

Professional Services Subcontracted Engineering TERMS & CONDITIONS

DEFINITIONS:

Contractor and Purchaser maybe used interchangeably and are TAI Specialty Construction, Inc.

Subcontractor and Seller maybe used interchangeably and is the entity named on any Purchase Order referencing these terms and conditions (Professional Services Subcontracted Engineering – Terms & Conditions)

Contract or Agreement shall be the agreement between the Contractor and Subcontractor. It shall be composed of the Purchase Order, these terms and conditions referenced in the Purchase Order and the Prime Contract terms and conditions.

The Prime Contract is the contract or contracts that flow down from the Purchaser's Client/Owner to Purchaser and that shall flow down to the Seller.

ARTICLE 1 - SCOPE OF WORK:

Subcontractor shall prepare and complete the drawings and specifications in accordance with the Job Specification, using sound Engineering practices, and in compliance with all applicable laws, regulations, and/or orders of all government and/or other competent authorities. The drawings and specifications shall be prepared and completed in accordance with agreed upon time schedules.

Contractor insists upon the right to have input to all designs, drawings, schedules, and shop drawings. Subcontractor shall submit drawings to the Contractor for review in an orderly manner and Subcontractor shall immediately inform the Contractor Representative any time that Contractor review of drawings is on the critical path of the schedule of the Services. Subcontractor agrees that the Contract schedule will include activities for all of the Contractor required Project related activities, including but not limited to drawing reviews and third-party related activities.

The Contractor Representative's review of such designs, drawings, or schedules shall not relieve Subcontractor from the responsibility for errors in shop drawings or schedules.

All Deliverables, drawings, specifications, and copies thereof provided by Subcontractor hereunder shall be considered a "work-made-for-hire" and shall become Contractor's Intellectual Property and Contractor's Confidential Information, and Contractor shall be free to use, copy, and disclose any and all information, drawings, specifications and copies thereof provided hereunder without incurring any further obligations to Subcontractor, financial or otherwise. Subcontractor shall not mark any Deliverable, information, drawings, specification, or copies thereof with Subcontractor's proprietary legends or copyright notices and at Contractor's request, Subcontractor shall remove any such proprietary legends or copyright notices. Any legends or notices affixed to Deliverables, information, drawings, specifications, manuals, or other documents provided by Contractor shall clearly state that it is Contractor's property and Contractor has full rights to use, copy and disclose the documents and information without restriction. Subcontractor shall protect all Deliverables, information, drawings and specifications and shall not use the Deliverables, information, drawings or specifications except in the performance of its obligations hereunder and

Subcontractor shall not disclose to any third party any of the Deliverables, information, drawings or specifications provided to Contractor under this Contract for any purpose except in the performance of its obligations hereunder.

The Subcontractor agrees to furnish all Engineering work, and any other miscellaneous items necessary to perform all of the work described in the Contract between Contractor and Subcontractor which is incorporated herein as well as any work not shown or specified but which may reasonably be implied to be within the scope of the Subcontractor's work for the Project being carried out by the Contractor in strict accordance with the provisions of this Subcontract and the Prime Contract and to the satisfaction of the Contractor and the Owner. The "Prime Contract" is the contract or agreement between Contractor and the Owner, higher tier contractor or other third party to whom the Contractor owes an obligation to complete the work for which the Subcontractor was obtained to assist in completion.

Except as modified by this subcontract, Subcontractor agrees to adhere to and be bound to the Contractor by all of the provisions of the Prime Contract affecting Subcontractor's work hereunder, which is incorporated herein and insofar as its work is concerned, to assume towards the Contractor all of the duties, obligations, and liabilities that the Contractor assumes toward the Owner. With regard to any requirements of the Prime Contract for submission of written notices within specified time periods, it is agreed that Subcontractor will submit such notices to the Contractor promptly enough to enable the Contractor to submit them to the Owner or Architect within such specified time periods.

The terms and conditions expressly set forth in this subcontract are in addition to the provisions of the Prime Contract. In the event of a conflict between the terms of this subcontract and the Prime Contract, the provisions of this subcontract shall govern.

ARTICLE 2 - SUBCONTRACTOR WARRANTIES AND REPRESENTATIONS:

Subcontractor represents and warrants that it is fully qualified to perform the work under this Subcontract and has, prior to entering into this subcontract, carefully examined and fully understands all provisions of this subcontract and the Prime Contract and fully investigated the type and nature of work to be performed by it and all of the conditions and circumstances surrounding, or in any way affecting, such work. Further, Subcontractor represents that it enters into this subcontract solely on the basis of such examination, inspection, and investigation and upon its asserted knowledge and experience in performing the work described herein and not because of, nor in reliance upon, any representation or opinion rendered by either the Contractor or the Owner or any of their representatives, officers, employees, or agents. Any failure by the Subcontractor to independently investigate the matters set forth in this Article 2 and become fully informed will not relieve the Subcontractor from its responsibilities hereunder.

Subcontractor warrants to the limits of standard of care, that the Services shall be performed with care, skill and diligence, in accordance with licensed professional Engineering standards of care currently recognized by licensed professional

Engineers, and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, designs, drawings, plans, information, specifications, and other applicable items and Services to be provided under the Contract.

Subcontractor warrants that all Services, Work and Deliverables provided under this Contract will conform to the licensed professional Engineering standard of care.

Subcontractor warrants that its employees shall be qualified and are trained in accordance with industry practices and are competent and skilled in the Engineering profession. Subcontractor further warrants that it shall acquire any additional training necessary for its employees or subcontractors during the provisions of Services to meet the Contractor's expectations relative to the Services, and/or to remain current and knowledgeable on innovative ideas and techniques relative to Services being provided.

Subcontractor warrants that all Key Personnel named in any proposal or Job specification shall actually perform or supervise Services contemplated herein, and in the manner described, until the completion and Contractor's acceptance of Deliverables provided hereunder. In the event that Subcontractor wishes to remove or substitute any such personnel, Subcontractor shall submit such request to the Contractor at least three days in advance of the proposed removal or substitution. Except in cases of disability, illness, or other personal reasons of significant gravity, no such removal or substitution may be made without the prior written approval of the Contractor, which will not be unreasonably withheld.

Replacements for Key Personnel shall be as technically qualified as their predecessor.

Subcontractor warrants that there are no actions, suits, or proceedings, pending or threatened, that will have a Material adverse effect on Subcontractor's ability to fulfill its obligations under this Contract. Subcontractor further warrants that it will notify Contractor immediately if Subcontractor becomes aware of any action, suit, or proceeding, pending or threatened that may have a Material adverse effect on Subcontractor's ability to fulfill the obligations under this Contract.

Subcontractor warrants that it is:

- (i) Financially capable of fulfilling all requirements of this Contract;
- (ii) A validly organized entity that has the authority to enter into this Contract; and
- (iii) Not prohibited by any loan, contract, financing arrangement, trade covenant, or similar restriction from entering into this Contract.

ARTICLE 3 – PAYMENT PAID:

Payment from the Owner is a specific condition precedent to Contractor's obligation to pay Subcontractor for work performed and materials supplied pursuant to this Agreement. Upon payment by the Owner the Contractor shall pay the Subcontractor for the satisfactory completion of its obligations hereunder the amount or amounts stated in the Subcontract, subject to additions and/or deductions for changes in the work as may be agreed upon in writing pursuant to written, signed change orders. It shall be Subcontractor's obligation to pay from the gross amount paid to it by Contractor all taxes imposed by federal, state, or municipal governments,

including all state and federal FICA and FUTA taxes, which shall become due or payable arising out of the employment by the Subcontractor of all employees in the performance of work under this subcontract. As a condition precedent to the receipt of the final payment and/or retained percentage, if any, by the Subcontractor, the Subcontractor shall show evidence to the Contractor that all payments for such taxes have been made.

The Contractor shall compensate the Subcontractor in installments as follows. Payments shall be made monthly for the proportion of the contract sum mentioned above properly allocable to the work completed through the last day of the preceding month, as determined by the Owner, less the percent retained by the Owner and less the aggregate of previous payments, within seven days after the receipt of said payment by the Contractor from the Owner, provided all other provisions of this subcontract are being fulfilled by the Subcontractor. The Subcontractor shall be paid no more than the Contractor is paid by the Owner for that particular division of work, or portion thereof, being done by the Subcontractor. Payments hereunder shall be subject to the following conditions precedent:

- (A) The Subcontractor having furnished, at the request of the Contractor, all forms of affidavits, certificates, and such other data as may be required by the Contractor in order to fully comply with the requirements of the Owner;
- (B) The Subcontractor having executed and delivered, upon demand, evidence, including general releases and affidavits, lien waivers and/or waiver of claims, satisfactory to the Contractor that no unpaid claims exist against the Subcontractor for labor, materials, insurance, sales tax, or other obligations incurred by the Subcontractor in the performance of the work hereunder. Such evidence shall be provided upon request during the course of the performance of the work, and in any event, shall be provided prior to the release of final payment and/or retention; and
- (C) Contractor having received payment from the Owner for the work for which payment is sought.

Any retainage specified will be paid to the Subcontractor within sixty days after acceptance of the Subcontractor's work by the Owner, Architect, Engineer, and Contractor unless otherwise provided in the Prime Contract. The Contractor may withhold such payments, as it may deem necessary to guarantee the satisfactory performance of or compliance with any provisions of this subcontract. No payment shall be construed to be an acceptance of any work nor shall payment prejudice any of the rights granted to the Contractor for this subcontract. All payments shall be subject to adjustment and/or correction in the final payment.

All work for which payment has been made shall become the property of Contractor, or, if the Prime Contract so provides, the property of the Owner. However, this provision shall not relieve the Subcontractor from the sole responsibility and liability for all of the work upon which payments have been made.

Contractor may withhold all amounts otherwise due under this subcontract or any other agreement between the parties, including back charges, to cover Contractor's reasonable estimate of any costs or liability Contractor has incurred or may incur, for which Subcontractor may be responsible under this subcontract or any other agreements between the parties, to the extent allowed by applicable state or local law. Appropriate adjustments to withholdings shall be made when the exact amounts owed hereunder are determined.

Notwithstanding any provision of this subcontract to the contrary, and subject to withholdings permitted by this subcontract, Contractor shall make final payment to the Subcontractor only after:

- (i) all of the work hereunder has been completed and approved by the Owner;
- (ii) the Subcontractor has provided proof that is satisfactory to Contractor that the Subcontractor has paid all amounts it owes in connection with this subcontract;
- (iii) the entire Project under the Prime Contract has been completed;
- (iv) all final payment prerequisites under the Prime Contract have been satisfied;
- (v) the Subcontractor has provided a final release of mechanics liens and certification that all laborers, second tier subcontractors and suppliers have been paid in full with respect to the work under this subcontract; and
- (vi) Contractor has been paid in full for the entire project under the Prime Contract.

Effective immediately upon final payment to the Subcontractor, the Subcontractor hereby waives any and all claims against Contractor, unless previously reduced to writing and identified as unsettled.

The Subcontractor shall cooperate fully with Contractor in securing payment to Contractor by the Owner, including but not limited to providing such supporting documentation as the Owner or Contractor may require.

It is specifically understood and agreed by the Subcontractor and Contractor that all payments from Contractor to the Subcontractor under this subcontract are dependent, as an express condition precedent, upon Contractor receiving contract payments, including retainage, from the Owner. At any time in which all monies due to Contractor from the Owner are not paid, Contractor shall, at its sole discretion, apportion the nonpayment equitably and reduce the payments otherwise due to Subcontractor in direct proportion to the amount due to Contractor from Owner. Such reductions shall continue until Contractor is paid all monies due to Contractor. Subcontractor shall be paid in full when Contractor's right to recover from Owner is finally determined or expires. The Subcontractor acknowledges that this Article 3 establishes a reasonable time for payment.

ARTICLE 4 - PROGRESS OF WORK:

Subcontractor agrees to commence its work hereunder without delay when progress on the Project has reached the point where Subcontractor's work can commence. In any event, the Subcontractor shall commence work within five days of notice to commence given by the Contractor. The Subcontractor's work shall be carried on promptly, with dispatch, and coordinated with other work on the Project to the satisfaction of the Contractor. The Contractor shall have the right to order that certain parts of the work be commenced in preference to others, and the Subcontractor agrees that it shall not be entitled to any additional compensation as the result of such change in sequence.

ARTICLE 5 - TIME; DELAYS:

Time is of the essence of this subcontract. Subcontractor shall be liable to the Contractor for any damages, liquidated or otherwise, caused by the Subcontractor's delay of the work

hereunder, including the Contractor's damages and any liability of the Contractor to Owner, other subcontractors, or any other person involved in the Project. Should the Subcontractor be only partially liable for such damages due to his/her operations hereunder, the Subcontractor shall pay the Contractor his/her pro-rata share of such damages. Subcontractor agrees that it will at all times furnish adequate and competent labor, services, equipment, and supervision so that its performance hereof may be carried out without delay.

In the event Subcontractor is delayed by unforeseeable causes that are beyond the control and without the fault of the Subcontractor, including causes that are within the control or the fault of the Contractor, the Subcontractor shall be entitled to an equitable adjustment in its schedule. The Subcontractor acknowledges and agrees that such a time extension shall be the exclusive remedy for such a delay.

Whenever Subcontractor knows or expects that it will not be able to meet one or more phases of the schedule of Services which was established for the Project and approved by the Contractor, Subcontractor shall promptly notify the Contractor Representative and obtain agreement from the Contractor Representative on how to remedy such deficiency including assignment of additional qualified personnel or other measures it or the Contractor feel are required to remedy such deficiencies. Subcontractor agrees that providing such prompt notice of delay is a Material obligation under this Contract.

When changes to the Project schedules can be accepted by the Contractor Representative, Subcontractor shall promptly furnish to the Contractor Representative a revised schedule giving the new dates on which the various phases of the Services will be completed.

When changes to the Project schedules cannot be accepted by the Contractor Representative without damage to the Contractor, Subcontractor shall promptly initiate actions acceptable to the Contractor to recover the lost progress.

Subcontractor shall staff in a manner necessary to achieve timely results satisfactory to the Contractor. When deficiencies in performance against schedule or quality standards are called to Subcontractor's attention, Subcontractor will immediately remedy such deficiencies.

Subcontractor acknowledges that the work indicated on the Prime Contract shall be accomplished utilizing normal (straight time) hourly rates. No compensation of overtime shall be due unless approved in writing by the Contractor.

ARTICLE 6 - LABOR DISPUTES:

In the performance of its obligations under this subcontract, the Subcontractor shall employ only such labor as performs its services to the satisfaction of the Contractor and in continuing harmony with other trades or employees employed on the Project. In the event of an actual or threatened dispute by or on behalf of labor employed on the work by the Contractor or any Subcontractor due to the employment of a person or persons by the Subcontractor or the presence of the Subcontractor on the Project, the Subcontractor shall forthwith make such arrangements as may be necessary in the opinion of the Contractor to prevent strikes, work stoppages, delays, or expense to the Contractor or discontinue the employment of any employee whose presence or conduct may be unsatisfactory to the Contractor or whose continued presence on the Project is, in the opinion of the Contractor, undesirable in the interest of the prompt and proper execution of this subcontract, the Prime Contract, or any Subcontractor's contract. Should the Subcontractor fail to carry out this

provision, the Contractor may proceed in the same manner as provided in Article 11 after 24 hours written notice.

ARTICLE 7 - BONDS:

If requested, the Subcontractor shall provide the Contractor with a payment and performance bond to secure payment and performance of its obligations hereunder, in the amount of the full subcontract price as set forth in the Contract. If requested, such bond shall be provided within seven days of the execution of this subcontract. Said bond shall be issued by a bonding company acceptable to Contractor and authorized to write payment and performance bonds in the state where the project is located. Said bond shall name the Contractor as the sole obligee thereof and shall be irrevocable without the written consent of the Contractor. If the full subcontract price as set forth in the Contract is increased, Contractor may require the Subcontractor to provide additional payment and performance bonds in an amount up to the increased subcontract price. The payments of any incremental increase in the cost of bonds arising out of changes pursuant to Article 16 are the responsibility of Subcontractor.

ARTICLE 8 - WAGES AND SUBCONTRACTOR DEBTS:

The Subcontractor agrees to pay unemployment compensation taxes with respect to its employees, suppliers, and intermediate subcontractors, as required by the state in which the work is being carried on, federal and state income taxes withheld from employees' wages, social security taxes, local taxes, and any other charges levied on the Subcontractor by any local, state, or federal governmental agency, and others to whom it may be indebted within the length of time stipulated in their contract. The Subcontractor agrees further to pay wages and benefits as required by any federal wage determinations and state wage rate determinations. The Subcontractor shall indemnify and defend the Contractor and the Owner and hold them harmless from any costs, expenses, or damages arising out of, or in connection with, the assertion of any claim or lien by any individual or organization to which the Subcontractor is indebted or which was retained directly or indirectly by the Subcontractor for the supply of labor, materials, or services used in the performance of the Subcontractor's obligations hereunder. The Subcontractor agrees to furnish, at any time during the progress of the work or upon completion thereof, satisfactory proof of compliance with the requirements of this Article 8. In the event of an actual or threatened mechanics lien or claim against the Project or against the Contractor on account of the Subcontractor's failure to pay any of its debts, the Contractor shall have the right to make payments directly to such claiming creditors or to the Subcontractor and the claiming creditor, jointly. Any such payments made by the Contractor shall be deducted from sums otherwise due to the Subcontractor. Alternatively, the Contractor shall have the right to retain out of any money then due, or to become due, to the Subcontractor an amount sufficient to completely indemnify the Contractor against such lien or claim as well as legal and other related costs. In the event that the Subcontractor shall have been fully paid all sums due to it, there shall be immediately due and payable from the Subcontractor to the Contractor an amount equal to payments made by the Contractor to discharge the lien or claim and the related costs incurred. If Subcontractor fails to discharge any such liens, Contractor may terminate this subcontract for Subcontractor's default under Article 11.

ARTICLE 9 - ASSIGNMENT AND SUBCONTRACTING:

The Contractor considers Services and work provided by Subcontractor hereunder to be personal and therefore this subcontract shall not be assigned, sublet, or transferred by the Subcontractor, in whole or in part, without the Contractor's prior written consent. Any purported assignment, subcontract, or transfer without the Contractor's prior written consent shall

be void and of no effect. It is further agreed that the Subcontractor shall not assign any monies due or to become due under this subcontract without the prior written consent of the Contractor. All lower-tier subcontractors and contracts awarded by Subcontractor are subject to the provisions of this subcontract, and Subcontractor shall insert in Subcontractor's subcontracts all provisions required by the Prime Contract or that are necessary to enable Subcontractor to comply with the terms of this subcontract. Subcontracting by Subcontractor shall not abrogate any obligation of the Subcontractor under this subcontract. The Subcontractor, by execution of this subcontract, contingently assigns to Contractor all of the Subcontractor's lower-tier subcontracts with third parties. The assignment of each of Subcontractor's lower-tier subcontracts shall take effect only upon Subcontractor's termination for default under Article 11 and Contractor's affirmative acceptance of the assignment of the specific lower-tier subcontract by written notice to Subcontractor and Subcontractor's lower-tier subcontractor. Contractor shall have no liability to any of Subcontractor's lower-tier subcontractors unless Contractor affirmatively accepts the assignment as provided above.

ARTICLE 10 - TERMINATION:

The Contractor shall have the right at any time, by written notice to the Subcontractor, to terminate this subcontract without cause and at the Contractor's discretion. In such case, provided the Subcontractor is not then in default, the Contractor shall pay the Subcontractor a pro-rata portion of the price set forth in the Contract based upon the percentage of Subcontractor's work hereunder which has been completed as of the effective date of termination. Subcontractor shall not be entitled to anticipated profits on work unperformed or on materials or equipment unfurnished. Notwithstanding the above, the Subcontractor agrees that in the event the Owner terminates the Prime Contract, or any portion of it, the Subcontractor expressly waives its right to claim compensation beyond the amount recovered by the Contractor from the Owner for the portion of the work being carried out by the Subcontractor.

ARTICLE 11 - DEFAULT:

- (i) If, in the opinion of the Contractor, as determined in its sole and absolute discretion, the Subcontractor:
- (ii) refuses or fails to provide sufficient properly-skilled Engineers, adequate supervision, or work which is of the quality associated with the licensed professional Engineering profession;
- (iii) fails in any respect to prosecute the work hereunder according to Contractor's then-current schedule;
- (iv) causes, by any action or omission, the stoppage or delay of or interference with the work of Contractor or of any other subcontractor;
- (v) fails to comply with all provisions of this subcontract or the Prime Contract;
- (vi) suffers a judgment of bankruptcy, or makes a general assignment for the benefit of its creditors;
- (vii) has a receiver appointed; or
- (viii) becomes insolvent or a debtor in reorganization proceedings and then, upon written notice, unless the condition specified in such notice has been eliminated within such three-day period, Contractor, at its option, may:

- (a) without voiding the other provisions of this subcontract and without notice to the sureties, take such steps as are necessary to overcome the condition, in which case the Subcontractor shall be liable to Contractor for the cost thereof,
- (b) terminate this subcontract or reduce the scope of the work under this subcontract, or
- (c) obtain specific performance or interlocutory mandatory injunctive relief requiring performance of Subcontractor's obligations hereunder, it being agreed by Subcontractor that such relief may be necessary to avoid irreparable harm to Contractor or Owner. In the event of termination of this subcontract for the Subcontractor's default, Contractor may at its option:
 - 1. take possession, for the purpose of completing the work hereunder, of all Deliverables, materials, information, drawings, specifications and any other reasonably necessary resources of Subcontractor which will further the Contractor's ability to complete the work hereunder,
 - 2. take assignment of any or all of Subcontractor's lower-tier subcontracts involving the work hereunder, or
 - 3. either itself or through others complete the work hereunder, by whatever method Contractor may deem expedient.

In case of termination for default, Subcontractor shall not be entitled to receive any further payment until the work hereunder shall be fully completed and accepted by Owner. At such time, if the unpaid balance of the price to be paid by Owner shall exceed the expense incurred by Contractor including overhead and profit, such excess shall be paid by Contractor to the Subcontractor. If such expense shall exceed the unpaid balance (to be paid by Owner), then Subcontractor shall pay the Contractor the difference. If Contractor wrongfully exercises its option to terminate this subcontract under this Article 11, that termination for default shall be considered a termination for Contractor's convenience and the Subcontractor shall be entitled to the applicable compensation provided in Article 10. The Subcontractor's remedy under this Article 11 shall be exclusive. Nothing herein shall bar withholdings by Contractor permitted by other provisions of this subcontract.

ARTICLE 12 – MERGER OR REPRESENTATIONS AND NEGOTIATIONS; ENTIRE AGREEMENT:

All negotiations, proposals, acknowledgments, and agreements made prior to the date of this subcontract, including, without limitation, any disclaimers or limits on liability, are merged herein and superseded hereby, with the exception of the Purchase Order which these terms and conditions supplement, and which may not be modified or changed by counteroffer or verbal agreement. Any conflict between the Purchase Order and these terms and conditions shall be controlled by these terms and conditions. Any acknowledgment of the terms of this subcontract by Subcontractor containing additional terms or terms differing from those contained herein shall be null, void, and of no effect, and the performance of any work described herein by the Subcontractor shall constitute a waiver of such additional or different terms. This subcontract constitutes the sole and entire agreement between the parties hereto. No representations to or other agreements with the Subcontractor have been made by the Contractor except as stated in this subcontract. Except as otherwise provided herein, this subcontract may not be changed in any way except by written agreement signed by both parties. No term or

condition of this subcontract may be waived by the Contractor except in writing signed by its duly authorized officer or agent.

ARTICLE 13 -INSURANCE:

Subcontractor and its agents, officers, directors and employees, hereby waive all rights of recovery and rights of subrogation against Contractor, Owner, its agents, officers, directors and employees. All policies identified below shall include a waiver of subrogation clause in favor of the additional insureds herein and state that the Subcontractor's insurance is primary and non-contributory. At a minimum, the language to be included within the Certificate of Insurance is as follows:

Tourgee & Associates, Inc., TAI Specialty Construction Inc. and [Insert Owner's Name] are all named as Additional Insured. Waiver of Subrogation in favor of Tourgee & Associates, Inc., TAI Specialty Construction, Inc. and [Insert Owner's Name]. Primary/Non-Contributory endorsement is included for all additional insureds.

The liability coverage furnished by Subcontractor shall name the Contractor, Owner and all of their affiliates as additional insureds, per ISO form CG 2010 11/85, or its equivalent. All insurance coverage shall be in a form acceptable to Contractor. Upon request, Subcontractor shall provide to Contractor certified copies of any insurance policy required under this subcontract. The Subcontractor shall require of the Subcontractor's lower-tier subcontractors, agents, and employees by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated in this Article 13. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

Furthermore, the Subcontractor shall maintain, at its own expense, the following insurance, with coverage of at least the amounts set forth below, during performance of the work and for a period of three (3) years after final acceptance of the Project under the Prime Contract.

- i) Commercial General Liability - Combined Single Limit - \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Such insurance shall be broad form and include, but not be limited to, contractual liability, independent contractors' liability, products and completed operations liability, premises and operations liability, and personal injury liability.
- ii) Workers Compensation – Statutory Limits.
- iii) Professional Liability- \$5,000,000 each claim.
- iv) Employers Liability – With minimum liability limits of \$100,000 bodily injury by accident each accident, \$500,000 bodily injury by disease, \$100,000 bodily injury each employee.
- v) Commercial Automobile Liability Combined Single Limit - \$2,000,000 per accident. Such insurance shall cover injury (or death) and property damage arising out of the ownership, maintenance, or use of any private passenger or commercial vehicles and of any other equipment required to be licensed for road use.

ARTICLE 14 - SUBCONTRACTOR'S LIABILITY AND INDEMNIFICATION:

The Subcontractor hereby assumes the entire responsibility and liability for all of the work hereunder, including but not limited to Deliverables, information and drawings. The Subcontractor is liable for any loss or destruction of the work hereunder from any cause, and it shall make good such loss, damage, or destruction at its own cost and at no cost to Contractor.

The Subcontractor shall be liable to Contractor for all costs Contractor incurs as a result of the Subcontractor's failure to perform any of its obligations under this subcontract in accordance with its terms. The Subcontractor's failure to perform shall include, but is not limited to, the failure of its lower-tier subcontractors to perform any portion of the work hereunder. The Subcontractor's liability shall include, but shall not be limited to:

- i.) Damages and other delay costs payable by Contractor to Owner;
- ii.) Contractor's increased costs of performance, such as extended overhead and increased performance costs resulting from Subcontractor-caused delays or improper performance of the work hereunder;
- iii.) Warranty and rework costs;
- iv.) Liability to third parties;
- v.) Excess re-procurement costs;
- vi.) Consultants' fees; and
- vii.) Attorneys' fees and related costs.

To the fullest extent permitted by law, the Subcontractor shall indemnify and defend the Owner and the Contractor as well as all of their officers, directors, agents and employees and hold them harmless from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Subcontractor's work under this subcontract, to the extent caused in whole or in part by any negligent act or omission of the Subcontractor or anyone directly or indirectly employed by him/her or anyone for whose acts s/he may be liable, regardless of whether it is caused in part by a party indemnified hereunder. Amongst other things, this indemnification shall constitute a waiver by the Subcontractor of any immunity from claims, contributions, or indemnification granted by law to the Subcontractor under applicable workers' compensation laws. The Subcontractor further agrees to indemnify and defend the Contractor against and hold it harmless from any and all claims, losses, damages, and expenses (including attorney's fees) which the Contractor may pay or be compelled to pay in settlement of any claims hereunder, including without limitation, claims under the provisions of any worker's compensation laws, claims under the mechanic's lien laws, and claims of third parties.

The Subcontractor's assumption of liability under this subcontract is independent from, and is not limited in any manner by, the Subcontractor's insurance coverage obtained pursuant to Article 13 or otherwise. The Subcontractor shall pay all amounts it owes to Contractor as a result of the liability provisions of this subcontract upon demand.

Subcontractor's liability for Contractor costs under this Article 14 or under any other provision of this subcontract shall include a ten percent (10%) markup. This markup is not a penalty but is established as liquidated damages to compensate Contractor for its administrative costs and to

allow Contractor reasonable profit on work which Contractor must perform as a result of the Subcontractor's failure to properly perform.

Subcontractor shall, at its own expense, hold harmless, indemnify, and defend the Contractor against any allegation or Claim that any equipment, process, materials, or Deliverable, or any part thereof, furnished by Subcontractor under this Contract, infringes any patent, trademark or copyright, or misappropriates any trade secret. If said equipment, process, materials, or Deliverable, or any part thereof is held in fact to infringe and/or its use is enjoined, Subcontractor shall, at its own expense:

- (i) Procure for the Contractor an irrevocable, royalty-free license to continue using such equipment, process, materials, or Deliverable;
- (ii) With the Contractor's prior written approval, replace same with substantially equivalent but non-infringing equipment, process, materials, or Deliverable; or
- (iii) Modify such equipment, process, materials, or Deliverable so it becomes non-infringing but maintains the same functionality. No replacement or modification provided according to this paragraph shall in any way amend or relieve Subcontractor of its warranties and guarantees set forth in this Contract.

The Contractor shall promptly notify Subcontractor of any allegation, claim, suit or proceeding involving the Contractor in which such infringement is alleged, and the Contractor shall permit Subcontractor to control the defense of any such allegation of infringement, and Contractor shall render such reasonable assistance, at Subcontractor's cost, in defense thereof as Subcontractor shall request or require. Subcontractor shall not settle or compromise any such allegation of infringement without prior written approval of the Contractor, which approval shall not be unreasonably withheld.

ARTICLE 15 - WAIVER:

The Subcontractor waives any right which may accrue to it to claim indemnity and/or contribution from the Contractor, the Owner, the Architect, or Engineer, for or on account of any and all loss, cost damage, expense, and liability which may be incurred by the Subcontractor by reason of injury to or death of persons whomsoever, including the Subcontractor's employees and the Contractor's employees, or damage to or destruction of property whatsoever. This waiver applies to all claims for indemnity, contribution, reimbursement, and protection of any nature whatsoever, regardless of the source or basis upon which the Subcontractor's loss, cost, damage, expense, and/or liability is founded, including, but not limited to, circumstances under which the Subcontractor is merely secondarily liable, passively negligent, liable only by operation or implication of fact, or otherwise remotely or indirectly liable. It is the intention of the parties to this subcontract that the Subcontractor shall assume sole and exclusive liability for claims made against it and that the Subcontractor shall not claim of the Contractor, any indemnity, contribution, reimbursement and/or protection of any kind whatsoever on account of said loss, cost, damage, expense, or liability, but shall hold the Contractor harmless therefrom. It is the intention of the parties to this Contract that the Subcontractor shall assume that exclusive responsibility for protecting itself against such claims by obtaining insurance.

Although the Contractor owes certain contractual duties to the Owner for certain general and specific safety measures, the Contractor does not assume the responsibility for the exercise

of safety precautions, which may be necessary or appropriate in connection with the work being performed by the Subcontractor. Subcontractor shall be responsible for all safety precautions, which may be necessary or appropriate in connection with the performance of its work.

ARTICLE 16 - CHANGES:

Contractor may, at any time, unilaterally or by agreement with Subcontractor, without notice to any sureties, make changes in the work hereunder, provided that any such unilateral order or agreement under this Article 16 shall be in a written change order. Subcontractor shall perform the work hereunder as changed by one or more change orders without delay.

Subcontractors shall submit to Contractor any claims for adjustment in the price, schedule or other provisions of the subcontract claimed by Subcontractor for change orders directed by the Owner or as a result of deficiencies or discrepancies in the Prime Contract, or for circumstances otherwise permitted by the Prime Contract. The Subcontractor shall submit said claims in writing in time to allow Contractor to comply with the applicable provisions of the Prime Contract. Contractor shall process said claims in the manner provided by and according to the provisions of the Prime Contract so as to protect the interests of the Subcontractor and others, including Contractor. Changes to the amount payable to Subcontractor under this subcontract resulting from a change order shall be made only to the extent that Contractor is entitled to relief from or must grant relief to Owner in relation to such change order. Further, each price adjustment hereunder shall be equal only to Subcontractor's allocable share of any adjustment in the Prime Contract. The Subcontractor's allocable share shall be determined by Contractor, after allowance of Contractor's normal overhead, profit and other interest in any recovery by making a reasonable apportionment, if applicable, between Subcontractor, Contractor and other subcontractors or persons with interests in the adjustment. This paragraph shall also cover other equitable adjustments or other relief allowed by the Prime Contract.

The Subcontractor shall not be entitled to receive any extra compensation of any kind whatsoever, regardless of whether the work was ordered by the Contractor or any of its representatives, unless such extra work order is given in writing and signed by an officer, or project manager, of the Contractor. The parties hereto agree that no oral modification of this agreement shall have any force or effect.

Payment on account of pending change orders directed by the Owner shall be made only if the Contractor receives such payment from the Owner for Subcontractor's changed work. It is specifically understood and agreed that such payments to the Subcontractor are dependent, as a condition precedent, upon the Contractor receiving contract payments, including retainage, from Owner. Each payment to Subcontractor on account of pending change orders shall be equal to Subcontractor's allocable share of Contractor's payment from the Owner for the pending change orders as determined by Contractor. Amounts paid on account of pending change orders are provisional and not an admission of liability and shall be repaid to Contractor on demand whenever Contractor determines there has been an overpayment.

For changes ordered by the Contractor independent of the Owner or Prime Contract, the Subcontractor shall be entitled to equitable adjustment in the amount payable to the Subcontractor under this subcontract.

If requested by Contractor, Subcontractor shall submit a reasonable price quotation for a proposed change order prior

to commencing work. If the Subcontractor does not do so and Contractor is required to submit a price quotation to the Owner which includes a proposed change to the work hereunder, Contractor shall use its best estimate of the proposed change as it affects this subcontract in its quotation to Owner, which estimate shall be the maximum equitable adjustment due to Subcontractor.

ARTICLE 17 - UNSATISFACTORY WORK:

The Subcontractor agrees that any Engineering Services which, in the opinion of those in authority under the Prime Contract, is unsatisfactory, whether such opinion is expressed orally or in writing, shall, immediately upon notice from the Contractor to the Subcontractor, be re-performed by the Subcontractor at its own expense. The question of whether or not such opinion is or is not proper is not to be considered. Any provisions in this subcontract to the contrary notwithstanding, the Contractor shall not be liable to Subcontractor for any delay caused by the Contractor or by the Owner, or by any of the Contractor's other subcontractors or for any other cause whatsoever.

Re-performance under this Article 17 shall not lead to adjustment of the schedule established for the affected Project.

ARTICLE 18 - GUARANTEE:

The Subcontractor affirms and guarantees that its work is of sufficient quality to be held within the standard of care of the licensed professional Engineering profession. The Subcontractor also agrees to guarantee, for the benefit of the Owner and the Contractor, its work to the full extent the Contractor is required to guarantee or warrant such work to the Owner under the Prime Contract. The Subcontractor agrees to execute any special guarantees provided for its work under the Prime Contract. The Subcontractor shall also assume all liability of the Contractor to the Owner or other third parties for warranties imposed by applicable law with respect to work done under this subcontract. The Subcontractor further agrees that said guarantee shall not be limited or abridged in any way by the terms and conditions of the Subcontractor's agreements with its lower tier subcontractors. Nor shall said guarantee constitute an exclusive remedy or preclude the Contractor from exercising any other remedy available in equity or law.

ARTICLE 19 - ARBITRATION

It is expressly agreed that if the terms of the Prime Contract obligate the Contractor to arbitrate disputes with the Owner, the Subcontractor, at the election and upon the demand of the Contractor, agrees to and shall participate, as a party with the Owner and the Contractor in any arbitration where any aspect of the Subcontractor's performance, its rights or liability for work performed or its right to payment under this subcontract is in issue. The procedures provided in the Prime Contract shall govern the conduct of such arbitration and the selection of arbitrators. In the absence of such procedures, the matter shall be decided as follows: If the claim is for \$30,000 or less, then the claim shall be tried solely and exclusively in a district court of Maryland. If the claim is for more than \$30,000, then the claim shall be settled by binding arbitration before one arbitrator in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Such arbitration shall be in Baltimore, Maryland, at a location agreed upon by Contractor and the Subcontractor. If the parties cannot agree on the arbitrator, the arbitrator shall be appointed under the Construction Industry Arbitration Rules of the American Arbitration Association. Arbitration may be commenced by either party by giving written notice to the other party that the dispute has been referred to arbitration under this Section. Any award rendered by the arbitrator(s) shall be conclusive and binding upon the parties, provided that

any such award shall be accompanied by a written opinion giving the reasons for the award. The foregoing agreement to arbitrate shall be specifically enforceable in any court of competent jurisdiction. Upon its request, Contractor shall be entitled to consolidation or joinder of any arbitration involving Subcontractor with related arbitrations involving other parties. The award rendered by the arbitrators shall be final and judgment may be entered upon in accordance with the applicable law in any court of competent jurisdiction. Due to the specialized nature of construction litigation, EACH PARTY HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO A TRIAL BY JURY. If Contractor prevails on any claim either in arbitration or vis the courts, Subcontractor shall be responsible for paying all attorney's fees, litigation costs, arbitration costs and any other costs associated with those claims. Subcontractor hereby consents to personal jurisdiction and venue in the State of Maryland. All disputes related to this Subcontract, whether subject to arbitration or litigation, shall be governed by the laws of the State of Maryland, exclusive of its' conflicts of laws provisions.

ARTICLE 20 - MISCELLANEOUS COVENANT

- (A) The Subcontractor shall give his/her personal supervision to the work or have a competent licensed professional Engineer, satisfactory to the Contractor, supervising the work at all times during progress, with full authority to act for Subcontractor. The Contractor may remove from the project any employee of the Subcontractor, which it considers unsatisfactory. The Subcontractor agrees to cooperate fully with the Contractor, any Contractor Representative, and all other subcontractors that the Contractor might employ on the Project.
- (B) Subcontractor shall comply fully with the Federal Occupational Safety and Health Act of 1970 as amended. Levies for noncompliance shall be borne by the Subcontractor. The Subcontractor also agrees to comply fully with all local, state, and federal ordinances, regulations, and laws including but not limited to immigration laws, rules and regulations; all safety and work regulations instituted by the Contractor for this particular project; and to report all accidents to the Contractor's Representative. In the hiring, promotion, transfer, and discharge of employees and independent contractors, the Subcontractor agrees not to discriminate against or in favor of any person because of race, color, creed, national origin, sex, age, religion, marital status, disability, and Vietnam Era or disabled veteran status. 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, safety glasses, and proper footwear approved by the Contractor. Anyone found in violation of any of these provisions may be removed from the Project by the Contractor's Project Superintendent. The obligations of the Subcontractor as to safety as required by this Article 20 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. Without limiting or narrowing the Subcontractor's exclusive responsibilities and liabilities for safety in the workplace, the Subcontractor agrees that the Contractor shall have the right, but not the responsibility, to issue directives to the Subcontractor to change or correct conditions, conduct, practices, or methods caused or employed by the Subcontractor which, in the sole judgment of the Contractor, are or could cause or create a hazardous condition or violation

of applicable safety requirements in the workplace. The Subcontractor agrees to make no claim, and hereby waives any right to make a claim for any increased costs or delays, which he believes, are or will be caused by the issuance of such directives. The parties further agree that in no event shall the foregoing two sentences be considered or deemed as assumption by the Contractor of the Subcontractor's sole liability for noncompliance with applicable safety requirements and safe working conditions.

- (C) Within the number of days specified in the Prime Contract, the Subcontractor shall furnish the 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, and coordination with the actual project conditions as they exist, and compliance with all conditions of this subcontract. Approval by the Architect, Engineer or 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 submittals with a letter pointing out and describing the proposed changes or modifications, and unless such changes or modifications are specifically approved in writing by the Architect, Engineer or Contractor. Contractor shall own all intellectual property related to the Project including but not limited to the copyright for all drawings and plans and specifications created by Subcontractor.
- (D) All of the design work covered hereunder is subject to the approval of the Contractor, the Owner, and the Architect or Engineer named in the Prime Contract, and any design work not so approved shall be reproduced at the appropriate level of quality by the Subcontractor at its own expense. The Subcontractor shall also be responsible for costs incurred by the Contractor associated with the Subcontractor's disapproved design work. The Contractor may withhold payments from the Subcontractor until such time as the work of the Subcontractor meets the approval of the above parties or proceed in the manner set out in Article 11 if the Subcontractor fails, refuses, or neglects to reproduce or replace defective or disapproved design work.
- (E) Claims for extra or altered work, changes, modifications, changed conditions, subsurface conditions, or obstruction at the site, any act of God, the elements, delays, equitable adjustments, and damages resulting from requirements, acts, or omissions of the Owner or any third party, or from any cause beyond the control of the Contractor, shall be governed by the provisions of the Prime Contract and the Contractor shall make payments to the Subcontractor on account of such claims only to the extent that the Contractor is paid therefore by the Owner. If the Contractor authorizes an appeal from the act or decision of the Owner denying any such claim and the time for such appeal has not expired, the Contractor, upon written request of the Subcontractor, shall at its option either prosecute an appeal on behalf of the Subcontractor under said contract provision or permit the Subcontractor to prosecute an appeal in the name of the Contractor, either to be at the Subcontractor's sole expense.
- (F) A waiver by the Contractor of any of the above terms and conditions shall not be deemed a waiver of any of the

other terms and conditions. None of the remedies provided by the Contractor by this subcontract are intended to be exclusive, and the Contractor expressly reserves the right to exercise any other remedies provided by law.

- (G) Each and every provision of law and clause required by law to be inserted in this subcontract shall be deemed to be inserted herein, and the subcontract shall be read and enforced as though it were included herein and, if through mistake or otherwise, any such provision is not inserted, or if not correctly inserted, then upon the application of either party, this subcontract shall forthwith be physically amended to make such insertion.
- (H) If this subcontract is being awarded to Subcontractor upon the basis that it qualifies under federal and state laws as:
- (i) A Women's Business Enterprise, or
 - (ii) A Disadvantaged Business Enterprise, or
 - (iii) a minority, women owned, or economically disadvantaged firm as these terms may be defined from time to time under applicable law and it is agreed that it is a condition precedent to the Contractor's obligation hereunder that the Subcontractor continuously maintain its status as such a business or firm throughout the life of this subcontract.

If the Subcontractor's status as such a firm or enterprise is terminated at any time by any governmental authority having jurisdiction over the matter, or if Subcontractor hires or subcontracts a portion of its work such that any portion of its overall contract value is performed by entities that do not qualify under (i), (ii), or (iii) above, the Contractor shall have the right and option to terminate this subcontract immediately in accordance with the provisions of Article 11.

- (I) Termination under Article 10 or 11 shall not relieve the Subcontractor from obligations in connection with the work performed hereunder prior to termination or abrogate any provisions herein dealing with resolution of disputes.
- (J) Subcontractor, lower-tier subcontractors, and their employees shall not take photographs of the work on site; publish advertising matter of any description relating to the Project, or display signs at or near the Project without first obtaining the written consent of Contractor and Owner.
- (K) Seller warrants that for each of the past three years:
(1) it has not had a fatality; (2) Its Total Recordable Incident Rate (TRIR) has not exceeded 1.0, and (3) its Experience Modification Rate (EMR) has not exceeded 1.0.

ARTICLE 21 - SEVERABILITY

If any article of this Contract shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining articles shall remain in full force and effect.

ARTICLE 22 - GOVERNING LAW

This Contract shall be interpreted and construed according to, and governed by, the laws of Maryland, excluding any such laws that might direct the application of the laws of another jurisdiction.

ARTICLE 23 - NON-SOLICITATION OF EMPLOYEES

During the term of this Contract and during two years following its termination, neither Contractor nor Subcontractor will actively solicit the employment (other than by general solicitations such as newspaper, trade magazine, internet advertisements, etc.) of any employees who were directly involved in performance or receipt of Services without the other Party's prior written approval.

ARTICLE 24 – INDEPENDENT CONTRACTOR

Subcontractor shall be and perform as an independent contractor and nothing contained herein shall be construed as constituting any other relationship between the Contractor and the Subcontractor; nor shall it be construed as creating any relationship whatsoever between Contractor and Subcontractor's employees. The Parties acknowledge that Subcontractor has sole authority and responsibility to employ, discharge, and otherwise control its employees, and neither Subcontractor nor any of its employees are, or shall be, deemed to be employees of Contractor.

Nothing contained in this Contract shall be construed as creating a joint venture, partnership or employment relationship between the Parties, nor shall either Party have the right, power or authority to create any obligations or duty, express or implied, on behalf of the other Party.