



SUNBELT CONTROLS SUBCONTRACT AGREEMENT

CALIFORNIA CONTRACTOR'S LICENSE # 800423 ESTABLISHED 1995

Job # Job Name Job Address

Subcontract # Project Manager Confirmation

This Agreement made at Pleasanton, California On , between:

SUBCONTRACTOR

Name Address Phone

CONTRACTOR

A Sunbelt Controls, Inc. N 4511 Willow Road, Suite #4 D Pleasanton, CA 94588 (925) 660-3900

On or about the day of , Contractor entered into a contract with: to perform the following work: The work described in Section 1 below shall be performed in accordance with this subcontract agreement and the prime contract between: (Prime Contractor) and

drawings and other contract documents attached to or incorporated into the prime contract and general contract, all of which are incorporated herein by reference, and including all work reasonably inferable therefrom, for the above named Project. Said plans and specifications have been prepared by or on behalf of: Subcontractor acknowledges having received and/or having access to the documents referred to above. In addition, Subcontractor is bound by the terms and conditions attached to this subcontract and attached exhibits. In the event of conflict in these Contract Documents, the more stringent requirement, in Contractor's sole determination, shall govern.

SECTION 1. SCOPE

Subcontractor agrees to perform and furnish all labor, services, materials, equipment, and other facilities required to complete the below described scope of work, for the Project in strict accordance with the Contract Documents and the highest standards:

SECTION 2. PRICE

Contractor agrees to pay Subcontractor for the strict performance of his work, the sum of: \$ subject to adjustments for changes in the work as may be directed in writing by the Contractor, provided Subcontractor is not in breach of this Agreement, and has satisfied all other conditions for payment: 1) Progress payments shall be made in monthly progress payments of NINETY Percent (90%) of labor and material which have been incorporated into the work of improvement, and shall be made only with sums received by Contractor from Owner or Prime/General Contractor for work performed by Subcontractor as reflected in Contractor's applications for payment and: 2) Final payment shall be made within 35 days after the entire work required by the prime contract has been fully completed in conformity with the Contract Documents and has been delivered to and accepted by Owner, Architect, Prime/General Contractor and Contractor with funds received by Contractor from Owner or Prime/General Contractor in final payment for work under the prime contract. If owner or other responsible party delays in making any payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. "Reasonable time" shall be determined according to relevant circumstances, but in no event shall be less than the time Contractor, Contractor's sureties, and Subcontractor require to pursue to conclusion their legal remedies against Owner or other responsible party to obtain payment, including (but not limited to) mechanics' lien remedies. Subcontractor agrees to furnish in a prompt and timely manner, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor material and from his subcontractors, suppliers and/or material men and laborers, applicable payments or contributions to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust; in form satisfactory to Contractor, prior to receipt of any payment. Contractor may, at its option, make any payment or portion thereof by joint check payable to Subcontractor and any of its subcontractors, suppliers and/or material men. Any payment made hereunder prior to completion and acceptance of the work, as referred to above, shall not be construed as evidence of acceptance or acknowledgment of completion of any part of any Subcontractor's work. Please refer to Exhibit "B" for the payment and billing instructions.

SECTION 3. SPECIAL PROVISIONS

Performance and payment bonds are: Required. Not Required. Exhibits A, B, C are attached hereto and incorporated herein by its reference. To meet all state and local codes and safety orders.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD, ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THE BOARD WHOSE ADDRESSES ARE FOR THE FOLLOWING STATES:

- CALIFORNIA Contractors State License Board P.O. Box 26000 Sacramento, CA 95826
WASHINGTON Department of Labor & Industries P.O. BOX 44000 Olympia, WA 98504
NEVADA State Contractors Board 9670 Gateway Drive, # 100 Reno, NV 89521
IDAHO Bureau of Occupational Licensing 700 W State Street Boise, ID 83702
OREGON Construction Contractors Board P.O. Box 14140 Salem, OR 97309
UTAH Occupational & Professional Licensing P.O. Box 146701 Salt Lake City, UT 84114

SUBCONTRACTOR

Dated:

By (SIGNATURE) (NAME) (ADDRESS) (EMR) (CONTRACTOR'S LICENSE NUMBER) (PUBLIC WORKS NUMBER)

CONTRACTOR

Dated: Sunbelt Controls, Inc.

By (SIGNATURE) (NAME) 4511 Willow Road, Suite #4 Pleasanton, CA 94588 (CONTRACTOR'S LICENSE NUMBER) (PUBLIC WORKS NUMBER)

SECTION 4. TAXES

Subcontractor agrees to pay any and all taxes, including but not limited to sales and/or use taxes in connection with the performance of the work and the fulfillment of this Agreement, hereunder, unless specifically prohibited by any laws, ordinances and/or regulations of Federal, State, County, Municipal (unions where applicable), or other authorities. These taxes are included in the Price as stated in Section 2.

SECTION 5. ENTIRE AGREEMENT

It is understood that all references in this Agreement to "This Agreement" are defined to include all Exhibits and all documents incorporated herein by reference, wherever mentioned in this Agreement. This Agreement represents the entire agreement between Contractor and Subcontractor and the Subcontractor and supersedes any prior written or oral representations, except when a properly executed and active Master Subcontract Agreement is in effect, in which case the terms of the Master Subcontract Agreement are incorporated herein by reference and are a part of this Agreement. Subcontractor and its subcontractors are bound by the prime contract and any contract documents incorporated therein insofar as they relate in any way, directly or indirectly, to the work covered by this Agreement. Subcontractor certifies that it is fully familiar with all the terms of the Contract Documents, the location of the job site, and the conditions under which the work is to be performed and that he enters into this Agreement, based upon his investigation of all such matters and is not relying on any opinions or representations of Contractor. Modifications to this Agreement, proposed by the Subcontractor are not acceptable unless specifically agreed to in writing by Contractor. Commencement or continuation of work by Subcontractor following receipt of this Agreement constitutes acceptance of the terms herein without modification. The terms and conditions herein apply to all work performed by the Subcontractor, even if instructed to do so on a purchase order.

SECTION 6. TIME, DELAYS, REMEDIES

Time is of the essence in this Agreement. The Subcontractor agrees to keep itself thoroughly informed as to the progress of the job, and will, as soon as the project is ready for the commencement of the subcontract work provided for herein, commence and prosecute such work diligently to completion as rapidly as the conditions on the project permit: it being understood that Subcontractor will conform with the time schedule approved by the Prime Contractor. The Subcontractor shall coordinate its work as directed by the Contractor, and in accordance with the plans, specifications, addenda, terms, stipulations, conditions, and drawings governing the performance of the Prime Contractor, all of which so far as they have referenced to and affect the work herein subcontracted, shall be binding upon the Subcontractor, the same as though they were incorporated into this Agreement, the intention being that with respect to said work reserved by or given to the Owner and the Architect may be maintained and exercised and/or against the Subcontractor. Subcontractor shall coordinate its work with that of all other contractors, subcontractors and suppliers so as not to delay or damage their performance. Subcontractor shall prepare and obtain approval as required by the Contract Documents for all shop drawings, details, samples, and do other things necessary and incidental to the prosecution of its work in conformance with progress schedule. In the event Subcontractor fails to maintain its part of the Contractor's schedule, he shall, without additional compensation, accelerate the work, including but not limited to, additional craftsmen and overtime at no cost to the Contractor, as Contractor may direct until Subcontractor's work is in accordance with such schedule. Contractor shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time and order in which various portions of the work shall be installed and the relative priority of the work of Subcontractor and, in general, all other matters pertaining to the timely and orderly conduct of the work of Subcontractor on the premises.

Should Subcontractor be delayed in the prosecution of completion of the work by the act, neglect, or default of Owner, Architect, Prime Contractor, or should Subcontractor be delayed waiting for materials, if required by this Agreement to be furnished by Owner, Prime Contractor, or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by or resulting from fault or collusion on the part of Subcontractor, or in the event of a lock-out by Prime Contractor or Contractor, then the time herein fixed for the completion of the work shall be extended the number of days that Subcontractor has thus been delayed, but no allowance or extension shall be made unless a claim therefor is presented in writing to Contractor within two (2) working days of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire project within the time allowed Contractor by Owner or Prime Contractor for such completion.

No claims for additional compensation or damages for delays, disruptions, hindrances or inefficiencies, whether caused in whole or in part by any conduct on the part of Contractor, including but not limited to, conduct amounting to a breach of this Agreement or delays by others including but not limited to other Subcontractors, Owner, or Prime Contractor, or designers shall be recoverable from Contractor, and the above-mentioned extension of time for completion shall be the sole remedy of Subcontractor, provided, however, that in the event Contractor obtains additional compensation from Owner or Prime Contractor on account of such delays, disruptions, hindrances, or inefficiencies, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor as is equitable under all of the circumstances, not to exceed a pro rata share of the recovery obtained by Contractor against the Owner or Prime Contractor. In the event that Contractor prosecutes a claim against Owner or Prime Contractor for additional compensation for such occurrences, Subcontractor shall cooperate fully with Contractor on the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorney's fees, to the extent that said claim is made by Contractor at the request of Subcontractor. The Contractor has sole discretion to settle Subcontractor's claims with the Prime Contractor or Owner, whether as part of a global settlement or otherwise. This provision shall not be construed to require the Contractor to pursue any delay claim against the Owner or any other party.

SECTION 7. DAMAGES CAUSED BY SUBCONTRACTOR DELAYS

If Subcontractor should default in performance of the work or should otherwise commit any act which causes delay to the Prime Contractor work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages sustained by the Contractor, or for which Contractor may be liable to Owner or any other party.

SECTION 8. BONDING OF SUBCONTRACTOR

Concurrently with the execution of this Agreement, Subcontractor shall, if required by Contractor, execute a labor and material payment bond and performance bond, in an amount equal to one hundred percent (100%) of the Contract Price. Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form satisfactory to Contractor. Whether the payment of the bond premium is to be by Subcontractor or Contractor, will be addressed on the Job Specific Work Order, or Purchase Order.

SECTION 9. LIENS

In case suit is brought on any claim or liens for labor performed or materials used on or furnished to the project, Subcontractor shall pay and satisfy any such lien or judgment as may be established by the decision of the court in said suit. Subcontractor agrees within ten (10) days after written demand to cause the effect of any such suit or lien to be removed from the premises, and in the event Subcontractor shall fail to do so, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed and the cost thereof, together with actual attorney's fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such lien or suit provided he causes the effect thereof to be removed, promptly in advance, from the premises, and shall further do such things as may be necessary to cause Owner or Prime Contractor not to withhold any monies due to Contractor from Owner or Prime Contractor by reason of such liens or suits. It is understood and agreed that the full and faithful performance of this Agreement on the part of the Subcontractor (including payment of any obligations due from Subcontractor to Contractor, and any amounts due to labor or materialmen furnishing labor or material for said work) is a condition precedent to Subcontractor's right to receive payment for the work performed, and any monies paid by Contractor to Subcontractor under the terms of this Agreement, shall be impressed with a trust in favor of labor and materialmen furnishing labor and material to Subcontractor on the work herein subcontracted.

SECTION 10. CHANGES IN WORK

Subcontractor shall make no changes in the work covered by this Agreement without written direction from the Contractor. Subcontractor shall not be compensated for any change which is made without such written direction by an authorized individual of the Contractor. If necessary, the contract price stated in Section 2, and the time for Subcontractor's performance shall be adjusted by appropriate additions or deductions mutually agreed upon before Subcontractor performs the changed work. Subcontractor shall supply Contractor with all documentation necessary to substantiate the amount of the addition to or deduction from the price or time. Contractor will submit the pricing to the Prime Contractor and Owner for approval. If Contractor and Subcontractor cannot gain agreement on the amount of the addition or deletion, Subcontractor shall nonetheless timely perform the work, as changed by the Contractor's written direction. Pricing shall be determined per Section 23 covering disputes. Once Subcontractor receives Contractor's written direction, Subcontractor is solely responsible for timely performance of the work as changed by the written direction. Payment for changed work shall be made in accordance with Section 2. No changes in the work covered by this Agreement shall exonerate any surety or any bond given in connection with this Agreement.

SECTION 11. DISPUTED WORK; NOTICE

If any dispute shall arise between Contractor and Subcontractor regarding performance of the work, or any alleged change in the work, Subcontractor shall timely perform the disputed work and shall give written notice of a claim for additional compensation or time extension for the work with ten (10) days after commencement of the disputed work. Subcontractor's failure to give written notice within the ten (10) day period constitutes an agreement by Subcontractor that it will receive no extra compensation or time extension for the disputed work, and such claims are expressly waived.

SECTION 12. INSPECTION AND PROTECTION OF WORK

- 12.1 Should performance of the work hereunder depend upon performance of other work, Subcontractor shall carefully examine all contiguous or dependent work, determine whether it is suitable for performance of the work hereunder, report immediately any unsuitable conditions to Contractor in writing, and allow Contractor reasonable time to have such unsuitable conditions remedied. Unless Subcontractor reports such unsuitable conditions, Subcontractor shall be deemed to have accepted dependent work as adequate for the completion of the work.
- 12.2 Subcontractor shall make the work accessible at all times for inspection by the Contractor. Subcontractor shall, at the first opportunity, inspect all material and equipment delivered to the job site by others to be used or incorporated in the Subcontractor's work and give prompt notice of any defect therein. Subcontractor assumes full responsibility to protect the work done hereunder until final acceptance by the Architect, Owner, Prime Contractor and Contractor.

SECTION 13. LABOR RELATIONS

- 13.1 Subcontractor shall maintain labor relations in conformity with the directions of the Contractor and shall comply with those labor agreements applicable to the work performed under this Agreement, to the extent required by the Contractor.
- 13.2 For public works projects in California, Subcontractor acknowledges the provisions of the California Labor Code regarding the payment of prevailing wages to workers on public works projects, and Subcontractor has read and understands such Labor Code sections. This Agreement incorporates by reference the provisions of Labor Code sections 1771, 1775, 1776, 1777.5, 1813, and 1815 as though they were expressly set forth herein. Prior to final payment, if requested by Contractor, Subcontractor shall (i) provide a letter from the labor trust funds for unions indicating that date through which Subcontractor is current in their trust fund payment obligations, and (ii) provide an affidavit that Subcontractor has paid prevailing wage to its employees and any amounts due under California Labor Code section 1813, and that Subcontractor is in compliance with required apprentice ratios. Subcontractor will require its sub-subcontractors performing work at the Project (if applicable) to agree to the obligations set forth in this Section. Upon request, Subcontractor agrees to submit certified payroll reports to Contractor within five working days after labor has been paid. This paragraph is applicable only to public works projects covered by the California Labor Code.
- 13.3 Subcontractor shall defend, indemnify and hold harmless Contractor from and against any and all claims, damages, losses or expenses (including, without limitation, attorneys' fees, disbursements or costs, as well as any and all penalties and liquidated damages that may be assessed or incurred by Contractor) to the extent any such claim, damage, loss or expense arises out of or relates to (i) liability imposed under California Labor Code section 218.7; or (ii) any other alleged failure by Subcontractor to comply with any applicable wage or labor laws. Subcontractor acknowledges and agrees that its failure to comply with any applicable wage or labor law, or its failure to fulfill its indemnification and defense obligations in this paragraph, shall be a material breach by Subcontractor, for which Contractor shall have all of its available rights and remedies under this Agreement, including, without limitation, those rights and remedies set forth in Section 16.1. Pursuant to California Labor Code 218.7, subdivision (h), Contractor may withhold as "disputed" all sums owed to Subcontractor unless and until Subcontractor provides certified payroll reports and other payroll records of its employees who are providing labor on the Project, and Subcontractor's estimated journeyman and apprentice hours for the Project.

SECTION 14. FAILURE OF PERFORMANCE, NOTICE TO CURE

If Subcontractor at any time refuses or neglects to supply enough properly skilled workers and proper materials, or fails to properly and diligently prosecute the work covered by this Agreement, or fails to make prompt payment to his workers, subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship, or other employee benefit program or trust, or is otherwise guilty of a material breach of a provision of this Agreement, and fails within two (2) working days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then Contractor, without prejudice to any other rights or remedies provided in this Agreement or allowed by law, shall have the right to any or all of the following remedies:

- a. Supply such number of workers and quantity of materials, equipment and other facilities as Contractor deems necessary for the completion of Subcontractor's work, or any part thereof which Subcontractor has failed to complete or perform, and charge the cost thereof to Subcontractor, who shall be liable for the payment of same including reasonable overhead, profit, and actual attorney's fees incurred as a result of Subcontractor's failure of performance;
- b. Contract with one or more additional contractors to perform such part of Subcontractor's work as Contractor shall determine will provide the most expeditious completion of the total work and charge the cost thereof to Subcontractor, and
- c. Withhold payment of any monies due Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor. In the event of an emergency affecting the safety of persons or property, Contractor may proceed as above without notice.

SECTION 15. COMPLIANCE WITH LAWS

The Subcontractor agrees to comply with and conform to all laws, ordinances and regulations of Federal, State, County, City, Municipal (unions, where applicable) and all other authorities with respect to the performance of the work and the fulfillment of this Agreement; and will pay promptly all permits, fees, taxes, charges, damages, and penalties that may be assessed against the Subcontractor or against the Contractor on account of the Subcontractor.

SECTION 16. TERMINATION

- 16.1 Termination for Default. If Subcontractor fails to commence and satisfactorily continue correction of a default within two (2) working days after receipt by Subcontractor of the notice issued under Section 14, then Contractor may terminate Subcontractor's right to perform under this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor to complete Subcontractor's work without any further compensation to Subcontractor for such use. Contractor may also furnish those materials and equipment, and/or employ such workers or subcontractors as Contractor deems necessary to maintain the orderly progress of the work.
- 16.2 Termination for Convenience. Contractor may at any time and for any reason, in Contractor's sole discretion, terminate Subcontractor's services hereunder at Contractor's convenience. In the event of termination for convenience, Subcontractor shall recover the lesser of the percentage of work completed by Subcontractor multiplied by the Subcontract price, or the actual direct cost of the work completed to the date of termination, plus 15% of the actual direct cost of the work for overhead and profit. Subcontractor shall not be entitled to any claim or lien against Contractor, Owner or Prime Contractor for any additional compensation or damages in the event of such termination. In no case shall payment exceed the allowance made by Prime Contractor or Owner for Subcontractor's work. An improper termination for default by Contractor shall be deemed a termination for convenience.

SECTION 17. GENERAL INDEMNITY

All work covered by this Agreement done at the site of construction or in preparing or delivering materials or equipment, or any or all of them, to the site, shall be at the risk of Subcontractor exclusively.

- 17.1 To the fullest extent permitted by law, Subcontractor shall defend, indemnify, and hold harmless Owner, Prime Contractor, Contractor and their agents and employees from claims, demands, causes of actions and liabilities of every kind and nature whatsoever arising out of or in connection with Subcontractor's operations performed under this Agreement.
- 17.2 This indemnification shall extend to claims occurring after this Agreement is terminated as well as while it is in force. The indemnity shall apply regardless of any contributory negligent act or omission of Owner, Prime Contractor, Contractor or their agents or employees, but Subcontractor shall not be obligated to indemnify any party for claims arising from the sole negligence, active negligence or willful misconduct of Contractor its agents or employees.
- 17.3 This indemnity shall apply to any and all claims, liability, loss, damage, costs, including reasonable attorney's fees, awards, fines or judgments arising by reason of any obligation or indemnity which Contractor has to Owner. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.
- 17.4 With respect to Subcontractor's obligation to defend, Subcontractor shall defend Contractor to the maximum amount allowed by law. Upon Contractor's tender to Subcontractor of a claim or portion thereof that includes the information provided by the Claimant relating to the claims caused by Subcontractor's scope of work and a written statement regarding how the reasonable allocated share of fees and costs was determined, Subcontractor shall elect to perform either of the following:

- a. Defend the claim with counsel of its choice. If Subcontractor elects to defend under this subparagraph, Subcontractor shall provide written notice of the election to Contractor within a reasonable time following receipt of Contractor's written tender, and in no event later than 30 days following that receipt. The defense by Subcontractor shall be a complete defense of Contractor of all claims or portions thereof to the extent alleged to be caused by Subcontractor, including any vicarious liability claims against Contractor resulting from the Subcontractor's scope of work, but not including claims resulting from the scope of work, actions or omissions of Contractor or any other party. Any vicarious liability imposed upon Contractor for claims caused by Subcontractor electing to defend under this paragraph shall be directly enforceable against Subcontractor by Contractor, or claimant. All information, documentation, or evidence, if any, relating to Subcontractor's assertion that another party is responsible for the claim shall be provided by Subcontractor to Contractor.
- b. Pay, within 30 days of receipt of invoice from Contractor a reasonable allocated share of the Contractor's defense fees and costs on an ongoing basis during the pendency of the claim, subject to any amounts reallocated upon final resolution of the claim, either by settlement or judgment. The Contractor will allocate a share to itself to the extent a claim or claims are alleged to be caused by its work, actions, or omissions, and a share to each other party to the extent a claim or claims are alleged to be caused by the other party's work, actions, or omissions, regardless of whether Contractor actually tenders the claim to any other party, and regardless of whether that other party is participating in the defense.
If a Subcontractor fails to timely and adequately perform its obligations under Subparagraph (a) above, Contractor shall have the right to pursue a claim against Subcontractor for any resulting compensatory damages, consequential damages, and reasonable attorney's fees. If Subcontractor fails to timely perform its obligations under Subparagraph (b) above, Contractor shall have the right to pursue a claim against Subcontractor for any resulting compensatory damages, interest, on defense and indemnity costs, from the date incurred, at the rate set forth in Civil Code Section 8818, consequential damages, and reasonable attorney's fees incurred to recover these amounts. If, upon request by Subcontractor, Contractor does not reallocate defense fees within 30 days following final resolution of the claim, Subcontractor shall have the right to pursue a claim against Contractor for any resulting compensatory damages with interest, from the date of final resolution of the claim, at the rate set forth in Civil Code Section 8818.

SECTION 18. INSURANCE

- 18.1 Subcontractor shall, at its own expense, maintain in effect at all times during the performance of the Work under this Subcontract the insurance coverage, limits, and requirements set forth in Exhibit C, which is incorporated herein by reference.

SECTION 19. PAYMENTS

- 19.1 Prior to its first application for payment, Subcontractor shall submit a detailed schedule of values in a form acceptable to Contractor for use in checking Subcontractor's monthly application for payment. The schedule of values will be used for payment purposes only and shall not relieve Subcontractor from furnishing all work required by this Subcontract. All applications must be certified and completed utilizing the payment forms required by the Contract Documents. Subcontractor agrees that, upon request by Contractor, it shall furnish such information and consents of surety as Contractor may require, to confirm Subcontractor's entitlement to payment.
- 19.2 No payment will be made to Subcontractor until receipt by Contractor of (a) an executed Subcontract Agreement; (b) evidence of insurance consistent with Section 18; and (c) Payment and Performance bonds, if required, and as addressed in Section 8.
- 19.3 Contractor shall have the right at all times to contact Subcontractor's subcontractors and suppliers to ensure that the same are being paid by Subcontractor for labor or materials for use in performing Subcontractor's work.
- 19.4 Should Subcontractor: (a) fail to make timely payment to its suppliers, subcontractors, laborers, or fringe benefit funds; (b) fail to compensate Contractor or another contractor or subcontractor for damage caused by Subcontractor; or (c) fail to perform its clean up obligations, Contractor, at its sole discretion, may make direct payment to such individuals or entities and reduce the Subcontract Agreement price accordingly.
- 19.5 Progress or final payments shall not be acceptance of improper, faulty or defective work or material, shall not release Subcontractor of any of its obligations under this Agreement and shall not constitute a waiver of any rights or provisions hereof by Contractor. Beneficial use or occupancy is not acceptance of the work.
- 19.6 Subcontractor, as requested by Contractor, shall furnish certified copies of all payrolls in the manner prescribed by Contractor. Contractor reserves the right to require mechanic's lien, stop notice, material supplier and bond claim releases (including releases from laborers, suppliers and lower tier subcontractors) and payment sworn statements with each Application for progress payments and on final payment. Contractor also reserves the right to require Subcontractor to execute an Unconditional Waiver and Release form as to previously paid progress payments. No payment will be made until required releases and affidavits have been received and approved by Contractor.
- 19.7 If allowed in the Contract Documents and approved in advance by the Owner and Contractor, payments may be made for materials or equipment suitably stored at the job site or some other locations agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by Subcontractor of bills of sale or such other procedures satisfactory to Contractor to establish Owner's title to such materials or equipment or otherwise protect Owner's interest, including applicable insurance and transportation to the site.
- 19.8 Contractor may withhold or, on account of subsequently discovered evidence, may nullify, the whole or part of any payment to protect Contractor from loss on account of (a) defective work not remedied by Subcontractor; (b) third party claims filed or reasonable evidence indicating probably filing of such claims arising out of Subcontractor's work; (c) Failure of Subcontractor to make payments properly to its subcontractors or for materials, equipment, labor or fringe benefits; (d) reasonable doubt that the work under this agreement can be completed for the balance of the Subcontract Price then unpaid; (e) damage to Contractor, a separate contractor or another subcontractor arising out of Subcontractor's work; (f) reasonable doubt that the work under this Agreement can be completed within the time required herein and that the balance of this subcontract price then unpaid would be sufficient to cover the damages resulting from the anticipated delay; (g) penalties assessed against Contractor or Subcontractor on account of Subcontractor's failure to comply with State, Federal, or local laws and regulations; (h) failure to carry out the work under this Subcontract in accordance with the Contract Documents; of (i) Any other grounds for withholding payment allowed by state or federal law, or as otherwise provided in this Subcontract. When the reason(s) for withholding payment is/are rectified, such amounts as are then due and owing shall be paid or credited to Subcontractor.
- 19.9 Contractor reserves the right to make payment by joint check or by direct check to Subcontractor's material suppliers or subcontractors or to any other person or entity who has performed work or furnished materials under this Agreement and may have a claim or a right of action against Contractor, Contractor's Surety, or the Project under any law: provided, however, that Contractor shall not be obligated to exercise the right reserved herein for the benefit of any person or entity other than itself. Subcontractor agrees that contractor shall have the right to determine the manner in which payment shall be made.

SECTION 20. SAFETY

Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to occupational safety and health, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention, safety program and safety regulations of Owner and Contractor. Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, order, citations, rules, standards and statutes. Subcontractor will promptly report any accident or injury to any of its employees, agents, servants, or members of the public on this Project to the Contractor's Superintendent and will furnish Contractor with copies of all accident reports. Subcontractor shall furnish Contractor with current Material Safety Data Sheets for hazardous materials prior to delivery of any hazardous materials to the job site. The Subcontractor shall inform the Contractor of any precautionary measures to be taken to protect employees. Subcontractor will comply with the requirements of Exhibit "A", Safety Requirements.

SECTION 21. CLEAN-UP

At all times during the course of performing the work under this Agreement, Subcontractor shall perform its work, including any necessary clean-up, so as to maintain the Project site in a clean, safe and orderly condition. All materials shall be stored or stacked in a neat organized manner. Upon completion of the work under this Agreement, Subcontractor shall (a) clean all surfaces, fixtures, equipment and other items which are a part of the work under this Agreement or may have been soiled by such work, and (b) remove from the job site and legally dispose of all temporary structures, debris, waste, and other items incidental to Subcontractor's operations, including all hazardous materials, which do not constitute a permanent part of the Project. Subcontractor shall follow all directions of Contractor in regard to clean-up, both during the course of the work and at the completion of Subcontractor's work. Clean-up shall be considered a daily requirement to ensure that the work areas are clean, orderly and safe. If the Prime Contractor directs a composite clean-up crew, Subcontractor shall participate as directed at no additional cost. Contractor shall be entitled to back-charge Subcontractor for the costs of clean-up if Subcontractor fails to clean up its work within two (2) working days after written demand by Contractor. Contractor shall not be required to issue multiple clean-up notices.

SECTION 22. PROTECTION OF WORK

Subcontractor shall effectually secure and protect the work, including materials and equipment on the job site, and assume full responsibility for the condition thereof until final acceptance by Architect, Owner and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the work and the workers of Contractor. Owner and other subcontractors from its operations. Subcontractor shall be liable for any loss or damage to any work in place or any equipment and materials on the job site caused by him or its agents, employees or guests.

SECTION 23. CLAIMS RESOLUTION PROCEDURE

- 23.1 All claims, disputes and matters in question arising out of, or relating to this Agreement, or the breach thereof, except for claims which have been waived by the making acceptance of final payment, shall be decided by the claims procedure, including any arbitration and/or forum selection clause, specified in the Prime Contract between Contractor and Owner. In the absence of an agreement to arbitrate in the Prime Contract, claims or disputes shall be arbitrated if elected by Contractor.
- 23.2 In the event the Contract Documents contain an arbitration provision or if arbitration is elected by Contractor, the following shall apply:
- a. Notice of the Demand for Arbitration shall be filed in writing with the other party to this Agreement and shall conform to the requirements of the arbitration provision set forth in the Prime Contract. The Demand for Arbitration shall be made within a reasonable time after written notice of the claim, dispute, or other matter in question, and in no event shall be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matters in question would be barred by the applicable Statute of Limitations.
 - b. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.
 - c. Unless otherwise agreed to in writing, Subcontractor shall carry on the work and maintain the schedule of work pending arbitration, and, if so, Contractor shall continue to make payments in accordance with this Agreement.
 - d. To the event not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding. In this event, it shall be the responsibility of Subcontractor to prepare and present Subcontractor's case, to the extent the proceedings are related to this Agreement. Should Contractor enter into arbitration with the Owner or others regarding matters relating to this agreement, Subcontractor shall be bound by the result of the arbitration to the same degree as the Contractor.
 - e. This section shall not be deemed limitation of any rights or remedies which Subcontractor may have under the Federal or State mechanic's lien laws or under any applicable labor and material payment bonds unless the Subcontractor expressly waives such rights or remedies.
 - f. Subcontractor agrees to consolidation and/or joinder of all parties whose participation is necessary to a complete resolution of the claim or dispute.
- 23.3 In any dispute resolution proceeding between the parties to this Agreement, whether litigation or arbitration, the prevailing party shall be entitled to recover its reasonable attorney's fees, expert fees and costs. In determining prevailing party status and the reasonableness of fees and costs, consideration shall be given to whether Subcontractor has permitted contractor a reasonable time to pursue payment on Subcontractor's behalf in accordance with Section 2 of this Agreement, and whether other conditions to payment have been satisfied prior to commencement of the disputes proceeding. Consideration shall also be given to the relief awarded in relation to the relief sought.

SECTION 24. LABOR RELATIONS AND SUBCONTRACTOR EMPLOYEES

Subcontractor shall comply with all of the provisions of any collective bargaining agreements executed by or on behalf of Contractor. Contractor shall have no liability to Subcontractor for any costs, expenses or liability resulting from any stoppage of work, however, caused, arising out of a labor dispute or controversy. Subcontractor shall be liable for any and all costs resulting from work stoppage or other labor disputes associated with Subcontractor, Subcontractor's employees or the subcontractor(s) of Subcontractor. Subcontractor shall employ only competent, well-disciplined workers to perform the work hereunder and Subcontractor agrees to immediately remove and replace any employee(s) whom Contractor, Owner, or Architect determines is not in compliance with the Project requirements.

SECTION 25. WARRANTY

Subcontractor warrants to Owner and Contractor that all materials and equipment furnished shall be new unless otherwise specified and that all work under this Agreement shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this paragraph shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. Subcontractor guarantees its work against defects in materials and/or workmanship for the time period called for in the Specifications or for twelve (12) months, whichever is longer, from the date of the written acceptance of the entire work called for in the Contract between the Owner and Contractor. Subcontractor shall promptly repair or replace any such defects occurring within the guarantee period without cost to Contractor or Owner upon written notice from Contractor or Owner. Subcontractor shall furnish three (3) copies of a separate written guarantee with the final billing.

SECTION 26. EQUAL OPPORTUNITY

Subcontractor agrees to be subject to all applicable contract clauses required by federal, state, or local law, rule, or regulation to be included in this Agreement, including, but not limited to, the following clauses, which are incorporated herein by this reference: Equal Opportunity Clause (41 CFR 60.1.4); Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam Era (41 CFR 60-250.4); Affirmative Action Clause for Handicapped Workers (41 CFR 60-741.4); and the Certification of Nonsegregated Facilities Clause (41 CFR 60 1.8; 41 CFR 1-12.803.10). In addition, Subcontractor agrees and certifies, if applicable, this it has developed a written affirmative action compliance program (41 CFR 60-1.40(a)) and annually files Standard Form 100 (EEO-1) (41 CFR 60-1.7(a)).

SECTION 27. RIGHT OF ASSIGNMENT

- a. This Subcontract and the proceeds from this Subcontract will not be assigned without the written consent of Contractor, and if applicable, Subcontractor's Surety.
- b. The Subcontractor will not relet or sublet any Work covered under this Subcontract without prior written approval by Contractor. The Subcontractor will insert in any subcontract awarded by it, with approval of Contractor, all or any part of this Subcontract necessary to protect Contractor. The assignment of any Subcontract Work will not relieve Subcontractor of any performance, supervisory and coordination requirements.