



STANDARD SUBCONTRACT AGREEMENT

Number: 1010001-003

Date: --/--/----

Project: Sample Project

Location: ALLERTONFOX CONSTRUCTION
110 W. 40th St 16th Floor, New York, NY 10018

Cost Code: 0000000

Scope: Original

Subject: test commitment

Subcontractor: Sample Vendor
123 Sample Vendor Street
Sample City, SS 12345

Bill to: ALLERTONFOX CONSTRUCTION
110 W. 40th St 16th Floor
New York, NY 10018

Contact: Sample Vendor Contact
555-147-8596
555-147-8596 (fax)

Manager: Jamie Fox
212.390.8650
917.807.3298 (mobile)
jfox@allertonfox.com

Terms: Net 10
10% Retainage

SAMPLE

TABLE OF CONTENTS

Articles

1	Agreement
2	Contract price
3	Scope of Work
4	Schedule of Work
5	Payment
6	Changes, Claims, and Delays
7	General Contractor's Obligations
8	Subcontractor's Obligations
9	General Obligations of the Subcontractor
10	Recourse by General Contractor
11	Labor Relations
12	Indemnification
13	Insurance
14	Arbitration
15	Contract Interpretation
16	Contract Documents
17	Identification of General Contractor

Exhibits

A-1	Scope of Work
A-2	List of Contract Documents per enclosed PLANS AND SPECIFICATIONS document
B-1	Schedule of Work (Milestones)
B-2	Schedule of Work (Absolute Dates)
C-1	Release of Lien for Subcontractor (Partial)
C-2	Release of Lien for Subcontractor (Final)
C-3	Release of Lien for Subcontractor's Subcontractors and/or Suppliers (Partial)
C-4	Release of Lien for Subcontractor's Subcontractors and/or Suppliers (Final)
D-1	Schedule of Values
D-2	Schedule of Man Hours
D-3	Hourly Rates
D-4	List of Proposed Sub Tier Subcontractors and/or Suppliers
E-1	Insurance Requirements
F-1	Submittal Substitution Request Form

ARTICLE 1 AGREEMENT

This Agreement made on the date indicated on the front page by and between AllertonFox Construction LLC, 110 West 40th Street, Suite 1603, New York, NY 10018 hereinafter called the 'General Contractor' and the Subcontractor indicated on the front page, hereinafter called the "Subcontractor", to perform Work on the Project indicated herein. Notice to the Parties shall be given at the above address by email and/or regular mail (overnight mail if email is not available).

ARTICLE 2 CONTRACT PRICE

2.1 The General Contractor agrees to pay to the Subcontractor for the satisfactory performance of the Subcontractor's Work the sum indicated in accordance with the terms and conditions set forth herein.

ARTICLE 3 SCOPE OF WORK

3.1 Subcontractor's Work. The General Contractor employs the Subcontractor as an Independent Contractor, to perform the entire scope of work applicable to its trade and as described in Article 16 and Exhibit A-1 & A-2. The Subcontractor shall perform such Work (hereinafter called the "Subcontractor's Work") under the general direction of the General Contractor and in accordance with this Agreement and the Contract documents.

The Subcontractor shall perform the Work in accordance with the highest industry standards except where modified by the Contract Documents.

3.2 Contract Documents. The Contract Documents that are binding on the Subcontractor are this contract, the contract between the Owner and the General Contractor, (where that document is more restrictive or impose obligations not set forth herein), the documents set forth in Article 16 and the Exhibits attached hereto. Upon the Subcontractor's request, the General Contractor shall furnish a copy of any part of these documents, which are available for viewing at the offices of the General Contractor.

3.3 The Work. Subcontractor agrees to furnish and pay for all labor, materials, equipment, services and every other thing necessary for completion of the Work in accordance with the Contract Documents, or if they are necessary to produce the intended results and to assure a complete and functional Project. The work shall include all obligations of the Subcontractor to comply with the provisions of this Subcontract and with the provisions of all other Contract Documents. It is further understood that incidental or minor modifications may be required due to actual job conditions, field coordination with other trades or substitution of equal products due to availability, etc. in that event no request for extras or change orders will be granted for such modifications that are hereby inferred under the normal scope of work unless a major change occurs and it is recognized as such by the Architect and Owner. The terms and conditions of this Subcontract shall apply to any and all work furnished by Subcontractor prior to the execution of this subcontract.

ARTICLE 4 SCHEDULE OF WORK

4.1 Time is of the Essence. Time is of the essence for the completion of the Work, and the parties mutually agree to see to the performance of their respective Work and the Work of their subcontractors, so that the entire Project may be completed in accordance with the Contract Documents and the Schedule of Work which the parties acknowledge is set forth as Exhibit B1 and/or B2. Exhibit B1, shall be completed if the Schedule of Work is tied to Milestones. Exhibit B2 shall be completed if the Schedule of Work has been established without reference to Milestones.

The General Contractor shall prepare and revise such schedule as the Work progresses and may, if the circumstances dictate, change from a milestones schedule to a schedule based upon absolute dates. Where liquidated damages are specified in this agreement or in the agreement with the Owner, failure of the Subcontractor to complete the Work within the time specified and/or abandonment of the project by the Subcontractor shall result in the assessment of these liquidated damages for delay plus any additional actual costs as may be incurred by other Subcontractors, the Project Manager, General Contractor or the Owner for the completion of the Work. If liquidated damages are not specified, then the damages for delay shall be those actually incurred by the other Subcontractors, the Project Manager, General Contractor, and the Owner.

4.2 Duty To Be Bound. The Subcontractor shall be bound by the Schedule of Work initially set forth herein and as subsequently revised by the General Contractor. The Subcontractor shall provide the General Contractor with any requested scheduling information for the Subcontractor's Work, including such "look ahead" schedules as the General Contractor may request of the Subcontractor. The Schedule of Work and all subsequent changes thereto shall be submitted to the Subcontractor in advance of the required performance.

4.3 Schedule Changes. The Subcontractor recognizes that the Owner and the General Contractor may make periodic changes in the Schedule of Work and agrees to comply with such changes and adhere to any "look ahead" schedules it may be called upon to submit. Failure to so comply shall be deemed a breach of this Agreement without further notice.

4.4 Priority of Work. The General 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, including the scheduling and assignment or responsibility for submissions and coordination drawings.

ARTICLE 5 PAYMENT

GENERAL PROVISIONS

5.1.1 Schedule of Values. No more than fifteen (15) days from the date of execution of this Agreement as provided below in 5.2.1, the Subcontractor shall provide: (a) a schedule of values, (b) a schedule of Man-hours and unit material costs (if any), (c) a list of hourly rates, and (d) a list of all sub-subcontractors, suppliers and materialmen which shall be satisfactory to the General Contractor, Consultants, and the Owner.

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 furnishing labor or materials for use in performing the Subcontractor's Work on this project.

5.1.3 Payment Use Verification. The General Contractor shall have the right at all times to contact the Subcontractor's sub-subcontractors and suppliers to ensure that same are being paid by the Subcontractor for labor or materials furnished for use in performing the Subcontractor's Work.

5.1.4 Partial Lien Waivers and Affidavits. The Subcontractor shall provide, as a prerequisite for payment, in a form satisfactory to the Owner and the General Contractor (Exhibits C-1, C-2, C-3, & C-4), lien or claim waivers or releases and affidavits from the Subcontractor and its sub-subcontractors and suppliers for the complete Subcontractor's Work.

5.1.5 Subcontractor Payment Failure. The Subcontractor shall insure that the Project remains free and clear of claims and liens asserted by any of the Subcontractor's Materialmen, Suppliers or Sub-Subcontractors and further insures and warrants to the General Contractor that in its contracts with such entities they are subject to the provisions of Section 8.13.

In the event that the Subcontractor's Materialmen, Suppliers or Sub-Subcontractors make a claim or file a lien against the project or in the event the General Contractor has reason to believe that labor, materials or other obligations incurred in the performance of the Subcontractor's Work are not being paid, the Subcontractor shall have five (5) calendar days after the date of written notice from the General Contractor to

- supply evidence, to the satisfaction of the General Contractor, in the form of a waiver and release of lien executed by the claimant attesting to the fact that the moneys owing to the claimant have been paid; or
- post a bond indemnifying the Owner, the General Contractor, the General Contractor's surety, if any, and the premises from such claim or lien.

Upon the failure of the Subcontractor to do so, the General Contractor is empowered in its sole discretion and without further notice to the Subcontractor, (a) to retain out of any payments due or to become due to the Subcontractor a reasonable amount to protect the Owner and the General Contractor from any and all loss, damage or expense, arising out of or relating to any such claim or lien until the claim or lien has been satisfied by the Subcontractor (b) to resolve or pay the claim or lien, (c) to bond or otherwise satisfy and extinguish the lien and/or (d) to terminate the Subcontractor. The General Contractor shall recover from the Subcontractor all of its costs, including attorneys fees, in the exercise by it of any of its remedies set forth above.

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

PROGRESS PAYMENTS

5.2.1 Application. The Subcontractor's progress payment application for Work performed in the preceding payment period shall be submitted to the General Contractor per the terms of this Agreement for approval of the General Contractor and the Owner. The Subcontractor shall, before the first application, submit to the General Contractor a Schedule of Values (Exhibit D-1) of the various parts of the Work as well as a schedule of Man-hours and unit material costs (Exhibit D-2). Such schedules shall aggregate to the total sum of the Contract, made out in such detail as the Subcontractor and General Contractor may agree upon, or as required by the Owner, and, if required, supported by such evidence as to its correctness as the General Contractor may direct. These schedules, when approved by the General Contractor, shall be used as a basis for Certificates for Payment, unless it is found to be in error. In applying for payment, the Subcontractor shall submit a statement based upon these schedules. The General Contractor shall forward, without delay, the approved value to the Owner for payment.

5.2.2 Provisions for Payment. Unless otherwise set forth in the contract with the Owner, all requisitions shall be properly filled out and submitted BY THE TWENTY-FIFTH (25TH) DAY OF EACH MONTH FOR ALL WORK PERFORMED THROUGH AND INCLUDING THE LAST DAY OF THE MONTH on a standard AIA payment requisition form in PDF FORMAT. This will be the only form of pay requisition that will be accepted by the General Contractor. Unless otherwise provided, ten percent (10%) of the amount of the Certificates approved for periodic and final payment shall be withheld as retainage, which shall be paid upon acceptance of the Work by the Owner and the Owner's Architect.

5.2.3 Time of Application. Unless otherwise set forth in the contract with the Owner, the Subcontractor shall submit progress payment applications to the General Contractor no later than the twenty-fifth (25th) day of each month for Work performed up to and including the last day of the month indicating Work completed and, to the extent allowed below, materials suitably stored during the preceding payment period.

5.2.4 Stored Materials. Unless otherwise provided in the Contract Documents and if approved in advance by the Owner, 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, applicable insurances to satisfaction of Owner and General Contractor, photographs of the stored materials, and such other procedures satisfactory to the Owner and General Contractor to establish the Owner's title to such materials and equipment or otherwise protect the Owner's and General Contractor's interests therein, including transportation to the site.

5.2.5 Time of Payment. Unless otherwise set forth in the contract with the Owner, progress payments to the Subcontractor for satisfactory performance of Subcontractor's Work shall be made no later than fifteen (15) days after receipt by the General Contractor of payment from the Owner for such Subcontractor's Work.

5.2.6. Payment Delay. If for any reason without any fault or responsibility of the Subcontractor, the Subcontractor does not receive a progress payment from the General Contractor within fifteen (15) days after the date such payment is due, as defined in Article 5.2.5, then the Subcontractor, upon giving fifteen (15) days written notice to the General Contractor, and without prejudice to and in addition to any other legal remedies, may stop work upon the expiration of the second fifteen (15) day period until payment of the full amount then owing to the Subcontractor under the Contract Documents is made. The Contract price shall be increased by the amount of the Subcontractor's reasonable costs of shutdown, delay and start-up, which shall be effected by appropriate Change Order.

5.2.7 If the Subcontractor's Work has been stopped for sixty (60) days because the Subcontractor has not received progress payments as required hereunder, the Subcontractor may terminate this Agreement upon giving the General Contractor an additional fourteen (14) days written notice.

FINAL PAYMENT

5.3.1 Application. Upon the Subcontractor furnishing evidence of fulfillment of the Subcontractor's obligations in accordance with the Contract Documents and Article 5.2.3, and upon acceptance of the Subcontractor's Work by the Owner, the General Contractor and, if necessary the Consultants, the General Contractor shall process the Subcontractor's application for final payment without delay.

5.3.2 Requirements. Before the General Contractor shall be required to process the Subcontractor's application for final payment, the Subcontractor shall submit to the General 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 its surety or the General Contractor or their sureties might in any way be liable, have been paid for otherwise satisfied;
- b) consent of surety to final payment, if required;
- c) satisfaction of required close-out procedures; and
- d) other data if required by the General Contractor or Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be designated by the General Contractor or Owner.

Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontractor's Work, but shall in no way relieve the Subcontractor of liability for the obligations assumed under this Contract, or for faulty or defective Work appearing after final payment.

5.3.3 Time of Payment. Final payment of the balance due of the Contract price shall be made to the Subcontractor:

- a) upon receipt by the General Contractor of original unconditional waiver(s) of all claims related to the Subcontractor's Work;
- b) receipt of all items noted in Article 5.3.2, and
- c) within thirty (30) days after receipt by the General Contractor of final payment from the Owner for such Subcontractor's Work.

5.3.4 Final Payment Delay. If the Owner or its designated agent does not issue a Certificate for Final Payment or if the General Contractor does not receive such payment for any cause which is not the fault of the Subcontractor, the General Contractor shall promptly inform the Subcontractor in writing.

The General 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. In all events no payment, whether interim or final, shall be due to the Subcontractor from the General Contractor unless and until the Owner has made payment to the General Contractor for the Subcontractor's work.

5.4.1 Notwithstanding any provision to the contrary in this Agreement, no provision hereof shall be construed in a way that places any conditions precedent upon the obligation of the Owner to pay the Subcontractor for work performed, or that interferes with or restrains the Subcontractor from enforcing its rights under the applicable lien laws. To that end, the Subcontractor agrees that:

- a) in the event that a payment requisition is not paid hereunder, when due, for a period of ninety (90) days; and
- b) the General Contractor, upon written notice of same from the Subcontractor, asserts, within thirty (30) days of the receipt of that notice, that the reason therefore is the failure of the Owner to make payment to the General Contractor.

THEN, in that event, the General Contractor, shall be released from liability for said payment by the Subcontractor and as consideration thereof the General Contractor shall, upon request, execute an assignment of its right to collect said payment from the Owner, under its contract with the Owner, to the Subcontractor.

ARTICLE 6 CHANGES, CLAIMS AND DELAYS

CHANGES IN WORK

6.1.1. General Contractor without invalidating the Subcontract may make a change in the Work for additions to, deletions from or alterations of Work, the method or manner of performing Work, and such other modifications as General Contractor may require, whether substantial or insubstantial. When General contractor so orders in writing, the Subcontractor shall make any and all changes in the Work that are within the Scope of Work and unless so ordered, Subcontractor shall not perform changes unless approved in writing by a person authorized herein to bind the General Contractor, it being specifically understood and acknowledged by Subcontractor that no person other than the individuals identified in this subcontract has authority to authorize a change in the Work.

General Contractor's Project Manager, field superintendent or any other of General Contractor's employees, other than such persons identified herein, do not have any explicit or apparent authority to authorize any such change in the Work, but may only confirm the hours worked and quantity of material provided by Subcontractor pursuant to this Agreement. This also applies to any and all signed tickets. Any ticket(s) signed by AFC or anyone assumed to be representing AFC are a "Verification of Time and Material Only" and signature does not guarantee payment. Signature in no way indicates the work performed was additional work. Any change that may be made by Subcontractor without approval from General Contractor shall have been made solely at Subcontractor's risk. Where such changes made by Subcontractor without approval involve additional cost, Subcontractor hereby waives all claims for additional compensation therefore.

6.1.2 The Contract Price and time may be adjusted for a change in the Work made pursuant to the directions of General Contractor and the amount of adjustment, if any, for each such change in the Work shall be made as set forth below. Subcontractor shall submit bills and other proofs of additional cost, including any adjustment in the time of the Subcontractor's performance for such change in the Work as may be satisfactory to the General Contractor within five (5) days of a request by General Contractor (or seventy-two hours in the case of an emergency). Any claim for adjustment in either the Subcontract Price or time submitted thereafter is waived. Nothing in this Section shall negate from Subcontractor's obligation to notify General Contractor within seventy-two hours of the start of any delay in connection with any claim for delay.

6.1.3 The value of a change in the Work shall be determined by one or more of the following:

(a) Unit Prices (to the extent set forth in Exhibit D-1 to the Agreement) or

(b) if no Unit Prices or Alternates are previously agreed to, then the value of the change in the Work shall be determined by adding or deducting a fixed sum amount agreed on between General Contractor and Subcontractor which shall include an allowance for overhead and profit not to exceed the guidelines set forth in subparagraph (c) below; or

(c) By adding:

- i. For labor – the actual cost to Subcontractor of labor for base wages as set forth in the approved wage rate sheets, Exhibit D-3, including any required union benefits as set forth in the applicable collective bargaining agreement (if any), plus premiums required to be paid by Subcontractor for liability and workers' compensation insurance for such labor, plus state taxes for unemployment insurance and federal social security taxes, plus the allowance for Subcontractor's profit, supervision, administrative and all other overhead and indirect costs related to the labor portion of the change in the Work noted below; plus
- ii. For materials-the actual cost to Subcontractor of materials incorporated or to be incorporated into the Project, including transportation to the site, sales tax on such materials, maintenance, operation and rental or reasonable rental value of equipment owned by Subcontractor, other than small tools, plus the allowance for Subcontractor's profit, supervision, administrative and all other overhead and indirect costs related to the materials portion of the change in the Work noted below.

(d) Should Subcontractor subcontract a change in the Work on the basis of the cost of labor and materials, payments to subcontractors of any tier that actually performs the change in the Work shall be governed by the provisions in subparagraph (i) and (ii) above; provided, however, the aggregate of allowances shall not exceed the maximum noted below for labor and materials and it shall be the responsibility of Subcontractor and its subcontractor(s) of all tiers to allocate the allowances set forth in this subparagraph (d) between and amongst themselves.

(e) If Unit prices are stated in the Contract Documents or subsequently agreed upon (in each case to the extent now or hereafter attached to the Agreement as Exhibit D-1), and if quantities originally contemplated are so added or deleted in a proposed change that application of such Unit Prices to quantities of Work proposed will cause substantial inequity to the General Contractor or Subcontractor, the applicable Unit Prices shall be equitably adjusted.

(f) Some other method of calculating the value of a change in the Work as may be determined by General Contractor, or, if the contract between the General Contractor and Owner contains provisions governing the pricing of a change in the Work, the more stringent provisions apply in the General Contractor's discretion.

(g) Unless otherwise set forth in the contract with the Owner, in the event of any claim for additional compensation by the Subcontractor, it is agreed that additional materials and labor shall be submitted at the Subcontractor's cost, which shall include a five percent (5%) mark-up for overhead and profit on Labor, a five percent (5%) mark up for overhead and profit on Material, and five percent (5%) mark-up on any Sub tier Contractor.

6.1.4 Annexed to this Agreement as Exhibit D-1 are cost breakdowns and unit prices utilized by the Subcontractor in calculating the cost of the Work.

Whenever a Change in the Work shall be contemplated for the Project, it is agreed that:

a) Every Subcontractor who is requested to submit a price on a Change in the Work, shall provide such price within five (5) working days of such request, unless the request is denoted as an emergency, in which case it shall be supplied within three (3) days. The failure of the Subcontractor to strictly comply with this provision shall subject it to the imposition of a back-charge in the amount of \$1,000 per day, beyond the above time limits to compensate the Contractor for any delay that may result to it in processing the Change in the Work. Further, the Contractor shall also have the right, but not the obligation, to price up the change at the Subcontractor's cost and on the Subcontractor's behalf. In this event, Subcontractor shall accept such compensation, if any, without further rights and/or claims.

b) When possible, Changes in the Work shall be performed at a price equal to the amounts shown on the annexed schedule for similar Work provided the unit prices set forth therein are usual, reasonable and customary in the industry. Provided also that the Work can be done in conjunction with the specified Work on the Project so that there are no additional start-up costs to be absorbed (or if no similar Work or unit price is shown, or if the Subcontractor must restart that portion of the Work, for a reasonable price to be determined by comparison with the prices stipulated for items on the annexed list.)

c) The parties shall proceed with any such Change in the Work in accordance with the provisions of Article 7 of AIA Document A201-2007, except that whenever that Article refers to the Contractor, it shall, for the purposes of this Contract, be held to refer to the Subcontractor, and, whenever that Article refers to the Architect, it shall, for the purposes of this Contract, be held to refer to the Contractor. No other provisions of AIA A201-2007 shall apply to this Contract except as otherwise specifically provided in this Contract.

6.1.5 If the Subcontractor claims an increase in the Subcontract Price, Subcontractor shall advise General Contractor in writing within five (5) days after the occurrence of the matter giving rise to such claim setting forth the impact on the Subcontractor's Work. Any claim for adjustment submitted thereafter is waived. Pending resolution of such dispute, Subcontractor shall perform such disputed work which performance will not prejudice a claim by Subcontractor for additional compensation. Subcontractor shall perform work which General Contractor agrees is a change in the Work whether or not Subcontractor and General Contractor have agreed as to compensation for the change in the Work.

6.1.6 The following shall apply with respect to estimates for a change in the Work and/or additional work requested by General Contractor:

(a) Within five (5) days following receipt by Subcontractor of either (i) plans and/or specifications which indicate or reasonably imply a change in the Work or (ii) a request from General Contractor for an estimate of a proposed change in the Work, Subcontractor will furnish in the form required by General Contractor an estimate of the cost of the change in the Work.

(b) Should Subcontractor not furnish the estimate in accordance with paragraph (a) above, Subcontractor will be bound by such adjustment General Contractor determines to be reasonable in the circumstances and in the industry.

(c) Should Subcontractor submit an estimate which is rejected by General Contractor and should General Contractor elect to proceed with such work, the provisions of Section 6.1.3 shall be implemented.

6.1.7 The amount of credit to be allowed by Subcontractor to General Contractor for a deletion or change which results in a net decrease in the Subcontract Price shall be the actual net cost as confirmed by General Contractor. When both additions and deletions covering related Work or substitutions are involved in a change in the Work, the allowances for overhead and profit shall be applied on the basis of the net increase, if any, with respect to that change in the Work.

6.1.8 Pending final determination of the cost, amounts which have been approved may be included in Applications for Payment.

6.1.9 General Contractor has the right to delete portions of the Work from this Subcontract and award same to Other Contractors. The amount of the credit to this Subcontract will be the greater of the actual cost of the deleted Work as paid to Other Contractors, or the value of the work as set forth in the approved schedule of values including overhead and profit thereon.

6.1.10 Receipt of payment or time adjustment from Owner by the General Contractor for changes in the Subcontractor's Work shall be an express condition precedent to the right of the Subcontractor to receive payment or time adjustment from the General Contractor and the payment provisions in this Subcontract apply to payments for change orders.

6.1.11 If the progress of the Subcontractor's Work is substantially delayed without the fault or responsibility of the Subcontractor and occurs as a result of:

- i. the acts or omissions of the Owner or Architect or General Contractor (or other parties for whom they are responsible), including changes to the Work or time extensions granted by a court, not caused by negligent or willful acts or omissions of Subcontractor;
- ii. fire;
- iii. acts of God;
- iv. acts of the public enemy;
- v. unavailability of, or inability to obtain, labor or materials by reason of acts of any governmental body which affect the supply or availability of labor or materials;
- vi. floods;
- vii. rebellions, riots, insurrections or sabotage;
- viii. unusually severe weather conditions; and
- ix. unforeseen concealed above-grade and subsurface conditions, including previously unidentified hazardous materials which could not have been anticipated in the exercise of reasonable due diligence.

Then the time for the Subcontractor's Work (but only to the extent not attributable to the General Contractor, the Subcontractor (or any of its subcontractors) and only to the extent the Subcontractor has used its best efforts to minimize the period of delay or hindrance by means which include, at no additional cost to General Contractor, seeking alternate sources of labor or materials or acceleration of the Subcontractor's Work) shall be extended by change order to the extent obtained by General Contractor from Owner under the Contract Documents as applicable to the Subcontractor's Work.

6.1.12 The Subcontractor's sole and exclusive remedy for delay not the fault or responsibility of the Subcontractor and as explicitly set forth above shall be an extension of time in the performance of the Subcontractor's Work. Subcontractor expressly agrees not to assert, and hereby waives, any claims for damages, including those resulting from increased labor or material costs on account of any delay, obstruction or hindrance from any cause whatsoever, whether or not foreseeable and whether or not anticipated. Neither the Owner nor the General Contractor shall be liable to the Subcontractor for any damages or additional compensation (including acceleration costs) as a consequence of delays to the Subcontractor's Work.

6.1.13 Subcontractor shall not be allowed an extension of time unless Subcontractor has established to the satisfaction of the General Contractor and Owner that the delay claimed by Subcontractor is for a portion of the Work on the critical path of the Work schedule.

6.2.1 Claims Relating to Owner. The Subcontractor agrees to make all claims for which the Owner is or may be liable in a manner acceptable to the General Contractor.

6.2.2 Notice of such claims shall be given by the Subcontractor to the General Contractor within one (1) week (and always) prior to the beginning of the Subcontractor's Work for the event for which such claim is to be made, or immediately upon the Subcontractor's first knowledge of the event, whichever shall first occur, otherwise, such claims shall be deemed waived.

6.3 Claims Relating to General Contractor. The Subcontractor shall give the General Contractor written notice of all claims not included in Article 6.2 five (5) days prior to the beginning of the event for which claim is made; otherwise, such claims shall be deemed waived.

6.3.1 All unresolved claims, disputes and other matters in question between the General Contractor or Owner and the Subcontractor including claims as set forth in Article 6.2 shall be resolved in the manner provided in Article 14 herein.

6.4.1 Delay. If the progress of the Subcontractor's Work is substantially delayed without the fault or responsibility of the Subcontractor, then the time for the Subcontractor's Work shall be extended by Change Order to the extent obtained by the General Contractor from the Owner and the Schedule of Work shall be revised accordingly.

6.4.2 The General Contractor shall not be liable to the Subcontractor for any damages or additional compensation as a consequence of any delays or interference, no matter how caused, unless the General Contractor has first recovered same from the Owner or other Subcontractors, it being understood and agreed that the Subcontractor's sole and exclusive remedy for delay shall be an extension in the time for performance of the Subcontractor's Work, but only to the extent that the General Contractor is granted such an extension from the Owner.

6.4.3 If the progress of the Subcontractor's Work is delayed for reasons not excused hereunder, then the Subcontractor shall be liable for the General Contractor's additional cost, and the like, as set forth in Article 10.

6.5.1 Liquidated Damages. If this agreement or the Contract Documents provide for liquidated damages for delay beyond the completion date set forth in the Contract Documents, and if they are so assessed, then the General Contractor may assess same against the Subcontractor 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 General Contractor.

6.5.2 Such assessment may be made in the month of the delay and shall be held by the General Contractor until such time as the Subcontractor is back on schedule and the delay occasioned thereby has been eliminated.

6.6 Billing Delays - Change Order Work. It is the responsibility of the Subcontractor to timely submit all bills relating to Change Order Work beyond its original Contract obligations. No Change Order Work billing will be accepted thirty (30) days after the completion of the Change Order Work.

ARTICLE 7 GENERAL CONTRACTOR'S OBLIGATIONS

7.1 Authorized Representative. The General Contractor shall designate one (1) or more persons who shall be the General Contractor's authorized representative(s) on-site and off-site. Such authorized representative(s) shall be the only person(s) the Subcontractor shall look to for instructions, orders and/or directions, except in an emergency and except that the representatives shall have no authority to execute or approve Change Orders over one thousand dollars (\$1,000.00) in value. The onsite representative shall default to the General Contractor's Project Superintendent, unless defined otherwise in this agreement. The offsite representative shall default to the General Contractor's Project Manager, unless defined otherwise in this agreement.

7.2 Storage Allocation. The General Contractor shall allocate adequate storage areas, if and when available, for the Subcontractor's products, materials, and equipment during the course of the Subcontractor's Work. The Subcontractor, however, assumes full responsibility for protection, safekeeping, and safety of its products, materials and equipment on the site or elsewhere until acceptance of the Subcontractor's work by General Contractor, Architect/Engineer, and Owner. Protection shall be furnished, installed, maintained and removed as directed by General Contractor by the Subcontractor. Removals and reinstallation of protection to allow for inspection by authorized personnel is included. Losses due to improper storage, theft, vandalism, casualty, or failure to secure Work or to install temporary protective devices shall be borne by the Subcontractor irrespective of whatever actions the General Contractor might take to secure the worksite. Storage and delivery of material and equipment at the site shall be permitted only to the extent approved in advance by General Contractor, and if anything so stored obstructs the progress of any portion of work, it shall be promptly removed or relocated by the Subcontractor without reimbursement. If not removed or relocated within 24 hours, General Contractor may do so with its own forces and backcharge the responsible Subcontractor.

7.3 Timely Communications. The General Contractor shall transmit, with reasonable promptness, all submittals, transmittals, and written approvals relating to the Subcontractor's Work.

7.4 Non-Contracted Services. The General Contractor agrees, except as otherwise provided in this Agreement, that no claim for non-contracted construction services rendered or materials furnished shall be valid unless the General Contractor provides the Subcontractor notice:

- a) prior to furnishing of the services or materials, except in an emergency affecting the safety of persons or property;
- b) in writing of such claim within five (5) working days of first furnishing such services or materials; and
- c) the written charges for such services or materials no later than the fifteenth (15th) day of the calendar month following that in which the claim originated.

7.5 The Subcontractor shall be paid by the General Contractor after a reasonable time following being paid by the Owner, unless otherwise provided in the Contract Documents upon the payment of certificates issued under the Contract or in the Schedule of Values. The amount of the payment shall be equal to or less than the percentage of completion certified by the Owner or its authorized agent for the Work of this Subcontractor applied to the amount allowed the General Contractor on account of the Subcontractor's Work to the extent of the Subcontractor's interests therein or such lesser amount as agreed upon.

ARTICLE 8 SUBCONTRACTOR'S OBLIGATIONS

8.1 Obligations Derivative. The Contract Documents are complementary and what is required in any part thereof shall be a binding obligation even if omitted elsewhere. The Subcontractor binds itself to the General Contractor under this Agreement to the highest standards to which the General Contractor is bound to the Owner under the Contract Documents. In the event of contradictory or inconsistent matters arising under the Contract Documents, the Subcontractor's obligation shall be to perform to the greater, higher or most difficult standard set forth in those Documents. The Subcontractor agrees that all Work shall be done subject to the final approval of the Architect or Owner's authorized agent, and its decision in matters relating to artistic effect shall be final, if within the terms of the Contract Documents.

8.2.1 The Subcontractor shall furnish and pay for all of the labor, materials, equipment, and services including, but not limited to, competent supervision, shop drawings, samples, mock-ups, safety, tools, and scaffolding as are necessary for the proper performance of the Subcontractor's Work. The Subcontractor shall supply a sufficient number of skilled workmen and materials to prosecute the work with promptness and diligence and to avoid delay or interference with other Contractors on the job.

8.2.2 The Subcontractor shall provide a list of proposed sub-subcontractors and suppliers (Exhibit D-4), be responsible for taking field dimensions, providing tests, ordering of materials and all other actions required to meet the Schedule of Work.

8.2.3 The Subcontractor shall, upon submission of payment requests, furnish satisfactory evidence to the General Contractor verifying compliance with Articles 8.1, 8.2.1, and 8.2.2.

8.2.4 The Subcontractor shall make all requests or claims for changes, extras, for extensions of time and for damage for delays or otherwise, promptly (within five (5) working days), in writing, to the General Contractor consistent with the Contract Documents. In particular, the Subcontractor shall not modify the Work in any way, nor shall it change the schedule or any other aspect of the performance of the Work; nor shall it do anything for which it expects to receive extra compensation until and unless, in any of the cases just mentioned, it has notified the General Contractor in writing of its intentions and received a written approval for same.

8.3 Temporary Services. The Subcontractor shall furnish all temporary services and/or facilities necessary to perform its Work. The Subcontractor shall be responsible to provide its own and the General Contractor's supervisory forces to work overtime when necessary for the prosecution of the work within the schedule or when directed by the General Contractor.

In the latter case, the General Contractor agrees to pay the additional costs for such overtime arising out of the additional compensation that may be pursuant to law or labor agreement and in accordance with Exhibit D-3.

8.4.1 Coordination. It is acknowledged and agreed that an integral part of the contractual obligations of the Subcontractor is to attend all job meetings from time to time, unless otherwise excused in writing from so attending. The Subcontractor shall abide by the planning, scheduling and related accommodations arising out of decisions made at said job meetings without claim for additional time or compensation, except where said determination materially affects the time or cost of performing the Subcontractor's Work in a way not reasonably contemplated by the Parties, by customary practice in the industry or by Contract Documents.

Failure to attend shall require the Subcontractor to reimburse the contractor the liquidated amount of \$1,000 per incident for each such non-excused non-appearance which amount is intended to compensate the contractor for the additional burden imposed by the subcontractor's non-attendance. The liquidated amount shall be assessed as a back charge against the next submitted requisition, unless prior thereto, the subcontractor delivers to the general contractors main office a check that is payable to the selected charity of choice by the General Contractor.

8.4.2 The Subcontractor shall:

- a) cooperate with the General Contractor and all others whose work may interfere or intertwine with the Subcontractor's Work;
- b) specifically note and immediately advise the General Contractor of any such interference with the Subcontractor's Work;
- c) participate in the preparation of coordination drawings and Work schedules in areas of congestion; and,
- d) promptly submit shop drawings, drawings, product data, cut sheets, submittals, and samples, as required, in order to carry on said Work efficiently and at speed that will not cause delay in the progress of the General Contractor's Work or other branches of the Work carried on by other Subcontractors. It is the Subcontractor's responsibility to insure that its submittals and shop drawings are not in conflict with those of other Subcontractors or applicable laws or regulations and to harmonize them in order to avoid conflict. A minimum of one (1) sepia and six (6) prints shall be submitted with each shop drawing submitted for approval. Cooperation includes the obligation to accept such reasonable changes in the Work as the Owner or the General Contractor or their agents may from time to time require, which changes shall be paid for in accordance with this Contract.
- e) Furnish the General Contractor, prior to completion of the Work, or when requested by the General Contractor, whichever is sooner, all as-built drawings (in both CADD & pdf files), operating and maintenance manuals, and/or construction manuals together with any other documents required by the Contract Documents and in a form acceptable to the General Contractor.
- f) Follow such reasonable directions as maybe given by the General Contractor as a result of Field Observations regarding matters such as (but not limited to) the performance of work, coordination with other trades, and the staging of its work and supplies.

8.4.3 Completion of Work;

- a) Subcontractor shall perform all Work, including but not limited to (i) the completion of all "punch list" Work, and (ii) Work that the Subcontractor asserts is Change Order Work for which it asserts it is entitled to additional compensation, as directed by General Contractor, in a timely fashion so as to cause no delay to substantial completion and/or final completion of the Work, the work of Other Contractors, or others.

Subcontractor shall commence all such Work or punch list Work within twenty four (24) hours notice by General Contractor, and all "punch list" work shall be performed on overtime, at no additional cost to AFC or Owner, when required by the Owner and/or circumstances and shall be completed within five (5) days of said notice, unless Exhibit B-1 indicates otherwise and/or the nature of the Punch List Work renders it impossible to comply with this time requirement. In the absence of specific punch list items, Subcontractor shall take direction from the authorized representative(s) of the General Contractor. With respect to corrective Work should Subcontractor fail to commence such Work in a manner satisfactory to General Contractor prior to the commencement of such corrective work by others, General Contractor shall have the right to prohibit Subcontractor from returning to the Project site until all Work or punch list work is completed by General Contractor's own forces or by others, at the option of the General Contractor, at the Subcontractor's cost. Should Subcontractor fail to complete Work in accordance herewith, General Contractor shall have the right either to (i) complete said work at such times as General Contractor deems convenient, on a time and material basis, at its usual and customary rates, and in accordance with applicable collective bargaining agreements (if any), plus the costs of general requirements and direct supervision plus ten percent (10%) overhead and ten percent (10%) profit, or to (ii) hire such consultants or other subcontractors to perform the work. The General Contractor shall be reimbursed by the Subcontractor for all expenditures incurred thereby, plus the costs of general requirements and direct supervision plus ten percent (10%) overhead and ten percent (10%) profit.

(b) All costs incurred by General Contractor and/or Owner (plus the costs of general requirements and direct supervision plus ten percent (10%) overhead and ten percent (10%) profit and interest (at the prevailing rate) resulting from the failure of Subcontractor to complete Work or punch list or corrective Work in accordance herewith will be deducted from the unpaid balance of the Subcontract Price. If such costs exceed the unpaid balance, Subcontractor shall pay the difference to General Contractor within five (5) business days of receipt of costs incurred by GC.

8.5.1 Authorized Representative. The Subcontractor shall designate one or more persons who shall be the authorized Subcontractor's representative(s) on-site and off-site. **The name of the person(s) so designated shall be inserted where 'Contact' is shown on the first page of this Agreement.** The Subcontractor shall have a competent foreman and/or superintendent on the site at all times during the performance of this Subcontract Agreement. Said foreman and/or superintendent shall be fully authorized to act on behalf of the Subcontractor. Such authorized representative(s) shall be the only person(s) to whom the General Contractor shall issue instructions, orders or directions, except in an emergency.

8.5.2 Concerning any duty or responsibility of the Subcontractor set forth in this Agreement as to which it is not in compliance after three (3) days written notice, the General Contractor is authorized to take such action and to engage such persons to perform said duties and shall be entitled to deduct the costs thereof, including overhead and profit, from any amounts due to the Subcontractor and/or pursue damages against the Subcontractor.

8.6.1 Provisions For Inspection. The Subcontractor shall notify the General Contractor when portions of the Subcontractor's Work are ready for inspection and with adequate notice so inspection(s) can be scheduled and performed without impact to the project schedule. The Subcontractor shall at all times furnish the General Contractor and its representatives adequate facilities for inspection of materials at the site or any place where materials under this Agreement may be in the course of preparation, process, manufacture or treatment.

8.6.2 The General Contractor shall have the right to cause an inspection or testing to be done with respect to any portion of the Subcontractor's Work, at any time. The Subcontractor shall promptly correct Work rejected by the General Contractor or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed.

The Subcontractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the General Contractor services and expenses made necessary thereby. The Subcontractor shall furnish to the General Contractor in such detail and as often as required, full reports of the progress of the Subcontractor's Work.

8.6.3 The review or inspection of the Subcontractor's work, submittals, etc., by the General Contractor shall not relieve the Subcontractor from its obligation to perform the Work in accordance with the Agreement. Notwithstanding that the General Contractor may provide dimensions or specifications in the Contract Documents, the Subcontractor shall take such measurements as will ensure proper matching and fitting of Subcontract work. Should performance of the Subcontractor's work depend upon the performance of other work, the Subcontractor shall carefully examine all contiguous or dependent work, determine whether it is suitable for performance of the Subcontractor work and report immediately any unsuitable conditions in writing. Failure to do so will operate as a waiver by the Subcontractor of any claim that such work was unsuitable. By proceeding, Subcontractor thereby accepts the condition and acknowledges it is adequate for your work to proceed.

8.7.1 Safety and Cleanup. The Subcontractor shall:

- a) at all times keep the building and premises free from debris and unsafe conditions resulting from the Subcontractor's Work;
- b) center piling all debris (if union project). Else, loading of all debris into containers provided for Subcontractor's use;
- c) follow the General Contractor's cleanup and safety directions, if any.

8.7.2 If the Subcontractor fails to immediately commence compliance with such safety duties or commence cleanup duties or within twenty-four (24) hours after receipt from the General Contractor of written notice of non-compliance, the General Contractor may, but shall have no obligation to, implement such safety or cleanup measures without further notice and deduct the cost thereof from any amounts due or to become due the Subcontractor. If deemed by the General Contractor to be an emergency situation, the twenty-four (24) hour notice provided for herein is hereby waived by the Subcontractor.

8.7.3 The Subcontractor agrees to comply fully with all local, state and federal ordinances, regulations and laws; all safety and work regulations instituted by the General Contractor for this particular project; and safety regulations contained in the General Contractor's safety manual, a copy of which is available for inspection at the General Contractor's office; and to report all accidents to the General Contractor's Project Manager and Superintendent the same day of the incident. In the hiring, promotion transfer and discharge of employees, the Subcontractor agrees not to discriminate against or in favor of any person because of his or her race color, creed national origin, sex, age, status as a veteran, or handicap. If applicable to this Project and to this Contract, the Subcontractor agrees to comply with all requirements of Executive Order No. 11246 and all rules and orders issued thereunder or pursuant thereto, and to furnish to the General Contractor all required reports, information and data needed by the General Contractor to comply with reporting requirements of said Executive Order. The Subcontractor shall provide safe working conditions for its employees and for all others on the project whose duties necessarily require them to be in, on, or about the area where the Subcontractor is working. All employees of the Subcontractor shall wear hard-hats, pants, and proper PP&E (inclusive of proper footwear). Anyone found in violation of any of these provisions may be removed from the jobsite by the General Contractor's Project Superintendent. The obligations of the Subcontractor as to safety as required by this Article are additional and supplementary to the other safety precautions which may be necessary or appropriate in connection with the performance of the Subcontractor's work and for which safety precautions the Subcontractor is responsible.

The Subcontractor hereby agrees to comply fully with the construction safety provisions of the Contract Work Hours Standards Act of 1962, as amended, the Occupational Safety and Health Act of 1970, as amended, and any comparable state laws in effect where the Project is being carried out. The Subcontractor hereby agrees to indemnify and hold harmless the General Contractor from any claims of any kind or nature whatsoever by reason of the Subcontractor's failure to fully comply with such laws or orders issued thereunder and to reimburse the General Contractor for any fine expenses, court costs, or related damages incurred by the General Contractor on account of the Subcontractor's failure to so comply. The Subcontractor agrees to comply with all applicable laws and regulations dealing with or relating to economic stabilization or wage and price controls and to indemnify and save harmless the General Contractor on account of the Subcontractor's failure to so comply. Upon the Subcontractor's failure to abide by safety regulations, the General Contractor may, but shall have no duty to, supply such lacking safety equipment or perform such absent safety measure on behalf of the Subcontractor and back-charge the Subcontractor for the cost thereof plus overhead, profit and start-up costs at rates defined elsewhere herein. In the event that the General Contractor does supply such safety equipment, including, but not limited to safety glasses or hard hats, the charge heretofore will be Five Hundred Dollars (\$500.00) plus the cost of the item so supplied. The foregoing, however, shall be without prejudice to the exercise of any other right under the Contract by the General Contractor.

8.8 Protection of the Work. The Subcontractor shall take necessary precautions to properly protect the Subcontractor's Work and the Work of others from damage caused by the Subcontractor's operations. Should the Subcontractor cause damage to the Work or property of the Owner, the General Contractor or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the General Contractor, or the General Contractor may so remedy and deduct the cost thereof from any amounts due or to become due the Subcontractor. Subcontractor is responsible to adequately protect their work until it is accepted by the General Contractor and/or Owner in writing.

8.9.1 Permits, Fees and Licenses. The Subcontractor shall comply with all Federal, State and local laws and ordinances and 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.

8.9.2 To the extent obtained by the General Contractor under the Contract Documents, the Subcontractor shall be compensated for additional costs resulting from laws, ordinance, rules, regulations and taxes enacted after the date of the Agreement.

8.10 Assignment. This Subcontract is solely for the benefit of the signatories hereto, except that where the General Contractor has agreed to make Subcontractor Agreements assumable by the Owner or Owner's construction lenders, the Subcontractor agrees to be bound to said Owner or lender to the same extent and under the same conditions as this Contract binds the Subcontractor to the General Contractor. The Subcontractor shall not assign this Agreement or its proceeds or subcontract the whole or any part of the Subcontractor's Work without prior written approval of the General Contractor which shall not be unreasonably withheld.

8.11 Approvals. Within the number of days specified in this Contract (or within five (5) consecutive working days if not specified), the Subcontractor shall furnish the General Contractor with all necessary details, shop drawings, specification sheets, catalogs, test reports, samples, and schedules pertaining to items included in the Subcontractor's work. These submittals shall be in the quantity, form, and manner prescribed by the Contractor. Approvals shall be only as to type and/or design, and the Subcontractor shall remain responsible for quantities, dimensions, coordination with the actual jobsite conditions as they exist, coordination with other trades, and compliance with all conditions of this Contract.

Review and/or Approval by the Architect or Engineer and General Contractor of drawings and other submittals shall not be construed as authority to depart from or modify the plans or specifications unless the Subcontractor accompanies its submittal with the Submittal Substitution Form, Exhibit F-1, which must be completed in full and describe the proposed changes or modifications, and unless such changes or modifications are specifically approved in writing by the Architect and/or Engineer and General Contractor. Submittals must be accurate so that they can be processed ('No Exceptions', 'Reviewed', 'Approved', or 'Approved as Noted') on the first pass. Submittals are required to be a complete package by specification section and we reserve the right to reject partial submittals. If a resubmission is required as a result of a 'Revise and Resubmit' or 'Rejected' submittal, the Subcontractor shall be solely responsible for the costs incurred by the General Contractor, Owner, Architect, Engineer, and/or Consultants associated with the additional review(s), as well as any additional expenses incurred. The Subcontractor agrees to furnish record and as-built drawings and operating manuals for all portions of its work for which such drawings or manuals are necessary or appropriate, current and complete in every detail, and meeting the requirements and approval of the Owner, General Contractor, Architect, and/or Engineer(s).

8.12 Non-Contracted Services. The Subcontractor agrees, except as otherwise provided in this Agreement, that no claim for non-contracted construction services rendered or materials furnished shall be valid unless the Subcontractor provides the General Contractor notice:

- a) prior to furnishing any of the services or materials, except in an emergency affecting the safety of persons or property;
- b) in writing of such claim five (5) working days prior to first furnishing such services or materials; and
- c) the written charge with all necessary documentation for such services or materials to the General Contractor no later than the fifteenth (15th) consecutive working day following that in which the claim originated.

8.13 Notice of Non-Payment. If at any point during the Project there is a claim by the Subcontractor or by any party claiming through the Subcontractor, that a payment is overdue, it agrees to provide fifteen (15) calendar days written notice to the General Contractor of such claim prior to the filing of any lien. Since the failure to provide such notice deprives the General Contractor of its ability to resolve differences over claims for payment without legal involvement, and since the filing of such liens without such notice has a deterring effect on the relationship between the parties and with the Owner, and since it would be difficult to determine the precise damages flowing from the failure to give such notice, therefore, upon the failure of the Subcontractor or any party claiming through the Subcontractor to provide such notice, the General Contractor shall be entitled to liquidated damages in an amount equal to ten (10) percent of the amount of any such lien filed without notice and shall be entitled to backcharge or otherwise assess the Subcontractor for such liquidated damages.

8.14 Claims by Subcontractor's Materialmen, Suppliers or Sub-Subcontractors. The Subcontractor shall insure that the Project remains free of claims and liens asserted by any Materialmen, Suppliers or Sub-Subcontractors performing work through the Subcontractor and shall further ensure that its contracts with such entities contains the language set forth in 8.13 above. In the event that the Subcontractor's Materialmen, Supplier or Sub-Subcontractor shall make a claim or file a lien against the Project, the Subcontractor shall have five (5) calendar days after notice to resolve the claim and/or to bond or otherwise satisfy and extinguish the lien. Upon the Subcontractor's failure to do so the Contractor is empowered to resolve the claim and or to bond or otherwise satisfy and extinguish the lien, in its sole discretion, and to recover from the Subcontractor its costs of doing so in addition to the liquidated damages set forth in 8.13 above.

ARTICLE 9 GENERAL OBLIGATIONS OF THE SUBCONTRACTOR

9.1 Layout Responsibility and Levels. The General Contractor shall establish a base line 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 General 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 uniform alignment of finish surfaces in accordance with the plans and specifications. It is understood and mutually agreed the Subcontractor shall be solely responsible even if the Project Superintendent or any other trade assisted in any way.

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 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 to receive, unload, handle, store, secure, and install the items with such skill and care as to ensure a satisfactory and proper installation. Subcontractor is responsible for these items as if they were supplied by the Subcontractor. Except that all shipping and receiving tickets must be signed by the subcontractor and turned over to the job superintendent on a timely basis. If material is damaged Subcontractor must give notice immediately, document it on the delivery slip, and take pictures of the damage. Loss or damage due to acts of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor. Subcontractor is responsible for review and coordination of submittals for these materials as if they were supplying themselves.

9.4 Substitution. No substitutions shall be made in the Subcontractor's Work unless permitted in the Contract Documents and only then upon the Subcontractor first receiving all approvals required under the Contract Documents for substitutions. No such approval shall be effective unless the Subcontractor shall have identified in advance of approval, with specificity, those areas where the substitution may vary from the material or performance specified. The Subcontractor shall indemnify the General Contractor and Owner for any increased costs incurred by the Owner or General Contractor as a result of such substitutions, whether or not the Subcontractor has obtained approval thereof. Submittal Substitution Form, Exhibit F-1, must be utilized to make any and all substitution requests. No other form will be acceptable unless specifically required by the Architect and/or Engineer.

9.5.1 Use of General Contractor's Equipment. The Subcontractor, its agents, employees, sub-subcontractors or suppliers shall not use the General Contractor's equipment without the express written permission of the General Contractor's designated representative.

9.5.2 If the Subcontractor or any of its agents, employees, suppliers or lower tier subcontractors utilize any machinery, equipment, tools, ladders, scaffolding, hoists, lifts or similar items owned, leased, or under the control of the General Contractor or any other party, the Subcontractor shall be liable to the General Contractor as provided in Article 12 for any loss or damage (including personal injury or death) which may arise from such use.

9.6 Privity. Until final completion of the Project, the Subcontractor agrees not to perform any work directly for the Owner or any tenants hereof, or deal directly with the Owner's representatives in connection with the Project, unless otherwise directed in writing by the General Contractor.

All Work for this Project performed by the Subcontractor shall be processed and handled exclusively by the General Contractor. In the event of a violation or breach of this provision by the Subcontractor, the General Contractor shall be entitled to liquidated damages in an amount equal to twenty-five (25%) percent of the price of any work performed by the Subcontractor for the Owner prior to final completion and final payment.

9.7 Subcontract Bond. Even if a Performance and Payment Bond is not required of the Subcontractor per the Credentials section of Exhibit A-1 of this Agreement and/or Article 16, the General Contractor may nonetheless require such bonds and the Subcontractor shall provide it. Said bonds shall be in the full amount of this Agreement in a form and by a surety satisfactory to the General Contractor. The Subcontractor shall be reimbursed, without retainage, for the cost of the bonds, without markup, simultaneously with the first progress payment hereunder. The reimbursement amount for the bonds shall not exceed the manual rate for such Subcontractor Work. Retainage reduction provisions of Article 5.2.2 shall not apply to the cost of the bonds when bonds are furnished under the terms of this Article. In the event the Subcontractor shall fail to promptly provide such requested bonds, the General Contractor may terminate this Agreement and re-let the Work to another Subcontractor and all of the General Contractor's and Owner's costs and expenses incurred thereby shall be paid by the Subcontractor.

9.10.1 Warranty. The Subcontractor warrants its Work against all deficiencies and defects in materials and/or workmanship as called for in the Contract Documents. If no time is specified, it shall default to one (1) year from the date(s) of acceptance of the Project by Owner and/or architect.

9.10.2 The Subcontractor agrees to satisfy such warranty obligations that appear within the guarantee or warranty period established in the Contract Documents without costs to the Owner or the General Contractor.

9.10.3 If no guarantee or warranty is required of the General Contractor in the Contract Documents, then the Subcontractor shall guarantee or warranty its Work as described above for the period of one (1) year from the date(s) of acceptance of the Project by Owner and/or architect.

9.10.4 The Subcontractor further agrees to execute any special guarantees or warranties that shall be required for the Subcontractor's Work prior to final payment.

9.11 Labor. Subcontractor shall at all times provide all necessary labor to complete the Work on the Project. Under no circumstances will any labor-related issues give Subcontractor the right to avoid any of its obligations contained in this Agreement or to perform the Work. Any failure by Subcontractor to provide labor for the project in connection with the Work shall constitute a material breach of this Agreement, and Subcontractor shall be liable to General Contractor for all consequential damages stemming therefrom.

9.12 Deliveries. If the Subcontractor will be delivering materials to the jobsite, the Subcontractor will be required to schedule any such deliveries with the General Contractor in advance. Failure to schedule such deliveries in advance may result in the General Contractor rejecting the delivery of materials and the General Contractor may also refuse access to the jobsite by the Subcontractor. In such an event, General Contractor will not be liable for any resulting damages to Subcontractor and Subcontractor agrees to indemnify and hold General Contractor harmless from any losses, costs, damages, injuries or expenses arising from or in any way related to the rejection of any deliveries from the Subcontractor.

9.13 Escalation. Subcontractor shall include any and all labor rate increases and material cost escalations for the duration of the project.

ARTICLE 10 RECOURSE BY GENERAL CONTRACTOR

FAILURE OF PERFORMANCE

10.1.1 Notice To Cure. If the Subcontractor refuses or fails to supply enough properly skilled workers, proper materials and equipment, or maintain the Milestones or Schedule of Work set forth in Exhibits B1 and/or B2 as amended by the General Contractor from time to time, or it fails to make prompt payment 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 a breach of a provision of this Agreement, and fails within three (3) consecutive working days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then the General 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 the General Contractor deems necessary for the completion of the Subcontractor's Work, or any part thereof which the Subcontractor has failed to complete or perform after the aforesaid notice, and charge the costs thereof to the Subcontractor, who shall be liable for the payment of same including reasonable overhead, profit and attorney's fees.
- b) Contract with one or more additional subcontractors or itself to perform such part of the Subcontractor's Work as the General Contractor shall determine will provide the most expeditious completion of the total Work and charge the costs 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 General Contractor and the Owner.
- d) Charge the Subcontractor for all costs incurred by the General Contractor due to its delay or breach, including but not limited to, reasonable overhead, profit, attorney's fees and additional actual expenses incurred for general requirements, supervision, equipment rental, and the like.
- e) In the event of any emergency affecting the safety of persons or property, the General Contractor may proceed as above without notice.

10.1.2 Termination By General Contractor. If the Subcontractor fails to commence and satisfactorily continue correction of a default within three (3) working days after receipt by the Subcontractor of the notice issued under Article 10.1.1, or upon the appointment of a receiver for the Subcontractor or upon the Subcontractor making an assignment for the benefit of creditors, or filing a petition for protection under any section of the Bankruptcy Act, then the General Contractor may terminate this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to the Subcontractor, assume all, or so many of the Subcontractor's sub-subcontracts as the General Contractor determines are necessary for the proper completion of the work and/or to complete the Subcontractor's Work. The General Contractor may also furnish those materials, equipment and/or employ such workers or subcontractors as the General Contractor deems necessary to maintain the orderly progress of the Work. All of the costs incurred by the General Contractor in so performing the Subcontractor's Work, including reasonable overhead, profit and attorney's fees, shall be deducted from any moneys due or to become due the Subcontractor. The Subcontractor shall be liable for the payment for any amount by which such expense may exceed the unpaid balance of the Contract price.

10.1.3 Use of Subcontractor's Equipment. If the General Contractor performs Work under this Article or sublets such Work to be so performed, the General 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 located at the Project.

The General Contractor may offset against any sums due or to become due the Subcontractor all costs incurred in completing the Work or pursuing any of its remedies including, but not limited to, reasonable overhead, profit and attorney's fees. The Subcontractor shall be liable for the payment of any amount by which the expense of completion, etc., may exceed the unpaid balance of the Contract price.

10.2.1 Suspension By Owner. Should the Owner suspend the Project or any part of the Project that includes the Subcontractor's Work, the General Contractor shall so notify the Subcontractor in writing and upon receipt of said notice the Subcontractor shall immediately suspend the Subcontractor's Work.

10.2.2 In the event of such Owner suspension, the General Contractor's liability to the Subcontractor is limited to the extent of the General Contractor's recovery from the Owner on the Subcontractor's behalf under the Contract Documents. The General Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit the Subcontractor to prosecute said claim, in the name of the General Contractor, for the use and benefit of the Subcontractor or assign the claim to the Subcontractor. The prosecution of all such claims shall be as under Article 14.

10.3.1 Termination By Owner. Should the Owner terminate the Project or any part of the Project that includes the Subcontractor's Work, the General Contractor shall so notify the Subcontractor in writing and upon receipt of said notice, this Agreement shall also be terminated and the Subcontractor shall immediately stop the Subcontractor's Work.

10.3.2 In the event of such Owner termination, the General Contractor's liability to the Subcontractor is limited to the extent of the General Contractor's recovery from the Owner on the Subcontractor's behalf under the Contract Documents. The General 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 General Contractor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor.

10.4.1 Termination for Convenience and Suspension. The General Contractor may order the Subcontractor in writing to suspend, delay, or interrupt or terminate all or any part of the Subcontractor's Work with or without cause, for such period of time as may be determined to be appropriate for the convenience of the General Contractor.

10.4.2 Upon receipt of the written notice of termination, the Subcontractor shall:

- a) Stop all work if its performance of all the Subcontract or Subcontract Work has been terminated, or stop work on the part of the Subcontract Work that has been terminated if its performance of only part of the Subcontract Work has been terminated;
- b) Enter into no further sub-subcontracts or place any orders for supplies, materials or facilities except as necessary to complete any portion of the Subcontract work not terminated;
- c) Terminate, or assign, in accordance with the instructions of the General Contractor, all sub-subcontractors or orders related to the work;
- d) As directed by the General Contractor, transfer title and deliver to the General Contractor any fabricated or unfabricated parts, work in progress, completed work, supplies and other materials procured or acquired for the Subcontract or Subcontract Work terminated and the completed or partially completed plans, drawings, information and other property that, if the Subcontract had been completed, the Subcontractor would be required to furnish to the General Contractor;
- e) Complete non-terminated portions of the Subcontract Work if the Subcontractor's performance of only a part of the Subcontract Work has been terminated;
- f) Use its best efforts to sell, as directed by the General Contractor, any materials of the types referred to in paragraph d above. The proceeds from the sale of such material shall be applied to reduce any payments due from the General Contractor or Owner to the Subcontractor;
- g) Submit, within sixty (60) days of the effective date of the termination, to the General Contractor, a written termination claim, along with all documentation required to support that claim; and,
- h) Take any other action toward termination as directed by the General Contractor.

10.4.3 Effect of Owner's Termination of General Contractor. If there has been a termination of the General Contractor's contract with the Owner, the Subcontractor shall be paid the amount due from the Owner to the General Contractor for the Subcontractor's completed Work, as provided in the Contract Documents and herein.

10.4.4 Compensation. If the General Contractor's contract has not been terminated, the General Contractor shall pay the Subcontractor as follows:

- a) The direct costs of the work performed by the Subcontractor prior to termination, plus reasonable overhead, general and administrative expenses in an amount equal to five (5%) percent of direct costs; and profit of five percent (5%) on the total of the above two amounts, unless it appears that the Subcontractor would have sustained a loss on the Subcontract in which case no profit shall be paid.
- b) The Subcontractor shall not be compensated for any accounting, legal, clerical, or other expenses incurred by the Subcontractor in the preparation of the Subcontractor's termination claim, nor for unabsorbed overhead or anticipated lost profits.
- c) The General Contractor shall be entitled to deduct from any payment due to the Subcontractor any advance payment that has been made to the Subcontractor for work not yet performed, or performed in a deficient manner, or for which there is an outstanding change order deduct, and the amount of any claim against the Subcontractor.

10.4.5 The Subcontractor shall notify the General Contractor in writing, within ten (10) consecutive working days after receipt of the General Contractor's termination for convenience order, of the effect of such order upon the Subcontractor's Work. The Contract price or Contract time shall be adjusted by a Subcontract Change Order for any increase in the time or cost of performance of this Agreement caused by such suspension, delay, or interruption. 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 General 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 so suspended, delayed, or interrupted by the fault or negligence of the Subcontractor.

10.4.6 The settlement of termination costs pursuant to the above shall constitute a settlement and release of any and all claims, known and unknown, by the Subcontractor, arising prior to or as a result of the termination.

10.5 Wrongful Exercise. If the General Contractor wrongfully exercises any option under this Article, the General Contractor shall be liable to the Subcontractor solely for the reasonable value of Work performed by the Subcontractor prior to the General Contractor's wrongful action, including reasonable overhead and profit, less prior payments made, but not including attorney's fees or other legal costs.

ARTICLE 11 LABOR RELATIONS

11.1 Unless otherwise specifically agreed to in writing, the Subcontractor agrees, at the General Contractor's direction, to man the job exclusively with the type of labor indicated in this Agreement. If no General Conditions exist for the Project or for a particular aspect of the Work, the parties will adhere to standard AIA General Conditions, A-201 (most recent edition), to the extent not in conflict with this Agreement.

11.2 The Subcontractor will not discriminate against any employees or applicant for employment because of race, creed, color, national origin, religion, sex, handicap, age, veteran status, or any other category prohibited by local, State or Federal law.

11.3 The General Contractor shall have the right to bar officers and employees of the Subcontractor from the site for any of the following: failure to adhere to safety regulations promulgated by the General Contractor, the Owner or any State or Federal code; consumption of alcoholic beverages; smoking; the commission of any misdemeanor or crime on the Project site; fighting, insubordination or other conduct subversive of the orderly management of the Project; or failure to comply with reasonable Project regulations necessary for the safe, efficient, and/or economic prosecution of the Work by the Subcontractor, General Contractor, or other trades.

11.4 The project is not required to consist of Union Trades and/or prevailing wages (unless indicated otherwise in the Credentials section of Exhibit A-1 of this Agreement and/or Article 16). If the Subcontractor elects to perform their work with union labor, such Subcontractor would be subject to remedy any labor or union disputes, claims, strikes, or impact to other subcontractor's work caused by their action at NO additional costs to the General Contractor, Owner, or their Agents. This includes, but is not limited to work stoppages. Subcontractor be it union or non-union, agrees to maintain the schedule, continue to man the job, and keep worker harmony at their cost.

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, the Architect, the General Contractor (including its affiliates, parents and subsidiaries) and other contractors, consultant(s), and subcontractors and all of their agents and employees from and against all claims, damages, loss and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Subcontractor's Work provided that:

- a) any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Subcontractor's Work itself) including the loss of use resulting therefrom, to the extent caused or alleged to be caused in whole or in any part by any negligent act or 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.
- b) such obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any Party or person described in this Article 12.

Further, to the fullest extent permitted by law, by acceptance of this Contract, the contractor agrees to indemnify and hold the Owner and General Contractor harmless from and against all claims, damages, losses and expenses including but not limited to, attorney's fees, arising out of or in connection with the work provided that any such claim, damage, loss, or expense is based upon or imposed under any obligation of the Owner and General Contractor under the Labor Law relating to the Subcontractor's Work.

12.2 No Limitation Upon Liability. In any and all claims against the Owner, the Architect, the General Contractor (including its affiliates, parents and subsidiaries) and other contractors, consultants, or subcontractors, or any of their agents or employees, by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation under this 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 workmen's compensation acts, disability benefit acts or other employee benefit acts.

12.3 Architect Exclusion. The obligations of the Subcontractor under this Article 12 shall not extend to the liability of the Architect, its agents or employees, arising out of (a) the preparation of approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (b) the giving of or the failure to give directions or instruction by the Architect, its agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

12.4.1 Compliance With Laws. The Subcontractor agrees to be bound by, and at its own cost comply with, all Federal, State and local laws, ordinances and regulations (hereinafter collectively referred to as "laws") applicable to the Subcontractor's Work including, but not limited to equal employment opportunity, minority business enterprise, women's business enterprises, disadvantage business enterprise, safety and all other laws with which the General Contractor must comply according to the Contract Documents.

12.4.2 The Subcontractor shall be liable to the General Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply therewith, including, but not limited to, any fines, penalties, and/or corrective measures.

12.5 Patents. Except as otherwise provided by the Contractor Documents, the Subcontractor shall pay all royalties and license fees that 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 General Contractor or Owner, and shall be liable to the General Contractor and Owner for all loss, including all costs, expenses, and attorney's fees.

ARTICLE 13 INSURANCE

13.1 Subcontractor's Insurance. Prior to start of the Subcontractor's Work, the Subcontractor and their subcontractors, suppliers, and vendors shall procure for the Subcontractor's Work and maintain in force Worker's Compensation Insurance, Employer's Liability Insurance, Comprehensive General Liability Insurance, Excess/Umbrella Liability Insurance(s), and all insurance required of the General Contractor under the Contract Documents. The General Contractor, Owner, and all Parties required by contract shall be named as additional insured for ongoing and completed operations on a primary non-contributory basis on each of these policies except for Worker's Compensation.

Subcontractor's insurance shall not contain terms, conditions, and coverages not more restrictive than General Contractor's insurance. This insurance shall include contractual liability insurance covering the Subcontractor's obligations under Article 12.

13.2 Minimum Limits of Liability. The Subcontractor's Comprehensive General and Automobile Liability Insurance, as required by Article 13.1, shall be written with limits of liability not less than that set forth in EXHIBIT E-1.

13.3 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 or Umbrella Liability Policy. Vertical Exhaustion of Excess Limits is required and General Contractor, Owner, and all related Parties shall be named as additional insured for ongoing and completed operations on a primary non-contributory basis on each of these policies.

13.4. 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 General 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 written notice has been given to the General Contractor unless otherwise specifically required in the Contract Documents. Certificates of Insurance, endorsements, and/or certified copies of policies acceptable to the General Contractor shall be filed with the General Contractor prior to the commencement of the Subcontractor Work. Subcontractor shall email the certificates and endorsements to the General Contractor with the understanding that the Subcontractor's Insurance Agent must mail original certificates directly to the General Contractor's headquarters within five (5) consecutive business days of the electronic transmission. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, the General Contractor may purchase coverage and charge the expense thereof to the Subcontractor, or terminate this Agreement.

13.5.1 Waiver of Rights. The General Contractor and Subcontractor waive all rights against each other and the Owner, the Architect, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk or any other property or equipment insurance, except such right as they may have to the proceeds of such insurance; provided, however, that such waiver shall not extend to the acts of the Architect listed in Article 12.3.

13.5.2 Upon written request of the Subcontractor, the General Contractor shall provide the Subcontractor with a copy of the Builder's Risk policy of insurance (if any) or any other property or equipment insurance (if any) in force for the Project and procured by the Owner or the General Contractor. The Subcontractor shall satisfy itself as to the existence and extent of such insurance prior to commencement of the Subcontractor's Work.

If the Owner or General Contractor have not purchased Builder's Risk Insurance for the full insurable value of the Subcontractor's Work less a reasonable deductible, then the Subcontractor may procure such insurance as will protect the interest of the Subcontractor, its subcontractors and their subcontractors in the Work, and, by appropriate Subcontractor Change Order, the cost of such additional insurance shall be reimbursed to the Subcontractor by the Owner. If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Contract Documents, 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 the site or in transit, when such portions of the Subcontractor's Work are to be included in an application for payment under Article 5.

13.6 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.

ARTICLE 14 ARBITRATION

14.1 Agreement to Arbitrate: Except as provided below, all claims, disputes, and matters in question arising out of, or relating to this Agreement or the breach thereof or between the Subcontractor and the General Contractor or Owner, including disputes arising under Article 6, hereof, shall be decided by arbitration unless the contract between the General Contractor and the Owner does not provide for arbitration or in the event the General Contractor elects mediation and/or litigation. In the matter of arbitration, the Subcontractor's, Owner's and General Contractor's rights and obligations and all procedures shall be those set forth in the Contract Documents provided, however, that a decision by the Architect or Owner's authorized agent shall not be a condition precedent to arbitration. However, in the event that the Subcontractor initiates litigation in Court on any matter relating to this contract, the General Contractor reserves the right to refer any and all such matters to Arbitration as set forth below.

14.2 Notice of Demand. Notice of the Demand for Arbitration and the American Arbitration Association's fee shall be filed in writing with the other Party to this Agreement and with the American Arbitration Association, Rhode Island Regional Office. Except as provided below, the Demand for Arbitration shall be made within six (6) months after written notice of the claim, dispute or other matter in question has been given. In no event shall a demand be made or enforceable 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. The location of the arbitration proceedings shall be the place of the General Contractor's headquarters. The arbitration proceedings shall be conducted in accordance with the Construction Industry Rules of the AAA, single arbitrator.

14.3 Award. The award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with applicable law in any Court having jurisdiction. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law.

14.4 Work Continuation and Payment. Unless otherwise agreed to in writing, the Subcontractor shall carry on the Work and maintain the Schedule of Work pending arbitration, and if so, the General Contractor and Owner shall continue to make payments in accordance with this Agreement.

14.5 Same Arbitrators. The claims and disputes of the Owner, General Contractor, Subcontractor and other subcontractors involving a common question of fact or law shall be heard by the same arbitrator in a single proceeding, if feasible.

14.6 Exceptions. This Article shall not apply to any claim of contribution or indemnity asserted by one Party to this Agreement against the other Party and arising out of an action brought in a State or Federal court or in arbitration by a person who is under no obligation or who does not consent to arbitrate the subject matter of such action with either of the Parties hereto.

14.7 Arbitrability. In any dispute arising over the application of this Article, the question of Arbitrability shall be decided by the arbitrator.

14.8 Legal Fees. In the event of a dispute, the prevailing party shall be entitled to reimbursement by the non-prevailing party for any and all attorney's fees, costs, charges, expenses, and alike that are associated with such dispute. The term "Prevailing Party" shall include, without limitation, a party which substantially obtains or defeats the relief sought, as determined by the Court or Arbitrators adjudicating the Dispute.

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 General Contractor in writing within three (3) working days of the Subcontractor's discovery thereof. Upon receipt of said notice, the General Contractor shall instruct the Subcontractor as to the measures to be taken and the Subcontractor shall comply with the General Contractor's instructions. Subcontractor shall be responsible to satisfy the most costly or challenging of the items in question. Unless specifically provided for herein, all references to days shall be to consecutive calendar days.

15.2 Law and Effect. This Agreement shall be governed by the law of the State of New York. Venue shall be New York, NY.

15.3 Severability and Waiver. The partial or complete invalidity of any one (1) or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either Party hereto to insist, in any one (1) or more instances, upon the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant or right as respects further performance.

15.4 Attorney's Fees. In the event that the General Contractor employs an attorney:

1. To institute suit or demand arbitration to enforce any of the provisions hereof
2. To protect its interest in any matter arising under this Agreement
3. To collect damages for the breach of the Agreement

- To recover on a surety Bond given by the Subcontractor under this Agreement
- Or to defend a claim or to bond a lien filed by the Subcontractor where the Subcontractor does not ultimately prevail on the full amount of the amount claimed or liened. The Subcontractor then shall pay General Contractor's attorney's fees, costs, charges, and expenses, including expenses of procuring and filing a bond, expended or incurred thereby.

15.5 Title. The titles given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purposes.

15.6 Entire Agreement. This Agreement is solely for the benefit of the signatories hereto and represents the entire and integrated Agreement between the Parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. No Amendment or change to this agreement shall be effective unless same is in writing and signed by both parties hereto. Unless specifically set forth in Exhibit A no exclusions from the Scope of Work will be accepted even if they were part of the original bid submitted by the Subcontractor.

15.7 General Contractor/Construction Manager. Whenever the term General Contractor is used herein it shall be held to mean Construction Manager, in any instance in which the relationship of AllertonFox Construction to the Owner, is that of Construction Manager, and not General Contractor.

15.8 Subcontractor/Trade Contractor. Whenever the term Subcontractor is used herein it shall be held to mean Trade Contractor, in any instance in which the relationship of AllertonFox Construction to the Owner, is that of Construction Manager, and not General Contractor.

15.9 AllertonFox Construction. Whenever the term AFC, AllertonFox, Allerton & Fox, and/or AllertonFox Construction are used herein it shall be held to mean AllertonFox Construction LLC. This shall also apply to all contract documents and exhibits.

ARTICLE 16 CONTRACT DOCUMENTS

16.1 Contract Documents. The Contract Documents are set forth in the enclosed document titled, "PLANS AND SPECIFICATIONS" and Exhibits A-1 and A-2. These also include; This Agreement, The Contract between the Owner and AFC, Plans and Specifications document (enclosed), and EXHIBITS A-1 & A-2, AFC's Health & Safety Plan, Client's Contractor Handbook (if any), Client's Health & Safety Manual (if any), Building Rules & Regulations (if any), and Supplemental Conditions (if any) even if not listed on the Exhibits.

16.2 Subcontractor agrees to furnish and pay for all labor, materials, equipment, services and every other things necessary for completion of the Work in accordance with the Contract Documents, or if they are necessary to produce the intended results and to assure a complete and functional Project. It is further understood that incidental or minor modifications may be required due to actual job conditions, field coordination with other trades or substitution of equal products due to availability, etc. In that event no request for extras or change orders will be granted for such modifications that are hereby inferred under the normal scope of work unless a major change occurs and it is recognized as such by the Architect and Owner. The Scope of Work is included in the Contract Documents.

ARTICLE 17 IDENTIFICATION OF GENERAL CONTRACTOR

17.1 The persons authorized on behalf of the General Contractor to make binding commitments are: Terry Allerton and Jamie Fox

17.2 The limit of the Project Manager's authority shall be to bind AllertonFox Construction in matters having a value of less than \$10,000. Regarding matters with a value in excess of this, the signature of one of the persons identified in Article 17.1 is necessary to bind AllertonFox Construction. It is mutually agreed and understood that this continues to apply even if it is overlooked at times.

18.1 This Agreement/Purchase Order shall be binding upon and inure to the benefit of Seller and Purchaser, and their respective successors, assigns and related entities (subject to any restrictions set forth in the Agreement), and may be executed in multiple counterparts or by facsimile transmission or electronic mail, each of which shall be treated as an original of this Agreement/Purchase order for all purposes, and all of which shall constitute one (1) agreement binding upon all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart or facsimile transmission.

Subcontractor shall be bound by this Agreement and its terms and conditions when it executes and returns a signed copy of this Standard Subcontract Agreement, when it delivers goods to the General Contractor, performs any services for the General Contractor, and/or when it invoices General Contractor for same - whichever occurs first shall govern.

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

GENERAL CONTRACTOR	SUBCONTRACTOR Sample Vendor
_____	_____
SIGNATURE	SIGNATURE
_____	_____
PRINT NAME	PRINT NAME
_____	_____
TITLE	TITLE
	Witness: _____
	(Corp. Seal Here)

Exhibit A-1: Scope of Work

Scope of Work & Clarifications

Item	Description	Amount (\$)
1	Item 1	1,500.00
	Subtotal (\$)	1,500.00
	✓ (0% Capital Improvement) Tax (\$)	0.00
	Total (\$)	1,500.00

One Thousand Five Hundred Dollars and Zero Cents

In addition to the information referred to above, Subcontractor shall be responsible for examination of actual conditions at the site. The Subcontractor affirms that from its own investigations, it has satisfied itself as to the nature of the work, the character of the equipment and other facilities needed for the performance of the work, the general and local conditions at the site and all other matters which may in any way affect the work or its performance and, further, that the conditions at the site are such that the work to be performed under this Agreement can be carried on and completed in accordance with the contract documents. It is in the intention of the parties hereto that the scope of work of the Subcontractor, unless specifically restricted in the contract documents, includes provision for all labor, material, equipment, and applicable sales and use taxes related services to fully complete and protect the work of the Subcontractor's trade all as set forth in the Contract Documents, no matter where it appears, without any exclusions. Subcontractor further agrees to comply with the reasonable interpretations of the General Contractor, with reference to the custom in the industry, as to the Scope of Work.

Vendor Credentials Required

- W-9

Provide W-9 for Subcontractor

- Exhibit E1

Subcontractor shall provide insurance(s) per this Agreement inclusive of Exhibit E-1

- General Liability

Subcontractor shall provide insurance(s) per this Agreement inclusive of Exhibit E-1

- Umbrella/Excess Coverage

Subcontractor shall provide insurance(s) per this Agreement inclusive of Exhibit E-1

- Worker's Compensation

Subcontractor shall provide insurance(s) per this Agreement inclusive of Exhibit E-1

- Automobile Liability

Subcontractor shall provide insurance(s) per this Agreement inclusive of Exhibit E-1

SAMPLE



PLANS AND SPECIFICATIONS

Project: 1010001 - Sample Project

Date: 09/26/2019

Document: 1010001-003

The following contract documents are hereby incorporated by reference. These documents may be viewed online and downloaded in entirety at: <https://allertonfox.redteamsoftware.com/planroom>

**Enter Project Number 1010001 when accessing the online planroom.*

Name	Date	Author	Scope
<i>- There are No Plans and Specifications on File</i>			

SAMPLE

: _____

Subcontractor: _____

SAMPLE



EXHIBIT C-1 SUB PARTIAL WAIVER

Project: 1010001 - Sample Project
Document: 1010001-003

Date: 09/26/2019

EXHIBIT C-1: SUBCONTRACTOR'S/SUPPLIER'S PARTIAL WAIVER OF LIEN AND RELEASE

Project Title: _____ AFC Job#: _____

Project Location: State of: _____ Application#: _____

Project Location: County of: _____ Period Ending: _____

Whereas the undersigned has been employed by _____ to furnish _____ for the premises known as _____

Of which _____ is the Owner.

The undersigned hereby certifies and warrants that the following statement of contract account is correct:

Statement of Contract Amount:

Total Contract Amount (Inclusive of Approved Change Orders) \$ _____

Total Amount of Current Certificates for Payment (Inclusive of Retainage) \$ _____

Total Amounts of Retention Properly Withheld for This Payment \$ _____

Whereas the undersigned has requested partial payment and is under no duress to sign this lien waiver.

Upon receipt of the sum of \$ _____ the undersigned does hereby waive and release any and all lien or claim or right of lien under the statutes of the State(s) of the site of the labor or services performed or the materials, equipment, fixtures, improvements, or apparatus furnished relating to Mechanics Liens on the above described premises and improvements thereon and on the monies or other considerations due from the Owner and/or AllertonFox Construction LLC, on account of labor services, material, fixtures, improvements, or apparatus heretofore furnished to this date by the undersigned for the above described premises.

Contractor warrants that it has not assigned and will not assign its claim for payment, nor its right to perfect a lien against the Property with respect to the rights herein released. The person executing this document warrants that he/she is authorized to do so and has personal knowledge of the facts set forth herein.

The undersigned states that it has not assigned any claim or payment against the Owner and/or AllertonFox Construction, LLC, and their agents, partners, lenders successors and assignees, and that no security interest has been given or executed by the undersigned for or in connection with any materials, appliances, machinery, fixtures or furnishings placed upon or installed on the above described premises. Further, the undersigned agrees to indemnify and hold harmless the Owner and AllertonFox Construction, LLC, and their agents, partners, lenders, successors and assignees, from any charges, costs, expenses, demands, suits and/or legal fees, directly or indirectly relating to any lien or claim by any other party for work, labor, services, material, and/or equipment which relates to that which the undersigned performed or should have performed, and from and against any lien or claim relating to any work, labor, services, material, and/or equipment allegedly performed by or for the undersigned. Finally, the undersigned states that it has the right, power and authority to execute this instrument, which shall be an independent covenant.

Executed under seal this _____ day of _____, 20_____.

Attest or Witness:

Notary - State of: _____

Notary - County of: _____

Signature of Notary Public _____

[AFFIX NOTARY SEAL]

Vendor Name: _____

By (Signature): _____

By (Print Name): _____

Title: _____

11/20/15

: _____ Subcontractor: _____



EXHIBIT C-2 SUB FINAL WAIVER

Project: 1010001 - Sample Project

Date: 09/26/2019

Document: 1010001-003

EXHIBIT C-2: SUBCONTRACTOR'S/SUPPLIER'S FINAL WAIVER OF LIEN AND RELEASE

Project Title: _____ AFC Job#: _____

Project Location: State of: _____ Application#: _____

Project Location: County of: _____ Period Ending: _____

Whereas the undersigned has been employed by _____ to furnish
_____ for the premises known as _____

Of which _____ is the Owner.

Whereas the undersigned has requested FINAL payment and is under no duress to sign this lien waiver.

The undersigned hereby acknowledges the sum of \$ _____ constitutes the entire **unpaid** balance due the undersigned in connection with said project whether under said contract or otherwise and that the payment of said sum to the Contractor will constitute payment in full and will fully satisfy any and all liens, claims, and/or demands which the Contractor may have or assert against AllertonFox Construction, LLC and/or the Owner in connection with said contract or project.

Contractor has fully paid all amounts due to its subcontractors and suppliers. No amounts are in dispute.

Upon receipt of said sum, the undersigned does hereby waive and release any and all lien or claim or right of lien under the statutes of the State(s) of the site of the labor or services performed or the materials, equipment, fixtures, improvements, or apparatus furnished relating to Mechanics Liens on the above described premises and improvements thereon and on the monies or other considerations due from the Owner and/or AllertonFox Construction LLC, on account of labor services, material, fixtures, improvements, or apparatus heretofore furnished to this date by the undersigned for the above described premises.

Contractor warrants that it has not assigned and will not assign its claim for payment, nor its right to perfect a lien against the Property with respect to the rights herein released. The person executing this document warrants that he/she is authorized to do so and has personal knowledge of the facts set forth herein.

The undersigned states that it has not assigned any claim or payment against the Owner and/or AllertonFox Construction, LLC, and their agents, partners, lenders successors and assignees, and that no security interest has been given or executed by the undersigned for or in connection with any materials, appliances, machinery, fixtures or furnishings placed upon or installed on the above described premises. Further, the undersigned agrees to indemnify and hold harmless the Owner and AllertonFox Construction, LLC, and their sureties, agents, partners, lenders, successors and assignees, from any charges, costs, expenses, demands, suits and/or legal fees, directly or indirectly relating to any lien or claim by any other party for work, labor, services, material, and/or equipment which relates to that which the undersigned performed or should have performed, and from and against any lien or claim relating to any work, labor, services, material, and/or equipment allegedly performed by or for the undersigned. Finally, the undersigned states that it has the right, power and authority to execute this instrument, which shall be an independent covenant.

Executed under seal this _____ day of _____, 20_____.

Attest or Witness: _____

Vendor Name: _____

Notary - State of: _____

By (Signature): _____

Notary - County of: _____

By (Print Name): _____

Signature of Notary Public _____

Title: _____

[AFFIX NOTARY SEAL]

11/20/15

: _____ Subcontractor: _____



EXHIBIT C-3 2ND TIER PARTIAL

Project: 1010001 - Sample Project

Date: 09/26/2019

Document: 1010001-003

EXHIBIT C-3: 2ND TIER SUBCONTRACTOR'S/ SUPPLIER'S PARTIAL WAIVER OF LIEN AND RELEASE

Project Title: _____ AFC Job#: _____

Project Location: State of: _____ Application#: _____

Project Location: County of: _____ Period Ending: _____

Whereas the undersigned has been employed by _____ to furnish _____ for the premises known as _____

Of which _____ is the Owner.

Amount Paid to Date: \$ or % _____ Balance Remaining: \$ or % _____

The undersigned for and in consideration of the payments made to it by the Subcontractor/Supplier, or to a subcontractor, materialman, or supplier of the undersigned, for labor, services, materials, fixtures, apparatus, improvements, and/or equipment furnished for the above described premises, does hereby waive and release any and all lien or claim or right of lien under the statutes of the State(s) of the site of the labor or services performed or the materials, equipment, fixtures, or apparatus furnished relating to Mechanics Liens on the above described premises and improvements thereon and on the monies or other considerations due from AllertonFox Construction, LLC and/or the Owner, on account of labor services, material, fixtures, apparatus, or improvements heretofore furnished to this date by the undersigned for the above described premises.

Contractor warrants that it has not assigned and will not assign its claim for payment, nor its right to perfect a lien against the Property with respect to the rights herein released. The person executing this document warrants that he/she is authorized to do so, has personal knowledge of the facts set forth herein, and is under no duress to execute this lien waiver.

The undersigned states that it has not assigned any claim or payment against the Owner and/or AllertonFox Construction, LLC, and their agents, partners, lenders successors and assignees, and that no security interest has been given or executed by the undersigned for or in connection with any materials, appliances, machinery, fixtures or furnishings placed upon or installed on the above described premises. Further, the undersigned agrees to indemnify and hold harmless the Owner and AllertonFox Construction, LLC, and their agents, partners, lenders, successors and assignees, from any charges, costs, expenses, demands, suits and/or legal fees, directly or indirectly relating to any lien or claim by any other party for work, labor, services, material, and/or equipment which relates to that which the undersigned performed or should have performed, and from and against any lien or claim relating to any work, labor, services, material, and/or equipment allegedly performed by or for the undersigned. Finally, the undersigned states that it has the right, power and authority to execute this instrument, which shall be an independent covenant.

Executed under seal this _____ day of _____, 20_____.

Attest or Witness: _____ Vendor Name: _____

Notary - State of: _____ By (Signature): _____

Notary - County of: _____ By (Print Name): _____

Signature of Notary Public _____ Title: _____

[AFFIX NOTARY SEAL]

11/20/15

: _____ Subcontractor: _____



EXHIBIT C-4 2ND TIER FINAL WAIVER

Project: 1010001 - Sample Project

Date: 09/26/2019

Document: 1010001-003

EXHIBIT C-4: 2ND TIER SUBCONTRACTOR'S/ SUPPLIER'S FINAL WAIVER OF LIEN AND RELEASE

Project Title: _____ AFC Job#: _____

Project Location: State of: _____ Application#: _____

Project Location: County of: _____ Period Ending: _____

Whereas the undersigned has been employed by _____ to furnish _____ for the premises known as _____

Of which _____ is the Owner.

Balance Remaining to Be Paid to 2nd Tier Vendor for said Contract: \$ ZERO

The undersigned hereby acknowledges that Contractor has been paid in full so ZERO dollars constitutes the entire unpaid balance due the undersigned in connection with said project whether under said contract or otherwise and that the previous payments to the Contractor constitute payment in full and fully satisfy any and all liens, claims, and/or demands which the Contractor may have or assert against AllertonFox Construction, LLC and/or the Owner in connection with said contract or project.

Contractor has fully paid all amounts due to its subcontractors and suppliers. No amounts are in dispute.

The undersigned does hereby waive and release any and all lien or claim or right of lien under the statutes of the State(s) of the site of the labor or services performed or the materials, equipment, fixtures, improvements, or apparatus furnished relating to Mechanics Liens on the above described premises and improvements thereon and on the monies or other considerations due from the Owner and/or AllertonFox Construction LLC, on account of labor services, material, fixtures, improvements, or apparatus heretofore furnished to this date by the undersigned for the above described premises.

Contractor warrants that it has not assigned and will not assign its claim for payment, nor its right to perfect a lien against the Property with respect to the rights herein released. The person executing this document warrants that he/she is authorized to do so and has personal knowledge of the facts set forth herein.

The undersigned states that it has not assigned any claim or payment against the Owner and/or AllertonFox Construction, LLC, and their agents, partners, lenders successors and assignees, and that no security interest has been given or executed by the undersigned for or in connection with any materials, appliances, machinery, fixtures or furnishings placed upon or installed on the above described premises. Further, the undersigned agrees to indemnify and hold harmless the Owner and AllertonFox Construction, LLC, and their sureties, agents, partners, lenders, successors and assignees, from any charges, costs, expenses, demands, suits and/or legal fees, directly or indirectly relating to any lien or claim by any other party for work, labor, services, material, and/or equipment which relates to that which the undersigned performed or should have performed, and from and against any lien or claim relating to any work, labor, services, material, and/or equipment allegedly performed by or for the undersigned. Finally, the undersigned states that it has the right, power and authority to execute this instrument, which shall be an independent covenant.

Executed under seal this _____ day of _____, 20_____.

Attest or Witness: _____

Vendor Name: _____

Notary - State of: _____

By (Signature): _____

Notary - County of: _____

By (Print Name): _____

Signature of Notary Public _____

Title: _____

[AFFIX NOTARY SEAL]

11/20/15

: _____ Subcontractor: _____

Project: 1010001 - Sample Project

Date: 09/26/2019

Document: 1010001-003

Exhibit D-1: Schedule of Values

[To be supplied within the time indicated in Agreement]

Exhibit D-2: Schedule of Man Hours and Material Costs

[To be supplied within the time indicated in Agreement]

Exhibit D-3: List of Hourly Rates

[To be supplied within the time indicated in Agreement]

Exhibit D-4: List of Sub Tier Subcontractors and Suppliers

[To be supplied within the time indicated in Agreement]

: _____

Subcontractor: _____

Project: 1010001 - Sample Project

Date: 09/26/2019

Document: 1010001-003

Exhibit F-1: Submittal Substitution Request

This form must be completed in its entirety for the request to be considered. If a question does not apply, please indicate same by writing 'NONE' in the appropriate location. If there is insufficient space provided for the requested information, please attach it here and indicate same in the response to the associated question.

Project Name: _____ Date: _____

Project Location: _____ AFC Job#: _____

Vendor Name: _____ Prepared by: _____

We certify that the following product is equal or superior to the specified product in appearance, durability, performance, and in every other respect, and we hereby submit it for your consideration as a substitute for the specified item for the above mentioned project:

A. Specified Item Description & Specification Section: _____

B. Proposed Substitution Description: _____

C. Reason for Substitution: _____

D. Costs (Provide a breakdown of costs, including the cost amount to be DEDUCTED from the Contract Sum if the proposed substitution is accepted. Include documentation for both materials and labor.)

E. Schedule (Describe substitution's affect on construction schedule): _____

F. Supporting Data:
a. Cutsheets: Attach complete technical data, including laboratory tests, if applicable, for proposed substitution.
b. Installation: Include complete information on changes to Drawings and/or Specifications describing the steps that the proposed substitution will require for its proper installation or attach the installation instructions.

: _____	Subcontractor: _____
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Project: 1010001 - Sample Project

Date: 09/26/2019

Document: 1010001-003

Exhibit F-1: Submittal Substitution Request

- c. Samples: Submit with request all necessary samples and/or substantiating data clearly marked to prove equal quality and performance to that which is specified.
- G. List ways in which the substitution affects dimensions shown on Drawings: _____

- H. List affects of proposed substitution on other trades: _____

- I. List ways in which proposed substitution will be affected by applicable code requirements and agency approval.

- J. List differences between proposed substitution and specified item: _____

- K. Manufacturer's warranties of the proposed and specified items are: _____ Same _____ Different
Explain: _____

- L. List information on availability of maintenance service and source of replacement materials: _____

- M. Certification of, and Assumption of Liability for, Equivalent Performance: _____

The undersigned certifies that the function, appearance and quality of the proposed substitution is equivalent or superior to the specified item and is in full compliance with the Contract Documents and applicable regulatory requirements. Signature must be by person authorized to legally bind his/her firm to the above terms. Failure to provide legally binding signature will result in retraction of approval even if previously issued.

Vendor Signature: _____
By (Print Name): _____
Title: _____

: _____	Subcontractor: _____
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