.

3.19 HAZARDOUS MATERIALS To the extent that the Constructor has rights or obligations under the prime agreement or by Law regarding hazardous materials as defined by the Subcontract Document within the scope of the Subcontract Work, the Subcontractor shall have the same rights or obligations.

3.20 MATERIAL SAFETY DATA (MSD) SHEETS The Subcontractor shall submit to the Constructor all Material Safety Data Sheets required by law for materials or substances necessary for the performance of the Subcontract Work. MSD sheets obtained by the Constructor from other subcontractors or sources shall be made available to the Subcontractor by the Constructor.

3.21 LAYOUT RESPONSIBILITY AND LEVELS The Constructor shall establish principal axis lines of the building and Worksite, and benchmarks. The Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontract Work and for any loss or damage to the Constructor or others by reason of the Subcontractor's failure to lay out or perform Subcontract Work correctly. The Subcontractor shall exercise prudence so that the actual final conditions and details shall result in alignment of finish surfaces.

3.22 UNCOVERING/CORRECTION OF SUBCONTRACT WORK

3.22.1 UNCOVERING OF SUBCONTRACT WORK

3.22.1.1 If required in writing by the Constructor, the Subcontractor must uncover any portion of the Subcontract Work which has been covered by the Subcontractor in violation of the Subcontract Documents or contrary to a directive issued to the Subcontractor by the Constructor. Upon receipt of a written directive from the Constructor, the Subcontractor shall uncover such work for the Constructor's or Owner's inspection and restore the uncovered Subcontract Work to its original condition at the Subcontractor's time and expense.

3.22.1.2 The Constructor may direct the Subcontractor to uncover portions of the Subcontract Work for inspection by the Owner or Constructor at any time. The Subcontractor is required to uncover such work whether or not the Constructor or Owner had requested to inspect the Subcontract Work prior to it being covered. Except as provided by the subsection immediately above, this Agreement shall be adjusted by Subcontract Change Order for the cost and time of uncovering and restoring any work which is uncovered for inspection and proves to be installed in accordance with the Subcontract Documents, provided the Constructor had not previously instructed the Subcontractor to leave the work uncovered. If the Subcontractor uncovers work pursuant to a directive issued by the Constructor, and such work upon inspection does not comply with the Subcontract Documents, the Subcontractor shall be responsible for all costs and time of uncovering, correcting and restoring the work so as to make it conform to the Subcontract Documents. If the Constructor or some other entity for which the Subcontractor is not responsible caused the nonconforming condition, the Constructor shall be required to adjust this Agreement by Subcontract Change Order for all such costs and time.



3.22.2 CORRECTION OF WORK

3.22.2.1 If the Design Professional or Constructor rejects the Subcontract Work or the Subcontract Work is not in conformance with the Subcontract Documents, the Subcontractor shall promptly correct the Subcontract Work whether it had been fabricated, installed, or completed. The Subcontractor shall be responsible for the costs of correcting such Subcontract Work, any additional testing, inspections, and compensation for services and expenses of the Design Professional and Constructor made necessary by the defective Subcontract Work.

3.22.2.2 In addition to the Subcontractor's obligations under section 3.21, the Subcontractor agrees to promptly correct, after receipt of a written notice from the Constructor, all Subcontract Work performed under this Agreement which proves to be defective in workmanship or materials within a period of one year from the date of Substantial Completion of the Subcontract Work or for a longer period of time as may be required by specific warranties in the Subcontract Documents. Substantial Completion of the Subcontract Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Subcontract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unscheduled disruption. If, during the one-year period, the Constructor fails to provide the Subcontractor with prompt written notice of the discovery of defective or nonconforming Subcontract Work, the Constructor shall neither have the right to require the Subcontractor to correct such Subcontract Work nor the right to make claim for breach of warranty. If the Subcontractor fails to correct defective or nonconforming Subcontract Work within a reasonable time after receipt of notice from the Constructor, the Constructor may correct such Subcontract Work pursuant to subsection 10.1.1.

3.22.3 The Subcontractor's correction of Subcontract Work pursuant to this section shall not extend the one-year period for the correction of Subcontract Work, but if Subcontract Work is first performed after Substantial Completion, the one-year period for corrections shall be extended by the time period after Substantial Completion and the performance of that portion of Subcontract Work. The Subcontractor's obligation to correct Subcontract Work within one year does not limit the enforcement of the Subcontractor's other obligations with regard to the Agreement and the Subcontract Documents.

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

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

3.23 MATERIALS OR EQUIPMENT FURNISHED BY OTHERS If the scope of the Subcontract Work includes installation of materials or equipment furnished by others, the Subcontractor is responsible for exercising proper care in receiving, handling, storing, and installing such items, unless otherwise provided in the Subcontract Documents. The Subcontractor shall examine the items provided and report to the Constructor in writing any items it may discover that do not conform to requirements of the Subcontract Documents. The Subcontractor shall not proceed to install nonconforming items without further instructions from the Constructor. Loss or damage due to acts or omissions of the Subcontractor shall,



upon two (2) Business Days' written notice to the Subcontractor, be deducted from any amounts due or to become due the Subcontractor.

3.24 SUBSTITUTIONS No substitutions shall be made in the Subcontract Work unless permitted in the Subcontract Documents, and only upon the Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions.

3.25 USE OF CONSTRUCTOR'S EQUIPMENT The Subcontractor, its agents, employees, subcontractors or suppliers shall use the Constructor's equipment only with the express written permission of the Constructor's designated representative and in accordance with the Constructor's terms and conditions for such use. If the Subcontractor or any of its agents, employees, subcontractors or suppliers utilize any of the Constructor's equipment, including machinery, tools, scaffolding, hoists, lifts, or similar items owned, leased or under the control of the Constructor, the Subcontractor shall indemnify and be liable to the Constructor as provided in ARTICLE 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Constructor's employees operating the Constructor's equipment.

3.26 WORK FOR OTHERS Until final completion of the Subcontract Work, the Subcontractor agrees not to perform any work directly for the Owner or any tenants, or deal directly with the Owner's representatives in connection with the Subcontract Work, unless otherwise approved in writing by the Constructor.

3.27 SYSTEMS AND EQUIPMENT STARTUP With the assistance of the Owner's maintenance personnel and the Constructor, the Subcontractor shall direct the check-out and operation of systems and equipment for readiness, and assist in their initial startup and the testing of the Subcontract Work.

3.28 COMPLIANCE WITH LAWS The Subcontractor agrees to comply with all Laws at its own costs. The Subcontractor shall be liable to the Constructor and the Owner for all loss, cost, and expense attributable to any acts or omissions by the Subcontractor, its employees, and agents resulting from the failure to comply with Laws, including, any fines, penalties, or corrective measures, except as provided in subsection 3.15.10. However, liability under this section shall not apply if notice to Constructor was given, and advance approval by appropriate authorities, including the Constructor is received.

3.28.1 To the extent Constructor receives reimbursement or additional time from the Owner under the prime agreement, the Subcontract Amount or Progress Schedule shall be equitably adjusted for changes in Laws enacted after the date of this Agreement, including taxes, affecting the performance of the Work.

3.29 CONFIDENTIALITY To the extent the prime agreement provides for the confidentiality of any of the Owner's proprietary or otherwise confidential information disclosed in connection with the performance of this Agreement, the Subcontractor is equally bound by the Owner's confidentiality requirements.

3.30 ROYALTIES, PATENTS, AND COPYRIGHTS The Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by the Subcontractor and incorporated in the Subcontract Work. The Subcontractor shall defend, indemnify, and hold the Constructor and Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Subcontractor shall be liable for all loss, including all costs, expenses, and attorneys' fees, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Subcontract Documents. However, if the Subcontractor has reason to believe that a particular design, process, or product required by the Subcontract Documents is an infringement of a patent, the Subcontractor shall promptly furnish such information to the Constructor or be responsible to the Constructor and Owner for any loss sustained as a result.



ARTICLE 4 CONSTRUCTOR'S RESPONSIBILITIES

4.1 CONSTRUCTOR'S REPRESENTATIVE The Constructor shall designate a person who shall be the Constructor's authorized representative. The Constructor's representative shall be the only person the Subcontractor shall look to for instructions, orders or directions, except in an emergency. The Constructor's Representative is [_____]. If the Constructor changes its representative, the Constructor shall promptly notify the Subcontractor in writing.

4.2 OWNER'S ABILITY TO PAY

4.2.1 Unless expressly prohibited by the prime agreement, the Constructor shall promptly provide to the Subcontractor the following information received from the Owner: (a) upon the Subcontractor's request, information regarding the Owner's financial ability to pay for the Work, and (b) notice of any material variation in the Owner's financial ability to pay. The Constructor, however, does not warrant the accuracy or completeness of the information provided.

4.2.2 If the Subcontractor does not receive the information referenced in the subsection immediately above with regard to the Owner's ability to pay for the Work as required by the Contract Documents, the Subcontractor may request the information from the Owner or Owner's lender.

4.3 CONSTRUCTOR APPLICATION FOR PAYMENT Upon request, the Constructor shall give the Subcontractor a copy of the most current Constructor application for payment reflecting the amounts approved or paid by the Owner for the Subcontract Work performed to date.

4.4 INFORMATION OR SERVICES The Subcontractor is entitled to request through the Constructor any information or services required for the Subcontractor's performance of the Subcontract Work which is under the Owner's control. The Subcontractor also is entitled to request through the Constructor any information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the Owner's interest in the real property on which the Project is located and the recorded legal title. To the extent the Constructor receives such information or services, the Constructor shall provide them to the Subcontractor in a timely manner. The Constructor, however, does not warrant the accuracy or completeness of the information provided by the Owner. To the extent the Owner provides any warranty of Owner provided information, the Constructor agrees to permit the Subcontractor to prosecute a claim in the name of the Constructor for the use and benefit of the Subcontractor, pursuant to subsection 5.3.2.

4.5 STORAGE AREAS The Constructor shall allocate adequate storage areas, if available, for the Subcontractor's materials and equipment during the course of the Subcontract Work. Unless otherwise agreed upon, the Constructor shall reimburse the Subcontractor for the additional costs of having to relocate such storage areas at the direction of the Constructor.

4.6 TIMELY COMMUNICATIONS The Constructor shall transmit to the Subcontractor, with reasonable promptness, all submittals, transmittals, and written approvals relative to the Subcontract Work. Unless otherwise specified in the Subcontract Documents, if communications are not through the Subcontractor, the Constructor shall inform the Subcontractor of the communications the Constructor has with the Subcontractor's subcontractors, and suppliers.

4.7 USE OF SUBCONTRACTOR'S EQUIPMENT The Constructor, its agents, employees or suppliers shall use the Subcontractor's equipment only with the express written permission of the Subcontractor's designated representative and in accordance with the Subcontractor's terms and conditions for such use. If the Constructor or any of its agents, employees, or suppliers utilize any of the Subcontractor's equipment, including machinery, tools, scaffolding, hoists, lifts, or similar items owned, leased, or under



the control of the Subcontractor, the Constructor shall indemnify and be liable to the Subcontractor as provided in ARTICLE 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Subcontractor's employees operating the Subcontractor's equipment.

ARTICLE 5 PROGRESS SCHEDULE

5.1 TIME IS OF THE ESSENCE Time is of the essence for both Parties. They mutually agree to see to the performance of their respective obligations so that the entire Project may be completed in accordance with the Subcontract Documents and particularly the Progress Schedule as set forth in Exhibit C.

5.2 SCHEDULE OBLIGATIONS The Subcontractor shall provide the Constructor with any scheduling information proposed by the Subcontractor for the Subcontract Work. In consultation with the Subcontractor, the Constructor shall prepare the schedule for performance of the Work ("Progress Schedule") and shall revise and update such schedule, as necessary, as the Work progresses. Both the Constructor and the Subcontractor shall be bound by the Progress Schedule. The Progress Schedule and all subsequent changes and additional details shall be submitted to the Subcontractor promptly and reasonably in advance of the required performance. The Constructor shall have the right to determine and, if necessary, make reasonable changes to the time, order, and priority in which the various portions of the Work shall be performed and all other matters relative to the Subcontract Work. To the extent such changes increase the Subcontractor's time and costs, the Subcontract Amount and Subcontract Time shall be equitably adjusted.

5.3 DELAYS AND EXTENSIONS OF TIME

5.3.1 OWNER CAUSED DELAY Subject to the subsection immediately below, if the commencement or progress of the Subcontract Work is delayed without the fault or responsibility of the Subcontractor, the Subcontract Time shall be extended by Subcontract Change Order and the Subcontract Amount equitably adjusted to the extent obtained by the Constructor under the Subcontract Documents, and the Progress Schedule shall be revised accordingly.

5.3.2 CLAIMS RELATING TO OWNER The Subcontractor agrees to initiate all claims for which the Owner is or may be liable in the manner and within the time limits provided in the Subcontract Documents for like claims by the Constructor upon the Owner and in sufficient time for the Constructor to initiate such claims against the Owner in accordance with the Subcontract Documents. At the Subcontractor's request and expense to the extent agreed upon in writing, the Constructor agrees to permit the Subcontractor to prosecute a claim in the name of the Constructor for the use and benefit of the Subcontractor in the manner provided in the Subcontract Documents for like claims by the Constructor upon the Owner.

5.3.3 CONSTRUCTOR CAUSED DELAY Nothing in this article shall preclude the Subcontractor's recovery of delay damages caused by the Constructor to the extent not otherwise precluded by this Agreement.

5.3.4 CLAIMS RELATING TO CONSTRUCTOR The Subcontractor shall give the Constructor written notice of all claims not included in subsection 5.3.2 within fourteen (14) Days of the Subcontractor's knowledge of the facts giving rise to the event for which claim is made. Thereafter, the Subcontractor shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties agree upon a longer period of time. The Constructor shall respond in writing denying or approving, in whole or in part, the Subcontractor's claim no later than fourteen (14) Days after receipt of the Subcontractor's documentation of claim. The Constructor's failure to respond shall be deemed a denial of the Subcontractor's claim. All unresolved claims, disputes, and other matters in question between the



Constructor and the Subcontractor not relating to claims included in subsection 5.3.2 shall be resolved as provided for in ARTICLE 11.

5.4 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

5.4.1 Except for any (a) liquidated, consequential, or other damages that the Owner is entitled to recover against the Constructor under the prime agreement, and (b) losses covered by insurance required by the Subcontract Documents, the Constructor and the Subcontractor mutually waive all claims against each other for consequential damages, including damages for loss of business, loss of financing related to the Project, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. Similarly, the Subcontractor shall obtain in another agreement from its Subsubcontractors mutual waivers of consequential damages that correspond to the Subcontractor's waiver of consequential damages herein. The provisions of this subsection shall also apply to and survive termination of this Agreement.

5.5 LIQUIDATED DAMAGES

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

5.5.2 To the extent the prime agreement provides for a mutual waiver of consequential damages by the Owner and the Constructor, damages for which the Constructor is liable to the Owner, including those related to section 9.1, are not consequential damages for the purpose of this waiver. Similarly, to the extent the agreement between the Subcontractor and Subsubcontractor provides for a mutual waiver of consequential damages by the Owner and the Constructor, damages for which the Subcontractor is liable to lower-tiered parties due to the fault of the Owner or Constructor are not consequential damages for the purpose of this waiver.

ARTICLE 6 SUBCONTRACT AMOUNT

As full compensation for performance of this Agreement, the Constructor agrees to pay the Subcontractor in current funds for the satisfactory performance of the Subcontract Work subject to all applicable provisions of this Agreement:

- a. the fixed-price of [_____] dollars (\$[_____] subject to additions and deductions as provided for in the Subcontract Documents; or
- b. alternates and unit prices in accordance with the attached schedule of alternates and unit prices and estimated quantities, which is incorporated by reference and identified as Exhibit D; or
- c. time and material rates and prices in accordance with the attached Schedule of Labor and Material Costs which is incorporated by reference and identified as Exhibit [_____].

The fixed-price, unit prices or time and material rates and prices are referred to as the Subcontract Amount.

ARTICLE 7 CHANGES



7.1 The Subcontractor may request or the Constructor may order changes in the Subcontract Work or the timing or sequencing of the Subcontract Work that impacts the Subcontract Amount or Subcontract Time. All such changes in the Subcontract Work that affect the Subcontract Amount or the Subcontract Time shall be formalized in a Subcontract Change Order. Any such requests for a change in the Subcontract Amount or Subcontract Time shall be processed in accordance with this article.

7.1.1 For changes in the Subcontract Work, the Constructor and the Subcontractor shall negotiate in good faith an appropriate adjustment to the Subcontract Amount or the Subcontract Time and shall conclude these negotiations as expeditiously as possible. Acceptance of the Subcontract Change Order and any adjustment in the Subcontract Amount or Subcontract Time shall not be unreasonably withheld.

7.2 INTERIM DIRECTED CHANGES In the absence of agreement on the terms of a Subcontract Change Order, the Constructor may issue a written Interim Directed Change directing the Subcontractor to proceed with the Subcontract Work in question. If such Interim Directed Change is issued as a result of the Owner's issuance of an Interim Directed Change, Construction Change Directive, or equivalent directive, then the applicable provisions of the prime agreement shall govern. Otherwise, the Subcontractor shall separately submit its costs for the resulting change, beginning with its next regularly scheduled application for payment submitted after the issuance of the Interim Directed Change. If there is a dispute as to the cost, the Constructor shall pay the Subcontractor fifty percent (50%) of its estimated cost to perform the Subcontract Work. In such event, the Parties reserve their rights as to the disputed amount. If and when the Parties agree upon an adjustment in Subcontract Amount or Subcontract Time, such agreement shall be reflected in a Subcontract Change Order, and the payments to date shall be adjusted to reflect the Subcontract Change Order. If no agreement is reached, the Parties shall resolve the matter as provided in ARTICLE 11.

7.3 CONCEALED OR UNKNOWN SITE CONDITIONS If the conditions encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Subcontractor shall stop affected Work after the condition is first observed and give prompt written notice of the condition to the Constructor. The Subcontractor shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or the Contract Time as a result of the unknown condition shall be determined as provided in ARTICLE 5.

7.4 ADJUSTMENTS IN SUBCONTRACT AMOUNT If a Subcontract Change Order requires an adjustment in the Subcontract Amount, the adjustment shall be established by one of the following methods:

7.4.1 mutual acceptance of an itemized lump sum; or

7.4.2 unit prices as indicated in the Subcontract Documents or as subsequently agreed to by the Parties; or

7.4.3 costs as determined in the Subcontract Documents or in a manner otherwise acceptable to the Parties, and a mutually acceptable fixed or percentage fee.

7.5 SUBSTANTIATION OF ADJUSTMENT If the Subcontractor does not respond promptly or disputes the method of adjustment, the method and the adjustment shall be determined by the Constructor on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Subcontract Amount, an allowance for overhead and profit of



the percentage provided in section 7.6, or if none is provided, as mutually agreed upon by the Parties. The Subcontractor may contest the reasonableness of any adjustment determined by the Constructor. The Subcontractor shall maintain for the Constructor's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Subcontract Change Order:

7.5.1 labor costs, including Social Security, health, welfare, retirement, and other fringe benefits as normally required, and state workers' compensation insurance;

7.5.2 costs of materials, supplies, and equipment, whether incorporated in the Subcontract Work or consumed, including transportation costs;

7.5.3 costs of renting machinery and equipment other than hand tools;

7.5.4 costs of bond and insurance premiums, permit fees, and taxes attributable to the change; and

7.5.5 costs of additional supervision and field office personnel services necessitated by the change.

7.6 Adjustments shall be based on net change in the Subcontractor's reasonable cost of performing the changed Subcontract Work plus, in case of a net increase in cost, an agreed upon sum for overhead and profit not to exceed [_____] percent ([_____]%).

7.7 NO OBLIGATION TO PERFORM The Subcontractor shall not be obligated to perform changes in the Subcontract Work that impact Subcontract Amount or Subcontract Time until a Subcontract Change Order has been executed or written instructions have been issued in accordance with sections 7.2 or 7.8.

7.8 INCIDENTAL CHANGES The Constructor may direct the Subcontractor to perform incidental changes in the Subcontract Work which do not involve adjustments in the Subcontract Amount or the Subcontract Time. Incidental changes shall be consistent with the scope and intent of the Subcontract Documents. The Constructor shall initiate an incidental change in the Subcontract Work by issuing a written order to the Subcontractor. Such written notice shall be carried out promptly and is binding on the Parties.

ARTICLE 8 PAYMENT

8.1 SCHEDULE OF VALUES As a condition precedent to payment, the Subcontractor shall provide a schedule of values satisfactory to the Constructor not more than fifteen (15) Days from the date of execution of this Agreement.

8.2 PROGRESS PAYMENTS

8.2.1 APPLICATIONS The Subcontractor's applications for payment shall be itemized and supported by substantiating data as required by the Subcontract Documents. If the Subcontractor is obligated to provide design services pursuant to section 3.8, the Subcontractor's applications for payment shall show its design professional's fee and expenses as a separate cost item. The Subcontractor's application for payment shall be notarized if required and if allowed under the Subcontract Documents may include properly authorized Subcontract Construction Change Directives or Interim Directed Changes. The Subcontractor's application for payment for the Subcontract Work performed in the preceding payment period shall be submitted for approval by the Constructor in accordance with the schedule of values if required and subsections 8.2.2 through 8.2.4. The Constructor shall incorporate the approved amount of the Subcontractor's application for payment into the Constructor's application for payment to the Owner for the same period and submit it to the Owner in a timely fashion. The Constructor shall promptly notify the Subcontractor of any changes in the amount requested on behalf of the Subcontractor.



8.2.2 RETAINAGE The rate of retainage shall be [_____] percent ([_____]%), which is equal to the percentage retained from the Constructor's payment by the Owner for the Subcontract Work. If the Subcontract Work is satisfactory and the prime agreement provides for reduction of retainage, the Subcontractor's retainage shall also be reduced when the Constructor's retainage of the Subcontract Work has been so reduced by the Owner.

8.2.3 TIME OF APPLICATION The Subcontractor shall submit progress payment applications to the Constructor no later than the [_____] Day of each payment period for the Subcontract Work performed up to and including the [_____] Day of the payment period indicating work completed and, to the extent allowed under the subsection below, materials suitably stored during the preceding payment period.

8.2.4 STORED MATERIALS Unless otherwise provided in the Subcontract Documents, applications for payment may include materials and equipment not yet incorporated in the Subcontract Work but delivered to and suitably stored on or off the Worksite including applicable insurance, storage, and costs incurred transporting the materials to an off-site storage facility. Approval of payment applications for such stored items on or off the Worksite shall be conditioned upon submission by the Subcontractor of bills of sale and required insurance or such other procedures satisfactory to the Owner and Constructor to establish the Owner's title to such materials and equipment, or otherwise to protect the Owner's and Constructor's interest including transportation to the Worksite.

8.2.5 TIME OF PAYMENT Progress payments to the Subcontractor for satisfactory performance of the Subcontract Work shall be made no later than seven (7) Days after receipt by the Constructor of payment from the Owner for the Subcontract Work. If payment from the Owner for such Subcontract Work is not received by the Constructor, through no fault of the Subcontractor, the Constructor will make payment to the Subcontractor within a reasonable time for the Subcontract Work satisfactorily performed.

8.2.6 PAYMENT DELAY If the Constructor has received payment from the Owner and if for any reason not the fault of the Subcontractor, the Subcontractor does not receive a progress payment from the Constructor within seven (7) Days after the date such payment is due, as defined in the subsection immediately above, or, if the Constructor has failed to pay the Subcontractor within a reasonable time for the Subcontract Work satisfactorily performed, the Subcontractor, upon giving seven (7) Days' written notice to the Constructor, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to the Subcontractor has been received. The Subcontract Amount and Time shall be adjusted by the amount of the Subcontractor's reasonable and verified cost of shutdown, delay, and startup, which shall be effected by an appropriate Subcontractor Change Order.

8.2.7 PAYMENTS WITHHELD The Constructor may reject a Subcontractor application for payment in whole or in part or withhold amounts from a previously approved Subcontractor application for payment, as may reasonably be necessary to protect the Constructor from loss or damage for which the Constructor may be liable and without incurring an obligation for late payment interest based upon:

8.2.7.1 the Subcontractor's repeated failure to perform the Subcontract Work as required by this Agreement;

8.2.7.2 except as accepted by the insurer providing Builders Risk or other property insurance covering the Project, loss or damage arising out of or relating to this Agreement and caused by the Subcontractor to the Owner, the Constructor, or others to whom the Constructor may be liable;



8.2.7.3 the Subcontractor's failure to properly pay for labor, materials, equipment, or supplies furnished in connection with the Subcontract Work;

8.2.7.4 rejected, nonconforming, or defective Subcontract Work which has not been corrected in a timely fashion;

8.2.7.5 reasonable evidence of delay in performance of the Subcontract Work such that the Work will not be completed within the Subcontract Time, and that the unpaid balance of the Subcontract Amount is not sufficient to offset the liquidated damages or actual damages that may be sustained by the Constructor as a result of the anticipated delay caused by the Subcontractor;

8.2.7.6 reasonable evidence demonstrating that the unpaid balance of the Subcontract Amount is insufficient to cover the cost to complete the Subcontract Work; and

8.2.7.7 uninsured third-party claims involving the Subcontractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Subcontractor furnishes the Constructor with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, the Constructor shall give written notice to the Subcontractor, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the Subcontractor in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

8.2.8 SUBSTANTIAL COMPLETION

8.2.8.1 Upon substantial completion of the Subcontract Work or a designated portion thereof to the extent required to allow the Constructor to accept the Subcontract Work to allow succeeding Work to proceed, the Constructor shall assume responsibility for security and protection of the Subcontract Work pending the achievement of Substantial Completion of the Project. However, acceptance of the Subcontract Work for the purpose of allowing succeeding Work to proceed shall not result in the commencement of the warranty period for the Subcontract Work unless otherwise provided in the prime agreement.

8.2.8.2 Unless otherwise provided for in the prime agreement, partial Owner occupancy or use of completed portions of the Subcontract Work shall constitute Substantial Completion of that portion of the Subcontract Work and the warranty period applicable to the Subcontract Work shall commence upon the achievement of Substantial Completion of the Project and acceptance by the Owner under the terms of the prime agreement.

8.3 FINAL PAYMENT

8.3.1 APPLICATION Upon acceptance of the Subcontract Work by the Owner and the Constructor and receipt from the Subcontractor of evidence of fulfillment of the Subcontractor's obligations in accordance with the Subcontract Documents and the subsection below, the Constructor shall incorporate the Subcontractor's application for final payment into the Constructor's next application for payment to the Owner without delay, or notify the Subcontractor if there is a delay and the reasons for the delay.



8.3.2 REQUIREMENTS Before the Constructor shall be required to incorporate the Subcontractor's application for final payment into the Constructor's next application for payment, the Subcontractor shall submit to the Constructor:

8.3.2.1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontract Work for which the Owner or its property or the Constructor or the Constructor's surety might in any way be liable, have been paid or otherwise satisfied;

8.3.2.2 consent of surety to final payment, if required;

8.3.2.3 satisfaction of required closeout procedures;

8.3.2.4 other data, if required by the Constructor or Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be required by the Subcontract Documents;

8.3.2.5 written warranties, equipment manuals, startup and testing required in section 3.273.27; and

8.3.2.6 as-built drawings if required by the Subcontract Documents.

8.3.3 TIME OF PAYMENT Final payment of the balance due of the Subcontract Amount shall be made to the Subcontractor within seven (7) Days after receipt by the Constructor of final payment from the Owner for such Subcontract Work.

8.3.4 FINAL PAYMENT DELAY If the Owner or its designated agent does not issue a certificate for final payment or the Constructor does not receive such payment for any cause which is not the fault of the Subcontractor, the Constructor shall promptly inform the Subcontractor in writing. If final payment from the Owner for such Subcontract Work is not received by the Constructor, through no fault of the Subcontractor, the Constructor will make payment to the Subcontractor within a reasonable time.

8.3.5 WAIVER OF CLAIMS Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontract Work, but shall in no way relieve the Subcontractor of liability for the obligations assumed under sections 3.21 and 3.22, or for faulty or defective work or services discovered after final payment, nor relieve the Constructor for claims made in writing by the Subcontractor as required by the Subcontract Documents prior to its application for final payment as unsettled at the time of such payment.

8.4 LATE PAYMENT INTEREST Progress payments or final payment due and unpaid under this Agreement, as defined in subsections 8.2.5, 8.3.3 and 8.3.4, shall bear interest from the date payment is due at the prevailing statutory rate at the place of the Project. However, if the Owner fails to timely pay the Constructor as required under the prime agreement through no fault or neglect of the Constructor, and the Constructor fails to timely pay the Subcontractor as a result of such nonpayment, the Constructor's obligation to pay the Subcontractor interest on corresponding payments due and unpaid under this Agreement shall be extinguished by the Constructor promptly paying to the Subcontractor the Subcontractor's proportionate share of the interest, if any, received by the Constructor from the Owner on such late payments.

8.5 CONTINUING OBLIGATIONS Provided the Constructor is making payments on or has made payments to the Subcontractor in accordance with this Agreement, the Subcontractor shall reimburse the Constructor for any costs and expenses for any claim, obligation, or lien asserted before or after final



payment is made that arises from the performance of the Subcontract Work. The Subcontractor shall reimburse the Constructor for costs and expenses including attorneys' fees and costs and expenses incurred by the Constructor in satisfying, discharging, or defending against any such claims, obligation, or lien, including any action brought or judgment recovered. If any Law or bond require the Subcontractor to take any action prior to the expiration of the reasonable time for payment referenced in subsection 8.2.5 in order to preserve or protect the Subcontractor's rights with respect to mechanic's lien 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: (a) create the reimbursement obligation recited above, (b) be in violation of this Agreement, or (c) considered premature for purposes of preserving and protecting the Subcontractor's rights.

8.6 PAYMENT USE RESTRICTION Payments received by the Subcontractor shall be used to satisfy the indebtedness owed by the Subcontractor to any person furnishing labor or materials, or both, for use in performing the Subcontract Work through the most current period applicable to progress payments received from the Constructor before it is used for any other purpose. In the same manner, payments received by the Constructor from the Owner for the Subcontract Work shall be dedicated to payment to the Subcontractor. This provision shall bear on this Agreement only, and is not for the benefit of third parties. Moreover, it shall not be construed by the Parties to this Agreement or third parties to require that dedicated sums of money or payments be deposited in separate accounts, or that there be other restrictions on commingling of funds. Neither shall these mutual covenants be construed to create any fiduciary duty on the Subcontractor or Constructor, nor create any tort cause of action or liability for breach of trust, punitive damages, or other equitable remedy or liability for alleged breach.

8.7 PAYMENT USE VERIFICATION If the Constructor has reason to believe that the Subcontractor is not complying with the payment terms of this Agreement, the Constructor shall have the right to contact the Subcontractor's subcontractors and suppliers to ascertain whether they are being paid by the Subcontractor in accordance with this Agreement.

8.8 PARTIAL LIEN WAIVERS AND AFFIDAVITS As a prerequisite for payments, the Subcontractor shall provide, in a form satisfactory to the Owner and Constructor, partial lien or claim waivers in the amount of the application for payment and affidavits covering its subcontractors and suppliers for completed Subcontract Work. Such waivers may be conditional upon payment. In no event shall the Constructor require the Subcontractor to provide an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

8.9 SUBCONTRACTOR PAYMENT FAILURE Upon payment by the Constructor, the Subcontractor shall promptly pay its subcontractors and suppliers the amounts to which they are entitled. If the Constructor has reason to believe that labor, material, or other obligations incurred in the performance of the Subcontract Work are not being paid, the Constructor may give written notice of a potential claim or lien to the Subcontractor and may take any steps deemed necessary to assure that progress payments are utilized to pay such obligations, including but not limited to the issuance of joint checks. If upon receipt of notice, the Subcontractor does not (a) supply evidence to the satisfaction of the Constructor that payment owed has been paid; or (b) post a bond indemnifying the Owner, the Constructor, the Constructor's surety, if any, and the premises from a claim or lien, the Constructor shall have the right to withhold from any payments due or to become due to the Subcontractor a reasonable amount to protect the Constructor from any and all loss, damage, or expense including attorneys' fees that may arise out of or relate to any such claim or lien.

8.10 SUBCONTRACTOR ASSIGNMENT OF PAYMENTS The Subcontractor shall not assign any payment due or to become due under this Agreement, without the written consent of the Constructor, unless the assignment is intended to create a new security interest within the scope of Article 9 of the Uniform Commercial Code. Should the Subcontractor assign all or any part of any payment due or to become due under this Agreement to create a new security interest or for any other purpose, the



instrument of assignment shall contain a clause to the effect that the assignee's right in and to any money due or to become due to the Subcontractor shall be subject to the claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the Subcontract Work.

8.11 PAYMENT NOT ACCEPTANCE Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Subcontract Work.

ARTICLE 9 INDEMNITY, INSURANCE, AND BONDS

9.1 INDEMNITY

9.1.1 INDEMNITY To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Constructor, the Design Professional, the Owner, and their agents, consultants, and employees (the Indemnitees) from all claims for bodily injury and property damage other than to the Work itself that may arise from the performance of the Subcontract Work, including reasonable attorneys' fees, costs, and expenses, that arise from the performance of the Work, but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Subcontractor shall be entitled to reimbursement of any defense cost paid above the Subcontractor's percentage of liability for the underlying claim to the extent attributable to the negligent acts or omissions of the Indemnitees.

9.1.2 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees 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 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

9.2 INSURANCE

9.2.1 SUBCONTRACTOR'S INSURANCE Before commencing the Subcontract Work, and as a condition precedent to payment, the Subcontractor shall purchase and maintain insurance that will protect it from the claims arising out of its operations under this Agreement, whether the operations are by the Subcontractor, or any of its consultants or subcontractors or anyone directly or indirectly employed by any of them for whose acts the Subcontractor may be liable.

9.2.2 MINIMUM LIMITS OF LIABILITY The Subcontractor shall procure and maintain with insurance companies licensed in the jurisdiction in which the Project is located and acceptable to the Constructor, which acceptance shall not be unreasonably withheld, at least the limits of liability as set forth in Exhibit [_____].

9.2.3 PROFESSIONAL LIABILITY INSURANCE

9.2.3.1 The Subcontractor shall require its design professional(s) to maintain professional liability insurance with a company reasonably satisfactory to the Constructor, including contractual liability insurance against the liability assumed in section 3.8, and including coverage for any professional liability caused by consultants of its design professional. Said insurance shall have specific minimum limits as set forth below:

Limit of [_____] dollars (\$[_____]) per claim.

General Aggregate of [_____] dollars (\$[_____]) for the subcontract services rendered.



The professional liability insurance shall contain prior acts coverage sufficient to cover all subcontract services rendered by the design professional. Said insurance shall be continued in effect with an extended period of [_____] years following final payment to the design professional. Such insurance shall have a maximum deductible amount of [_____] dollars (\$[_____]) per occurrence. The deductible shall be paid by the Subcontractor or its design professional.

9.2.3.2 The Subcontractor shall require its design professional to furnish to the Subcontractor and Constructor, before the design professional commences its services, a copy of its professional liability policy evidencing the coverages required in this subsection. No policy shall be cancelled or modified without thirty (30) Days' prior written notice to the Subcontractor and Constructor.

9.2.4 NUMBER OF POLICIES Commercial General Liability Insurance (CGL) and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy.

9.2.5 CANCELLATION, RENEWAL, AND MODIFICATION To the extent commercially available to the Subcontractor from its current insurance company, insurance policies required under subsection 9.2.1 shall contain a provision that the insurance company or its designee must give the Constructor written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company and (b) within 10 Business Days after cancelation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Subcontractor shall furnish the Constructor with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under subsection 9.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Subcontractor shall give Constructor prompt written notice upon actual or constructive knowledge of such condition.

9.2.6 CONTINUATION OF COVERAGE The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least one year after final payment to the Constructor. Before commencing the Work, the Subcontractor shall furnish the Constructor with certificates evidencing the required coverages.

9.2.7 PROPERTY INSURANCE

9.2.7.1 Upon written request of the Subcontractor, the Constructor shall provide the Subcontractor with a copy of the Builder's Risk policy of insurance or any other property or equipment insurance in force for the Project and procured by the Owner or Constructor. The Constructor shall advise the Subcontractor if a Builder's Risk policy of insurance is not in force.

9.2.7.2 If the Owner or Constructor has not purchased property insurance reasonably satisfactory to the Subcontractor, the Subcontractor may procure such insurance as will protect the interests of the Subcontractor, its subcontractors, and their subcontractors in the Subcontract Work. The cost of this insurance shall be charged to the Constructor in a Subcontract Change Order.

9.2.7.3 If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Subcontract Documents, the Subcontractor shall procure and maintain at the Subcontractor's own expense property and equipment insurance for the Subcontract Work including portions of the Subcontract Work stored off



the Worksite or in transit, when such portions of the Subcontract Work are to be included in an application for payment under ARTICLE 8.

9.2.8 WAIVER OF SUBROGATION

9.2.8.1 The Constructor and Subcontractor waive all rights against each other, the Owner and the Design Professional, and any of their respective consultants, subcontractors, subsubcontractors, agents, and employees, for damages caused by perils to the extent covered by the proceeds of the insurance provided in section 9.2.7, except such rights as they may have to the insurance proceeds and such rights as they may have for the Owner's failure to obtain and maintain any Project Builders Risk Coverage that the Owner may be obligated to provide. The Subcontractor shall require similar waivers from its subcontractors.

9.2.9 ENDORSEMENT If the policies of insurance referred to in this article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

9.2.10 CONSTRUCTOR'S LIABILITY INSURANCE The Constructor shall obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement including without limitation, loss of use and claims, losses, and expenses arising out of the Constructor's acts or omissions.

9.2.11 ADDITIONAL GENERAL LIABILITY COVERAGE The Constructor [_____] shall/ [_____] shall not require the Subcontractor to purchase and maintain additional liability coverage, primary to the Constructor's coverage pursuant to the subsection immediately above.

9.2.11.1 If required by the subsection immediately above, the additional liability coverage required of the Subcontractor shall be:

1. [_____] ADDITIONAL INSURED. The Constructor shall be named as an additional insured on the Subcontractor's CGL specified, for operations and completed operations, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of the Subcontractor, or those acting on the Subcontractor's behalf, in the performance of Subcontract Work for the Constructor at the Worksite.

2. [_____] OCP. The Subcontractor shall provide an Owners' and Constructors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL specified, or limits as otherwise required by the Constructor.

Any documented additional cost in the form of a surcharge associated with procuring the additional general liability coverage in accordance with this subsection shall be paid by the Constructor directly or the costs may be reimbursed by the Constructor to the Subcontractor by increasing the Subcontract Amount to correspond to the actual cost required to purchase and maintain the coverage. Before commencing the Subcontract Work, the Subcontractor shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that the Constructor has been named as an additional insured, as applicable.

9.2.12 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Subcontract Work shall be upon the Subcontractor until the Date of Substantial Completion, unless otherwise agreed to by the Parties.



9.3 BONDS

9.3.1 Performance and Payment Bonds [_____] are/ [_____] are not required of the Subcontractor. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to the Constructor. The Constructor's acceptance shall not be withheld without reasonable cause. The penal sum of the Payment Bond and of the Performance Bond shall each be in the full Subcontract Amount.

9.3.2 The Subcontractor shall be reimbursed, without retainage, for the cost of any required performance or payment bonds simultaneously with the first progress payment. The reimbursement amount for the Subcontractor bonds shall be [_____] percent ([_____]%) of the Subcontract Amount, which sum is included in the Subcontract Amount. If acceptable to the Constructor, the Subcontractor may, in lieu of retainage, furnish a retention bond or other security interest, acceptable to the Constructor, to be held by the Constructor.

9.3.3 If the Subcontractor shall fail to promptly provide any required bonds, the Constructor may terminate this Agreement and enter into a subcontract for the balance of the Subcontract Work with another subcontractor. All Constructor costs and expenses incurred by the Constructor as a result of said termination shall be paid by the Subcontractor.

9.3.4 PAYMENT BOND REVIEW The Constructor [_____] has/ [_____] has not provided the Owner a payment bond. A copy of the Constructor's payment bond for the Project, if any, shall be furnished by the Owner or Constructor upon the Subcontractor's written request.

ARTICLE 10 SUSPENSION, NOTICE TO CURE, AND TERMINATION

10.1 FAILURE OF PERFORMANCE AND TERMINATION

10.1.1 NOTICE TO CURE A DEFAULT If the Subcontractor persistently fails to supply enough qualified workers, proper materials, or equipment, to maintain the Progress Schedule, or fails to make prompt payment to its workers, subsubcontractors, or suppliers, or disregards Laws or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, the Subcontractor shall be deemed in default of this Agreement. If the Subcontractor fails within three (3) Business Days after written notification to commence and continue satisfactory correction of the default with diligence and promptness, then the Constructor shall give a second notice to the Subcontractor and surety, if any, to correct the default within a two (2) Business Day period. If the Subcontractor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the Constructor without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

10.1.1.1 supply workers, materials, equipment, and facilities as the Constructor deems necessary for the completion of the Subcontract Work or any part which the Subcontractor has failed to complete or perform after written notification, and charge the Subcontractor costs and expenses, including reasonable overhead, profit, and attorneys' fees that are due or to become due. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount. At the Subcontractor's request, the Constructor shall provide a detailed accounting of the costs to finish the Subcontract Work;

10.1.1.2 contract with one or more additional contractors to perform such part of the Subcontract Work as the Constructor determines will provide the most expeditious completion of the Work, and charge the cost to the Subcontractor as provided under the subsection above;



10.1.1.3 withhold any payments due or to become due the Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of the Constructor. In the event of an emergency affecting the safety of persons or property, the Constructor may proceed as above without notice, but the Constructor shall give the Subcontractor notice promptly after the fact as a precondition of cost recovery; or

10.1.1.4 terminate the Agreement by written notice.

10.1.2 USE OF SUBCONTRACTOR'S EQUIPMENT If the Constructor performs work under this article, either directly or through other subcontractors, the Constructor or other subcontractors shall have the right to take and use any materials, implements, equipment, appliances, or tools furnished by, or belonging to the Subcontractor and located at the Worksite for the purpose of completing any remaining Subcontract Work. Immediately upon completion of the Subcontract Work, any remaining materials, implements, equipment, appliances, or tools not consumed or incorporated in performance of the Subcontract Work, and furnished by, belonging to, or delivered to the Project by or on behalf of the Subcontractor, shall be returned to the Subcontractor in substantially the same condition as when they were taken, normal wear and tear excepted.

10.2 BANKRUPTCY

10.2.1 TERMINATION ABSENT CURE If the Subcontractor files a petition under the Bankruptcy Code, this Agreement shall terminate if the Subcontractor or the Subcontractor's trustee rejects the Agreement or, if there has been a default, and the Subcontractor is unable to give adequate assurance that the Subcontractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

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

10.3 SUSPENSION BY OWNER FOR CONVENIENCE Should the Owner suspend the Work or any part which includes the Subcontract Work for the convenience of the Owner and such suspension is not due to any act or omission of the Constructor, or any other person or entity for whose acts or omissions the Constructor may be liable, the Constructor shall notify the Subcontractor in writing and, upon receiving notification, the Subcontractor shall immediately suspend the Subcontract Work. To the extent provided for under the prime agreement and to the extent the Constructor recovers such on the Subcontractor's behalf, the Subcontract Amount and the Subcontract Time shall be equitably adjusted by Subcontract Change Order for the cost and delay resulting from any such suspension. The Constructor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit the Subcontractor to prosecute the claim, in the name of the Constructor, for the use and benefit of the Subcontractor.

10.4 TERMINATION BY OWNER Should the Owner terminate its contract with the Constructor or any part which includes the Subcontract Work, the Constructor shall notify the Subcontractor in writing within



three (3) Business Days of the termination and, upon written notification, this Agreement shall be terminated and the Subcontractor shall immediately stop the Subcontract Work, follow all of the Constructor's instructions, and mitigate all costs. In the event of Owner termination, the Constructor's liability to the Subcontractor shall be limited to the extent of the Constructor's recovery on the Subcontractor's behalf under the Subcontract Documents, except as otherwise provided in this Agreement. The Constructor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the Owner termination and to permit the Subcontractor to prosecute the claim, in the name of the Constructor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor. If the Owner terminates the Constructor for cause, through no fault of the Subcontractor, the Subcontractor shall be entitled to recover from the Constructor its reasonable costs arising from the termination of this Agreement, including reasonable overhead and profit on Work not performed.

10.5 CONTINGENT ASSIGNMENT OF THIS AGREEMENT The Constructor's contingent assignment of this Agreement to the Owner, as provided in the prime agreement, is effective when the Owner has terminated the prime agreement for cause and has accepted the assignment by notifying the Subcontractor in writing. This contingent assignment is subject to the prior rights of a surety that may be obligated under the Constructor's bond, if any. The Subcontractor consents to such assignment and agrees to be bound to the assignee by the terms of this Agreement, provided that the assignee fulfills the obligations of the Constructor.

10.6 SUSPENSION BY CONSTRUCTOR The Constructor may order the Subcontractor in writing to suspend all or any part of the Subcontract Work for such period of time as may be determined to be appropriate for the convenience of the Constructor. Phased Work or interruptions of the Subcontract Work for short periods of time shall not be considered a suspension. The Subcontractor, after receipt of the Constructor's order, shall notify the Constructor in writing in sufficient time to permit the Constructor to provide timely notice to the Owner in accordance with the prime agreement of the effect of such order upon the Subcontract Work. The Subcontract Amount or Subcontract Time shall be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Agreement caused by such suspension. No claim under this section shall be allowed for any costs incurred more than fourteen (14) Days prior to the Subcontractor's notice to the Constructor. Neither the Subcontract Amount nor the Progress Schedule shall be adjusted for any suspension, to the extent that performance would have been suspended, due in whole or in part to the fault or negligence of the Subcontractor or by a cause for which the Subcontractor would have been responsible. The Subcontract Amount shall not be adjusted for any suspension to the extent that performance would have been suspended by a cause for which the Subcontractor would have been entitled only to a time extension under this Agreement.

10.7 WRONGFUL EXERCISE If the Constructor wrongfully exercises any option under this article, the Constructor shall be liable to the Subcontractor solely for the reasonable value of Subcontract Work performed by the Subcontractor prior to the Constructor's wrongful action, including reasonable overhead and profit on the Subcontract Work performed, less prior payments made, together with reasonable overhead and profit on the Subcontract Work not executed, and other reasonable costs incurred by reason of such action.

10.8 TERMINATION BY SUBCONTRACTOR If the Subcontract Work has been stopped for thirty (30) Days because the Subcontractor has not received progress payments or has been abandoned or suspended for an unreasonable period of time not due to the fault or neglect of the Subcontractor, then the Subcontractor may terminate this Agreement upon giving the Constructor seven (7) Days' written notice. Upon such termination, the Subcontractor shall be entitled to recover from the Constructor payment for all Subcontract Work satisfactorily performed but not yet paid for, including reasonable overhead, profit, and attorneys' fees, costs, and expenses. However, if the Owner has not paid the Constructor for the satisfactory performance of the Subcontract Work through no fault or neglect of the Constructor, and the Subcontractor terminates this Agreement under this article because it has not



received corresponding progress payments, the Subcontractor shall be entitled to recover from the Constructor, within a reasonable period of time following termination, payment for all Subcontract Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable overhead and profit on Subcontract Work not performed. The Constructor's liability for any other damages claimed by the Subcontractor under such circumstances shall be extinguished by the Constructor pursuing said damages and claims against the Owner on the Subcontractor's behalf as provided for in sections 10.3 and 10.4.

ARTICLE 11 DISPUTE MITIGATION AND RESOLUTION

11.1 WORK CONTINUATION AND PAYMENT Unless otherwise agreed in writing, the Subcontractor shall continue the Subcontract Work and maintain the Progress Schedule during any dispute mitigation or resolution proceedings. If the Subcontractor continues to perform, the Constructor shall continue to make payments in accordance with this Agreement.

11.2 DISPUTES BETWEEN CONSTRUCTOR AND SUBCONTRACTOR If the dispute resolution provisions between the Constructor and the Owner in the Subcontract Documents do not permit consolidation or joinder with disputes of third parties, such as the Subcontractor, or if such dispute is only between the Constructor and the Subcontractor, then the Parties shall submit the dispute to the dispute resolution procedures set forth in the section below.

11.3 CONSTRUCTOR–SUBCONTRACTOR DISPUTE RESOLUTION

11.3.1 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) business Days, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) business Days to endeavor to reach resolution. If the matter remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute resolution procedures selected in ARTICLE 11.

11.3.2 MEDIATION If direct discussions pursuant to the subsection immediately above do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) working Days of the matter first being discussed and shall conclude within forty-five (45) working Days of the matter being first discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and to the mediator. The costs of the mediation shall be shared equally by the Parties.

11.3.3 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

Arbitration using:

the current Construction Industry Arbitration Rules of the AAA and administered by the AAA;



the current JAMS Engineering and Construction Arbitration Rules and Procedures and administered by JAMS; or
 the current arbitration rules of and administered by .

Unless the Parties mutually agree otherwise in writing, if arbitration is selected as the binding dispute resolution procedure and this Agreement does not specify the arbitration rules to be utilized, then the arbitration shall be conducted using the current Construction Industry Arbitration Rules of the AAA and the arbitration shall be administered by the AAA.

Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

11.3.4 COSTS The costs of any binding dispute resolution procedure and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

11.3.5 VENUE The venue for any binding dispute resolution proceeding shall be the location of the Project unless the Parties agree on a mutually convenient location.

11.3.6 Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

11.3.7 An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the Parties, and judgment may be entered upon an award in any court having jurisdiction.

11.4 MULTIPARTY PROCEEDING All parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding. To the extent disputes between the Constructor and Subcontractor involve in whole or in part disputes between the Constructor and the Owner, disputes between the Subcontractor and the Constructor shall be decided by the same tribunal and in the same forum as disputes between the Constructor and the Owner.

11.5 NO LIMITATION OF RIGHTS OR REMEDIES Nothing in this article shall limit any rights or remedies not expressly waived by the Subcontractor which the Subcontractor may have under lien laws or payment bonds.

ARTICLE 12 MISCELLANEOUS

12.1 EXTENT OF AGREEMENT Except as specifically as provided, this Agreement is for the exclusive benefit of the Parties, and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

12.2 ASSIGNMENT OF SUBCONTRACT WORK Except as provided in section 8.10, the Subcontractor shall neither assign the whole nor any part of the Subcontract Work without prior written approval of the Constructor.



12.3 GOVERNING LAW This Agreement shall be governed by the Law in effect at the location of the Project.

12.4 SEVERABILITY 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.

12.5 NO WAIVER OF PERFORMANCE The failure of either Party 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 of its rights, shall not be construed as a waiver or relinquishment of term, covenant, condition, or right with respect to further performance.

12.6 TITLES The titles given to the articles and sections of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

12.7 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

ARTICLE 13 SUBCONTRACT DOCUMENTS

13.1 INTERPRETATION OF SUBCONTRACT DOCUMENTS

13.1.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, the Subcontractor shall perform the Subcontract Work as though fully described on both consistent with the Subcontract Documents and reasonably inferable from them.

13.1.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings, or specifications, the Subcontractor shall immediately submit the matter to the Constructor for clarification by the Owner. The Owner's clarifications are final and binding on all Parties, subject to an equitable adjustment in Subcontract Time or Subcontract Amount pursuant to dispute mitigation and resolution.

13.1.3 Where figures are given, they shall be preferred to scaled dimensions.

13.1.4 Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

13.1.5 In case of any inconsistency, conflict or ambiguity among the Subcontract Documents, the documents shall govern in the following order: (a) Subcontract Change Orders and written amendments to this Agreement; (b) the ConsensusDocs 750 Agreement as modified by the Parties; (c) subject to subsection 13.1.2 the drawings (large scale governing over small scale), specifications and addenda issued prior to the execution of this Agreement; (d) information furnished by the Owner that is identified as a Subcontract Document; (e) other documents listed in this Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.



CONSTRUCTOR Rodgers Builders, Inc.

BY: _____

PRINT NAME: [_____] PRINT TITLE: [_____]

ATTEST _____

NAME [_____] TITLE [_____]

SUBCONTRACTOR: [_____]

BY: _____

PRINT NAME: [_____] PRINT TITLE: [_____]

ATTEST _____

NAME [_____] TITLE [_____]

END OF DOCUMENT.



To Subcontract between Rodgers Builders, Inc. (Constructor) and Subcontractor's Name ("Subcontractor") for Project known as **UNC Charlotte Phase XIV Residence Hall**.

The provisions of this Amendment supplement or amend the terms and conditions of the Consensus Docs. 750 Standard Form of Agreement between Constructor and Subcontractor (2014 Edition). It is expressly understood by Constructor and Subcontractor that this Amendment shall apply on a project-to-project basis. To the extent that there are any conflicts or ambiguities between the provisions of this Amendment and the terms and conditions of the Subcontract hereto, the provisions of this Amendment shall prevail. Unless otherwise defined herein, all definitions set forth in the Contract Documents shall apply to this Amendment.

Article 2.2 SUBCONTRACT WORK

In the second line, following the word "equipment" insert ", insurance". In the fourth line, delete "accordance" and insert "strict compliance"

Article 2.4 SUBCONTRACT DOCUMENTS

In the second line after the words "Owner – Constructor Agreement" add, "including the General Conditions incorporated therein,"

Article 2.5 CONFLICTS

Delete existing sentence in its entirety and add new sentence: In the event of conflicts between the documents, the most stringent, as determined by the Constructor will take precedence.

Article 2.6.4 LAWS

Delete "that are enacted as of the Agreement date."

Article 3.2 RESPONSIBILITIES

In the first line, after "The Subcontractor" add "as a fiduciary," and after "its diligent" add "and best"

Add the following to the end of 3.2

"The Subcontract Documents relating to the physical Work are to be treated by Subcontractor as 'scope' documents which indicate the general scope of the Work in terms of the architectural design concept, the overall dimensions, the type of structural, mechanical, electrical, utility, and other systems, and an outline of major architectural elements. As 'scope' document, the Contract Documents do not necessarily indicate or describe all items required for the full performance and proper completion of the Work. It is the intent of this Subcontract that Subcontractor is to furnish for the Price all items required for proper completion of the Work. Subcontractor shall ensure that all obligations of this Agreement and the Contract Documents are included in all agreements involving lower tiers as respects their performance of any Work."

Article 3.3 INCONSISTENCIES AND OMISSIONS

Delete the second sentence beginning with "Such examination and comparison..."

Delete third sentence starting "The Subcontractor shall not have liability" and replace with "The Subcontractor shall not have liability for errors, omissions, or inconsistencies discovered under this subsection unless the Subcontractor fails to report to Constructor a recognized problem or problem that reasonably should have been recognized."

Article 3.5 INCREASED COSTS OR TIME

End of first sentence add "; however, any such claim shall comply strictly with the claims procedures of this Subcontract."

In the second sentence delete "in Sections 0 and 3.4" and replace with "by this Article 3 and otherwise by the Subcontract". After "is" insert "exposed to a claim or"

Article 3.7.1 SUBMITTALS

In the last sentence following words "contain" delete the rest of the sentence and insert "a deadline for submittals in connection with the Subcontract work, the Subcontractor agrees to provide a complete listing of all required submittals and their anticipated submittal dates within 14 days after award of the Subcontract unless a shorter time is specified elsewhere in the Agreement."

Article 3.8.1 DESIGN DELEGATION

First sentence, after "(b) specify" delete "all"

Article 3.8.2 DESIGN DELEGATION

Delete 3rd sentence "The Subcontractor's design professional(s) is N/A."

Article 3.10 COORDINATION Subcontractor agrees as follows:

3.10.1 Subcontractor shall cooperate with Constructor and all others whose work may interface or interfere with Subcontractor's Work;

3.10.2 Before proceeding with Subcontractor's Work, or any portion thereof, Subcontractor shall review all job conditions and thoroughly inspect all prior Work of Constructor and others. Subcontractor shall notify Constructor, in writing, of any unacceptable conditions, interferences or defective prior Work that would affect the proper and timely execution of Subcontractor's Work. Unless such notice is given, Subcontractor shall be deemed to have fully accepted the conditions as they exist and shall be fully responsible for any and all expenses, losses or damages resulting from said conditions;

3.10.3 Subcontractor recognizes that the Schedule of Work requires coordination with other trades, and agrees to coordinate Subcontractor's Work with the work of Constructor and others. Subcontractor recognizes that Subcontractor's Work may not always be performed as a continuous operation. Subcontractor, at Constructor's election, shall participate in and cooperate with the preparation of coordination drawings in order to properly coordinate interrelated and interfacing work of the Constructor and the various subcontractors. Should Subcontractor install any portion of Subcontractor's Work prior to coordination or in such a manner as to cause interference with the Work of Constructor or others, Subcontractor shall, at its own expense, arrange for its removal or modification, or cutting and patching;

3.10.4 Subcontractor shall be responsible for taking all field measurements necessary to ensure the proper fitting of Subcontractor's Work with the Work of Constructor and others. Field measurements shall be taken and coordinated in a timely manner to avoid delaying the Schedule of Work;

3.10.5 Subcontractor shall schedule delivery of all materials and equipment to coincide with installation dates established by Constructor in accordance with the Schedule of Work. Subcontractor shall immediately notify Constructor, in writing, of any change in the delivery status of any of Subcontractor's materials or equipment;

however, such change does not relieve Subcontractor of its obligations to perform its work in accordance with this Agreement; and,

3.10.6 Subcontractor shall promptly submit shop drawings, drawings, data, and samples in such detail as required in order to carry on Subcontractor's Work efficiently and at a speed that will avoid delay to the Schedule of Work and permit coordination of Subcontractor's Work with the work of Constructor and others.

Article 3.11 SUBCONTRACTOR'S REPRESENTATIVE

Delete and replace with the following:

Subcontractor shall designate one or more persons acceptable to Constructor who shall be Subcontractor's superintendent on site and other representative(s) off site. Subcontractor represents that its superintendent is an expert in the Work, is a competent person as defined by OSHA, and is knowledgeable of all local safety regulations and local codes. Subcontractor's superintendent and other representative(s) shall have full responsibility for the prosecution of Subcontractor's Work, and full authority to act on behalf of Subcontractor in all matters necessary for proper supervision, coordination direction and technical administration of Subcontractor's Work. Superintendent and other representative(s) shall represent Subcontractor at meetings, at such times and places as shall be determined by Constructor, to render reports on the progress of Subcontractor's Work. Subcontractor shall remove and replace any representative that the Constructor, Owner or Owner's authorized representative reasonably determines to be unacceptable, at no cost to Constructor and with no extension of time.

Article 3.13 WARRANTIES

At the end of the Paragraph, insert the following: "Subcontractor and its Surety shall remain liable to Constructor for any claims which may be alleged or asserted against Constructor or its Surety by Owner, its successors, or assigns, for any defects or alleged defects, whether patent or latent, in materials or workmanship attributable to or caused by Subcontractor Work and/or any claims by Owner that Subcontractor Work was not performed in accordance with the Contract Documents, such liability and responsibility to remain for so long a period of time as Constructor may be liable to Owner, its successors, and assigns, under the Contract Documents or by operation of law. In any event Subcontractor and/or its Surety shall pay for all damage to the Project resulting from defects in the Work and expenses necessary to remove, replace and/or repair the Work and any other Work which may be damaged in removing or repairing the Work."

Article 3.15.7 SAFETY

SAFETY End of paragraph, add "Subcontractor shall also designate a Competent Person responsible for safety and safe performance of the Subcontract Work. Subcontractor shall have a Competent Person on the Project site at all times that the Subcontract Work is being performed."

Article 3.15.10 SAFETY

Second to last sentence starting "To the fullest extent", delete everything after "are" and replace with "the result of the acts, omissions or failures to comply with applicable safety requirements by Subcontractor or those for whom Subcontractor is responsible."

Delete last sentence.

Article 3.16 PROTECTION OF THE WORK

Delete the entire Paragraph and insert the following: "Subcontractor shall be responsible for and shall protect its Work in place from the elements and other causes of damage until completion and final acceptance and shall adequately store and protect its own materials and materials furnished it by Constructor and/or others. Subcontractor shall provide whatever protection is necessary for the performance of its Work. The cost of such protection shall be borne by Subcontractor. Constructor shall not be responsible for damage to Subcontractor Work caused by other Subcontractors, but shall make a reasonable effort to secure payment for such damage from the responsible subcontractor provided Subcontractor identifies the responsible subcontractor(s) to Constructor promptly after the identities are known by Subcontractor. Subcontractor shall not cause damage or injury to the work of other Subcontractors; and if such damage or injury should occur, Subcontractor shall pay all costs of repairing or replacing such damaged or injured work."

Article 3.19 HAZARDOUS MATERIALS

Delete "as defined by the Subcontract Document"

Article 3.21 LAYOUT RESPONSIBILITY AND LEVELS

Add sentence at end "Subcontractor shall promptly notify Constructor of any error or inaccuracy in any measurements, benchmarks or points necessary for it to layout its work. Failure to provide this notice shall make Subcontractor responsible for any cost, delay or impact resulting from Subcontractor's use of such information."

Article 3.22.2.2 CORRECTION OF WORK

Delete the entire third sentence "If, during this one year breach of warranty"

Article 3.22.3 CORRECTION OF WORK

In the first sentence, following "one year period for the correction of Subcontract Work, insert "unless required by prime agreement."

Article 3.28 COMPLIANCE WITH LAWS

Delete last sentence "However, liability under this section shall not apply if notice to Constructor was given, and advance approval by appropriate authorities, including the Constructor is received."

Add Article 3.31 LABOR RELATIONS

Should the Work of Constructor or Subcontractor for any reason be stopped or materially delayed or disrupted due, in Constructor's opinion, to Subcontractor failure to have proper workmen to execute this Subcontract, Constructor shall have the right, upon seventy-two (72) hours prior written notice, to terminate Subcontractor right to proceed with the Work and to employ such workmen as may be necessary to complete performance of this Subcontract, with all costs of such termination and completion of performance being charged against Subcontractor."

Article 4.5 STORAGE AREAS

Delete the entire second sentence "Unless otherwise agreed. of the Constructor."

Article 5.2 SCHEDULE OBLIGATIONS

Delete the last sentence "To the extent such changes increase the Subcontractor's time and costs.....shall be equitably adjusted."

At the end of the Paragraph, insert the following:

"A. Time is of the Essence

Subcontractor shall initiate its Work whenever any or all of the Work becomes available or as otherwise directed by Constructor and shall thereafter proceed and complete performance of the Work promptly, diligently and in such a manner and sequence as to permit completion of the Project within the time provided by the Contract and within the construction schedule formulated by Constructor for the Project. Time is of the essence in the performance of the obligations of Subcontractor, and should Subcontractor in any way cause delay to the progress of the Work so as to cause any loss or damage to Constructor or any loss or damage for which Constructor may become liable, including liquidated damages, Subcontractor and its Surety, if any, shall be liable for such and shall indemnify, defend, protect and hold Constructor harmless therefrom to the fullest extent permitted by law. Subcontractor shall not, however, be allowed to begin Work until this Agreement is fully executed by both Constructor and Subcontractor and certificates of insurance, any required bonds, and Subcontractor Code of Safe Work Practices have been delivered to Constructor, all in compliance with the terms of this Agreement. The foregoing provision appears herein, however for the exclusive use and benefit of Constructor and shall not be considered in any manner as limiting the responsibility of Subcontractor to provide such documents in a form acceptable to Constructor.

B. Project Schedule

The parties hereto recognize that the best schedules are mutually developed. Constructor will prepare a schedule establishing the sequence and duration of all Work activities and will consider Subcontractor input in developing the schedule. Subcontractor shall, within fifteen (15) days after the date of the Subcontract, or within such other time as may be specified by Constructor, prepare and submit to Constructor for review a proposed schedule, showing the order in which Subcontractor proposes to carry out all major activities and indicating the dates on which the several activities representing the complete performance of the Subcontract (including procurement of materials, plant and equipment) may be started and finished. This schedule shall list the sequence of activities anticipated by Subcontractor and the anticipated duration of each activity. Subcontractor acknowledges that Constructor has made available to it any Project construction schedules adopted by Constructor prior to the date Subcontractor proposed schedule is due hereunder, that such schedule is acceptable, and that Subcontractor has scheduled and sequenced its Work on the basis of Constructor's schedule.

C. Constructor's Right to Modify Project Schedule and Sequence

Subcontractor further acknowledges that as construction progresses it may be necessary for Constructor to change the sequential order and duration of the various activities, including those contemplated by this Agreement to account for unanticipated delays,

occurrences and other factors which act to alter Constructor's original schedule. Constructor may require Subcontractor, at no additional cost to Constructor, to prosecute Subcontractor Work in such sequence as the progress of other Subcontractors and the Project schedule reasonably dictates. It is expressly understood and agreed that the scheduling and sequencing of the Work is an exclusive right of Constructor and that Constructor reserves such right to reasonably reschedule and re-sequence Subcontractor Work from time to time as the demands of the Project require without any additional cost or expense to be paid to Subcontractor.

Subcontractor shall carry on said Work promptly, efficiently and at a speed that will not cause delay in the progress of Constructor's work or work of other Subcontractors. If, in the opinion of Constructor, Subcontractor falls behind in the progress of the Work, Subcontractor may be directed to take such steps as deemed necessary to improve the rate of progress. These steps may include, without limitation, requiring Subcontractor to increase the number of shifts, personnel, overtime operations, days of Work, equipment, plant, or other remedies. Subcontractor shall submit to Constructor for Constructor's approval a schedule demonstrating how the required rate of progress necessary to meet the schedule will be implemented and monitored without additional cost to Constructor or Owner.

D. Constructor's Right to Accelerate/Overtime

Constructor, if it deems necessary, may accelerate Subcontractor by directing Subcontractor to Work overtime and if so instructed Subcontractor will Work said overtime and, provided that Subcontractor is not in default in any of the provisions herein, Constructor will pay Subcontractor for the actual proved incremental portion of such wages paid at rates which have been approved by Constructor, plus taxes imposed by law on the incremental portion of such additional wages, plus worker's compensation, levies and liability insurance on such additional wages when required to be paid by Subcontractor. In no event shall Subcontractor be entitled to any inefficiency, impact, or other special or indirect charges or damages of any kind as a result of any acceleration or other schedule or sequence modifications. If, however, Subcontractor delays the progress of the Work, Subcontractor shall, at its own cost and expense, work such overtime as may be necessary to avoid delay in the completion of the Project."

Article 5.3.2 CLAIMS RELATING TO OWNER

Delete the last sentence.

Article 7.3 CONCEALED OR UNKNOWN SITE CONDITIONS

In the second sentence starting "The Subcontractor shall not", delete "without the written mutual agreement of the Parties." And replace with "without written direction by Constructor pursuant to Paragraph 7.2 or mutual agreement of the Parties."

Article 7.5 SUBSTANTIATION OF ADJUSTMENT

Delete the first and second sentence through . . . "adjustment determined by the Constructor." and insert the following: "When the Owner or Constructor requests a proposal, Subcontractor shall submit change order proposals within seven (7) calendar days unless a shorter time is specified elsewhere in the Agreement in a form acceptable to Constructor. The quotation shall be supported by a cost breakdown which shall include a quantity survey, unit prices and unit labor hours, markup for overhead and profit and other information as requested by Constructor. Requests or claims shall be submitted in writing by Subcontractor in sufficient time to allow Constructor to comply with the applicable provisions of the prime agreement. If Subcontractor does not comply with the time requirements and Constructor is required to submit a price quotation to the Owner which includes a proposed change to Subcontractor Work, Constructor shall use its best efforts to estimate in good faith the proposed change as it affects Subcontractor in its quotation to the Owner, which estimate shall be the maximum equitable adjustment due to Subcontractor."

Article 8.2.1 APPLICATIONS

In the last sentence after "...Constructor shall..." delete the word "promptly" and replace with "reasonably".

Article 8.2.5 TIME OF PAYMENT

Insert second paragraph: CONDITIONS PRECEDENT TO PARTIAL PAYMENT:

Progress Payments due under this Agreement will not be released until all of the following conditions have been met:

1. Subcontract Agreement has been signed, returned and approved.
2. Insurance Certificates satisfying the requirements of this Agreement have been received.
3. Acceptable fully executed Performance and Payment Bonds have been received, if applicable.
4. A schedule of values for the Work to be performed under this Subcontract has been received in the form and content specified by Constructor.

5. Release of lien and waivers of claim from all tier Subcontractors and material men evidencing payments through the previous month, if required by Constructor.

Article 8.2.7.2 PAYMENTS WITHHELD

Delete “accepted” and replace with “paid”.

Article 8.2.7.7 PAYMENTS WITHHELD

Remove “uninsured”.

Insert New Article: Article 8.2.7.8 PAYMENTS WITHHELD

“Any other material breach of this Agreement.”

Article 8.2.8.1 SUBSTANTIAL COMPLETION

In the first sentence replace “shall” with “may at Constructor’s discretion”

Article 8.8 PARTIAL LIEN WAIVERS AND AFFIDAVITS

In the first sentence, 2nd line, after the words “...in a form” insert “attached as Exhibit “A” and in line 2, after “...partial lien” delete “or” and insert “and”

Article 9.1.1 INDEMNITY

In the first sentence, after “from all claims”, insert “including claims” and after “and expenses, that arise from the performance” insert “or non-performance”. Delete the last sentence.

Article 9.2.1 SUBCONTRACTOR INSURANCE

In the 2nd line after the words “and maintain insurance”, add “in compliance with Exhibit ‘A’.” End of paragraph, add “If Subcontractor elects to subcontract any portion of this Subcontract to another Subcontractor (herein called Sub-Subcontractor), Subcontractor will require of Sub-Subcontractor insurance coverage and limits as specified in Exhibit “A’

and shall furnish evidence of such insurance upon Constructor request. Failure of Subcontractor to require Sub- Subcontractor to obtain the insurance coverages required herein and to furnish Constructor evidence of such coverage shall be grounds for termination for default under Article 10 hereof.”

Article 9.2.2 MINIMUM LIMITS OF LIABILITY

Add “The Subcontractor shall maintain at least the limits of liability in a company satisfactory to the Constructor as set forth in Exhibit “A”.” Delete the words “procure and maintain with insurance companies licensed in the jurisdiction in which the Project is located and acceptable to the Constructor, which acceptances shall not be unreasonably withheld, at least the limits of liability as set forth “

Article 9.2.3.1 PROFESSIONAL LIABILITY INSURANCE

In the 2nd line, after the words “and maintain insurance”, add “in compliance with Exhibit “A”. in the 5th line, following “as set forth below”, add “or as otherwise specified in Exhibit “A” 2nd paragraph, 3rd line, after “an extended period”, delete “of years” and replace with “equal to the State statute of repose”. Delete 3rd sentence starting “Such insurance shall have a maximum deductible....”

Article 9.2.3.2 PROFESSIONAL LIABILITY INSURANCE

3rd line, replace “copy of its professional liability policy” with “certificate of its professional liability insurance”

Article 9.2.5 CANCELLATION, RENEWAL, AND MODIFICATION

Delete “To the extent commercially available to the Subcontractor from its current insurance company.”

Article 9.2.6 CONTINUATION OF COVERAGE

2nd line, replace “for at least one year” with “equal to State statute of repose”.

Article 9.2.7.2 PROPERTY INSURANCE

2nd paragraph: Delete in its entirety.

Article 9.2.7.3 PROPERTY INSURANCE

3RD paragraph: Delete in its entirety.

Article 9.2.11 ADDITIONAL GENERAL LIABILITY CONVERAGE

2nd line: Delete “additional”

Article 9.2.11.1.1 ~~X~~ ADDITIONAL INSURED

1st sentence: Delete “The Constructor shall be named” and replace with “Except as otherwise required by the Constructor, the Constructor, Owner, and other entities as required by prime agreement shall be named”

Article 9.2.11

Last paragraph starting “Any documented additional costs”, delete the 1st sentence in its entirety. Last line, delete “Constructor” and replace with “required entities”

Article 9.3.1

Delete existing article and replace with the following:

The Subcontractor shall [] shall not [] furnish to the Constructor, as the named Obligee, performance and payment surety bonds to secure the faithful performance of the Subcontract Work and to satisfy all Subcontractor payment obligations related to Subcontract Work. Subcontractor shall, upon execution and delivery of this Agreement, deliver to Constructor separate Performance and Payment Bonds, each in the full amount of the Subcontract Price. Subcontractor’s Bonding Company must have a minimum rating of “A” by A. M. Best Company, Inc. Premiums on said bonds are to be paid by Subcontractor. Surety on such bonds shall be bound, jointly and separately, by any determination of decision which is binding on Subcontractor and shall, on demand, pay over to Constructor any sums for which Subcontractor may be liable to Constructor. At Constructor’s option, Subcontractor’s surety may be joined as a party in any arbitration with Subcontractor pursuant to this Agreement. The provisions of this Agreement are hereby incorporated into the bonds by reference and in the event of conflict, this Agreement shall prevail. If

Subcontractor fails to furnish said bonds upon execution and delivery of this Agreement, Constructor may terminate this Agreement at any time after such failure without notice and without regard to Subcontractor's Work already performed or expense already incurred by Subcontractor and without reimbursement to Subcontractor for any such expense already incurred or to be incurred. If bonds are not required, Constructor nonetheless reserves the right at any time prior to commencement of Subcontractor's Work to require Subcontractor to furnish such bonds. No payment shall be due or made to the Subcontractor, pursuant to this Agreement, unless and until any bonds required by this Subcontract have been provided in proper form to the Constructor, Subcontractor shall, if required by Constructor, submit current financial and work in progress statements in a form acceptable to Constructor. The cost of the bonds required herein is included in the Subcontract Price. Notwithstanding Subcontractor other performance of the duties and obligations herein imposed upon Subcontractor, the insolvency of said Surety or the revocation of said Surety's right to do business, license to issue bonds in the State where the Project is located, or the failure to maintain an AM Best rating of "A" or better, shall be deemed an act of default on the part of Subcontractor and shall render this Subcontract terminable at the option of Constructor, unless within seven (7) days following notification to Subcontractor by Constructor of such occurrence, Subcontractor furnishes alternate bonds in conformance with this article. No change, alteration or modification in or deviations from the Subcontract or the Contract Documents shall release or exonerate in whole or in part any Surety on any bond given in connection with this Agreement. Neither Owner nor Constructor shall be under any obligation to notify the Surety or Sureties of any such change. Any increase in the Subcontract amount shall automatically result in a corresponding increase in the penal amount of the bonds without notice to or consent from the Surety, such notice and consent are being hereby waived. Decreases in the Subcontract amount shall not, however, reduce the penal amount of the bonds unless specifically provided in any Change Order decreasing the Scope of Work."

Article 9.3.2

Delete existing article and replace with the following:

"If a performance or payment bond, or both, are required of the Subcontractor under this Agreement, Subcontractor is required to submit Performance Bond and Labor and Material Payment Bond using Rodgers Builders, Inc.'s Standard Bond (standard bond included in Bid Package Manual for Project and submitted to Subcontractor with subcontract). Subcontractor to provide the name of their Surety Company (not agent) providing Payment and Performance Bonds. Name of Subcontractor's Surety: _____."

Article 9.3.3

Delete the existing article and replace with the following:

"The Subcontractor shall be reimbursed, without retainage, for the cost of any required performance or payment bonds simultaneously with the first progress payment. The

reimbursement amount for the subcontractor bonds shall not exceed one percent (1%) of the Subcontract Amount, which sum is included in the Subcontract Amount.

Article 9.3.5

Add the following article:

"In the event the Subcontractor shall fail to promptly provide any required bonds, the Constructor may terminate this Agreement and enter into a subcontract for the balance of the Subcontract Work with another subcontractor. All Constructor costs and expenses incurred by the Constructor as a result of said termination shall be paid by the Subcontractor.

Article 10.1.1 NOTICE TO CURE A DEFAULT

After second sentence starting "If the Subcontractor fails.....within a two (2) Business Day period." Add "However, notice to Subcontractor or its Surety shall not be a condition precedent to Constructor's rights, exercised in its discretion, to mitigate any and all impacts of Subcontractor's default by any means Constructor deems reasonable."

Article 10.7 WRONGFUL EXERCISE

Delete the entire article and insert:

"TERMINATION FOR CONVENIENCE

Notwithstanding anything contained herein to the contrary, Constructor may, without cause, terminate this Agreement at any time upon written notice to Subcontractor. In the event Constructor gives Subcontractor such notice, Subcontractor shall withdraw its employees and equipment from the worksite on the effective date of the termination as specified in said notice (which effective date shall not be less than two (2) working days after the date of the notice) regardless of any claim Subcontractor may or may not have against Constructor. The Subcontractor failure to do so shall entitle Constructor to bring an action for damages, including attorney's fees and costs, and/or to bring an action for injunctive relief. If there has been a termination of Constructor's contract with the Owner, the Subcontractor shall be paid the amount due from the Owner for its work, as provided in the Contract Documents, after payment therefor by the Owner to Constructor. If Constructor's contract has not been terminated, Subcontractor shall be paid the reasonable value of work performed by Subcontractor prior to termination plus reasonable direct close-out costs, but in no event shall Subcontractor be entitled to unabsorbed overhead, anticipatory profits or damages for any termination under this clause except as expressly provided by this paragraph. If no work has been performed by Subcontractor at the time of termination, Subcontractor shall

be paid the sum of \$100.00 for its undertaking an obligation to perform. Upon receipt of payments provided for above, the parties hereto shall have no further obligation to each other except for Subcontractor obligations to perform corrective and/or warranty Work relating to Work actually performed by Subcontractor or any of its Sub-Subcontractors prior to the termination, and to indemnify, defend, protect and hold harmless Constructor as provided for in this Agreement.”

Insert New Article: Article 10.7.1 CONVERSION OF CAUSE TO CONVENIENCE

“In the event Constructor terminates Subcontractor for any cause under the terms of this Agreement, and it is later determined by a court of competent jurisdiction, by arbitration or other similar proceeding, that such termination for cause was not justified, then in such event such termination for cause shall automatically be converted to a termination for convenience under the terms of this Article.”

Article 10.8 TERMINATION BY SUBCONTRACTOR

“In the 2nd line after the words “progress payments” add “which are due and owing”.

Article 11.4 COST OF DISPUTE RESOLUTION

At the end of the paragraph, insert "DUE TO THE SPECIALIZED NATURE OF CONSTRUCTION LITIGATION, IN THE EVENT OF ANY LITIGATION RELATED TO THIS AGREEMENT, EACH PARTY HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY."

Insert New Article: Article 11.6 COSTS INCURRED

In any instance when acting pursuant to the terms of this Agreement, Constructor shall incur any costs on behalf of Subcontractor, or in the performance of Subcontractor's Work or the discharge of Subcontractor's duties and obligations under this Agreement, or as a result of Subcontractor's failure to fulfill its duties and obligations pursuant to this Agreement, Constructor shall be entitled to offset such costs (including reasonable overhead and profit and reasonable attorneys' fee) against any sums otherwise due or to become due to Subcontractor under this Agreement or any other contract or agreement between Constructor and Subcontractor on this or any other project. Subcontractor shall remain liable for, and shall promptly pay Constructor any amount by which such costs exceed the sums otherwise due or to become due to Subcontractor. Upon final completion and acceptance of Subcontractor's Work hereunder, whether completed by Subcontractor,

Constructor or others at the Constructor's election, Subcontractor shall be entitled to any unpaid balance of the Subcontract Price after the Constructor shall have fully exercised its right of offset as provided herein. Should Constructor be required to institute or defend a lawsuit or arbitration in order to enforce any of the provisions of this Agreement or to protect Constructor's interests arising hereunder, to collect damages for the breach of this Agreement, or to recover on a surety bond given by a party under this Agreement, and if Constructor prevails in such lawsuit or arbitration, Constructor shall be entitled to recover reasonable attorneys' fees, consultants' and experts' fees, and/or any other costs, charges, and expenses incurred in connection therewith.

**Insert New Article: Article 12.8 " RECEIPT AND AGREEMENT TO ABIDE BY
CONSTRUCTOR'S SAFETY PLAN**

The Subcontractor agrees that the prevention of accidents to Subcontractor workmen engaged in the Work under this Agreement is the responsibility of Subcontractor. The Subcontractor agrees to comply with all laws, regulations and codes concerning safety as shall be applicable to the Work and to the published safety plan of Constructor, a copy of which is attached as Exhibit "_____". When so ordered, Subcontractor agrees to stop any part of the Work which Constructor deems unsafe until corrective measures, satisfactory to Constructor, have been taken, and further agrees to make no claim for damages growing out of such stoppages. Should Subcontractor neglect to adopt such corrective measures, Constructor may, but shall be under no obligation, to perform them and deduct the cost from payments due or to become due Subcontractor. Failure on the part of Constructor to stop unsafe practices shall, in no way, relieve Subcontractor of its responsibility. Subcontractor shall adopt Constructor's Safety Policy attached hereto as Exhibit "_____" or a substantially similar policy for its own employees, agents and representatives who come on to the job site and shall require its Subcontractors and suppliers of any tier who come onto the job site to do likewise. If Subcontractor, or any person who enters the job site under an employment or a direct or indirect contractual arrangement with Subcontractor, fails to enforce the said Safety Policy or substantially similar policy, Constructor shall have the right to bar such party from the job site. Any resulting damage (including damage for delay) will be the responsibility of Subcontractor."

Insert new Article: Article 12.9 TIME AND MATERIAL

Work done on a time-and-material basis must be signed for daily by Constructor's authorized representative and invoiced weekly no later than two (2) weeks following the week in which the Work was done. No payment for time-and-material work will be made unless the work has been authorized in writing by Constructor's representative, outlining the rates and terms of payment and the appropriate daily approval requirements. Strict compliance with the requirements of this paragraph must be observed; otherwise any claims by Subcontractor hereunder shall be deemed waived. No one other than an

executive officer of Constructor has the authority to waive this requirement and such waiver must be expressed in writing and signed by such officer.”

ACCEPTED:

ACCEPTED:

SUBCONTRACTOR NAME

RODGERS BUILDERS, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title. _____

Date: _____

Date: _____

Subcontractor: **[INSERT SUBCONTRACTOR COMPANY NAME]**

Project Name: **[INSERT PROJECT NAME]**
 Rodgers Project No. _____

1. SUBCONTRACTOR'S INSURANCE AND MINIMUM LIMITS OF LIABILITY: Prior to the start of Work, Subcontractor shall provide and maintain in force at all times during the performance of this Agreement the following insurance:

- .1 Commercial General Liability with limits equivalent to not less than:
 - \$1,000,000 per occurrence combined for bodily injury or property damage,
 - \$1,000,000 general policy aggregate,
 - \$1,000,000 products, completed operations aggregate.
 Comprehensive Automobile Liability with the following limits and insuring:
 - (a) Per accident limit of \$1,000,000
 - (b) All owned or leased vehicles;
 - (c) All hired vehicles; and,
 - (d) All other non-owned vehicles.
 - (e) Contractor, Owner, Architect and all other parties required of the General Contractor, shall be included as Additional Insureds on the auto policy

Comprehensive General Liability under the following form:
 ISO Commercial General Liability Policy, occurrence form CG 00 01 (10/01), or providing equivalent coverage and shall cover liability arising from Premises, Operations and Personal and Advertising Injury Products- Completed Operations including Blanket Contractual, Independent Contractor Coverage without any endorsements excluding explosion, collapse and underground hazards, modified by ISO form #CG2503, "Amendment - Aggregate Limits of Insurance (per project)" or its equivalent. Contractor, Owner, Architect and all other parties required of the Contractor shall be included as insureds on the CGL, using ISO Additional Insured Endorsement CG 20 10 (11/85) or current combination of CG 20 10 (10/01) and CG 20 37 (10/01) or an endorsement providing equivalent coverage to the Additional Insureds. It shall apply as Primary and Non-Contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the Additional Insured. Subcontractor shall maintain CGL coverage for itself and all Additional Insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least eight (8) years after completion of the Work or through the Statute of Repose.

- .2 Worker's Compensation and Employers Liability:
 - (a) Worker's Compensation Coverage as required by law, including statutory coverage for the state in which the Work is performed and the state of domicile of Subcontractor.
 - (b) Employer's Liability Insurance limits of at least \$500,000 each accident for Bodily Injury by accident and \$500,000 each Employee for injury by disease and \$500,000 disease policy limit.
 - (c) Where applicable, U.S. Longshore and Harborworker's Compensation Act Endorsement shall be attached to the policy.
 - (d) When applicable, the Maritime Coverage Endorsement shall be attached to the policy.

.3 Professional Liability Insurance – **Required: () Yes () No** (only required if and to the extent Subcontractor is required per this Agreement to perform engineering or architectural design services) in the amount of \$2,000,000, covering claims made against Contractor and/or Subcontractor arising out of the performance of professional engineering or architectural services under this Agreement and caused by errors, omissions, or negligent acts for which Subcontractor is legally liable. This insurance, if applicable, shall be maintained in force by Subcontractor for a minimum of five (5) years after the date of completion of the Project or as established pursuant to Contract Documents.

- .4 Commercial Umbrella/Excess:
 - (a) Umbrella/Excess limits must be at least \$3,000,000 each occurrence and aggregate limit.
 - (b) Umbrella/Excess coverage must include as Insureds all entities that are Additional Insureds on the CGL.
 - (c) Umbrella/Excess policy must be a Following-Form policy.

If the commercial general liability or the professional liability requirement is met by a claims made form policy, Subcontractor agrees to maintain continuous uninterrupted coverage for a minimum of eight years, or for the greater length of time of the applicable statute of limitation and/or statute of repose where the work is being performed (the greater time limitation will apply), following completion and acceptance of Subcontractor's Work either through purchase of an extended reporting provision or through purchase of successive renewals of insurance with a retroactive date not later than the beginning of performance under this Agreement. The limits of insurance may be increased, reduced or waived at Contractor's sole option with an appropriate adjustment to the Subcontract Price. Contractor, Owner and Architect shall be named as additional insureds on each of these policies, except for Workers' Compensation, or Subcontractor shall provide as its sole expense a separate Owners, Architects and Contractors' Protective Liability Policy in the limits specified above or as modified at Contractor's option, and naming Owner, Architect and Contractor as insureds. Subcontractor shall not subcontract any part of its Work without securing same insurance from its subcontractors.

**EXHIBIT [INSERT IDENTIFIER " "]
SUBCONTRACT DOCUMENTS – INSURANCE REQUIREMENTS**

Subcontractor: [INSERT SUBCONTRACTOR COMPANY NAME]

Project Name: [INSERT PROJECT NAME]
RBI Project No. _____

2. CERTIFICATE OF INSURANCE. The Subcontractor shall furnish the Contractor with Certificates of Insurance evidencing that such insurance is provided and is in full force and effective before starting work and at any other time requested by the Contractor. Attached to each Certificate of Insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor's Commercial General Liability Policy. All of said certificates shall set forth on the face thereof contractual coverage as required herein. No amendment or cancellation of any of said policy shall be effective until after thirty (30) days notice, in writing, to the Contractor. The failure of the Subcontractor to supply certificates evidencing full compliance with the requirements of the provision shall not abrogate its duty to provide and maintain the required insurance, including the naming of the Contractor as an Additional Insured.

3. NUMBER OF POLICIES: General and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy, providing such excess or umbrella policies have a per project aggregate provision.

4. CANCELLATION, RENEWAL OR MODIFICATION: Subcontractor shall maintain in effect all insurance coverage required under this Agreement at Subcontractor's sole expense with admitted insurance companies having a minimum A.M. Best rating of "A" or through other approved insurance mechanisms acceptable to Contractor. All insurance policies shall contain a provision that the coverage afforded thereunder shall not be canceled, non renewed, materially changed, or have restrictive modifications added, until at least thirty (30) days prior written notice has been given to Contractor unless otherwise specifically required in the Contract Documents. Certificates of Insurance or certified copies of policies acceptable to Contractor shall be filed with the Contractor prior to commencement of Subcontractor's Work. In the event Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, Contractor may at its sole option purchase such coverage and charge the expense thereof to Subcontractor or terminate this Agreement.

5. WAIVER OF SUBROGATION: Subcontractor waives all rights against Contractor, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella/Excess liability, business auto liability, Builder's Risk or any other property or equipment insurance, Workers Compensation and Employers Liability insurance maintained pursuant to the requirements referred to in this Article. Subcontractor's Workers Compensation policy has WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT with Contractor, Owner and Architect listed on SCHEDULE.

6. REPORTS OF ACCIDENT AND INJURY: Subcontractor shall immediately advise Contractor, in writing, of the facts and details of every accident and personal injury occurring with relation to Subcontractor's Work and simultaneously furnish to Contractor a copy of every accident report furnished to Subcontractor's insurance carrier.

7. OFF-SITE STORAGE: Subcontractor shall procure and maintain, at Subcontractor's own expense, property and equipment insurance for portions of Subcontractor's Work stored off the Project site or in transit, when such portions of Subcontractor's Work are to be included in an application for payment under Article 8.

8. NO DEDUCTIBLES: Unless expressly agreed in writing by Contractor, all specified insurance coverage shall be without any deductible of any kind or amount. To the extent that at any time during the course of performance under this Agreement Contractor determines a deductible exists without the express written consent of Contractor, then, at Contractor's sole election, Contractor may withhold from payments otherwise due Subcontractor under this Agreement, the amount of such deductible until expiration of all contractual warranties required under this agreement. Additionally, in the event of any occurrence(s) or claim(s) under any of these policies which would otherwise have fully covered, but for the presence of such deductible, Contractor may withhold any additional amount from payments to Subcontractor for each such claim or occurrence in the amount of the damages claimed for such occurrence/claim or the amount of deductible whichever is the greater and may apply such withholdings to cover such damages should full recovery not be obtained under the insurance coverage because of the presence of such deductible.