
**MASTER SUBCONTRACT AGREEMENT
MADE BETWEEN**

National TAB
1329 E Kemper Road Suite 4210
Cincinnati, Ohio 45246

Dated: 6/6/2023

THE SUBCONTRACTOR

AND

rand* construction corporation
THE CONTRACTOR

Agreement made as of the 6th day of June in the year 2023

BETWEEN the **Contractor**:
rand* Construction Corporation
2292 Vantage St Suite 100
Dallas, Texas 75207

And the **Subcontractor**:
National TAB
1329 E Kemper Road Suite 4210
Cincinnati, Ohio 45246

DURATION AND APPLICABILITY OF MASTER SUBCONTRACT AGREEMENT

THE CONTRACTOR AND THE SUBCONTRACTOR ACKNOWLEDGE AND AGREE THAT THIS MASTER SUBCONTRACT AGREEMENT SHALL BE APPLICABLE TO, AND SHALL GOVERN, ALL WORK PERFORMED BY THE SUBCONTRACTOR FOR THE CONTRACTOR DURING THE PERIOD 6.6.23-6.6.25 ("MSA PERIOD). THE CONTRACTOR AND SUBCONTRACTOR UNDERSTAND AND AGREE THAT A SEPARATE SUBCONTRACT AGREEMENT WILL BE ISSUED BY CONTRACTOR TO SUBCONTRACTOR FOR EACH PROJECT PERFORMED BY SUBCONTRACTOR DURING THE MSA PERIOD. THE PARTIES FURTHER EXPRESSLY AGREE THAT (1) THE TERMS AND CONDITIONS OF THIS MASTER SUBCONTRACT AGREEMENT SHALL BE APPLICABLE TO EACH SEPARATE PROJECT PERFORMED BY SUBCONTRACTOR FOR CONTRACTOR DURING THE MSA PERIOD, AND (2) THE TERMS AND CONDITIONS OF THIS MASTER SUBCONTRACT AGREEMENT SHALL BE INCORPORATED INTO EACH SEPARATE SUBCONTRACT AGREEMENT BETWEEN THE PARTIES AS IF FULLY SET FORTH THEREIN.

ARTICLE 1 THE SUBCONTRACT DOCUMENTS

1.1 The Contract Documents. The Contract Documents for each project performed by Subcontractor shall be as set forth in each Subcontract Agreement and shall specifically include, without limitation, this Master Subcontract Agreement.

1.2 Interpretation. It is specifically understood and agreed that as used herein the term “Subcontract Agreement” shall include the terms of each project-specific Subcontract Agreement and this Master Subcontract Agreement. The provisions of the Subcontract Agreement, the Prime Contract, and the other Contract Documents are all intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, there is an irreconcilable conflict between or among the terms of this Subcontract Agreement and the Contract Documents, or among the Contract Documents, the provision imposing the higher standard or greater responsibility on the Subcontractor shall prevail.

ARTICLE 2 SCOPE OF WORK

2.1 Subcontractor’s Work. Subcontractor shall perform all work and furnish all labor, materials, equipment, scaffolding, hoisting, transportation, tools, supervision, supplies, applicable taxes, freight, insurance and all other things necessary for the proper construction and completion of work as described in the Subcontract Agreement and made a part hereof and all other work incidental thereto (“Scope of Work”), in strict accordance and in full compliance with the Contract Documents and the Subcontract Agreement. Except as may be specifically provided by the terms of the Subcontract Agreement, Subcontractor shall assume all obligations, risks and liabilities which Contractor has assumed towards Owner in the Prime Contract.

2.2 Timely Submittals. Subcontractor shall timely prepare and submit to Contractor all submittals, including shop drawings, manufacturers’ literature, samples and material lists, as may be necessary to describe completely the details and construction of Subcontractor’s Work. Such submittals shall be made in sufficient time so as not to delay the Project and to allow Contractor to furnish such submittals to Owner within the time required under the Contract Documents. Any deviation from the Contract Documents shall be clearly identified in the submittals, and so stated, in writing, in separate correspondence. Approval of such submittals shall not relieve Subcontractor of its obligation to perform Subcontractor’s Work in strict accordance with the Contract Documents, nor of its responsibility for the proper matching and fitting of Subcontractor’s work with contiguous work.

2.3 Status. If requested by Contractor, Subcontractor shall furnish periodic progress reports on Subcontractor’s Work including information on the status of materials and equipment, which may be in the course of preparation or manufacture.

2.4 Layout, Dimensions and Measurements. Subcontractor shall be solely and fully responsible for any and all layout and the dimensional integrity of Subcontractor’s Work. Subcontractor shall advise Contractor should Subcontractor need to coordinate any dimensions with the work of other trades, and shall notify Contractor in writing of any dimensional discrepancies in the Contract Documents that will affect Subcontractor’s Work. Notwithstanding the dimensions given in the plans, specifications and other Contract Documents, it shall be the obligation and responsibility of Subcontractor to take such measurements, including but not limited to field measurements, as will ensure the proper matching and fitting of Subcontractor’s Work and contiguous work.

2.5 Substitutions. Subcontractor shall identify and list in a written submission to Contractor all proposed substitutions, if any, of products or materials in place of those specified in the Contract Documents. Approval of any proposed substitutions is at the sole discretion of Contractor, and no substitutions shall be made by Subcontractor, unless Subcontractor obtains a change order for such substitution.

2.6 Testing. Where testing agency standards are referenced in the Contract Documents, all materials to be incorporated into the Work shall be tested and certified by an approved, independent testing firm acceptable to the Contractor. Subcontractor is responsible for the cost of all required testing.

2.7 Equipment, Material and Supply Deliveries. Subcontractor shall be responsible for offloading, storing and protecting any equipment, materials, supplies and other items with Contractor in advance and shall only schedule such deliveries during hours designated for that purpose by Contractor. Equipment, material, supplies and other items stored on the Project site shall be in the care and custody of Subcontractor and shall not be removed from the site without the written consent of the Contractor. Subcontractor agrees to keep Contractor fully informed regarding its delivery schedule for any equipment, materials, supplies or other items and shall immediately advise Contractor in writing of any delay or anticipated delay that may affect the progress of the Subcontractor's Work or the work of the Contractor, other subcontractors, the Owner, or the Owner's other contractors.

2.8 Parking and Storage. The locations for employee and equipment parking, material and supply storage and temporary trailers shall be designated and approved by Contractor if on the Project site or on another site arranged by Contractor. Contractor reserves the right to change any designated or approved location and Subcontractor shall promptly advise its employees of the change and relocate any materials, supplies and temporary trailers to the newly designated location at no cost to Contractor.

ARTICLE 3 REPRESENTATIONS, INVESTIGATION AND INTERPRETATION

3.1 Representations and Investigation. Subcontractor represents that it is fully qualified and has the experience and resources to perform Subcontractor's Work in accordance with this Subcontract Agreement and the Contract Documents. Subcontractor warrants that prior to the execution of the Subcontract Agreement, it has satisfied itself by its own independent investigation that: (a) the materials, techniques, means and methods for performing Subcontractor's Work are sufficient and adequate for the Project; (b) the conditions involved, including those related to the site, locality, weather, labor and economy, have been taken into account in pricing and planning Subcontractor's Work; and (c) all information furnished by Contractor or others related to Subcontractor's Work is correct and accurate. Any failure by Subcontractor to independently investigate and become fully informed of the matters described in this Section 3.1 will not release Subcontractor from its responsibilities under this Subcontract Agreement, and Subcontractor agrees not to submit and expressly waives any claims resulting from such failure.

3.2. Inconsistencies and Omissions. Should inconsistencies or omissions appear in the Contract Documents, Subcontractor shall notify Contractor and identify the inconsistency or omission, in writing, within three (3) days of Subcontractor's discovery thereof. Upon receipt of Subcontractor's notice, Contractor shall instruct Subcontractor as to the measures to be taken, if any, and Subcontractor shall comply with Contractor's instructions. If Subcontractor performs any work when it knows or should have known that the Contract Documents contain an inconsistency or omission, Subcontractor shall be solely responsible for such work, the cost of correction, and the consequences thereof.

3.3 Remedies Under Prime Contract. Contractor shall have the benefit of all rights, redress and remedies against Subcontractor that Owner has against Contractor under the Prime Contract.

ARTICLE 4 PAYMENT

4.1 Subcontract Price. Contractor agrees to pay Subcontractor for the satisfactory and timely performance of Subcontractor's Work the total sum set forth in the Subcontract Agreement ("Subcontract Price") in accordance with the provisions of this Subcontract Agreement, with such Subcontract Price being subject to additions and deductions by change order or other provisions of this Subcontract Agreement. Subcontractor warrants and represents that that the Subcontract Price is adequate compensation for Subcontractor's Work, and includes all costs, expenses (including but not limited to those associated with bonds and taxes), charges, overhead, and profit to enable Subcontractor to satisfactorily and timely perform Subcontractor's Work.

4.2 Progress Payment. Subject to the conditions in Section 4.5 below, progress payments will be due Subcontractor in the amount of ninety percent (90%) of Subcontractor's Work in place which Contractor

and Owner have approved and for which Owner has paid Contractor. It is specifically understood and agreed that payment by the Owner to the Contractor for the Subcontractor's work included in any progress payment is an express condition precedent to Subcontractor's right to such payments from the Contractor. For the purpose of determining progress payments, Subcontractor shall furnish Contractor before its first application for progress payment, a Schedule of Values on AIA form G703 for Contractor's review and approval. If Contractor disapproves of Subcontractor's Schedule of Values, Contractor shall establish a reasonable breakdown which shall serve as the basis for Subcontractor's Work, provided, however, that Contractor shall have no obligation to reduce retention if, in its reasonable opinion, Contractor believes Subcontractor is not in full compliance with its contractual obligations.

4.3 Stored Materials. Unless otherwise provided in the Contract Documents, Subcontractor will be paid its progress payments in the amount of ninety percent (90%) of the value of stored materials that Contractor and Owner have approved and for which Owner has paid Contractor. Approval of payment for such stored items on or off site shall be based on submission by Subcontractor of evidence satisfactory to Contractor and Owner that Owner's and Contractor's interest in such materials and equipment, including transport to the site, is protected. Risk of loss, however, shall not pass to the Contractor or Owner until such materials and equipment are incorporated into the construction and accepted by Owner. Stored materials shall be: (1) stored and labeled so that they are clearly identified as dedicated to the Project and (2) available for inspection by Contractor, Owner and Owner's lender, if any, during normal business hours. Retainage withheld on Subcontractor's stored materials may be reduced in the same manner set forth in the last sentence of Section 4.2 above.

4.4 Form of Application for Progress Payment. All applications for progress payments shall be on a form satisfactory to Contractor, typed with all amounts, totals and descriptions filled out, and shall include Contractor's job number in the upper right hand corner. Any non-compliant applications for progress payments shall be rejected and returned to Subcontractor for resubmission.

4.5 Time and Conditions for Payment. Subcontractor shall submit progress payment applications in a form satisfactory to Contractor no later than the twenty-fifth (25th) day of each payment period, indicating Subcontractor's Work completed and, to the extent allowed under Section 4.3 above, materials suitably stored during the preceding payment period. Progress payments shall be made by Contractor to Subcontractor on or about the tenth (10th) day following Contractor's receipt of payment from Owner for Subcontractor's Work. However, notwithstanding any other provision in this Subcontract Agreement or Contract Documents to the contrary, it is specifically understood and agreed that payment to Subcontractor is dependent, as a condition precedent, upon Contractor receiving contract payments for Subcontractor's Work, including final payment and retainage, from Owner. Notwithstanding any other provisions of this Subcontract Agreement and Contract Documents to the contrary, Subcontractor expressly waives all right of action against Contractor or its surety until said monies are actually received by Contractor from Owner. Subcontractor understands and agrees that it is relying on the creditworthiness of Owner and not Contractor for payment.

4.6 Failure of Subcontractor to Make Payment. Subcontractor shall ensure that all of its subcontractors, employees, vendors, consultants and suppliers are paid all amounts, including all applicable taxes and benefits, due in connection with this Subcontract Agreement. Contractor may withhold any progress payments, or any portion thereof, until Subcontractor submits evidence satisfactory to Contractor that all amounts due in connection with this Subcontract Agreement have been paid. Further, in its sole discretion, Contractor may pay any and all persons who have not received payment due in connection with this Subcontract Agreement, whether or not a lien has been filed. Subcontractor shall immediately reimburse Contractor for any amounts paid by Contractor, deducted from payments owed to Contractor paid under Contractor's payment bond, or any other Contractor payments relating to a failure of Subcontractor to make payment, and Subcontractor shall indemnify Contractor for all costs associated therewith. If Subcontractor fails to reimburse or indemnify Contractor for such payments and costs, Contractor shall have the right to withhold such amounts from Subcontractor's progress payments.

4.7 Partial Lien Waivers and Affidavits. As a condition precedent to any progress payment or, as required by Contractor, Subcontractor shall provide Contractor with, in a form satisfactory to Contractor and Owner, partial lien and claim waivers and affidavits from Subcontractor and its subcontractors, vendors, consultants and suppliers for all prior payments to Subcontractor as part of each application for progress

payment other than the initial request. No progress payments shall be released to Subcontractor without such fully executed partial lien or claim waivers and affidavits.

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

4.9 Transfer of Title. All materials and work covered by progress payments received by Subcontractor shall become the property of Contractor or, if the Contract Documents so provide, the property of the Owner. This provision does not affect Subcontractor's sole responsibility and liability for all such materials and work until final acceptance by Owner.

4.10 Right to Withhold Payment. Contractor may withhold amounts otherwise due under this Subcontract Agreement or due under any other contractual arrangement between the parties to compensate Contractor for costs, losses or damages Contractor has incurred or may incur for which Subcontractor may be responsible hereunder or otherwise. Appropriate adjustments to withholding shall be made when the exact amounts owned hereunder are determined.

4.11 Joint Checks. Prior to submitting its first estimate for payment, Subcontractor shall provide Contractor with a statement identifying the name address and telephone number of each known sub-subcontractor, vendor, consultant or supplier. Subcontractor shall update its statement with each monthly estimate for payment as required to identify any new sub-subcontractors, vendors, consultants or suppliers and any name, address or telephone number changes for existing sub-subcontractors, vendors, consultants or suppliers. Contractor may, in its sole discretion, make payment for any portion of Subcontractor's Work by joint check to Subcontractor and the applicable sub-subcontractor, vendor, consultant or supplier or benefit fund to which Subcontractor has an outstanding obligation. Any payments made by Contractor by joint check as provided in this Section 4.11 shall be deemed to have been made directly to Subcontractor.

4.12 Final Payment. Final payment, subject to withholdings permitted hereunder, shall be made after: (1) Subcontractor's Work has been completed and approved by Owner, including all punchlist work; (2) evidence satisfactory to Contractor that Subcontractor has satisfied all payrolls, bills for materials and equipment, and all known indebtedness connected with Subcontractor's Work; (3) all contract deliverables required under this Subcontract Agreement and the Contract Documents have been furnished to Contractor; (4) the entire Project is certified complete by Owner; (5) Contractor has been paid in full for the entire Project. Prior to final payment, Subcontractor shall provide Contractor a final release of liens and claims for Subcontractor's Work, as well as any other evidence Contractor or Owner may require to demonstrate that there are no other liens or claims whatsoever outstanding related to the Subcontract Work.

ARTICLE 5 SCHEDULE OF SUBCONTRACTOR'S WORK

5.1. Time of Performance. Subcontractor will proceed with Subcontractor's Work in a prompt and diligent manner, in accordance with Contractor's schedule, revised if necessary, as the work progresses. Time is of the essence in the performance of Subcontractor's obligations under this Subcontract Agreement. Subcontractor shall not be entitled to additional compensation for compliance with schedule revisions or adjustments, except to the extent that Prime Contract entitles Contractor to additional compensation and such compensation is obtained from Owner.

5.2 Subcontractor's Schedule. If requested by Contractor, Subcontractor shall submit to Contractor a detailed schedule for performance of Subcontractor's Work, in a form acceptable to Contractor, which shall comply with all scheduling requirements of the Contract Documents and of Section 5.1 above. Contractor may, at its sole discretion, direct Subcontractor to make reasonable modifications and revisions in said schedule. Subcontractor shall be responsible for any additional supervision and general conditions cost and all costs of stand-by trades or other subcontractors if Subcontractor elects to, or is required, due to its failure to maintain scheduled performance, to work hours and days other than those specified as normal working hours in the Contract Documents or by Contractor.

5.3 Subcontractor Delays. If, in the opinion of Contractor, Subcontractor is behind schedule due to Subcontractor's failure to comply with its obligations under this Subcontract Agreement and the Contract Documents, Subcontractor shall, upon notice by Contractor and at Subcontractor's sole expense, employ appropriate action to overcome such schedule delays, including but not limited to, working overtime and adding multiple work shifts, manpower and equipment, and Subcontractor shall be liable for any costs, including additional supervision and general conditions cost, incurred by Contractor and any other subcontractor as a result thereof. If Subcontractor fails to take appropriate action, Contractor shall have the right to take whatever actions it deems appropriate to overcome such schedule delays, and Subcontractor shall be responsible for bearing all costs associated with such actions, including any costs incurred by Contractor or other subcontractors impacted by such delays. In the event that concurrent delay by the Owner, Contractor, and/or Subcontractors causes delay to completion of the Contractor's Work, Contractor shall make a good faith apportionment of that delay between the parties causing or contributing to the delay and Subcontractor shall be responsible for its portion of the damages based on that apportionment.

5.4 Time Extensions. Should Subcontractor's performance be delayed, impacted or disrupted by causes unforeseen by and beyond the reasonable control of Subcontractor, Subcontractor's sole remedy shall be an extension of time to Subcontractor's time of performance and Subcontractor shall not be entitled to additional compensation for such delays, impacts or disruptions, unless Contractor's contract with Owner entitled Contractor to additional compensation and such compensation is obtained from Owner for such delays, impacts or disruptions. In submitting a request for time extension, Subcontractor shall, at a minimum, provide the following information: (1) documentation showing that the delayed, impacted or disrupted activities are on the critical path of the schedule for Subcontractor's Work; (2) evidence that the delay, impact or disruption was unforeseen by and beyond the reasonable control of Subcontractor; and (3) documentation showing that Subcontractor complied with all applicable notice and claims submission requirements of this Subcontract Agreement and the Contract Documents. All requests for time extensions shall be submitted in sufficient time to enable Contractor to meet its notice and claims submission requirements to Owner under the Contract Documents, but in no event later than five (5) days from when Subcontractor's performance was delayed, impacted or disrupted. Subcontractor's failure to strictly comply with the provisions of this Section 5.4 shall result in a rejection and waiver of Subcontractor's request for time extension.

5.5 Priority and Sequencing of Work. Subcontractor acknowledges that Subcontractor's Work: (1) will be performed concurrently with the work of other subcontractors and Owner's other contractors; (2) is dependent upon the progress of the work of other subcontractors and Owner's other contractors; (3) may not be performed in a continuous manner due to the activities of other subcontractors and Owner's other contractors; and (4) that the Subcontract Price and its schedule fully accounts for and considers the fact that Subcontractor will be working under such conditions. Subcontractor will coordinate Subcontractor's Work, including but not limited to, procurement, submittals, shop drawings, fabrications, equipment delivery, testing, inspections, installation and project closeout, with the work of Contractor, other subcontractors and Owner's other contractors to prevent or mitigate delays or interferences in the completion of any part or all of the Project. Contractor shall have the right to decide the time, order and priority in which various portions of Subcontractor's Work shall be performed and all other matters relative to the timely and orderly conduct of Subcontractor's Work. Subcontractor agrees that Owner and Contractor shall have the right to perform or have performed other work in or about the Project site during the time when Subcontractor is performing its Work.

ARTICLE 6 SUBCONTRACTOR'S LIABILITY

6.1 Scope. Subcontractor shall be liable to Contractor for all costs, damages and losses Contractor incurs as a result of Subcontractor's failure to fulfill its obligations under this Subcontract Agreement and the Contract Documents. Subcontractor's failure to fulfill its obligations shall include the failure of its suppliers, vendors, consultants or subcontractors of any tier to perform. Subcontractor's liability shall include, but not be limited to: (1) damages and other delay costs payable by Contractor to Owner; (2) Contractor's increased performance costs, such as extended field and home office overhead, inefficiencies resulting from Subcontractor-caused delays or non-conforming work, and costs paid to other subcontractors resulting from such delays and nonconforming work; (3) warranty and rework costs; (4) liability to third

parties, including other subcontractors of Contractor; (5) excess costs of re-procurement; and (6) attorney's fees and related costs of resolving disputes with Subcontractor or other persons related to Subcontractor's failure to perform its obligations.

6.2 Use of Equipment Owned by Others. If Subcontractor or any of its agents, employees, suppliers, vendors, consultants or subcontractors uses any machinery, equipment, tools, scaffolding, hoists, lifts or similar items belonging to or under the control of Contractor or other subcontractors or suppliers, Subcontractor assumes all risks and liabilities relating to such use. Subcontractor shall be liable to and indemnify Contractor for any loss or damage, including personal injury or death, which may arise from such use, except where such loss or damage is due solely to the negligence of Contractor, Contractor's employees or other contractors.

6.3 Protection of Other Property. Subcontractor shall at all times take all necessary precautions to protect all third party property not covered by Sections 2.5, 2.6 and 2.7 from any damage arising out of its operations, including the property of adjacent landowners, utilities, roads, bridges, waterways and railroads. If any such third party property is damaged as a result of Subcontractor's operations, Subcontractor shall promptly replace, repair, restore or rebuild it at its expense.

6.4 Owner Damages. If Owner assesses liquidated or other damages against Contractor, then Contractor may assess against Subcontractor the portion of Owner's damages that represents Subcontractor's share of the responsibility. The amount of such assessment against Subcontractor for Owner's damages shall not exceed the amount assessed against Contractor by Owner plus the portion of costs and attorney's fees Contractor incurred in defending against Owner's claim for damages arising out of or in relation to Subcontractor's Work.

6.5 Liens. To the fullest extent permitted by law, Subcontractor hereby waives any and all rights to file a lien against the Project or the subject property and hereby agrees to indemnify the Contractor for any and all costs and fees, including attorney fees, incurred by the Contractor in dealing with, releasing or discharging any lien filed against the Project or subject property by the Subcontractor or Subcontractor's laborers, materialmen, suppliers, consultants, vendors or subcontractors. If any lien, claim or encumbrance is filed on or against the Project or subject property by Subcontractor, Subcontractor's laborers, materialmen, suppliers, consultants, vendors or subcontractors, Contractor shall have the right to pursue any of the following of combination thereof: (1) to require Subcontractor to, within five (5) days of receiving notice by Contractor, to have such lien, claim or encumbrance discharged, by payment, posting a bond, or otherwise; (2) to retain, out of any payment due or thereafter to become due, an amount for any damages, costs or expenses that Contractor and Owner may incur related to such lien, claim or encumbrance; (3) to discharge such lien, claim or encumbrance using amounts due or thereafter to become due to Subcontractor; or (4) to require Subcontractor to indemnify and hold harmless Contractor and Owner for any damages, costs or expenses, including attorney's fees, that Contractor and Owner may incur related to such lien, claim or encumbrance. Contractor shall have the right to exercise its remedies under Article 18 of this Subcontract Agreement, including but not limited to terminating Subcontractor for default, if Subcontractor fails to comply with Contractor's requirements or directions under this Section 6.4.

ARTICLE 7 CHANGES TO SUBCONTRACTOR'S WORK

7.1 Changes. Contractor may, at any time, either unilaterally or by direction of Owner, and without notice to sureties, make changes, including additions and deletions, in Subcontractor's Work. Any such changes shall be in writing and Subcontractor shall perform the work as changed and directed by Contractor. Subcontractor further understands that Contractor will be forwarding to Subcontractor changes that are being proposed by either Owner or Contractor, but which are not yet authorized by Contractor. Subcontractor shall not perform any proposed change unless and until it is given a written authorization from Contractor to do so.

7.2 Subcontractor's Duty to Notify. Subcontractor agrees to notify Contractor in writing, no later than five (5) days of its receipt of any change or proposed change, as to whether such change or proposed change will have a price, time or other impact on Subcontractor's Work, as well as the specific quantification of

such impact. Any requests by Subcontractor for an adjustment in price, time or other provision of this Subcontract Agreement, shall be submitted to Contractor in writing in sufficient time for Contractor to comply with its obligations to Owner under applicable provision of the Contract Documents, but in no event later than five (5) days after the occurrence of the event giving rise to such request. If Subcontractor fails to so notify Contractor for any change or proposed change, Contractor may, at its sole discretion: (1) reasonably estimate the impact of the change or proposed change, which estimate shall be the maximum relief due Subcontractor for such changed work or (2) retain another subcontractor to perform the changed work.

7.3 Owner-Related Changes. If Owner issues a change or proposed change affecting Subcontractor's Work ("Owner-Related Changes"), Subcontractor agrees, if directed by Contractor, to meet with Contractor and Owner to review and discuss such change. Contractor has final authority to settle all Owner-Related Changes, whether or not Subcontractor is a party to any negotiations. Notwithstanding any other provisions in this Subcontract Agreement or the Contract Documents to the contrary, Subcontractor agrees that its recovery for Owner-Related Changes shall be limited to the relief Contractor recovered from Owner directly allocable to the changed portion of Subcontractor's Work. Subcontractor's allocable share shall be determined by Contractor, after allowance for Contractor's general conditions, field and home office overhead and profit.

7.4 Pricing of Changes. The pricing of Subcontractor's Work to be changed, including additions and deletions, shall be subject to any limitations or requirements in the Contract Documents. Subcontractor shall provide itemization and supporting data as requested by Contractor to permit proper and full evaluation by Contractor or Owner as to the reasonableness of the price of the changed work.

7.5 Requirement for Written Change Orders. Subcontractor expressly acknowledges and agrees that no act, omission, conduct or course of dealing by or between Contractor and Subcontractor shall waive, alter, modify or change the requirement that all Change Orders must be in writing and signed by Contractor. Such written Change Orders are the sole and exclusive methods for adjusting the Subcontract Price and Subcontractor's time of performance for changed work, and such adjustments to the Subcontract Price and Subcontractor's time of performance cannot be made by implication or construction change order.

ARTICLE 8 INSPECTION AND ACCEPTANCE

8.1 Inspection of Work. Subcontractor shall provide appropriate facilities at all reasonable times for inspection by Contractor or Owner of Subcontractor's Work, whether at the Project site or at any place where such work or materials may be in preparation, manufacture, storage or installation.

8.2 Correction of Defective Work. Subcontractor shall promptly replace or correct any work or materials which Contractor or Owner shall reject as failing to conform to the requirements of this Subcontract Agreement or the Contract Documents. If Subcontractor does not promptly replace or correct rejected work, Contractor shall have the right to do so and Subcontractor shall be liable to Contractor for the cost, losses and damages thereof. If, in the opinion of Owner, it is not expedient to correct or replace all or any part of rejected work or materials, then Contractor, at its option, may deduct from the payments due, or to become due, to Subcontractor, such amounts as, in Owner's judgment, will represent the greater of the following: (1) the difference between the fair value of the rejected work and materials and the value thereof if it complied with this Subcontract Agreement and the Contract Documents; or (2) the cost of replacement or correction.

8.3 Remedies for Wrongful Rejection. If rejection was pursuant to Owner's direction, Subcontractor's remedy for wrongful rejection of Subcontractor's Work shall be limited to the relief Contractor receives from Owner for such wrongful rejections. If Owner was not involved in said rejection, Contractor shall be liable for Subcontractor's substantiated increased costs caused by the wrongful rejection of Subcontractor's Work.

8.4 Acceptance. Subcontractor's work shall be accepted by Owner according to terms of the Contract Documents. However, unless otherwise agreed in writing, entrance and use by Owner or Contractor shall not constitute acceptance of Subcontractor's Work.

ARTICLE 9 CLEANUP AND CLOSEOUT

9.1 Cleanup. Subcontractor shall, at its own expense, clean and remove from the Project all rubbish and debris resulting from the performance of Subcontractor's Work and, at the completion of Subcontractor's Work in each area of the Project, perform such cleaning as may be required. Such removal and cleaning shall be done in a manner that will not impede the progress of the Project or other trades. If Subcontractor fails to clean up and remove its rubbish and debris within twenty-four (24) hours of receiving written notice to do so, then Contractor without further notice to Subcontractor shall have the absolute right to perform such work and hold Subcontractor responsible for all costs incurred, including Contractor's administrative costs and profit.

9.2 Punchlist. Subcontractor shall perform any and all punchlist work within fourteen (14) days of receipt of a punchlist from Contractor or such other that may be agreed in writing. If Subcontractor fails to complete all punchlist items and fails to provide written justification of its failure to complete such items by such date, then Contractor without further notification to Subcontractor shall have the absolute right to perform all incomplete work utilizing its own resources or another subcontractor and hold Subcontractor responsible for all costs incurred, including Contractor's administrative costs and profit.

9.3 Project Closeout. Subcontractor shall comply with all Project closeout requirements in the Contract Documents and shall, unless otherwise directed by Contractor, provide at least 14 days prior to Substantial Completion all documentation of as-build conditions, and commissioning, startup, testing, and operation and maintenance requirements associated with Subcontractor's Work.

ARTICLE 10 WARRANTY

10.1 Scope of Warranty. Subcontractor warrants to Owner and Contractor that all materials and equipment furnished shall be new, unless otherwise specified in the Contract Documents and that all of Subcontractor's Work shall be of good quality, free from faults and defects and in strict conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

10.2 Term. Subcontractor warrants Subcontractor's Work for the same period as Contractor warrants the work to Owner under the Prime Contract. If a specific warranty period is not specified, Subcontractor warrants Subcontractor's Work for a period of one year from the date of Substantial Completion of the entire Project.

ARTICLE 11 LAWS, PERMITS, FEES AND PATENTS

11.1 Compliance. Subcontractor shall give all notices required by and comply with all federal, state, municipal and local laws, ordinances, rules and regulations relating to Subcontractor's Work, including, but not limited to: tax laws, social security acts, unemployment compensation acts, and workers' or workmen's compensation acts, civil rights acts, labor and employment laws, and occupational safety and health laws and regulations. Subcontractor shall secure and pay for all permits, fees, licenses and arrange inspections necessary for Subcontractor's Work. Subcontractor shall be duly licensed to operate under the laws of the applicable jurisdictions.

11.2 Waiver of Claim. Subcontractor waives any and all claims for additional compensation because of any increase in taxes, contribution or premiums unless Owner pays Contractor for such increases incurred by Subcontractor.

11.3 Patents and Royalties. Subcontractor agrees to pay all royalty and licenses fees owed related to Subcontractor's Work. Subcontractor agrees to defend all suits or claims for infringement of any patent rights, due to the inclusion of patented materials in Subcontractor's Work, that may be brought against Contractor or Owner, and agrees to indemnify and hold harmless Contractor and Owner for any damages, costs or expenses, including attorney's fees, that Contractor and Owner may incur on account thereof.

ARTICLE 12 HEALTH AND SAFETY

12.1 Responsibility of Subcontractor. Subcontractor is responsible for the safety of the general public or workers engaged on or in the vicinity of the Project related to Subcontractor's Work and, prior to commencing any work under this Agreement, shall submit to Contractor a copy of Subcontractor's safety program for the Project. Subcontractor agrees to comply with all federal, state, municipal and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety, as may be applicable to Subcontractor's Work, and with the safety standards and requirements that Owner or Contractor establishes for the Project. Subcontractor specifically acknowledges that the safety standards and requirements of Owner or Contractor may be more stringent than those established by applicable law, and specifically agrees to comply with such more stringent standards.

12.2 Stoppages Ordered by Contractor. Contractor shall have the right to issue Stop Work Orders when Contractor deems any work, activity or condition unsafe. When ordered by Contractor, Subcontractor shall stop any part of Subcontractor's Work which Contractor deems unsafe until corrective measures, satisfactory to Contractor, have been taken, and Subcontractor agrees that it shall not have nor make any claim for damages arising out of such stoppages due in full or in part to the fault of the Subcontractor. Should Subcontractor fail to take such corrective measures, Contractor has the right, but not the obligation, to find Subcontractor in default and/or take corrective measures at the costs and expense of Subcontractor and may deduct the cost and expense thereof from any payments due or to become due to Subcontractor. Failure on the part of Contractor to stop unsafe practices shall not be deemed an acceptance or acquiescence by Contractor of Subcontractor's means and methods of construction and shall in no way relieve Subcontractor of its responsibility.

12.3 Hold Harmless. Subcontractor agrees to hold Contractor harmless for all damages, costs and attorney's fees arising out of or relating to Subcontractor's violation of this Section 12.

ARTICLE 13 LABOR POLICY

13.1 Project Personnel and Superintendent. Subcontractor and its subcontractors, vendors, consultants or suppliers shall not employ anyone to perform Subcontractor's Work whose employment may be objected to by Contractor or Owner. Subcontractor shall employ at the jobsite a competent, English speaking, full-time supervisor, satisfactory to Contractor, and with full authority to act on Subcontractor's behalf. Subcontractor's supervisor shall be fluent in the primary language of the workers of Subcontractor, and shall, when required by Contractor, attend progress meetings. Contractor shall have the right to require Subcontractor to replace its supervisor, or any other employee, if, in the opinion of the Contractor or Owner, such individual is objectionable for any reason.

13.2 Work Stoppage. Should workers performing Subcontractor's Work engage in a strike or any other stoppage or cease to work due to picketing or a labor dispute of any kind, said circumstances shall be deemed a failure by Subcontractor to perform Subcontractor's Work and shall be subject to the terms set forth in Article 18 of this Subcontract Agreement.

13.3 Equal Employment Opportunity. Subcontractor shall not discriminate against any employee or employment applicant because of race, ethnicity, religion, sex, color, national origin, age, disability, handicap or any other basis prohibited by federal, state or local laws. Subcontractor shall allow access to its books, records and accounts by representatives of Contractor or Owner for purposes of investigations to ascertain compliance with the provisions of this Section 13.3. These requirements shall be in addition to any similar Equal Employment Opportunity provisions in the Contract Documents. If Subcontractor fails to comply with the Equal Employment Opportunity provisions of this Subcontract Agreement or the

Contract documents, Subcontractor may be terminated for default as specified under Article 18 of this Subcontract Agreement.

ARTICLE 14 PERFORMANCE AND PAYMENT BONDS

14.1 Unless specifically excluded from Subcontractor's Scope of Work under Attachment A, Subcontractor shall, at its own expense, furnish to Contractor performance and payment bonds, in a form and from a surety acceptable to Contractor, in the full amount of the Subcontract Price. Contractor's receipt of such performance and payment bonds from Subcontractor shall be a condition precedent to the disbursement of any payments due and owing to Subcontractor under this Subcontract Agreement.

ARTICLE 15 INSURANCE

15.1 General. To the fullest extent permitted by law, the Subcontractor obligates itself to the Contractor and Owner, jointly and severally, in the following respects: (1) To indemnify the Contractor and Owner, and the employees, representatives, officers, agents and directors of any of them against and save them harmless from any use or infringements of patents; (2) To protect, defend and indemnify the Contractor and Owner, and the employees, representatives, officer agents and directors of any of them against and save them harmless from any and all claims, losses, damages, costs, expenses, including but not limited to attorney fees, suits or liability for damage to property of any sort, including loss of use resulting therefrom, injuries to persons, sickness, including death, contractual liabilities of any sort, and from any other claims, suites or liability arising out of or resulting from performance of the work by the Subcontractor or any for whom the Subcontractor may be responsible, caused in whole or in part out of their alleged negligence, regardless of whether such loss is caused in in whole or in part out of their alleged negligence, regardless of whether such loss is caused in part by an indemnified party hereunder, or on account of any act or omission of the Subcontractor, or any of its officers, agents, employees or servants, subcontractors or materialmen, and from any and all loss, damages, costs, expenses and attorney fees arising therefrom; (3) To pay for all materials furnished and work and labor performed under this Subcontract, and to satisfy the Contractor and Owner thereof whenever demand is made, and to protect, defend and indemnify the Contractor and the Owner against and save them and the premises harmless from any and all claims , suits or liens levied against the Project or the property arising out of or related to Subcontractor's Work; (4) To obtain and pay for all permits, licenses and official inspections made necessary by the Work, and to comply with all laws, ordinances and regulations bearing on the Work; and (5) To protect, defend and indemnify the Contractor and the Owner against and save them harmless from, any and all losses, damages, costs, expenses and attorney fees suffered or incurred on account of any breach of the aforesaid obligations and covenants, and any other provision or covenant of this Subcontractor.

15.2 Required Insurance. Without otherwise affecting or reducing the aforesaid indemnity obligation set forth in Section 15.1, Subcontractor shall insure indemnity and all its work by an admitted insurance carrier with a minimum A.M. Best Rating of at least A-VII, and is licensed to do business where the work is located. The insurance required by this Paragraph shall be written for not less than the following limits:

(A) Comprehensive General Liability Insurance: \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate. The Subcontractor shall maintain CGL coverage (without interruption) for itself and all additional insureds for the duration of the project (from the date of the commencement of the work until the date of final payment) and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the Work, or until the expiration of the applicable statute of limitations or statute of repose, whichever is longer, in the jurisdiction in which the project is located .

(B) Vehicular insurance for all vehicles used by subcontractor, its servants, agents and subcontractors and suppliers on jobsite: \$1,000,000 each accident.

(C) Workmen's Compensation:	<u>Statutory Limits</u>
(D) Employers Liability Insurance	<u>\$500,000</u> each accident, \$500,000 for bodily injury by accident, and \$500,000 each employee for injury by disease.
(E) Contractual Liability Insurance	<u>\$1,000,000</u>
(F) Umbrella/Excess Liability:	<u>\$4,000,000</u> where such Umbrella coverage must include as insureds all entities that are additional insureds on the CGL.

15.3 Duration of Policies. The insurance policies required under this Section 15 may not be cancelled or allowed to expire without adequate substitution before cancellation or expiration. The insurance policies, certificates of insurance, and any renewals shall contain a provision that the insurer or Subcontractor shall give Contractor at least thirty (30) days prior written notice of any cancellation, termination, material modification or non-renewal of the insurance by registered or certified mail, return receipt requested. Original certificates of insurance and all endorsements, in a form reasonably acceptable to Contractor, must be filed with Contractor prior to the commencement of Subcontractor's work, but in no event later than 60 days after signing contract. The insurance obligations shall expressly survive the expiration or termination of this Subcontract.

15.4 Waiver of Rights. The Subcontractor waives all rights against Contractor and the Owner, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for recovery of damages to the extent these damages are covered by any applicable insurance, including any commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance. The Subcontractor shall require the Subcontractor's sub-subcontractors, agents and employees, by appropriate agreements, to provide similar waivers in favor of Contractor, the Owner, and all entities or individuals named as additional insureds. The Subcontractor expressly acknowledges that Contractor has the right to require Subcontractor to procure insurance in excess of the types, amounts and limits stated herein should it be required for the Project.

ARTICLE 16 INDEMNIFICATION

16.1 Subcontractor's Indemnity. To the fullest extent permitted by law, Subcontractor shall protect, defend, indemnify and hold harmless Contractor, Owner and if, required by Contractor's contract with Owner, Owner's architect ("Indemnified Parties"), and all of the Indemnified Parties' affiliates, parents, subsidiaries, officers, directors, agents and employees, from and against all claims, damages, fines, losses and expenses, including but not limited to attorney's fees (hereinafter collectively referred to as "Claims and Damages"), arising out of or resulting from Subcontractor's Work, provided that (1) any such Claims or Damages are attributable to, arise out of or result from: (a) bodily injury, sickness, disease or death; (b) injury to or destruction of tangible property (other than Subcontractor's Work itself), including the loss of use therefrom; or (c) Subcontractor's failure to fulfill its obligations under this Subcontract Agreement; and (2) any such Claims or Damages are caused, or alleged to be caused, in whole or in part, by Subcontractor's breach of any obligation under this Subcontract Agreement or the Contract Documents, or by any wrongful or negligent act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable; provided however that this provision shall only require the Subcontractor to indemnify the Contractor for Claims and Damages to the extent that such Claims and damages result from the Subcontractor's negligence, fault or responsibility.

16.2 No Limitation on Liability. Subcontractor's obligations under Section 16.1 above shall not be limited in any way by any limitation on the amount of type of damages, compensation, or benefits payable by or for Subcontractor under Worker's Compensation Acts, disability benefit acts, or other employee benefit acts, or by any insurance that may be procured by Subcontractor or by any Indemnified Party, and Subcontractor expressly waives any limitations of liability or protections afforded under such acts or insurance.

ARTICLE 17
TERMINATION FOR CONVENIENCE

17.1 Procedure. Upon three (3) days advance written notice to Subcontractor, Contractor shall have the right to terminate this Subcontract Agreement, without cause, for convenience, when Contractor determines that it is in its own best interest to so terminate this Subcontract Agreement.

17.2 Subcontractor's Remedy. If Contractor exercises its right to terminate for convenience as a result of Owner terminating the Prime Contract for convenience, Subcontractor's remedy for such termination shall be as provided in Prime Contract and shall be limited to the relief actually received by Contractor from Owner for the terminated portion of Subcontractor's Work. If Contractor exercises its right to terminate for convenience for reasons other than Owner's termination of Contractor for convenience, Subcontractor's remedy for such terminate shall be the payment of a prorated portion of the Subcontract Price for all Subcontractor's Work properly performed up to the date of termination, reduced by amounts previously paid by Contractor to Subcontractor and any amounts which Contractor may withhold or deduct pursuant to the terms of this Subcontract Agreement. Notwithstanding the foregoing, in no event shall Subcontractor be entitled to recover: (a) profit or unabsorbed overhead in connection with work not actually performed or future work; (b) amounts that would result in Subcontractor receiving payments that would not be entitled to receive under this Subcontract Agreement if Subcontractor was not terminated for convenience; and (c) amounts that would cause the total payments received by Subcontractor to exceed the Subcontract Price, as may be adjusted pursuant to this Subcontract Agreement.

ARTICLE 18
FAILURE OR INABILITY TO PERFORM SUBCONTRACT WORK

18.1 If, in the opinion of Contractor, Subcontractor shall at any time: (1) refuse or fail to provide sufficient properly skilled workmen or materials of the proper quality or quantity; (2) fail in any respect to prosecute Subcontractor's Work according to the current schedule; (3) cause, by any action or omission, the stoppage or delay of, or interference with, the work of Contractor or of any other subcontractor or Owner's separate contractors; (4) submit a false or misleading lien or claim waiver; (5) fail to make payments to subcontractors, employees, vendors, consultants or suppliers; or (6) otherwise fail to comply with provisions of this Subcontract Agreement or the Contract Documents, then, after serving three (3) days' written notice, unless the condition specified in such notice shall have been eliminated within such three (3) days, Contractor may, at its option and without prejudice to any other right it may have under this Subcontract Agreement or by law, take any of the following actions or a combination thereof:

(A) without voiding the other provisions of this Subcontract Agreement and without notice to the sureties, take such steps as are necessary to overcome the condition;

(B) terminate this Subcontract Agreement, in whole or part, for default; or

(C) seek specific performance of Subcontractor's obligations hereunder, it being agreed by Subcontractor that specific performance may be necessary to avoid irreparable harm to Contractor or Owner.

If Contractor takes any of the foregoing actions, or exercises any other right it may have under this Subcontract Agreement or by law as a result of Subcontractor's failure or inability to perform Subcontractor's Work, Subcontractor shall be liable to Contractor for all costs, losses, and damages, including Contractor's administrative costs, profit, interest and attorney's fees.

18.2 Demand for Assurance. In the event Contractor becomes concerned about Subcontractor's ability to continue performance or comply with its obligations under this Subcontract Agreement and the Contract Documents, Contractor may demand adequate assurance from Subcontractor that it has the means and ability to timely complete Subcontractor's Work or comply with its obligations in accordance with this Subcontract Agreement and the Contract Documents. Failure to provide or fulfill such assurance within five (5) days of receipt of the demand shall entitle Contractor to exercise its rights under Section 18.1 above.

18.3 Contractor's Rights upon Termination for Default. In the event of termination for default under Section 18.1 above, Contractor may, at its option, take any of the following actions or combination thereof: (1) enter the premises and take possession for the purpose of completing Subcontractor's Work, of all supplies, materials and equipment to be incorporated into the Project, and of all Project records and files, whether in hard or electronic format; (2) require Subcontractor to assign to Contractor any or all of Subcontractor's subcontracts and purchase orders relating to Subcontractor's Work; or (3) either itself or through others complete the work by whatever method Contractor may deem expedient. In case of termination for default, Subcontractor shall not be entitled to receive any further payment until Subcontractor's Work shall be fully completed and accepted by Owner. At such time, if the unpaid balance of the Subcontract Price, as may be adjusted, to be paid exceeds the expense incurred by Contractor, including Contractor's administrative costs, profit, interest and attorney's fees, such excess shall be paid by the Contractor to Subcontractor. If the expense incurred by Contractor exceeds such unpaid balance, then Subcontractor shall pay Contractor the difference. In addition to any other rights that the Contractor may have under this Subcontract Agreement, if the Subcontractor is indebted to the Contractor on any project, the Contractor shall have the right to set-off such amounts against any amounts that may be owed to the Subcontractor on any other project performed pursuant to this Master Subcontract Agreement.

18.4 Recourse Against Contractor. If Contractor wrongfully terminates Subcontractor for default, Contractor shall be liable to Subcontractor for the amount Contractor would have paid if Contractor would have terminated Subcontractor for convenience in accordance with Article 17 of this Subcontract Agreement. Subcontractor's remedy hereunder shall be exclusive, and nothing hereunder shall prevent Contractor from withholding or deducting amounts otherwise due to Subcontractor under other provisions of this Subcontract Agreement.

18.5 Bankruptcy of Subcontractor. If Subcontractor institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate Subcontractor's ability to perform its obligations under this Subcontract Agreement and the Contract Documents. Accordingly, should such event occur:

(A) Subcontractor, its trustee or other successor, shall furnish, upon request for Contractor, adequate assurance of the ability of Subcontractor to perform all future material obligations under this Subcontract Agreement and the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

(B) Subcontractor shall file an appropriate action within the bankruptcy court to seek assumption or rejection of this Subcontract Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If Subcontractor fails to comply with its foregoing obligations, Contractor shall be entitled to request the bankruptcy court to reject this Subcontract Agreement, declare this Subcontract Agreement terminated and pursue any other recourse available to Contractor under this Article 18. The rights and remedies under this Section 18.5 shall not be deemed to limit the ability of Contractor to exercise any other rights and remedies provided by this Subcontract Agreement or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Contractor to terminate Subcontractor under any applicable provision of this Subcontract Agreement.

ARTICLE 19 CLAIMS AND DISPUTE RESOLUTION

19.1 Claims for Relief. If Subcontractor believes that is entitled to relief against Contractor for any event arising out of or relating to the Project, it shall provide written notice to Contractor within five (5) days after the occurrence giving rise to the claim for relief of the basis for its claim for relief, unless this Subcontract Agreement provides another time period or a shorter time period is necessary for Contractor to comply with its obligations to Owner under applicable provisions of the Contract Documents. All such notices shall include sufficient information to advise Contractor of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. If directed by

Contractor, Subcontractor shall, within five (5) days after receipt of Contractor's directive, certify the completeness and accuracy of its claim as a condition precedent to its consideration by Contractor or Owner. Failure to submit such written notice or certification shall constitute a conclusive presumption that Subcontractor is not entitled to a price or time adjustment for the event giving rise to the claim. Subcontractor's failure to strictly comply with the provisions of this Section 19.1 shall result in a rejection and waiver of Subcontractor's claim for relief.

19.2 Claims Relating to Owner. If Subcontractor submits a claim to Contractor arising out of or relating to issues that Contractor, in its sole discretion, believes are caused by or are the contractual responsibility of Owner ("Owner-Related Claims"), then Contractor agrees to present such claim to Owner. Subcontractor recognizes and agrees that such Owner-Related Claims shall be submitted and resolved pursuant to the requirements of the Prime Contract and that Subcontractor shall be bound to Contractor to the same extent that Contractor is bound to Owner for such Owner-Related Claims. Nothing herein shall require Contractor to submit or certify a claim of Subcontractor when Contractor cannot do so in good faith. Subcontractor agrees, at its sole expense, to furnish all documents, statements, witnesses and other information required by Contractor for investigating and presenting Subcontractor's claim and to pay or reimburse Contractor for all expense and costs, including Contractor's legal and expert fees, incurred in connection with presenting Subcontractor's claims. If Contractor's claim submission to Owner involves more than one subcontractor, Subcontractor agrees that it shall contribute a fair and proportionate share of the expenses and costs, including Contractor's legal fees, of advancing the claims. Contractor has final authority to settle all Owner-Related Claims and, notwithstanding any other provisions in this Subcontract Agreement or the Contract Documents to the contrary, Subcontractor agrees that its recovery for Owner-Related Claims shall be limited to the relief Contractor has recovered from Owner for Subcontractor's claim, whether or not Subcontractor is a party to such proceedings involving such claims. Subcontractor agrees that it shall exhaust through Contractor the remedies available under Prime Contract for Owner-Related Claims, including the initiation of litigation or arbitration, as applicable, against Owner through Contractor.

19.3 Claims Relating to Contractor. For any claim, dispute or controversy that is not an Owner-Related Claim, Subcontractor and Contractor will first attempt to resolve such claim, dispute or controversy at the field level through direct discussions between the project management staff of both Contractor and Subcontractor. If the dispute is not resolved, then either party may exercise the rights afforded by Section 19.4 below.

19.4 Litigation. Subject to Section 19.3 above, any claim, dispute or controversy between Subcontractor and Contractor that is not an Owner-Related Claim shall be resolved through litigation, unless Contractor, at its sole option, advises Subcontractor in writing prior to the institution of litigation with respect to a claim or dispute, or within thirty (30) days after either party has instituted litigation with respect to the claim or dispute that Contractor elects to have the claim or dispute resolved by arbitration. In the event that the parties proceed through litigation the parties specifically and irrevocably waive any right to a trial by jury. Except as provided below, each party shall be responsible for bearing their own costs and expenses, including but not limited to attorney's fees, associated with any claim, dispute or controversy between them. Notwithstanding the preceding sentence, Subcontractor shall remain obligated to pay Contractor's costs and expenses, including but not limited to attorney's fees, for any event that is covered by an indemnity or hold harmless provision, or any other clause in this Subcontract Agreement where Subcontractor has assumed the obligation to pay Contractor's costs, expenses and/or attorney's fees.

19.5 Work Continuation and Payment. Unless the parties mutually agree otherwise in writing, Subcontractor shall continue to perform Subcontractor's Work in accordance with Contract Documents and Contractor's directives pending the resolution of any claim, dispute or controversy. If Subcontractor continues to perform Subcontractor's Work in accordance with Contractor's directives and this Subcontract Agreement, Contractor shall honor its payment obligations in accordance with this Subcontract Agreement.

ARTICLE 20
MISCELLANEOUS PROVISIONS

20.1 Assignment and Transfer. Subcontractor agrees that it will not assign or transfer this Subcontract Agreement in whole or in part, or any payment due thereunder, without the prior written consent to Contractor and Subcontractor's surety, if any. Subcontractor agrees that Contractor shall have the right, upon written notice to Subcontractor, to assign or transfer Contractor's responsibilities and obligations under this Subcontract Agreement, in whole or in part, to any other entity, including Owner or any entity affiliated with or related to Contractor. If Contractor exercises its right to assign or transfer, Subcontractor shall be fully obligated to the assignee or transferee to perform each and every obligation, whether express or implied, arising out of or related to this Subcontract Agreement.

20.2 Acceptance of Subcontract Terms Condition Precedent to Payment. Contractor's receipt of an executed copy of this Subcontract Agreement from Subcontractor shall be a condition precedent to the disbursement of any payments due and owing to Subcontractor under this Subcontract Agreement.

20.3 Subcontractors. Subcontractor agrees that all of its suppliers, vendors, consultants and subcontractors will be subject to all terms and conditions of this Subcontract Agreement and the Contract Documents. Contractor's consent to any subletting shall not be deemed to create any contractual relationship between Contractor and any vendor, consultant, subcontractor or supplier to whom Subcontractor's Work or any portion thereof is sublet. In the event that this Subcontract Agreement is terminated for any reason by Contractor, Subcontractor agrees to assign its subcontracts and purchase orders to Contractor upon Contractor furnishing written notice to Subcontractor and the applicable supplier, vendor, consultant or subcontractor that Contractor accepts such assignment.

20.4 Audit Rights. Contractor shall have the right to require an audit of Subcontractor's books and records, whether in hard paper or electronic form, at any time during construction and within three (3) years after final completion of the Project, in order to verify the actual cost of Subcontractor's Work, including but not limited to, changed work, that was performed on a cost-plus, time and material, or similar basis. The audit shall be conducted by Contractor's personnel or by a representative of Contractor during normal business hours upon reasonable advance written notice to Subcontractor. Contractor shall have the right to copy Subcontractor's books and records which are the subject of the audit. This right to audit is in addition to any other Contractor or Owner audit rights which may exist under Contractor's contract with Owner.

20.5 Notices. All notices shall be made in writing to the parties at the addresses set forth herein. Acceptable forms of notice are: (1) email delivered to the Contractor's Project Manager or to Subcontractor's Project Manager or Superintendent as applicable; (2) delivered personally; (3) sent by certified mail; (4) sent by a recognized overnight delivery or courier service with delivery receipt required; or (5) sent by facsimile with facsimile confirmation. Notice shall be considered effective as of the date received.

20.6 Advertising. Subcontractor, its vendors, consultants, subcontractors or suppliers shall not place any signs, billboards or posters on any portion of the Project site, building property or fences, whether temporary or permanent, adjacent to or surrounding the same, except upon prior written permission received from Contractor and Owner, and then only of a size, material, color and type and at a location approved by Contractor and Owner.

20.7 Severability and Waiver. The partial or complete invalidity of any one or more provisions or portions thereof, of this Subcontract Agreement shall not affect the validity or continuing force and effect of the remaining portion of such provision or any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Subcontract Agreement, or failure to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or rights related to further performance.

20.8 Choice of Law. This Subcontract Agreement is governed by and interpreted under the laws of the Commonwealth of Virginia without consideration to the location of the Project.

20.9 Complete Agreement. This Subcontract represents the entire and integrated agreement between the parties hereto, and supersedes all prior negotiations, representations or agreements, either written or oral. No other agreements, representations, warranties or other matters, oral or written, shall bind the parties.

20.10 Drafter. This Subcontract Agreement is duly exercised by two parties in the construction industry and no provisions herein shall be construed against the drafter of this Subcontract Agreement.

This Agreement is hereby executed the day and year first written above:

NATIONAL TAB

RAND CONSTRUCTION CORPORATION

Virginia Contractor Registration No. 035127

Title

Title