

GENERAL CONDITIONS FOR SUBCONTRACTOR WORK

ARTICLE 1. AGREEMENT.

1.1 The intent of the Agreement is to include all items necessary for proper execution of the Work. The documents comprising the Agreement are complementary and what is required by one shall be as binding as if required by all.

1.2 All of the terms of the Agreement are intended to complement each other. In case of conflict, however, the Scope of Work shall govern; then the Geotechnical Report shall govern (if applicable); then the Drawings and the specifications noted thereon shall govern; then the body of the Agreement shall govern; then the General Conditions shall govern; then the Prime Contract shall govern.

1.3 Subcontractor, to the extent of the Work to be performed by it, shall be bound to Contractor by the terms of the Prime Contract, and assumes toward Contractor all the obligations and responsibilities which Contractor assumes toward Customer. Subcontractor has read the Prime Contract and will comply with the terms of the Prime Contract applicable to any subcontractor in performing all Work hereunder.

1.4 To the extent that either Contractor or Customer is a party to a grant agreement in which either federal, state or local funds are being allocated to the Project, Subcontractor agrees that it shall be bound by all provisions of such grant agreement that flow down to such subcontractor.

1.5 Subcontractor agrees that it shall cause any sub-subcontractor or other person performing Work or supplying materials for the Work to acknowledge and be bound by the terms of the Prime Contract applicable to any sub-subcontractor. Subcontractor further agrees that it shall cause any sub-subcontractor or other person performing Work or supplying materials pursuant to the Agreement to acknowledge and be bound by the relevant provisions of these General Conditions and the Agreement to the extent of the sub-subcontractors' work.

ARTICLE 2. INSTRUMENTS OF SERVICE.

2.1 The Drawings are Instruments of Service through which the Work to be executed by Subcontractor is described, and are to be used solely with respect to this Project. Neither Subcontractor, nor any sub-subcontractor or supplier shall own or claim a copyright or other proprietary right or interest in the Drawings.

2.2 Subcontractor shall defend Contractor against suits or claims for infringement of patents, copyrights, trademarks or other proprietary rights in connection with the Work, and shall indemnify and hold Contractor harmless from all loss and liability on account thereof.

ARTICLE 3. FIELD CONDITIONS AND CONTRACT DOCUMENTS.

Subcontractor acknowledges that it carefully reviewed all information provided to it by Customer and Contractor prior to entering into this Agreement, that it is thoroughly familiar with the Agreement and the Agreement is full, complete, and sufficient to have enabled Subcontractor to determine the cost of the Work therein and to enable it to construct the Work outlined therein in accordance with applicable laws, statutes, building codes and regulations, and otherwise to fulfill all its obligations hereunder. Subcontractor further acknowledges that it has visited and thoroughly examined (including taking field measurements) the Project site and all conditions affecting the Work, is fully familiar with all of the conditions thereon and affecting the same, and has satisfied itself as to the character of equipment and facilities needed preliminary to and during the prosecution of the Work, and other matters which can reasonably be expected to affect the Work under the Agreement. Subcontractor agrees that it shall not rely on any dimensions or scaling in the Agreement and acknowledges that it detected no errors, inconsistencies or omissions in the Agreement other than those which it reported to Contractor prior to entering into this Agreement.

If any adjustments or changes to the Work shall be necessary to complete the Work as shown on the Drawings due to any conditions at the Project site, prior knowledge of which could have been reasonably obtained by Subcontractor, Subcontractor shall make such adjustments or changes to the Work at its sole expense, without being entitled to, or seeking any, additional compensation for unforeseen site conditions, changed conditions, or on any other basis.

ARTICLE 4. PROSECUTION OF THE WORK.

4.1 Subcontractor acknowledges and understands that the Project may be governed by city, county, state, federal and agency mandates and restrictions not expressly identified in the Agreement, including but not limited to those mandates and restrictions relating to environmental impact, noise, dust, work hours, access, dumping, etc. Subcontractor acknowledges that it has familiarized itself with such mandates and restrictions prior to entering into this Agreement, and can and will comply with same in its prosecution of the Work.

4.2 Subcontractor is an independent contractor for all purposes. Subcontractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated in the Work. Subcontractor shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement.

4.3 Subcontractor shall comply with all provisions of the Immigration Reform and Control Act ("IRCA") in the hiring of its employees. Subcontractor shall comply with all equal employment opportunity requirements promulgated by any governmental authority, including but not limited to the Civil Rights Act of 1964, 42 United States Code Section 1983, Executive Orders 11246, 11375 and 11478, state law of the Project State, and any other applicable law (including, without limitation, for Projects in California the California Fair Employment Practices Act and the California Plan).

4.4 Subcontractor shall pay all unemployment taxes, social security taxes, payroll taxes, sales and use taxes, municipal taxes, and all other similar taxes or charges, which are legally enacted when this Agreement is executed, whether or not yet effective or merely scheduled to go into effect. Subcontractor agrees to indemnify Contractor and Customer from any and all claims, damages, liability, settlement, attorneys' fees and expenses, as incurred, on account of the foregoing or any breach of the Agreement by Subcontractor or any other action or inaction by or for or on behalf of Subcontractor. Subcontractor further agrees to indemnify Contractor and Customer from taxes under Section 4980B of the Internal Revenue Code of 1986, as amended, and any penalties and interest thereon, resulting directly from the failure of Subcontractor to satisfy the continuation coverage requirements provided in such section with respect to persons used by Subcontractor in performing under this Agreement to the extent such taxes, interest or penalties are proportionally attributed to Subcontractor's failure.

4.5 Subcontractor shall notify Contractor in writing immediately, and before such conditions are disturbed, of: (i) subsurface or latent physical conditions at the Project site differing materially from those indicated in the Agreement; or (ii) previously unknown physical or other conditions at the Project site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement; and the Contractor shall provide instructions related thereto.

4.6 Subcontractor shall, at its own expense and on a daily basis, keep the Work site clean and free of accumulation of rubbish and waste materials. Upon completion of the Work, and as a condition precedent to final payment, Subcontractor shall remove all rubbish, waste materials, equipment and surplus materials, and shall clean all surfaces, fixtures, equipment, etc., relative to the performance of the Work. If Subcontractor fails, at any time, to comply with this provision, Contractor may undertake such clean up and the cost thereof shall be charged to Subcontractor.

ARTICLE 5. WARRANTY.

5.1 Subcontractor warrants that the materials and equipment which it furnishes under the Agreement will be of good quality, new and carrying full manufacturers', distributors' and installers' warranties unless otherwise required or permitted by the Agreement; that the Work will be free from defects; and that the Work will be of a professional and workmanlike quality performed in strict conformance with the requirements of the Agreement, industry standards and manufacturers' recommendations. Work not conforming to these requirements shall be considered defective. Subcontractor's warranty excludes remedy for damage or defect caused by modifications not executed by Subcontractor, or its sub-subcontractors or suppliers, improper or insufficient maintenance by a third party, improper operation by a third party, or normal wear and tear and normal usage.

5.2 Subcontractor warrants that it has all of the expertise, knowledge and skill necessary to comply with the Agreement. Subcontractor shall perform the Work in compliance with all applicable city, county, state, federal and agency law, ordinances, statutes, building and other codes, permits, rules and regulations, and lawful orders of public authorities applicable to performance of the Work, and shall assume sole responsibility for, and bear all costs attributable to, Work not performed in compliance therewith. Subcontractor shall not be relieved of such obligation either by activities or duties of Contractor, or by tests, inspections or approvals required or performed by any person or entity in connection with the Work. Subcontractor shall supervise and direct the Work, using Subcontractor's best skill and attention, and shall cooperate with Contractor in scheduling and performing the Work to avoid conflicts, delay or interference with the Work of Contractor, separate contractors or Customer's own forces. Subcontractor shall at all times maintain good discipline and order among its employees and other persons carrying out the Work. Subcontractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

5.3 Subcontractor represents and warrants that it is properly licensed, and will remain so throughout the performance of the Work. Subcontractor will ensure that its sub-subcontractors are properly licensed at all times during the performance of the Work. In addition, if the Project State is Texas, Subcontractor warrants, represents and covenants that it and its applicable employees are authorized to work on compressed natural gas ("CNG") and/or liquefied natural gas ("LNG"), as applicable, and perform CNG and LNG, as applicable, activities, pursuant to the requirements of the Railroad Commission of Texas and Subcontractor warrants that all of its subcontractors and their applicable employees will be authorized to work on CNG and/or LNG, as applicable, and perform CNG and LNG, as applicable, activities, pursuant to the requirements of the Railroad Commission of Texas.

5.4 All warranty obligations on the part of Subcontractor shall run for the longer of: (a) a period of one (1) year following Final Completion; or (b) the applicable warranty period identified in the Prime Contract; and therefore, the warranty obligations shall survive any termination of the Agreement

ARTICLE 6. WORK BY CUSTOMER, CONTRACTOR OR BY SEPARATE CONTRACTORS.

6.1 Customer and Contractor reserve the right to perform work themselves and to award separate contracts in connection with other portions of the Project. Subcontractor shall cooperate with the forces of Customer and Contractor and of each separate contractor so as not to delay, hinder or interfere with their work.

6.2 If the proper execution of any part of the Work depends upon the work of Customer or Contractor or any separate contractor, Subcontractor shall, prior to proceeding with its Work, promptly report to Contractor any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution of the Work. Failure of Subcontractor so to report shall constitute an acknowledgment that Customer's, Contractor's and/or separate contractor's completed or partially completed construction is fit and proper to receive Subcontractor's Work.

6.3 Subcontractor shall not damage or endanger work performed by Customer, Contractor or separate contractors, or any portion thereof, by cutting, patching or otherwise altering such work. Subcontractor shall promptly remedy damage caused by Subcontractor or any of its sub-subcontractors or suppliers to completed construction or to property of Customer, Contractor or separate contractors.

6.4 Subcontractor shall defend, indemnify and hold Contractor harmless from and against any liabilities, losses, damages, including but not limited to delay and impact damages, awards, fines or judgments in connection with the claim of a separate contractor arising from acts or omissions of Subcontractor in performing Work under the Agreement.

ARTICLE 7. SURVEYS, TESTS AND INSPECTION.

Tests, inspections and approvals of portions of the Work required by the Agreement or by laws, ordinances, rules, regulations or orders of any public authority shall be procured by Subcontractor at its sole expense and shall be made at the appropriate time so as to avoid delay in the Work. Subcontractor shall give Contractor and the proper authorities timely notice of its readiness for testing or inspection and of when and where such testing and inspection shall be made, and shall generally coordinate survey, testing and inspection with the appropriate authorities. If a portion of the Work requiring inspection is covered prior to such inspection, it must be uncovered for inspection and covered thereafter at Subcontractor's sole expense. Notwithstanding any other provision herein, if testing or inspection reveals failure of a portion of the Work to comply with the Agreement, all costs made necessary by such failure shall be at Subcontractor's sole expense.

ARTICLE 8. PAYMENTS.

8.1 Applications for Payment.

8.1.1 Based upon applications for payment submitted by Subcontractor, Contractor shall make progress payments as provided below or elsewhere in the Agreement. Subcontractor warrants that all Work covered by an application for payment will pass to Contractor and Customer free and clear of all liens, claims, security interests or encumbrances upon payment by Contractor, other than potential liens for retainage if not paid when due (if permitted, as further described below in Article 12).

8.1.2 Applications for payment shall be submitted to Contractor by the third (3rd) business day of each month and shall consist of that portion of the Contract Price properly allocable to completed Work performed in the prior month, along with that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the Project site for subsequent incorporation in the completed construction, less ten percent (10%) retainage on the total sum for which application is made (if permitted by applicable state law). Each application for payment shall be accompanied by and based on an updated schedule of values supported by such data to substantiate its accuracy as Contractor may require. Applications for payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment. Each application for payment shall also be accompanied by a progress schedule which shall be approved by Contractor.

8.1.3 As a condition precedent to payment, each application for payment shall be accompanied by unconditional waivers and releases of claims and liens from Subcontractor and its sub-subcontractors in a form which complies with the state law of the Project State (which for a Project in California shall be the language set forth in Section 8134 of the California Civil Code), acknowledging payment for all labor, services, equipment and materials supplied to the Project before the end of the month preceding the month for which application for payment is made, and by conditional waivers and releases from Subcontractor and its sub-subcontractors in a form which complies with the language set forth in the state law of the Project State (which for a Project in California shall be the language set forth in Section 8132 of the California Civil Code), acknowledging their agreement to waive claims and liens upon payment for Work performed in the month for which application for payment is made. Subcontractor shall, promptly after Effective Date, provide Contractor with a complete list of all of its sub-subcontractors and suppliers.

8.2 Progress Payments.

8.2.1 During performance of the Work, Contractor shall pay Subcontractor all undisputed sums within 30 days of receiving an application for payment submitted in strict accordance with the Agreement, less retainage in the amount of ten percent (10%) on the total sum for which application is made (if permitted by applicable state law). If an application for payment is not properly supported or is otherwise not submitted in strict accordance with the Agreement, or if Contractor disputes the application for payment, in whole or in part, Contractor shall provide Subcontractor with written notice thereof within thirty (30) days of receiving the subject application for payment.

8.2.2 Except with Contractor's written prior approval, Subcontractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the Project site.

8.3 Final Payment.

8.3.1 Final payment shall not become due until Subcontractor submits:

- (a) A final application for payment;
- (b) An affidavit attesting to the fact that payrolls, bills for materials and equipment, sub-subcontractors, and other indebtedness of Subcontractor connected with the Work have been paid or otherwise satisfied, and evidence thereof as reasonably required by Contractor;
- (c) Consent of surety, if required, to final payment; and
- (d) Releases and waivers of all liens, claims, security interests or encumbrances arising out of the Work, including those of Subcontractor and its sub-subcontractors; in a form which complies with the state law of the Project State (which for a Project in California shall be the language set forth in Section 8136 of the California Civil Code), conditionally acknowledging payment for Work for which final application for payment is made.

8.3.2 Within forty-five (45) days of Final Completion and receipt of a final application for payment, Contractor shall pay Subcontractor all amounts remaining to be paid under the Agreement, including retainage, less any amounts Contractor is entitled to retain under other provisions of the Agreement provided, that Subcontractor must, at the time of such payment, deliver to Contractor unconditional waivers and releases of claims and liens from Subcontractor and its sub-subcontractors in a form which complies with the state law of the Project State (which for a Project in California shall be the language set forth in Section 8138 of the California Civil Code), acknowledging payment for all labor, services, equipment and materials supplied to the Project.

8.3.3 Acceptance of final payment by Subcontractor shall constitute a waiver of all Subcontractor Claims, except those previously made in writing and identified by Subcontractor as unsettled at the time of final application for payment.

8.3.4 Neither final payment nor any provision in the Agreement shall relieve Subcontractor of responsibility for Work that is deficient, incomplete, defective or otherwise not in compliance with the Agreement.

8.4 Right to Withhold Payment. Contractor may withhold from payment such amounts as may be necessary for protection against loss or prospective loss relating to Subcontractor's Work, including but not limited to:

- 8.4.1 defective Work not remedied;
- 8.4.2 claims filed, or reasonable evidence indicating the probable filing of claims against Customer, Contractor or Subcontractor, including but not limited to mechanic's lien claims, stop notice claims or claims for personal injury, property damage or other loss;
- 8.4.3 failure of Subcontractor to make timely payment to sub-subcontractors or for material or labor;
- 8.4.4 reasonable evidence that the Work cannot be completed within the Contract Time or completed for the unpaid balance of the Contract Price;
- 8.4.5 any breach of the Agreement; and/or
- 8.4.6 Any other ground allowed by law or as otherwise provided in the Agreement.

8.5 Other Payment Issues.

8.5.1 Subcontractor must promptly pay each sub-subcontractor and supplier out of the amount paid to Subcontractor by Contractor on account of such sub-subcontractor's or supplier's portion of the Work. Alternatively, and at its sole option, Contractor may pay a sub-subcontractor or supplier by joint check or directly; in either case, such payment will be deemed to have been made directly to Subcontractor.

8.5.2 Subcontractor covenants that all funds paid to it hereunder shall be first used to discharge obligations incurred by Subcontractor in the performance of the Work and the funds shall not be used for any other purpose unless and until all such obligations have been fully discharged.

ARTICLE 9. CHANGES.

9.1 No change in the Work (whether by way of additions, deletions or modifications to the Work) shall be the basis of an addition to the Contract Price or an extension of the Contract Time unless and until such changed work has been authorized by a written "**Change Order**" executed by Contractor in advance of its performance, describing the changed work authorized and stating the adjustment to the Contract Price and Contract Time, if any. This requirement is of the essence of the Agreement and oral change directives are not sufficient. Subcontractor waives the right to recover compensation for any changed work performed in advance of or without having received a Change Order issued in strict accordance with this Article. No course of conduct or dealings between the parties, nor express or implied acceptance of changes to the Work nor any Claim that Contractor or Customer has been unjustly enriched by such change, whether or not there is in fact unjust enrichment, shall constitute a waiver or estoppel or shall be the basis for any Claim to an increase in the Contract Price or in the Contract Time.

9.2 All requests by Subcontractor for an adjustment of the Contract Price or the Contract Time arising out of changes to the Work shall be submitted to Contractor for prior written approval on a Change Order Request ("**COR**") form approved by Contractor, and shall be accompanied by a complete itemization of all costs of the proposed changes, and evidence thereof, to Contractor's reasonable satisfaction. Subcontractor shall not perform changed work which is the subject of a COR until and unless the COR has been transformed into a fully executed Change Order.

9.3 Profit and overhead for all changed Work shall be capped at a combined total of fifteen percent (15%).

9.4 If Subcontractor is delayed at any time in the commencement or progress of the Work by (i) events such as labor disputes, civil disturbance, fire, flood, or other acts of God or other causes beyond Subcontractor's control (collectively, "**force majeure events**"), or (ii) an act of neglect of Customer or Contractor, Subcontractor agrees that it will nevertheless attempt in good faith and make every effort to achieve Substantial Completion within the Contract Time stated herein. If the critical path of the Work is proven to be negatively impacted by force majeure events, then the Contract Time may be extended by Change Order. As a condition precedent to any extension of the Contract Time due to delay, Subcontractor shall deliver to Contractor a written Claim for such extension within two (2) days following the date when Subcontractor becomes, or reasonably should become, aware of the event causing the underlying delay. Notwithstanding the foregoing or anything to the contrary, and to

the extent permitted by applicable law, an extension of time shall be Subcontractor's sole remedy for delay caused by force majeure events or by an act of neglect of Customer or Contractor, and additional compensation or other damages shall not be recoverable from Contractor as a result of such force majeure event or neglect.

ARTICLE 10. CLAIMS AND DISPUTE RESOLUTION.

10.1 Claims.

10.1.1 A "Claim" is a demand or assertion by Subcontractor seeking, as a matter of right, adjustment or interpretation or enforcement of the Agreement terms, payment of money, or other relief with respect to the terms of the Agreement. The term "Claim" also includes all other disputes and matters raised by Subcontractor arising out of or in any way relating to the Agreement, the Work or the Project, whether such dispute be grounded in law or equity, contract or tort. Each notice of Claim, and Claim, shall be presented separately and independent of any other Claim, and shall include a statement supporting such Claim, a detailed estimate of any adjustment in the Contract Price sought by Subcontractor, and documentation to substantiate its claim sufficient to allow Contractor to evaluate the Claim. Pending resolution of a Claim, Subcontractor shall proceed diligently with performance of the Work and Contractor shall continue to make payments in accordance with the Agreement.

10.1.2 Subcontractor acknowledges and understands that the Project is on a critical time path schedule dictated by factors both within and outside of Contractor's control, and that any failure by Subcontractor to promptly notify Contractor of a Claim may adversely and materially impact the Project itself, as well as Contractor's ability to address the Claim. As a result, Subcontractor shall waive any Claim unless it gives Contractor written notice thereof as soon as reasonably practicable, but in no event later than ten (10) days after the date when Subcontractor knows or should know of the condition giving rise to any such Claim. In no event shall a Claim be allowed if asserted after final payment under this Agreement. Claims not timely made in accordance with this provision shall be presumptively prejudicial to Contractor and shall not be allowed under any circumstances.

10.1.3 With twenty-five (25) business days following Contractor's receipt of notice of the Claim, Contractor, in writing, shall either: (i) reject the Claim in whole or in part; (ii) accept the Claim; (iii) pass the Claim through to Customer; or (iv) request additional written information from Subcontractor. If Contractor requests additional information, then Subcontractor shall within ten (10) business days of such request provide such information or notify Contractor, in writing, that it will not provide such information. If Subcontractor provides additional information, then Contractor will act upon the Claim as described immediately above in this Section. If within ten (10) business days of receipt of Contractor's request for additional information, Subcontractor fails to supply such information, or to notify Contractor in writing that it will not supply such information and the reasons therefor, then the Claim shall be deemed null and void and Subcontractor thereby shall have waived any and all rights it may have had to recover from Contractor any and all damages, liabilities or extra compensation related to the Claim.

10.1.4 The procedures set forth in this Article are a condition precedent to undertaking arbitration or litigation with respect to any Claim. No arbitration or litigation may ensue on a Claim until and unless all requirements of this Article have been satisfied.

10.2 Prime Contract Governs. Any Claims not resolved as set forth above shall be resolved in the manner set forth in the Prime Contract, whether by resort to a dispute review board, arbitration or court proceeding.

ARTICLE 11. PROTECTION OF PERSONS AND PROPERTY.

11.1 Subcontractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work and Contractor shall have no liability in connection therewith. Subcontractor shall comply with all requirements of Contractor, Customer and all applicable laws, ordinances, rules, regulations and orders of public authorities providing for the safety of persons or property, including but not limited to the requirements of Fed/OSHA, the state law of the Project State (which for a Project in California shall include, without limitation, Cal/OSHA, the California Administrative Code, the California Labor Code, and all Safety Orders of the California State Industrial Accident Commission), and all other applicable law.

11.2 Subcontractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- 11.2.1 all persons performing the Work and all other persons who may be affected by the Work;
- 11.2.2 all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site;
- 11.2.3 all of the work, materials and equipment of other persons at the Project site;
- 11.2.4 other property at or adjacent to the site of the Work, including but not limited to trees, shrubs, walkways, patios, pavements, roadways, structures and utilities.

11.3 Subcontractor, at its sole expense (other than injury, damage, or loss, actually paid by Subcontractor's insurer to Contractor), shall promptly remedy any damage, injury or loss caused in whole or in part by Subcontractor, its sub-subcontractors or suppliers, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Subcontractor is responsible. Such obligation of Subcontractor is in addition to, and not in derogation of, Subcontractor's other obligations under the Agreement or pursuant to law.

11.4 In any emergency affecting the safety of persons or property, Subcontractor shall act expeditiously to prevent threatened damage, injury or loss. Except to the extent such emergency was caused by the negligent or willful act or omission of Subcontractor, its sub-subcontractors or suppliers, or anyone directly or indirectly employed by them, or by anyone for whose acts they may be liable and for which Subcontractor is responsible, Subcontractor shall be entitled to an equitable adjustment in Contract Price for substantiated costs reasonably incurred pursuant to this Section.

ARTICLE 12. INDEMNITY.

12.1

12.1.1 The following shall be Section 12.1 when the Project State is not Texas:

(a) Subcontractor agrees to protect, defend, indemnify and hold harmless Contractor and its officers, directors, employees or their contractors, their invitees, and the Customer for whom Contractor is performing services, from and against all claims, demands, and causes of action of every kind and character without limit and without regard to the cause or causes thereof or the negligence or fault (active or passive) of any party or parties including the joint or concurrent negligence of Contractor, any theory of strict liability and defect of premises, arising in connection herewith in favor of Subcontractor's employees, sub-subcontractors or their employees, or Subcontractor's invitees on account of bodily injury, death or damage to property. Contractor agrees to protect, defend, indemnify and hold harmless Subcontractor, its officers, directors, employees or their invitees, from and against any claims, demands, and causes of action of every kind and character without limit and without regard to the cause thereof or the negligence or fault (active or passive) of any party or parties including the joint or concurrent negligence or fault of the Subcontractor, any theory of strict liability and defect of premises, arising in connection herewith in favor of Contractor's employees or Contractor's invitees on account of bodily injury, death or damage to property.

12.1.2 The following shall be Section 12.1 when the Project State is Texas:

(a) Subcontractor agrees to protect, defend, indemnify and hold harmless Contractor and its officers, directors, employees or their contractors, their invitees, and the Customer for whom Contractor is performing services, from and against all claims,

demands, and causes of action of every kind and character without limit and without regard to the cause or causes thereof or the negligence or fault (active or passive) of any party or parties including the joint, comparative or concurrent negligence of Contractor, any theory of strict liability and defect of premises, arising in connection herewith in favor of Subcontractor's employees, sub-subcontractors or their employees, or Subcontractor's invitees on account of bodily injury, death or damage to property. Contractor agrees to protect, defend, indemnify and hold harmless the Subcontractor, its officers, directors, employees or their invitees, from and against any claims, demands, and causes of action of every kind and character without limit and without regard to the cause thereof or the negligence or fault (active or passive) of any party or parties including the joint, comparative or concurrent negligence or fault of Subcontractor, any theory of strict liability and defect of premises, arising in connection herewith in favor of Contractor's employees or Contractor's invitees on account of bodily injury, death or damage to property. The defense, indemnification, and hold harmless obligations of the parties as provided above shall only apply to the extent of their respective negligence or fault (including the negligence or fault of their respective separate contractors, subcontractors, agents or employees). **PROVIDED, HOWEVER, THAT IN THE EVENT OF ANY BODILY INJURY OR DEATH TO AN EMPLOYEE OF A PARTY OR ITS SEPARATE CONTRACTORS, SUBCONTRACTORS, AGENTS, OR EMPLOYEES, THAT PARTY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE OTHER PARTY FOR THE ENTIRETY OF ANY RESULTING CLAIM OR LIABILITY, REGARDLESS OF WHETHER SUCH CLAIM OR LIABILITY IS CAUSED IN WHOLE OR IN PART BY JOINT, COMPARATIVE, CONCURRENT OR SOLE NEGLIGENCE OR FAULT (ACTIVE OR PASSIVE) OF THE OTHER PARTY OR ANY THIRD PARTY. IT IS THE INTENTION HEREOF THAT EACH PARTY BE SOLELY RESPONSIBLE FOR ANY CLAIM OR LIABILITY FOR BODILY INJURY OR DEATH TO THEIR RESPECTIVE EMPLOYEES, OR THE EMPLOYEES OF THEIR AGENTS OR SEPARATE CONTRACTORS OR SUBCONTRACTORS.** The foregoing defense, indemnity and hold harmless obligations and those included elsewhere in the Agreement are intended to comply in all respects with Tex. Ins. Code § 151.001 et seq. and other applicable law and, in the event that any part is determined to be in violation of applicable law, such part shall be reformed or severed to the minimum extent necessary to cure such violation and the remainder shall be enforced pursuant to its terms and to the fullest extent permitted by applicable law.

12.2 Subcontractor General Indemnification. Subcontractor, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Contractor and its representatives, officers, directors and employees, and the Customer for whom Contractor is performing services, from and against claims, losses, damages liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, or property damage or destruction, resulting from the acts or omissions of Subcontractor, design consultants, sub-subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable, regardless of whether the same is contributed to by the negligence or fault (active or passive) of any party or parties, including the joint or concurrent negligence of Contractor and its representatives, officers, directors, and employees, or the Customer for whom Contractor is performing services, to the extent permitted by applicable law.

12.3 Subcontractor's indemnity obligations set forth in this Article above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Subcontractor, Subcontractor consultants, sub-subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts. Subcontractor's liability for indemnification hereunder is in addition to any liability Subcontractor may have with respect to indemnities under any other provisions of the Agreement and is in addition to and independent of any insurance coverage or payment.

12.4 Liens and Stop Notices. Subcontractor acknowledges that its rights to remedies pursuant to the lien laws of the Project State shall be governed, to the fullest extent permitted by law, by this Section.

In the event liens are not permitted to be filed pursuant to the Prime Contract and pursuant to the applicable laws of the Project State Subcontractor can waive its rights to pursue liens, neither Subcontractor nor its sub-subcontractors nor any of its agents, employees or other contractors shall pursue or file a lien in relation to the Project or the Work for any reason.

To the extent either liens are permitted in the Prime Contract or Subcontractor's ability to pursue liens is statutorily required and cannot be waived:

Subcontractor agrees that its rights to pursue a lien shall be limited to that portion of the Contract Price which is unpaid and due at the time of recording a lien claim or filing a stop notice. Subcontractor agrees that it shall not record liens or file stop notices for any sum which is not due hereunder and specifically agrees and covenants that it will not record liens or file stop notices for sums which it may contend are due as damages by reason of delays, accelerations or other such claims, unless such sums are specifically agreed to be due to Subcontractor by written contract modification signed by all parties. Subcontractor agrees that its lien or stop notice rights, whatever they may be, are reduced by each payment made to Subcontractor by Contractor or any other party on behalf of Contractor. Subcontractor acknowledges that a lien recorded by it or stop notice filed by it may be disruptive of project finances and could have an adverse impact on the Contractor's relationships with the Customer and its other subcontractors. Therefore, Subcontractor further agrees that if it records a lien or files a stop notice, which is not permitted by law, or which contains claims which are not permissible hereunder or pursuant to law, or which is negligently or purposefully overstated, Contractor shall be entitled to recover from Subcontractor all of Contractor's costs and damages arising therefrom, and shall further be held harmless and indemnified by Subcontractor from all claims of Customer and other subcontractors arising therefrom.

If any subcontractor, laborer, materialman or supplier of the Subcontractor or any other person directly or indirectly acting for, through or under it, or any of them, records or maintains a lien, files a stop notice or pursues a claim against the Work or Project site, or any part thereof, or any interests therein, or any improvements thereon, or against any monies due or to become due, from the Customer to Contractor or from Contractor to the Subcontractor, for or account of any work, labor, services, materials, supplies, equipment or other items performed or furnished for or in connection with the Work or under any change order or supplemental agreement for extra or additional work in connection with the Work, Subcontractor agrees to cause such liens and claims to be satisfied, removed or discharged at its own expense by bond, payment or otherwise, within thirty (30) days of the date of filing or recording thereof, and upon its failure to do so, Contractor shall have the right, in addition to all other rights and remedies provided under the Agreement, and/or by law, to cause such liens or claims to be satisfied, removed or discharged by whatever means Contractor chooses, at the entire cost and expense of the Subcontractor (such cost and expense to include reasonable legal fees and disbursements). The Subcontractor agrees to indemnify, protect and save harmless Contractor and the Customer from and against any and all such liens, claims and actions brought or judgments rendered thereon, and from and against any and all loss, damages, liability, costs and expenses, including legal fees and disbursements, which Contractor and/or the Customer may sustain or incur in connection therewith.

Provided Subcontractor has been paid, Subcontractor expressly agrees to promptly discharge, at its sole expense, each and every mechanic's lien and stop notice which may be recorded or served in connection with its Work hereunder or any portion thereof. Subcontractor further agrees to defend, indemnify and hold Contractor and Customer harmless from and against any liability, loss or damage, including costs and consultants' and attorneys' fees, arising from or relating to the recording or serving of a lien or stop notice relating to its Work hereunder. Until the time that such liens and/or stop notices are discharged and/or satisfied, Contractor shall be entitled to withhold from payment to Subcontractor an amount equal to 125% of the aggregate amount of such liens and stop notices. Final payment hereunder shall not be due while any such liens remain undischarged or any such stop notices remain unsatisfied.

12.5 Lis Pendens. Should any sub-subcontractor, supplier or other person file and/or record a lis pendens relating to the Work, Subcontractor shall immediately cause the lis pendens to be expunged by court order or otherwise, and shall give an undertaking of such nature and in such amount as shall be fixed by the court. Subcontractor further agrees to defend, indemnify and hold Contractor and Customer harmless from and against any liability, loss or damage, including costs and consultants' and attorneys' fees, arising from or relating to the filing and/or recording of a lis pendens relating to the Work.

12.6 Survival of Terms. Subcontractor's defense and indemnity obligations shall survive the expiration or termination of this Agreement.

ARTICLE 13. INSURANCE.

Subcontractor shall comply with the insurance requirements set forth in **Appendix 2**.

ARTICLE 14. CORRECTION OF WORK.

Upon receipt of written notice, Subcontractor shall promptly correct Work which does not conform to the Agreement, or which constitutes a breach of warranty, or which is otherwise rejected by Customer or Contractor, whether discovered before or after Substantial Completion, and whether or not fabricated, installed or completed. Such obligation to correct Work shall survive termination of this Agreement. Costs of correcting such rejected Work, including but not limited to additional testing, inspection and consultants' fees, shall be at Subcontractor's sole expense. Should Subcontractor fail to correct such Work within a reasonable time following notice, Contractor may correct it and Subcontractor shall reimburse Contractor for all expense incurred thereby, including but not limited to additional testing, inspection and consultants' fees made necessary thereby.

ARTICLE 15. RIGHT TO STOP WORK.

If Subcontractor defaults or neglects to carry out the Work in accordance with the Agreement, Contractor may deliver to Subcontractor a written stop work notice. If within three (3) days following receipt of such stop work notice, Subcontractor (i) fails to commence and continue correction of such default or neglect with diligence and promptness or (ii) persistently fails to carry out Work in accordance with the Agreement, Contractor may, without prejudice to other remedies it may have: (a) issue a written stop work order which shall direct Subcontractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; and (b) correct such deficiencies, and deduct the cost thereof from amounts otherwise due, or to be due, to Subcontractor. The right of Contractor to stop the Work shall not give rise to a duty on the part of Contractor to exercise this right for the benefit of Subcontractor or any other person or entity. This right shall be in addition to and not in restriction of, Contractor's rights under any other provision of the Agreement or the law.

Contractor may at any time and for any reason by written notice to Subcontractor suspend further performance of all or any portion of the Work for such period of time as Contractor may determine. Upon receiving any such notice, Subcontractor shall promptly suspend further performance of the Work, to the extent specified in the notice, and during the period of such suspension shall promptly care for and protect all Work in progress and materials, supplies and equipment that Subcontractor has on hand for performance of the Work. In the event of such suspension, the Contract Time shall be adjusted by Contractor and the Contract Price may be adjusted by Contractor based on delay costs incurred by Subcontractor to the extent an equitable adjustment for such suspension is made by Customer pursuant to the Prime Contract.

ARTICLE 16. TERMINATION.

16.1 Termination by Contractor.

16.1.1 Termination for Cause. Contractor may, upon five (5) days written notice and Subcontractor's failure to cure within that time period to Contractor's sole satisfaction, terminate the Agreement for cause if Subcontractor:

- (1) repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- (2) fails to timely make payments to sub-subcontractors or suppliers for their services;
- (3) appears in Contractor's judgement to be unable to timely complete its services or to complete its services for the balance of the Contract Price;
- (4) disregards laws, ordinances, codes, rules, regulations or orders of a public authority having jurisdiction; or
- (5) otherwise is in material breach of the Agreement.

Upon termination, Contractor may complete the Work by whatever reasonable means it deems expedient, including accepting assignment of sub-subcontracts, and Subcontractor shall not be entitled to receive further payment until such services are complete. If such costs of completion and other damages exceed the unpaid Contract Price balance, Subcontractor shall pay the difference to Contractor.

16.1.2 Termination for Convenience. Contractor may, at any time, for any reason and upon written notice, terminate the Agreement for the convenience of Contractor or Customer, and not for cause. Upon receipt of written notice from Contractor of such termination for convenience, Subcontractor shall cease operations as directed by Contractor in the notice, take actions necessary or as Contractor directs for the protection and preservation of the Work; and except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing sub-subcontracts and purchase orders and enter into no further sub-subcontracts or purchase orders. In case of such termination for convenience, Subcontractor shall be entitled to payment for all Work executed prior to the effective date of termination and for all reasonable substantiated costs with respect to materials, equipment, tools, equipment and machinery committed to by Subcontractor prior to Subcontractor's receipt of Contractor's notice of termination under this Section. In no event shall the sum paid Subcontractor under this provision exceed the Contract Price.

ARTICLE 17. ASSIGNMENT.

Subcontractor shall not, without the prior written consent of Contractor, assign, sell or transfer, in whole or part, the Agreement or any monies due to become due Subcontractor hereunder. Each sub-subcontract agreement for a portion of the Work is assigned by Subcontractor to Contractor provided that assignment is effective only after termination of the Subcontract by Contractor for cause pursuant to the provisions of this Agreement, and only for those sub-subcontract agreements which Contractor accepts by notifying sub-subcontractor and Subcontractor in writing.

ARTICLE 18. MISCELLANEOUS PROVISIONS.

18.1 The Agreement shall be governed by and interpreted pursuant to the law of the state in which the Project is located.

18.2 The Agreement may not be modified except by an instrument in writing signed by the party against whom enforcement of the modification is sought.

18.3 If any provision of the Agreement is determined to be void, illegal or otherwise unenforceable for any reason, the same shall be severed therefrom and the remainder of the Agreement shall be given full force and effect.

18.4 The duties, obligations, rights and remedies in these Agreement shall be cumulative, in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law, unless otherwise indicated.

18.5 No action or failure to act by Contractor shall constitute a waiver of any rights or remedies afforded it under the Agreement, nor shall any such action or failure to act constitute an approval of, or acquiescence in, any breach, except as may be specifically agreed in writing or specified in the Agreement.

18.6 Throughout performance of the Work and for a period of ten (10) years following Substantial Completion, Subcontractor shall preserve all documents relating to the Project and the Work. Upon 24 hours written notice, Contractor shall be afforded access to all said documents as maintained in the ordinary course of business for inspection, copying and audit, regardless of whether any legal proceedings are then pending.

18.7 The prevailing party in any legal proceeding, whether arbitration, litigation or other proceeding, shall be entitled to an award of its costs, actual consultants' fees, and reasonable attorneys' fees.

18.8 Any notice required to be given shall be in writing and shall be hand-delivered to the other party or mailed first class or via next-day delivery service, postage prepaid, to the party's address set forth in the Agreement, or to such other address as either party may designate for itself by written notice to the other.

18.9 Subcontractor hereby agrees that the Agreement is and will remain confidential information and shall not be disclosed to any person or entity who is not a party to the Agreement, except as specifically permitted under this Section. During the term of this Agreement and thereafter, Subcontractor shall not, without the prior written consent of Contractor, or except and only to the extent required by sub-subcontractors with a strict need to know such information to perform the Work, either directly or indirectly, in whole or in part, use or disclose to any person, firm, corporation, or other entity, any of the information provided to Subcontractor by Contractor under the Agreement, which is not in the public domain. Subcontractor shall advise its sub-subcontractors of the confidentiality of the Agreement, permit such sub-subcontractors to use information from the Agreement only for the purpose of performing their portion of the Work and shall be responsible for any unauthorized disclosure by its sub-subcontractors. Subcontractor may disclose such confidential information if required by law, regulation or in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof, but only to the extent and for the purposes of such required disclosure and only if the Subcontractor first notifies the Contractor of the requirement or order to permit the Contractor to seek an appropriate protective order. Any violation of this Section shall be a breach of the Agreement. This Section shall survive expiration of termination of this Agreement.

18.10 FOR ALL AGREEMENTS WHERE THE PROJECT IS NOT LOCATED IN CALIFORNIA, EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF OBLIGATIONS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.