

SUBCONTRACT AGREEMENT

THIS SUBCONTRACT, made on Month 00, Year, by and between **KBE BUILDING CORPORATION**, 76 Batterson Park Road, Farmington, Connecticut 06032, PH (860) 284-7110, FAX (860) 284-1174 (hereinafter "Contractor"), and «FIRMNAME», «FirmAddress», «FirmCity», «FirmState», «FirmZip» PH «FirmPhone», FAX «FirmFax» (hereinafter "Subcontractor").

WITNESSETH:

WHEREAS, Contractor and «Owner» (hereinafter "Owner") have entered into a contract for the construction of the «PROJECTDESCRIPTION», located at «JobAddress» in «JobCity», «JobState» «JobZip» (hereinafter "Project"), according to the Contract Documents listed below (hereinafter "Contract Documents"); and

WHEREAS, Contractor desires to subcontract certain work specified in the Contract Documents, and Subcontractor desires to perform said work at the prices and upon the terms and conditions hereinafter expressed;

NOW, THEREFORE, in consideration of the mutual agreements herein expressed, the parties do contract as follows:

- Contractor shall pay Subcontractor for performance of the work subject to additions and deductions as permitted by the terms of this Agreement, the total sum of:

«Totalsubcontract» («TotalSubcontract»)

| Phase Code | Description | Extended Price |
|-------------|--------------------|-----------------|
| «PhaseCode» | «PhaseDescription» | «ExtendedPrice» |

This sum shall include all applicable taxes, delivery charges, permits and insurance.

2. Subcontractor's Scope of Work.

All materials and equipment purchased, supplied and installed in the building in connection with this project shall be free from hazardous materials/substances or contaminants, as defined by applicable law, statutes, codes, regulations or ordinances, including, but not limited to, asbestos, PCB's, which warranty shall survive indefinitely.

Start Date: _____ «StartDate» _____

Completion Date: _____ «SubCompleteDate» _____

The Subcontractor is to supply labor, material, equipment, transportation, insurance, supervision and all things necessary to furnish and install all «SLDESCRIPTION» **WORK** for the «ProjectDescription», in «JobCity», «JobState» in strict accordance with the contract between the Contractor and the Owner and the plans and specifications prepared by «ArchEngName» and their consultants, collectively, the "Contract Documents", which are incorporated herein by reference. In addition, work shall be in accordance with the following riders:

- Rider "A" Subcontractor's Scope of Work, hereinafter included as part of this Subcontract Agreement.
- Rider "B" Drawing and Specification list dated «DrawingListDate», hereinafter included as part of this Subcontract Agreement.
- Rider "C" Abatement/Hazmat Requirements, hereinafter included as part of this Subcontract Agreement. *(This rider only used with subcontracts directly involved with any type of remediation on a project)*
- Exhibit "1" Standard Instructions Package (xx pages), hereinafter included as part of this Subcontract Agreement.
- Exhibit "2" Project Construction Schedule dated Month 00, Year, hereinafter included as part of this Subcontract Agreement. *(Only if applicable)*
- «AdditionalRiderExhibit» *(Note: It may be necessary to add riders or exhibits in order to comply with various owner, state and/or locality requirements specific to any given project.)*

a. **Responsibilities.** Subcontractor shall perform all work, which shall include all supervision, labor, materials, plans, scaffolding, tools, equipment, supplies and all other things necessary for the construction and completion of the work described above, work incidental thereto, and reasonably inferable from the Subcontract and the Contract Documents, in strict accordance and full compliance with the terms of this Subcontract and the Contract Documents to the satisfaction of Contractor and Owner and in the most sound and workmanlike manner.

b. **Pass Through Obligations.** In respect to work covered by this Subcontract, Subcontractor shall assume all obligations, risks and responsibilities which Contractor has assumed towards Owner in the Contract Documents, except as may be expressly modified herein. In case of a conflict between this Subcontract and the Contract Documents, the Subcontract shall govern. Nothing contained in this Subcontract shall prejudice any of the rights of the Owner or Architect under the Contract Documents. Subcontractor shall ensure that each of its subcontractors and suppliers are bound to the Contract Documents in a manner similar to that set forth herein. Notwithstanding any of the foregoing, if any provision of this Subcontract or any exhibits hereto irreconcilably conflicts with a provision of the Contract Documents, the provision imposing the greater duty or obligation on the Subcontractor shall govern.

2. **Subcontractor's Scope of Work (continued).**

c. **Fit of Subcontractor's Work.** Before proceeding with the Work under the Subcontract, the Subcontractor will check all previous and surrounding work done by other related trades and determine the correctness of same as required to incorporate the Work of this Subcontract, and shall report any discrepancies immediately to the Contractor. Failure on the Subcontractor's part to report discrepancies will constitute a waiver by Subcontractor and relieve the Contractor of any and all claims to recover cost or damage resulting therefrom.

d. **Approvals and Substitutions.** Subcontractor shall deliver to Contractor copies of shop drawings, cuts, samples and material lists required by Contractor or the Contract Documents in accordance with the Contract Documents within sufficient time so as not to delay performance of the Project and within the time stated in the Contract Documents. Notwithstanding any general approval granted by Contractor or Owner, all work shall be in accordance with the Contract Documents. Contractor's processing of shop drawings, cuts, samples and material lists is only for the convenience of the Owner in following the work and shall not relieve the Subcontractor from responsibility for any deviations from the requirements of the Contract Documents. No substitutions shall be made in the Subcontractor's Work unless permitted in the Contract Documents and only then after first receiving all necessary approvals required under the Contract Documents for substitutions.

e. **Inspection and Acceptance.** Subcontractor at its cost shall provide appropriate facilities at all reasonable times for inspection by Contractor or Owner of the work and materials provided under this Subcontract, whether at the Project site or at any place where such work or materials there may be in preparation, manufacture, storage, or installation. Subcontractor shall promptly replace or correct any work or materials which Contractor or Owner shall reject as failing to conform to the requirements of this Subcontract. The work shall be accepted according to the terms of the Contract Documents. Unless otherwise agreed in writing, entrance and use by Owner or Contractor shall not constitute acceptance of the work.

3. **Payment.**

a. Partial payments shall be due Subcontractor in the amount of «SubRetainage»% (*amount will be per state and/or owner requirements on each project*). the work in place for which payment has been made to Contractor by Owner. If the Contract Documents allow Contractor partial payments for stored materials, partial payments shall also be due Subcontractor in the amount of «SubRetainage»% (*per state and/or owner requirements*) of stored materials for which payment has been made to Contractor by Owner. Subcontractor shall submit to Contractor a Certificate of Insurance and a Bill of Lading for stored materials before payment will be made. Prior to the start of the Subcontractor's work, Subcontractor shall submit a breakdown of the total Subcontract price on Contractor's standard schedule of values. Such breakdown shall include for each part of Subcontractor's work separate values for categorized labor, material, closeout and cleanup. If the work involves renovation services (i.e., services involving the making of permanent improvements or betterments to increase the value of, and appreciably prolong the life of an existing building or structure), Subcontractor's price breakdown shall separately state all charges associated with such renovation services. If the Work involves renovation services and/or new construction services (i.e., services involving the construction of new buildings or structures or new additions to existing buildings or structures), Subcontractor's price breakdown shall separately state all charges associated with such new construction services, as well as all charges associated with renovation services. In the event Contractor disapproves said breakdown, Contractor shall establish a reasonable breakdown which shall serve as the basis for partial payments. No payment shall be required to be made which will reduce the contract balance below the sum which, in the opinion of the Contractor, will be adequate to fully cover the cost of completing Subcontractor's obligations under this agreement.

b. Subcontractor shall submit all Requisitions to the Contractor's main office, no later than the 10th day of the calendar month during which the work covered by that Requisition shall have been performed. Said requisition shall cover all work performed through the 20th day of that month. All billings must be submitted on Requisition forms resembling AIA G702 and G703 and must be accompanied by all documents specified hereunder or required by Owner's lender, which submission shall be a condition precedent to Subcontractor's entitlement to payment. Requisitions not submitted on the appropriate forms will be rejected. Prior to commencing work, Subcontractor must supply Contractor with its Sales and Use Tax Identification Number and this number must be shown on all monthly Requisitions. All Requisitions submitted must identify sales tax based on the laws where the job is located. Subcontractor shall also submit with each payment application a partial waiver of lien acceptable to Contractor or Owner. In addition, Subcontractor shall submit with each payment application subsequent to the first payment application, unconditional partial waivers of lien in favor of the Contractor and Owner from itself and each person or firm who has supplied material or services to Subcontractor for this project. In the event Subcontractor fails to submit the documents required by this Agreement, Contractor may withhold any payment due Subcontractor under this Agreement until such documents are submitted. Subcontractor further agrees to comply with Contractor's "Standard Instructions Package" that accompany this Agreement as Exhibit "1", and to furnish any certificates or documents regarding payment and waivers as any lender or the Owner may reasonably request.

3. Payment (continued).

c. Progress payments to the Subcontractor for satisfactory performance of the Subcontractor's Work shall be made only after receipt by the Contractor of payment from the Owner for the Subcontractor's Work. The Subcontractor agrees that the Contractor shall be under no obligation to pay the Subcontractor for any Work until the Contractor has been paid by the Owner, which receipt shall be a condition precedent to Subcontractor's right to receive payment. The Subcontractor expressly accepts the risk that it will not be paid for Work performed by Subcontractor if the Contractor, for whatever reason, is not paid by the Owner for such Work. Subcontractor hereby agrees to bear the risk of Owner insolvency. The Subcontractor agrees that it solely relies for payment for Work performed on the credit and ability to pay of the Owner and not of the Contractor. No partial payment made under this Subcontract shall be considered an acceptance of the work in whole or in part. All material and work covered by partial payments shall become the property of Contractor, or, if the Contract Documents so provide, the property of Owner; however, this provision shall not relieve Subcontractor from the sole responsibility and liability for all work and materials upon which payments have been made until final acceptance thereof by Owner.

d. Subcontractor shall ensure that all sub-subcontractors, employees and suppliers, at all times, are paid all amounts due in connection with the performance of the Subcontract. Subcontractor shall not use any payment received by Subcontractor from Contractor for any purpose other than to satisfy indebtedness incurred in the performance of this Subcontract. Contractor shall have the right to at any time contact the Subcontractor's sub-subcontractors and suppliers for the purpose of verifying that Subcontractor's payment obligations are being met. In the event Contractor has reason to believe the Subcontractor is not fulfilling its payment obligations, Contractor may take any steps necessary to ensure that progress payments are utilized to pay such obligations, including, but not limited to, direct payment issue checks jointly to Subcontractor and any vendor, sub-subcontractor or third party, or the right to withhold out of subsequent progress payments a reasonable amount to protect Contractor from any and all claims, loss or damage, including attorney's fees, arising out of any claim or lien, until Subcontractor submits evidence satisfactory to Contractor that all previous amounts owed in connection with the performance of this Subcontract, or any other contractual arrangements between the parties, have been paid. In the event that Contractor issues one or more checks jointly to Subcontractor and any vendor, sub-subcontractor or third party, Subcontractor hereby authorizes Contractor to assess an administrative fee and discount any monies due and payable to Subcontractor by the amount of \$200 for each joint check. Subcontractor shall also immediately reimburse Contractor for any amounts paid, including costs and attorney's fees, by Contractor or under Contractor's payment bond, if any, in connection with this Subcontract caused by Subcontractor's failure to make payments as provided in this paragraph.

e. Final payment shall be made the sooner of written acceptance by Owner and any tenant of Owner of Subcontractor's work, or 90 days after the entire project is complete; provided, that such payment shall not be due until (1) Subcontractor has provided satisfactory proof of payments of all amounts owed by Subcontractor in connection with the Project, (such proof to include, but not be limited to, a summary of all charges for goods and services associated with the Work performed by Subcontractor, that are subject to sales tax and the taxes paid on such goods and services), (2) Contractor has been paid in full for the entire Project, and (3) Subcontractor has provided the documentation required by Articles 11 and 12.

4. Subcontractor's Investigations and Representations.

Subcontractor having thoroughly investigated and informed itself of the conditions, locality and site of the work, and nature and difficulty of the work, by thorough examination and comparison of all plans and specifications, and project site conditions insofar as they relate in any way to the work to be undertaken herein such that Subcontractor can perform all work and requisite duties, obligations and responsibilities, including those reasonably inferable there from, under this Subcontract for the contract price specified herein, subject to adjustments as permitted in this Subcontract, agrees to complete the work described herein to the best of its ability and in a professional and workmanlike manner, in strict accordance with the requirements of the Contract Documents, including all documents incorporated herein and details illustrative thereof. Subcontractor enters into this Subcontract on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of Contractor, Owner or any of their respective officers, agents, servants or employees.

5. Subcontractor's Liability.

a. Subcontractor hereby assumes the entire responsibility and liability for all work, supervision, labor and materials provided hereunder, whether or not erected in place, and for all plant, scaffolding, tools, equipment, supplies and other things provided by Subcontractor until final acceptance of the work by Owner. In the event of any loss, damage or destruction thereof from any cause (other than Contractor's sole negligence), Subcontractor shall be liable therefore and shall repair, rebuild and make good said loss damage or destruction at Subcontractor's cost.

b. Subcontractor shall indemnify and hold-harmless Contractor for all costs Contractor incurs as a result of Subcontractor's failure to perform this Subcontract in accordance with its terms. Subcontractor's failure to perform shall include the failure of its suppliers and/or subcontractors of any tier to perform or comply with any law, rule, code or regulation governing the work. Subcontractor's liability shall include, but not be limited to (1) damages and other delay costs payable by Contractor to Owner; (2) Contractor's increased costs of performance, such as extended overhead and increased performance costs resulting from Subcontractor-caused delays or improper

5. Subcontractor's Liability (continued).

Subcontractor work, all in accordance with Contractor's standard billable rates; (3) warranty and re-work costs; (4) liability to third parties, and (5) attorney's fees and related costs or defenses against Subcontractor or its sureties incurred by Contractor against Subcontractor or its sureties to enforce any of Contractor's rights as provided herein.

c. In the event that Subcontractor or any of its agents, employees, suppliers, or lower-tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items belonging to or under the control of Contractor, Subcontractor shall be liable to Contractor for any loss or damage (including personal injury or death) which may arise from such use, except where such loss or damage shall be due solely to the negligence of Contractor's employees operating Contractor-owned or leased equipment.

d. Contractor is hereby given the right to withhold amounts otherwise due under this subcontract or any other contractual arrangements between the parties to cover any costs or liability Contractor has incurred or may incur for which Subcontractor may be responsible hereunder.

e. Subcontractor's assumption of liability is independent from, and not limited in any manner by, the Subcontractor's insurance coverage.

f. Subcontractor shall be responsible for calculating and remitting all sales or other taxes due and payable on all goods and services which are subject to tax and are associated with the Work performed by Subcontractor, its agents, or employees, and all sub-subcontractors. Subcontractor shall indemnify, defend and hold harmless Contractor (including its affiliates, parents and subsidiaries), Owner and Architect, and all of their agents and employees from and against all claims, damages, loss and expense, including but not limited to, attorneys' fees, arising from the failure of Subcontractor, its agents, or suppliers, and all sub-subcontractors, to comply with their respective sales tax obligations both hereunder and under the laws of the State having jurisdiction over the work.

g. Subcontractor is solely and exclusively responsible for the payment of wages and applicable benefits to its employees in accordance with applicable law, employment contracts or union agreements, whichever is greater. Subcontractor shall be responsible for any increases in applicable wage or benefit rates during this contract, and there shall be no adjustment to the contract price or rates payable to Subcontractor for increases in applicable wage or benefit rates. Subcontractor shall defend, indemnify and hold harmless Contractor for any and all damages or claims, including costs and attorney's fees, against or incurred by Contractor that are caused in whole or in part by Subcontractor's actual or alleged failure to comply with this section.

h. Subcontractor shall, upon request, prepare and sign any necessary inspection or certification documents to establish that Subcontractor's Work is furnished and installed in strict conformance with the Contractor Documents, including but not limited, to, permit, certificate of occupancy, warranty or tax-compliance documentation.

i. Subcontractor shall provide services necessary to evaluate energy efficiency measures in order for Contractor to qualify for available local, state or federal incentives or rebates, and Subcontractor agrees to execute relevant documents necessary for such programs. It is agreed that Contractor shall be the beneficiary of incentives or rebates received under these programs. Moreover, to assist in Contractor's tax compliance, at appropriate times during or after the project, Subcontractor agrees to execute the applicable Inspection, Certification and Calculation documents related to Section 179D of the Internal Revenue Code. With the cooperation of Subcontractor, Contractor or its tax advisors will prepare these documents, all accompanying documentation and the contents therein. Furthermore, Subcontractor agrees that Contractor will be designated the sole Section 179D beneficiary.

6. Indemnification.

a. To the fullest extent permitted by applicable law, Subcontractor shall defend all claims or allegations and indemnify and hold harmless Contractor, Owner and Architect (including their respective affiliates, parents, subsidiaries, agents and employees), from and against all damages, loss and expense, including attorney's fees and costs, resulting from, relating to or arising out of Subcontractor's Work under this Agreement; however, Subcontractor's indemnity obligation shall not apply to the extent applicable law prohibits Subcontractor from indemnifying and holding harmless Contractor for that portion of damages or losses caused by the independent negligence of Contractor, its agents or employees. In any event, with respect to any claims against, the Contractor, Owner, or Architect (as the case may be), the Subcontractor agrees to defend, indemnify and hold harmless Contractor, Owner, and/or Architect until it is determined by a court or arbitrator that Contractor's, Owner's or Architect's sole negligence or willful misconduct (as the case may be) had proximately caused the alleged damage or loss.


b. This indemnification obligation shall not be construed to negate, or abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article 6.

6. Indemnification (continued).

c. In any and all claims against the Owner, the Architect, the Contractor (including its affiliates, parents and subsidiaries) and other contractors or subcontractors, or any of their agents or employees, by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation under this Article 6 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 worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

d. Subcontractor expressly and specifically agrees to waive any defense or claim that Subcontractor's obligation to assume liability, indemnify, defend and save harmless Contractor, Owner and/or Architect, as provided for in this Agreement (or as provided by statute or common law), is in any way affected or diminished by any statutory or constitutional immunity it may enjoy from lawsuits by its own employees, or from limitations of liability or recovery under workers' compensation laws or other similar laws.

e. The obligations of the Subcontractor under this Article 6 shall not extend to the liability of the Architect, its agents or employees, arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (b) the giving of or the failure to give directions or instructions by the Architect, its agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

 **NOTE: Limits or additional insurance types other than those listed herein will be added in accordance with the owner requirements for each project.**

7. Subcontractor's Insurance.

a. Prior to the start of the Subcontractor's Work, the Subcontractor shall procure for the Subcontractor's Work and maintain in force Worker's Compensation Insurance, Employer's Liability Insurance, Comprehensive General Liability Insurance (CGL), Excess Liability Insurance (Excess) and/or Umbrella Insurance (Umbrella), Automobile Insurance and all insurance required by the Contract Documents, by a carrier(s) approved by the Contractor. This insurance shall include Contractual Liability insurance covering the Subcontractor's obligations under Article 6. The Contractor and the Owner(s) shall be named as additional insured on each of these policies except for Worker's Compensation. If Subcontractor's Work includes design or other professional services, Subcontractor shall provide evidence of Professional Liability Insurance coverage in the amount of not less than \$1 million per Occurrence and Aggregate, or the limits specifically required in the Contract Documents, whichever is greater. All such Professional Liability policies shall remain in force for eight years upon completion of the work and proof of coverage shall be forwarded to Contractor upon its yearly renewable date. Any Sub-subcontractor that is hired by Subcontractor shall also be required to purchase and maintain insurance that satisfies the criteria that is set forth under Article 7 of the Agreement. Any Subcontractor or any of Subcontractor's sub-subcontractors that are involved in the performance of any type of rigging operations must carry Rigging Accident Liability Insurance, inclusive of property damage as well as death and personal injury coverage, in a commercially reasonable amount, and shall supply proof of such coverage to Construction Manager. A Sub-subcontractor shall furnish Contractor with evidence that the required insurance has been purchased.

b. CGL coverage shall be written on ISO Occurrence form CG 00 01 (10 93) or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury. Contractor, Owner and all other parties required of the Contractor, shall be included as insureds on the CGL, using ISO Additional Insured Endorsement CG 20 10 (11 85), or CG 2010 (10 93) **and** CG 20 37 (10 01), or CG2033 (10 01) **and** CG2037 (10 01), or an endorsement providing equivalent coverage to the additional insureds. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured subcontractor. Any and all Primary, Excess and Umbrella Insurance purchased by Subcontractor shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured. In other words, any Primary, Excess and Umbrella insurance furnished by the Subcontractor in accordance with this Agreement, shall exhaust "vertically", and not share "horizontally" with any of Contractor's, Owner's or Architect's other insurance. Excess and Umbrella coverage shall be written "following form". All vehicles used by Subcontractor in performance of the Work shall be covered by the required Automobile Liability Insurance coverage.

c. The Subcontractor's Comprehensive General and Automobile Liability Insurance and Excess Liability shall be written with limits of liability not less than the following:

| | | | |
|-------|---|---------------------------|---------------------|
| A. | Comprehensive General Liability including Completed Operations. | | |
| | 1. Bodily Injury | \$«InsBodilyOccurrence» | Each Occurrence |
| | | \$«InsBodilyAggregate» | Aggregate / Project |
| | 2. Property Damage | \$«InsPropertyOccurrence» | Each Occurrence |
| | | \$«InsPropertyAggregate» | Aggregate / Project |
| <hr/> | | | |
| B. | Comprehensive Automobile Liability Combined Single Limit | \$«InsAutLIability» | Each Occurrence |
| <hr/> | | | |
| C. | Excess Liability | \$«InsExcessOccurrence» | Each Occurrence |
| | | \$«InsExcessAggregate» | Aggregate |

7. Subcontractor's Insurance (continued).

The general aggregate limits identified above shall be strictly dedicated for this Project and shall be evidenced on Subcontractor's certificate of insurance.

d. Subcontractor shall maintain Commercial General Liability coverage for itself and all additional insureds for the duration of the Project and maintain Completed Operations coverage for itself and each additional insured for at least five (5) years after completion of the Work, or up and until the date of the lapse of the applicable statute of repose which governs the project, whichever is longer.

e. The Subcontractor shall maintain in effect all insurance coverage required under this Agreement and the Contract Documents at the Subcontractor's sole expense and with insurance companies licensed to do business in the locale of the project. The requirements stated in this Agreement are minimum requirements. If any of the Contract Documents require greater limits or types of insurance, the requirements stated in the Contract Documents should be followed. Coverages afforded thereunder shall not be altered, suspended, cancelled or not renewed, nor restrictive modifications added, until at least sixty (60) days prior written notice has materially been given to the Contractor, which requirements shall also be set forth in the policies. Certificates of Insurance, or certified copies of policies and/or endorsements acceptable to the Contractor shall be filed with the Contractor prior to the commencement of the Subcontractor's Work. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, the Contractor may purchase such coverage and charge the expense thereof to the Subcontractor, or terminate this Agreement.

f. Subcontractor shall disclose any and all deductibles or retentions under the policies required herein. Subcontractor shall bear the cost and be responsible for the payment of any deductible or self-insured retention ("SIR") associated with any claim submitted under any of the policies of insurance that the Subcontractor has agreed to furnish in accordance with the terms of this Agreement. In the event Subcontractor fails to make payment of any required deductible or SIR, Contractor, at its option, may pay such deductible or SIR and thereafter recover the payment from the Subcontractor. Subcontractor **shall not** obtain insurance policies that restrict or limit who (or which insured) can make payment of a required SIR or deductible.

g. The Contractor and Subcontractor waive all rights against each other and the Owner, the Architect, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk or any other property or equipment insurance, except such rights as they may have to the proceeds of such insurance; provided, however, that such waiver shall not extend to the acts of the Architect listed in Article 6.e.

h. It is expressly agreed that the Contractor's failure to require or verify Subcontractor's complete and timely performance of Subcontractor's insurance obligations under Article 7 of this Agreement shall not constitute a waiver by the Contractor of its right to require the Subcontractor to comply with such insurance requirements and/or to seek damages against Subcontractor for its failure to comply with Article 7 of this Agreement.

8. Time of Performance and Manpower.

a. Subcontractor will proceed with the work in a prompt and diligent manner, in accordance with Contractor's schedule as reasonably amended from time to time, or as reasonably directed by the Contractor's authorized representative. TIME IS OF THE ESSENCE.

b. If requested by Contractor, Subcontractor shall submit a detailed schedule for performance of the Subcontract, in a form acceptable to Contractor, which shall comply with all scheduling requirements of the Contract Documents and with Article 8.a. above.

c. Subcontractor will properly coordinate its work with the work of Contractor, other subcontractors, and Owner's other builders, if any, so no delays, interference, or interruption will occur in the completion of any part or all of the Project.

d. If the Contract Documents provide for liquidated damages or permit consequential damages, or if Contractor shall be held liable to Owner for delays beyond the project completion date, then Subcontractor shall be liable to Contractor for the proportionate share of any such damages resulting from delays caused by Subcontractor.

e. Subcontractor shall at all times supply a sufficient number of skilled workers and supervision to perform the Work covered by this Subcontract in accordance with Contractor's schedule, or as directed by the Contractor's authorized representative. In the event Subcontractor fails to supply sufficient manpower to comply with Contractor's schedule, Contractor has the right upon 24 hours notice to supplement Subcontractor's forces with additional skilled workers and to deduct the cost of same from payments due Subcontractor. This right of Contractor to supplement subcontractor's manpower is in addition to all other rights or remedies of Contractor contained in this Subcontract and may be exercised upon 24 hours notice notwithstanding the provisions of Article 14. Contractor's supplemental forces may use the materials and equipment of Subcontractor to perform the Work.

9. Changes and Claims.

a. Contractor may, at any time, unilaterally or by agreement with Subcontractor, and without notice to the sureties, make changes including additions and deletions, in the work covered by this Subcontract. Any unilateral order, or agreement, under this Article 9.a. shall be in writing. Subcontractor shall perform the work as changed without delay, provided Subcontractor has received a written order from Contractor to proceed with the changed work, unless an emergency requires Subcontractor to proceed without a written order. Contractor will provide electronic documents to Subcontractor for pricing of such changes. Printing of these documents or obtaining hard copies of these documents is the responsibility of the Subcontractor. In the event Contractor and Subcontractor cannot agree upon the addition or deletion to the Subcontract price or time caused by such change prior to the need for commencement of the changed work, the Subcontractor shall nonetheless proceed promptly with the work. If Subcontractor intends to make a claim for extra compensation or time as a result of such change, it must, prior to proceeding with the work associated with the change, provide Contractor with a written notice that it is proceeding with the changed work under protest. Subcontractor waives and is barred from pursuing any and all claims for which a written notice of protest has not been provided. To the extent work is performed under this section without advance agreement of the adjustment to the subcontract price, if any, or time, if any, Subcontractor shall track all labor, material and equipment and obtain daily verification by Contractor of these resources utilized solely for the work at issue. To the extent such work is, in fact, a change to the scope of Subcontractor's Work under this Agreement, Subcontractor's payment shall be limited to the actual costs incurred for labor, materials and equipment as substantiated by Subcontractor and verified by Contractor or Owner as the case may be, plus the markup set forth in subparagraph (c) below.

b. Subcontractor shall submit in writing to Contractor all claims for adjustment in the Subcontract price or schedule, including an itemization of the damages and time claimed, within five days after the start of the occurrence giving rise to the claim (unless Contractor allows additional time for the submission of data or the Contract Documents provide for a shorter time). No claim for an adjustment in the contract time or price shall be valid if not submitted in accordance with this Article 9 and shall be barred if not so submitted. Subcontractor waives all claims for additional compensation and an extension of time if Subcontractor fails to strictly comply with any term of this Section 9, and any costs incurred by Subcontractor shall be at Subcontractor's sole risk and cost.

c. Adjustments in the Subcontract price resulting from changes, shall be set forth in a Subcontract Change Order. Subcontractor shall receive a mark-up of «SubCOMarkupRate»% (*amount will be per owner requirements on each project*) for combined overhead, insurance premiums, permit fees, bond premiums and profit on the direct costs of materials and labor associated with any change, provided such costs are agreed to by Contractor.

d. Subcontractor acknowledges that delays acceleration, inefficiencies, or lost productivity resulting from changes in the work, extreme weather, changes to the sequencing of the work, material shortages, transportation, strikes and other causes are inherent in the construction process. Subcontractor acknowledges that it has accounted for delays, accelerations and inefficiencies in its prices and agrees to bring no claims for money damages as a result of any delay or hindrance. In the event that Subcontractor claims that it has been delayed or hindered, it shall submit a request for a time extension to Contractor in the manner and pursuant to the time periods set forth in the Contract Documents. If it is determined that Subcontractor has been delayed or hindered or rendered inefficient through any reason other than its own fault, the time for performance hereunder will be extended and the extension of time will be Subcontractor's sole remedy for the delay, hindrance or inefficiency. Under no circumstances will the Contractor or Owner be liable to the Subcontractor for damages resulting from any delays, hindrances or inefficiencies.

e. Subcontractor acknowledges that Contractor's superintendent or other field personnel shall not be an authorized agent of Contractor to approve Subcontractor's change requests. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner or Contractor has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim for an increase in any amounts due under the Subcontract Documents or for a change in any time period provided for in the Subcontract Documents. In that regard, Subcontractor's claims for additional compensation or an extension of time for performance shall be limited to causes identified, and the conditions specified, in this Section 9 unless otherwise further limited by the Contract Documents, in which case the provisions of the Contract Documents shall take precedence.

f. The Subcontractor agrees that it shall not be entitled to nor claim any adjustment of time for any delay, obstruction, hindrance or interference to the Work except to the limited extent that Contractor has actually obtained an adjustment from the Owner under the Contract Documents for such delay, obstruction, hindrance or interference, and then only to the extent of the time adjustment, if any, which Contractor on behalf of the Subcontractor, actually received from the Owner on account of such delay, obstruction, hindrance or interference.

g. Notwithstanding any term or provision herein to the contrary, Subcontractor expressly waives and releases all claims or rights to recover lost profit (except for profit on work actually performed), recovery of overhead (including home office overhead), and any other indirect damages, costs or expenses in any way arising out of or related to the Agreement, including the breach thereof by Contractor, delays, charges, acceleration, loss of efficiency or productivity disruptions and interferences with the performance of the work.

9. Changes and Claims (continued).

h. It shall be an express condition precedent to any obligation on the part of Contractor to make payment of any such cost, reimbursement, compensation or damages to the Subcontractor hereunder that Contractor shall first be determined to be entitled to such compensation on behalf of the Subcontractor and then receive such payment from Owner, and Subcontractor expressly acknowledges that Contractor is not obligated or required to pursue Subcontractor claims as against Owner if Contractor, in its sole discretion, after review of Subcontractor's claim, has deemed the claim to lack merit in whole or in part.

i. Acceptance by Subcontractor of a change order shall operate as a waiver by Subcontractor of any and all claims arising out of or relating to the work set forth in the change order, unless specifically and expressly reserved in the change order. General reservations are not acceptable and shall not be enforceable.

j. In the event Subcontractor makes a Claim for additional compensation or a change in the Work that is subject to Owner approval or is otherwise disputed by Owner, Subcontractor shall be responsible for the reasonable legal costs and expenses of Contractor to pursue the Claim on behalf of Subcontractor.

k. In the event that Owner or Contractor request pricing of changes in the Work, Subcontractor agrees to provide pricing and associated detail, such as substantiated breakdowns of labor, material and equipment, within a reasonable period of time, not to exceed five days from Subcontractor's receipt of the request. Failure by Subcontractor to timely provide the information required by this section shall permit Contractor, at Contractor's sole and exclusive discretion, to provide its own reasonable estimate, which estimate shall be binding on Subcontractor.

l. Subject to the other conditions of this Article 9 with respect to compensation for delays, Subcontractor shall not be entitled to added supervision or foreman costs for changes in the Work except to the extent such supervision is not, and should not, already be on site for Subcontractor's base contract Work.

10. Settlement of Disputes.

Except as otherwise set forth herein, or in any provision of the Contract Documents to the contrary, no dispute or claim of any nature arising out of or relating to this Subcontract will be subject to arbitration. In the event Contractor and Subcontractor cannot resolve disputes, either party may prosecute its claim in a court of competent jurisdiction within the State of «JobState». All suits must be brought in the courts of «JobState». Subcontractor must commence any action within one year of the date Subcontractor substantially completes its work, otherwise the Subcontractor's claim will be deemed to have been waived. In the event of an arbitration between Owner and Contractor, and at the sole option of Contractor, Subcontractor may be joined in such arbitration. Subcontractor shall include a similar provision in its Sub-subcontracts.

11. Warranty and Closeout.

a. Subcontractor warrants its work hereunder to Contractor on the same terms, and for the same period, as Contractor warrants the work to Owner under the Contract Documents; and with respect to Subcontractor's work, Subcontractor shall perform all warranty obligations and responsibilities assumed by Contractor under the Contract Documents. If no guarantee or warranty is required by the Contract Documents, then the Subcontractor shall guarantee or warranty its work against all deficiencies and defects in materials and/or workmanship for one (1) year from the date of substantial completion of all or a designated portion of the Project. Once Subcontractor is placed on written notice of a warranty issue, Subcontractor shall respond within 72-hours to commence investigation and repair of the work at issue.

b. The Subcontractor shall furnish "as-built" or record drawings in reproducible form, copies of warranties and guarantees from its suppliers and subcontractors, and operation and maintenance manuals for all equipment furnished hereunder.

c. Nothing in this section shall excuse Subcontractor from the obligation to perform its work with the level of quality, workmanship and standards set forth in the Contract Documents, or limit the time in which Contractor may identify or seek a remedy for defects in Subcontractor's work.

d. Notwithstanding anything to the contrary in the Contract Documents, no warranties provided by or through Subcontractor, including manufacturer warranties, shall be conditioned upon payment or resolution of disputes with respect to payment. The provision of unconditional warranties is a condition precedent to final payment under this Agreement. To the extent any warranties are issued with such conditions, and until the conditions are removed, Subcontractor and its surety guarantee to Contractor and Owner the terms of the warranty as if the prohibited conditions did not exist. It shall be Subcontractor's sole responsibility to make arrangements to provide and/or obtain warranties that comply with this provision or to satisfy any such conditions so that the warranties are timely and in full force and effect.

11. Warranty and Closeout (continued).

e. Subcontractor shall provide all equipment/system startup and training, testing, operation manuals, attic stock, lock out/tag out, or other closeout documents required by the Contract Documents on or before substantial completion of Subcontractor's other Work. Contractor may assign reasonable values, other than retainage, to withhold against Subcontractor's payment pending receipt of, or completion of, these closeout items. Subcontractor shall be responsible for costs or damages incurred by Contractor for delayed or failed performance of the requirements under this Article 11.

12. Liens.

a. If any subcontractor, laborer, materialman or supplier of the Subcontractor or any other person directly or indirectly acting for, through or under it or any of them files or maintains a lien or claim, whether a mechanics' lien or an attested account or otherwise, a mechanic's lien or claim against the Project or Premises or any part thereof or any interests therein or any improvements thereon or against any monies due or to become due from the Owner to Contractor or from Contractor to the Subcontractor, for or on account of any work, labor, services, materials, supplies, equipment or other items performed or furnished for or in connection with the Work or under any change order or supplemental agreement for extra or additional work in connection with the Project, the Subcontractor agrees to cause such liens and claims to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within five (5) days from the date of the filing thereof, and upon its failure to do so Contractor shall have the right, in addition to all other rights and remedies provided under this Agreement and the other Contract Documents or by law, to cause such liens or claims to be satisfied, removed or discharged by whatever means Contractor chooses, at the entire cost and expense of the Subcontractor (such cost and expense to include legal fees and disbursements). The Subcontractor agrees to indemnify, protect and save harmless Contractor and the Owner from and against any and all such liens and claims and actions brought or judgments rendered thereon, and from and against any and all loss, damages, liability, costs and expenses, including legal fees and disbursements, which Contractor and/or the Owner may sustain or incur in connection therewith. Contractor shall have the right to withhold from any payments due or to become due to the Subcontractor an amount sufficient, in its judgment, to protect and indemnify the Contractor from and against any and all such loss, damages, liability, costs and expenses, including legal fees and disbursements, or if the amount of remaining payments is, in Contractor's judgment, insufficient, the Contractor may demand immediate payment from Subcontractor. The Subcontractor's failure to make immediate payment in accordance with the Contractor's demand shall be deemed a material breach of this Agreement.

b. At the time final payment is made, Subcontractor shall provide to Contractor a general release of all claims in connection with its performance of this Agreement. Final payment will not be due until said general release and any documents, waivers, or certificates required by Owner's lender are provided. Additionally, prior to the making of final payment, Subcontractor shall provide Contractor with evidence satisfactory to Contractor that there are no outstanding liens or claims outstanding against the Work.

c. The Subcontractor covenants and agrees that no mechanics' liens or claims will be filed or maintained against the Project and its premises or any part thereof or any interests therein or any improvements thereon, or against any monies due or to become due from the Owner to Contractor or from Contractor to the Subcontractor, for or on account of any work, labor, services, materials, equipment or other items performed or furnished in connection with the Work, and the Subcontractor does hereby expressly waive, release and relinquish all rights to file or maintain any such mechanic's liens and claims and agrees further that this waiver of the right to file or maintain mechanics' liens and claims shall be an independent covenant and shall apply as well to work, labor and services performed and materials, equipment and other items furnished under any change order or supplemental agreement for extra or additional work.

13. Termination for Convenience.

The Contractor shall have the right at any time, on not less than five (5) days notice to the Subcontractor, to terminate this Agreement without cause and/or for the Contractor's convenience. Upon receipt of such notice of termination, the Subcontractor shall immediately discontinue the Work and remove its equipment and employees from the site. In the event of termination under this paragraph, the Subcontractor shall have the right, at its sole and exclusive remedy, to recover from the Contractor payment for all Work executed and costs incurred up to the date of termination (less any payments theretofore made to the Subcontractor by the Contractor on account thereof)

provided, however, that in no event shall the amount recovered by the Subcontractor from the Contractor as aforesaid exceed a greater percentage of the Contract Price than the percentage of Work completed through the date of termination or any sum Contractor might recover from Owner in the event Contractor's contract or authorization has been terminated by Owner. All indemnities and all warranties shall survive the termination of the Contract.

14. Subcontractor's Failure to Perform and Termination For Cause.

a. If, in the opinion of Contractor, Subcontractor shall at any time (1) refuse or fail to provide a sufficient number of properly skilled workmen, adequate supervision or materials or the proper quality, (2) fail in any respect to prosecute the work according to the current schedule or as directed by Contractor, (3) cause, by any action or omission, the stoppage, or delay of, interruption or interference with the work of Contractor or of any other builder or subcontractor, (4) fail to comply with any provisions of this Subcontract or the Contract Documents, or commit a material breach of the Subcontract, then, after serving three (3) business days written notice, unless the condition specified in such notice shall have been eliminated within such three (3) days, the Contractor may at its option (i) without voiding the other provisions of (the subcontract and without notice to the sureties, take such steps as are necessary to overcome the condition, in which case the Subcontractor shall be liable to Contractor for the cost thereof consistent with Article 5, or (ii) terminate the Subcontract for default. In the event of termination for default, Contractor may, at its option, 1) enter on the premises and take possession, for the purpose of completing the work, of all materials and equipment of Subcontractor, (2) require Subcontractor to assign to Contractor any or all of the subcontract or purchase orders involving the project or (3) complete the work either by itself or through others, by whatever method Contractor may deem expedient. In case of termination for default, Subcontractor shall not be entitled to receive any further payment until the work shall be fully completed and accepted by Owner. At such time, if the unpaid balance of the price to be paid shall exceed the expense incurred by Contractor consistent with Article 5, such excess shall be paid by Contractor to Subcontractor. If such amount due Contractor shall exceed such unpaid balance, then Subcontractor shall pay Contractor the difference within five (5) business days following demand by Contractor. Subcontractor shall pay all reasonable costs of collection, including a reasonable attorney's fee, if any.

b. In the event of a dispute between Contractor and Subcontractor, Subcontractor shall pay all costs and expense, including reasonable attorney's fees, incurred by Contractor to successfully defend the claim, in whole or in part, and to prosecute a claim against Subcontractor. Such fees and costs are part of Subcontractor's indemnity obligations to Contractor under Sections 5 and 6 above.

c. If Contractor wrongfully exercises any option under Article 14.a (i) or (ii) above, such exercise shall be deemed a Termination for Convenience and the Subcontractor compensated as provided for in Article 13 hereof.

15. Subcontractor's Bankruptcy or Insolvency.

a. Upon the appointment of a receiver for the Subcontractor or upon the Subcontractor making an assignment for the benefit of creditors, the Contractor may terminate this Agreement giving three (3) business days written notice, by certified mail, to the Subcontractor and its surety, if any. If an order for relief is entered under the bankruptcy code with respect to the Subcontractor, the Contractor may terminate this Agreement by giving three (3) business days written notice, by certified mail, to the Subcontractor, its trustee, and its surety, if any, unless the Subcontractor, the surety, or the trustee:

- (i) promptly cures all defaults;
- (ii) provides adequate assurances of future performance;
- (iii) compensates the Contractor for actual pecuniary loss resulting from such defaults, and
- (iv) assumes the obligations of the Subcontractor within the statutory time limits.

b. If the Subcontractor is not performing in accordance with the Schedule of Work at the time of entering an order for relief, or at any subsequent time, the Contractor, while awaiting the decision of the Subcontractor or its trustee to reject or to accept this Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Schedule of Work. The Contractor may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and attorney's fees. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the contract price.

16. Safety Requirements.

In order to help assure the safety of all workers and the orderly progression of work, the following are to be considered basic safety requirements for all personnel on this project. These requirements are not intended to be all inclusive and may need to be amended, supplemented, or changed to meet specific project conditions such as the nature of the work and such other rules as required by the customer.

The Subcontractor agrees in the performance of this contract to observe and comply with the following requirements (in addition to any other contractual safety requirements). Violation of these rules and regulations shall be considered a material breach and may, at the Contractor's option, result in termination of the Subcontract Agreement.

16. **Safety Requirements (continued).**

- a. All applicable federal, state, local, or other regulatory agency's safety rules and regulations including, but not limited to, the Occupational Safety & Health Act of 1970, as amended.
- b. The Subcontractor agrees to observe and comply with Contractor's Corporate Safety Manual/Plan in effect, which terms are incorporated as part of this Agreement. Subcontractors are required to develop their own safety program that promotes safety awareness among its employees for the Project.
- c. Maintain safe and healthful working conditions.
- d. All areas of the project, with special emphasis on passageways, flammable or combustible storage areas, as well as areas around ladders, stairs and ramps, will be maintained in a clean and orderly condition at all times -- good housekeeping is everyone's job.
- e. Subcontractor shall have all material and equipment in or on portable carts, bins, racks, movable pallets, tables with casters, or equivalent. If necessary, specified materials and equipment shall be able to be relocated within one hour of notification.
- f. All employees must comply with established regulations and practices, and the proper wearing and use of all safety equipment. Hard hats are required at all times and to be worn per the manufacturer's recommendations. All employees on this project shall wear eye protection full time. Eye protection must include side protection and meet ANSI Z87.1 requirements. Workers shall wear eye protection adequate for the task being performed. Canvas shoes, jogging shoes, or sneakers are prohibited. "Steel-toe" safety shoes are recommended.
- g. Only trained, authorized people will operate or service equipment. Equipment will be operated only in accordance with the manufacturer's recommendations and by properly licensed operators, where applicable.
- h. The use, possession, or sale of alcohol or other drugs is prohibited. Those who are believed to have used, or are under the influence of drugs or alcohol, will be removed from the project.
- i. Maintain a continuous educational program in safe operating procedures.
 - 1. Weekly safety meetings will be conducted by each subcontractor for their personnel.
 - 2. Subcontractors are encouraged to conduct safety training prior to each new phase or operation.
- j. If the Subcontractor's worker's primary language is other than English, Subcontractor will provide a translator at all times that said workers are on site. The translator must have the ability to conduct required on site training, including Tool Box Talks.
- k. Clean-up - Subcontractor shall keep the construction area, including storage areas used by him, at all times free from Subcontractor's rubbish, waste material, excess materials, equipment, and debris, and each day shall remove from the site, or to a specified location on the site as may be directed by the Contractor, any such rubbish, waste material and debris, and prior to completion of work, shall remove all tools, scaffolding, equipment and materials used by Subcontractor and not incorporated into the completed work and shall leave Subcontractor's work "broom clean" and free and clear of all obstruction and hindrance. If the Subcontractor fails to so remove Subcontractor's rubbish, waste material, etc., after 24 hours notice, then the Contractor shall have the right to remove same and charge the cost thereof against monies due or to become due the Subcontractor. Given the inherent difficulty with determining responsibility among multiple subcontractors for cleanup, Subcontractor accepts Contractor's good faith estimate and allocation of responsibility for cleanup costs are final and binding on Subcontractor.
- l. Subcontractor agrees to have a representative present at all scheduled job and safety meetings held while Subcontractor is performing work. Unless otherwise excused from attendance at such meetings by Contractor, Subcontractor hereby consents to a reduction in payment of \$100.00 for each and every failure to attend job meetings.
- m. The Subcontractor shall follow the Contractor's safety directions. Any safety hazards found must be abated immediately by the offending Subcontractor. If the safety abatement is not performed in a timely manner, as determined by Contractor, Contractor will have the hazardous safety abatement completed and forward all associated costs to the offending Subcontractor.
- n. Safety violations will not be tolerated. Violations are taken seriously and may lead to written warnings, fines, or permanent removal from the project. Violations are categorized into three (3) groups as determined by the Contractor's Safety Director, and are comparable to the Federal OSHA Violation types and are as follows:
 - i. Other Than Serious
\$250 - \$500 Fine and/or Violating worker terminated from project;
 - ii. Serious
\$500 - \$1,000 Fine and/or Violating worker terminated from project;

16. Safety Requirements (continued).

- iii. Willful or Repeat
\$1,000 - \$2,500 fine and Violating worker terminated from project.

In addition to the penalty schedule above, continued disregard of safety regulations may also lead to the employer having to retrain or recertify individual workers, individual crews, or their entire company. Proof of retraining and/or recertification must be forwarded to Contractor.

Any individual that commits a Willful Violation will be permanently removed from the project and may be prohibited from working on any other projects of the Contractor.

Contractor at any time, may direct Subcontractor to immediately remove any worker that is in violation of this section if, in the opinion of Contractor, the worker is endangering the life, health or safety of him/her self or others.

o. At any time where Subcontractor has the amount of workers indicated below on the project site, to include workers employed by other contractors working under or through Subcontractor, Subcontractor shall have the minimum safety staffing personnel so indicated:

- i. 15 or more workers requires at least one 10 hour OSHA card holder;
- ii. 30 or more workers requires at least one 30 hour OSHA card holder;
- iii. 50 or more workers requires a dedicated safety employee whose sole responsibility shall be to ensure that the safety requirements set forth in this Agreement are being followed, and has the credentials to meet that of a "Competent and Qualified", person with a minimum of a 30 hour OSHA training.

p. Subcontractor shall also indemnify, defend and hold harmless Contractor (including its affiliates, parents and subsidiaries), Owner and Architect, and all of their agents and employees from and against all claims, damages, loss and expense, including but not limited to, attorneys' fees, arising from the failure of Subcontractor, its agents, suppliers, or employees, and all sub-subcontractors, to comply with Section 16 hereof.

17. Assignment.

Subcontractor shall not sub-subcontract the work of the Subcontract and shall not assign or transfer this subcontract, or funds due thereunder, without the prior written consent of Contractor and Subcontractor's surety.

18. Patents and Royalties.

Except as otherwise provided by the Contract Documents, Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented materials in the work. Subcontractor shall defend all suits or claims for infringement of any patent rights that may be brought against Contractor or Owner arising out of the work, and shall be liable to Contractor and Owner for all loss, including all costs and expenses, on account thereof.

19. Taxes and Permits.

a. Except as otherwise provided by the Contract Documents, Subcontractor agrees to pay and comply with and hold Contractor harmless against the payment of all contributions, taxes or premiums which may be payable by it under Federal, state or local laws arising out of the performance of this Subcontract, and all sales, use or other taxes of whatever nature levied or assessed against Owner, Contractor, or Subcontractor arising out of this Subcontract, including any interest or penalties. Subcontractor shall obtain and pay for all permits, licenses, fees and certificates of inspection necessary for the prosecution and completion of its work and shall furnish copies of same to the Contractor.

b. Subcontractor shall be responsible for calculating and remitting all sales taxes due and payable to revenue authorities having jurisdiction over the Project on all goods and services which are subject to sales tax and are associated with the Work performed by Subcontractor, its agents, or employees, and all sub-subcontractors. Subcontractor shall indemnify, defend and hold harmless Contractor, (including its affiliates, parents and subsidiaries), Owner and Architect, and all of their agents and employees from and against all claims, damages, loss and expense, including but not limited to, attorney's fees, arising from the failure of Subcontractor, its agents, or suppliers, and all sub-subcontractors, to comply in this respect.

20. a. **Laws, Regulations and Ordinances.**

Subcontractor agrees to be bound by, and, at its own cost, comply with all federal, state and local laws, codes, ordinances and regulations applicable to this Subcontract and the performance of the work hereunder including, but not limited to, prevailing wage laws, licensing laws, labor laws, tax laws, social security acts, unemployment compensation acts, workers compensation laws, affirmative action laws and the Occupational Safety and Health Act of 1970. Subcontractor hereby agrees to comply fully and completely with any and all federal, state and local statutes, regulations or executive orders; 1) precluding employment discrimination on the basis of race, color, religion, national origin, sexual gender or sexual orientation, age; or 2) requiring affirmative action to eliminate, among other things, under-utilization of minorities or other classifications to the extent same are applicable to Contractor. **This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.** Subcontractor shall be duly licensed to operate under the law of the applicable jurisdictions. Subcontractor shall be liable to Contractor and Owner for all loss, cost and expense attributable to any acts of commission or omission by Subcontractor, its employees and agents resulting from failure to comply including, but not limited to, fines, penalties or corrective measures. Contractor strictly enforces the positions of the Immigration Reform and Control Act of 1986 and requires all Subcontractors to do the same. As a condition precedent to Subcontractor's right to receive payment, Subcontractor agrees to provide all evidence and paperwork reasonably requested by Contractor to substantiate compliance by Subcontractor and its sub-subcontractors with these requirements.

b. **Communication of Hazards.**

Subcontractor shall and shall ensure that its agents, employees, and suppliers, and all sub-subcontractors, comply with all applicable standards (hereinafter "The Standards") of (i) the Occupational Safety and Health Standards Subpart Z - Toxic and Hazardous Substances Hazard Communication Standard, created pursuant to 29 U.S.C. 655 of the Occupational Safety and Health Act, as amended from time to time, including, but not limited to, the requirements for multi-employer workplaces stayed on June 24, 1988 by the United States Court of Appeals for the Third Circuit in Associated Builders and Contractors, Inc. v. Secretary of Labor, including but not limited to, reporting, record keeping and training requirements regarding the transmittal, use and storage of any hazardous material for use on the Project, and (ii) the Comprehensive Environmental Response, Compensation and Liability Act; the Superfund Amendment and Reauthorization Act, including the Emergency Planning and Community Right-To-Know Act as amended from time to time. Subcontractor assumes sole responsibility for failure of it, its agents, employees, and suppliers and all sub-subcontractors to comply with the Standards and all consequences of such failure. Copies of any forms, documents, or writings required to be submitted, filed, maintained, posted against Subcontractor or its sureties to enforce any of Contractor's rights as provided herein; and all costs of compliance, expenses and damages, including but not limited to, fines or penalties assessed against Contractor incurred as a result of violations of Section 20 (b) by Subcontractor, its agents, employees, and suppliers and any sub-subcontractors.

c. Subcontractor shall also indemnify, defend and hold harmless Contractor (including its affiliates, parents and subsidiaries), Owner and Architect, and all of their agents and employees from and against all claims, damages, loss and expense, including but not limited to, attorneys' fees, arising from the failure of Subcontractor, its agents, suppliers, or employees, and all sub-subcontractors, to comply with Section 20 hereof.

21. **Labor.**

a. The Subcontractor shall not employ workers, means, materials or equipment or assign work in any manner which may cause strikes, work stoppages or any disturbances by workers employed by the Subcontractor, Contractor or other contractors or subcontractors on or in connection with the Work or the Project or the location thereof. The Subcontractor agrees that all disputes as to jurisdiction of trades shall be adjusted in the manner or by a process that Contractor may require, including, if Contractor so requires, in accordance with any plan for the settlement of jurisdictional disputes to which Contractor may be bound in connection with the Project which may be in effect either nationally or in the locality in which the Work is being done. Subcontractor agrees that it shall assign work consistent with any such plan and shall be bound and abide by all such adjustments and settlements of jurisdictional disputes, provided that the provisions of this Article shall not be in violation of or in conflict with any provisions of law applicable to the settlement of such disputes. There shall be no manifestations on the project of any dispute between any labor organization and the Subcontractor. The Subcontractor agrees to employ workers, agents, suppliers and subcontractors who will perform the work under this Subcontract whether or not other employees or mechanics on the project are members or non-members of any labor or collective bargaining organization. Should the Subcontractor fail to carry out or comply with any of the foregoing provisions, Contractor shall have the right, in addition to any other rights and remedies provided by this Agreement or the other Subcontract Documents or by law, after three (3) days written notice mailed or delivered to the last known address of the Subcontractor, to terminate this Agreement or any part thereof or the employment of the Subcontractor for all or any portion of the Work for cause.

21. Labor (continued).

b. If the Subcontractor has any intention of obtaining sub-subcontractor(s) to work at this project, the Subcontractor must provide a written submittal stating the sub-subcontractor(s) name, address and completion date. This information must be approved prior to the sub-subcontractor(s) commencing work. The sub-subcontractor(s) is also required to obtain and maintain all the insurance requirements stated in Article 7, of this Subcontract. The Subcontractor must submit regular up-to-date lists of their sub-subcontractor(s) working at this project.

c. Should any workers performing work covered by this Subcontract engage in a strike or other work stoppage or cease to work due to picketing or a labor dispute of any kind, Contractor may, at its option and without prejudice to any other remedies it may have, after twenty-four (24) hours written notice to Subcontractor, provide any substitute labor as may be required and deduct the cost thereof from any monies due or thereafter to become due Subcontractor; and further, Contractor may at its option, without prejudice to any other remedies it may have, terminate the employment of Subcontractor for the work under this Subcontract, and shall have the right to enter upon the premises and take possession for the purpose of completing the work either with its own employees or other Subcontractors; and in case of such termination of the employment by Contractor, Subcontractor shall not be entitled to receive any further payments under the Subcontract or otherwise but shall nevertheless remain liable for any damages which Contractor incurs consistent with Article 5. If the expenses incurred by Contractor in completing the work shall exceed the unpaid balance due Subcontractor, Subcontractor shall pay the difference to Contractor together with any other damages incurred by Contractor as the result of Subcontractor's default. Contractor shall have a lien upon all materials, tools, and appliances taken possession of, to secure the payment thereof.

d. Subcontractor's assumption of liability is independent from, and not limited in any manner by, the Subcontractor's insurance coverage obtained pursuant to Article 7, or otherwise.

e. Subcontractor shall also indemnify, defend and hold harmless Contractor (including its affiliates, parents and subsidiaries), Owner and Architect, and all of their agents and employees from and against all claims, damages, loss and expense, including but not limited to, attorneys' fees, arising from the failure of Subcontractor, its agents, suppliers, or employees, and all sub-subcontractors, to comply with Section 21 hereof.

22. Notices.

All notices required to be in writing shall be addressed to the parties at the addresses herein, and shall be considered as delivered: 1) when postmarked if dispatched by registered/certified mail or confirmed receipt delivery by a common-carrier, 2) when sent, if by fax or e-mail; or 3) when received in all other cases. Notwithstanding the above, actual notice from Contractor to Subcontractor, whether verbal or in writing, shall constitute proper notice under this agreement.

23. Severability and Waiver.

The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision, and to the extent possible the terms of this Agreement shall be interpreted consistent with the permissible limits of applicable law to reflect the intent of the parties without invalidating or voiding the provisions. The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Subcontract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

24. Advertising.

Neither Subcontractor, its subcontractors, suppliers nor employees shall take photographs of the work on site, or publish or display advertising matter of any description relating to the Project without first obtaining the written consent of Contractor and the Owner.

25. Bond.

The Subcontractor shall, if required by the Contractor, furnish at Contractor's expense a Performance and Payment Bond, in the full amount of this Subcontract. The bond form and the surety shall be acceptable to the Contractor.

26. Complete Agreement.

This Subcontract contains the entire agreement between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties, or other matters, oral or written, shall be deemed to bind the parties hereto. In the event the law of the state which governs this Agreement renders any portion of this Subcontract void or unenforceable, the remaining requirements shall remain in full force and effect as between the parties. Moreover, in such an instance, all obligations of the Subcontractor, including, but not limited to its obligations to indemnify the Contractor, shall be enforced to the fullest extent permitted by the applicable law, and shall be construed to conform to the law.

27. No Third Party Beneficiary Rights.

Nothing in this Agreement shall be deemed to create any third party beneficiary relationship between Owner and any Subcontractor.

28. Jury Trial Waiver

SUBCONTRACTOR WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have hereunto executed this Subcontract and any attached Riders, hereinafter included as part of this Subcontract Agreement, on the day and year above written.

SUBCONTRACTOR

GENERAL CONTRACTOR

Authorized Signature

KBE Authorized Signature

Printed Name and Title

«ProjectManager», Project Manager

Printed Name and Title

For: «FIRMNAME»

For: KBE BUILDING CORPORATION

RIDER "A" - SUBCONTRACTOR'S SCOPE OF WORK
between
KBE BUILDING CORPORATION
and
«FIRMNAME»

The following items are included in Subcontractor's Scope of Work but are in NO WAY meant to limit the Scope of Work and obviously do not list all the items that Subcontractor must perform.

1. Furnish all labor, materials, supervision, tools, supplies equipment, insurance, permits, all applicable sales and use taxes, and services necessary for a **COMPLETE «SLDESCRIPTION» PACKAGE** as shown in the Contract Documents for the above referenced project, to be in accordance with the Project's General Conditions and related work by others as described herein, to include, but not limited to the following:
 - a.) *Any Payment and Performance Bond or Joint Check Agreement requirements applicable to a Subcontract will be inserted here, followed by the trade specific scope of work pertaining to subcontract.)*
 - b.)
 - c.)
 - d.)

2. Subcontractor will supply a skilled and knowledgeable foreman to supervise their portion of work and to deal with Contractor's field Superintendent on a daily basis and perform/supervise the following duties:
 - a.) Attend job meetings and have the authority to represent the Subcontractor at these meetings.
 - b.) Hold weekly safety meetings with the other employees of Subcontractor, and submit to Contractor's field Superintendent on a weekly basis, a signature list of the men attending this safety meeting and describing the discussion.
 - c.) Assuring Subcontractor's debris is picked up on a daily basis, or more often if deemed necessary by Contractor's field Superintendent, so as to maintain a safe work place for all.

3. Subcontractor will provide any required overtime if:
 - a.) Material and/or equipment needs to be unloaded and/or staged before or after working hours, and/or;
 - b.) Work must be performed on overtime or additional shifts to meet project schedule.

4. Contractor will provide the following temporary facilities and equipment:
 - a.) Portable toilets.
 - b.) Temporary water supply (hose bib).
 - c.) Cost of utility usage.
 - d.) Temporary lighting and temporary heat in those work areas of the building normally provided in standard construction practices.

5. Subcontractor will provide all other temporary facilities and equipment required to perform his work which shall include, but not be limited to, the following:
 - a.) Hoses to distribute water supply from source.
 - b.) Power cords to distribute power.
 - c.) All required crane hoisting or other lifting devices.
 - d.) All scaffolding, staging, ladders and or safety measures to meet or exceed regulatory requirements, including the identification of the Competent Person for erection and use of the same.
 - e.) Job offices (with power and telephones), storage containers, tool boxes, etc.

6. Contractor will provide a reasonable amount of benchmark elevations (controls). Subcontractor is responsible for all other layout as required to perform their work.

RIDER "A" (Scope of Work) Continued

7. If Subcontractor works at night, all required lighting, above what was outlined above, will be furnished, operated and maintained by Subcontractor.
8. It will be Subcontractor's responsibility for all his employees', agents', etc., parking requirements.
9. Contractor will not be charged for any incidental stand-by-time by Subcontractor or any of its agents, sub-subcontractors, suppliers or deliveries.
10. It will be Subcontractor's responsibility to remove from the site any damaged, rejected, surplus or unusable items that will not fit into Contractor's dumpsters. If Subcontractor's waste material is considered hazardous waste, it will be the responsibility of Subcontractor to remove this material from the site and dispose of all hazardous waste materials as required by all applicable regulatory agencies.
11. Subcontractor is responsible to coordinate and schedule with the Project Superintendent all material deliveries, off-loading and stocking plans.
12. Any required as-built drawings or other information, must be recorded by Subcontractor on the set of drawings retained at the site by Contractor's Project Superintendent prior to substantial completion of Subcontractor's work as directed by the Project Superintendent. All changes must be clearly marked and in a reproducible ink. If Subcontractor neglects to record as-built information, Contractor has the right to research and record as-built conditions of Subcontractor's work and backcharge Subcontractor for all associated costs incurred by Contractor. Notwithstanding the above, fire protection Subcontractors may submit as-built drawings directly to Contractor's main office. Subcontractor will be responsible for supplementing as-built information after substantial completion in order to assure a full as-built record upon final completion of the Subcontractor's work on the project. Submission of adequate as-built information and all other required closeout information is a condition precedent to Subcontractor's right to release of retainage and final payment.
13. Subcontractor must comply with the requirements of the "Worker Eligibility & Employment Verification Program" as outlined in the Standard Instruction Package that accompanies, and is hereby incorporated as part of this Subcontract Agreement as "Exhibit "1".
14. If requested by Owner or Contractor, Subcontractor shall provide to Owner and Contractor detailed information relating to benefit programs Subcontractor offers to some or all its employees, including but not limited to health insurance, retirement benefits, training and apprenticeship programs, and whether employees have accepted those benefits or cash alternatives. Subcontractor is on notice that Owner may have established minimum requirements for such benefits, including but not limited to the extent of availability to all employees, the level of coverage, and the amount paid by Subcontractor for the benefits. Subcontractor agrees to comply with all such requirements and shall provide full substantiation of compliance within 10 days after receiving a request for the information.
15. «AddtnlRiderAItem» *(Note: It may be necessary to add items to this rider in order to comply with various owner, state and/or locality requirements specific to any given project.)*

END OF RIDER "A"

RIDER "B" - DRAWING & SPECIFICATION LIST
between
KBE BUILDING CORPORATION
and
«FIRMNAME»

| |
|--|
| Name of Project - Project Number (Date of Drawing List) City, State |
|--|

| <u>DRAWING</u> | <u>TITLE</u> | <u>ORIG.</u> <u>DATE</u> | <u>REVISION DATES</u> |
|----------------|--------------|-----------------------------|-----------------------|
|----------------|--------------|-----------------------------|-----------------------|

END OF RIDER "B"

(Note: This rider only used with subcontracts directly involved with any type of remediation on a project and will be modified to specific project locality.)

RIDER "C" - ABATEMENT/HAZMAT REQUIREMENTS
between
KBE BUILDING CORPORATION
and
«FIRMNAME»

1. The Subcontractor will notify all appropriate federal, state and local authorities, including without limitation, the local Fire Department and Board of Health, that the Contract Services will be conducted at the Premises. All such services shall be provided in a workmanlike manner and shall conform to all applicable federal, state and local requirements, laws, regulations, ordinances and orders, including without limitation, the rules and regulations of the Occupational Safety and Health Administration ("OSHA"), the Environmental Protection Agency ("EPA"), the **Connecticut Department of Health ("CDH")** and all state and local construction codes.

2. The Subcontractor and its employees are familiar with all applicable laws, ordinances, rules and regulations of OSHA, EPA, DEP, **CDH** and all other applicable governing authorities, relating to the application, removal, disposal and treatment of asbestos, and the Subcontractor shall provide evidence of same to the Contractor.

3. All asbestos removal workers employed by the Subcontractor and providing the Contract Services must hold valid asbestos removal certificates issued by the **City of _____** and/or the **State of _____**, copies of which certificates shall be provided to the Contractor prior to commencement of the Contract Services. In addition, all personnel employed by the Subcontractor and engaged in providing the Contract Services shall have received all necessary appropriate training and certifications as required by all federal, state and local laws, rules and regulations, and shall comply with all applicable health and safety requirements of federal, state and local laws.

4. The Subcontractor shall employ those practices and standards which are generally accepted in the asbestos-removal industry in performing the Contract Services. Without limiting the generality of the foregoing, the Subcontractor shall provide an adequate decontamination unit and all asbestos removal personnel shall wear adequate protective clothing when employed at the Premises. The Subcontractor shall ensure that all employees of the Subcontractor follow the procedures, including decontamination procedures, as listed in Item #8 below, and that any employees of the Subcontractor that violate said procedures shall be dismissed or otherwise disciplined.

5. The disposal of all asbestos-containing materials must be at waste disposal sites operated in accordance with all applicable federal, state and local laws and regulations, at the sole cost and expense of the Subcontractor; provided, however, that the Subcontractor shall provide written notice to the Contractor of the proposed waste disposal site ten (10) days prior to any such disposal. If, and only if, the Contractor does not reject the Subcontractor's choice of the proposed waste disposal site within said ten (10) day period, Subcontractor may proceed with said deposition after the expiration of said ten (10) day period. In addition, prior to the commencement of the Contract Services, the Subcontractor shall provide to the Contractor satisfactory evidence that (i) all required federal, state and local governmental authorities have confirmed and approved the selection of said waste disposal site and (ii) said waste disposal site will accept the asbestos-containing material.

6. Upon such completion of Abatement/Asbestos Removal at said property, Subcontractor shall demonstrate to the satisfaction of the Contractor that the asbestos levels at the Premises meet the federal asbestos reoccupancy standards prior to final payment to the Subcontractor hereunder. In addition, a package containing the original copies of all sampling data, waste manifests, dump receipts and any and all other waste disposal records, each signed by the appropriate landfill manager shall be delivered to Contractor. Time is of the essence. Contractor shall have the right to terminate this contract if Subcontractor fails to comply with the schedule contained herein.

7. In addition to the foregoing insurance outlined in Item #7, Subcontractor's Insurance, Subcontractor shall maintain Contractor's Pollutions liability insurance on an occurrence basis, including completed operations and contractual liability coverage, with limits of not less than \$3,000,000.

8. The Subcontractor is aware that asbestos removal and encapsulation will disturb asbestos. The following guidelines represent minimum requirements to be followed by the Subcontractor. Where federal, state or local requirements or other provisions of this Agreement are more stringent, they shall apply:

RIDER "C" (Abatement/Hazmat Requirements) Continued

A. PRE-ASBESTOS REMOVAL AND ENCAPSULATION PREPARATIONS

- (a) All openings should be sealed, including HVAC ducts, doors, windows, telephone racks, with polyethylene sheets taped in place. Ductwork serving the containment area shall be sealed at the entry to the containment area.
- (b) A decontamination area which includes changing room, showers and toilet facilities should be on-site. This area must be directly accessible to the containment area. If not, the Subcontractor must provide portable units.
- (c) Adequate disposal work clothes and NIOSH approved respirators should be provided.
- (d) Provide a decontamination area multi-unit exhaust system to prevent contamination of occupied areas in the event of a barrier failure (Exhaust to atmosphere through HEPA filter.)

B. DECONTAMINATION

- (a) All workers should change clothes in designated work area.
- (b) Work clothes should be removed prior to departure from work areas.
- (c) Showers should be taken prior to eating and end of each work day.
- (d) Smoking, eating, and drinking should not be permitted in work areas.
- (e) Footwear will remain in work areas.

C. METHODS OF ASBESTOS REMOVAL OR ENCAPUSLATION

- (a) All removal should be performed wet.
- (b) Encapsulation material should be EPA approved and will be applied with a low pressure airless spray.
- (c) All material should be packed wet into a 6 mil plastic bag and stored in 55 gallon non-metallic drums.
- (d) All polyethylene material, tape, cleaning material and clothing used in the work area shall be considered contaminated and removed properly from the building.

D. AIR MONITORING

- (a) Throughout the removal or encapsulation, air sample monitoring should be conducted in accordance with OSHA and EPA Standards by an independent testing laboratory approved by Contractor.
- (b) Before any work begins, baseline asbestos concentrations should be measured. Asbestos fiber concentrations above 0.1 fibers per cubic centimeter in the containment area should be investigated to determine if procedures need to be changed.

E. CLEAN-UP

- (a) Following the removal or encapsulations, the entire area should be wet cleaned as required. After 24-hour period the entire area should be cleaned again. During this period, no entry, activity, or ventilation should be permitted. Twenty-four hours after the second cleaning, all surfaces should be vacuumed with a HEPA filter or wet mopped. Aggressive testing and air sampling is then required.

RIDER "C" (Abatement/Hazmat Requirements) Continued

F. DISPOSAL OF MATERIAL

- (a) Disposal should be in accordance with local ordinances and the guidelines of the EPA and the **Connecticut Department of Environmental Protection**.

G. ADDITIONAL REQUIREMENTS

- (a) All materials shall be removed through the freight elevator and rear door of the building, if any. No material shall be removed and no employees of Subcontractor shall enter or exit the site through the customer entrances. No employees shall shop or eat at the Premises during work hours.
- (b) Existing air conditioning ducts, pipes and electrical systems shall remain in place and shall be free of asbestos contamination or particles. Existing pipes and electrical materials shall be clean of all asbestos and left in place.
- (c) On completion of asbestos removal, all debris shall be removed from the Premises. All elevators, if any, and corridors used to exit the building shall be fully cleaned on completion of asbestos removal.
- (d) All ceiling tiles, T-bar and ceiling tracks, sheetrock, walls and partitions, floor coverings (down to bare concrete floors), walls (down to bare concrete block or brick), and toilet facilities shall be decontaminated and disposed properly by Subcontractor to leave clean, uncontaminated shell space.
- (e) If more than one, the non-contiguous work sites within the Premises shall be sectioned off into separate work areas. Each area shall be cocooned and then put under negative air pressure. After the floor is clear of all material (except the exposed asbestos containing columns), all asbestos containing material will be removed from the columns.

END OF RIDER "C"