

1. PAYMENT

- 1.1. Contractor, for the full, complete and faithful performance of this Subcontract, agrees to pay Subcontractor in accordance with the following terms:
 - 1.1.1. Subcontractor shall submit to Contractor monthly Applications for Payment (see Exhibit C) on or before the 20th day of each month in an amount equal to 90% of the value of material and labor incorporated into the Project by Subcontractor for that period to enable Contractor to apply for payment from the Owner. Applications for Payment for labor and materials shall be allocated in accord with a schedule of values satisfactory to Contractor provided by Subcontractor prior to the first payment application.
 - 1.1.2. Applications for Payment shall ONLY INCLUDE the base subcontract plus approved Change Orders issued to Subcontractor by Contractor. Payment to Subcontractor will be made for work actually performed and completed, as may be measured and certified by Contractor or Owner, or Owner's representative, which shall be accepted by Subcontractor as full compensation for the period applied for.
 - 1.1.3. Applications for Payment received by Contractor on or after the 21st day of the month will be included in the following month's billing to the Owner. Contractor shall be entitled to rely on the accuracy and completeness of the information furnished by Subcontractor on Subcontractor's Application for Payment.
 - 1.1.4. Payment shall be due and payable to the Subcontractor within seven (7) days after Contractor receives payment from Owner provided Subcontractor has provided Contractor complete sub-Subcontractor and supplier waivers, joint check or other payment information Contractor requires to make payment, provided that receipt of payment by Contractor from Owner shall be a condition precedent to the right of Subcontractor to receive payment. Subcontractor agrees that the exclusive source of funds for all progress payments is the payment by Owner to Contractor and Subcontractor expressly accepts the risk of non-payment by Owner. Contractor may withhold payment from Subcontractor, in whole or in part, for any failure of Subcontractor to perform according the terms and conditions of this Agreement or for the reasons and circumstances by which Owner may withhold payment from Contractor under the prime contract, regardless of whether or not Owner has actually withheld payment from Contractor.
 - 1.1.5. No amounts for pending or unapproved change orders shall be included in any payment application and no amounts for any additional or changed work shall be due Subcontractor until a corresponding change order between Owner and Contractor is approved.
- 1.2. Subcontractor agrees that any funds paid or advanced under this Agreement constitute a trust fund to be applied first to the payment of amounts owing to any person or entity that has furnished materials or performed work for Subcontractor on the Project before using any portions thereof for any other purpose. Subcontractor shall not assign, pledge, factor or otherwise transfer any proceeds due under this Subcontract Agreement in whole or in part without prior written approval of Contractor, which shall not be unreasonably withheld. No payment received by Subcontractor shall be used to satisfy or secure any indebtedness other than owed by Subcontractor to a person furnishing labor, materials, equipment or other services for use in performing Subcontractor's Work.
- 1.3. Contractor shall have the right at all times to communicate with Subcontractor's sub-Subcontractors, suppliers and laborers to ensure that the same are being paid by Subcontractor for labor, materials, equipment or other services furnished for use in performing the Subcontractor's Work. If Contractor has reason to believe that labor, material, equipment or other obligations incurred in the performance of Subcontractor's Work are not being paid by Subcontractor in a timely fashion, Contractor may take any steps it deems necessary, in its reasonable discretion, to insure that any payments shall be utilized to pay such obligations including, but not limited to Joint or Direct Checks to Subcontractor's sub-Subcontractors, suppliers and laborers. Subcontractor hereby expressly consents to the terms of this section, and agrees to fully cooperate with Contractor to effectuate payment to third parties as required to maintain the Project lien and claim free, and on schedule.
- 1.4. Subcontractor hereby agrees that Contractor has the right, but not the obligation, to make any payment due to Subcontractor hereunder, by Joint or Direct Check, to Subcontractor, and its sub-Subcontractors, suppliers or laborers which have performed Work or furnished materials under this Subcontract and any other person or entity that has a right of action against Contractor, Contractor's Surety, Owner, or the premises arising from or in any way related to Subcontractor's work under any law. Subcontractor may, at its option and sole cost, provide a Payment Bond covering its performance under this Subcontract.
- 1.5. Subcontractor hereby agrees that Contractor shall not be obligated to pay any amount to Subcontractor if such payment would render the balance in the Subcontract Sum then due to Subcontractor, to be less than the sum of (1) the retainage, plus (2) the amount determined by Contractor in its reasonable discretion, for Subcontractor to complete or correct all of its then remaining obligations for the Work.
- 1.6. **Final Payment.** Final payment shall be made only on the complete fulfillment of all of the following conditions: (a) Complete performance of this Subcontract by Subcontractor; (b) Final written approval and acceptance of Subcontractor's work by Contractor and Owner; (c) Receipt by Contractor of Subcontractor's release of any and

all claims, including liens, arising out of this Subcontract, releases from all Subcontractor's sub-Subcontractors, suppliers, and laborers and, if required, certified payroll reports; (d) Contractor's receipt of full and final payment of all sums owed to Contractor by Owner pursuant to the contract between Contractor and Owner. On fulfillment of (a) - (d) above, Contractor shall pay Subcontractor all sums due and owing to Subcontractor pursuant to this Subcontract within thirty (30) days. Contractor may deduct from any amounts due and owing Subcontractor any sum or sums owed by Subcontractor to Contractor. Subcontractor expressly agrees that final payment is expressly conditioned on receipt of payment by Contractor from Owner. Subcontractor agrees that the exclusive source of funds for any final payment is the payment by Owner to Contractor and Subcontractor expressly accepts the risk of non-payment by Owner. Contractor may withhold payment from Subcontractor, in whole or in part, for any failure of Subcontractor to perform per the terms and conditions of the Subcontract Agreement or for the reasons and circumstances by which Owner may withhold payment from Contractor under the Prime Contract, regardless of whether or not Owner has actually withheld payment from Contractor.

- 1.7. All claims for money due, or to become due from Contractor arising out of this or any other transaction or contract with Subcontractor, shall be subject to deduction or setoff by Contractor. In the event of default or should Contractor deem itself insecure with respect to Subcontractor's performance under this Agreement, or any other agreement or contract on any other Project, Contractor may deduct from any amounts due or to become due to Subcontractor any sum or sums owed by Subcontractor to Contractor, on any matter, debt or obligation, whether related or unrelated to this Agreement.