



MASTER SUBCONTRACT AGREEMENT

DATED: _____

CONTRACTOR:
RYCON CONSTRUCTION, INC.

SUBCONTRACTOR:

CONTRACTOR'S REPRESENTATIVE:

SUBCONTRACTOR'S REPRESENTATIVE:

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This Agreement has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged.

ARTICLE 1

AGREEMENT

1.1 This Master Subcontract Agreement, made this ____ day of _____, 20__ and effective the 1 day of January, 2023 by and between Rycon Construction Inc., hereinafter called the Contractor, and _____ hereinafter called the Subcontractor, to perform part of the Work for the Contractor on a construction Project as defined in the Project Contract Agreement(s) (hereinafter "PCA") to be issued to Subcontractor for each specific Project as more fully addressed below.

1.2 This Master Subcontract Agreement (hereinafter "MSA") shall apply to all PCAs agreed to by the parties within the term of this MSA until completion of the PCA. In the event of a conflict between terms and conditions of this MSA and a PCA, the terms of the PCA shall take precedence for the Work provided pursuant to the PCA.

1.3 For each and every Project on which Contractor wishes Subcontractor to perform Work, Contractor will issue to Subcontractor a PCA, which PCA will set forth the following information:

- (a) The name of the Project and any applicable Project number or other designation;
- (b) The specific scope of the Work that is the Subcontractor's responsibility for that particular Project;
- (c) The amount to be paid to the Subcontractor for the performance of the Work;
- (d) Any terms and/or conditions that specifically relate to the work to be performed by Subcontractor on the particular Project; and
- (e) All applicable schedules and/or delivery dates.

1.4 To the extent the terms and conditions of this MSA are not addressed in any PCA issued by Contractor to Subcontractor, the terms and conditions of this MSA shall remain binding upon the parties for all Work performed by Subcontractor on any Project on which Contractor has issued a PCA to Subcontractor.

1.5 Notice to parties shall be given at addresses identified on the cover page of this Agreement.

ARTICLE 2

SCOPE OF WORK

2.1 SUBCONTRACTOR'S WORK. The Contractor employs the Subcontractor as an independent contractor, to perform the work described in the PCA issued to Subcontractor. The Subcontractor shall perform such work (hereinafter called the "Subcontractor's Work") under the general direction of the Contractor and in accordance with this MSA and the Contract Documents.

2.2 CONTRACT DOCUMENTS. The Contract Documents, which are binding on the Subcontractor, are as set forth in the applicable PCA issued to Subcontractor and shall expressly include, but not be limited to, the General Conditions and any Supplemental Conditions contained within the Contract between Contractor and the Owner of the Project. The applicable Contract Documents are available for inspection at the offices of **Rycon Construction Inc.**, during normal business hours. By executing any PCA issued pursuant to this MSA, Subcontractor warrants that it has reviewed all Contract Documents and will be familiar therewith, or that it has had ample opportunity to do so, and acknowledges that it is bound by all of the provisions and requirements as if it has made such a review and as if same were fully set forth herein.

2.2.1 Subcontractor is bound, responsible, obligated, and liable to the Contractor and Owner under the Owner/Contractor Contract to the same extent as Contractor is bound, responsible, obligated, and liable to the Owner under the Owner/Contractor Contract.

2.3 CONFLICTS. In the event of a conflict between this MSA and the Contract Documents, the terms of this

MSA shall govern, except to the extent that an individual PCA provides a more restrictive term, then such more restrictive term shall apply.

2.3.1 In the event of any inconsistency within the Contract Documents the more restrictive provision shall govern the performance of the work under the PCA issued pursuant to this MSA.

2.4 MUTUALITY OF DOCUMENTS. The Subcontractor hereby acknowledges that it has carefully reviewed and examined this MSA and all other documents directly or indirectly relating to this MSA and any and all ambiguities and discrepancies have previously been clarified and/or corrected. This Subcontractor agrees that it will not make any claim or demand upon the Contractor based upon or arising out of any misunderstanding or misconception on its part of the provisions and requirements of the MSA, the documents enumerated in any PCA later issued to Subcontractor. Any information given or statement made to the Subcontractor by the Contractor or others as to the nature or characteristics of the work included herein, or as to the particular details relating to the Subcontractor's Work, shall not reduce the Work to be performed by the Subcontractor under this MSA and PCA subsequently issued to Subcontractor, if any.

ARTICLE 3

SCHEDULE OF WORK

3.1 TIME IS OF THE ESSENCE. Subcontractor acknowledges that time is of the essence and agrees to see to the performance of its Work and the work of its sub-subcontractors so that the entire Project may be completed in accordance with the Contract Documents and the approved Schedule of Work (also referred to herein as "PCA Time"). The Contractor shall prepare the Schedule of Work and revise such schedule as the Work progresses.

3.2 DUTY TO BE BOUND. The Subcontractor shall be bound by the Schedule of Work and any revisions thereto as the Work progresses. The Subcontractor shall provide the Contractor with any requested scheduling information for the Subcontractor's Work. The Schedule of Work and all subsequent changes thereto shall be submitted to the Subcontractor in advance of the required performance.

3.3 SCHEDULE REVISIONS. The Subcontractor recognizes that revisions will be made in the Schedule of Work and agrees to comply with such changes without any additional cost to the Contractor or receipt of other compensation from Contractor.

3.4 PRIORITY OF WORK. The Contractor shall have the right to decide the time, order, and priority in which the various portions of the Work shall be performed and all other matters relative to the timely and orderly conduct of the Subcontractor's Work. The Subcontractor shall commence its Work within seven (7) days of notice to proceed from the Contractor and if such Work is interrupted for any reason the Subcontractor shall commence such Work within two working days from the Contractor's notice to do so. The Subcontractor shall coordinate its Work with that of all other subcontractors and suppliers so as not to interfere, delay, or damage those other entities or the Project. To the extent of any such interference, delay or damage caused by Subcontractor, Contractor shall have the right to withhold payment and back-charge Subcontractor for all such costs and expense or damage. If required, Subcontractor shall work overtime or additional shifts to meet said Schedule of Work, at no additional cost to Contractor. Subcontractor shall perform the Work in accordance with Milestone Dates and Phasing Plans, which may require multiple deliveries and/or mobilizations. Subcontractor shall meet any specific milestone or partial completion dates as may be noted in the Subcontract Documents. **Time is of the essence.**

ARTICLE 4

CONTRACT PRICE

4.1 The Contractor agrees to pay the Subcontractor for the satisfactory performance of the Subcontractor's Work in the amount set forth in the PCA ("Contract Price" or "PCA Sum"). The Subcontract's sum will be paid in

accordance with Article 5, subject to additions or deductions per Article 6.

ARTICLE 5

PAYMENT

5.1 GENERAL PROVISIONS

5.1.1 **SCHEDULE OF VALUES.** Subcontractor shall submit a schedule of values within three (3) days of its receipt of a PCA from Contractor, which schedule of values is incorporated herein as if set forth in full and that is a part of the Contract Documents. The schedule of values must be approved by Contractor, and if required, by Owner and/or Architect, prior to and as a condition precedent to receipt of Subcontractor's first payment hereunder.

5.1.2 **PAYMENT USE RESTRICTION.** No payment received by the Subcontractor shall be used to satisfy or secure any indebtedness other than one owed by the Subcontractor to a person or entity furnishing labor or materials for use in performing the Subcontractor's Work.

5.1.3 **PAYMENT USE VERIFICATION.** Contractor shall have the right at all times to contact Subcontractor's subcontractors and suppliers to ensure that the same are being paid by Subcontractor for labor or materials furnished for use in performing Subcontractor's Work. However, nothing in this provision is intended to redound to the benefit of any subcontractor or supplier, and the Contractor does not assume any obligations thereto.

5.1.4 **PARTIAL LIEN AND CLAIM WAIVERS AND AFFIDAVITS.** As a prerequisite for payment, Subcontractor shall provide, on forms attached to a PCA or as otherwise approved by Contractor, partial lien or claim waivers (whichever are applicable) and affidavits from Subcontractor, and its sub-subcontractors and suppliers for the completed Subcontractor's Work. Such waivers are an express condition precedent to payment when required.

5.1.5 **SUBCONTRACTOR PAYMENT FAILURE.** In the event the Contractor has reason to believe that labor, material or other obligations incurred in the performance of the Subcontractor's Work are not being paid, the Contractor shall give notice of such claim or lien to the Subcontractor and may take any steps that the Contractor (in its sole discretion) deems necessary or prudent to insure that any progress payment shall be utilized to pay such obligation. If, upon receipt of said notice, the Subcontractor does not, within seven (7) days:

- (a) supply evidence to the satisfaction of Contractor that the monies owing to the claimant have been paid; or
- (b) if a lien has been recorded against the Project, post a bond (satisfactory in form and amount to Contractor) indemnifying the Owner, the Contractor, the Contractor's surety, if any, and the premises from such claim or lien,

then Contractor shall have the right to retain out of any payments due or to become due to Subcontractor a reasonable amount, in Contractor's sole discretion, to protect Contractor from any and all loss, damage or expense including reasonable attorneys' fees arising out or relating to any such claim or lien until the claim or lien has been satisfied by Subcontractor. Contractor further reserves the right to issue joint checks to Subcontractor and its subcontractor(s) and/or material suppliers to insure payment to same. In the event Contractor decides to issue such joint checks, Subcontractor is obligated to endorse such joint check(s) and issue a partial release of lien for the amount of such joint check payment at the time of such endorsement.

5.1.6 **PAYMENT NOT ACCEPTANCE.** Payment to the Subcontractor is specifically agreed not to constitute or imply acceptance by the Contractor or the Owner of any portion of the Subcontractor's Work.

5.2 PROGRESS PAYMENTS

5.2.1 APPLICATION. Subcontractor's progress payment application for Work performed in the preceding payment period shall be submitted to Contractor per the terms of this Agreement, and specifically Sections 5.1.1, 5.2.2, 5.2.3, and 5.2.4 for approval of the Contractor and Owner, or Owner's designated agent, if necessary under the Contract Documents.

5.2.2 RETAINAGE/SECURITY. If required in any PCA(s) issued to Subcontractor, the Subcontractor shall furnish bonds or security to guarantee both its entire performance of the Work and the total payment of all its Sub-subcontractors and suppliers, which bonds or security shall be satisfactory to the Contractor. The Contractor shall withhold retainage from Subcontractor's progress requisitions at the rate of 10%, or the maximum amount allowed by law where the Project is located in the event that such amount is less than 10%. If Owner ceases withholding retention at a certain point in a Project to which a PCA pertains, and Subcontractor's Work pursuant to the PCA is performed after that point, Contractor may withhold retention as provided herein from Subcontractor even though Owner is not withholding retention for Subcontractor's Work.

5.2.3 TIME OF APPLICATION. Provided a draft application for payment is received by Contractor not later than the 20th day of the month (projecting until the end of the month) and a final, approved hard copy of the payment application is received by Contractor by the 25th (or within two (2) days after approval of the draft payment application by Contractor), Contractor shall include Subcontractor's Work, including, to the extent allowed under Section 5.2.4, materials suitably stored during the preceding payment period, covered by that application in the next application for payment which Contractor is entitled to submit to the Architect or, where appropriate, Owner.

5.2.4 STORED MATERIALS. Only if provided in the Contract Documents and if approved in advance by the Owner, and if approved by the Contractor, applications for payment may include materials and equipment not incorporated in the Subcontractor's Work but delivered and suitably stored at the site or at some other location agreed upon in writing. Approval of payment application for such stored items on or off the site shall be conditioned upon submission by the Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to the Owner and Contractor to establish the Owner's title to such materials and equipment or otherwise protect the Owner's and Contractor's interests therein, including transportation to the site. Unless otherwise agreed, risk of loss for such stored materials remains with the Subcontractor until said items have been incorporated into the Work and the risk of loss for that Work has passed to the Contractor or the Owner. The Contractor may claim title to said stored items notwithstanding the fact that items have not been incorporated into the Work or that the risk of loss has not yet passed to the Contractor or the Owner.

5.2.5 TIME OF PAYMENT. Unless expressly prohibited by law in the State where the Project is located, progress and Final Payments to the Subcontractor for satisfactory performance of the Subcontractor's Work shall be made no later than ten (10) days after receipt by the Contractor of payment from the Owner for such Subcontractor's Work. Payment by the Owner to the Contractor is a strict condition precedent to payment by the Contractor (and Contractor's Surety, if applicable) to the Subcontractor, and no payment shall be due Subcontractor unless and until (1) Contractor has received the corresponding payment from the Owner and (2) Subcontractor's prior invoices are free and clear of claims and liens by the Subcontractor's subcontractors and suppliers. Moreover, with respect to both partial and Final Payments, payment by the Owner to the Contractor shall be a condition precedent to any claim by Subcontractor against Contractor's Surety, if any. Subcontractor expressly assumes the risk of non-payment by the Owner to the Contractor. Subcontractor expressly assumes this risk of non-payment by the Owner. In the event of nonpayment by the Owner, the Contractor and Subcontractor shall cooperate to exhaust all commercially available means, including any dispute resolution mechanism required under the Owner/Contractor Contract and this Agreement, to collect the Subcontractor's payment. In the case of any claims against Owner, insurance carrier or any third-party which are prosecuted by Contractor, Subcontractor's recovery is expressly limited to those damages received by Contractor, less attorneys' fees or other costs Contractor expends in the pursuit of such claim(s).

5.2.5.1 Should the foregoing condition precedent be unenforceable in the jurisdiction where the Project is located,

Subcontractor agrees that Contractor and Contractor's surety, if any, shall have a reasonable period of time within which to tender payment, and such reasonable period includes, but is not limited to, the time necessary for Owner to process and make a progress or final payment, or for Contractor to fully adjudicate any disputes, claims, causes of action or other matters associated with or related to this Agreement, a PCA hereunder and/or the Contract between Owner and Contractor. For the purposes of this section, "fully adjudicate" means the completion of mediations, arbitrations, trials or any combinations thereof, together with such appeals as may be taken for any decisions, orders, judgments, opinions or such similar rulings as may result therefrom.

5.2.6 PAYMENT DELAY. If for any reason not the fault of the Subcontractor, the Subcontractor does not receive a progress payment from the Contractor within fifteen (15) days after the date such payment is due, as defined in and subject to the conditions of Section 5.2.5, then the Subcontractor, upon giving an additional thirty (30) days written notice to the Contractor, and without prejudice to and in addition to any other legal remedies, may, after passage of the additional thirty (30) days, stop work until payment of the full amount owing to the Subcontractor for the requisition period for which the notice was sent, has been received. Only to the extent obtained by the Contractor under the Contract Documents, the contract price may be increased by the amount of the Subcontractor's documented reasonable costs of shut down, delay, and start-up, (which shall be effected by appropriate Change Order).

5.2.7 WITHHOLDING PAYMENT FROM SUBCONTRACTOR. Payments otherwise due the Subcontractor may be withheld in whole or in part by the Contractor on account of (a) defective materials or Work; (b) claims or liens chargeable to the Subcontractor, or any notice thereof; (c) any breach by the Subcontractor of any provision or obligation of this Contract or any PCA issued hereunder; (d) any rights of contribution, indemnity, offset or recoupment of the Contractor, (e) failure to pay any provider of labor, materials, equipment, supplier, or services provided to the Subcontractor in connection with its performance of the Work; (f) failure to provide any schedules or scheduling information as required under this Agreement or any PCA issued hereunder, or (g) any reasons set forth in the Contract Documents.

5.3 FINAL PAYMENT

5.3.1 APPLICATION. Upon acceptance of the Subcontractor's Work by the Owner, the Contractor, and if necessary the Owner's designated agents, and upon fulfillment of the Subcontractor's obligations in accordance with the Contract Documents and this Agreement, payment for the Subcontractor's Work shall be made to the Subcontractor, but only in an amount and manner as provided in the Contract Documents.

5.3.2 REQUIREMENTS. Before the Subcontractor is entitled to Final Payment, and as an express condition precedent thereto, the Subcontractor shall submit to the Contractor:

- (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontractor's work for which the Owner or his property or the Contractor or the Contractor's Surety might in any way be liable, have been paid or otherwise satisfied;
- (b) consent of surety to Final Payment, if required;
- (c) satisfaction of required closeout procedures;
- (d) other documentation if required by Contractor or Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be designated by the Contractor or Owner;
- (e) executed Affidavit and Final Release of Liens and Claims in the form attached hereto, and
- (f) other data, documents or things specified in the Contract Documents.

5.3.2.1 Final Payments shall constitute a waiver of all claims by Subcontractor relating to Subcontractor's Work and shall result in a waiver by Subcontractor, but shall in no way relieve Subcontractor of liability for warranty or indemnity obligations assumed hereunder, or for faulty or defective work appearing after Final Payment.

5.3.2.2 As a condition precedent to Final Payment, the Subcontractor shall also complete to the satisfaction of the Contractor, Owner and Architect the following: all punch-list items required by the Owner or Architect that are part of the Work of the applicable PCA. Upon issuance of a final punch list for the Work of the applicable PCA, Subcontractor shall complete the identified punch list Work within one (1) week except as otherwise provided in the PCA.

5.3.3 TIME OF PAYMENT. Final Payment of the balance due of the contract price shall be made to the Subcontractor in accordance with the following:

- (a) upon receipt of the Owner's waiver of all claims related to the Subcontractor's Work, unknown defective work, and noncompliance with the Contract Documents or warranties; and
- (b) within fifteen (15) days after receipt by the Contractor of final payment from the Owner for such Subcontractor's Work; and
- (c) subject to the time period or upon receipt of the items specified in the Contract Documents.

It is hereby acknowledged that final payment from the Owner to the Contractor, including retainage, is a strict condition precedent to Subcontractor's receipt of final payment from Contractor (and Contractor's surety, if applicable). Subcontractor expressly assumes the risk of non-payment by the Owner to the Contractor.

5.3.4 FINAL PAYMENT DELAY. If the Owner or its designated agent does not issue a Certificate for Final Payment (or its equivalent) or the Contractor does not receive such payment for any cause which is not the fault of the Subcontractor, the Contractor shall promptly inform the Subcontractor in writing. The Contractor shall also diligently pursue, with the assistance of the Subcontractor, the prompt release by the Owner of the Final Payment due for the Subcontractor's Work. At the Subcontractor's request and at its expense to the extent agreed upon in writing, the Contractor may institute all reasonable legal remedies to mitigate the damages and pursue full payment of the Subcontractor's entitlement to Final Payment including interest thereon.

5.3.5 ACCEPTANCE OF FINAL PAYMENT. Acceptance of final payment by the Subcontractor shall constitute a release and waiver of any and all claims the Subcontractor may have against the Contractor, the Owner, the Architect, or the Project.

ARTICLE 6

CHANGES, CLAIMS AND DELAYS

6.1 CHANGES. Owner may make changes in the Work by issuing modifications to the Owner/Contractor Contract. Upon receipt of such a modification issued subsequent to the execution of the applicable PCA(s), the Contractor shall promptly notify the Subcontractor of the modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work which would be inconsistent with the changes made by the modifications to the Owner/Contractor Contract.

6.1.1 Any reductions in the scope of Work shall result in a credit to the Contractor proportionate to the reduced scope of Work. All such credits shall include Subcontractor's overhead and profit on the reduced scope of Work.

6.1.2 Contractor may order changes in Subcontractor's Work. Subcontractor shall not be entitled to, nor shall it receive any increase or upward adjustment in its contract price unless said amount and liability are acknowledged, in writing by Change Order, from Contractor's authorized representative, which representative must have written authority for such acts, otherwise, the Subcontractor shall proceed at its own risk and expense. A change in the PCA Sum, the PCA Time or the PCA Completion Date shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Contractor has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis

of any claim to an increase in any amounts due under or a change in any time period provided for in this Agreement or any PCA issued hereunder.

6.1.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to all direct and indirect costs associated with such change and any and all adjustments to the PCA Sum, the PCA Time, the PCA Completion Date, and the Project schedule.

6.1.4 The Contractor and Subcontractor agree that the Subcontractor and its Sub-subcontractors and suppliers shall only be entitled such markup, which shall include overhead and profit, as identified in each PCA for any changes in the Work.

.1 Lump Sum Change Order Work. Prior to the commencement of Change Order Work, Contractor and Subcontractor shall agree to a Lump Sum Amount to be paid by Contractor to Subcontractor for the performance of such Change Order Work. The decision to perform Change Order Work via lump sum cost or T&M cost shall be the sole option of Contractor.

.2 Time and Materials ("T&M") Change Order Work. If a Lump Sum amount is not agreed to by Contractor and Subcontractor before performing Change Order Work, Subcontractor may be directed by Contractor to perform the Change Order Work on a Time and Material ("T&M") basis. In such an event, Subcontractor shall present daily written work orders to Contractor's Superintendent for all costs incurred each day. Each daily work order shall be presented by Subcontractor in writing not later than twenty-four (24) hours after the date that the authorized Change Order Work was performed. For Change Order Work performed on a T&M basis, Subcontractor's supervision costs shall not be included in the T&M cost as supervision costs are considered part of overhead which is included in the Change Order Mark-up reflected on the cover page of this Agreement.

.3 All Subcontractor Change Order Requests. Change order pricing must be submitted within one (1) week after Subcontractor's Change Order Request is made or, in the case of a Change Order Request for T&M Work, submission must occur not later than one (1) week after completion of such T&M Work. Subcontractor shall not invoice for Change Order Work unless and until a formal written Change Order has been issued by Contractor. All Change Order Request pricing submitted by Subcontractor shall be sufficiently broken down in writing showing quantities, man-hours, labor rates, material costs, equipment costs, sub-subcontractor costs and mark up as separate line items. All material and equipment costs shall be supported with proper documentation. Percentage add-ons for items shall not be accepted by Contractor. "Soft" costs such as supervision costs, home office support fees or project manager salaries/costs are not permitted as these costs considered part of overhead which is included in the Change Order Mark-up reflected on the cover page of this Agreement.

6.1.5 If Change Order Work is required and a unit price was established in the Subcontract Documents for the PCA, such Change Order Work shall be performed at the sole option and decision of Contractor and Owner (i) in accordance with the unit price, or (ii) as an agreed upon Lump Sum or (iii) on a T&M cost basis. Subcontractor may be directed, at Contractor and Owner's option, to prepare written Change Order Request proposals for each option.

6.1.6 In absence of total agreement on the terms of a Change Order, Contractor may execute a unilateral Subcontract Change Order which shall be binding on Subcontractor. Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the PCA Sum, the PCA Time and/or the PCA Completion Date for such revised Work in a manner consistent with requirements of the Subcontract Documents. Contractor's acknowledgement, acceptance or "sign off" of Change Order Work is expressly subject to Owner's acceptance and approval of the Change Order and the Work performed by Subcontractor. Subcontractor's payment by Contractor for Change Order Work is expressly subject

to payment by Owner for such Work and the payment provisions of this Agreement.

6.2 CLAIMS RELATING TO OWNER. Subcontractor agrees to make all claims for which Owner is or may be liable, including, but not limited to, claims for extra work, delays, additional schedule impacts, in the manner provided in the Contract Documents for like claims by Contractor upon Owner. Notice of such claims shall be given in writing by Subcontractor within the time period required by the Contract Documents, or if no time period is referenced therein, within ten (10) days from the event for which such claim is to be made, or immediately upon Subcontractor's first knowledge of the event, whichever shall first occur, otherwise, such claims shall be deemed waived. Subcontractor shall be bound by the determination of Owner, and/or the Architect, with respect to any such claim. Subcontractor shall continue performance of all subcontract Work during the pendency of any such claim, and the existence of such claim shall at no time give Subcontractor the right to stop or suspend its Work on the Project. Subcontractor shall be entitled to its proportionate share of any actual net recovery, less overhead and profit to Contractor and less Contractor's expense and attorneys' fees in handling said matter. Subcontractor hereby waives and releases any and all claims, causes of actions, and rights to further payment beyond Contract amount except as Contractor may receive funds or extensions of time from Owner or Architect. Subcontractor shall post whatever security may be required by Contractor to cover Contractor's cost and expenses including attorney's fees, prior to and as a condition to Contractor proceeding on Subcontractor's behalf. In the event there are no other subcontractor claims, and no claims by Contractor, Contractor may permit Subcontractor to prosecute said claim, in the name of Contractor, for the use and benefit of Subcontractor in the manner provided in the Contract Documents for like claims by Contractor upon Owner subject to the terms of this MSA. However, Subcontractor agrees to hold harmless, indemnify, protect, save, and defend Contractor from any and all claims, damages, expenses, fees, costs, disbursements, judgments, awards, losses, or liabilities of whatever nature that may arise from the Subcontractor's prosecution of said claims (whether by way of counterclaims or otherwise).

6.3 CLAIMS RELATING TO CONTRACTOR. The Subcontractor shall give the Contractor written notice of all claims not included in Section 6.2 within five (5) days of the beginning of the event for which any claims are made; otherwise, such claims shall be deemed waived.

6.4 DELAY. If the progress of Subcontractor's Work is substantially delayed without the fault or responsibility of Subcontractor, then the time for Subcontractor's Work shall be extended by Change Order, but only to the extent of a change order obtained by Contractor under the Contract Documents from Owner, and the Schedule of Work shall be revised accordingly. Contractor shall not be liable to Subcontractor for any monetary damages or additional compensation as a consequence of delays occasioned on the Project. Subcontractor's only monetary relief for delays will be to the extent Contractor recovers same on behalf of Subcontractor from Owner, it being understood and agreed by Subcontractor that, apart from recovery from said Owner, Subcontractor's sole and exclusive remedy for delay shall be an extension in time for performance of Subcontractor's Work. In the event of any claim for delay damages by Contractor against Owner, which includes a claim on behalf of Subcontractor, Subcontractor agrees to be responsible for its proportionate share of any and all expenses, including attorney fees and consultant's fees, which Contractor incurs in pursuing any and all such claims. Moreover, in the event of a settlement of such claims by Contractor against Owner, which settlement may be pursuant to Contractor's sole discretion, Subcontractor agrees to accept its proportionate share of the settlement in full and Final Payment of any and all such claims. Subcontractor's proportionate share shall be defined as the percentage of Subcontractor's delay damage claim to the whole of the entire delay damage claim submitted by Contractor to the Owner, inclusive of Contractor's claim and that of any and all subcontractors.

6.4.1 FORCE MAJEURE. Contractor and Subcontractor understand and agree that the term "Force Majeure" as used in this Agreement shall have the same meaning as the term "Force Majeure" as may be used in the Contract between Owner and Contractor. In the event of a Force Majeure event as that term may be used in the Contract between Owner and Contractor, Contractor shall have all of the same rights, remedies, duties and obligations hereunder that the Owner has pertaining to a Force Majeure event under such Contract. Subcontractor's sole remedy for any Force Majeure event shall be to request in writing an extension of the

Contract Time and/or the Completion Date to Contractor and shall only be entitled to said extension(s) if, as a condition precedent, the Contractor has received the same from the Owner. Subcontractor acknowledges that it shall not be entitled to any claims for monetary compensation for delays, acceleration, compression, inefficiency or other type of impact as a result of any delays or other impacts encountered by the Subcontractor due to any Force Majeure event. Subcontractor's recovery of claims shall be explicitly limited to those claims recovered by Contractor from Owner, less Contractor's attorney fees and costs expended in such recovery.

6.5 LIQUIDATED DAMAGES. If the Contract Documents provide for liquidated or other damages for delay beyond the completion date set forth in the Contract Documents, and such damages are so assessed, then the Contractor may assess same against the Subcontractor, and Subcontractor shall indemnify and hold Contractor harmless, in proportion to the Subcontractor's share of the responsibility for such delay. However, the amount of such assessment shall not exceed the amount assessed against the Contractor. Contractor shall also be entitled to assess and/or recover against Subcontractor Contractor's actual damages incurred during any delay caused by Subcontractor as well as the apportioned liquidated damages assessed by the Owner.

6.6 ACTUAL DAMAGES. In the event no liquidated damages are assessed due to concurrent delays caused by the Owner, Contractor shall be entitled to recover its actual damages for delay against Subcontractor for any concurrent delay period for delays caused by the Subcontractor.

6.7 WAIVER OF DAMAGES. Subcontractor waives its right to recover consequential damages including but not limited to loss of use, revenue or profit, actual or anticipated or otherwise, special, incidental, indirect, exemplary, multiple or punitive damages, legal fees and interested arising from any Project, delay, or claim, this Agreement or any PCA issued hereunder, including any consequential damages due to the termination of this MSA or any PCA issued hereunder. This waiver includes damages incurred by the Subcontractor for unabsorbed home office overhead, principal office expenses including the compensation of personnel stationed there, for losses of financing, losses in business and reputation, and for loss of profit except anticipated profit arising directly from the Work. Nothing contained in this provision shall be deemed to preclude an award of liquidated damages in favor of the Contractor, when applicable, in accordance with the requirements of the Contract Documents.

ARTICLE 7

CONTRACTOR'S OBLIGATIONS

7.1 OBLIGATIONS. Contractor binds itself to the Subcontractor under the Contract Documents. Contractor owes no greater duty or obligation to the Subcontractor than that which the Owner owes to Contractor. Contractor and Subcontractor shall be mutually bound by the terms of this MSA and, to the extent that the provisions of the Owner/Contractor Contract apply to this MSA and to the Work of the Subcontractor, Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under the Owner/Contractor Contract, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities that the Contractor, under the Owner/Contractor Contract, assumes toward the Owner. The Contractor shall have the benefit of all rights, remedies, and redress against the Subcontractor that the Owner, under the Owner/Contractor Contract, has against Contractor.

7.2 AUTHORIZED REPRESENTATIVE. Contractor shall designate one or more persons who shall be the Contractor's authorized representative(s) (a) on-site and (b) off-site. Such authorized representative(s) shall be the only person(s) Subcontractor shall look to for instructions, orders and/or directions, except in an emergency.

7.3 STORAGE ALLOCATION. Contractor shall allocate adequate storage areas, if available, for Subcontractor's materials and equipment during the course of Subcontractor's Work at the sole expense of Subcontractor.

7.4 TIMELY COMMUNICATIONS. The Contractor shall transmit, with reasonable promptness, all submittals, transmittals, and written approvals relating to the Subcontractor's Work.

ARTICLE 8
SUBCONTRACTOR'S OBLIGATIONS

8.1 OBLIGATIONS DERIVATIVE. The Subcontractor binds itself to the Contractor under this Agreement in the same manner as the Contractor is bound to the Owner under the Contract Documents.

8.2 RESPONSIBILITIES. The Subcontractor shall furnish all of the labor, materials, equipment, and services, including, but not limited to, competent supervision, shop drawings, samples, tools, and scaffoldings, which are necessary for and reasonably incidental for the proper performance and completion of the Subcontractor's Work in strict compliance with the Contract Documents. The Subcontractor shall supply and/or perform anything omitted from the plans and/or specifications which is necessary to complete the Work in accordance with good building practices and all applicable building codes. Subcontractor shall provide a list of proposed subcontractors and suppliers, be responsible for taking field dimensions, providing tests, ordering of materials and all other actions as required to meet the Schedule of Work. The Contractor shall have the right to reject any proposed subcontractor or supplier for reasonable grounds.

8.2.1 Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors. Approval of submittals by Contractor will not relieve Subcontractor of its obligation to perform the Subcontractor's Work in strict compliance with the PCA or the proper matching and fitting of the contiguous work. Late submission, approval or return of required submittals shall not be an acceptable reason for Subcontractor to fall behind schedule. Submittals shall be sent electronically whenever possible, or uploaded to a designated management internet site, if such a site is being utilized.

8.2.2 All Request for Information (RFI's) for the Project shall be submitted in writing by hardcopy or by email. An oral request by Subcontractor or oral response by Contractor or Architect to a question or issue is not approved or resolved unless the same is documented in writing, including but not limited to any questions or response that may involve changes to the Work or additional costs. When a response to an RFI or question will result in added costs, Subcontractor shall provide to Contractor a written proposal of such costs prior to proceeding with Work and proceed only in accordance with the Change Order provisions of this Agreement.

8.2.3 If there are defects or variances in the work of Contractor, other prime contractors on the Project or other subcontractors or employees surrounding, adjacent to or to underlie Subcontractor's Work, Subcontractor shall give prompt notice to Contractor of such defect. Subcontractor shall be liable for the cost to replace, modify or correct or for the correction, replacement or modification at Subcontractor's cost of any of Subcontractor's Work or any other work required as a result of Subcontractor's failure to give such prompt notice of a known or suspected defect to Contractor. Subcontractor shall coordinate the location and installation of its Work with other trades including but not limited to identifying tie-in points, blocking requirements, penetrations, supplemental supports.

8.3 TEMPORARY SERVICES. Subcontractor shall furnish all temporary services and/or facilities necessary to perform its work, (at the sole expense of the Subcontractor) except as provided in a specific PCA.

8.4 COORDINATION. The Subcontractor shall:

- (a) cooperate with the Contractor and all others whose work may interfere with the Subcontractor's Work or whose work Subcontractor may interfere with; and
- (b) specifically note and immediately, within forty-eight (48) hours, advise the Contractor of any such interference with the Subcontractor's Work; and
- (c) participate in the preparation of coordination drawings and work schedules in areas of congestion.

8.4.1 If weekly jobsite coordination meetings are being held it will be mandatory that Subcontractor, if currently working onsite or planning to start work onsite by the next meeting, have one of their qualified employees represent Subcontractor at the meeting. Any failure of Subcontractor to comply with this requirement will subject Subcontractor to a \$100.00 fine per each applicable meeting for which Subcontractor fails to be represented.

8.4.2 RELATED WORK. The Subcontractor before proceeding with any work under this MSA and PCA, will accurately check and verify all previous and surrounding work done by others and determine the correctness of same. Unless excused by Contractor in writing by Contractor's authorized representative, the Subcontractor shall field measure all work relating to its work, the failure of the Subcontractor to detect and disclose any existing discrepancies or nonconformities and report same to the Contractor, in writing, before commencing its work, shall relieve the Contractor of any and all responsibility for same, and the Subcontractor shall be responsible and liable for all resulting damages, costs and expenses arising as a result of discrepancies and nonconformities which should have been discovered by the Subcontractor. Subcontractor hereby represents that the plans and specifications are complete and sufficient to provide substantially complete and functional systems.

8.5 AUTHORIZED REPRESENTATIVE. The Subcontractor shall designate one or more persons who shall be authorized Subcontractor's representative(s) both (a) on-site, and (b) off-site. Due to safety considerations and to ensure the effective performance of the Work, the Subcontractor's foreman and superintendent for the Project shall be fluent in English, except as otherwise authorized by Contractor in writing. Failure to provide a foreman and superintendent fluent in English shall be a material breach of both this Agreement and all applicable PCAs. Such superintendent designated by Subcontractor shall be capable of making decisions on behalf of Subcontractor and shall attend all job meetings starting at least two (2) weeks prior to the start of the Subcontractor's Work and continuing until Subcontractor's Work under the PCA is complete.

8.6 PROVISION FOR INSPECTION. The Subcontractor shall notify the Contractor when portions of the Subcontractor's Work are ready for inspection. The Subcontractor shall at all times furnish the Contractor and its representatives adequate facilities for inspecting materials at the site or any place where materials under this Agreement may be in the course of preparation, process, manufacture or treatment. The Subcontractor shall furnish to the Contractor in such detail and as often as required, full reports of the progress of the Subcontractor's Work irrespective of the location of such work.

8.7 SAFETY AND CLEANUP. Subcontractor shall follow Contractor's clean-up and safety directions, and

- (a) at all times keep the building and premises free from debris and unsafe conditions resulting from the Subcontractor's Work; and
- (b) broom clean each work area prior to discontinuing work in the same.

Subcontractor shall provide daily clean-up and housekeeping while working on-site and deposit debris into dumpsters. Cleanup includes cleanup of lunch debris and personnel debris as well. Food and drink will only be permitted at designated areas on the Project. All lunch and break activity shall occur only at these designated areas. To the extent Subcontractor's activities will result in mud, dirt and/or debris on public roads and parking areas, Subcontractor shall provide cleanup and a power broom of these areas on a regular basis. If the Subcontractor fails to immediately commence compliance with such safety duties or commence cleanup duties within forty-eight (48) hours after receipt from the Contractor of notice of noncompliance, the Contractor may implement such safety or cleanup measures without further notice and deduct the cost thereof from any amounts due or to become due the Subcontractor. The Subcontractor shall comply with all federal state, and local safety and health regulations, ordinances, statutes, laws and rules, including all such requirements set forth in the Contract Documents. All federal, state and local safety and health regulations, ordinances, statutes, laws and rules, shall be enforceable by Contractor's Safety Director or designee. Correction of items noted shall commence immediately if imminent danger is present or within eight (8) hours of notice of a violation by Contractor if imminent danger is not present. Failure to correct a violation within the allotted time shall constitute a default of

this of this MSA and Contractor shall have all rights available to it in the event of such default by Subcontractor.

8.7.1 The Subcontractor shall maintain a Drug Free Workplace Program and in the event an injury occurs on the jobsite, the employee of the Subcontractor that is involved may be subject to a post- accident drug screen at the expense of the Contractor. A copy of the Subcontractor's Drug Free Workplace Program shall be available upon request of the Contractor or his designee.

8.7.2 The Subcontractor shall provide to the Contractor a copy of the Subcontractor's Safety Manual. It shall be reviewed by Contractor's Safety Director and returned to the Subcontractor.

8.7.3 The Subcontractor shall maintain a copy of its Hazardous Communication Program on site and will provide all necessary MSDS sheets for products used on the work site to the General Contractor.

8.7.4 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The PCA Time shall be extended appropriately and the PCA Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished only in accordance with the terms of this Agreement.

8.7.5 The Subcontractor is familiar with the Fair Labor Standards Act in relation to wages and hours and the laws, orders, and regulations on Equal Employment Opportunity; Occupational Safety and Health Act; Wage and Price Controls; and where such act, order or regulation apply to the Work furnished under this Agreement, the Subcontractor agrees to comply with the terms and provisions thereof and agrees to indemnify and hold the Contractor harmless from any violation of the above of the same by the Subcontractor.

8.7.6 Subcontractor and its sub-subcontractors and suppliers shall comply with any drug and/or alcohol use and/or abuse policy or program established by Owner related to the Project or the Project site, including a policy or program related to medical marijuana use (collectively "DA Program"). Any employee of Subcontractor or of its sub-subcontractors or suppliers who fails to comply with such DA Program is subject to immediate removal from the Project. Furthermore, upon Subcontractor's, its subcontractor's or supplier's failure to remove such employee in accordance herewith, or any other failure to comply with such DA Program, this Agreement shall be subject to immediate termination. Subcontractor shall be liable to Contractor for any and all damages associated with non-compliance with such DA Program. To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless the Owner, Contractor, and their respective agents and employees from and against claims, damages, losses, and expenses, including but not limited to its costs or attorney's fees, arising out of or resulting from the violation or breach of DA Program by Subcontractor or its sub-subcontractors or suppliers. Further, Subcontractor hereby waives and releases all claims, damages, attorneys' fees, and losses against Contractor which may arise in connection compliance with the DA Program.

8.7.7 The Contractor reserves the right to deduct monies from this Agreement or any PCA(s) issued hereunder, to recover any costs incurred as the result of a Subcontractor's non-compliance with Safety, Health, and Environmental Regulations. This includes, but is not limited to, costs from: Regulatory Fines, Maintenance and Compliance activities performed on the Subcontractor's behalf, and Repairs/Replacement of property or possessions on the Subcontractor's behalf.

8.7.8 Any Subcontractor or Subcontractor's Employee who fails to comply with Safety, Health, and Environmental Regulations is subject to immediate removal from the Project without prior warning by or from

Contractor.

8.7.9 Subcontractor and Subcontractor's sub-subcontractors and suppliers shall comply with any safety requirements or directives of the CDC and/or local health department including those related to epidemic and/or pandemic exposure prevention or protection. Subcontractor is responsible for any additional costs incurred by Contractor, including attorneys' fees or other costs, as a result of Subcontractor's failure to comply with such safety requirements or directives.

8.8 PROTECTION OF THE WORK. Subcontractor shall take necessary precautions to properly protect Subcontractor's Work and the work of others from damage caused by Subcontractor's operations. Should Subcontractor cause damage to the Work or property of Owner, Contractor or others, Subcontractor shall promptly remedy such damage to the satisfaction of Contractor, or Contractor may so remedy and deduct the cost thereof from any amounts due or to become due Subcontractor. Subcontractor shall protect all neighboring and existing finishes adjacent to their work and provide any barricades as needed for the Work of the PCA.

8.9 PERMITS, FEES AND LICENSES. The Subcontractor shall give adequate notices to authorities pertaining to the Subcontractor's Work and secure and pay for all permits, fees, licenses, assessments, inspections and taxes necessary to complete the Subcontractor's Work in accordance with the Contract Documents. Only to the extent obtained by the Contractor under the Contract Documents, the Subcontractor shall be compensated for additional costs resulting from laws, ordinances, rules, regulations and taxes enacted after the date of the Agreement.

8.10 ASSIGNMENT. Subcontractor shall not assign this MSA or any PCA issued to it pursuant to this Agreement, nor the proceeds of any such Purchase Order, nor subcontract the whole nor any part of Subcontractor's Work without prior written approval of Contractor, which shall not be unreasonably withheld.

8.11 PROGRESS AND PERFORMANCE. Subcontractor shall proceed with each and every part of this Contract in a prompt and diligent manner. Subcontractor, without additional compensation, shall perform this Contract at such times, in such order and such manner as Contractor may demand. Subcontractor shall commence, continue and complete its performance of the project so as not to delay Contractor, Owner or other contractors or subcontractors, in their completion of this Contract, the Owner/Contractor Contract, or any portion thereof, and so as to insure completion as directed by Contractor. Any time specified for the completion of this Contract, or portion thereof, is a material provision of this Contract, and time is of the essence. Subcontractor shall furnish sufficient forces to assure proper performance of its Contract in strict compliance with all performance schedules. Subcontractor shall, from time to time, on demand of Contractor give adequate evidence to Contractor to substantiate the planned performance and progress of the Contract and the various parts thereof. Subcontractor shall promptly increase its work force, accelerate its performance, work overtime, work Saturdays, Sundays and holidays, all without additional compensation, if in the opinion of Contractor, such work is necessary to maintain proper progress. Subcontractor shall conform to Contractor's hours of work. No premium time will be acknowledged or paid unless pursuant to a written authorization by Contractor. Subcontractor shall neither delay nor adversely affect the performance of Contractor or any other contractor or subcontractor working on or related to the project. If Subcontractor should so delay or threaten to delay the progress or performance of Contractor or cause any actual or potential damage or liability to Contractor, then Subcontractor may be deemed in breach of this Agreement and shall indemnify and shall hold Contractor harmless. Subcontractor shall fully cooperate and coordinate its work with Contractor and any other contractors or subcontractors at the Project. Subcontractor shall bear the costs of all damages done to other contractors and/or subcontractors and shall be directly responsible to such other contractors or subcontractors for any damages caused by or resulting from acts or omissions of Subcontractor.

8.11.1 The liability of Subcontractor shall not be deemed waived by any assent or acquiescence by the Contractor to the Subcontractor's late performance. Contractor shall be entitled to terminate the Contract due to late or threatened late performance. In the event any other contractor or subcontractor should damage the

Subcontractor, the Subcontractor shall neither seek nor be entitled to any compensation from the Contractor but will seek its damages directly from such other party. Subcontractor will not interfere with Contractor's contract with any other party. Subcontractor acknowledges that the Contract price is based on the fact that Contractor is not liable to Subcontractor, absent any actual fraud or intentional and active tortious act, for any damages or costs due to delay, accelerations, non-performance, interferences with performance, suspensions, or changes in the performance or sequence of Subcontractor's work. Should Subcontractor's performance, in whole or in part be interfered with or delayed, or be suspended in the commencement, execution or completion, for reasons beyond Subcontractor's control and without its fault or negligence, Subcontractor shall be entitled solely to an extension of time in which to complete its Contract, but only if it shall have notified in writing, Contractor of the cause of delay within five days of the occurrence of the event and provided a similar extension of time, if needed, is allotted to Contractor by Owner. In no circumstances will Contractor be liable to Subcontractor for damages, compensatory, consequential or otherwise, or increase in the Contract amount due to delay, interference, suspension or sequencing of the work, acceleration, inefficiency or disruption. Contractor owes no damage, duty, obligation or liability to Subcontractor as a result of any delay, interference, suspension or other event, except for seeking an extension of time from Owner.

8.12 Subcontractor hereby agrees to incorporate into any subcontracts or purchase orders it has with any other party, all those provisions required by law to be incorporated therein, and all those provisions of this Contract which affect the rights of Contractor. This Contract shall neither create a contractual relationship between Contractor and Subcontractor's subcontractors or suppliers, nor between Subcontractor and Owner or its representatives or agents.

8.13 Subcontractor shall maintain an up-to-date "As-Built" set of drawings as work progresses.

8.14 LABOR AND PERFORMANCE: If the Project is a merit shop project, Subcontractor is aware that both union and non-union contractors will be working side-by-side on such common site. Subcontractor represents and warrants that any labor agreement to which Subcontractor is a party has a no-strike clause therein and that Subcontractor will strictly enforce the provisions of such clause in the event that picketing or labor union difficulties arise at the construction site. Subcontractor shall conform to Contractor's labor policy and shall not employ any persons who, and its employees shall not engage in any activities which, may cause a strike, work stoppage, or other similar disruptive labor action. Subcontractor shall maintain and exercise control over all employees engaged in the performance of the Work; provided, however, Subcontractor shall remove or cause to be removed from the Project premises any such employee whose presence determined by Owner or Contractor to be detrimental to Owner's best interests or who fails to strictly abide by any reserved gate which may be established. Subcontractor warrants that its employees will cross any picket line and work behind any picket line established by a labor organization at the construction site. Should any personnel of Subcontractor or any Sub-subcontractor or supplier of Subcontractor providing labor or materials under the scope of the Work of a PCA engage in a strike or other work stoppage or cease or refuse to work due to picketing or any labor dispute of any kind, Contractor may, without prejudice to any other remedies it may have, after one (1) day's written notice to Subcontractor, either (a) provide any such labor and materials and deduct the costs thereof for any monies due or thereafter to become due to Subcontractor, and deduct from any PCA Sum balances any additional damages or liabilities incurred by Contractor as a result thereof, including any reasonable attorneys' fees; or, (b) terminate the PCA, this Agreement, or both, and thereupon shall have the right to enter upon the premises and take possession for the purpose of completing the Work hereunder all of Subcontractor's materials, tools and equipment thereon and charging the costs of completion against any PCA Sum balances due or to become due.

8.15 DESIGN ERRORS IN CONTRACT DOCUMENTS FURNISHED BY OWNER. Subcontractor understands and acknowledges that Contractor makes no representations or warranties, to Subcontractor, or to any other party, as matters pertaining to the design of the Project by licensed designed professionals (the "Construction Documents"). As such, Subcontractor acknowledges that in no event shall Contractor be liable to Subcontractor or to any other party for any errors or omissions, or claimed errors or omissions, related to the Construction

Documents for the Project. Subcontractor shall not pursue any disputes against Contractor or its surety, if any, which relate to any claimed deficiencies in the Construction Documents without first exhausting any and all available remedies with respect to Owner under the Owner/Contractor Contract and Contract Documents. Subcontractor further understands and acknowledges that any review of the Construction Documents for the Project by Contractor is performed solely in Contractor's capacity as a contractor and not as a licensed design professional. Further, Subcontractor also acknowledges that Contractor is only acting as a conduit with respect to any dissemination of Construction Documents by Contractor, and Contractor shall have no liability with respect to any errors, omissions or other matters related to the sufficiency of the Construction Documents due to any distribution or dissemination of same by Contractor.

8.16 SUBCONTRACTOR'S DESIGN-BUILD WORK. To the extent the scope of Subcontractor's Work in a PCA issued hereunder requires Subcontractor to provide design-build services, the provisions of this Design-Build Work Provision shall apply to this Agreement and such PCA. Subcontractor shall, consistent with applicable state licensing laws, provide the architectural, engineering and other design professional services required to perform design-build work required by the PCA ("Design-Build Work"). Subcontractor agrees that such services shall be provided through qualified, licensed design professionals who are either employed by Subcontractor or procured by Subcontractor from qualified, licensed design consultants.

8.16.1 Subcontractor shall at all times be responsible for services performed by its design consultants and shall coordinate the services and design documents of Subcontractor's design consultants with those of any other design professionals on the Project to satisfy Subcontractor's obligations under the Subcontract Documents and the PCA. Subcontractor shall give all notices and comply in all respects with all laws (including licensing laws), building codes, ordinances, regulations, and orders of any public or governmental authority applicable to the design or construction of the Design-Build Work to be furnished and performed by Subcontractor.

8.16.2 The standard of care for all design professional services performed by Subcontractor and its design consultants pursuant to this Agreement and any PCA issued hereunder shall be the care and skill ordinarily used by members of the design professional practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the PCA contains specifically identified performance standards for aspects of the services, Subcontractor agrees that all services shall be performed to achieve such standards.

8.16.3 In accordance with the times set forth in the PCA, including the Project schedule, Subcontractor shall submit to Contractor all interim design submissions and revisions for the Design-Build Work as required by the PCA. Such design submissions shall be in the form and quantity as called for in the PCA and may include design criteria, drawings, diagrams and specifications setting forth the PCA Project requirements. The submissions shall also show the relationship of the Design-Build Work to the overall PCA Project design. Contractor and Subcontractor agree that prior to the scheduled date for submitting all design submissions to Owner, Contractor, Subcontractor and Subcontractor's design consultant (if not otherwise employed by Subcontractor) will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the PCA as well as Contractor's budget and pricing assumptions.

8.16.4 The review and/or approval by either Contractor or Owner of any design submission or the construction documents prepared by Subcontractor as Design-Build Work shall not be deemed to transfer any design liability from Subcontractor to Contractor or Owner. Subcontractor will, at its own cost, revise any interim design submission or construction document Subcontractor provided to correct any errors, mistakes or omissions, and those necessary to secure permits, approvals and licenses. Such revisions shall be performed timely and so as not to jeopardize the PCA Project Schedule.

8.16.5 Ownership and use of the design and construction plans, drawings, specifications and other documents furnished by Subcontractor shall be as stated in the PCA. If not otherwise addressed in the PCA, the design and

construction plans, drawings, specifications and other documents furnished by Subcontractor shall be considered work made for hire and ownership of the entire right, title and interest in all such documents furnished by Subcontractor, including, but not limited to any copyrights therein, shall reside in Owner, and if such documents cannot be qualified as work for hire, the right to register and renew the copyrights and right to use the documents in any manner whatsoever shall be and hereby are assigned by Subcontractor to Owner. Subcontractor shall provide Contractor with copies of all written agreements which confirm and affect the assignment of all such rights by Subcontractor, Subcontractor's employees and design consultants who produce or create all or a portion of the design documents hereunder.

8.16.6 If a dispute arises with respect to Subcontractor's compensation or any other term of this Agreement, Subcontractor agrees to continue to fully perform under this Agreement and perform any additional services directed by Contractor while any dispute is resolved through the dispute resolution process, provided Contractor makes payment of undisputed amounts to Subcontractor in accordance with the terms of this Agreement. Contractor and Owner shall be entitled to continue to utilize the Design-Build Work during any pending dispute resolution proceeding between Contractor, Subcontractor, Owner or any third-party concerning this Agreement, any PCA, the Design-Build Work or any claim between Contractor and Subcontractor until Final Completion of the Project.

8.16.7 If this Agreement is terminated or suspended, Subcontractor shall deliver to Contractor copies of the plans, drawings, specifications, models, engineering calculations and other work product created or used by Subcontractor or its consultants in the performance of their obligations under this Agreement. Termination of this Agreement for any reason shall not release Subcontractor from any of its obligations related to the Design-Build Work existing at the time of termination, except for its obligation to complete its services hereunder. If this Agreement is terminated or suspended by any party and for any reason, Contractor and/or Owner are authorized hereunder to use any documents prepared hereunder by Subcontractor or its consultants to complete, modify or add to the project for the duration of such project provided that the Subcontractor has been paid undisputed amounts for the Design-Build Work performed to the date of termination. This provision shall be subject to enforcement through specific performance.

8.16.8 Subcontractor's and Subcontractor's design consultants and Sub-Subcontractor's insurance coverage requirements set forth in this Agreement and the PCA issued hereunder shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build nature of the Project.

8.16.9 If Design-Build Work is required under a PCA issued hereunder, Subcontractor shall provide professional liability insurance for claims arising from the negligent performance of design services by Subcontractor and the coverage limits, duration and other specifics of such insurance shall be set forth in the PCA. Any professional liability insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build nature of the Project. Such policies shall be provided to Contractor prior to the commencement of any design services hereunder.

ARTICLE 9

SUBCONTRACT PROVISIONS

9.1 LAYOUT RESPONSIBILITY AND LEVELS. Contractor shall establish principal axis lines of the building and site whereupon the Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontractor's Work and for any loss or damage to the Contractor or others by reason of the Subcontractor's failure to set out or perform its Work correctly. The Subcontractor shall exercise prudence so that actual Final conditions and details shall result in perfect alignment of finish surfaces.

9.2 WORKMANSHIP. Every part of the Subcontractor's Work shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike, and substantial manner. All workmanship shall be of the

best of its several kinds, and all materials used in the Subcontractor's Work shall be furnished in ample quantities to facilitate the proper and expeditious execution of the work, and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

9.3 MATERIALS FURNISHED BY OTHERS. In the event the scope of the Subcontractor's Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to examine the items so provided and thereupon handle, store and install the items with such skill and care as to ensure a satisfactory and proper installation. Loss or damage due to acts of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor.

9.3.1 MATERIALS, INSPECTIONS, STORAGE AND APPROVALS. It is Subcontractor's obligation, upon direction by Contractor, to take all necessary steps, including but not limited to delivery of samples, tests and reports, guarantees, drawings, manuals, certificates, details, warranties, inspections, etc., to obtain any and all required approvals necessary or required under this Contract or the Owner/Contractor Contract. Subcontractor shall, within 48 hours after receiving specific written notices from Contractor, commence to take down and remove any designated portion of its work which is condemned, disapproved or is questioned as not being in strict compliance and conformity with the requirements of this Contract or the Owner/Contractor Contract. Subcontractor shall promptly, at its own expense, correct and rectify same. If Contractor determines that it will accept nonconforming work, Contractor shall be entitled to a credit for the conformity plus all other costs incurred.

9.4 SUBSTITUTIONS. No substitutions shall be made in Subcontractor's Work unless permitted in the Contract Document and only then upon Subcontractor first receiving all approvals required under the Contract Documents for substitutions. Subcontractor shall indemnify Contractor for any increased costs incurred by the Contractor as a result of such substitutions, whether or not Subcontractor has obtained approval thereof.

9.5 USE OF CONTRACTOR'S EQUIPMENT. Subcontractor, its agents, employees, subcontractors or suppliers shall not use Contractor's equipment without the express written permission of Contractor's designated representative. If Subcontractor or any of its agents, employees, suppliers, or lower tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items owned, leased, or under the control of the Contractor, Subcontractor shall be liable to Contractor as provided in Article 12 for any loss or damage (including personal injury or death) which may arise from such use, except where such loss or damage shall be found to have been due solely to the negligence of the Contractor's employee in operating such equipment.

9.6 CONTRACT BOND REVIEW. The Contractor's Payment Bond for the Project, if any, may be reviewed and copied by the Subcontractor.

9.7 PRIVACY. Until Final completion of the Project, the Subcontractor agrees not to perform any work directly for the Owner or any tenants thereof, or deal directly with the Owner's representatives in connection with the Project, unless otherwise directed in writing by the Contractor. All work for this Project performed by the Subcontractor shall be processed and handled exclusively by the Contractor.

9.8 SUBCONTRACT BOND. If indicated as required in any PCA hereunder or otherwise by Contractor or the Subcontract Documents, Subcontractor shall, within ten (10) days of the execution of the PCA by Subcontractor or as otherwise provided therein, furnish to Contractor a performance bond and labor and material bond in the full amount of the PCA Sum and in the form and content and from such surety or sureties satisfactory to Contractor and Owner. If Subcontractor does not furnish such surety bond within ten (10) days of the execution of the PCA, the parties agree that such failure constitutes a material breach and default under the PCA and this Agreement for which damages shall include, but not be limited to, termination and Contractor's cost to secure a replacement subcontractor. Subcontractor's surety shall be bound to the same terms and conditions of this Agreement and the PCA as Subcontractor is bound, including any damages for delay, liquidated damages and attorneys' fees, and Subcontractor shall provide the surety with a copy of this Agreement and the relevant PCA. The premium for each such bond, together with additional bond premiums resulting from changes in the PCA

Sum, shall be paid and borne exclusively by Subcontractor. Subcontractor shall be reimbursed without retainage for the cost of the premium simultaneously with the first progress payment hereunder. The reimbursement amount for the bonds shall not exceed the manual rate for such Subcontractor Work. Any failure of Subcontractor to promptly furnish any bonds required hereunder shall constitute a material breach of this Agreement entitling Contractor to terminate this Agreement and/or the PCA for cause.

9.8.1 Subcontractor shall provide its surety with all notices, letters or emails from Contractor relating to deficiencies or alleged deficiencies in Subcontractor's performance of this Agreement, including but not limited to those referred to in this Agreement, and Subcontractor's surety agrees that if Subcontractor fails to provide surety with such information, the surety will not use lack of notice from Contractor as a defense to any claim by Contractor on Subcontractor's bond. In instances where Subcontractor is failing or having difficulty in fulfilling obligations under this Agreement or a PCA, Contractor, either prior to or after Subcontractor's default, may allow Subcontractor to continue performance under this Agreement and such actions by Contractor may not be used by Subcontractor's surety as a defense, either partial or otherwise, to a subsequent claim by Contractor on Subcontractor's bond.

9.9 WARRANTY. Subcontractor warrants its Work against all deficiencies and defects in materials and/or workmanship and as called for in the Contract Documents. Subcontractor agrees to satisfy such warranty obligations which appear within the guarantee or warranty period established in the Contract Documents without cost to the Owner or Contractor. If no guarantee or warranty is required of Contractor in the Contract Documents, then Subcontractor shall guarantee or warranty its work as described above for the period of one (1) year from the date of substantial completion or the maximum period provided by law, whichever is greater. Subcontractor further agrees to execute any special guarantees or warranties that shall be required for Subcontractor's Work prior to Final Payment.

9.10 APPROVAL OF SUBCONTRACTOR It is a condition precedent and a condition subsequent to this MSA that the Owner approve of the Subcontractor. In the event that the Owner shall disapprove of the Subcontractor before the Subcontractor commences performance under this a PCA, then the PCA shall become null and void at the sole option of the Contractor; then, in the event, all rights and obligations hereunder shall cease, and the PCA shall be of no further force and effect. In the event that the Owner shall disapprove of the Subcontractor after the Subcontractor commences performances under the subject PCA, then the PCA shall terminate immediately, then in that event, the Subcontractor shall be entitled to payment in an amount bearing the same percentage to the total Subcontract price [excluding extra work] that the percentage of the Work completed at termination [excluding extra work] bears to the total Work under the Subcontract [excluding extra work].

9.11 The approval of the Contractor, Owner, or Owner's representatives of any submittals of the Subcontractor shall not relieve the Subcontractor of liability for any deviations from the Contract Documents, unless specifically called to the Contractor's attention and acknowledged by the Contractor in writing.

ARTICLE 10

RECOURSE BY CONTRACTOR

10.1 FAILURE OF PERFORMANCE.

10.1.1 NOTICE TO CURE. If the Subcontractor refuses or fails to supply enough properly skilled workers, proper materials, or maintain the Schedule of Work, or it fails to make prompt payments for its workers, sub-subcontractors or suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of material breach of a provision of this MSA or a PCA, and fails within three (3) working days after receipt of notice to commence and continue satisfactory correction of such default with diligence and promptness, then the Contractor, without prejudice to any rights or remedies, shall have the right to any or all of the following remedies:

- (a) supply such number of workers and quantity of materials, equipment, and other facilities as Contractor deems necessary for the completion of Subcontractor's Work, or any part thereof which Subcontractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to Subcontractor, who shall be liable for the payment of same including reasonable overhead, profit and attorneys' fees;
- (b) contract with one or more additional contractors to perform such part of the Subcontractor's Work as the Contractor shall determine will provide the most expeditious completion of the total Work and charge the cost thereof to the Subcontractor;
- (c) withhold payment of any monies due the Subcontractor pending corrective action to the extent required by and to the satisfaction of the Contractor and Owner;
- (d) terminate the PCA and/or this MSA in accordance with the terms of this Agreement.

In the event of an emergency affecting the safety of persons or property, the Contractor may proceed provided in this Section without prior notice to Subcontractor.

10.1.2 USE OF SUBCONTRACTOR'S EQUIPMENT. If the Contractor performs Work under this Article or sublets such Work to be performed, the Contractor and/or the persons to whom Work has been sublet shall have the right to take and use any materials, implements, equipment, appliances or tools furnished by, belonging or delivered to the Subcontractor and located at the Project or on a site specifically designated for performance of all or a portion of the Subcontractor's Work.

10.2 BANKRUPTCY.

10.2.1 TERMINATION ABSENT CURE. Upon the appointment of a receiver for the Subcontractor or upon the Subcontractor making an assignment for the benefit of creditors, the Contractor may terminate this MSA and any PCA in progress upon giving three (3) working days' written notice to the Subcontractor and its Surety, if any. If an order for relief is entered under the bankruptcy code with respect to the Subcontractor, the Contractor may terminate this MSA and any PCA in progress by giving three (3) working days written notice to the Subcontractor, its Trustee and its Surety, if any, unless the Subcontractor or its Surety:

- (a) promptly cures all defaults;
- (b) provides adequate assurances of future performance;
- (c) compensates the Contractor for actual pecuniary loss resulting from such defaults; and
- (d) assumes the obligations of the Subcontractor within the statutory time limits.

10.2.2 INTERIM REMEDIES. If the Subcontractor is not performing in accordance with the Schedule of Work at the time of entering an order for relief, or at any subsequent time, the Contractor, while awaiting the decision of the Subcontractor or its Trustee to reject or to accept this MSA and existing PCA and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Schedule of Work. Contractor may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and attorney's fees. The Subcontractor shall be liable for any and all such costs and/or expenses which exceed the unpaid balance of the subcontract price.

10.3 SUSPENSION BY OWNER. Should Owner suspend the Owner/Contractor Contract or any part of the Owner/Contractor Contract which includes Subcontractor's Work, Contractor shall so notify Subcontractor and upon receipt of said notice Subcontractor shall immediately suspend Subcontractor's Work. In the event of such Owner suspension, Contractor's liability to Subcontractor is limited to the extent of Contractor's recovery on Subcontractor's behalf under the Contract Documents. Contractor agrees to cooperate with Subcontractor, at Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit Subcontractor to prosecute said claim, in the name of Contractor, for the use and benefit of Subcontractor, subject to the terms of indemnity set forth in Section 6.2.

10.4 TERMINATION BY OWNER FOR CAUSE OR FOR CONVENIENCE. Should the Owner terminate, for cause or for convenience, the Owner/Contractor Contract or any part of the Owner/Contractor Contract which includes the Subcontractor's Work, the Contractor shall so notify the Subcontractor in writing. Contractor's notice of termination shall be effective immediately and only for those portions of the Work described in the notice. To the extent that Owner terminates only some part of the Owner/Contractor Contract, Subcontractor shall remain obligated to perform all portions of the Work not covered by the notice. In the event of such Owner termination, the Contractor's liability to the Subcontractor is limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Contract Documents. The Contractor 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 said claim, in the name of the Contractor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor, subject to the indemnity provision of Section 6.2.

10.5 SUSPENSION BY CONTRACTOR FOR CONVENIENCE. The Contractor may order the Subcontractor to suspend, delay, or interrupt all or any part of the Subcontractor's Work for such period of time as may be determined to be appropriate for the convenience of the Contractor or the convenience of the Owner. In the event of recommencement of the work after such suspension, delay or interruption, the Subcontractor shall notify the Contractor in writing within ten (10) working days after receipt of the Contractor's order of the effect of such order upon the Subcontractor's Work, and the contract price or contract time shall be adjusted by Subcontractor Change Order for any increase in the time or cost of performance of this Agreement caused by such suspension, delay, or interruption, to the same extent that Contractor receives such an adjustment from the Owner. No claim under this Article shall be allowed for any costs incurred more than ten (10) working days prior to the Subcontractor's notice to the Contractor. Neither the Contract Price nor the Contract Time shall be adjusted under this Article for any suspension, delay or interruption to the extent that performance would have been suspended, delayed, or interrupted by the fault or negligence of the Subcontractor, third parties, or force majeure.

10.6 TERMINATION FOR CONVENIENCE BY CONTRACTOR. Contractor, at any time and without cause, may also terminate this Agreement or any PCA issued hereunder for the Contractor's convenience. Contractor's termination shall be effective immediately and only upon written notice to Subcontractor and only for those portions of the Work described in the notice. Subcontractor shall remain obligated to perform all portions of the Work not covered by the notice. Where Contractor has terminated Subcontractor for Contractor's convenience and without cause, Subcontractor's compensation is exclusively limited to any recovery of the value of the work performed by the Subcontractor as of the date of the termination for convenience, to the extent the Contractor receives payment from the Owner for such value, and receipt of such payment by the Contractor from the Owner is a strict condition precedent to payment by the Contractor to the Subcontractor.

10.7 TERMINATION FOR CAUSE BY CONTRACTOR. If Subcontractor (1) fails or neglects to carry out the Work in accordance with the applicable PCA Contract Documents or otherwise to perform in accordance with a specific PCA and/or this MSA and (2) fails within three (3) working days after issuance of written notice to commence and continue correction of such default or neglect with diligence and promptness, Contractor may, by written notice to Subcontractor and without prejudice to any other remedy Contractor may have, terminate (1) the PCA at issue and/or (2) terminate this MSA and any PCA then in progress. Upon such termination, Contractor may finish the Subcontractor's Work by whatever method Contractor may deem expedient. If the unpaid balance of the PCA Sum exceeds the expense of finishing Subcontractor's Work and other damages incurred by Contractor and not expressly waived, such excess shall be paid to Subcontractor. If such expense and damages exceed the unpaid balance of the PCA Sum, Subcontractor shall pay the difference to Contractor.

10.8 Upon receipt of written notice of termination, for cause or for convenience, by Contractor, Subcontractor shall:

- .1 cease operations as directed by the Contractor in the notice;

- .2 take actions necessary, or that Contractor may direct, for the protection and preservation of the Work;
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders;
- .4 if requested by Contractor, deliver all materials and equipment in transit or fabrication to the Project site and possession of Contractor; and
- .5 thereafter, only perform such Subcontractor's Work as may be necessary to preserve and protect the Work already in progress or in place or in transit.

10.9 Termination of an individual PCA under this Article shall not be deemed a termination of other PCAs issued to Subcontractor under this MSA or the termination of the MSA itself, except to the extent so written in Contractor's notice of termination to Subcontractor.

10.10 In case of any termination for convenience by Owner or by Contractor hereunder, the Subcontractor shall only be entitled to receive payment for actual Work executed through the effective date of the termination, and any proven, unavoidable costs incurred by reason of such termination, but only to the extent and as a condition precedent that the Contractor has received payment of such amounts from the Owner. If prior to termination Subcontractor has fabricated any materials for subsequent incorporation into Subcontractor's Work and if Subcontractor delivers these materials to Contractor, Subcontractor shall be paid for these materials at the rates provided in this Agreement, provided the same are in good condition per the Contract Documents and subject to the terms and conditions of this Agreement, but only to the extent and as a condition precedent that Contractor has received payment of such amounts from Owner. Under no circumstances shall the Subcontractor be entitled to recover any other damages including but not limited to lost overhead, profit or lost profit on the Work not executed. Accordingly, as a condition precedent to its right to any payment, Subcontractor shall execute a complete release of all liens and claims related to the terminated Work.

10.11 **WRONGFUL EXERCISE.** If Contractor wrongfully exercises any option under this Article, Contractor shall be liable to the Subcontractor solely for the reasonable value of work performed by Subcontractor prior to Contractor's wrongful action, including reasonable overhead and profit, and less prior payments made, but excluding attorneys' fees. Any termination for cause of this Agreement or any PCA issued hereunder by Contractor that is determined to be wrongful and/or in breach of this Agreement or the PCA shall be considered a termination for convenience and Subcontractor's recovery against Contractor shall be limited to those damages set forth in Section 10.10 hereof.

10.12 In the event of action taken by Contractor pursuant to this Article, Subcontractor's sole remedy against Contractor shall be to receive compensation for the reasonable value of the Work in place and performed pursuant to the terms of this Agreement and the PCA, less any previous payments and only to the extent Contractor is successful in receiving the same from Owner. Subcontractor shall not be entitled to receive any lost profits on any unperformed work or any delay or other impact damages unless Contractor is successful in receiving same from the Owner.

ARTICLE 11

MATERIAL DEPOSITS

11.1 In the event that the Owner terminates for convenience or cause the Owner/Contractor Contract with the Contractor for a Project that is the subject of a PCA between Contractor and Subcontractor, or a PCA between Contractor and Subcontractor Contractor terminates for cause or convenience, any funds that had been advanced by Contractor to Subcontractor for the purchase of materials, supplies, equipment or design services shall be immediately refunded in full to Contractor by Subcontractor, less only the documented reasonable value of conforming materials, supplies, and equipment actually fabricated and delivered to the subject Project and documented design services actually rendered, plus a markup for overhead and profit thereon of six percent (6%).

The failure of Subcontractor to make such refund within fifteen (15) calendar days following Contractor's written demand therefore may subject Subcontractor to both civil and criminal redress.

ARTICLE 12

INDEMNIFICATION

12.1 SUBCONTRACTOR'S PERFORMANCE. To the fullest extent permitted by law, the Subcontractor shall indemnify, defend and hold harmless the Owner, its designated agents and representatives, the Contractor (including its affiliates, parent and subsidiaries) and other contractors and subcontractors and the agents and employees of any of them and all liabilities, costs, judgments, and awards, including but not limited to attorney's fees, arising out of or resulting from the performance of the Subcontractor's Work, including without limitation, all claims, damage, loss or expense attributable to delays, breaches of this Agreement or the applicable PCA, bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including loss of use resulting therefrom, provided that:

- (a) any such claim, damage, loss, or expense, etc., is caused or alleged to be caused in whole or in any part by any negligent act of omission of the Subcontractor or anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, regardless of whether it is caused in part by a party indemnified hereunder, and
- (b) such obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article 12.

Notwithstanding the above, and without limitation, Subcontractor further agrees that, to the fullest extent permitted by law, Subcontractor shall fully defend, indemnify and hold harmless Indemnitees from and against any claims, damages, losses, liability and expenses, including, but not limited to attorneys' fees, consultants and expert witness fees, arising out of or relating to any claims made by employees of Subcontractor, its Sub-subcontractors, suppliers or agents of any of them for bodily injury, sickness, disease, death, injury to or destruction of tangible property.

12.1.1 MECHANICS' LIENS. The Subcontractor and Subcontractor's surety shall indemnify, defend and hold harmless the Contractor from and against any mechanic's or materialmen's liens or notices or claims thereof, including all reasonable attorney's fees, expenses and costs incurred in connection therewith, brought against the Owner or against any Project as a result of the failure of the Subcontractor to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred in connection with the Work, including but not limited to any and all mechanic's or materialmen's liens filed by Sub-subcontractors, suppliers, materialmen or any other person or entity that furnishes labor, skill or superintendence thereto, or supplies or hauls, materials, fixtures, machinery or equipment for Subcontractor in connection with the Work or a Project. Within ten (10) working days of receiving written notice from the Contractor that such a claim or mechanic's lien has been filed, the Subcontractor shall discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond in such amount as may be set by a court of appropriate jurisdiction to result in the actual discharge the lien. If the Subcontractor fails to do so, the Contractor shall have the right to discharge the claim or lien and hold the Subcontractor liable for costs and expenses incurred, including attorneys' fees. The Contractor shall be entitled to retain out of any monies due or to become due to the Subcontractor, a sum sufficient to protect the Contractor from loss until such time as the mechanics' lien or claim is finally settled, released, defeated or discharged. Should the Subcontractor fail to settle, discharge or defend or secure against the claim as provided by this Agreement and/or the mechanics' lien law, the Contractor may (1) pay the claim, upon which payment the Contractor shall be subrogated to the rights of the Sub-subcontractor or supplier against the Subcontractor; or (2) undertake a defense against said claim in which case the Subcontractor shall be liable to the Contractor for all costs, expenses and charges incurred in such defense, including reasonable attorneys' fees, whether said defense be successful or not, but the undertaking of such defense shall not affect the right of the Contractor to retain funds of the

Subcontractor under this Agreement, any PCA issued hereunder and/or the mechanics' lien law until the claim is finally defeated or discharged. The Subcontractor acknowledges and agrees that the indemnity obligations of the Subcontractor and rights of the Contractor hereunder or pursuant to any PCA issued hereunder are in addition to and shall be cumulative and not in derogation of any and all statutory or common law rights of the Contractor.

12.2 NO LIMITATION UPON LIABILITY. In any and all claims against the Owner, its designated agents and representatives, the Contractor (including its affiliates, parent, and subsidiaries) and other contractors or subcontractors, or any of their agents or employees, by any employee of the Subcontractor, anyone directly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification and defense obligations under this Article 12 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under worker's or workman's compensation acts, disability benefits acts or other employee benefits acts nor by any comparative negligence statutes or applicable common law precedent.

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

12.3.1 Subcontractor shall: (1) at Subcontractor's own cost, expense and risk, defend all claims defined in this Agreement that may be brought or instituted by third persons, including, but not limited to, governmental, state, or local agencies or employees of Subcontractor against the parties indemnified hereunder; (ii) pay and satisfy any judgment or decree that may be rendered against any party indemnified hereunder arising out of any such claim; and (iii) reimburse any party indemnified hereunder for any and all legal expenses incurred by any of them in connection herewith or in enforcing the indemnity obligations granted in this Agreement.

12.4 PATENTS. Except as otherwise provided by the Contract Documents, the Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented materials in the Subcontractor's Work. The Subcontractor shall defend all suits for claims for infringement of any patent rights arising out of the Subcontractor's Work, which may be brought against the Contractor or Owner, and shall be liable to the Contractor and Owner for all loss, including all costs, expenses, and attorney's fees.

12.5 All provisions pertaining to indemnification and indemnity in this Agreement shall apply to, and bind, Subcontractor's surety, if any, to the same extent the provision applies to, and binds, Subcontractor.

12.6 Notwithstanding the indemnification requirements hereunder, Subcontractor shall not be required to indemnify for Indemnitees' own negligence.

ARTICLE 13 **INSURANCE**

13.1 SUBCONTRACTOR'S INSURANCE Unless otherwise agreed in writing, prior to start of Subcontractor's Work, Subcontractor shall procure for Subcontractor's Work and maintain in force Worker's Compensation Insurance, Employer's Liability Insurance, Comprehensive General Liability Insurance and all insurance required of the Contractor under the Contract Documents. Subcontractor shall maintain insurance in accordance with the Contract Documents and not less than the types and limits of insurance as forth in each specific PCA during the entire duration of each PCA issued hereunder. Contractor and Owner shall be named as additional insureds on

each of these policies except for Worker's Compensation.

13.1.1 A Certificate of Insurance acceptable to the Contractor and Contractor's insurance company shall be submitted prior to commencement of the Work identifying coverage in accordance with the requirements identified here and receipt of such certificate by Contractor shall be a condition precedent to Contractor's obligation to make payment to Subcontractor. The certificates and insurance policies required hereunder shall contain verbiage to the effect that Contractor will receive notice at least thirty (30) days prior to the cancellation of coverage and that Subcontractor's insurer acts as prime insurer for Subcontractor's portion of the Work.

13.1.2 If any of the foregoing insurance coverage is required to remain in force after Final Payment, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Contract Documents and information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contract Documents.

13.2 NUMBER OF POLICIES. Comprehensive General Liability Insurance 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 of Umbrella Liability Policy.

13.3 CANCELLATION, RENEWAL OR MODIFICATION. The Subcontractor shall maintain in effect all insurance coverage required under this Agreement at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor. All insurance policies shall contain a provision that the coverage afforded thereunder shall not be canceled or not renewed, nor restrictive modifications added, until at least thirty (30) days prior to notice has been given to the Contractor unless otherwise specifically required in the Contract Documents. Certificates of Insurance or certified copies of policies acceptable to the Contractor shall be filed with the Contractor before commencement of the Subcontractor's Work. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, the Contractor may purchase such coverage and charge the expense thereof to the Subcontractor or terminate this Agreement.

13.4 WAIVER OF RIGHTS. The Contractor and Subcontractor waive all rights against each other and the and the Owner, separate contractors, and all other subcontractors for loss or damage to the extent covered by any property or equipment insurance, except such rights as they may have to the proceeds of such insurance. The Subcontractor shall procure and maintain at the Subcontractor's own expense property and equipment insurance for portions of the Subcontractor's Work stored off site or in transit.

13.5 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.

13.6 SUBCONTRACTOR DEFAULT INSURANCE. Contractor reserves the right to waive performance and labor and material payment bonds and cover the risk of Subcontractor's default of this Agreement or a PCA issued hereunder under a Contractor sponsored Subcontractor Default Insurance Program. Such election does not change the contractual obligations of Subcontractor or in any way impact the rights of Contractor to recover damages resulting from Subcontractor's default. In such instance, Contractor will be insured under the terms of the Subcontractor Default Insurance Program for damages resulting from the default of Subcontractor. Subcontractor agrees to perform all actions requested by Contractor for such purposes. In the event that (i) Subcontractor should not qualify to be included in the Subcontractor Default Insurance Program, or (ii) should at some point be excluded from the Subcontractor Default Insurance Program, then Subcontractor agrees and covenants shall provide a performance bond and labor and material payment bond in the full amount of the Contract Price (plus any Change Order increases to date), naming Contractor as the bond obligee. Such bonds shall be issued in the form and content and from such surety or sureties satisfactory to Contractor and Owner. In the event that Subcontractor should fail to comply with this obligation, Contractor, at its election, may (a)

withhold such amounts from Subcontractor's progress billings, Change Order payments, claim payments, retention release, and/or final payments, in such amounts as Contractor, in its sole and absolute discretion, deems necessary to protect the interest of Contractor and/or the Owner in connection with Subcontractor's Work; or (b) terminate this Agreement and/or the PCA, which shall be a termination for cause, with all of Contractor's rights and remedies under this Agreement and/or at law and equity being available to Contractor for such termination for cause; or (c) terminate this Agreement for convenience upon terms and conditions agreeable to Contractor in Contractor's sole and absolute discretion. Any waiver of subrogation by Contractor does not apply to claims made against any Subcontractor pursuant to any Subcontractor Default Insurance Program required hereunder.

13.7 **WAIVER OF SUBROGATION.** The Subcontractor waives all rights against the Contractor, Owner, Architect, Architect's consultants, separate contractors, and any subcontractors, sub-subcontractors, agents and employees, of any of them, for damages caused by fire or other causes of loss to the extent covered by property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein or in a PCA. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14

DISPUTE RESOLUTION

14.1 **OWNER RELATED DISPUTE RESOLUTION.** In the case of any dispute or claim between Contractor and Subcontractor which, in Contractor's sole opinion, is any way relating to or arising from any act or omission of the Owner or third-party or involving the Contract Documents ("Owner Related Dispute"), Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to Owner or such third-party, by the terms of the Contract Documents. If the Owner/Contractor Contract or any other contract, subcontract or agreement between Contractor and another person or entity provides for the resolution of any controversy or claim by mediation, arbitration, litigation or other alternative dispute resolution process, then, in the event of any dispute among and between Contractor and Owner, or between Contractor and another subcontractor, contractor or any other person or entity involving and relating to the Work, materials, equipment, rights, claims, duties or responsibilities of the Subcontractor, Subcontractor, if directed or requested by Contractor, hereby agrees to abide by and be bound by the same dispute resolution proceeding. Further, Contractor may give Subcontractor written notice of any such dispute, and Subcontractor hereby consents to participate and join in any such mediation, arbitration or other dispute resolution proceeding as a party, whether by joinder, consolidation or otherwise, if Contractor so requests. Subcontractor agrees to be bound by any and all preliminary and final decisions, determinations or agreements made by or between Contractor, third-party or Owner or as authorized in the Subcontract Documents or by the court or arbitrator designated, whether or not Subcontractor is a party to such agreement or proceedings. Contractor and Contractor's surety shall not be liable to Subcontractor in excess of any sum actually received from Owner or third-party on behalf of Subcontractor for such dispute and Contractor and Contractor's surety shall only be required to pay Subcontractor if, and only if, Owner or third-party pays Contractor, which is an express condition precedent to Contractor's and its surety's duty to pay Subcontractor or Subcontractor's surety, if any, and Subcontractor intends to and does hereby assume the risk of nonpayment.

14.1.1 Contractor may, at Contractor's option, (i) present to Owner, third-party or any court or arbitrator, in Contractor's name, or (ii) authorize Subcontractor to present in Contractor's name, all or some of Subcontractor's Owner Related Dispute, and to answer the claims of a third-party or Owner involving Subcontractor or Subcontractor's Work. If the Owner Related Dispute is presented, prosecuted or defended by Contractor, Subcontractor, at Subcontractor's own expense, agrees to furnish all documents, statements, witnesses and other information required by Contractor and to pay or reimburse Contractor for all costs incurred by Contractor in

connection with the dispute including, without limitation, attorneys', experts' and consultants' fees. Subcontractor acknowledges that in agreeing to the Contract Price it has assessed the potential impact of this Article on Subcontractor's ability to recover additional compensation in connection with its Owner Related Dispute and agrees that these limitations will apply regardless of the accuracy of Subcontractor's assessment or actual costs incurred by Subcontractor.

14.1.2 Subcontractor shall certify its Owner Related Claims in the same manner that Contractor is required to certify a claim to Owner. Subcontractor shall defend, indemnify and hold harmless Contractor and Contractor's surety from allegations of false claim or similar allegations arising out of Subcontractor's Owner Related Dispute, regardless of whether Contractor has certified Subcontractor's Owner Related Dispute. If Contractor cannot in good faith certify or submit subcontractor's Owner Related Dispute, Contractor shall not be required to submit Subcontractor's Owner Related Dispute, and, in such case, Subcontractor waives its right to seek compensation from Contractor or Contractor's surety for Subcontractor's Owner Related Dispute.

14.1.3 In the event Contractor has a claim with Owner or third-party which includes Subcontractor's Owner Related Dispute and which is resolved on a global basis, Subcontractor's recovery for Subcontractor's Owner Related Dispute will be computed on a pro-rata basis after Contractor's costs (including but not limited to attorney, consultant and expert fees and costs) arising from pursuing Contractor's claim with Owner or third-party and Contractor's overhead and profit markup on Subcontractor's Owner Related Dispute are subtracted from the offer, award or settlement.

14.1.4 Subcontractor shall not pursue any disputes against the Contractor or its surety, if any, which relate to any act, omission, obligation or responsibility of the Owner without first exhausting any and all available remedies with respect to Owner under the Owner/Contractor Contract and Contract Documents. Subcontractor further agrees to toll and stay its rights under Contractor's bond, including its Miller Act and other statutory-required bond rights, and Subcontractor agrees to file no litigation or claim pertaining to this Agreement or Subcontractor's Work, whether sounding in contract, tort, equity or other non-contractual theory, until such time as Contractor has exhausted its dispute provisions with Owner or the third-party.

14.1.5 A demand for arbitration or filing of a claim involving an Owner Related Dispute shall be made within the time limits specified in the conditions of the Owner/Contractor Contract, and in other cases within a reasonable time after the claim has arisen, and, in no event, shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations.

14.2 The parties acknowledge and agree that this Agreement, all PCAs issued hereunder, and any and all disputes arising thereunder shall be governed by the laws of the state in which the Project is located. Except for claims involving third parties subject to Section 14.1 hereof, Contractor and Subcontractor agree that claims and disputes, between themselves, shall be resolved either, as Contractor or Contractor's surety, if any, should in their sole discretion elect, (1) by arbitration to be conducted by the American Arbitration Association ("AAA") in accordance with its Construction Industry Rules then in effect in a location determined by Contractor or the location of the Project, or (2) by litigation in a state or federal court with competent jurisdiction in a location determined by Contractor or the location of the Project, in Contractor's sole discretion, without a jury or before a jury. In the event of any litigation by and between the parties hereunder, as opposed to arbitration, Subcontractor hereby agrees to a complete a WAIVER TO THE RIGHT TO TRIAL BY JURY. Notwithstanding the foregoing, if any such dispute should involve Contractor's surety and/or any consultant or agent of Owner, and such dispute is brought or is pending in a court proceeding, then Subcontractor agrees to be joined in or otherwise participate as a party in such court proceeding notwithstanding any arbitration between Contractor and Subcontractor.

14.2.1 Nothing contained herein or in the Subcontract Documents or in any bond shall obligate the Contractor's surety to be joined in any arbitration proceeding with the Subcontractor.

14.2.2 To the extent that this Dispute Resolution provision is unenforceable under the law of the Project's location, the parties acknowledge and agree that any dispute between themselves shall be resolved by arbitration as provided under Section 14.2.

14.2.3 No action or proceeding, including a demand for arbitration, shall be brought by the Subcontractor against the Contractor or the Contractor's surety unless such action or proceeding shall be commenced within thirty (30) days after the date payment is mailed or otherwise made by or on behalf of Contractor or its surety with respect to Subcontractor's final application for payment or, if performance under this Agreement or any PCA issued pursuant to this Agreement is terminated, unless such action or proceeding is commenced within thirty (30) days after the date of such termination. **Time shall be of the essence.** In no event shall an action or proceeding, including a demand for arbitration, be commenced after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. **TIME IS OF THE ESSENCE.**

14.2.4 Any arbitration proceeding filed pursuant to this provision shall be conducted in accordance with the AAA's Construction Industry Rules then in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. Any award rendered by the arbitrator or arbitrators shall be Final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof, and such court shall be empowered to enforce such judgment.

14.2.5 The parties further agree that the arbitrator(s) shall apportion attorneys' fees, costs and expenses, including expenses of consultants and expert witnesses, based upon the success of each party in sustaining its position and the merits of each party's case. The intent of this provision is that a losing party should be required to pay the reasonable attorneys' fees, costs and expenses of the prevailing party, unless the arbitrator(s) deem there is a good reason for not requiring such payment. In the event that any disputes are resolved by legal proceedings other than arbitration, the parties agree that a Judge sitting in a court of competent jurisdiction shall apply this provision to the parties to the same extent as if such court proceeding were in arbitration.

14.3 WORK CONTINUATION. Unless otherwise agreed in writing, Subcontractor shall carry on the Work, including any disputed change orders and/or extras, and maintain the Schedule of Work pending resolution of any claim, dispute, or other issue, including litigation between or among Contractor, Owner, or Subcontractor, and, if so, Contractor shall continue to make payments in accordance with this MSA. Subcontractor agrees that in the event it fails to continue its performance of the Work during the resolution of any dispute, Contractor shall be entitled to injunctive relief specifically enforcing Subcontractor's obligations under this Agreement and the applicable PCA(s), and further agrees that Contractor has no other adequate remedy at law.

14.4 To the extent Contractor obtains a bond for any Project pursuant to this Agreement, Subcontractor agrees to toll and stay its rights under Contractor's bond, including its Miller Act or other statutory rights and Subcontractor also agrees to file no arbitration, litigation or other dispute resolution pertaining to a claim or the Subcontractor's work or this Agreement or any PCA hereunder or a Project, whether sounding in contract, tort, equity or other non-contractual theory, until such time as Contractor has exhausted its dispute provisions with Owner or third-party. If Contractor or Contractor's surety is the prevailing party, in whole or in part, in connection with any claim by Subcontractor against Contractor or Contractor's surety, Subcontractor shall reimburse all of the Contractor's and Contractor's surety's costs incurred in investigating, responding to, defending against, and resolving such claims including but not limited to Contractor's and Contractor's surety's reasonable attorneys' fees and other costs incurred in connection with Subcontractor's claim.

14.5 All provisions pertaining to Dispute Resolution in this Agreement shall apply to and bind Subcontractor's surety to the same extent the provision applies to and binds Subcontractor, and Subcontractor's surety's statutes of limitations and repose shall be the same as that of Subcontractor.

ARTICLE 15
CONTRACT INTERPRETATION

15.1 INCONSISTENCIES AND OMISSIONS. Should inconsistencies or omissions appear in the Contract Documents, it shall be the duty of the Subcontractor to so notify the Contractor in writing within three (3) working days of the Subcontractor's discovery thereof. Upon receipt of said notice, the Contractor shall instruct the Subcontractor as to the measures to be taken and the Subcontractor shall comply with the Contractor's instructions.

15.2 SEVERABILITY AND WAIVER. The partial or complete invalidity of one or more provisions of this MSA shall not affect the validity or continuing force and effect to any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this MSA, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

15.3 TITLES. The titles given to the Articles of this MSA are for ease of reference only and shall not be relied upon or cited for any other purpose.

15.4 ENTIRE AGREEMENT. This MSA is solely for the benefit of the signatories hereto and is not intended to and shall not be considered to redound to the benefit of any third parties; it represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, oral or written.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under Seal, the day and year first above written.

Company Name

RYCON CONSTRUCTION, INC.
Company Name

Signature

Signature

Print

Print

Title

Title

Date

Date