



JAYNES CORPORATION

Invitation to Bid

Farmington Municipal Schools Preschool Academy East

(3.21.24 Permit Set)

Issue Date **August 15, 2024**

Bid Deadline: **12:00 p.m. (MT) September 10, 2024**

Estimated start of work: **January 1, 2024**

Submit Bids to:

Jaynes Corporation

Attn: Ryan Sorenson

ryan.sorenson@jaynescorp.com

900 Resource Ave

Farmington, NM 87401

Instructions to Bidders

Contents:

1. Request for Proposals
2. Bid Description
3. Project Information
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Request for Proposals

Jaynes Corporation is the Construction Manager (At-Risk) for this project. Jaynes Corporation requests your proposal for Phase 1 Athletics Complex. Please review this Request for Proposal and Instruction to Bidders in its entirety.

Bid Description

Farmington Municipal Schools Preschool Academy East – 5840 Fortuna Drive, Farmington, NM, 87402

This is a multi-phase project that consists of a new two story Preschool Building including associated sitework and demolition of the existing preschool building.

Bid documents will be available for viewing via Building Connected beginning August 15, 2024, and can be accessed via the following website:

Paper copies of plans/specs are bidders' responsibility.

Questions regarding the Athletic Complex bid and design issues are to be addressed to:
Chief Estimator ryan.sorenson@jaynescorp.com

Questions are due by August 27th, 2024. Please DO NOT send questions and clarifications regarding design directly to the design firm.

Complete bids will be due September 10, 2024 by 12:00 pm (MT). Bids shall be emailed to ryan.sorenson@jaynescorp.com

Project Information

Project Name: Farmington Municipal School – Preschool Academy East

Owner: Farmington Municipal Schools and State of New Mexico Public School Facility Authority (PSFA)

Design Professional: FBT Architects

Construction Manager (CMAR): Jaynes Corporation - Farmington

Senior Project Manager: David Hawthorne (505) 330-6013

Project Manager: Josh Pronozuk (503) 780-6491

Senior Project Superintendent: Neil Reese (970) 946-7986

Chief Estimator: Ryan Sorenson (970) 531-2704

Bid Proposal Requirements:

In addition to clearly indicating scopes of work and specification sections being bid, subcontractor bids shall include the following information with their bid proposals:

- NM DOL number.
- NM Contractor's license number.
- Experience Modification Rate (EMR).
- If bid amount is over \$125,000 include name of bonding company and bonding limit.
- Acknowledgement of Addenda.
- A list of 3 projects of similar size and complexity with contact information for owner and general contractor; **or**, a project execution plan with a list of proposed management team, field operations and manpower plan, and equipment plan.
- **Proposal received shall be valid for a minimum of 90 days.**
- Long lead items that may impact the project is not procured early MUST BE IDENTIFIED IN YOUR PROPOSAL. Refer to Attachment A Preliminary Schedule.

Selection:

Bids will be evaluated based on price, value engineering capabilities, completeness of scope, past performance on projects of similar size and complexity, safety program/record, and ability to meet schedule durations. Bids may be evaluated by Public School Facilities Authority of New Mexico (PSFA) and Farmington Municipal Schools prior to selection. Notification will occur as soon as possible following review.

Value Engineering:

Value engineering encourages using alternative methods and materials that are less expensive and do not lower the functionality of the system, service, or product. Jaynes is committed to this process and will rely on this systematic approach to realize value within the project. Selected Subcontractors shall be required to participate in this effort.

Schedule, Phasing, Logistics:

Construction of Phase 1 (New Building) is proposed to begin on **January 1st, 2024** and run through **June 2nd, 2026**. Phase 2 shall begin **June 15th, 2025** and run through **October 15th, 2026**.

SCHOOL WILL BE IN SESSION ON CAMPUS DURING CONSTRUCTION. IT IS IMPERATIVE THAT THE CONSTRUCTION PROCESSES MINIMIZE DISTRUPTION TO THE CAMPUS. Background checks will be implemented on all workers.

All Warranties shall extend to the dates of substantial completion.

“Reasonably Inferred”:

Project Plans and Specifications are never perfect. Asking questions is highly recommended prior to the Q & A deadline. Your proposals will be assumed to be complete systems and you will be responsible for any and all items that pertain to your scope that can be “reasonably inferred” from the contract documents. Please submit all questions in writing. Please do not contact the design team directly. If discussions with the design team become necessary, arrangements can be made for a meeting or phone conference.

Insurance & Bonding Requirements:

Subcontractors will be required to participate in Jaynes Contractor Controlled Insurance Program (CCIP). See Exhibit F Jaynes Subcontractors insurance requirements. Also, see Exhibit E & G for trades typically excluded from the CCIP policy. Excluded trades will be required to carry Independent General Liability Insurance.

Subcontractors and suppliers with bids equal to or greater than \$125,000 may be required to supply a performance and payment bond. Please include the cost of the bonds in your bid or indicate your bond percentage clearly on your proposal.

Billing - Textura:

All subcontractors will be required to use Textura for monthly billings. The rate to use Textura is 0.22% of the value of your contract with a minimum fee of \$50 and a maximum of \$5,000 for contracts exceeding \$2,272,727.00. Sub -tier Subcontractors pay a flat \$100.00 fee per contract. Please include the Textura fee in your bid.

Health and Safety:

All on-site personnel are required to adhere to Jaynes Corporation and OSHA safety standards. Noncompliance of safety requirements and improper decorum will not be tolerated.

General Wage Decision:

The Department of Workforce Solutions has issued this project a General Wage Decision. The Wage Decision document published in the Specification has Expired. Download and reference the January 1, 2024 Type B General Building Wage Determination located in the Building Connected ITB Files.

Digital Plans:

Jaynes Corporation manages our project documents through digital means. As such, paper-based project documents such as plans, specs, and other records will NOT be provided to your company. Jaynes will maintain a digital working set of drawings available to all parties and encourage your teams to use digital tools as the primary way to access project information.

QAQC:

Jaynes will be utilizing a QAQC program which all subcontractors will be required to participate in. Mock-ups will be extremely important, particularly for trades associated with the exterior envelope. There will be a large scale, stand-alone mock-ups that will incorporate the exterior wall assembly, storefront, and top of wall components. Successful subs will be required to provide their trade components in this assembly as part of their bid.

Lean Participation:

Full cooperation in LEAN building practices as determined by the Project Superintendent will be expected by successful bidders. This will consist of pull plan meetings for 2-month sections of work, 15-minute daily huddles, and a weekly coordination meeting. Foreman will be expected to be on time and fill out a weekly work plan each week.

Construction Management:

CONSTRUCTION MANAGER AT RISK (CMAR)

Farmington Municipal Schools (FMS) and Public-School Facilities Authority (PSFA) have contracted with Jaynes Corporation to manage this project as a CMAR. As such, Jaynes and all participating companies are tasked with ensuring this facility is constructed for the quoted amounts. Special attention needs to be given to coordination and cooperation with other trades during the construction process, and toward finding solutions to cost and scheduling issues that may arise. The same consideration will be given to companies working directly for FMS and PSFA.

Jaynes utilizes ConsensusDocs 750 for subcontracts.

Procore Construction Management software will be utilized to process vital information including RFIs, submittals, change orders, and other information.

Cleaning:

Due to the active campus status, successful bidders will be required to give extra care to daily cleanup of their work areas. Daily disposal of all trash, refuse, sweeping, etc. As necessary to keep a tidy work area is required.

ATTACHMENTS:

Attachment A – Forthcoming

Attachment B – Oracle Textura Payment Management

Attachment E – CCIP (Notice of Insurance Requirements)

Attachment F – Sample CD 750 Contract

Attachment G – CCIP (Enrollment – A Guide to Typically Enrolled and Typically Excluded Trades)

*Geotech Report (located within the project specifications document) This report can also be downloaded via the Building Connected ITB Files)

*General Building wage rates. The Wage Decision document published in the Specification has Expired. Download and reference the January 1, 2024 Type B General Building Wage Determination located via the Building Connected ITB Files.

Oracle's Textura Payment Management: Work Faster and More Efficiently

What Is Textura Payment Management (TPM®)?

Oracle's TPM is an Internet-based construction invoicing and payment solution. With the TPM system, subcontractors can electronically sign and submit their pay applications—including invoices, sworn statements, and conditional and/or unconditional lien waivers. Payments are made electronically via ACH (Automated Clearing House) resulting in faster access to your funds. In addition, TPM facilitates submission and tracking of compliance documents and sub-tier waivers. In short, TPM has revolutionized the construction payment process. Thousands of subcontractors currently use TPM to submit their pay applications every month.

Sign Pay Applications and Submit Electronically

TPM automatically generates the required Pay Application documents and transmits them to your GC electronically at the click of a button.

- Invoices are created by simply entering a percent complete or dollar value by line item of your budget
- Electronic submission of documents eliminates the expense and inconvenience of fax or hand delivery
- Invoice amounts are verified with lien waiver and payment amounts, reducing the risk of error

Receive Payments via ACH

TPM uses the secure ACH network for electronic deposit of funds to accelerate draw payments.

- ACH will deliver funds faster than a manual check. Payments are made through TPM directly by the GC and are subject to the terms of your contract.
- ACH works like direct deposit. Funds are immediately available, no waiting for checks to clear.
- TPM alerts you via email that payment has been disbursed.

Know What is Happening, When It Happens

TPM offers complete visibility throughout the draw process and notifies users of critical events.

- Receive real-time notifications when a draw is opened, change order issued, payment disbursed, etc.
- Receive email reminders to update expiring insurance documents and notification of non-compliance.
- Online invoice approval and rejection ensures that both parties are informed of final invoice amounts.

Manage Documents Online

Project documents created in or uploaded to the system are available for viewing, printing or downloading to your computer. TPM will store these documents for a minimum of ten years.

- Pay Application backup documents are submitted quickly and easily via an upload attachment feature.
- Electronic submission & tracking of legal documents such as insurance certificates reduces payment holds.
- Possibility for lost or delayed documents resulting in held payments is virtually eliminated

What Does It Cost to Use TPM?

0.22 % of contract value*

- Maximum – \$5,000
- Sub-tier subcontractors – \$100

Payment Methods

- ACH (default) or Credit Card

**Plus applicable taxes*

Technical Requirements:

TPM is completely web-based- there is no software to install. Users need only:

- Internet access (high-speed recommended)
- Email access for each user
- Adobe Acrobat Reader 6.0 or higher (free download)

Free Training & Support:

Our Training Supports your training needs with:

- Free webinars
- Individual training by phone
- Training videos
- Live in-app chat

Support representatives are available to answer your questions at 866 -TEXTURA (866-839-8872).

Notice of Project Insurance Requirements –

In addition to customary insurance requirements for this Project, Jaynes Corporation may choose to utilize a General Liability only CCIP for this Project. If so, the successful Bidder will receive Exhibit F (CCIP) Insurance Requirements to replace any previous version of Exhibit F to the Standard Subcontract which defines the responsibilities and minimum insurance coverage outside of the CCIP that will be required by the project. The successful Bidder will also receive, as a Subcontract Document, a CCIP manual addressing other mandatory CCIP procedures.

Because of this possibility, Bidders **must include** with their bid proposal a deductive bid alternate breaking out the cost of the bidder's General Liability and Excess Liability allocable to its proposed on-site subcontract work. Bidders must also advise their sub-tier bidders of this same procedure.

If Jaynes utilizes a General Liability only CCIP for this Project, Bidders are hereby notified the following Subcontractors are not eligible for CCIP coverage:

- Crane Subcontractors of any tier:
- Entities whose primary scope of work is to perform hazardous materials remediation, removal and/or transport companies and their consultants;
- Architects, surveyors, engineers, and other professional services providers such as soil testing engineers or concrete testing engineers or other material testing engineers, and each of their respective consultants;
- Any person and/or organization that does not have responsibility for labor or installation on the Site such as fabrication or the manufacture of products, materials or supplies away from the Site with delivery to the Site. Jaynes, in its sole discretion, may designate a fabricator or supplier as an Eligible Subcontractor in the event that its erection or installation Subcontractor performs Work on the Site;
- Vendors, suppliers, fabricators, material dealers, truckers, haulers, owner/operators (independent contractors), drivers and others whose operation(s) and/or employee(s) is/are engaged solely in the loading, hauling and/or unloading of material, supplies and/or equipment to or from the Site;
- Subcontractors and each of their respective sub-subcontractors who do not perform any actual labor on the Site; and
- Any other parties whom Jaynes, in its sole discretion, elects to exclude from the CCIP, even if otherwise eligible.

Enrollment- A Guide to *Typically* Enrolled and *Typically* Excluded Trades

Enrolled Trades should include trades who perform installation work on the project site. These would include the core trades such as foundations, framing, roofing, electrical, plumbing, and HVAC. This category can also include any number of smaller trades such as painting, tile work, countertops and cabinetry...

While the list of Enrolled Trades could go on forever, it is simpler to define those trades that are typically excluded from an OCIP or a CCIP:

- Architects, engineers, and other trades whose scope of work is covered by Professional Liability
- Pest Control and other trades whose scope of work is covered by Pollution Liability
- Hazardous materials remediation, removal and/or transport
- Fabricators away from the Project location and does not install such products
- Equipment rental companies who perform equipment maintenance and do not provide operators
- Delivery-only: engaged solely in the loading, hauling and/or unloading of material, supplies and/or equipment to or from the project location
- Scaffold
- Site Security
- Temporary Fencing
- Trash Removal
- Blasting contractors
- Tower crane operators
- Clean-up
- Consulting Services
- Designers
- Developers
- Leased Labor and Temporary Labor
- Pest Control
- Portable Toilets
- Demolition contractors
- Vendors-only
- Suppliers-only
- Those who do not perform actual labor on the Project site

Gray Areas and Exceptions

There are occasions where policy endorsements allow for typically excluded trades to be enrolled or a trade that would typically be enrolled will be excluded and providing its own GL coverage. When there is a question about enrollment, turn to the assigned project manager for guidance, and note the outcome in the portal for future reference.

ConsensusDocs® 750

STANDARD AGREEMENT BETWEEN CONSTRUCTOR AND SUBCONTRACTOR JAYNES CORPORATION SUBCONTRACT



TABLE OF ARTICLES

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11. DISPUTE MITIGATION AND RESOLUTION
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ARTICLE 1 AGREEMENT

This Agreement is made this [] Day of [] in the year [], by and between the
CONSTRUCTOR, []



and the

SUBCONTRACTOR, []

for services in connection with the SUBCONTRACT WORK for the following

PROJECT []

Notice to the Parties shall be given at the above addresses. The Date of Commencement is the date of this Agreement above.

The OWNER is [], and the DESIGN PROFESSIONAL for the Project is [].

ARTICLE 2 SCOPE OF WORK

2.1 PARTIES' RELATIONSHIP The Parties each agree to proceed with the Subcontract Work on the basis of mutual trust, good faith, and fair dealing. The Parties shall each endeavor to promote harmony and cooperation.

2.2 SUBCONTRACT WORK The Constructor contracts with the Subcontractor as an independent contractor to provide all labor, materials, equipment, and services necessary or incidental to complete the work for the Project described in ARTICLE 1 and as may be set forth in further detail in Exhibit A, in accordance with, and reasonably inferable from, that which is indicated in the Subcontract Documents, and consistent with the Progress Schedule, as may change from time to time. The Subcontractor shall perform the Subcontract Work under the general direction of the Constructor and in accordance with the Subcontract Documents. Subcontractor is to have competent supervision on site at all times during the course of work covered under this Subcontract. Subcontractor's onsite supervision will not be changed during the course of this subcontract without the advanced notice and permission of the Constructor.

2.3 CONSTRUCTOR'S WORK The Constructor's Work is the construction and services required of the Constructor to fulfill its obligations pursuant to its agreement with the Owner (the Work). The "Subcontract Work" is a portion of the Constructor's Work.

2.3.1 ETHICS The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest and discloses promptly any to the other Party; and (b) warrants that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, subcontractors or others for whom they may be liable, to secure preferential treatment.

2.4 SUBCONTRACT DOCUMENTS The Subcontract Documents include this Agreement, the prime agreement, special conditions, general conditions, specifications, drawings, addenda issued and acknowledged prior to execution of this Agreement, amendments, laboratory testing to determine the nature of encountered hazardous materials, other documents listed in this Agreement, and modifications issued in accordance with this Agreement. The Constructor shall provide to the Subcontractor, prior to the execution of this Agreement, copies of the existing Subcontract Documents to which the Subcontractor will be bound. The Subcontractor shall provide copies of applicable portions of the Subcontract Documents to its proposed subcontractors and suppliers. Nothing shall prohibit the Subcontractor from obtaining copies of the Subcontract Documents from the Constructor at any time after the Subcontract Agreement is executed.

2.4.1 DOCUMENTS IN ELECTRONIC FORM If the Owner requires that the Owner, Design Professional, Constructor and Subcontractors exchange documents and data in electronic or digital form, prior to any such exchange, the Owner, Design Professional, and Constructor



may use ConsensusDocs 200.2, or another written protocol, governing all exchanges, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. The Subcontractor shall provide whatever input is needed to assist the Constructor in developing the protocol and shall be bound by the requirements of the written protocol. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient. In the event the Owner requires use of Consensus Docs 200.2, or another written protocol, Subcontractor shall cooperate with this requirement, and obey the terms of the protocol.

2.5 CONFLICTS In the event of a conflict between this ConsensusDocs 750 Standard Agreement as modified and the other Subcontract Documents, the ConsensusDocs 750 shall govern.

2.6 DEFINITIONS

2.6.1 “Agreement” means this ConsensusDocs 750 Standard Agreement Between Constructor and Subcontractor, as modified by the Parties, and exhibits and attachments made part of this agreement upon its execution.

2.6.2 “Business Day” means all Days, except weekends and official federal or state holidays where the Project is located.

2.6.3 The term “Day” shall mean calendar day.

2.6.4 “Laws” mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Subcontract Work with which the Constructor and Subcontractor must comply that are enacted as of the Agreement date.

2.6.5 The “Parties” are collectively the Constructor and the Subcontractor.

2.6.6 Wherever the term “Progress Schedule” is used in this Agreement, it shall be read as Project Schedule when that term is used in the Subcontract Documents.

2.6.7 A “Subcontract Change Order” is a written order signed by the Constructor and the Subcontractor after execution of this Agreement, indicating changes in the scope of the Subcontract Work, the Subcontract Amount or Subcontract Time, including substitutions proposed by the Subcontractor and accepted by the Constructor.

2.6.8 “Subcontract Time” means the time period on the Progress Schedule between commencing and completing the Subcontract Work.

2.6.9 “Worksite” means the geographical area of the Project location as identified in ARTICLE 1 where the Work is to be performed.

ARTICLE 3 SUBCONTRACTOR'S RESPONSIBILITIES

3.1 OBLIGATIONS The Constructor and the Subcontractor are hereby mutually bound by the terms of this Agreement. To the extent the terms of the prime agreement apply to the Subcontract Work, then the



Constructor hereby assumes toward the Subcontractor all the obligations, rights, duties, and redress that the Owner under the prime agreement assumes toward the Constructor. In an identical way, the Subcontractor hereby assumes toward the Constructor all the same obligations, rights, duties, and redress that the Constructor assumes toward the Owner and Design Professional under the prime contract. The prime agreement may contain flow-down requirements applicable to Subcontractor, and Subcontractor agrees to abide by such requirements, if any. Upon Subcontractor's request, Constructor shall promptly provide a copy of the prime agreement to Subcontractor. In the event of an inconsistency among the documents, the specific terms of this Agreement shall govern.

3.2 RESPONSIBILITIES The Subcontractor agrees to furnish its best skill and judgment to perform the Subcontract Work in an expeditious and diligent manner and to cooperate with the Constructor so that the Constructor may fulfill its obligations to the Owner. The Subcontractor shall furnish all of the labor, materials, equipment, and services, including but not limited to competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of the Subcontract Work, all of which shall be provided in full accord with and reasonably inferable from the Subcontract Documents. The Subcontractor shall provide the Constructor a list of its proposed subcontractors and suppliers, and be responsible for taking field dimensions, providing tests, obtaining required permits related to the Subcontract Work and affidavits, ordering of materials, and all other actions as required to meet the Progress Schedule.

3.3 INCONSISTENCIES AND OMISSIONS The Subcontractor shall examine and compare the drawings, specifications, other Subcontract Documents, and information furnished by the Owner relative to the Subcontract Work. Such examination and comparison shall be solely for the purpose of facilitating the Subcontract Work and not for the discovery of errors, inconsistencies, or omissions in the Subcontract Documents nor for ascertaining if the Subcontract Documents are in accordance with Laws. The Subcontractor shall not have liability for errors, omissions, or inconsistencies discovered under this subsection unless the Subcontractor knowingly fails to report a recognized problem to the Constructor. Should the Subcontractor discover any errors, inconsistencies, or omissions in the Subcontract Documents, the Subcontractor shall promptly report such discoveries to the Constructor in writing. Following receipt of written notice, the Constructor shall promptly instruct the Subcontractor as to the measures to be taken, and the Subcontractor shall comply with the Constructor's instructions. If the Subcontractor performs work knowing it to be contrary to Laws without notice to the Constructor and advance approval by appropriate authorities, including the Constructor, the Subcontractor shall assume responsibility for such work and bear all associated costs, charges, fines, penalties, fees, and expenses necessarily incurred to remedy the violation. The Subcontractor may be entitled to additional costs or time because of clarifications or instructions arising out of the Subcontractor's reports described in this section. Nothing in this section shall relieve the Subcontractor of responsibility for its own errors, inconsistencies, and omissions.

3.4 WORKSITE VISITATION Before commencing the Subcontract Work, the Subcontractor shall conduct a visual inspection of the Worksite to become generally familiar with local conditions and to correlate Worksite observations with the Subcontract Documents. If the Subcontractor discovers any discrepancies between its Worksite observations and the Subcontract Documents, such discrepancies shall be promptly reported to the Constructor.

3.5 INCREASED COSTS OR TIME The Subcontractor may assert a claim if the Constructor's clarifications or instructions in responses to requests for information are believed to require additional time or cost. If the Subcontractor fails to perform the reviews and comparisons required in sections 0 and 3.4, to the extent the Constructor is held liable to the Owner because of the Subcontractor's failure, the Subcontractor shall pay the costs and damages to the Constructor that would have been avoided if the Subcontractor had performed those obligations.



3.6 COMMUNICATIONS Unless otherwise provided in the Subcontract Documents and except for emergencies, the Subcontractor shall direct all communications related to the Project to the Constructor.

3.7 SUBMITTALS

3.7.1 The Subcontractor promptly shall submit for approval to the Constructor all shop drawings, samples, product data, manufacturers' literature, and similar submittals required by the Subcontract Documents. Submittals shall be submitted in electronic form if required. The Subcontractor shall be responsible to the Constructor for the accuracy and conformity of its submittals to the Subcontract Documents. The Subcontractor shall prepare and deliver its submittals to the Constructor in a manner consistent with the Progress Schedule and in such time and sequence so as not to delay the Constructor or others in the performance of the Work. The Subcontractor's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Subcontract Documents. The approval of any Subcontractor submittal shall not be deemed to authorize changes, deviations, or substitutions in the requirements of the Subcontract Documents unless express written approval is obtained from the Constructor and Owner authorizing such change, deviation, or substitution. Such approval shall be promptly memorialized in a Subcontract Change Order within seven (7) Days following approval by the Constructor and, if applicable, provide for an adjustment in the Subcontract Amount or Subcontract Time. If the Subcontract Documents do not contain submittal requirements pertaining to the Subcontract Work, the Subcontractor agrees upon request to submit in a timely fashion to the Constructor for approval any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by the Constructor, Owner, or Design Professional.

3.7.2 The Constructor, Owner, and Design Professional are entitled to rely on the adequacy, accuracy, and completeness of any professional certifications required by the Subcontract Documents concerning the performance criteria of systems, equipment, or materials, including all relevant calculations and any governing performance requirements.

3.8 DESIGN DELEGATION

3.8.1 If the Subcontract Documents (a) specifically require the Subcontractor to procure design services, and (b) specify all design and performance criteria, the Subcontractor shall provide those design services necessary to satisfactorily complete the Subcontract Work. As permitted by the laws, rules, and regulations in the jurisdiction where the Project is located, the Subcontractor shall procure such services and any necessary certifications from licensed design professionals. The signature and seal of Subcontractor's design professional shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Subcontract Work designed or certified by the Subcontractor's design professional. The Constructor shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications, or approvals performed by the Subcontractor's design professional.

3.8.2 If the Subcontractor's design professional is an independent professional, the design services shall be procured pursuant to a separate written agreement between the Subcontractor and the design professional. The agreement between the Subcontractor and the Subcontractor's design professional shall not include any limitation of liability, except to the extent that consequential damages are waived pursuant to subsection 5.4.1, or exclusion from participation in the multiparty proceedings requirement of section 11.4. The Subcontractor's design professional(s) is _____. The Subcontractor shall notify the Constructor in writing if it intends to change its procured design professional. The Subcontractor shall be responsible for conformance of its design with the information given



and the design concept expressed in the Subcontract Documents. The Subcontractor shall not be responsible for the adequacy of the performance or design criteria required by the Subcontract Documents.

3.8.3 The Subcontractor shall not be required to provide design services in violation of any applicable law.

3.9 TEMPORARY SERVICES The Subcontractor's and Constructor's respective responsibilities for temporary services are set forth in Exhibit A.

3.10 COORDINATION The Subcontractor shall: (a) cooperate with the Constructor and all others whose work may interface with the Subcontract Work, (b) specifically note and immediately advise the Constructor of any such interface with the Subcontract Work, and (c) participate in the preparation of coordination drawings and work schedules in areas of congestion.

3.11 SUBCONTRACTOR'S REPRESENTATIVE The Subcontractor shall designate a person, subject to the Constructor's approval, who shall be the Subcontractor's authorized representative. This representative shall be the only person to whom the Constructor shall issue instructions, orders, or directions, except in an emergency. The Subcontractor's representative is _____, who is agreed to by the Constructor. If the Subcontractor changes its representative, the Subcontractor shall immediately notify the Constructor in writing.

3.12 TESTS AND INSPECTIONS The Subcontractor shall schedule all required tests, approvals and inspections of the Subcontract Work at appropriate times so as not to delay the progress of the work. The Subcontractor shall give proper written notice to all required Parties of such tests, approvals, and inspections. Except as otherwise provided in the Subcontract Documents the Subcontractor shall bear all expenses associated with tests, inspections, and approvals required of the Subcontractor by the Subcontract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity approved by the Constructor and Owner. Required certificates of testing, approval, or inspection shall, unless otherwise required by the Subcontract Documents, be secured by the Subcontractor and promptly delivered to the Constructor.

3.13 WARRANTIES The Subcontractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Subcontract Documents, and free from defective workmanship and materials. Upon request by the Constructor, the Subcontractor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. The Subcontractor further warrants that the Subcontract Work shall be free from material defects not intrinsic in the design or materials required in the Subcontract Documents. The Subcontractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by others, or abuse. The Subcontractor's warranties shall commence on the date of Substantial Completion of the Work or a designated portion.

3.14 CLEANUP

3.14.1 The Subcontractor shall at all times during its performance of the Subcontract Work keep the Worksite clean and free from debris resulting from the Subcontract Work. Prior to discontinuing the Subcontract Work in an area, the Subcontractor shall clean the area and remove all its rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The Subcontractor shall make provisions to minimize and confine dust and debris resulting from its construction activities. The Subcontractor shall not be held responsible for unclean conditions caused by others. The Subcontractor shall be responsible to haul off and properly dispose of any construction debris deemed under OSHA and EPA landfill



requirements to be hazardous materials. Subcontractor shall adhere to all hazardous material laws in handling and disposing of same.

3.14.2 If the Subcontractor fails to commence compliance with cleanup duties within two (2) business Days after written notification from the Constructor of non-compliance, the Constructor may implement appropriate cleanup measures without further notice and shall deduct the reasonable costs from any amounts due or to become due the Subcontractor in the next payment period.

3.15 SAFETY

3.15.1 The Subcontractor is required to perform the Subcontract Work in a safe and reasonable manner. The Subcontractor shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect:

3.15.1.1 employees and other persons at the Worksite;

3.15.1.2 materials and equipment stored on or off the Worksite for use in performance of the Subcontract Work; and

all property and structures located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

3.15.2 The Subcontractor shall give all required notices and comply with all applicable rules, regulations, orders, and other lawful requirements established to prevent injury, loss, or damage to persons or property.

3.15.3 The Subcontractor shall implement appropriate safety measures pertaining to the Subcontract Work and the Project, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers, and establishing proper notice procedures to protect persons and property at the Worksite and adjacent to the Worksite from injury, loss, or damage. Subcontractor shall comply and fully cooperate with Jaynes' safety program, including all procedures contained within Exhibit C.

3.15.4 The Subcontractor shall exercise extreme care in carrying out any of the Subcontract Work which involves explosive or other dangerous methods of construction or hazardous procedures, materials, or equipment. The Subcontractor shall use properly qualified individuals or entities to carry out the Subcontract Work in a safe and reasonable manner so as to reduce the risk of bodily injury or property damage.

3.15.5 Damage or loss to the extent caused by the negligent acts or omissions of the Subcontractor, or anyone for whose acts the Subcontractor may be liable, shall be promptly remedied by the Subcontractor. Damage or loss to the extent caused by the negligent acts or omissions of the Constructor, or anyone for whose acts the Constructor may be liable, shall be promptly remedied by the Constructor.

3.15.6 The Subcontractor is required to designate an individual at the Worksite in the employ of the Subcontractor who shall act as the Subcontractor's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Subcontractor in writing to the Constructor, the designated safety representative shall be the Subcontractor's project superintendent. Such safety representative shall attend Worksite safety meetings as requested by the Constructor.



3.15.7 The Subcontractor has an affirmative duty not to overload the structures or conditions at the Worksite and shall take reasonable steps not to load any part of the structures or Worksite so as to give rise to an unsafe condition or create an unreasonable risk of bodily injury or property damage. The Subcontractor shall have the right to request, in writing, from the Constructor loading information concerning the structures at the Worksite.

3.15.8 The Subcontractor shall give prompt written notice to the Constructor of any accident involving bodily injury requiring a physician's care, any property damage exceeding five hundred dollars (\$500.00) in value, or any failure that could have resulted in serious bodily injury, whether or not such an injury was sustained.

3.15.9 Prevention of accidents at the Worksite is the responsibility of the Constructor, the Subcontractor, and all other subcontractors, persons, and entities at the Worksite. Establishment of a safety program by the Constructor shall not relieve the Subcontractor or other Parties of their safety responsibilities. The Subcontractor shall establish its own safety program implementing safety measures, policies, and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by the Constructor and the Owner, including, but not limited to, requirements imposed by the Subcontract Documents. The Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project, and shall stop any part of the Subcontract Work which the Constructor deems unsafe until corrective measures satisfactory to the Constructor shall have been taken. The Constructor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility therefor. The Subcontractor shall notify the Constructor immediately following a reportable incident under applicable rules, regulations, orders, and other lawful requirements, and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by the Constructor. To the fullest extent permitted by law, each Party to this Agreement shall indemnify the other Party from and against fines or penalties imposed as a result of safety violations, but only to the extent that such fines or penalties are caused by its failure to comply with applicable safety requirements or regulations. This indemnification obligation does not extend to additional or increased fines that result from repeated or willful violations not caused by the Subcontractor's failure to comply with applicable rules, regulations, orders, and other lawful requirements.

3.16 PROTECTION OF THE WORK The Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of others from damage caused by the Subcontractor's operations. Should the Subcontractor cause damage to the Subcontract Work or property of the Owner, the Constructor, or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Constructor, or the Constructor may, after forty-eight (48) hours written notice to the Subcontractor, remedy the damage and deduct its cost from any amounts due or to become due the Subcontractor, unless such costs are recovered under applicable property insurance. In the event the cost incurred by the Constructor to remedy the damage exceeds any amounts due or to become due to the Subcontractor, and unless such costs are recovered under applicable insurance, the Subcontractor shall pay the excess to the Constructor within thirty (30) days from the date Constructor provides written substantiation of all costs incurred to remedy the damage.

3.17 EMERGENCIES In an emergency affecting the safety of persons or property, the Subcontractor shall act to prevent threatened damage, injury, or loss. Any change in the Subcontract Amount or the Progress Schedule from actions of the Subcontractor in an emergency situation shall be as determined in ARTICLE 7.

3.18 PERMITS, FEES, LICENSES, AND TAXES The Subcontractor shall give timely notices to authorities pertaining to the Subcontract Work, and shall be responsible for all permits, fees, licenses,



assessments, inspections, testing, and taxes necessary to complete the Subcontract Work in accordance with the Subcontract Documents.

3.19 HAZARDOUS MATERIALS To the extent that the Constructor has rights or obligations under the prime agreement or by Law regarding hazardous materials as defined by the Subcontract Documents within the scope of the Subcontract Work, the Subcontractor shall have the same rights or obligations.

3.20 MATERIAL SAFETY DATA (MSD) SHEETS The Subcontractor shall submit to the Constructor all Material Safety Data Sheets required by law for materials or substances necessary for the performance of the Subcontract Work. MSD sheets obtained by the Constructor from other subcontractors or sources shall be made available to the Subcontractor by the Constructor.

3.21 LAYOUT RESPONSIBILITY AND LEVELS Unless specifically included in Subcontractor's Work, the Constructor shall establish principal axis lines of the building and Worksite, and benchmarks. The Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontract Work and for any loss or damage to the Constructor or others by reason of the Subcontractor's failure to lay out or perform Subcontract Work correctly. The Subcontractor shall exercise prudence so that the actual final conditions and details shall result in alignment of finish surfaces.

3.22 UNCOVERING/CORRECTION OF SUBCONTRACT WORK

3.22.1 UNCOVERING OF SUBCONTRACT WORK

3.22.1.1 If required in writing by the Constructor, the Subcontractor must uncover any portion of the Subcontract Work which has been covered by the Subcontractor in violation of the Subcontract Documents or contrary to a directive issued to the Subcontractor by the Constructor. Upon receipt of a written directive from the Constructor, the Subcontractor shall uncover such work for the Constructor's or Owner's inspection and restore the uncovered Subcontract Work to its original condition at the Subcontractor's time and expense.

3.22.1.2 The Constructor may direct the Subcontractor to uncover portions of the Subcontract Work for inspection by the Owner or Constructor at any time. The Subcontractor is required to uncover such work whether or not the Constructor or Owner had requested to inspect the Subcontract Work prior to it being covered. Except as provided by the subsection immediately above, this Agreement shall be adjusted by Subcontract Change Order for the cost and time of uncovering and restoring any work which is uncovered for inspection and proves to be installed in accordance with the Subcontract Documents, provided the Constructor had not previously instructed the Subcontractor to leave the work uncovered. If the Subcontractor uncovers work pursuant to a directive issued by the Constructor, and such work upon inspection does not comply with the Subcontract Documents, the Subcontractor shall be responsible for all costs and time of uncovering, correcting and restoring the work so as to make it conform to the Subcontract Documents. If the Constructor or some other entity for which the Subcontractor is not responsible caused the nonconforming condition, the Constructor shall be required to adjust this Agreement by Subcontract Change Order for all such costs and time.

3.22.2 CORRECTION OF WORK

3.22.2.1 If the Design Professional, Owner, or Constructor rejects the Subcontract Work or the Subcontract Work is not in conformance with the Subcontract Documents, the Subcontractor shall promptly correct the Subcontract Work whether it had been fabricated, installed, or completed. The Subcontractor shall be responsible for the costs of correcting



such Subcontract Work, any additional testing, inspections, and compensation for services and expenses of the Design Professional and Constructor made necessary by the defective Subcontract Work. Subcontractor shall begin and continue its corrective work within 72 hours of written notification from the Constructor.

3.22.2.2 The Subcontractor agrees to promptly correct, after receipt of a written notice from the Constructor, all Subcontract Work performed under this Agreement which proves to be defective in workmanship or materials within a period of one year from the date of Substantial Completion of the Subcontract Work or for a longer period of time as may be required by specific warranties in the Subcontract Documents. Substantial Completion of the Subcontract Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Subcontract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unscheduled disruption. If the Subcontractor fails to correct defective or nonconforming Subcontract Work within a reasonable time after receipt of notice from the Constructor, the Constructor may correct such Subcontract Work pursuant to subsection 10.1.1.

3.22.3 The Subcontractor's correction of Subcontract Work pursuant to this section shall not extend the one-year period for the correction of Subcontract Work, but if Subcontract Work is first performed after Substantial Completion, the one-year period for corrections shall be extended by the time period after Substantial Completion and the performance of that portion of Subcontract Work. The Subcontractor's obligation to correct Subcontract Work within one year does not limit the enforcement of the Subcontractor's other obligations with regard to the Agreement and the Subcontract Documents.

3.22.4 If the Subcontractor's correction or removal of Subcontract Work destroys or damages completed or partially completed work of the Owner, the Constructor, or any separate contractors or subcontractors, the Subcontractor shall be responsible for the reasonable cost of correcting such destroyed or damaged property.

3.22.5 If portions of Subcontract Work which do not conform with the requirements of the Subcontract Documents are neither corrected by the Subcontractor nor accepted by the Constructor, the Subcontractor shall remove such Subcontract Work from the Project Worksite if so directed by the Constructor.

3.23 MATERIALS OR EQUIPMENT FURNISHED BY OTHERS If the scope of the Subcontract Work includes installation of materials or equipment furnished by others, the Subcontractor is responsible for exercising proper care in receiving, handling, storing, and installing such items, unless otherwise provided in the Subcontract Documents. The Subcontractor shall examine the items provided and report to the Constructor in writing any items it may discover that do not conform to requirements of the Subcontract Documents. The Subcontractor shall not proceed to install nonconforming items without further instructions from the Constructor. Loss or damage due to acts or omissions of the Subcontractor shall, upon two (2) Business Days' written notice to the Subcontractor, be deducted from any amounts due or to become due the Subcontractor.

3.24 SUBSTITUTIONS & DEVIATIONS No substitutions shall be made in the Subcontract Work unless permitted in the Subcontract Documents, and only upon the Subcontractor first receiving all written approvals required under the Subcontract Documents for substitutions. Subcontractor shall not deviate, change, or substitute its Work without express written approval by the Constructor. Any Subcontractor Work deviating from the Subcontract Documents, including but not limited to all applicable specifications, drawings, or design documents provided to Subcontractor, is not acceptable under this Subcontract and shall be considered non-conforming Work unless Subcontractor obtains express written authorization



from Constructor for the specific deviation, change, or substitution. Verbal directives shall not constitute valid authorization for Subcontractor to make or proceed with any deviation, change, or substitution to the Subcontract Documents.

3.25 USE OF CONSTRUCTOR'S EQUIPMENT The Subcontractor, its agents, employees, subcontractors or suppliers shall use the Constructor's equipment only with the express written permission of the Constructor's designated representative and in accordance with the Constructor's terms and conditions for such use. If the Subcontractor or any of its agents, employees, subcontractors or suppliers utilize any of the Constructor's equipment, including machinery, tools, scaffolding, hoists, lifts, or similar items owned, leased or under the control of the Constructor, the Subcontractor shall indemnify and be liable to the Constructor as provided in ARTICLE 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Constructor's employees operating the Constructor's equipment.

3.26 WORK FOR OTHERS Until final completion of the Subcontract Work, the Subcontractor agrees not to perform any work directly for the Owner or any tenants, or deal directly with the Owner's representatives in connection with the Subcontract Work, unless otherwise approved in writing by the Constructor.

3.27 SYSTEMS AND EQUIPMENT STARTUP With the assistance of the Owner's maintenance personnel and the Constructor, the Subcontractor shall direct the check-out and operation of systems and equipment for readiness, and assist in their initial startup and the testing of the Subcontract Work.

3.28 COMPLIANCE WITH LAWS The Subcontractor agrees to comply with all Laws at its own costs. The Subcontractor shall be liable to the Constructor and the Owner for all loss, cost, and expense attributable to any acts or omissions by the Subcontractor, its employees, and agents resulting from the failure to comply with Laws, including, any fines, penalties, or corrective measures, except as provided in subsection 3.15.9. However, liability under this section shall not apply if notice to Constructor was given, and advance approval by appropriate authorities, including the Constructor is received. Subcontractor is responsible for complying with all applicable labor and employment laws for its labor forces and, to the extent provided by law, Subcontractor shall indemnify and defend Constructor against any legal action, claim, penalty, or fine brought by any governmental entity against Constructor specifically relating to and arising out of Subcontractor's utilization or classification of any form of labor in connection with this Subcontract (including direct employment or independent contractor labor), but only to the extent caused by the acts or omissions of Subcontractor.

3.28.1 To the extent Constructor receives reimbursement or additional time from the Owner under the prime agreement, the Subcontract Amount or Progress Schedule shall be equitably adjusted for changes in Laws enacted after the date of this Agreement, including taxes, affecting the performance of the Work.

3.29 CONFIDENTIALITY To the extent the prime agreement provides for the confidentiality of any of the Owner's proprietary or otherwise confidential information disclosed in connection with the performance of this Agreement, the Subcontractor is equally bound by the Owner's confidentiality requirements.

3.30 ROYALTIES, PATENTS, AND COPYRIGHTS The Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by the Subcontractor and incorporated in the Subcontract Work. The Subcontractor shall defend, indemnify, and hold the Constructor and Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Subcontractor shall be liable for all loss, including all costs, expenses, and attorneys' fees, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Subcontract Documents. However, if the Subcontractor has reason to believe that a particular design,



process, or product required by the Subcontract Documents is an infringement of a patent, the Subcontractor shall promptly furnish such information to the Constructor or be responsible to the Constructor and Owner for any loss sustained as a result.

ARTICLE 4 CONSTRUCTOR'S RESPONSIBILITIES

4.1 CONSTRUCTOR'S REPRESENTATIVES The Constructor shall designate specific Jaynes representatives who shall be the Constructor's authorized representatives. The Constructor's representatives shall be the only persons the Subcontractor shall look to for instructions, orders or directions, except in an emergency. The Constructor's Representatives, including applicable Project Superintendents and Project Manager, shall be named and designated for each Jaynes Project. :

If the Constructor changes its representative, the Constructor shall promptly notify the Subcontractor in writing.

4.2 OWNER'S ABILITY TO PAY

4.2.1 Unless expressly prohibited by the prime agreement, the Constructor shall promptly provide to the Subcontractor the following information received from the Owner: (a) upon the Subcontractor's request, information regarding the Owner's financial ability to pay for the Work, and (b) notice of any material variation in the Owner's financial ability to pay. The Constructor, however, does not warrant the accuracy or completeness of the information provided.

4.2.2 If the Subcontractor does not receive the information referenced in the subsection immediately above with regard to the Owner's ability to pay for the Work as required by the Contract Documents, the Subcontractor may request the information from the Owner or Owner's lender.

4.3 CONSTRUCTOR APPLICATION FOR PAYMENT Upon request, the Constructor shall give the Subcontractor a copy of the most current Constructor application for payment reflecting the amounts approved or paid by the Owner for the Subcontract Work performed to date.

4.4 INFORMATION OR SERVICES The Subcontractor is entitled to request through the Constructor any information or services required for the Subcontractor's performance of the Subcontract Work which is under the Owner's control. The Subcontractor also is entitled to request through the Constructor any information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the Owner's interest in the real property on which the Project is located and the recorded legal title. To the extent the Constructor receives such information or services, the Constructor shall provide them to the Subcontractor in a timely manner. The Constructor, however, does not warrant the accuracy or completeness of the information provided by the Owner. To the extent the Owner provides any warranty of Owner provided information, the Constructor agrees to permit the Subcontractor to prosecute a claim in the name of the Constructor for the use and benefit of the Subcontractor, pursuant to subsection 5.3.2.

4.5 STORAGE AREAS The Constructor shall allocate adequate storage areas, if available, for the Subcontractor's materials and equipment during the course of the Subcontract Work. Unless otherwise agreed upon, the Constructor shall reimburse the Subcontractor for the additional costs of having to relocate such storage areas at the direction of the Constructor.

4.6 TIMELY COMMUNICATIONS The Constructor shall transmit to the Subcontractor, with reasonable promptness, all submittals, transmittals, and written approvals relative to the Subcontract Work. Unless



otherwise specified in the Subcontract Documents, if communications are not through the Subcontractor, the Constructor shall inform the Subcontractor of the communications the Constructor has with the Subcontractor's subcontractors, and suppliers.

4.7 USE OF SUBCONTRACTOR'S EQUIPMENT Except as provided within section 10.1.2, the Constructor, its agents, employees or suppliers shall use the Subcontractor's equipment only with the express written permission of the Subcontractor's designated representative and in accordance with the Subcontractor's terms and conditions for such use. If the Constructor or any of its agents, employees, or suppliers utilize any of the Subcontractor's equipment, including machinery, tools, scaffolding, hoists, lifts, or similar items owned, leased, or under the control of the Subcontractor, the Constructor shall indemnify and be liable to the Subcontractor as provided in ARTICLE 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Subcontractor's employees operating the Subcontractor's equipment.

ARTICLE 5 PROGRESS SCHEDULE

5.1 TIME IS OF THE ESSENCE Time is of the essence for both Parties. They mutually agree to see to the performance of their respective obligations so that the entire Project may be completed in accordance with the Subcontract Documents and particularly the Progress Schedule.

5.2 SCHEDULE OBLIGATIONS The Subcontractor shall provide the Constructor with any scheduling information proposed by the Subcontractor for the Subcontract Work. In consultation with the Subcontractor, the Constructor shall prepare the schedule for performance of the Work ("Progress Schedule") and shall revise and update such schedule, as necessary, as the Work progresses. Subcontractor further agrees to furnish manpower and duration estimates for their various portions of the work as required by the Constructor. Both the Constructor and the Subcontractor shall be bound by the Progress Schedule. The Progress Schedule and all subsequent changes and additional details shall be submitted to the Subcontractor promptly and reasonably in advance of the required performance. The Constructor shall have the right to determine and, if necessary, make reasonable changes to the time, order, and priority in which the various portions of the Work shall be performed and all other matters relative to the Subcontract Work.

5.3 DELAYS AND EXTENSIONS OF TIME

5.3.1 OWNER CAUSED DELAY Subject to the subsection immediately below, if the commencement or progress of the Subcontract Work is delayed without the fault or responsibility of the Subcontractor, the Subcontract Time shall be extended by Subcontract Change Order and the Subcontract Amount equitably adjusted to the extent obtained by the Constructor under the Subcontract Documents, and the Progress Schedule shall be revised accordingly. Subcontractor must notify Constructor in writing within fourteen (14) days of the occurrence of any delay to the Subcontract Work.

5.3.2 CLAIMS RELATING TO OWNER The Subcontractor agrees to notify and initiate all claims for which the Owner is or may be liable in the manner and within the time limits provided in the Subcontract Documents for like claims by the Constructor upon the Owner and in sufficient time for the Constructor to initiate such claims against the Owner in accordance with the Subcontract Documents. At the Subcontractor's request and expense to the extent agreed upon in writing, the Constructor agrees to permit the Subcontractor to prosecute a claim in the name of the Constructor for the use and benefit of the Subcontractor in the manner provided in the Subcontract Documents for like claims by the Constructor upon the Owner.



5.3.3 CONSTRUCTOR CAUSED DELAY Nothing in this article shall preclude the Subcontractor's recovery of delay damages caused by the Constructor to the extent not otherwise precluded by this Agreement.

5.3.4 CLAIMS RELATING TO CONSTRUCTOR The Subcontractor shall give the Constructor written notice of all claims not included in subsection 5.3.2 within fourteen (14) Days of the Subcontractor's knowledge of the facts giving rise to the event for which claim is made. Thereafter, the Subcontractor shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties agree upon a longer period of time. The Constructor shall respond in writing denying or approving, in whole or in part, the Subcontractor's claim no later than fourteen (14) Days after receipt of the Subcontractor's documentation of claim. The Constructor's failure to respond shall be deemed a denial of the Subcontractor's claim. All unresolved claims, disputes, and other matters in question between the Constructor and the Subcontractor not relating to claims included in subsection 5.3.2 shall be resolved as provided for in ARTICLE 11.

5.4 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

5.4.1 Except for any (a) liquidated, consequential, or other damages that the Owner is entitled to recover against the Constructor under the prime agreement, and (b) losses covered by insurance required by the Subcontract Documents, the Constructor and the Subcontractor mutually waive all claims against each other for consequential damages, regardless whether such claims are brought under theories of contract, tort, statute, strict liability or other legal theories, including damages for loss of business, loss of opportunity, loss of financing related to the Project, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. Similarly, the Subcontractor shall obtain in another agreement from its subsubcontractors mutual waivers of consequential damages that correspond to the Subcontractor's waiver of consequential damages herein. The provisions of this subsection shall also apply to and survive termination of this Agreement.

5.5 LIQUIDATED DAMAGES

5.5.1 If the Subcontract Documents provide for liquidated damages or other damages for delay beyond the completion date set forth in the Subcontract Documents that are not specifically addressed as a liquidated damage item in this Agreement, and such damages are assessed, the Constructor may assess a share of the damages against the Subcontractor in proportion to the Subcontractor's share of the responsibility for the damages. However, the amount of such assessment shall not exceed the amount assessed against the Constructor. This section shall not limit the Subcontractor's liability to the Constructor for the Constructor's actual damages caused by the Subcontractor.

5.5.2 To the extent the prime agreement provides for a mutual waiver of consequential damages by the Owner and the Constructor, damages for which the Constructor is liable to the Owner, including those related to section 9.1, are not consequential damages for the purpose of this waiver. Similarly, to the extent the agreement between the Subcontractor and Subsubcontractor provides for a mutual waiver of consequential damages by the Owner and the Constructor, damages for which the Subcontractor is liable to lower-tiered parties due to the fault of the Owner or Constructor are not consequential damages for the purpose of this waiver.

ARTICLE 6 SUBCONTRACT AMOUNT



As full compensation for performance of this Agreement, the Constructor agrees to pay the Subcontractor in current funds for the satisfactory performance of the Subcontract Work subject to all applicable provisions of this Agreement:

- a. the fixed-price of [] dollars (\$[]) subject to additions and deductions as provided for in the Subcontract Documents; or
- b. alternates and unit prices in accordance with the attached schedule of alternates and unit prices and estimated quantities; or
- c. time and material rates and prices in accordance with the attached Schedule of Labor and Material Costs.

The fixed-price, unit prices or time and material rates and prices are referred to as the Subcontract Amount.

ARTICLE 7 CHANGES

7.1 The Subcontractor may request or the Constructor may order changes in the Subcontract Work or the timing or sequencing of the Subcontract Work that impacts the Subcontract Amount or Subcontract Time. All such changes in the Subcontract Work that affect the Subcontract Amount or the Subcontract Time shall be formalized in a Subcontract Change Order. Any such requests for a change in the Subcontract Amount or Subcontract Time shall be processed in accordance with this article.

7.1.1 For changes in the Subcontract Work, the Constructor and the Subcontractor shall negotiate in good faith an appropriate adjustment to the Subcontract Amount or the Subcontract Time and shall conclude these negotiations as expeditiously as possible. Acceptance of the Subcontract Change Order and any adjustment in the Subcontract Amount or Subcontract Time shall not be unreasonably withheld. Subcontractor's acceptance of a Change Order shall constitute full and final resolution of the issue or issues addressed in the Change Order.

7.2 INTERIM DIRECTED CHANGES In the absence of agreement on the terms of a Subcontract Change Order, the Constructor may issue a written Interim Directed Change directing the Subcontractor to proceed with the Subcontract Work in question. If such Interim Directed Change is issued as a result of the Owner's issuance of an Interim Directed Change, Construction Change Directive, or equivalent directive, then the applicable provisions of the prime agreement shall govern. Otherwise, the Subcontractor shall separately submit its costs for the resulting change, beginning with its next regularly scheduled application for payment submitted after the issuance of the Interim Directed Change. If there is a dispute as to the cost, the Constructor shall pay the Subcontractor fifty percent (50%) of its estimated cost to perform the Subcontract Work. In such event, the Parties reserve their rights as to the disputed amount. If and when the Parties agree upon an adjustment in Subcontract Amount or Subcontract Time, such agreement shall be reflected in a Subcontract Change Order, and the payments to date shall be adjusted to reflect the Subcontract Change Order. If no agreement is reached, the Parties shall resolve the matter as provided in ARTICLE 11.

7.3 CONCEALED OR UNKNOWN SITE CONDITIONS If the conditions encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Subcontractor shall stop affected Work after the condition is first observed and give prompt written notice of the condition to the Constructor. The Subcontractor shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract



Price or the Contract Time as a result of the unknown condition shall be determined as provided in ARTICLE 5.

7.4 ADJUSTMENTS IN SUBCONTRACT AMOUNT If a Subcontract Change Order requires an adjustment in the Subcontract Amount, the adjustment shall be established by one of the following methods:

7.4.1 mutual acceptance of an itemized lump sum; or

7.4.2 unit prices as indicated in the Subcontract Documents or as subsequently agreed to by the Parties; or

7.4.3 costs as determined in the Subcontract Documents or in a manner otherwise acceptable to the Parties, and a mutually acceptable fixed or percentage fee.

7.5 ADJUSTMENTS FOR TIME AND MATERIAL WORK Time and Material work must be pre-authorized by the Project Manager in writing. The Subcontractor must submit documentation daily detailing all labor and material costs for approval by the Project Superintendent.

7.6 SUBSTANTIATION OF ADJUSTMENT If the Subcontractor does not respond promptly or disputes the method of adjustment, the method and the adjustment shall be determined by the Constructor on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Subcontract Amount, an allowance for overhead and profit of the percentage provided in section 7.7, or if none is provided, as mutually agreed upon by the Parties. The Subcontractor may contest the reasonableness of any adjustment determined by the Constructor. The Subcontractor shall maintain for the Constructor's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Subcontract Change Order:

7.6.1 labor costs, including Social Security, health, welfare, retirement, and other fringe benefits as normally required, and state workers' compensation insurance;

7.6.2 costs of materials, supplies, and equipment, whether incorporated in the Subcontract Work or consumed, including transportation costs;

7.6.3 costs of renting machinery and equipment other than hand tools;

7.6.4 costs of bond and insurance premiums, permit fees, and taxes attributable to the change; and

7.6.5 costs of additional supervision and field office personnel services necessitated by the change.

7.7 The specifications or applicable contract documents for the Project shall govern as to adjustments. In the absence of a specification or other contractual provision on adjustments, adjustments shall be based on net change in the Subcontractor's reasonable cost of performing the changed Subcontract Work plus, in case of a net increase in cost, an agreed upon sum for overhead and profit not to exceed [_____] percent (_____%).

7.8 NO OBLIGATION TO PERFORM The Subcontractor shall not be obligated to perform changes in the Subcontract Work that impact Subcontract Amount or Subcontract Time until a Subcontract Change Order has been executed or written instructions have been issued in accordance with sections 7.2 or 7.9.



7.9 INCIDENTAL CHANGES The Constructor may direct the Subcontractor to perform incidental changes in the Subcontract Work which do not involve adjustments in the Subcontract Amount or the Subcontract Time. Incidental changes shall be consistent with the scope and intent of the Subcontract Documents. The Constructor shall initiate an incidental change in the Subcontract Work by issuing a written order to the Subcontractor. Such written notice shall be carried out promptly and is binding on the Parties.

ARTICLE 8 PAYMENT

8.1 SCHEDULE OF VALUES As a condition precedent to payment, the Subcontractor shall provide a schedule of values satisfactory to the Constructor not more than fifteen (15) Days from the date of execution of this Agreement.

8.2 PROGRESS PAYMENTS

8.2.1 APPLICATIONS The Subcontractor's applications for payment shall be itemized and supported by substantiating data as required by the Subcontract Documents. If the Subcontractor is obligated to provide design services pursuant to section 3.8, the Subcontractor's applications for payment shall show its design professional's fee and expenses as a separate cost item. The Subcontractor's application for payment shall be notarized if required and if allowed under the Subcontract Documents may include properly authorized Subcontract Construction Change Directives or Interim Directed Changes. The Subcontractor's application for payment for the Subcontract Work performed in the preceding payment period shall be submitted for approval by the Constructor in accordance with the schedule of values if required and subsections 8.2.2 through 8.2.4. The Constructor shall incorporate the approved amount of the Subcontractor's application for payment into the Constructor's application for payment to the Owner for the same period and submit it to the Owner in a timely fashion. The Constructor shall promptly notify the Subcontractor of any changes in the amount requested on behalf of the Subcontractor.

8.2.2 CLOSEOUT & PUNCHLIST SCHEDULE OF VALUE ITEM Subcontractor shall include in its Schedule of Values for the Subcontract Work a line item for Subcontractor's completion of all punchlist Work and Subcontractor's delivery of all required closeout documents to Contractor. The amount of this line item shall comprise a percentage of the Subcontractor's total price, before application of any taxes. The rate of the closeout & punchlist line item shall be [_____] percent ([_____]%).

8.2.3 TIME OF APPLICATION The Subcontractor shall submit progress payment applications to the Constructor no later than the 20th Day of each payment period for the Subcontract Work performed up to and including the last Day of the payment period indicating work completed and, to the extent allowed under the subsection below, materials suitably stored during the preceding payment period. Application periods are understood to be each month through the duration of the Project.

8.2.4 STORED MATERIALS Unless otherwise provided in the Subcontract Documents, applications for payment may include materials and equipment not yet incorporated in the Subcontract Work but delivered to and suitably stored on or off the Worksite including applicable insurance, storage, and costs incurred transporting the materials to an off-site storage facility. Approval of payment applications for such stored items on or off the Worksite shall be conditioned upon submission by the Subcontractor of bills of sale and required insurance or such other procedures satisfactory to the Owner and Constructor to establish the Owner's title to such materials and equipment, or otherwise to protect the Owner's and



Constructor's interest including transportation to the Worksite. Security for Subcontractor's stored materials and equipment shall be the sole responsibility of the Subcontractor.

8.2.5 TIME OF PAYMENT Progress payments to the Subcontractor for satisfactory performance of the Subcontract Work shall be made no later than seven (7) Days after receipt by the Constructor of payment from the Owner for the Subcontract Work. If payment from the Owner for such Subcontract Work is not received by the Constructor, through no fault of the Subcontractor, the Constructor will make payment to the Subcontractor within a reasonable time for the Subcontract Work satisfactorily performed.

8.2.5.1 The Subcontractor will be required to execute both conditional and unconditional lien waivers for each progress payment.

8.2.6 PAYMENT DELAY If the Constructor has received payment from the Owner and if for any reason not the fault of the Subcontractor, the Subcontractor does not receive a progress payment from the Constructor within seven (7) Days after the date such payment is due, as defined in the subsection immediately above, or, if the Constructor has failed to pay the Subcontractor within a reasonable time for the Subcontract Work satisfactorily performed, the Subcontractor, upon giving seven (7) Days' written notice to the Constructor, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to the Subcontractor has been received. The Subcontract Amount and Time shall be adjusted by the amount of the Subcontractor's reasonable and verified cost of shutdown, delay, and startup, which shall be effected by an appropriate Subcontractor Change Order.

8.2.7 PAYMENTS WITHHELD The Constructor may reject a Subcontractor application for payment in whole or in part or withhold amounts from a previously approved Subcontractor application for payment, as may reasonably be necessary to protect the Constructor from loss or damage for which the Constructor may be liable and without incurring an obligation for late payment interest based upon:

8.2.7.1 the Subcontractor's repeated failure to perform the Subcontract Work as required by this Agreement;

8.2.7.2 except as accepted by the insurer providing Builders Risk or other property insurance covering the Project, loss or damage arising out of or relating to this Agreement and caused by the Subcontractor to the Owner, the Constructor, or others to whom the Constructor may be liable;

8.2.7.3 the Subcontractor's failure to properly pay for labor, materials, equipment, or supplies furnished in connection with the Subcontract Work;

8.2.7.4 rejected, nonconforming, or defective Subcontract Work which has not been corrected in a timely fashion;

8.2.7.5 reasonable evidence of delay in performance of the Subcontract Work such that the Work will not be completed within the Subcontract Time, and that the unpaid balance of the Subcontract Amount is not sufficient to offset the liquidated damages or actual damages that may be sustained by the Constructor as a result of the anticipated delay caused by the Subcontractor;

8.2.7.6 reasonable evidence demonstrating that the unpaid balance of the Subcontract Amount is insufficient to cover the cost to complete the Subcontract Work; and



8.2.7.7 third-party claims involving the Subcontractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Subcontractor furnishes the Constructor with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than fourteen (14) Days after receipt of an application for payment, the Constructor shall give written notice to the Subcontractor, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the Subcontractor in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

8.2.8 SUBSTANTIAL COMPLETION

8.2.8.1 Upon substantial completion of the Subcontract Work or a designated portion thereof to the extent required to allow the Constructor to accept the Subcontract Work to allow succeeding Work to proceed, the Constructor shall assume responsibility for security and protection of the Subcontract Work pending the achievement of Substantial Completion of the Project. However, acceptance of the Subcontract Work for the purpose of allowing succeeding Work to proceed shall not result in the commencement of the warranty period for the Subcontract Work unless otherwise provided in the prime agreement.

8.2.8.2 Unless otherwise provided for in the prime agreement, partial Owner occupancy or use of completed portions of the Subcontract Work shall constitute Substantial Completion of that portion of the Subcontract Work and the warranty period applicable to the Subcontract Work shall commence upon the achievement of Substantial Completion of the Project and acceptance by the Owner under the terms of the prime agreement.

8.3 FINAL PAYMENT

8.3.1 APPLICATION Upon acceptance of the Subcontract Work by the Owner and the Constructor and receipt from the Subcontractor of evidence of fulfillment of the Subcontractor's obligations in accordance with the Subcontract Documents and the subsection below, the Constructor shall incorporate the Subcontractor's application for final payment into the Constructor's next application for payment to the Owner without delay, or notify the Subcontractor if there is a delay and the reasons for the delay.

8.3.2 REQUIREMENTS Before the Constructor shall be required to incorporate the Subcontractor's application for final payment into the Constructor's next application for payment, the Subcontractor shall submit to the Constructor:

8.3.2.1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontract Work for which the Owner or its property or the Constructor or the Constructor's surety might in any way be liable, have been paid or otherwise satisfied;

8.3.2.2 consent of surety to final payment, if required;

8.3.2.3 satisfaction of required closeout procedures;



8.3.2.4 other data, if required by the Constructor or Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be required by the Subcontract Documents;

8.3.2.5 written warranties, equipment manuals, startup and testing required in section 3.273.27; and

8.3.2.6 as-built drawings if required by the Subcontract Documents.

8.3.3 TIME OF PAYMENT Final payment of the balance due of the Subcontract Amount shall be made to the Subcontractor within seven (7) Days after receipt by the Constructor of final payment from the Owner for such Subcontract Work.

8.3.4 FINAL PAYMENT DELAY If the Owner or its designated agent does not issue a certificate for final payment or the Constructor does not receive such payment for any cause which is not the fault of the Subcontractor, the Constructor shall promptly inform the Subcontractor in writing. If final payment from the Owner for such Subcontract Work is not received by the Constructor, through no fault of the Subcontractor, the Constructor will make payment to the Subcontractor within a reasonable time.

8.3.5 WAIVER OF CLAIMS Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontract Work, but shall in no way relieve the Subcontractor of liability for the obligations assumed under sections 3.21 and 3.22, or for faulty or defective work or services discovered after final payment, nor relieve the Constructor for claims made in writing by the Subcontractor as required by the Subcontract Documents prior to its application for final payment as unsettled at the time of such payment.

8.4 LATE PAYMENT INTEREST Progress payments or final payment due and unpaid under this Agreement, as defined in subsections 8.2.5, 8.3.3 and 8.3.4, shall bear interest from the date payment is due at the prevailing statutory rate at the place of the Project. However, if the Owner fails to timely pay the Constructor as required under the prime agreement through no fault or neglect of the Constructor, and the Constructor fails to timely pay the Subcontractor as a result of such nonpayment, the Constructor's obligation to pay the Subcontractor interest on corresponding payments due and unpaid under this Agreement shall be extinguished by the Constructor promptly paying to the Subcontractor the Subcontractor's proportionate share of the interest, if any, received by the Constructor from the Owner on such late payments.

8.5 CONTINUING OBLIGATIONS Provided the Constructor is making payments on or has made payments to the Subcontractor in accordance with this Agreement, the Subcontractor shall reimburse the Constructor for any costs and expenses for any claim, obligation, or lien asserted before or after final payment is made that arises from the performance of the Subcontract Work. The Subcontractor shall reimburse the Constructor for costs and expenses including attorneys' fees and costs and expenses incurred by the Constructor in satisfying, discharging, or defending against any such claims, obligation, or lien, including any action brought or judgment recovered. If any Law or bond require the Subcontractor to take any action prior to the expiration of the reasonable time for payment referenced in subsection 8.2.5 in order to preserve or protect the Subcontractor's rights with respect to mechanic's lien or bond claims, then the Subcontractor may take that action prior to the expiration of the reasonable time for payment and such action will not: (a) create the reimbursement obligation recited above, (b) be in violation of this Agreement, or (c) considered premature for purposes of preserving and protecting the Subcontractor's rights.

8.6 PAYMENT USE RESTRICTION Payments received by the Subcontractor shall be used to satisfy the indebtedness owed by the Subcontractor to any person furnishing labor or materials, or both, for use in



performing the Subcontract Work through the most current period applicable to progress payments received from the Constructor before it is used for any other purpose. In the same manner, payments received by the Constructor from the Owner for the Subcontract Work shall be dedicated to payment to the Subcontractor. This provision shall bear on this Agreement only, and is not for the benefit of third parties. Moreover, it shall not be construed by the Parties to this Agreement or third parties to require that dedicated sums of money or payments be deposited in separate accounts, or that there be other restrictions on commingling of funds. Neither shall these mutual covenants be construed to create any fiduciary duty on the Subcontractor or Constructor, nor create any tort cause of action or liability for breach of trust, punitive damages, or other equitable remedy or liability for alleged breach.

8.7 PAYMENT USE VERIFICATION If the Constructor has reason to believe that the Subcontractor is not complying with the payment terms of this Agreement, the Constructor shall have the right to contact the Subcontractor's subcontractors and suppliers to ascertain whether they are being paid by the Subcontractor in accordance with this Agreement.

8.8 PARTIAL LIEN WAIVERS AND AFFIDAVITS As a prerequisite for payments, the Subcontractor shall provide, in a form satisfactory to the Owner and Constructor, partial lien or claim waivers in the amount of the application for payment and affidavits covering its subcontractors and suppliers for completed Subcontract Work. Such waivers may be conditional upon payment. In no event shall the Constructor require the Subcontractor to provide an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

8.9 SUBCONTRACTOR PAYMENT FAILURE Upon payment by the Constructor, the Subcontractor shall promptly pay its subcontractors and suppliers the amounts to which they are entitled. If the Constructor has reason to believe that labor, material, or other obligations incurred in the performance of the Subcontract Work are not being paid, the Constructor may give written notice of a potential claim or lien to the Subcontractor and may separately take any steps deemed necessary to assure that progress payments are utilized to pay such obligations, including but not limited to the issuance of joint checks. If upon receipt of notice, the Subcontractor does not (a) supply evidence to the satisfaction of the Constructor that payment owed has been paid; or (b) post a bond indemnifying the Owner, the Constructor, the Constructor's surety, if any, and the premises from a claim or lien, the Constructor shall have the right to withhold from any payments due or to become due to the Subcontractor a reasonable amount to protect the Constructor from any and all loss, damage, or expense including attorneys' fees that may arise out of or relate to any such claim or lien.

In addition to the rights otherwise set forth in this Article 8.9, and without prejudice to any other rights specified herein or given to the Constructor by operation of law, the Constructor specifically reserves the right to write joint checks to the Subcontractor and its material suppliers/and or subcontractors if, in the judgment of the Constructor, it is necessary or advisable to do so in order to insure payment to the materialmen and/or subcontractors. Furthermore, if Constructor and Subcontractor have multiple contracts between themselves for different projects, the Constructor, in addition to its other rights and remedies, shall have the right to offset or deduct from amounts due to Subcontractor under this Subcontract any amounts due to Constructor and its materialmen and/or subcontractors on the other project(s) with funds due under this Subcontract if, in the judgment of Constructor, it is necessary or advisable to do so in order to insure payment to the materialmen and/or subcontractors on the other project(s).

8.10 SUBCONTRACTOR ASSIGNMENT OF PAYMENTS The Subcontractor shall not assign any payment due or to become due under this Agreement, without the written consent of the Constructor, unless the assignment is intended to create a new security interest within the scope of Article 9 of the Uniform Commercial Code. Should the Subcontractor assign all or any part of any payment due or to become due under this Agreement to create a new security interest or for any other purpose, the instrument of assignment shall contain a clause to the effect that the assignee's right in and to any money



due or to become due to the Subcontractor shall be subject to the claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the Subcontract Work.

8.11 PAYMENT NOT ACCEPTANCE Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Subcontract Work.

ARTICLE 9 INDEMNITY, INSURANCE, AND BONDS

9.1 INDEMNITY

9.1.1 INDEMNITY To the fullest extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless the Constructor, the Constructor's other subcontractors, the Design Professional, the Owner, and their agents, consultants, and employees (the Indemnitees) from all claims for bodily injury, design defects (if the design originated from subcontractor) and property damage including the destruction of tangible property or the loss of use thereof that may arise from the performance of the Subcontract Work, including reasonable attorneys' fees, costs, and expenses, but only to the extent that the liability, damages, losses or costs are caused by or arise out of the acts or omissions of the Subcontractor, the Subcontractor's subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

Subcontractor shall defend, indemnify and hold harmless the Constructor, its officers, partners, and representatives from and against any fines, penalties, assessments or damages, including reasonable attorneys' fees, imposed or incurred on account of the violation of any law, rule, order, regulation, ordinance or statute but only to the extent caused by, or contributed to, arising out of, the action, inaction, statements and/or claims of the Subcontractor and/or any lower tier subcontractor or supplier.

These indemnifications shall survive this Subcontract and each will be enforceable as a separate agreement.

9.1.2 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

9.1.3 BORROWED EQUIPMENT Subcontractor agrees and acknowledges that any scaffolding, equipment, tools, or machinery (hereinafter the "items") borrowed, used, or rented from the Constructor, or from Constructor's other subcontractors, has/have been, or will be, prior to use, thoroughly inspected by a competent representative of Subcontractor to ensure the same item(s) are in good working order, suitable for the use intended by Subcontractor and ready for safe and proper use, and that such item(s) will be otherwise approved and cleared for safe use by an authorized representative of Subcontractor prior to use. Subcontractor shall not modify the items or remove any safety mechanisms without prior written consent from Constructor. By taking possession of the items Subcontractor acknowledges it takes full responsibility for the items, including proper use, care, and maintenance of the items. Subcontractor acknowledges and agrees that, to the fullest extent permitted by law, and except to the extent caused by or arising out of the negligent acts or omissions of Constructor or Constructor's other subcontractors, Constructor and/or Constructor's other subcontractors shall not be liable for any, direct, indirect, consequential or incidental damages,



including property damage, bodily injury or death suffered by either Subcontractor, its employees or agents, by Constructor, its employees or agents, or by any third party arising out of Subcontractor's borrowing, use, or rental of any item, and Subcontractor specifically waives such claims against Constructor as additional consideration for borrowing, using, or renting the item(s).

Subcontractor also agrees to have a **COMPETENT AND/OR QUALIFIED PERSON** at the jobsite to inspect the items for safe and proper working order before use and shall also ensure all users of such items have been properly trained and instructed on the safe and proper use of such items before any use of the same items. The **COMPETENT AND/OR QUALIFIED PERSON** shall do a daily inspection of the items and install proper safety tags when and where needed and shall cooperate with Constructor on all safety efforts.

Subcontractor further agrees, to the extent permitted by law, to indemnify, defend, and hold harmless Constructor, its agents, officers, directors, employees, other subcontractors, successors, and assigns against any and all claims for bodily injury, death, or property damage, including the destruction of tangible property or loss of use thereof, that may arise out of Subcontractor's use of the items, but only to the extent the claims, liability, damages, losses or costs are caused by or arise out of the acts or omissions of Subcontractor, its employees, agents, or, its subcontractors. This indemnification includes any and all costs associated with any indemnification or defense, including, but not limited to clean-up fees, attorney's fees, costs and/or expenses.

9.2 INSURANCE

9.2.1 SUBCONTRACTOR'S INSURANCE Before commencing the Subcontract Work, and as a condition precedent to payment, the Subcontractor shall purchase and maintain insurance that will protect it from the claims arising out of its operations under this Agreement, whether the operations are by the Subcontractor, or any of its consultants or subcontractors or anyone directly or indirectly employed by any of them for whose acts the Subcontractor may be liable. Certificate of Insurance and applicable endorsements shall be filed with the Constructor no later than ten (10) days from the date this Contract is issued.

9.2.2 MINIMUM LIMITS OF LIABILITY The Subcontractor shall procure and maintain with insurance companies licensed in the jurisdiction in which the Project is located and acceptable to the Constructor, which acceptance shall not be unreasonably withheld, at least the limits of liability as set forth in Exhibit F. Failure of the Constructor to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of Constructor to identify a deficiency from evidence that is provided, shall not be construed as a waiver of Subcontractor's obligation to procure and maintain such insurance.

9.2.3 PROFESSIONAL LIABILITY INSURANCE

9.2.3.1 In the event this Subcontract requires Subcontractor to perform professional services (architectural, engineering, layout, surveying, testing, etc.) or design services, Subcontractor shall procure and maintain professional liability insurance with a company reasonably satisfactory to the Constructor, including contractual liability insurance against liability assumed in Section 3.8, and including coverage for any professional liability caused by Subcontractor's consultants performing professional or design services. Subcontractor must furnish proof of its professional liability coverage to Constructor before commencing any professional or design services in connection with this Subcontract. Certificate of Insurance and applicable endorsements shall be filed with the Constructor no later than ten (10) days from the date this Contract is issued.



Subcontractor's professional liability insurance shall have specific minimum limits as set forth below:

Limit of one million dollars (\$1,000,000) per claim.

General Aggregate of two million dollars (\$2,000,000) for the subcontract services rendered.

The professional liability insurance shall contain prior acts coverage sufficient to cover all Subcontract services rendered by Subcontractor and any of its consultants. This insurance shall be continued in effect with an extended period of two years following project completion. Such insurance shall have a maximum deductible amount of fifty thousand dollars (\$50,000) per occurrence. The deductible shall be paid by the Subcontractor or its consultants. No policy shall be cancelled or modified without thirty (30) Days' prior written notice to the Constructor.

9.2.3.2 In the event Subcontractor retains any separate design professional(s) or other licensed professional(s) to perform any of the professional services (architectural, engineering, layout, surveying, testing, etc.) or design services required by this Subcontract, the Subcontractor shall require each design professional or licensed professional to maintain professional liability insurance with a company reasonably satisfactory to the Constructor, including contractual liability insurance against the liability assumed in section 3.8, and including coverage for any professional liability caused by consultants of its design professional or licensed professional. This insurance coverage shall be in addition to, and not a replacement for, any professional liability coverage required by Section 9.2.3.1 above. Said insurance shall have specific minimum limits as set forth below:

Limit of one million dollars (\$1,000,000) per claim.

General Aggregate of two million dollars (\$2,000,000) for the subcontract services rendered.

The professional liability insurance shall contain prior acts coverage sufficient to cover all subcontract services rendered by the design professional. Said insurance shall be continued in effect with an extended period of two years following project completion. Such insurance shall have a maximum deductible amount of fifty thousand dollars (\$50,000) per occurrence. The deductible shall be paid by the Subcontractor or its design professional or licensed professional.

9.2.3.3 The Subcontractor shall require its design professional or licensed professional to furnish to the Subcontractor and Constructor, before the design professional or licensed professional commences its services, evidence of the coverages required in this subsection. No policy shall be cancelled or modified without thirty (30) Days' prior written notice to the Subcontractor and Constructor.

9.2.4 NUMBER OF POLICIES Commercial General Liability Insurance (CGL) and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy.



9.2.5 CANCELLATION, RENEWAL, AND MODIFICATION To the extent commercially available to the Subcontractor from its current insurance company, insurance policies required under subsection 9.2.1 shall contain a provision that the insurance company or its designee must give the Constructor written notice transmitted in paper or electronic format: (a) 30 Days before coverage is non-renewed by the insurance company and (b) within 10 Business Days after cancellation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Subcontractor shall furnish the Constructor with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under subsection 9.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Subcontractor shall give Constructor prompt written notice upon actual or constructive knowledge of such condition.

9.2.6 CONTINUATION OF COVERAGE The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least two years or for such longer period as the owner may require in the contract documents project completion. Before commencing the Work, the Subcontractor shall furnish the Constructor with certificates evidencing the required coverages. Certificate of Insurance and applicable endorsements shall be filed with the Constructor no later than ten (10) days from the date this Contract is issued.

9.2.7 PROPERTY INSURANCE

9.2.7.1 Upon written request of the Subcontractor, the Constructor shall provide the Subcontractor with a copy of the Builder's Risk policy of insurance or any other property or equipment insurance in force for the Project and procured by the Owner or Constructor. The Constructor shall advise the Subcontractor if a Builder's Risk policy of insurance is not in force.

9.2.7.2 If the Owner or Constructor has not purchased property insurance reasonably satisfactory to the Subcontractor, the Subcontractor may procure such insurance as will protect the interests of the Subcontractor, its subcontractors, and their subcontractors in the Subcontract Work. The cost of this insurance shall be charged to the Constructor in a Subcontract Change Order.

9.2.7.3 If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Subcontract Documents, the Subcontractor shall procure and maintain at the Subcontractor's own expense property and equipment insurance for the Subcontract Work including portions of the Subcontract Work stored off the Worksite or in transit, when such portions of the Subcontract Work are to be included in an application for payment under ARTICLE 8.

9.2.8 WAIVER OF SUBROGATION

9.2.8.1 The Constructor and Subcontractor waive all rights against each other, the Owner and the Design Professional, and any of their respective consultants, subcontractors, subsubcontractors, agents, and employees, for damages caused by perils to the extent covered by the proceeds of the insurance provided in section 9.2.7, except such rights as they may have to the insurance proceeds and such rights as they may have for the Owner's failure to obtain and maintain any Project Builders Risk Coverage that the Owner may be obligated to provide. The Subcontractor shall require similar waivers from its subcontractors.



9.2.9 ENDORSEMENT If the policies of insurance referred to in this article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

9.2.10 CONSTRUCTOR'S LIABILITY INSURANCE The Constructor shall obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement including without limitation, loss of use and claims, losses, and expenses arising out of the Constructor's acts or omissions.

9.2.11 ADDITIONAL GENERAL LIABILITY COVERAGE Subcontractor shall maintain additional liability coverage, primary to the Constructor's coverage pursuant to Section 9.2.10 above, covering Subcontractor's work and conduct under this Subcontract.

9.2.11.1 CONSTRUCTOR NAMED AS ADDITIONAL INSURED Unless this Project requires enrollment of Constructor and Subcontractor in an Owners' and Constructors' Protective Liability Insurance Program (a.k.a an Owner or Contractor Controlled Insurance Program, "OCIP" or "CCIP"), the Constructor shall be named as an additional insured on Subcontractor's CGL policy or policies by endorsement, specified for the Project, including operations and completed operations coverage, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of the Subcontractor, or those acting on the Subcontractor's behalf, in the performance of Subcontract Work for the Constructor.

9.2.11.2 OCIP or CCIP If the Project requires enrollment in an OCIP or CCIP, the Subcontractor shall cooperate with the enrollment process and provide any applicable proof of enrollment or coverage required by Constructor and/or any owner for a specific project. Subcontractor's coverage under the OCIP or CCIP shall be equal to the limits on CGL specified for the project, or shall conform to limits otherwise required by Constructor.

Any documented additional cost in the form of a surcharge associated with procuring the additional general liability coverage in accordance with this subsection shall be paid by the Constructor directly or the costs may be reimbursed by the Constructor to the Subcontractor by increasing the Subcontract Amount to correspond to the actual cost required to purchase and maintain the coverage. Before commencing the Subcontract Work, the Subcontractor shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that the Constructor has been named as an additional insured, as applicable. Certificate of Insurance and applicable endorsements shall be filed with the Constructor no later than ten (10) days from the date this Contract is issued.

9.2.12 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Subcontract Work shall be upon the Subcontractor until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

9.3 BONDS

9.3.1 The Subcontractor [] shall [] shall not furnish to the Constructor, as the named Obligatee, appropriate surety bonds to secure the faithful performance of the Subcontract Work and to satisfy all Subcontractor and Materialmen payment obligations related to the Subcontract Work.

If a performance or payment bond, or both, are required of the Subcontractor under this Agreement, the bonds shall be in a form and by a surety acceptable to the Constructor, and in the full dollar amount of the Subcontract Amount, including any Change Orders, unless otherwise



specified. Constructor's acceptance shall not be withheld without reasonable cause. Payment and performance bonds are to be provided within ten (10) days of the issuance of this Subcontract Agreement. In no event shall the Subcontractor begin Work before providing performance and payment bonds acceptable to the Constructor.

The Subcontractor shall be reimbursed, without retainage, for the cost of any required performance or payment bonds simultaneously with the first progress payment. The reimbursement amount for the Subcontractor bonds shall be the actual cost of Subcontractor's bond as stated in the proposal or the amount verified by an invoice from the bonding company, without origination fees, service charges, overhead or markup, up to a maximum of 3% of the Subcontract Amount. Unless specifically waived by Constructor in writing, Subcontractor must obtain any necessary bond riders to any Subcontractor bonds required under this Agreement needed on account of any increase in the amount of this Subcontract.

9.3.2 In the event the Subcontractor shall fail to promptly provide any required bonds, the Constructor may terminate this Agreement and enter into a subcontract for the balance of the Subcontract Work with another subcontractor. All Constructor costs and expenses incurred by the Constructor as a result of said termination shall be paid by the Subcontractor.

9.3.3 PAYMENT BOND REVIEW The Constructor [] has [] has not provided the Owner a payment bond for the Project. . A copy of the Constructor's payment bond for the Project, if any, shall be made available by the Constructor for review and copying by the Subcontractor.

ARTICLE 10 SUSPENSION, NOTICE TO CURE, AND TERMINATION

10.1 FAILURE OF PERFORMANCE AND TERMINATION

10.1.1 NOTICE TO CURE A DEFAULT If the Subcontractor persistently fails to supply enough qualified workers, proper materials, or equipment, to maintain the Progress Schedule, or fails to make prompt payment to its workers, subsubcontractors, or suppliers, or disregards Laws or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, the Subcontractor shall be deemed in default of this Agreement. If the Subcontractor fails within three (3) Business Days after written notification to commence and continue satisfactory correction of the default with diligence and promptness, then the Constructor without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

10.1.1.1 supply workers, materials, equipment, and facilities as the Constructor deems necessary for the completion of the Subcontract Work or any part which the Subcontractor has failed to complete or perform after written notification, and charge the Subcontractor costs and expenses, including reasonable overhead, profit, and attorneys' fees that are due or to become due. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount. At the Subcontractor's request, the Constructor shall provide a detailed accounting of the costs to finish the Subcontract Work;

10.1.1.2 contract with one or more additional contractors to perform such part of the Subcontract Work as the Constructor determines will provide the most expeditious completion of the Work, and charge the cost to the Subcontractor as provided under the subsection above;

10.1.1.3 withhold any payments due or to become due the Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the



extent required by and to the satisfaction of the Constructor. In the event of an emergency affecting the safety of persons or property, the Constructor may proceed as above without notice, but the Constructor shall give the Subcontractor notice promptly after the fact as a precondition of cost recovery; or

10.1.1.4 terminate the Agreement by written notice.

10.1.2 USE OF SUBCONTRACTOR'S EQUIPMENT If the Constructor performs work under this article, either directly or through other subcontractors, the Constructor or other subcontractors shall have the right to take and use any materials, implements, equipment, appliances, or tools furnished by, or belonging to the Subcontractor and located at the Worksite for the purpose of completing any remaining Subcontract Work. Immediately upon completion of the Subcontract Work, any remaining materials, implements, equipment, appliances, or tools not consumed or incorporated in performance of the Subcontract Work, and furnished by, belonging to, or delivered to the Project by or on behalf of the Subcontractor, shall be returned to the Subcontractor in substantially the same condition as when they were taken, normal wear and tear excepted.

10.2 BANKRUPTCY

10.2.1 TERMINATION ABSENT CURE If the Subcontractor files a petition under the Bankruptcy Code, this Agreement shall terminate if the Subcontractor or the Subcontractor's trustee rejects the Agreement or, if there has been a default, and the Subcontractor is unable to give adequate assurance that the Subcontractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

10.2.2 INTERIM REMEDIES If the Subcontractor is not performing in accordance with the Progress Schedule at the time a petition in bankruptcy is filed, or at any subsequent time, the Constructor, while awaiting the decision of the Subcontractor or its trustee to reject or to assume this Agreement and provide adequate assurance of its ability to perform, may avail itself of such remedies under this article as are reasonably necessary to maintain the Progress Schedule. The Constructor may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided including, but not limited to, reasonable overhead, profit, and attorneys' fees. The Subcontractor shall be liable for the payment of any amount by which costs incurred may exceed the unpaid balance of the Subcontract Amount.

10.3 SUSPENSION BY OWNER FOR CONVENIENCE Should the Owner suspend the Work or any part which includes the Subcontract Work for the convenience of the Owner and such suspension is not due to any act or omission of the Constructor, or any other person or entity for whose acts or omissions the Constructor may be liable, the Constructor shall notify the Subcontractor in writing and, upon receiving notification, the Subcontractor shall immediately suspend the Subcontract Work. To the extent provided for under the prime agreement and to the extent the Constructor recovers such on the Subcontractor's behalf, the Subcontract Amount and the Subcontract Time shall be equitably adjusted by Subcontract Change Order for the cost and delay resulting from any such suspension. The Constructor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit the Subcontractor to prosecute the claim, in the name of the Constructor, for the use and benefit of the Subcontractor.

10.4 TERMINATION BY OWNER Should the Owner terminate its contract with the Constructor or any part which includes the Subcontract Work, the Constructor shall notify the Subcontractor in writing within three (3) Business Days of the termination and, upon written notification, this Agreement shall be



terminated and the Subcontractor shall immediately stop the Subcontract Work, follow all of the Constructor's instructions, and mitigate all costs. In the event of Owner termination, the Constructor's liability to the Subcontractor shall be limited to the extent of the Constructor's recovery on the Subcontractor's behalf under the Subcontract Documents, except as otherwise provided in this Agreement. The Constructor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the Owner termination and to permit the Subcontractor to prosecute the claim, in the name of the Constructor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor. If the Owner terminates the Constructor for cause, through no fault of the Subcontractor, the Subcontractor shall be entitled to recover from the Constructor its reasonable costs arising from the termination of this Agreement, including reasonable overhead and profit on Work not performed.

10.5 CONTINGENT ASSIGNMENT OF THIS AGREEMENT The Constructor's contingent assignment of this Agreement to the Owner, as provided in the prime agreement, is effective when the Owner has terminated the prime agreement for cause and has accepted the assignment by notifying the Subcontractor in writing. This contingent assignment is subject to the prior rights of a surety that may be obligated under the Constructor's bond, if any. The Subcontractor consents to such assignment and agrees to be bound to the assignee by the terms of this Agreement, provided that the assignee fulfills the obligations of the Constructor.

10.6 SUSPENSION BY CONSTRUCTOR The Constructor may order the Subcontractor in writing to suspend all or any part of the Subcontract Work for such period of time as may be determined to be appropriate for the convenience of the Constructor. Phased Work or interruptions of the Subcontract Work for short periods of time shall not be considered a suspension. The Subcontractor, after receipt of the Constructor's order, shall notify the Constructor in writing in sufficient time to permit the Constructor to provide timely notice to the Owner in accordance with the prime agreement of the effect of such order upon the Subcontract Work. The Subcontract Amount or Subcontract Time shall be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Agreement caused by such suspension. No claim under this section shall be allowed for any costs incurred more than fourteen (14) Days prior to the Subcontractor's notice to the Constructor. Neither the Subcontract Amount nor the Progress Schedule shall be adjusted for any suspension, to the extent that performance would have been suspended, due in whole or in part to the fault or negligence of the Subcontractor or by a cause for which the Subcontractor would have been responsible. The Subcontract Amount shall not be adjusted for any suspension to the extent that performance would have been suspended by a cause for which the Subcontractor would have been entitled only to a time extension under this Agreement.

10.7 WRONGFUL EXERCISE If the Constructor wrongfully exercises any option under this article, the Constructor shall be liable to the Subcontractor solely for the reasonable value of Subcontract Work performed by the Subcontractor prior to the Constructor's wrongful action, including reasonable overhead and profit on the Subcontract Work performed, less prior payments made, together with reasonable overhead and profit on the Subcontract Work not executed, and other reasonable costs incurred by reason of such action.

10.8 TERMINATION BY SUBCONTRACTOR If the Subcontract Work has been stopped for thirty (30) Days because the Subcontractor has not received progress payments or has been abandoned or suspended for an unreasonable period of time not due to the fault or neglect of the Subcontractor, then the Subcontractor may terminate this Agreement upon giving the Constructor seven (7) Days' written notice. Upon such termination, the Subcontractor shall be entitled to recover from the Constructor payment for all Subcontract Work satisfactorily performed but not yet paid for, including reasonable overhead, profit, and attorneys' fees, costs, and expenses. However, if the Owner has not paid the Constructor for the satisfactory performance of the Subcontract Work through no fault or neglect of the Constructor, and the Subcontractor terminates this Agreement under this article because it has not received corresponding progress payments, the Subcontractor shall be entitled to recover from the



Constructor, within a reasonable period of time following termination, payment for all Subcontract Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable overhead and profit on Subcontract Work not performed. The Constructor's liability for any other damages claimed by the Subcontractor under such circumstances shall be extinguished by the Constructor pursuing said damages and claims against the Owner on the Subcontractor's behalf as provided for in sections 10.3 and 10.4.

ARTICLE 11 DISPUTE MITIGATION AND RESOLUTION

11.1 WORK CONTINUATION AND PAYMENT Unless otherwise agreed in writing, the Subcontractor shall continue the Subcontract Work and maintain the Progress Schedule during any dispute mitigation or resolution proceedings. If the Subcontractor continues to perform, the Constructor shall continue to make payments in accordance with this Agreement.

11.2 DISPUTES BETWEEN CONSTRUCTOR AND SUBCONTRACTOR If the dispute resolution provisions between the Constructor and the Owner in the Subcontract Documents do not permit consolidation or joinder with disputes of third parties, such as the Subcontractor, or if such dispute is only between the Constructor and the Subcontractor, then the Parties shall submit the dispute to the dispute resolution procedures set forth in the section below.

11.3 CONSTRUCTOR-SUBCONTRACTOR DISPUTE RESOLUTION

11.3.1 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) business Days, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) business Days to endeavor to reach resolution. If the matter remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute resolution procedures selected in ARTICLE 11.

11.3.2 MEDIATION If direct discussions pursuant to the subsection immediately above do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) working Days of the matter first being discussed and shall conclude within forty-five (45) working Days of the matter being first discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and to the mediator. The costs of the mediation shall be shared equally by the Parties.

11.3.3 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

☒ **Arbitration** using the current Construction Industry Arbitration Rules of the American Arbitration Association or the Parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the Parties.



[] Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

11.3.4 COSTS The costs of any binding dispute resolution procedure and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

11.3.5 VENUE The venue for any binding dispute resolution proceeding shall be the location of the Project unless the Parties agree on a mutually convenient location.

11.3.6 Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

11.3.7 An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the Parties, and judgment may be enforced and entered upon an award in any court having jurisdiction.

11.4 MULTIPARTY PROCEEDING All parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding. To the extent disputes between the Constructor and Subcontractor involve in whole or in part disputes between the Constructor and the Owner, disputes between the Subcontractor and the Constructor shall be decided by the same tribunal and in the same forum as disputes between the Constructor and the Owner.

11.5 NO LIMITATION OF RIGHTS OR REMEDIES Nothing in this article shall limit any rights or remedies not expressly waived by the Subcontractor which the Subcontractor may have under lien laws or payment bonds.

ARTICLE 12 MISCELLANEOUS

12.1 EXTENT OF AGREEMENT Except as specifically as provided, this Agreement is for the exclusive benefit of the Parties, and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

12.2 ASSIGNMENT OF SUBCONTRACT WORK Except as provided in section 8.10, the Subcontractor shall neither assign the whole nor any part of the Subcontract Work without prior written approval of the Constructor.

12.3 GOVERNING LAW This Agreement shall be governed by the Law in effect at the location of the Project.

12.4 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.



12.5 NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of term, covenant, condition, or right with respect to further performance.

12.6 TITLES The titles given to the articles and sections of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

12.7 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

12.8 OTHER PROVISIONS AND DOCUMENTS Other provisions and documents applicable to the Subcontract Work are set forth in the identified Exhibits as attached.

12.9 EQUAL EMPLOYMENT OPPORTUNITY Subcontractor certifies that an individual's race, color, religion, sex, sexual orientation or gender identity, disability, age, membership or application for membership in the uniformed services or national origin is not and will not be considered in any personnel or management decision. Further, Subcontractor certifies that harassment on the basis of an individual's race, color, religion, sex, sexual orientation or gender identity, disability, age, membership or application for membership in the uniformed services, national origin, or the presence, or perceived presence of, a physical, sensory or mental disability is prohibited.

12.10 ELECTRONIC DOCUMENTS & SIGNATURES The Parties agree any business transacted or related to this Subcontract may be conducted by electronic means, including, but not limited to, receipt of electronic records and the use of electronic signatures in accordance with the Electronic Signatures in Global and National Commerce Act (ESIGN) and the Uniform Electronic Transactions Act (UETA).

ARTICLE 13 SUBCONTRACT DOCUMENTS

13.1 INTERPRETATION OF SUBCONTRACT DOCUMENTS

13.1.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, the Subcontractor shall perform the Subcontract Work as though fully described on both consistent with the Subcontract Documents and reasonably inferable from them.

13.1.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings, or specifications, the Subcontractor shall immediately submit the matter to the Constructor for clarification by the Owner. The Owner's clarifications are final and binding on all Parties, subject to an equitable adjustment in Subcontract Time or Subcontract Amount pursuant to dispute mitigation and resolution.

13.1.3 Where figures are given, they shall be preferred to scaled dimensions.

13.1.4 Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.



13.1.5 In case of any inconsistency, conflict or ambiguity among the Subcontract Documents, the documents shall govern in the following order: (a) Subcontract Change Orders and written amendments to this Agreement; (b) the ConsensusDocs 750 Agreement as modified by the Parties; (c) subject to subsection 13.1.2 the drawings (large scale governing over small scale), specifications and addenda issued prior to the execution of this Agreement; (d) information furnished by the Owner that is identified as a Subcontract Document; (e) other documents listed in this Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

As defined in Paragraph 2.3, the following Exhibits are a part of this Agreement:

EXHIBIT A	The Subcontract Work
EXHIBIT B	The Drawings, Specifications, General and other conditions, addenda and other information. (Attach a complete listing by title, date and number of pages.)
EXHIBIT C	Protection of Persons and Property
EXHIBIT D	Jaynes Companies Quality Assurance Plan
EXHIBIT E	Jaynes Companies Code of Business Ethics and Conduct
EXHIBIT F	Minimum Insurance Requirements
EXHIBIT H	Illegal Aliens (Colorado only)
EXHIBIT I	Labor Code Addendum (California only)
EXHIBIT J	Notification of Employee Rights Under Federal Labor Laws (NLRA) (Federal Government Projects only)
EXHIBIT K	FAR Provisions (Federal Government Projects only)

This Agreement is entered into as of the date entered in Article 1.

CONSTRUCTOR []

BY: _____

PRINT TITLE: []

SUBCONTRACTOR: []

BY: _____

PRINT TITLE: []

LICENSE NO.: _____



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EXHIBIT B to ConsensusDOCS Master Subcontract Amendment
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PROTECTION OF PERSONS AND PROPERTY

ARTICLE 3 IS HEREBY AMENDED AND RE-STATED AS FOLLOWS:

3.14 SAFETY

3.14.1 The Subcontractor is required to perform the Subcontract Work in a safe and reasonable manner. The Subcontractor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

3.14.1.1 Employees and other persons at the site;

3.14.1.2 Materials and equipment stored at the site or at off-site locations for use in performance of the Subcontract Work; and

3.14.1.3 All property and structures located at the site and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work. The Subcontractor and all its sub-subcontractors shall notify the Contractor prior to performing any Subcontract Work that will impact, alter, interfere or re-route any public pedestrian or vehicular thoroughfare in any way.

3.14.2 The Subcontractor shall give all required notices and comply with all applicable rules, regulations, orders and other lawful requirements established to prevent injury, loss or damage to persons or property. The Subcontractor and all its sub-subcontractors shall give courteous and full cooperation to any Federal or State inspector involving environmental, safety, health or transportation issues and shall forward all copies of reports, citations, penalties, abatement dates, etc. immediately to the Contractor. Should any inspection reveal environmental, safety, health or transportation violations for which the Subcontractor or its sub-subcontractors are responsible and should those violations result in a citation and/or fine to the Contractor, then the Subcontractor shall immediately reimburse the Contractor in an amount equal to the amount as finally adjusted. This reimbursement shall be accomplished through direct payment and if such amount is not so paid, then by the Contractor withholding of funds normally due to the Subcontractor for Work on the Project.

3.14.3 The Subcontractor shall implement appropriate safety measures pertaining to the Subcontract Work and the Project, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers, and establishing proper notice procedures to protect persons and property at the site and adjacent to the site from injury, loss or damage. Each Subcontractor's project management team, prior to initial mobilization on the Project, shall meet with the Contractor's Project Supervisor to discuss the Subcontractor's safety plan and the specific nature of any hazards that they anticipate.

The Subcontractor and all its sub-subcontractors shall follow OSHA Act 1926.21(b)(2) requirements that state "each employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury."

The Subcontractor and all its sub-subcontractors shall provide their own project safety orientation to all employees before they begin the Work on the Contractor's Project. This orientation shall cover the Contractor's general safety rules, disciplinary actions, personal protective equipment requirements and the relationship of the Contractor's personnel assigned to the Project. The Subcontractor and all its sub-subcontractor employees assigned to this project shall attend the project specific safety orientation and review the Contractor's Project Safety Accident Prevention Plan and view the Contractor's Safety Orientation Videos and insure that safety requirements are understood by all of their employees.

The Subcontractor and all its sub-subcontractors shall attend the Contractor's Weekly Project Safety Meeting and shall conduct a separate Weekly Safety Meeting held by the Subcontractor at the Project site. It is the responsibility of the Subcontractor and all its sub-subcontractors to make available each safety meeting topic discussed and names of employees present when requested. Employees are required to be on time and pay attention during these meetings.

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3.14.4 The Subcontractor shall exercise extreme care in carrying out any of the Subcontract Work which involves explosive or other dangerous methods of construction or hazardous procedures, materials or equipment. The Subcontractor shall use properly qualified individuals or entities to carry out the Subcontract Work in a safe and reasonable manner so as to reduce the risk of bodily injury or property damage. The Subcontractor and all its sub-subcontractors shall insure that a Competent Person as defined in 1926.32(f) of the 29CFR1926 OSHA Construction Standards is present on the Project site and directs all Subcontract Work where the OSHA Standards require a Competent Person. The Subcontractor and all its sub-subcontractors shall provide to the Contractor a written Safe Plan of Action involving any High Hazard Work Activity as defined by the Contractor and shall attend a pre-construction meeting to discuss said plan prior to performing Subcontract Work.

3.14.5 Damage or loss not insured under property insurance which may arise from the performance of the Subcontract Work, to the extent of the negligence attributed to such acts or omissions of the Subcontractor, or anyone for whose acts the Subcontractor may be liable, shall be promptly remedied by the Subcontractor. Damage or loss attributable to the acts or omissions of the Contractor and not to the Subcontractor shall be promptly remedied by the Contractor. The Subcontractor and all its sub-subcontractors shall immediately notify the Contractor in writing of any Claims they receive involving personal injury, theft or property damage related to the Subcontract Work.

3.14.6 The Subcontractor is required to designate an individual at the site in the employ of the Subcontractor who shall act as the Subcontractor's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Subcontractor in writing to the Contractor, the designated safety representative shall be the Subcontractor's Project Superintendent/Foreman. Said safety representative shall attend site safety meetings as requested by the Contractor. This individual shall be assigned to the project and must be present on site while Subcontract Work is being performed. If non-English speaking workers will be on site, the Subcontractor shall have a supervisory person on site that is fluent in the language(s) spoken as well as English to interpret and translate as needed. The Subcontractor and all its sub-subcontractors shall cooperate fully with all other subcontractors and with the Contractor in their respective environmental, health, safety and security programs. The Subcontractor shall give courteous and full cooperation to the Contractor or its representative during any jobsite safety survey. The Contractor reserves the right to inspect ALL company or personal tools, machinery, equipment, vehicles, trailers, tool boxes, supplies and materials located on the jobsite. Subcontractors are required to conduct, document and submit a weekly written safety survey report detailing issues found on the job and the corrective actions taken to prevent future occurrences. This report must be turned in by end of business each week. Failure to conduct or provide this report may delay the processing of the Subcontractor's Application for Payment and may require Subcontractor personnel changes.

3.14.7 The Subcontractor has an affirmative duty not to overload the structures or conditions at the site and shall take reasonable steps not to load any part of the structures or site so as to give rise to an unsafe condition or create an unreasonable risk of bodily injury or property damage. The Subcontractor shall have the right to request, in writing, from the Contractor loading information concerning the structures at the site.

3.14.8 The Subcontractor shall give prompt written notice to the Contractor of any incident involving bodily injury requiring a physician's care, any property damage exceeding Five Hundred Dollars (\$500.00) in value, or any failure that could have resulted in serious bodily injury, whether or not such an injury was sustained. All incidents or occurrences resulting in employee injury or illness, theft, vandalism, property damage or environmental issue shall be verbally reported to the Contractor's supervisor immediately. An incident investigation with a formal written report giving full details with witness statements shall be completed and forwarded to the Contractor not later than the end of the working day after the occurrence. Any incident involving a law enforcement agency shall also be included.

All project related OSHA recordable occupational injuries and illnesses, other than first aid cases, shall be submitted with the Application for Payment to the Contractor. Failure to provide this information may delay the processing of the Subcontractor's Application for Payment and may require Subcontractor personnel changes.

If alcohol or drugs can reasonably be suspected of being a causative factor, the Subcontractor and all its sub-subcontractors agree to have all employees involved in any incident with or without injuries, illness, damage or loss, tested for the presence of alcohol or drugs within two (2) hours following the incident. The Subcontractor and all its sub-subcontractors agree to have any employee suspected of being under the influence or impaired by alcohol or drugs tested for the presence of alcohol or drugs within two (2) hours of notification. Testing will be done at the

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direction and expense of the Subcontractor and results will be provided to the Contractor's Corporate Safety Director within specified timeframes. If test results show that either alcohol or drugs were present, or if such employee refuses to submit to such testing, such employee may no longer be allowed on any Contractor's jobsite, without limitation as to any other consequences. Drug and alcohol testing protocols used by the Subcontractor and all its sub-subcontractors shall be acceptable to the Contractor.

The possession, use, sale or distribution of alcohol; or the possession, use, sale or distribution of illegal drugs or other controlled substances as defined under federal or state law, or the abuse or misuse of prescription and over-the-counter drugs, or being under the influence of alcohol or drugs is strictly prohibited on Contractor jobsites or company premises.

3.14.9 Prevention of accidents at the site is the responsibility of the Contractor, Subcontractor, and all other subcontractors, persons and entities at the site. Establishment of a safety program by the Contractor shall not relieve the Subcontractor or other parties of their safety responsibilities. The Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-government authorities having jurisdiction and by the Contractor and Owner, including, but not limited to, requirements imposed by the Subcontract Documents. The Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project, and shall stop any part of the Subcontract Work which the Contractor deems unsafe until corrective measures satisfactory to the Contractor shall have been taken, the Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility therefore. The Subcontractor shall notify the Contractor immediately following any accident and promptly confers the notice in writing. A detailed written report shall be furnished if requested by the Contractor. Each party to this Agreement shall indemnify the Contractor from and against fines or penalties imposed as a result of the Subcontractor's or any of its sub-subcontractor's safety violations, but only to the extent that such fines or penalties are caused by the Subcontractor's failure to comply with applicable safety requirements. If the Contractor or its representative notifies the Subcontractor or any of its sub-subcontractors of any non-compliance issue with the provisions of this program, the Subcontractor shall make all reasonable efforts to immediately correct the unsafe work practice or condition. If immediate corrective action is not possible, the Subcontractor must submit a written response to the Contractor giving a correction time and date and an explanation of the procedures or precautions that will be used until the unsafe work practice and/or condition can be corrected.

SECTION 3.18 IS HEREBY AMENDED AND RE-STATED AS FOLLOWS:

3.18 Hazardous Materials. To the extent that the Contractor has rights or obligations under the Owner-Contractor agreement or by law regarding hazardous materials as defined by the Subcontract Document within the scope of the Subcontract Work, the Subcontractor shall have the same rights or obligations. The Subcontractor and all its sub-subcontractor's employees have a Right-To-Know about potentially hazardous materials and substances they will be working with or to which they may be exposed. It is the duty of the Subcontractor and all its sub-subcontractors to train their employees in recognition of potentially hazardous materials and substances.

SECTION 3.19 IS HEREBY AMENDED AND RE-STATED AS FOLLOWS:

3.19 SAFETY DATA (SSD) SHEETS. The Subcontractor shall submit to the Contractor all Safety Data Sheets required by law for materials or substances necessary for the performance of the Subcontract Work. Safety Data Sheets obtained by the Contractor from other subcontractors or sources shall be made available to the Subcontractor by the Contractor. The Subcontractor and all its sub-subcontractors shall maintain copies of their specific Safety Data Sheets at or near the time and point of use. Before using any potentially hazardous material or substance, all Subcontractor employees must know emergency first aid measures, safe handling procedures and personal protective equipment (PPE) requirements.

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THE JAYNES COMPANIES
QUALITY ASSURANCE PLAN

Jaynes' Quality Mission Statement:

Jaynes is dedicated to building construction projects that meet or exceed our customer's expectations, thereby creating long-term relationships and repeat business. Our goal is for our customers to understand our commitment to both quality and safety while providing cost-effective construction services. Our purpose is to deliver tangible project results that meet design and performance requirements in a timely manner and within approved budgets.

Quality management is founded on intelligent effort. Consistent quality is a result of commitment and participation by every Project Team (PT) member – this includes the owner, general contractor, subcontractors, sub-subcontractors, and designers.

The goals of this program are:

- To ensure that quality materials that conform with the contract documents are incorporated into both Jaynes' and our subcontractors' scopes of work.
- To select qualified, quality-oriented subcontractors.
- To ensure that workmanship required by the contract documents is performed by knowledgeable Jaynes' craftspeople and subcontractor craftspeople.
- To perform timely inspections and tests by Jaynes, its subcontractors, and third-party inspection personnel.
- To ensure conformance with the contract documents and functional performance requirements.
- To implement a continuous punch-list for the duration of the project.
- To minimize re-work.
- To maintain adequate documentation for post-construction inspections, warranty call-backs, and maintenance activities.
- To avoid construction defects.

SUBCONTRACTOR CERTIFICATION

As a subcontractor on a Jaynes Companies' project, I fully understand that I am expected to comply with the missions and goals of the Jaynes Companies Quality Assurance Plan. I also understand that it is my obligation to advise employees of my company of the Jaynes Companies Quality Assurance Plan as well as to ensure their full commitment. Further, it is my understanding that a copy of the complete Jaynes Companies Quality Assurance Plan will be provided to me upon my request. The QA Representative for my company on this project is

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**THE JAYNES COMPANIES
CODE OF BUSINESS ETHICS AND CONDUCT**

The Jaynes Companies' policy, and one of our core values, is to conduct every aspect of our business ethically and with integrity. That means every employee will maintain the highest ethical standards in our work and will comply with all applicable laws, rules, and regulations. Integrity has always been a cornerstone of our values, and that must remain true if we are to grow and prosper. We believe that this policy will ensure our continued success by earning the confidence of our customers and the communities in which we live. In order to ensure that we all operate pursuant to this policy, we have established a Code of Business Ethics and Conduct, which is summarized below:

1. The Jaynes Companies will live up to our core values. We will foster honesty, integrity, openness and respect.
2. We will conduct our business in accordance with the highest standards of ethics and integrity.
3. It is the responsibility of each officer, director, and employee of the Jaynes Companies to maintain a current awareness and understanding of the rules, laws and regulations that apply to our activities and to comply fully with them.
4. It is the responsibility of each officer, director, and employee of the Jaynes Companies to ensure their personal interests do not interfere with the Companies' interests, particularly in such areas as giving or receiving gifts and entertainment, making political contributions, holding political office, and making donations and charitable contributions.
5. All Jaynes Companies employees are expected to maintain open, honest and professional business relationships with customers, subcontractors and suppliers.
6. It is our policy to promote equal opportunity and affirmative action.
7. It is our policy, in accordance with the law, to maintain an environment free from discrimination or harassment on the basis of sex, age, race, color, religion, national origin, veteran status or disability.
8. We will use only environmentally sound business practices. Safety is a core value of the Jaynes Companies and we will provide a safe work environment for all employees, subcontractors and suppliers.
9. The Jaynes Companies are fully committed to compliance with Federal and State antitrust laws, which are designed to promote free and open competition in the marketplace. Price-fixing, bid rigging, market division, and vendor bid shopping are prohibited. Further, all forms of bribery and kickbacks, payoffs, or other unusual or improper payments to obtain or keep business are unethical, illegal and expressly prohibited.
10. Information learned about the Jaynes Companies customers, subcontractors, and suppliers in the course of business is confidential. Such information will only be given to persons with the need to know, and upon the presentation of proper authorization.

SUBCONTRACTOR CERTIFICATION

This document certifies that I have read and fully understand the summary of the Jaynes Companies Code of Business Ethics and Conduct. I also understand that a copy of the complete Jaynes Companies Code of Business Ethics and Conduct will be made available to me upon request. As a subcontractor/supplier to the Jaynes Companies on this project, I understand that it is my obligation to advise employees of my company of the Jaynes Companies Code of Business Ethics and Conduct and to ensure that they fully comply with its policies and procedures.

**EXHIBIT F to ConsensusDocs [] For Contractor Controlled Insurance Program
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1. **Contractor's CCIP:** Contractor shall provide a Contractor Controlled Insurance Program ("CCIP") on the [PROJECT]. The CCIP shall include Commercial General Liability and Excess Liability coverage described below, for the benefit of the Owner, Contractor, and Enrolled Subcontractors of every tier who perform Work at or from the designated project site. It shall exclude certain subcontractors, suppliers, and vendors as more fully defined in the CCIP Manual and general liability policy, or at Contractor's election.

Even if enrolled in the CCIP, Subcontractor must provide and maintain insurance coverages identified in Section 7 below.

2. **CCIP Manual:** A CCIP Manual shall be provided to all prospective CCIP participants. The CCIP Manual shall include, generally, the CCIP terms and conditions, a description of the CCIP Insurance coverage, and identification of any CCIP administration responsibilities. The CCIP Manual shall be included and incorporated into the Contract Documents.

3. **CCIP Insurance:**

a. **General Liability** – American Contractors Insurance Group (ACIG)

- i. \$2,000,000 Each Occurrence
- ii. \$2,000,000 General Aggregate
- iii. \$2,000,000 Completed Operations Aggregate

b. **Excess Liability** – ACIG / Westchester / RSUI

- i. \$58,000,000 Each Occurrence
- ii. \$58,000,000 General Aggregate
- iii. \$58,000,000 Completed Operations Aggregate

c. **The CCIP Insurance includes the following:**

- i. Owner, Contractor, and Enrolled Subcontractors are Named Insureds;
- ii. CCIP Insurance applies only to the Scope of Work and Project site as outlined in the Prime Contract;
- iii. General Aggregate applies on a per-project basis;
- iv. General Liability coverage extension providing operations coverage to facilitate warranty and call-back activities of Contractor and subcontractors;
- v. Provision for joint defense of insured claims;
- vi. Completed Operations extension for a period of up to ten (10) years beyond the date the subcontractor's Work is deemed completed according to the CCIP Insurance.

d. The CCIP Insurance is provided only to the Owner, Contractor, and Enrolled Subcontractors.

e. The CCIP does not provide any additional coverage, except as described above and more fully outlined in the policies.

f. Additional CCIP details are included in the CCIP Manual.

4. **CCIP Bidding:**

Subcontractors of all tiers **must include** with all prepared bids, proposals, and/or quotations **a deductive bid alternate breaking out the cost of the bidder's General Liability and Excess Liability, including profit and overhead on this cost, allocable to its proposed on-site subcontract work.** Any subsequent change order proposals or quotations shall follow the same procedure.

- a. Such excluded costs, including profit and overhead, may be verified by subsequent audit ordered by Contractor.

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5. CCIP Enrollment:

- a. Subcontractor shall not be allowed to begin or perform work at the Site until all CCIP enrollment and other insurance requirements have been met.
- b. Contractor shall not release progress payment to subcontractor(s) until such time as enrollment is complete by the Subcontractor and their subcontractors.

6. Joint Defense of and Waiver of CCIP Insured Claims

- a. Project-related claims are handled under the joint defense provision of the CCIP Insurance.
- b. In exchange for being provided coverage under the CCIP, parties insured by the CCIP shall waive the right to make a claim against another party enrolled in the CCIP if the claim arises from "Bodily Injury" or "Property Damage" to which the CCIP Insurance applies and for which there are adequate unexhausted limits of the CCIP Insurance to pay damages. Being provided insured status under the CCIP shall be deemed a waiver of such claims by each Insured, and further, parties insured by the CCIP hereby waive any such claims. Coverage by the CCIP also means that the parties insured under the CCIP also agree to perform any additional acts required to effectuate the foregoing waiver. This paragraph shall not apply to any claim necessary to trigger the CCIP Insurance.
- c. In view of the preceding, the Insurer is responsible for the joint defense, prosecution, or other resolution of matters the CCIP Insurance covers. The Insurer expects any matters requiring legal or other assistance to be the responsibility of one attorney or one law firm selected by the Insurer in its sole discretion. Likewise, the Insurer shall retain, in its sole discretion, such investigators, experts, and others as it deems necessary or desirable to assist the Insurer and those covered by the CCIP Insurance. While the parties may always retain such legal representation and other assistance as they believe is appropriate under the circumstances, the CCIP Insurance will not pay such costs and expenses they may choose to incur. This prohibition is consistent with a purpose of the CCIP, namely, reducing costs associated with covered matters through a knowledgeable and unified approach.

7. Other Insurance Required of Subcontractors (Even If Enrolled In CCIP):

a. Type and Coverage Amounts:

i. <u>Worker's Compensation</u>	Statutory
Employer's Liability per:	
Accident \$500,000	Disease (Policy Limit) \$500,000
	Disease (Each) \$500,000

Coverage should include USL&H if warranted by type of work.

ii. Commercial General Liability (For Risks Off-Site)

Including products/completed operations, independent contractor's protective, owner's and contractor's protective liability, broad form contractual liability insuring the subcontract contained herein, per project aggregates, and broad form property damage, with the exclusion pertaining to explosion, collapse and underground property damage eliminated for all the above coverages.

Coverage shall be provided for risks off the Project site. On-Site Locations are defined within the CCIP Manual.

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iii.	<u>Minimum Limits</u>	<u>Combined Single Limit</u>
	Bodily Injury and Property Damage	\$ 1,000,000 Each Occurrence \$ 2,000,000 Aggregate
	Products/Completed Operations	\$ 2,000,000 Aggregate
	Personal Injury	\$ 1,000,000
iv.	<u>Automobile Liability</u>	
	Including owned, hired and non-owned automobiles	
	Bodily Injury and Property Damage	\$ 1,000,000 Each Occurrence
v.	<u>Umbrella/ Excess Liability</u>	
	Wording which defines coverage attaches over GL, Auto and Ancillary Coverages	
	Bodily Injury and Property Damage	\$ 1,000,000 Each Occurrence \$ 1,000,000 Aggregate
vi.	<u>Pollution Liability</u>	
	<i>For Environmental Work:</i>	\$ 5,000,000 Each Occurrence
	Bodily Injury and Property Damage	\$10,000,000 Aggregate
	<i>For Other Qualifying Scopes of Work (see below):</i>	\$ 1,000,000 Each Occurrence
	Bodily Injury and Property Damage	\$ 2,000,000 Aggregate
vii.	<u>Professional Liability Insurance</u>	
	Minimum Limit of Liability	\$1,000,000 Per Claim \$2,000,000 Aggregate

Professional Liability coverage is required only when architectural, engineering or design services are provided as part of the Subcontractor's Work. This policy shall have an extended reporting period for two (2) years following project completion. The Professional Liability policy may be provided by a practice or project specific policy. Certificates of Insurance shall be filed with the Contractor prior to Designer commencing its services.

b. Section 7 INSURANCE REQUIREMENTS / TERMS

- i. To the fullest extent of coverage allowed under applicable law, the CONTRACTOR, its parent and affiliated companies, and Owner are to be designated as Additional Insureds on all of the above General and Umbrella/Excess Liability coverages, except Professional Liability and so described on the Certificate(s) of Insurance. Additional insured endorsement MUST be attached to the Certificate of Insurance and shall be at least as broad in coverage as ISO forms: CG 2010 10 01 or 07 04 in combination with CG 20 37 10 01 or 07 04, which covers on-going and completed operations, or endorsements providing equivalent coverage. For purposes of this additional insured requirement, "equivalent" coverage means coverage for liability arising out of Subcontractor's work performed for the Additional Insureds, including coverage for products-completed operations coverage. If an automatic ("blanket") additional insured endorsement is provided, such endorsement must be in the form of the CG 2038, which became effective April 1, 2013.

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- ii. **The coverage provided to the CONTRACTOR as an Additional Insured must be at least as broad as that provided to SUBCONTRACTOR and may not contain any additional exclusionary language or limitations applicable to the Named Additional Insured.**
- iii. **Insurance coverages and limits of liability maintained by subcontractor that exceed the minimum requirements of this Exhibit shall be applicable to this subcontract.**
- iv. **The Worker's Compensation policy must contain a waiver of subrogation in favor of CONTRACTOR and Owner and other site subcontractors enrolled in the CCIP, and be so described on the Certificate(s) of Insurance.**
- v. Prior to the start of any WORK, SUBCONTRACTOR will furnish 1 Certificate(s) of Insurance to CONTRACTOR evidencing that all insurance coverage required is in force and that it will not be canceled, non-renewed or materially change with less than thirty (30) days prior written notice thereof to CONTRACTOR and Owner. Replacement Certificates of Insurance, evidencing replacement or renewed coverage, will be delivered to CONTRACTOR and all Additional and Named Insureds on or before the expiration date of any Policies.
- vi. The SUBCONTRACTOR shall not have any exclusion under their General Liability or Umbrella/Excess policies for work performed on Residential Type Projects such as: Apartments, Dormitories, Military Housing, Assisted Living Facilities, Nursing Homes, Hospitals or any facilities capable of providing in-house patient stay. Evidence of this type of coverage must be displayed on the Certificate of Insurance AND through evidence of Endorsement or as displayed and denoted in the policy coverage form, a copy of which must be supplied with the certificate of insurance. Any Exclusion pertaining to this type of work on these policies is UNACCEPTABLE.
- vii. If EIFS, DEFS or similar system is used on any part of the project, there shall be no EIFS exclusion, DEFS exclusion or exclusion applying to a similar exterior system.
- viii. Pollution Liability insurance is required for all Subcontractors whose scope of work includes environmental work (see page 1 for required limits of coverage for this type of work). Additionally, pollution liability insurance is also a requirement for Subcontractors performing any of the following scopes of work: dirtwork or grading operations, weatherproofing, fire sprinkler systems, exterior glass or glazing, stucco/EIFS/DEFS or similar exterior finish system, roofing, flashing or sealant work, framing or drywall, structural metal framing or metal building installation, plumbing, heating, venting, or cooling systems, and/or hauling to or from any project site any hazardous or pollutant material that could cause an environmental or pollution event if spilled.
- ix. All sub-subcontractors shall maintain the same types and amounts of insurance and be subject to the same requirements as SUBCONTRACTOR.
- x. All policies shall be written on an occurrence basis, except for Professional Liability.
- xi. All policies shall provide primary coverage and not calling upon any other insurance procured by other parties for defense, payment or contribution. This shall be so described on the Certificate of Insurance(s).
- xii. All policies shall contain endorsements requiring thirty (30) days' advance written notice to named and additional insureds of any cancellation, non-renewal or material change in coverages, and an endorsement form containing this exact language must be attached to the Certificate of Insurance.
- xiii. All policies shall be written by responsible insurance companies with a Best's rating of AVIII or better and be licensed to do business in the state in which the Job is located.
- xiv. SUBCONTRACTOR shall forward SUBCONTRACTOR'S Certificate of Insurance through SUBCONTRACTOR'S Agent prior to the commencement of work and/or payment with CONTRACTOR, which shall be subject to the CONTRACTOR'S approval of adequacy of protection and the satisfactory character of the insurer. The Certificate of Insurance should be mailed within five days of receipt of the Subcontract, regardless of when SUBCONTRACTOR'S work will start. If covered under a Blanket or Master Subcontract Agreement, please submit only one "Blanket" Certificate of Insurance which states: "For All Jobs performed for The Jaynes Companies and/or its subsidiaries."

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- xv. Providing proof of SUBCONTRACTOR'S current insurance coverage is required each time for every Jaynes Project, unless SUBCONTRACTOR is performing work under a Master Subcontract Agreement with CONTRACTOR. Once proof of SUBCONTRACTOR'S insurance is provided pursuant to a Master Subcontract Agreement, **replacement Certificates of Insurance, evidencing replacement or renewed coverage or evidencing required Additional or Named Insureds (as needed), will be delivered to CONTRACTOR and all Additional and Named Insureds on or before the expiration date of any Policies and upon request by CONTRACTOR in response to a project-specific need.**
- xvi. Certificate of Insurance and applicable Endorsements must be received by, or on file with, CONTRACTOR no later than ten (10) days from the date of execution of either the Subcontract Agreement or a Master Subcontract Agreement (including any applicable Amendment thereto). If CONTRACTOR does not receive the required insurance certificate and endorsements before SUBCONTRACTOR mobilizes to the Worksite, SUBCONTRACTOR shall not be permitted on the Worksite, SUBCONTRACTOR shall not be permitted to bill, and CONTRACTOR may be forced to terminate the Subcontract Agreement, Master Subcontract Agreement (if applicable) and any project-specific Master Subcontract Amendment (if applicable).
- xvii. SUBCONTRACTOR shall not do anything to cause any of the insurance required to be invalidated in whole or in part.
- xviii.
At CONTRACTOR'S request, from time to time or at any time, originals or copies of SUBCONTRACTOR'S or sub-subcontractor's policies, certified by the carrier, shall be delivered to CONTRACTOR. Failure to comply with this requirement may be considered a breach of contract.
- xix.
CONTRACTOR does not represent that the coverage and limits set out in these insurance requirements will necessarily be adequate to protect the SUBCONTRACTOR, and such coverage and limits shall not be deemed as a limitation on the SUBCONTRACTOR'S liability under the indemnities provided to the CONTRACTOR and others under this Subcontract.
- xx.
If any action or proceeding is commenced to enforce the rights of the CONTRACTOR as an additional insured under this Subcontract, and the CONTRACTOR prevails in that action, the SUBCONTRACTOR and/or its insurer agrees to pay, in addition to any other relief granted, the actual reasonable attorneys' fees and costs which the prevailing party has paid or is obligated to pay and all costs and expenses, not merely recoverable costs, which the prevailing party has paid or is obligated to pay. This provision is independent and severable from any other provision of this Subcontract and shall be enforceable as a separate agreement.
- xxi.
SUBCONTRACTOR acknowledges and agrees its failure to procure and maintain the above coverages for this Project constitutes a material breach of this Subcontract. In the event SUBCONTRACTOR fails to procure or maintain the above insurance coverages for this Project, and CONTRACTOR suffers harm, damage or other loss that would have otherwise been covered by Subcontractor's required insurance coverage, CONTRACTOR shall be entitled, in addition to any other relief granted, to its actual reasonable damages, attorney's fees and costs incurred as a result of the loss, damage or harm to CONTRACTOR.
- xxii. **In the event Subcontractor is not enrolled in the CCIP or is otherwise excluded from the CCIP:**
1. **All coverage requirements outlined within Section 7 (including General Liability and Excess Liability Insurance) shall apply to the full on-site scope of work defined in the Subcontract Agreement.**
 2. On-going and Products/Completed operations coverage with additional insured endorsement shall be included and must be maintained for the term of the Subcontract plus the period of time Subcontractor may be held legally liable for its work or work performed on its behalf for all General Liability and Excess Liability policies.

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3. The policy(s) shall provide for additional insured status to the Owner, Contractor, its parent and affiliate companies, and other as required in the Contract on forms no less broad than ISO Endorsement CG 20 10 11 85, or CG 20 10 10 01 and CG 20 37 10 01.
4. Coverage shall apply on a primary and non-contributory basis and evidenced on ISO Endorsement CG 20 01.
5. Such coverage and additional insureds shall be maintained for the period of time the subcontractor may be held legally liable for its work.
6. Neither the general liability nor the excess liability shall contain any of the following types of coverage exclusions or limitations:
 - A. EIFS exclusion;
 - B. Subsidence exclusion;
 - C. Cross-liability exclusion;
 - D. Action-over or similar employee injury exclusion;
 - E. Work from heights exclusion;
 - F. Claims-made policy form.
7. General Aggregate shall apply on a per-project basis;
8. Policy(s) shall contain a waiver of subrogation in favor of the Indemnitees of this Subcontract, the additional insured parties noted above, and the parties insured by the CCIP, to the extent permitted by law on ISO Endorsement CG 24 04.

The terms of this Exhibit F shall control for this CCIP Project and takes precedence over any prior existing Exhibit F included as part of a Master Subcontract Agreement between SUBCONTRACTOR and CONTRACTOR. This Exhibit F does not invalidate or modify any prior existing Exhibit F issued pursuant to a Master Subcontract Agreement for any other or future project(s) not subject to the terms of CONTRACTOR's CCIP.