

GENERAL CONDITIONS TO SUBCONTRACT AGREEMENT

These **GENERAL CONDITIONS TO SUBCONTRACT AGREEMENT** (“General Conditions”) are part of the Subcontract Agreement between Stahl Construction Company (“Contractor”) and Subcontractor. Any references to the “Subcontract” or “Subcontract Agreement” between the parties shall include all terms and conditions of both the Subcontract Agreement, including its Exhibits, and these General Conditions. As used in these General Conditions, the terms Contractor, Subcontractor, Project, Project Site, Owner, Architect, and Contract Price shall have the same meanings as in the Subcontract Agreement.

SECTION 1. SUBCONTRACTOR

1. Scope of Work. Subcontractor is employed by Contractor as an independent contractor and shall furnish and pay for all supervision, labor, materials, tools, equipment, services, and all other items, whether temporary or permanent in nature, including those items and services that are required, incidental, or reasonably implied to perform fully the Subcontract for the installation, completion, and operation, as applicable, of all the work described in Exhibit B attached to the Subcontract (“Work”).

SECTION 2. GENERAL TERMS

2. Contract Documents. The “Contract Documents” consist of (1) the Subcontract, including its Exhibits and these General Conditions, (2) the Prime Contract between Owner and Contractor and all documents and exhibits incorporated therein, (3) all plans, specifications, project manuals, general and supplementary conditions, special conditions, invitation to bidders, instructions to bidders, addenda, bonds, and other documents enumerated on the list of Contract Documents attached to the Subcontract as Exhibit A, including documents and exhibits incorporated in or by any such documents enumerated on Exhibit A, and (4) any properly made addenda, modifications, revisions, riders, or changes to the above documents. The terms and conditions of all Contract Documents are fully incorporated in, and are part of, the Subcontract.

2.1. Understanding the Contract Documents. Subcontractor understands the Work to include all work shown on or reasonably implied by any of the Contract Documents and all work and things necessary to complete the Work for use for its intended purposes. If conflicts exist within the Contract Documents as to quantity of material or quality of work, Subcontractor shall provide the greater quantity or better quality shown or specified with no increases in the Contract Price. Failure by Subcontractor to detect inconsistencies or omissions

in the Contract Documents, or to investigate the Project Site and nature of its Work, shall not relieve Subcontractor from responsibility for estimating the difficulty and cost of its Work nor justify any adjustment in the Contract Price or time of performance or time of completion of Work. Subcontractor’s price for its Work shall be assumed to include any increases or escalations in the costs of labor, equipment, or material during the construction of the Project, whether foreseeable or not. References herein to Subcontractor’s subcontractors shall include subcontractors and suppliers of all tiers. Any reference herein to a Paragraph shall include all of its subparagraphs unless otherwise specifically provided. Any references to a subparagraph shall not include other subparagraphs of the Paragraph unless specifically provided.

2.2. Flow Down of Prime Contract Obligations. Subcontractor agrees to be bound to Owner and to Contractor by all provisions of the Contract Documents, including rights and remedies, and to assume toward Owner and Contractor all the duties and obligations that Contractor assumes toward Owner. As a general rule of contract interpretation: (a) In the event of conflict with the other Contract Documents, the Subcontract shall govern. (b) In the event of any conflict between the Subcontract and its Exhibits, the Exhibits shall govern. Notwithstanding the foregoing, the Subcontract and other Contract Documents shall be interpreted, and conflicts shall be resolved to avoid any breach of the Prime Contract by Contractor. Subcontractor shall require its lower-tier subcontractors (including suppliers) to assume toward Owner, Contractor, and Subcontractor the same duties and obligations that Subcontractor assumes toward Contractor.

2.3. Definitions. Words and phrases in the Subcontract shall be defined in a manner to effectuate the terms of the agreement between Owner and Contractor as contained in the Contract Documents. To the extent not inconsistent with the Contract Documents, the following definitions shall apply: A

“Change Order” is an agreement for a change in the Work signed by Contractor and Subcontractor or an agreement for a change signed by Owner and Contractor. A “Change Order Request” or “COR” is a request from Contractor to Owner or Architect concerning a proposed change in the Work. A “Change Proposal” or “Proposed Change Order” or “PCO” is a request to Subcontractor from Contractor for information on pricing for a proposed change, the effect of a proposed change on time, and other matters concerning a proposed change in the Work, whether initiated by Contractor, Owner, Architect, or another party. A “Change Directive” is a unilateral direction to Subcontractor from Contractor for a change in the Work. Because Contractor has the right to revise the Project Schedule as required to meet the conditions and needs of the Project, and to reschedule the order, rate, and sequence of performance of Subcontractor’s Work as necessary to facilitate job progress, any direction for changes in Subcontractor’s schedule is not a Change Directive or Change Order but shall be binding on Subcontractor. Time and money adjustments for Change Orders or Change Directives shall be determined in strict accordance with the Subcontract. A “Pass-Through Claim” is a claim by Subcontractor resulting from a determination, decision, ruling, directive, error, omission, or other action or inaction by Owner or Architect (or others acting as design consultant, owner representative, or in another role on behalf of Owner) that affects Subcontractor or its Work. Contractor is not directly liable to Subcontractor for damages caused by the action or inaction giving rise to a Pass-Through Claim, and any damages recoverable by Subcontractor shall be determined only to the extent and under the procedures specifically provided in Paragraph 12.2 below. As used in the Subcontract, “Architect” shall be deemed to include any design professional or other representative of Owner authorized by the Contract Documents to make relevant decisions or to take relevant actions concerning the design and/or administration of construction.

SECTION 3. THE WORK

3. Prosecution of the Work. Subcontractor agrees to complete its Work as follows:

3.1. Quality of Work. Subcontractor shall supervise and direct the Work using its best skill and attention and shall execute all Work in the best and most proficient manner by qualified, careful, and efficient workers and other necessary personnel, including

administrative, supervisory, managerial, and other personnel needed for the execution of the Work. Notwithstanding that the Contract Documents may allocate responsibilities differently than in this Paragraph, as between Contractor and Subcontractor, and any parties affected by their relationship, Subcontractor shall be solely responsible for, and shall have control over, construction means, methods, techniques, sequences, and procedures, and for all safety matters except to the extent directed by Contractor, and for the coordination and proper fit of all portions of its Work, including proper fit with the work of other subcontractors, and for conforming its Work to all applicable codes and other legal requirements. Notwithstanding any dimensions given in the Contract Documents, it shall be the obligation of the Subcontractor to take such measurements, to consult shop drawings and other submittals of other subcontractors, and to make field modifications without extra cost as necessary to ensure the proper matching and fitting of Subcontractor’s Work and to comply with “hold to” requirements in the Contract Documents. The fact that any part of Subcontractor’s Work is not specifically mentioned in this Subcontract or its Exhibits shall not excuse Subcontractor from performance of such portions of the Work not specifically mentioned if (1) such portions, in Contractor’s reasonable judgment, are necessary and are usually or normally part of Subcontractor’s Work in the craft or trade performed by Subcontractor, or (2) such portions are reasonably inferable or implied from this Subcontract or the Contract Documents.

3.2. Responsibility for Others. Subcontractor shall be responsible to Contractor for the acts, omissions, performance delays, and materials and equipment delivery delays of its employees, agents, subcontractors, and suppliers, including their agents and employees and other persons on the Project Site on behalf of Subcontractor or performing any of Subcontractor’s Work at any location.

3.3. Warranty. Subcontractor warrants to Owner and Contractor that all materials and equipment furnished under the Subcontract will be new and of first quality unless otherwise specified, and all work will be free from faults and defects and in strict conformance with the Contract Documents. Any work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. No substitutions for items called for by the Contract Documents shall be made unless approved in advance in writing by Contractor,

and by others as required by the Contract Documents. If required by Contractor, Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is in addition to any other warranty, right, or remedy provided by law or in the Contract Documents. Upon final completion of its Work, or at such earlier date specified by the Contract Documents, Subcontractor agrees to assign to both Contractor and Owner any and all manufacturers' guaranties and warranties relating to its Work.

3.4. Supervision. Subcontractor shall employ a competent superintendent and any necessary assistants who shall be always present at the Project Site during the progress of the Work. The superintendent must be satisfactory to Contractor and shall not be changed by Subcontractor except at the direction of, or with written consent from, Contractor, unless the superintendent ceases to be employed by Subcontractor. The on-site superintendent (and other representatives but only if so designated in writing by Subcontractor) shall represent Subcontractor, and all communications and directions given to the superintendent and designated representatives shall be binding as if given to Subcontractor.

3.5. Time of Performance. In conformance with the Project completion dates in the Contract Documents, Contractor shall prepare a Project Schedule indicating the dates for the commencement and completion of the various stages of construction. The Project Schedule shall be revised in the discretion of Contractor to meet the conditions and needs of the Project. Contractor shall have the right to reschedule the order, rate, and sequence of performance of Subcontractor's Work as necessary to facilitate job progress. Contractor shall be liable to Subcontractor only for unreasonable rescheduling of Subcontractor's Work due to the fault or neglect of Contractor. Pass-Through Claims for rescheduling not due to the fault or neglect of Contractor shall be made as provided in Paragraph 12.2 below.

3.5.1. Time is of the essence of the Subcontract. Within two (2) business days after notification by Contractor, Subcontractor shall commence work in the field at such points as Contractor may designate and shall continue diligently in strict accordance with the Project Schedule without delaying or hindering Contractor's work or the work of other contractors and subcontractors. Subcontractor's commencement of work shall be deemed Subcontractor's agreement to complete its Work by the completion date specified

in the Project Schedule and an acknowledgment that Subcontractor has reviewed and accepted the Contract Documents, Project Schedule, and other requirements and conditions of the job. Prior to commencing its Work, Subcontractor shall complete and submit to Contractor a Pre-Installation Form and any other documents required of Subcontractor by Contractor for purposes of obtaining planning and work execution information for the efficient and timely completion of the Project. Subcontractor's failure to return such documents when required shall obligate it to pay an additional administrative fee of \$500 or such lesser amount as Contractor may designate. Failure of Contractor to promptly bill the fee shall not constitute a waiver of it.

3.5.2. If any part of Subcontractor's Work depends for proper execution or results upon the work of any others, Subcontractor shall inspect and promptly report to Contractor any apparent delays, discrepancies, or defects in such work that render it unsuitable for Subcontractor's Work. Subcontractor is responsible for obtaining and reviewing shop drawings and submittals of other subcontractors as necessary to insure proper fitting and coordination of its Work. Failure by Subcontractor to report known or reasonably ascertainable delays, discrepancies, faulty measurements and dimensions, and other defects shall constitute a waiver of claims.

3.5.3. Subcontractor shall promptly provide Contractor with any scheduling information requested by Contractor. Subcontractor shall comply with all instructions given by Contractor including any to suspend, delay, or accelerate the Work. Except in the case of fault or neglect by Contractor, Subcontractor shall not be entitled to extra compensation due to the suspension, delay, or acceleration of its Work that is not specifically paid for by Owner or other subcontractors, except as provided in Paragraph 3.16 below. Subcontractor must attend any meetings scheduled by Contractor, whether a regularly occurring meeting or a specially scheduled meeting. Failure by Subcontractor to attend a scheduled meeting, unless such absence is requested by Subcontractor and approved in writing by Contractor, shall subject Subcontractor to an administrative fee of \$500 or such lesser amount as Contractor may designate. Failure of Contractor to promptly bill the fee shall not constitute a waiver of it.

3.5.4. Should Subcontractor be delayed in the commencement, prosecution or completion of its Work by the act, omission, fault, or neglect of Contractor, anyone employed by Contractor, any other contractor or subcontractor on the Project, or by any other cause beyond Subcontractor's control and not due to any fault, neglect, act, or omission on Subcontractor's part, then Subcontractor shall be entitled to an extension of time only, and Subcontractor shall not be entitled to damages or other payment on account of such delay. Such extension shall be for a period equivalent to that granted to Contractor by Owner for the same cause of delay, or for a reasonable time in the case of a delay caused by the fault or neglect of Contractor or another Subcontractor. Subcontractor hereby releases and discharges Contractor from all claims for damages and other relief, other than an extension of time as provided herein, on account of any delay affecting Subcontractor. Subcontractor shall not be entitled to any extension of time, however, unless a claim for extension of time is presented in writing to Contractor within seventy-two (72) hours after the commencement of such delay, with a new notice to be timely provided for each separate delay. Nothing in this Paragraph shall limit Subcontractor's rights to make permissible Pass-Through Claims for delay-related money damages as provided in the Contract Documents and this Subcontract.

3.5.5. Nothing contained in Paragraph 3.5.4 shall preclude the recovery by Contractor of damages should Subcontractor default in performance of its Work or otherwise commit any act which causes delay, disruption, or interference. Subcontractor shall be liable for all losses, costs, expenses (including attorneys' fees), liabilities, and damages (including direct, consequential, contribution, indemnity, and liquidated damages) sustained by Contractor as a result of Subcontractor's default. Subcontractor hereby specifically waives any claim or defense of lack of mutuality of remedies because of the varying rights specified in this Subcontract. In the case of any dispute, disagreement, claim, mediation, arbitration, or cause of action, including disputes over payment or Contractor's withholding or reduction of payment, Subcontractor will continue to perform its Work in proper sequence and on schedule under this Subcontract pending resolution of all informal and formal efforts and proceedings to resolve such dispute, disagreement, claim, mediation, arbitration, or cause of action.

3.6. Coordination of the Work with Others.

Subcontractor shall coordinate the Work covered by the Subcontract with that of Contractor and all other contractors and subcontractors in a manner that will facilitate the efficient operation and construction of the entire Project. Subcontractor shall furnish periodic progress reports on its Work as requested, including the actual and projected dates for delivery for materials and equipment. Shipment of all goods, materials, and equipment to the Project shall be consigned to Subcontractor c/o Contractor, c/o Owner, with all transportation, freight, and delivery charges to be prepaid by Subcontractor, and Subcontractor shall be solely responsible for receiving, unloading, and immediately inspecting shipments, and for all damages during shipping and delivery.

3.7. Submittals. Subcontractor shall prepare and submit to Contractor within the time required by the Project's submittal schedule, or within fifteen (15) days after receipt of the Subcontract if not covered by the submittal schedule, all shop drawings, samples, product data, and other submittals required by the Contract Documents for Subcontractor's Work, or within such earlier time as may be necessary to ensure timely fabrication, delivery, and installation of the Work. Approval of such shop drawings by Contractor and Architect shall mean only that the submission conforms to the general concept of the Project and any such approval of shop drawings and submittals shall not relieve Subcontractor of its obligations to perform its Work in strict compliance with the Contract Documents and shall not subject Contractor to any liability.

3.7.1. Subcontractor shall deliver to Contractor prior to commencement of its Work a written inventory of all hazardous materials it will have on the job site and a Safety Data Sheet (SDS) for each of those hazardous materials. Subcontractor shall also submit a statement confirming that its workers have received proper training in the handling of those hazardous materials.

3.7.2. Subcontractor shall deliver to Contractor prior to submitting its first Application for Payment a list of its subcontractors and suppliers of all tiers for the Project. Receipt of this information shall be a condition precedent to Contractor's obligation to pay Subcontractor. During the progress of the job, Subcontractor shall notify Contractor in advance of payment if there are any new or substitute

subcontractors or suppliers of any tier that were not on the original list.

3.8. Clean-Up; Damage. Subcontractor shall keep the Project Site clean of debris resulting from the performance of its Work and shall remove from its work areas to designated disposal points all debris generated by the execution of the Work. In addition, Subcontractor shall be responsible for promptly repairing damage to others' work. If, after twenty-four (24) hours' notice from Contractor, Subcontractor fails to comply with this Paragraph, Contractor may perform necessary clean-up and repair to damaged work without further notice and deduct the clean-up cost or repair from any amounts due to Subcontractor. In the event Contractor is unable to determine which subcontractor is responsible for clean-up of debris or damage to work, Contractor may apportion the cost of clean-up or repair among the subcontractors in such manner as it determines to be equitable in its reasonable discretion.

3.9. Protection. Subcontractor shall be solely responsible for the protection of its Work and for loss or damage, however caused, to materials, tools, equipment, appliances, and other personal property owned, rented, or used by Subcontractor.

3.10. As-Built or Record Drawings. When as-built or record drawings are required by the Contract Documents, Subcontractor shall record as-built conditions on the plans and detail drawings on a weekly basis during the performance of the Work and shall provide final as-built or record drawings to Contractor within thirty (30) days following completion of its Work and before its final Application for Payment.

3.11. Indemnity. To the fullest extent permitted by law, Subcontractor agrees to indemnify and save harmless Contractor, and its directors, officers, agents, and employees, from all claims, losses, damages, and costs (including attorneys' fees) arising in any way out of Subcontractor's Work or the Subcontract and involving personal injury, death, or property damage, including claims for loss of use of property, but only to the extent that such claim, loss, cost, or damage was caused in whole or in any part by the negligent act or omission or other fault of Subcontractor or persons acting on its behalf. Subcontractor further agrees to obtain and maintain such general liability insurance coverage and endorsements, including contractual indemnity and completed operations coverage, for

claims, losses, damages, and costs arising out of performance of its Work, to insure the provisions of this Paragraph. Such policy or policies of insurance shall name Contractor as an additional insured on a primary, non-contributory basis, and shall name Owner and other parties as required by the Contract Documents. The following language, or such other language as required by Contractor to comply with the Contract Documents, shall appear on Subcontractor's applicable certificate(s) of insurance: "Stahl Construction Company is an additional insured on a primary, non-contributory basis under the commercial general liability policy and any excess or umbrella policy." The indemnification and insurance coverage required by this Paragraph are binding on Subcontractor and its insurer(s) regardless of whether Contractor is partly responsible for any such claim, loss, cost, or damage. Regardless of the final determination of fault, Subcontractor or its insurer(s) shall defend, and shall bear the cost of defending without right to reimbursement or contribution from Contractor based on final outcome, Contractor in any suit or action arising in any way out of Subcontractor's Work or the Subcontract and involving to any degree any claims or possible claims by any parties for personal injury, death, or property damage, including claims for loss of use of property, that might have been caused in whole or in part by Subcontractor. The defense and indemnification obligations under the Subcontract 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 benefits acts, or other employee benefits laws, and such obligations shall extend to and include any actions brought by or in the name of any employee of Subcontractor or other party acting on Subcontractor's behalf, including lower-tier subcontractors. In the alternative to naming Contractor as an additional insured, as required above, Subcontractor may provide an Owner's and Contractor's Protective Policy (OCP) with limits at least equal to those required of Subcontractor under the Subcontract for general liability and excess or umbrella coverage. Subcontractor shall pay all costs, expenses, and attorneys' fees incurred by Contractor to enforce Subcontractor's obligations under this Paragraph, including the attorney's fees of Contractor's in-house counsel at the rate specified in Paragraph 12.1.4 below.

3.12. Indemnity Against Liens and Claims. Subcontractor shall protect and defend (a) the land upon which the Work is performed and all improvements now or in the future placed on the land, (b) Owner and Contractor, jointly and severally, and (c) Contractor's

surety, if any, from any liens, charges, encumbrances, or claims, including mechanic's liens and payment bond claims, resulting from the default, failure of payment, failure of performance, or nonperformance by Subcontractor and its subcontractors and suppliers, or due to any disputes between Subcontractor and any of its subcontractors or suppliers, other than claims and liens resulting from nonpayment by Owner or Contractor without any ground or basis in contract, law, or equity for the nonpayment. As a condition to any progress or final payment, Contractor may require Subcontractor to complete and sign Contractor's standard conditional form of lien waiver (with absolute waivers for all payments previously received), or any waiver required by the Contract Documents, and to provide similar lien waivers from its subcontractors and suppliers. Contractor may also require a letter from the appropriate union trust fund administrator verifying that Subcontractor is current on all union "fringe" or benefits payments. As part of this indemnity, Subcontractor agrees to release and remove of record, or provide to Contractor and Owner a bond in the amount of 200% of the amount of, any lien, charge, encumbrance, or claim at its own expense within three (3) days of the filing, making, or recording thereof, and as a condition precedent to payment under the Subcontract, Contractor may require Subcontractor to furnish complete waivers, releases, or satisfactions of any and all such liens, charges, encumbrances, and claims covered by this indemnity.

3.13. Labor. Subcontractor shall not employ personnel, means, materials, or equipment that cause or may cause strikes, work stoppages or other disturbances or interferences in the progress of the Project. Subcontractor agrees to be bound by any applicable Project Labor Agreement. Should Subcontractor fail to comply with any of the foregoing provisions, Contractor shall have the right to terminate the Subcontract for cause without waiver or limitation of any other rights and remedies available to Contractor. Lower-tier subcontractors shall comply with this provision to the same extent as Subcontractor.

3.14. Tools and Equipment. Subcontractor shall provide all tools and equipment necessary to perform its Work, including, but not limited to, scaffolds, hoisting, and specialty items. At any time, Contractor may make arrangements for the shared use of scaffolding, forklift, bobcat, and other equipment, with Subcontractor to bear the rental charges and other costs of the shared use thereof in proportion to

its use, as determined by Contractor in its reasonable discretion.

3.15. Safety. Subcontractor shall carry on its Work in a safe manner, shall comply with all safety measures initiated by, or directions from, Contractor or required by the Contract Documents, and shall comply with all applicable laws, codes, ordinances, rules, regulations, and lawful orders of any public authority for the safety of persons or property. Notwithstanding any safety and indemnity obligations of Contractor under the terms of the Contract Documents, and notwithstanding any directions or measures, or lack of directions or measures, from Contractor, Subcontractor shall be solely and completely responsible to all others and to Contractor for the protection and safety of its employees and for implementing adequate and lawful safety measures and programs covering its Work and work areas. If Contractor finds Subcontractor or any individual or entity acting on behalf of Subcontractor to be in violation of any safety law or any safety program covering the Project, and Contractor then notifies Subcontractor of such safety violation, whether orally or in writing, Subcontractor shall promptly notify Contractor of any notices or directions by Contractor or others that may conflict with the safety duties and obligations of Subcontractor. Subcontractor shall immediately commence to cure the safety violation and shall continue to cure the violation without delay of any kind, and in the event Subcontractor fails to commence or continue the cure of the safety violation as provided herein, Contractor may immediately terminate this Subcontract for cause or take whatever action it deems necessary to remedy the safety violation, with all costs resulting from Contractor's action of any kind to be the sole responsibility of Subcontractor. Contractor always has a "zero tolerance" policy on the Project prohibiting (1) the presence of alcoholic beverages, illegal drugs, and illegal substances of any kind on the job site, and (2) any persons on the job site being under the influence of alcoholic beverages, illegal drugs, and illegal substances of any kind. Any person found to be in violation of this "zero tolerance" policy shall be immediately escorted from the job site and may be barred from returning to the job site for all times thereafter in Contractor's discretion. In addition to the above, Contractor may require those safety measures in response to an epidemic or pandemic, or other health risks of a novel or unusual nature, as Contractor shall determine to be prudent or necessary in its sole discretion.

3.16. Progress of Work. To facilitate the progress of work on the Project, Contractor may alter the time, order, and priority of any and all components of Subcontractor's Work. Subcontractor agrees that Contractor shall have the right to make changes to the Project Schedule and agrees to comply with such changes, and Subcontractor further agrees that it shall not be entitled to additional compensation for such changes except as expressly provided in the Subcontract. When, in the sole discretion of Contractor, it becomes necessary to accelerate the Work, Subcontractor shall increase its work force or transfer personnel and equipment to other points in order to comply with Contractor's directions. Subcontractor shall not be entitled to extra compensation due to the acceleration, reordering, or rescheduling of its Work that is not specifically paid for by Owner or others, unless such acceleration was necessitated by the fault or neglect of Contractor. In the case compensation to Subcontractor for extra costs is allowed, Subcontractor's additional compensation shall be limited to the actual costs incurred by Subcontractor.

3.17. Work Stoppage. If Subcontractor fails to carry out all or a portion of its Work in accordance with the Contract Documents, Contractor may direct Subcontractor in writing to stop the Work until the unsatisfactory condition has been investigated and/or eliminated, with Subcontractor to be responsible for all costs resulting from the stoppage.

3.18. Subcontractor's Correction of Defective Work. Without cost to Contractor or Owner, Subcontractor shall promptly correct any improper or defective Work that may be discovered during construction or within one (1) year from the date of final acceptance of the Project by Owner. Following correction of any deficient Work, an additional one-year correction period shall run from the time of last correction for the corrected Work. In addition to the above, Subcontractor shall provide any broader or longer guarantees and warranties required by the Contract Documents. Required equipment and system warranty documents and as-built drawings shall be delivered to Contractor within thirty (30) days after completion of Subcontractor's Work and before its final Application for Payment. Contractor's rights and remedies for breach of express warranty are in addition to all other rights and remedies available under contract or at law or in equity.

3.19. Contractor's Right to Correct Deficient Work. If, within forty-eight (48) hours after receipt

of written notice of a default or failure in the performance of its Work (including insufficient progress toward timely completion of its Work) provided by Contractor to Subcontractor and/or to its surety, if any, Subcontractor fails to commence and diligently continue correction of such default or other failure, or to provide sufficient workforce and to make sufficient schedule progress to Contractor's satisfaction, then Contractor may either (a) require the surety, if any, to assume the obligations of Subcontractor, or (b) immediately and without prejudice to any other remedy make good such deficiencies. Contractor's right of correction shall include supplementing Subcontractor's workforce, ordering, purchasing, and paying for expedited delivery of materials, replacing Subcontractor on all or a portion of Subcontractor's Work, accelerating portions of Subcontractor's Work or the work of others (including scheduling overtime) to bring the Project back on schedule, and such other remedies as Contractor may determine. In the case of (b), an appropriate Change Directive shall be issued deducting from the payments due to Subcontractor the cost of correcting such deficiencies and the cost of all architectural, consulting, and legal expenses, including attorneys' fees, which shall include the fees of Contractor's in-house counsel at the rate specified in Paragraph 12.1.4 below, incurred by Contractor as a result of such deficiency. If the balance of the Contract Price is not sufficient to cover such amount, Subcontractor or the surety shall promptly pay the difference to Contractor. The notice permitted by this Paragraph is discretionary and not mandatory, and it need not identify itself as a formal notice of default nor cite to this Paragraph, and Contractor's failure to give notice hereunder shall not constitute a release or waiver of, or limitation on, any other rights or remedies under the Subcontract or the Contract Documents, or at law or in equity, including rights of termination for cause, rights to damages caused by Subcontractor's defective work, delay in performance, or other deficiency, and remedies under Paragraph 10 below.

SECTION 4. PRICE

4. Contract Price. For full performance of the Work in strict conformance with the Contract Documents, including all terms and conditions of the Subcontract, Contractor shall pay Subcontractor the Contract Price set forth in the Subcontract.

4.1. Changes. The Contract Price may be changed only in strict accordance with the terms and requirements of Section 8.

4.2. Taxes. The Contract Price includes, and Subcontractor accepts exclusive liability for, all federal, state, county, municipal and other taxes imposed by law or contract, including payroll, or withholding taxes and premiums, sales, use, and other personal property taxes, pension, welfare, vacation, annuity and other nonunion employee benefits, and all union benefit contributions payable in connection with labor agreements and collective bargaining agreements.

4.3. Permits and Law. Subcontractor shall obtain and pay for all necessary permits pertaining to its Work, shall comply with all applicable laws, codes, ordinances, rules, regulations, directives and requirements relating to the Work, and shall defend and indemnify Contractor against any actions and proceedings by any governmental entity, subdivision, agency, or authority relating to or arising out of Subcontractor's Work.

SECTION 5. PAYMENT

5. Application for Payment. By the dates set forth in the Subcontract, Subcontractor shall submit to Contractor a written Application for Payment, in approved form, showing the proportionate value of the Work performed and completed as projected through the end of the month or other permissible time period covered by the Application for Payment, from which shall be deducted: (a) the retainage specified in the Subcontract; (b) all previous payments; (c) all charges for materials and services furnished by Contractor to Subcontractor; and (d) any other retention, charges, set-offs, or deductions provided for or permitted in the Subcontract or the Contract Documents. If an Application for Payment is received by Contractor after the submittal date set forth in the Subcontract, it shall be submitted to Owner for approval with Contractor's next payment request. As a condition to Subcontractor's first Application for Payment, Subcontractor shall submit to Contractor a complete and accurate schedule of values for the parts of the Work aggregating the Contract Price in such form and supported by such evidence as Contractor may direct. Subcontractor shall revise and resubmit the schedule of values immediately upon any changes in its Work. Contractor's reliance on Subcontractor's schedule of values shall not be construed as an agreement as to

the accuracy or completeness of such schedule of values, which shall be deemed for information purposes only. All items in Subcontractor's schedule of values that are not physically part of the improvement at the job site ("soft items"), such as engineering, preparation of shop drawings and submittals, insurance (including costs of naming Contractor and others as additional insured), mobilization to the job site, trailer rental and other general conditions, overhead, profit, and other such costs, must be reasonably spread over the performance of the Work at the job site and Contractor shall have the right to review Subcontractor's allocation of such soft items and to adjust them as reasonably necessary to correct any frontloading or disproportionate allocation of costs over the duration of Subcontractor's Work. Subcontractor may not include any soft items in its Application for Payment prior to commencing physical Work at the Project site. All Applications for Payment must be properly sworn and completed. Subcontractor shall furnish such information and consents of surety, if any, as Contractor may require, to confirm Subcontractor's entitlement to payment. At Contractor's or Owner's option, Subcontractor's Applications for Payment and any and all supporting documentation shall be in electronic format and shall be submitted to Contractor using an electronic payment management system specified by Contractor or Owner, with Subcontractor responsible for all fees and costs associated with the use of such system. At any time, Contractor may modify any payment requirements as needed to comply with Owner's requirements for applications of payment, with Subcontractor responsible for associated costs.

5.1. Progress Payments. Monthly progress payments in approved amounts shall be made to Subcontractor within seven (7) days after Contractor's receipt of payment from Owner, which receipt from Owner constitutes both a condition precedent to Contractor's payment obligation to Subcontractor and the exclusive source for payment to Subcontractor. In its sole discretion and notwithstanding receipt of payment from Owner, Contractor shall have the right to withhold or reduce any progress payment or final payment by reason of: (a) any indebtedness or amount of any kind owed by Subcontractor to Contractor; (b) defective work not remedied or defective materials not removed and replaced; (c) third-party claims (including but not limited to secured party claims, IRS and other tax claims, threatened levies, lawsuits by the Owner or any other third party that include Contractor as a party, union benefits claims, etc.)

brought or filed, or for which there is evidence that such claims may be brought or filed in the future (including claims for potentially defective Work by Subcontractor and claims for which there may be insurance until such claims are accepted by the relevant insurer); (d) failure of Subcontractor to make payments to its subcontractors, suppliers, laborers, shippers, and others, or to make any union-related fringe fund, trust fund, or other benefits payments; (e) doubt that the Work can be completed for the unpaid balance of the Contract Price; (f) damage to Contractor or another subcontractor; (g) unsatisfactory or untimely prosecution of the Work by Subcontractor, including reasonable indication that any portion of the Work will not be completed on schedule; (h) any material failure of Subcontractor to comply with this Subcontract or the Contract Documents; (i) any reason or circumstance for which Owner or Owner's lender may withhold payment from Contractor under the Contract Documents in connection with Subcontractor's performance of its Work, other than due to neglect or fault by Owner or Contractor; or (j) any failure by Subcontractor to honor its indemnity or insurance obligations to Contractor. In the event of any of the above, Contractor shall have the right to withhold or reduce a progress payment or final payment by the amount it determines to be necessary to remedy Subcontractor's default, to cover Contractor's estimated or actual damages, including potential future damages, and to protect Contractor from possible costs and expenses, including legal fees, design fees, and other out-of-pocket costs and expenses. In its sole discretion, Contractor shall have the right to make any payment under this Subcontract by joint check, or multiple joint checks, in the event of any question as to Subcontractor's obligation or payment to, or ability to pay, its suppliers, subcontractors, and others. Unless specifically provided elsewhere in the Subcontract, retainage on progress payments shall be five percent, with retainage to be released upon receipt from Owner, subject to other provisions for withholding in the Contract Documents.

5.2. Payment Upon Unit Prices. When payment is based upon quantities at applicable unit prices, Subcontractor shall submit the quantities with its Application for Payment, and Contractor shall have the right to examine the pertinent books and records of Subcontractor to verify quantities.

5.3. Effect of Payment. The making of any progress or final payment by Contractor to Subcontractor shall not constitute an acceptance of the Work and shall not

release Subcontractor from any of its obligations under the Subcontract nor constitute a waiver of any rights or remedies by Contractor. Beneficial use or occupancy is not acceptance of the Work.

5.4. Application Condition. No Application for Payment shall be complete, and no payment shall be due until Contractor has received a signed acceptance copy of the Subcontract, a current insurance certificate (revised and resubmitted as needed to reflect current coverages and any changes in coverage) evidencing proper coverages per the Subcontract with all necessary endorsements for additional insureds, performance and payment bonds, if required, and other documents required under this Subcontract.

5.5. Stored Materials. If approved in advance by Owner and Contractor, applications for payment may include materials and equipment not incorporated in Subcontractor's Work but delivered and suitably stored at the Project Site or at some other location agreed upon in writing by Contractor. In the event Contractor approves payment for materials stored off-site, Subcontractor shall submit such supplier invoices, delivery tickets, photographs of the materials properly segregated and labeled with the Project name, certificates of insurance with property coverage equal to the total value of such stored materials, and a complete and accurate tabulation worksheet sufficiently detailed as to identify the type and quantity of materials or equipment, as Contractor shall require as a condition precedent to payment. Contractors reserve the right to issue joint checks to all suppliers of stored materials.

5.6. Final Payment. Final payment shall be made within seven (7) days after Contractor's receipt of final payment from Owner, which receipt from Owner constitutes both a condition precedent to Contractor's payment obligation to Subcontractor and the exclusive source for payment to Subcontractor. As a condition precedent to final payment to Subcontractor, Contractor may require: (a) evidence satisfactory to Contractor that there are no claims, obligations, or liens outstanding or threatened in connection with the Work; (b) a general release in favor of Contractor, Contractor's surety, if any, and Owner; (c) written consent of Subcontractor's surety, if any, to final payment; and (d) all final lien waivers, manufacturer instructions and warranties, Subcontractor's written warranties, and other final or closeout documents required by Contractor, the Contract Documents, Owner, or the Owner's

lender(s). In the event Subcontractor fails to comply with Contractor's closeout instructions and timeline and to deliver final and closeout documents in a timely manner, Contractor may charge an administrative fee of up to \$100 per day for every day documents are not delivered, and Subcontractor shall be liable for charges of interest of 10% by Contractor on delayed final payment. In the event Contractor's final application for payment to Owner fails to include amounts claimed by Subcontractor because Subcontractor did not make prompt billings to Contractor, including for claimed changes billable to Owner by Contractor, Subcontractor's right to claim for such amounts is waived. Final payment to Subcontractor shall constitute a waiver of any and all claims by Subcontractor against Contractor and Owner arising out of the Subcontract.

5.7 Back Charges. Contractor shall have the right to back charge Subcontractor for any work performed by another subcontractor or others on the Project as a result of Work incorrectly or untimely performed or omitted by Subcontractor or resulting from the failure of Subcontractor to meet any other obligations or requirements under this Subcontract. Within seven (7) days following a written request from Subcontractor, or at any time voluntarily by Contractor on Contractor's own initiative, Contractor shall provide in writing the basis for any such back charge. Upon receipt of a writing from Contractor providing the basis for the back charge, whether or not in response to a request from Subcontractor, Subcontractor shall have seven (7) days thereafter to respond in writing objecting to the back charge or any portion thereof and if Subcontractor fails to make timely objection, then all rights to challenge or dispute the back charge or any portion thereof shall be deemed waived and the back charge shall become immediately and irrevocably effective, due, and payable by Subcontractor.

5.8 Cross-Default. Subcontractor acknowledges and agrees that Contractor's continued confidence in the ability of Subcontractor to perform its Work properly and expeditiously is a substantial and material concern of Contractor. Consequently, if Contractor and Subcontractor enter into or have entered into any other subcontracts or agreements for work on other projects and Subcontractor defaults on any terms of this Subcontract or on any terms of such other subcontracts and agreements, then Contractor, in Contractor's sole discretion, may treat any default as a default on all subcontracts and agreements, with all rights and remedies available under all subcontracts

and agreements thereafter available to Contractor. In the event of any default on any terms of this Subcontract or on any terms of any other subcontracts and agreements, Contractor may offset from amounts owing to Subcontractor under this Subcontract or under any other subcontract or agreement, any losses, damages, costs, and expenses incurred by Contractor arising from such default. Default under any other subcontract and agreement is a default under this Subcontract in Contractor's sole discretion.

SECTION 6. INSURANCE

6. Insurance. Subcontractor shall procure and maintain insurance as required herein to protect Contractor, Subcontractor (including its employees, agents and subcontractors), and other parties as provided in this Subcontract and the Contract Documents, against claims for bodily injury or death or for damage to property, including loss of use of property, with coverage written on an "occurrence" basis or, if such coverage is not available, on a claims-made basis. All insurance shall be issued by a financially responsible company or companies acceptable to Contractor and, at a minimum, must be placed with carriers maintaining an A-minus or better AM Best rating. Failure of Subcontractor to maintain the required insurance shall constitute a default under this Subcontract and, at Contractor's option, shall allow Contractor to terminate this Subcontract for cause, withhold payment, and/or obtain such insurance and back charge all costs for such insurance to the Subcontractor.

6.1. Liability Insurance. Prior to commencing any Work, the Subcontractor shall procure, maintain and pay for insurance of the type and with the minimum coverage and limits of liability of the coverage and limits (i) specified below; or (ii) specified in the Contract Documents for subcontractors; or (iii) required by law, with Subcontractor to provide the greater coverage and limits with respect to each insurance type.

If Subcontractor is performing EIFS/DIFS work, then its Commercial General Liability and Excess and Umbrella policies cannot exclude coverage for such work. Subcontractor's insurance shall include all policies specified below and all other policies required by the Contract Documents and shall have limits at least equal to the greater of those specified in the Contract Documents or those specified below:

Workers Compensation/Employer’s Liability

Workers Compensation Statutory
Employer’s Liability (including “stop gap”
and USL&H, if applicable)

Each Accident \$1,000,000
Disease – Policy Limit \$1,000,000
Disease – Each Employee \$1,000,000

Commercial General Liability

Each Occurrence..... \$1,000,000
Personal & Advertising Injury..... \$1,000,000
General Aggregate..... \$2,000,000
Products/Completed Operations
(occurrence and aggregate) \$2,000,000

Commercial Automobile

Bodily Injury (any one accident or loss) . \$1,000,000
Bodily Injury (per accident) \$1,000,000
Property Damage (per accident)..... \$1,000,000

or

Bodily Injury/Property Damage (combined single
limit) \$2,000,000

Umbrella/Excess Liability

Each Occurrence..... \$2,000,000
Aggregate \$2,000,000

Any combination of higher primary limits and lower umbrella limits is permissible so long as the sum of the primary and excess/umbrella limits held by Subcontractor is equal to the sum of the primary and Excess/Umbrella Liability limits listed above. Limits of liability beyond those required in the Subcontract or Contract Documents, or any type of insurance not so described which Subcontractor may deem prudent or necessary for its own protection, or which Subcontractor is required by law to carry, shall be Subcontractor’s responsibility and shall be procured by Subcontractor solely at its own expense.

6.1.1. Subcontractor shall furnish Contractor with satisfactory evidence in the form of a certificate of insurance or other documents as required or needed to effectuate coverage, that it has complied with these requirements and that the coverages will not be canceled (including cancellation for nonpayment) except after thirty (30) days’ written notice to Contractor. Subcontractor shall cause any commercial general liability, automobile liability, umbrella/excess liability, and pollution liability coverage required by this Subcontract and the Contract Documents to include (1) the Contractor as additional insured on a primary, non-contributory basis for claims caused in whole or in any part during

Subcontractor’s operations (with any policies of Contractor to be considered excess to the policies of Subcontractor); (2) the Contractor as an additional insured on a primary, non-contributory basis (with any policies of Contractor to be considered excess to the policies of Subcontractor) for claims caused in whole or in any part under completed operations coverage; and (3) similar additional insured coverage for the Owner and other parties as required by the Contract Documents. The following language, or such other language as necessary to meet the terms of the Contract Documents, shall appear on Subcontractor’s certificate of insurance: “Stahl Construction Company is an additional insured on a primary, non-contributory basis under the commercial general liability policy and any excess or umbrella policy.” The name and address of the Project must appear under the description of operations on the certificate of insurance.

Commercial General Liability insurance required under this Subcontract shall be on ISO Form CG 00 01 or its equivalent and include coverage for liability arising from premises, operations, independent contractors, products-completed operations including construction defect, contractual liability, personal injury, and advertising injury. There shall be no limitations or exclusions of coverage beyond those contained in the standard coverage form. Excess/Umbrella Liability insurance required under this Subcontract shall follow the form of the Commercial General Liability insurance, Commercial Automobile Liability insurance, and Workers’ Compensation Employers’ Liability insurance as required in the Subcontract.

The appropriate additional insured endorsement(s) to the policy must be attached to the certificate of insurance. Such endorsement(s) shall comply with applicable laws and shall, where permitted by law, be ISO form CG 2010 (11-85 edition), or CG 20 10 04 13 (ongoing operations) and CG 20 37 04 13 (products-completed operations) in combination, or an equivalent to one of these additional insured endorsements (more limited endorsements such as CG 0001 1204, CG 20 10 04 14, and CG 20 37 04 14 are not acceptable) and shall provide coverage for injury caused by the negligent acts or omissions of Subcontractor and for Contractor’s vicarious liability or liability imposed by warranty arising out of the negligent acts or omissions of Subcontractor, and Subcontractor shall purchase and assure that the above required Products/Completed Operations coverage will remain in effect for at least the time

period of any applicable statutes of limitation or statutes of repose, whichever date is longer. Where applicable laws affect or limit the additional insured coverage and endorsements that are permissible, Subcontractor shall provide the broadest form, types, and amounts of coverage available and reasonably deemed allowable under applicable laws to meet all or the permissible parts of the above terms agreed by the parties, and any such additional insured coverage provided by Subcontractor shall be construed and applied to the broadest extent possible consistent with such laws. All the above insurance terms, requirements, and limits shall not in any way be construed as a limitation on Subcontractor's responsibilities and liabilities under other provisions, including with respect to insurance, contained in the Contract Documents. At its option, Contractor may elect to provide Subcontractor with an Insurance Checklist summarizing the requirements of this Section 6. The Insurance Checklist is for convenience and information purposes only and shall not relieve Subcontractor from its obligations for strict compliance with all insurance requirements in the Subcontract and the Contract Documents, notwithstanding any differing or incomplete provisions in the Insurance Checklist. Based on Owner's insurance requirements for the Project, Contractor may issue an insurance exhibit modifying the requirements of this Subcontract, and Subcontractor waives any rights or claims not to be bound by other insurance requirements in the Contract Documents. Subcontractor's certificates of insurance shall be subject to approval by Contractor, but failure of Contractor to request such certificate or other evidence of Subcontractor compliance with insurance requirements, or failure of Contractor to identify deficiencies from evidence that is provided, shall in no way limit or relieve Subcontractor of its obligations to maintain such insurance.

6.2. Property Insurance Waiver of Subrogation.

To the extent of coverage afforded by any property insurance applicable to the Work or the Project or equipment used in performance of the Work, Contractor and Subcontractor waive all rights against each other and Owner and their subcontractors, agents, and employees, for damages caused by fire or other insured perils except such rights as they may have to the proceeds of such insurance. Subcontractor shall require of its subcontractors and supplier's similar waivers in favor of all parties.

6.2.1 Subcontractor agrees to waive all rights of subrogation against Contractor, and shall cause each of its subcontractors to waive all rights of subrogation against Contractor, its agents and employees, as respects loss, damage, claims, suits or demands, howsoever caused, to the extent such loss, damage, claims, suits or demands are, or should be, afforded coverage by Subcontractor's required or any other insurance maintained by Subcontractor. Subcontractor further agrees to hold harmless and indemnify Contractor from any loss or expense incurred as a result of Subcontractor's failure to obtain such waivers of subrogation from its insurers.

6.3. Insurance Deductible and Self-Insured Retentions. Subcontractor shall defend and indemnify Contractor and Owner for losses or damages arising out of uninsured or underinsured perils for which insurance was required or within the deductible of any insurance applicable to the Work of Subcontractor.

6.4. Other Insurance. The following insurance shall be required of the Subcontractor only as provided below or in Exhibit B to the Subcontract or as required by the Contract Documents:

6.4.1. Pollution Liability: If Subcontractor is performing Work that includes (a) environmental remediation or testing, or (b) building envelope work such as installation of windows, doors, exterior siding, glazing, sheet metals, roof, etc., or (c) design and/or installation of any mechanicals, including plumbing, HVAC, and fire sprinklers, or (d) site excavation, or (e) transportation of hazardous materials onsite or offsite, or if such insurance is required by other provisions in the Subcontract, then Subcontractor shall procure and maintain pollution liability insurance, including mold coverage, and as applicable, non-owned disposal site & third-party transportation coverage. If the pollution liability insurance is claims-made, its effective date must be prior to commencement of Work, and it must be kept in force for at least 10 years after completion of the Project, provided such insurance remains available at commercially reasonable rates of premium.

6.4.2 Professional Liability: If Subcontractor is performing Work that includes (a) any professional design or design consulting services, or (b) design, design-build, or installation of any mechanical or electrical work or systems, including fire sprinklers, or if such insurance is required by other provisions in the Subcontract, then Subcontractor shall procure and

maintain professional liability insurance, and if the professional liability insurance is claims-made, its effective date must be prior to commencement of Work, and it must be kept in force for at least 10 years after completion of the Project, provided such insurance remains available at commercially reasonable rates of premium.

6.4.3 The above coverage shall have limits at least equal to the greater of those specified in the Contract Documents or those specified below:

Pollution Liability (including mold coverage)

Each Occurrence.....\$1,000,000

Professional Liability

Each Claim Made\$1,000,000

SECTION 7. BONDS

7. Bonds. If not required by the Contract Documents but requested by Contractor, Subcontractor shall furnish to Contractor, in form satisfactory to Contractor, duly executed Performance and Payment Bonds, underwritten by a surety or sureties satisfactory to Contractor, in the full amount of the Contract Price. The bond premium shall be paid by Subcontractor and reimbursed by Contractor. Failure to deliver satisfactory bonds within ten (10) calendar days after request shall be a material breach of the Subcontract.

SECTION 8. CHANGES

8. Change Directives. Contractor shall have the unilateral right, by written Change Directive and without notice to Subcontractor’s surety, if any, to direct changes, accelerations, or deletions in the Work or other revisions to the scope of Work or the time of completion of the Subcontract or Work. To obtain a price or time adjustment for any such Change Directive that Subcontractor claims will result in additional costs or more time for which it may be entitled to adjustment under the terms of the Subcontract, Subcontractor must submit a written notice of such claim to Contractor within seventy-two (72) hours after receipt of Contractor’s Change Directive and in all cases prior to commencement of work under the Change Directive. Subcontractor shall only be entitled to make a claim for price or time adjustment if thereafter Subcontractor is authorized to proceed by Contractor in writing. The Change Directive need not be titled as such if the effect of any email, fax, or other written directive from Contractor

is for a change, acceleration, deletion, Work revision, time adjustment, or other proper subject of a Change Directive. Any claim by Subcontractor for extra costs or time on account of a Change Directive shall be barred unless Subcontractor has complied strictly with the notice and authorization requirements set forth in this Paragraph. Should Contractor duly authorize Subcontractor in writing to proceed, even though Contractor disputes in whole or in part Subcontractor’s claim for extra costs or additional time, Subcontractor shall nevertheless perform the work as directed notwithstanding the dispute between them, with any further claim to be made and resolved according to the terms of, and as provided in, the Subcontract and any relevant Contract Documents.

8.1. Computation of Price Change. Where a Change Directive resulting in additional costs or time is duly authorized and approved by Contractor in writing, the Contract Price and time shall be equitably adjusted as follows:

8.1.1. For Owner’s Change Directives “passed through” by Contractor, the sum or time added or deducted by Owner for changes in Subcontractor’s Work shall be appropriately added to or deducted from the Contract Price or time in this Subcontract. Subcontractor shall have the right to contest with Owner the reasonableness of the Owner’s adjustment as provided in Paragraph 12.2 below.

8.2. Change Proposals or Change Order Requests (CORs). From time to time, whether at the instigation of Owner or Contractor, Contractor may request from Subcontractor proposals for possible changes in the Work, which will be deemed to include the impact of the change on price and time. If Subcontractor fails to respond within five (5) business days, Contractor shall determine the impact, and such determination shall be conclusive and binding upon Subcontractor. Such change proposals or change order requests may have different names, depending on the terms used in the prime contract between Owner and Contractor. Change Orders shall be signed as required by Contractor and the terms of the prime contract. In the event Subcontractor timely responds to a request for change proposal or COR, and Owner or Contractor disagree about pricing or time impact, the parties shall attempt to negotiate these matters in good faith. If the parties cannot reach agreement on pricing or time within the time required in Contractor’s sole discretion to assure satisfactory progress of the Work, pricing and time shall be determined as provided in Paragraph 8.2.1 below.

8.2.1 For Contractor's unilateral Change Directives and for CORs and requests for change proposals that are not worked out by the parties, the value of the changed Work shall be determined by one or more of the following methods or combinations thereof, as Contractor may elect in its sole discretion: (1) by mutual acceptance in a signed writing of a lump sum with duly itemized costs; (2) by unit prices stated in the Contract Documents or subsequently agreed upon in a signed writing (such unit prices shall be deemed to include an allowance for Subcontractor's office expense, overhead, profit and bond costs); or (3) by actual field costs incurred in performance of the changed work plus a reasonable allowance for overhead, supervision and profit not to exceed 10% of the actual field cost for work performed by Subcontractor's own forces and 5% for work performed by its subcontractors. Contractor shall have the right to examine the pertinent books and records of Subcontractor or any of its subcontractors to verify actual field costs and allowances.

8.3. Proceeding with Work. Notwithstanding any disputes or disagreements over the changed Work or over the adjustments under Paragraphs 8.1 and 8.2 above, or under Paragraph 8.5 below, while the disputes are being determined, Subcontractor shall proceed promptly to perform the Work as changed. Contractor may correct the Work under Paragraph 3.19 or may terminate the Subcontract under Paragraph 10.1 if Subcontractor fails to proceed promptly as directed.

8.4. Contract Documents. All changes in the Work directed in writing by Contractor shall be performed in strict compliance with the Contract Documents except and only as specifically changed in writing.

8.5. Unauthorized Changes and Extra Work. If Subcontractor believes that any work to be performed by Subcontractor is outside the scope of its Work under this Subcontract or the Contract Documents, and that Subcontractor should receive additional time or compensation for such extra or changed work, Subcontractor shall promptly notify Contractor in writing sufficiently in advance before performing any such extra or changed work to request a Change Directive or a Change Order. If Subcontractor fails to request a Change Directive or Change Order in writing prior to performing such extra or changed work, the price set forth in this Subcontract for Subcontractor's Work shall be deemed to be full compensation for all work and materials furnished by

Subcontractor, whether or not specifically called for by this Subcontract or the Contract Documents. No additional compensation shall be paid to the Subcontractor and no additional time shall be granted unless a Change Directive or Change Order is signed by the Contractor in advance, stating that the work is extra or changed work and designating the amount to be paid and the time to be granted. In the event of a disagreement or dispute between Contractor and Subcontractor after proper and timely notice by Subcontractor over whether any work is an extra or a change or whether the compensation and time proposed to be provided is adequate, upon written direction from Contractor, Subcontractor shall proceed with the work with its rights reserved to resolve its disagreement or dispute over the work under the procedures provided in this Subcontract. Upon the request of Contractor, Subcontractor shall promptly provide in writing a detailed breakdown with sufficient documentation to justify the costs and time impacts that it claims for such work. If Subcontractor makes any changes in the Work or performs any extra work without a Change Directive or Change Order, or without written direction from Contractor under this Section 8 to proceed notwithstanding a dispute or disagreement, Subcontractor will not be paid for that changed Work or extra work nor will Subcontractor receive any extension of time, even if Subcontractor received oral direction from Contractor or any other direction, written or oral, from Owner, Architect, or another person or entity. In addition, Subcontractor shall be liable to Contractor for all losses, costs, expenses (including attorneys' fees), damages, and liability arising out of any such change made or extra work performed without written direction or written authorization from Contractor.

8.6. Payment. Receipt of payment from Owner by Contractor for Subcontractor's changed Work shall be a condition precedent to the right of Subcontractor to receive payment from Contractor, and the exclusive source of payment from Contractor, unless the changed Work was ordered for the benefit of Contractor or resulted from the negligence or other fault of Contractor.

SECTION 9. INSPECTIONS & TESTING

9. Inspection. Contractor, Owner, Architect, and their authorized representatives shall at all times have the right to inspect and test the Work and places to verify strict compliance of the Work with the Contract Documents and industry standards of good work.

9.1. Access. Subcontractor shall provide access sufficient for inspection and testing as deemed to be necessary by Contractor, Owner, or Architect.

9.2. Contractor's Benefit. Inspection and testing by Contractor, Owner, or Architect shall not be construed to relieve Subcontractor of any responsibility for defective Work and for strict compliance with the Contract Documents.

9.3. Rejection. Within forty-eight (48) hours after receiving written notice from Contractor that any Work has been rejected by Contractor, Owner, or Architect as defective, Subcontractor, at its own cost and expense, shall commence and diligently continue correction and replacement of the rejected Work with proper and satisfactory Work and shall make good all work of others damaged or destroyed as a result of its corrective work. Subcontractor's performance hereunder shall not be construed as a waiver of its right to contest the rejection as provided in the Subcontract or in the Contract Documents but the Subcontractor must diligently proceed with correction while the dispute is being determined and resolved.

SECTION 10. TERMINATION

10. Termination. Contractor shall have the right to terminate the Subcontract as provided below.

10.1. Should Subcontractor at any time: (a) fail to supply a sufficient number of skilled personnel, or to supply work, equipment or materials of proper quality and quantity; or (b) fail to proceed with the Work in the sequence or manner directed by Contractor; or (c) fail to prosecute the Work with promptness and diligence or; (d) in Contractor's reasonable judgment, fail to make satisfactory progress on its Work or fail to progress with its Work in such a manner that makes it likely that Subcontractor will complete its Work in accordance with the Project Schedule; or (e) cause any stoppage, delays, disruption, or interference with respect to any work on the Project; or (f) fail in the performance of any of the provisions of the Contract Documents; or (g) file or be subject to a petition in bankruptcy or for reorganization (Contractor being unwilling to accept performance by any trustee in bankruptcy); or (h) fail to comply with its indemnification obligations to Contractor or Owner or fail to provide or maintain required insurance or to provide timely evidence that it has required insurance; or (i) become insolvent or go into

liquidation or dissolution or make an assignment for the benefit of creditors or otherwise acknowledge insolvency; or (j) fail to pay any of its subcontractors or suppliers when due or fail to pay any union obligations when due; or (k) breach any term or condition of the Subcontract, with any right to notice of breach and/or opportunity to correct any of the failures or deficiencies specified in (a) through (k) above, whether provided elsewhere in the Subcontract or in the Contract Documents or at law or in equity, being specifically waived by Subcontractor, then, in the case of any such events, each of which shall constitute a default by Subcontractor, upon written notice to Subcontractor mailed, emailed, faxed, or delivered to its last know address, Contractor may elect either or both of the following actions in Paragraphs 10.1.1 and 10.1.2 below, in its sole discretion:

10.1.1. Contractor may terminate the Subcontract and the performance of Subcontractor, with such termination effective automatically at the expiration of forty-eight (48) hours after delivery of the written notice, or at such later or earlier time as Contractor shall designate in the notice, for all or any portion of the Work, and either (i) require completion of the Subcontract by Subcontractor's surety, if any, or (ii) enter upon the premises and take possession of all materials, equipment, scaffolds, tools, appliances, and other items thereon, all of which, in the case of property not being incorporated into the Project, Subcontractor hereby grants the temporary use of, and in the case of property being incorporated into the Project, Subcontractor transfers and assigns to Contractor, for the purpose of completing the Work. In case of such termination of the Subcontract and Subcontractor's performance, Subcontractor shall not be entitled to receive any further payment under the Subcontract until the Work shall be wholly completed to the satisfaction of the Contractor, at which time: (a) if the unpaid balance under the Subcontract exceeds the cost incurred by Contractor in completing the Work, such excess shall be paid by Contractor to Subcontractor; but (b) if the cost incurred by Contractor exceeds the unpaid balance to Subcontractor, then Subcontractor and its surety, if any, shall promptly pay the difference to Contractor. The cost of completing the Work shall include all labor, services, materials, equipment, and other items required therefor, and also all losses, damages, costs, and expense (including architectural and engineering fees and attorneys' fees, which shall include Contractor's in-house counsel at the rate specified in

Paragraph 12.1.4 below) incurred by Contractor by reason of Subcontractor's default.

10.1.2. Contractor may perform all or part of the Work and deduct all losses, damages, costs, and expense (including architectural and engineering fees and attorneys' fees, which shall include Contractor's in-house counsel at the rate specified in Paragraph 12.1.4 below) incurred in connection with performance of the Work from any moneys due or to become due to Subcontractor under the Subcontract.

10.2. Withholding of Payment. In the event of termination, Contractor shall have the additional right to withhold payment from Subcontractor in any amount determined by Contractor in its sole discretion to be necessary or prudent to protect Contractor against losses or damages that may be due to Subcontractor's default.

10.3 Conversion. If it is later determined that any termination by Contractor under Paragraph 10.1 was exercised without legal right, then the termination shall be deemed to be a convenience termination pursuant to the terms of Paragraph 10.4.

10.4. Convenience Termination. The Contractor, for its own convenience, shall have the right, at any time, to terminate the Subcontract by written notice to Subcontractor to cease work. Such termination shall be effective at the time and in the manner specified in said notice and shall be without prejudice to any claims that Contractor or Owner may have against Subcontractor. Subcontractor will be paid only the direct value of its work completed as of the date of termination (including reasonable overhead and profit up to the date of termination) and shall have no right to any other claimed damages.

SECTION 11. LIMITATION OF CONTRACTOR'S LIABILITY

11. Limitation of Liability. In no event, either as a result of breach of contract, negligence, intentional act, or otherwise, shall Contractor or Owner be liable to Subcontractor for loss of future profits, loss of use, loss of revenue, loss of bonding capacity, or any other special, indirect, consequential, or punitive damages of any kind. The total liability of Contractor or Owner for any loss, claim, or damage arising out of the Subcontract shall be as provided in the Contract Documents, but in no event shall such liability exceed the direct and immediate value of the Work

performed by Subcontractor, plus reasonable overhead and profit for the Work performed.

SECTION 12. CLAIMS

12. Disputes. Unless Contractor, in its sole discretion, otherwise decides and directs in writing that any matters in question shall be submitted for resolution to a court of competent jurisdiction, which written direction may be issued at any time prior to the first day of arbitration hearing (with Subcontractor hereby specifically waiving any defense to litigation based on lack of mutuality of remedies or lack of consideration therefor), the parties agree to resolve all claims, disputes and other matters relating to the Work or to the Subcontract or the breach thereof as follows:

12.1. Arbitration. Subject to the provisions governing Pass-Through Claims in Paragraph 12.2 below, Subcontractor and Contractor shall arbitrate all claims, disputes, and other matters in question arising out of or relating to the Subcontract or the performance or breach thereof. All arbitration proceedings shall be venued and held in Minneapolis, Minnesota, and shall be made and conducted through the American Arbitration Association in accordance with its Construction Industry Arbitration Rules and, where applicable, The Guidelines for Complex Commercial Cases. In all cases, the Federal Arbitration Act shall govern over state law.

12.1.1. Subcontractor specifically agrees to arbitrate with Contractor and other parties in a joint proceeding all common issues of law and/or fact and, if requested by Contractor at any time before the first day of arbitration hearing, to conduct pre-hearing discovery in the time and manner provided by the Minnesota Rules of Civil Procedure.

12.1.2. Notice of the demand for arbitration shall be provided in writing to the other party and filed with the American Arbitration Association. Subcontractor's demand for arbitration must be made and filed within three (3) months after the claim, dispute, or other matter in question has arisen, or such shorter time period specified in the Contract Documents, and if not timely made and filed, Subcontractor's claim, dispute, or other matter shall be deemed waived and barred for all time. This time requirement is to be strictly construed in any arbitration, court action, or other lawful proceeding.

12.1.3. 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 of competent jurisdiction.

12.1.4. The prevailing party in a court action, arbitration, or other lawful proceeding shall be entitled to recover reasonable attorneys' fees and expenses. Contractor's attorneys' fees shall include the actual amounts billed by outside counsel and reimbursement for the time, measured in hours and tenths of hours, of Contractor's in-house counsel, at a rate for in-house counsel of \$175 per hour.

12.2. Pass-Through Claims. In the case of a Pass-Through Claim, such dispute shall be resolved only as follows:

12.2.1. Subcontractor shall make a written claim to Contractor within seven (7) days of the determination, decision, ruling, directive, error, omission, or other action or inaction by Owner or Architect (or others acting as design consultant, representative, or otherwise on behalf of Owner) giving rise to the Pass-Through Claim, or within such other time as required by this Subcontract and the Contract Documents, whichever is earlier. Thereafter, Contractor shall, with complete discretion as to which action it chooses to take, either: (a) institute in Contractor's name an appeal, claim, litigation, arbitration, or other action or proceeding on behalf of Subcontractor, at Subcontractor's sole expense (with Subcontractor's expenses to be allocated equitably in the event Subcontractor's claim is combined with other claims by Contractor), to resolve such determination, decision, ruling, directive, error, omission, or other action or inaction giving rise to the Pass-Through Claim; or (b) permit Subcontractor, at Subcontractor's sole expense, to prosecute any claim or dispute against Owner or Architect (or others acting as design consultant, representative, or otherwise on behalf of Owner) either in the name of Contractor or in Subcontractor's name after written assignment of Contractor's rights of claim to Subcontractor. Subcontractor's written claim to Contractor shall contain such facts and information, with such supporting documentation attached, as will provide Contractor with an adequate understanding of the nature and basis of the claim. Subcontractor shall cooperate with Contractor's investigation and prosecution, if applicable, of the Pass-Through Claim, and in the event Contractor prosecutes a claim on behalf of Subcontractor, then Subcontractor hereby specifically waives any rights to claim that

Contractor failed to represent Subcontractor adequately or fairly, or failed to prosecute its claim adequately or fairly.

12.2.2. In the event Subcontractor fails to make a written claim in the time and manner provided above, Subcontractor shall be bound by the determination, decision, ruling, directive, error, omission, or other action or inaction by Owner or Architect (or others acting as design consultant, representative, or otherwise on behalf of Owner). In the event of the prosecution of any claim or right of Subcontractor, by either manner provided in the Paragraph above, or in any other permissible action or proceeding that Contractor may choose to bring that determines in whole or part a right or claim of Subcontractor, Subcontractor shall be entitled only to its proportionate share of any net recovery, less overhead and profit to Contractor, and less Contractor's expenses and attorneys' fees. Contractor's attorneys' fees shall include the actual amounts billed by outside counsel and reimbursement for the time spent, measured in hours and tenths of hours, of Contractor's in-house counsel, at a rate for in-house counsel of \$175 per hour.

12.2.3. With respect to Pass-Through Claims, Subcontractor hereby waives and releases any and all claims to payment beyond the Contract Price and extensions of time except as Contractor may receive funds or extensions of time from Owner for Subcontractor's Work. In making a Pass-Through Claim, Subcontractor warrants that it has made good-faith efforts to assure the accuracy and reasonableness of any claims. Subcontractor shall indemnify Contractor against any and all liability for submitting a Pass-Through Claim to Owner or others in breach of the Minnesota False Claims Act.

12.3. Proceeding with Work. Subcontractor shall carry on the Work and maintain satisfactory progress while any claim, dispute, or other disagreement of any kind, is being resolved. Contractor's withholding of payment under any provisions of this Subcontract shall not justify suspensions or delays in the performance of its Work by Subcontractor and any payment disputes must be resolved as provided in the Subcontract.

12.4. Attorneys' Fees. The right of recovery of attorneys' fees under this Section 12 is in addition to the right to recover attorneys' fees and expenses under other provisions of the Subcontract or the Contract Documents. Where Contractor is entitled to

recover attorneys' fees under any such provisions, such right shall include reimbursement for the time of Contractor's in-house counsel at the rate specified in Paragraph 12.1.4 above.

12.5 Mediation. In Contractor's sole discretion, Contractor may require Subcontractor to participate in a mediation to attempt to resolve the disputes between the parties. Contractor may enforce this right to require mediation by giving written notice to Subcontractor at any time ten (10) days or more in advance of the scheduled first day of arbitration hearing or trial of its election to mediate, and following such notice, the parties shall proceed expeditiously to mediate the dispute by any means agreeable to the parties, with such agreement to be put in a writing signed by the parties, or, in the event the parties cannot reach agreement within three (3) days following Subcontractor's receipt of Contractor's written notice, then under the rules and procedures for mediation of the American Arbitration Association. The parties hereby agree to the postponement or stay of the arbitration hearing or trial as needed to participate in the mediation hereunder.

SECTION 13. PRIVACY

13. Privacy. Until final completion of the Project, Subcontractor agrees not to perform any work directly for Owner or any tenant of Owner nor deal directly with Owner's representatives in connection with the Project unless otherwise directed in writing by Contractor. All Work performed by Subcontractor shall be processed and handled exclusively by Contractor.

SECTION 14. PATENTS

14. Patent Infringement. Subcontractor shall pay all royalties and license fees and shall defend all suits or claims for infringement of any patent rights arising out of the Work of Subcontractor under the Subcontract.

SECTION 15. ASSIGNMENT

15. Assignment and Subletting. Without the prior written consent of Contractor, neither the Subcontract nor any payments hereunder shall be pledged, assigned or sublet in whole or in part, except that Subcontractor may subcontract portions of the Work to subcontractors as provided in this Subcontract. Any such pledge, assignment, or subletting requiring prior written consent shall be void and of no effect

and shall vest no right in the assignee of Subcontractor. Contractor's consent to any assignment or subletting shall not relieve Subcontractor of its obligations under the Contract Documents, and Contractor may withdraw its consent at any time without liability therefor. Unless otherwise agreed in writing, Contractor's consent to any pledge, assignment, or subletting shall not create any contractual relationship between Contractor and any pledged party, assignee, or sub-lessee, and shall not vest any right of action in any such party against Contractor. Whether or not Contractor consents to a pledge, assignment, or subletting, unless Contractor specifically agrees otherwise in a signed writing, Subcontractor shall be responsible for the acts and omissions of its pledged parties, assignees, and sub-lessees, and all persons acting on their behalf or in their employ. In all cases, Subcontractor shall bind each of its pledged parties, assignees, and sub-lessees to all of the provisions of the Contract Documents, including the Subcontract, with respect to the assigned, sublet, or pledged Work.

SECTION 16. EMPLOYMENT LAWS

16. Compliance with Laws. Subcontractor shall ensure that all employees and applicants are treated without discrimination on account of race, color, religion, creed, marital status, age, sex, sexual orientation, or national origin; shall comply with all applicable federal, state and local laws, ordinances, orders and regulations governing human rights, immigration, nondiscrimination, and employment; and shall provide all required forms, plans, and reports. Subcontractor hereby agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless Contractor from all financial losses of any kind, including penalties, assessments, and defense costs (including attorneys' fees) in any way arising out of or resulting from Subcontractor's failure to comply any such laws, ordinances, orders and regulations that apply to Subcontractor, regardless of the separate fault or liability of Contractor.

SECTION 17. LIENS

17. Waiver of Lien and Surety Bond Rights. Subcontractor covenants and agrees that it shall not file any mechanic's liens or claims against the Project, or the Property, or any part thereof, or against any improvements thereon, or against any moneys due or to become due from Owner to Contractor or from Contractor to Subcontractor, or against Contractor's surety, if any, on account of any work,

labor, materials, services, equipment or other items furnished in connection with Subcontractor's Work, and Subcontractor hereby expressly waives all rights to file or maintain such liens and claims, except under the following two circumstances only: (1) In the event Subcontractor fails to receive timely payment following an Application for Payment to Contractor and Contractor has received payment from Owner for such portion of Subcontractor's Work covered by the Application for Payment, and all other conditions to payment are satisfied, and Contractor has not claimed any defenses, set-offs, deductions, or objections as provided in the Subcontract or the Contract Documents; and/or (2) In the event Subcontractor fails to receive timely payment following an Application for Payment to Contractor for the reason that Contractor has not received payment from Owner for such portion of Subcontractor's Work covered by the Application for Payment and Owner's nonpayment is unrelated to the time, quality, or details of Subcontractor's Work, but is for other causes such as Owner's filing of bankruptcy, insolvency, or liquidation, default by Owner of its loan agreement with a lender causing the lender to stop loan payments, or a dispute between Owner and Contractor unrelated to Subcontractor's Work.

17.1 The above provisions of this Section 17 shall be modified as necessary to conform to applicable state law, and the invalidity of any term above shall not affect those terms that may be applied under state law.

SECTION 18. MISCELLANEOUS

18.1. Rights Cumulative; Non-Waiver. All of Contractor's remedies herein are cumulative and in addition to all other remedies at law or in equity. Any failure by Contractor to insist upon strict compliance with any term of the Subcontract shall not be construed as a waiver of its right thereafter to require strict compliance.

18.2. Complete and Entire Agreement. The Subcontract comprises the complete and entire agreement between the parties and supersedes any oral statement, understanding, or other claimed agreement between the parties.

18.3. Severability. If any provision of the Subcontract is in conflict with any applicable law, ruling, or regulation, then such provision shall continue in effect to the extent permissible. If all or part of any provision is inoperative, the remaining provisions of the Subcontract shall, nevertheless, remain in full force and effect.

18.4. Governing Law. The Subcontract shall be governed by the laws of Minnesota and, wherever applicable, the Federal Arbitration Act, which shall control over state law. The Subcontract shall be binding on the heirs, successors, and assigns of the parties hereto.

18.5. Modification and Effect of Commencement. The Subcontract may not be modified or amended except by a written instrument signed by an authorized agent or officer of Contractor. Any strike-through marks, added wording, or other physical alteration to the Subcontract, including the General Conditions, are only effective to modify the agreement if a full signature by Contractor's authorized agent or officer and a full signature by an authorized agent or officer of Subcontractor appear immediately adjacent to the physical alteration. Initials shall not constitute an agreement to any physical alteration. Subcontractor's commencement of Work without prior written objection to the Subcontract, or to any of its terms and conditions, shall constitute an acceptance of all the Subcontract's terms and conditions without modification and shall be deemed an agreement by Subcontractor to be bound by the terms and conditions of the Subcontract as if Subcontractor had executed the Subcontract prior to commencing Work. In the event the parties have not reached agreement on all the terms and conditions of the Subcontract prior to the commencement of Work, Subcontractor's commencement of work on the Project shall be deemed an acceptance of all terms and conditions of the last Subcontract that was tendered by Contractor to Subcontractor that were not specifically identified by Subcontractor in writing as remaining unresolved prior to its commencement of Work.