

JEWETT CONSTRUCTION CO., INC.

GENERAL PROVISIONS



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ARTICLE 1 INTRODUCTION

1.1 GENERAL PROVISIONS This document is incorporated by reference into the Standard Form Agreement between Contractor and Subcontractor (the "Subcontract") executed by the parties as if repeated in full therein. Signing the Subcontract is an affirmative representation by the Subcontractor that it has read this document in its entirety prior to signing and agrees to be bound by its terms.

ARTICLE 2 GENERAL SCOPE OF WORK

2.1 SUBCONTRACT WORK The Contractor contracts with the Subcontractor as an independent contractor to provide all labor, materials, equipment and services necessary or incidental to complete the work described in the STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR for the Project in accordance with, and reasonably inferable from, that which is indicated in the Subcontract Documents, and consistent with the Progress Schedule, as may change from time to time. The Subcontractor shall perform the Subcontract Work under the general direction of the Contractor and in accordance with the Subcontract Documents.

2.2 CONTRACTOR'S WORK The Contractor's work is the construction and services required of the Contractor to fulfill its obligations pursuant to its agreement with the Owner (the Work). The Subcontract Work is a portion of the Work.

2.3 SUBCONTRACT DOCUMENTS The Subcontract Documents include the STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR, this document, the Owner-Contractor agreement, special conditions, general conditions, specifications, drawings, addenda, Subcontract Change Orders, amendments and any pending and exercised alternates. The Contractor shall make available to the Subcontractor, prior to the execution of the Subcontract Agreement, copies of the Subcontract Documents to which the Subcontractor will be bound. The Subcontractor similarly shall make copies of applicable portions of the Subcontract Documents available to its proposed subcontractors and suppliers. Nothing shall prohibit the Subcontractor from obtaining copies of the Subcontract Documents from the Contractor at any time after the Subcontract Agreement is executed.

2.4 CONFLICTS In the event of a conflict between the STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR and the other Subcontract Documents, the STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR shall govern.

2.5 EXTENT OF AGREEMENT Nothing in this Agreement shall be construed to create a contractual relationship between persons or entities other than the Contractor and Subcontractor. This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

2.6 DEFINITIONS

- .1 Wherever the term *Progress Schedule* is used in this Agreement, it shall be read as Project Schedule when that term is used in the Subcontract Documents.
- .2 Whenever the term Change Order is used in this Agreement, it shall be read as Change Document when that term is used in the Subcontract Documents.
- .3 Unless otherwise indicated, the term Day shall mean calendar day.

ARTICLE 3 SUBCONTRACTOR'S RESPONSIBILITIES

3.1 OBLIGATIONS The Contractor and Subcontractor are hereby mutually bound by the terms of this Subcontract. To the extent the terms of the prime contract between the Owner and Contractor apply to the work of the Subcontractor, then the Contractor hereby assumes toward the Subcontractor all the obligations, rights, duties, and redress that the

Owner under the prime contract assumes toward the Contractor. In an identical way, the Subcontractor hereby assumes toward the Contractor all the same obligations, rights, duties, and redress that the Contractor assumes toward the Owner and Architect under the prime contract. In the event of an inconsistency among the documents, the specific terms of this Subcontract shall govern.

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

3.3 INCONSISTENCIES AND OMISSIONS The Subcontractor shall make a careful analysis and comparison of the drawings, specifications, other Subcontract Documents and information furnished by the Owner relative to the Subcontract Work. Such analysis and comparison shall be solely for the purpose of facilitating the Subcontract Work and not for the discovery of errors, inconsistencies or omissions in the Subcontract Documents nor for ascertaining if the Subcontract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules or regulations. Should the Subcontractor discover any errors, inconsistencies or omissions in the Subcontract Documents, the Subcontractor shall report such discoveries to the Contractor in writing within three (3) days. Upon receipt of notice, the Contractor shall instruct the Subcontractor as to the measures to be taken and the Subcontractor shall comply with the Contractor's instructions. If the Subcontractor performs work knowing it to be contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations without notice to the Contractor and advance approval by appropriate authorities, including the Contractor, the Subcontractor shall assume appropriate responsibility for such work and shall bear all associated costs, charges, fees and expenses necessarily incurred to remedy the violation. Nothing in this Paragraph 3.3 shall relieve the Subcontractor of responsibility for its own errors, inconsistencies and omissions.

3.4 SITE VISITATION Prior to performing any portion of the Subcontract Work, the Subcontractor shall conduct a visual inspection of the Project site to become generally familiar with local conditions and to correlate site observations with the Subcontract Documents. If the Subcontractor discovers any discrepancies between its site observations and the Subcontract Documents, such discrepancies shall be promptly reported to the Contractor.

3.5 INCREASED COSTS AND/OR TIME The Subcontractor may assert a Claim as provided in Article 7 if Contractor's clarifications or instructions in responses to requests for information are believed to require additional time or cost. If the Subcontractor fails to perform the reviews and comparisons required in Paragraphs 3.3 and 3.4, above, to the extent the Contractor is held liable to the Owner because of the Subcontractor's failure, the Subcontractor shall pay the costs and damages to the Contractor that would have been avoided if the Subcontractor had performed those obligations.

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

3.7 SUBMITTALS

3.7.1 The Subcontractor promptly shall submit for approval to the Contractor all shop drawings, samples, product data, manufacturers' literature and similar submittals required by the Subcontract Documents. The Subcontractor shall be responsible to the Contractor for the accuracy and conformity of its submittals to the Subcontract Documents. The Subcontractor shall prepare and deliver its submittals to the Contractor in a manner consistent with the Progress Schedule and in such time and sequence so as not to delay the Contractor or others in the performance of the Work. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Subcontract Documents unless express written approval is obtained from the Contractor and Owner authorizing such deviation, substitution or change. In the event that the Subcontract Documents do not contain submittal requirements pertaining to the Subcontract Work, the Subcontractor agrees upon request to submit in a timely fashion to the Contractor for approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Contractor, Owner or Architect. The Subcontractor shall identify by transmittal form any aspect of the submittal which differs or deviates from the requirements of the Subcontract Documents.

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

3.8 DESIGN DELEGATION

3.8.1 If the Subcontract Documents (1) specifically require the Subcontractor to provide design services and (2) specify all necessary design and performance criteria, the Subcontractor shall provide those design services necessary to satisfactorily complete the Subcontract Work. Design services provided by the Subcontractor shall be procured from licensed design professionals retained by the Subcontractor as permitted by the law of the place where the Project is located (the Designer). The Designer's signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by the Designer. Shop Drawings and other submittals related to the Subcontract Work designed or certified by the Designer, if prepared by others, shall bear the Subcontractor's and the Designer's written approvals when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by the Designer. By executing this Subcontract Agreement, the Subcontractor acknowledges and affirms that (1) the design and performance criteria supplied by the Contractor is sufficient to allow the Subcontractor to fulfill all of its design-build responsibilities under the terms of this Subcontract Agreement and (2) it will make no claim for additional compensation or schedule extensions associated with alleged deficiencies in such criteria.

3.8.2 If the Designer is an independent professional, the design services shall be procured pursuant to a separate agreement between the Subcontractor and the Designer. The Subcontractor-Designer agreement shall not provide for any limitation of liability, except to the extent that consequential damages are waived pursuant to Paragraph 5.4, or exclusion from participation in the multiparty proceedings requirement of Paragraph 11.4. **The Subcontractor shall provide the Contractor with the name(s) and qualifications of the intended Designer(s) for approval.** The Subcontractor shall notify the Contractor in writing if it intends to change the Designer. The Subcontractor shall be responsible for conformance of its design with the information given and the design concept expressed in the Subcontract Documents. The Subcontractor shall not be responsible for the adequacy of the performance or design criteria required by the Subcontract Documents.

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

3.9 TEMPORARY SERVICES Subcontractor's responsibilities for temporary services, if any, are set forth in Exhibit A of the STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR.

3.10 COORDINATION The Subcontractor shall:

- .1 cooperate with the Contractor and all others whose work may interface with the Subcontract Work;
- .2 specifically note and immediately advise the Contractor of any such interface with the Subcontract Work; and
- .3 participate in the preparation of coordination drawings and work schedules in areas of congestion.

3.11 SUBCONTRACTOR'S REPRESENTATIVE The Subcontractor shall designate a person, subject to Contractor's approval, who shall be the Subcontractor's authorized representative. This representative shall be the only person to whom the Contractor shall issue instructions, orders or directions, except in an emergency. The Subcontractor shall submit name, email, cell phone number, and any other specific information for the Subcontractor's intended representative(s) for the office and field.

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

3.13 CLEANUP & RECYCLING

3.13.1 The Subcontractor shall at all times during its performance of the Subcontract Work keep the work site clean and free from debris resulting from the Subcontract Work. Prior to discontinuing the Subcontract Work in an area, the Subcontractor shall clean the area and remove all its rubbish and its construction equipment, tools, machinery, waste and surplus materials, **in accordance with Jewett Construction's Recycling/Waste Management Plan (available from www.jewettconstruction.com)**. Subcontractor shall make provisions to minimize and confine dust and debris resulting from its construction activities. The Subcontractor shall not be held responsible for unclean conditions caused by others.

3.13.2 If the Subcontractor fails to commence compliance with cleanup duties after notification from the Contractor of non-compliance, the Contractor may implement appropriate cleanup measures without further notice and the cost thereof shall be deducted from any amounts due or to become due the Subcontractor.

3.13.3 All Subcontractors are required to follow Jewett Construction's Recycling/Waste Management Plan and recycling as much waste as possible on every job site.

3.14 SAFETY

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

- .1 employees and other persons at the site;
- .2 materials and equipment stored at the site or at offsite locations for use in performance of the Work; and
- .3 all property and structures located at the site and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

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

3.14.3 The Subcontractor shall implement appropriate safety measures pertaining to the Subcontract Work and the Project, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers, and establishing proper notice procedures to protect persons and property at the site and adjacent to the site from injury, loss or damage.

3.14.4 The Subcontractor agrees to **follow OSHA guidelines** with regard to training their employees and subcontractors. Safety training and proper building procedures are to be followed at all times. **At a minimum, OSHA 10-hour safety training is required for all subcontractors' employees working on Jewett Construction's jobsites.**

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

3.14.6 Damage or loss not insured under property insurance which may arise from the performance of the Subcontract Work, to the extent of the negligence attributed to such acts or omissions of the Subcontractor, or anyone for whose acts the Subcontractor may be liable, shall be promptly remedied by the Subcontractor. Damage or loss attributable to the acts or omissions of the Contractor and not to the Subcontractor shall be promptly remedied by the Contractor.

3.14.7 The Subcontractor is required to designate an individual at the site in the employ of the Subcontractor who shall act as the Subcontractor's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Subcontractor in writing to the Contractor, the designated safety representative shall be the Subcontractor's project superintendent.

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

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

3.14.10 Prevention of accidents at the site is the responsibility of the Contractor, Subcontractor, and all other subcontractors, persons and entities at the site. Establishment of a safety program by the Contractor shall not relieve the Subcontractor or other parties of their safety responsibilities. The Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by the Contractor and Owner, including, but not limited to, requirements imposed by the Subcontract Documents. **The Subcontractor shall supply the Contractor's Superintendent with a copy of this said program prior to the start of work. Subcontractors not required by state law to have a safety program shall read and agree to comply with the Contractor's safety program.** The Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project, and shall stop any part of the Subcontract Work, which the Contractor deems unsafe until corrective measures satisfactory to the Contractor shall have been taken. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility thereof. The Subcontractor shall notify the Contractor immediately following an accident and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by the Contractor. Each party to this Agreement shall indemnify the other party from and against fines or penalties imposed as a result of safety violations, but only to the extent that such fines or penalties are caused by its failure to comply with applicable safety requirements. Subcontractor and all Subcontractor's employees shall be in attendance at Contractor's weekly on-site safety meetings.

3.14.11 **Hard hats are required at all times** on this project. **Smoking is not permitted** on any of our construction sites.

3.15 PROTECTION OF THE WORK The Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of others from damage caused by the Subcontractor's operations. Should the Subcontractor cause damage to the Work or property of the Owner, the Contractor or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor, or the Contractor may remedy the damage and deduct its cost from any amounts due or to become due the Subcontractor, unless such costs are recovered under applicable property insurance.

3.16 PERMITS, FEES, LICENSES AND TAXES The Subcontractor shall give timely notices to authorities pertaining to the Subcontract Work, and shall be responsible for all permits, fees, licenses, assessments, inspections, testing and taxes necessary to complete the Subcontract Work in accordance with the Subcontract Documents. To the extent reimbursement is obtained by the Contractor from the Owner under the Owner-Contractor agreement, the Subcontractor shall be compensated for additional costs resulting from taxes enacted after the date of this Agreement.

3.17 ASSIGNMENT OF SUBCONTRACT WORK The Subcontractor shall not assign the whole nor any part of the Subcontract Work without prior written approval of the Contractor.

3.18 HAZARDOUS MATERIALS To the extent that the Contractor has rights or obligations under the Owner-Contractor agreement or by law regarding hazardous materials as defined by the Subcontract Document within the scope of the Subcontract Work, the Subcontractor shall have the same rights or obligations.

3.19 MATERIAL SAFETY DATA SHEETS (MSDS) The Subcontractor shall submit to the Contractor all Material Safety Data Sheets for materials or substances necessary for the performance of the Subcontract Work. MSDS sheets obtained by the Contractor from other subcontractors or sources shall be made available to the Subcontractor by the Contractor. **These MSDS sheets shall be supplied in triplicate to the Contractor seven days prior to material being brought on-site.**

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

3.21 WARRANTIES

3.21.1 WORKMANSHIP AND MATERIALS The Subcontractor warrants that all material and equipment furnished under this Agreement shall be new, unless otherwise specified, of good quality, in conformance with the Subcontract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of Substantial Completion of the Work or a designated portion.

3.21.2 MANUFACTURERS The Subcontractor agrees that, by executing this Subcontract Agreement, it assigns to the project Owner all manufacturer issued warranties applicable to the Subcontract Work. Upon demand, all such warranties shall be delivered to the Contractor in final form and containing all necessary signatures, regardless of the existence of a dispute regarding payment, changes or any other issue.

3.22 UNCOVERING/CORRECTION OF SUBCONTRACT WORK

3.22.1 UNCOVERING OF SUBCONTRACT WORK

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

3.22.1.2 The Contractor may direct the Subcontractor to uncover portions of the Subcontract Work for inspection by the Owner or Contractor at any time. The Subcontractor is required to uncover such work whether or not the Contractor or Owner had requested to inspect the Subcontract Work prior to it being covered.

3.22.1.3 The Subcontract shall be adjusted by change order for the cost and time of uncovering and restoring any work which is uncovered for inspection and proves to be installed in accordance with the Subcontract Documents, provided the Contractor had not previously instructed the Subcontractor to leave the work uncovered. If the Subcontractor uncovers work pursuant to a directive issued by the Contractor, and such work upon inspection does not comply with the Subcontract Documents, the Subcontractor shall be responsible for all costs and time of uncovering, correcting and restoring the work so as to make it conform to the Subcontract Documents. If the Contractor or some other entity for which the Subcontractor is not responsible caused the nonconforming condition, the Contractor shall be required to adjust this Agreement by change order for all such costs and time.

3.22.2 CORRECTION OF WORK

3.22.2.1 If the Architect or Contractor rejects the Subcontract Work or the Subcontract Work is not in conformance with the Subcontract Documents, the Subcontractor shall promptly correct the Subcontract Work whether it had been fabricated, installed or completed. The Subcontractor shall be responsible for the costs of correcting such Subcontract Work, any additional testing, inspections, and compensation for services and expenses of the Architect and Contractor made necessary by the defective Subcontract Work.

3.22.2.2 In addition to the Subcontractor's obligations under Paragraph 3.21, the Subcontractor agrees to promptly correct, after receipt of a written notice from the Contractor, all Subcontract Work performed under this Agreement which proves to be defective in workmanship or materials within a period of one year from the date of Substantial Completion of the Subcontract Work or for a longer period of time as may be required by specific warranties in the Subcontract Documents. Substantial Completion of the Subcontract Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Subcontract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use of which it is intended. If, during the one-year period, the

Contractor fails to provide the Subcontractor with prompt written notice of the discovery of defective or nonconforming Subcontract Work, the Contractor shall neither have the right to require the Subcontractor to correct such Subcontract Work nor the right to make claim for breach of warranty. If the Subcontractor fails to correct defective or nonconforming Subcontract Work within a reasonable time after receipt of notice from the Contractor, the Contractor may correct such Subcontract Work pursuant to Subparagraph 10.1.1.

3.22.3 The Subcontractor's correction of Subcontract Work pursuant to this Paragraph 3.22 shall not exceed the one-year period for the correction of Subcontract Work, but if Subcontract Work is first performed after Substantial Completion, the one-year period for corrections shall be extended by the time period after Substantial Completion and the performance of that portion of Subcontract Work. The Subcontractor's obligation to correct Subcontract Work within one year as described in this Paragraph 3.22 does not limit the enforcement of Subcontractor's other obligations with regard to the Agreement and the Subcontract Documents.

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

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

3.23 MATERIALS OR EQUIPMENT FURNISHED BY OTHERS In the event the scope of the Subcontract Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to exercise proper care in receiving, handling, storing and installing such items, unless otherwise provided in the Subcontract Documents. The Subcontractor shall examine the items provided and report to the Contractor in writing any items it may discover that do not conform to requirements of the Subcontract Documents. The Subcontractor shall not proceed to install nonconforming items without further instructions from the Contractor. Loss or damage due to acts or omissions of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor.

3.24 SUBSTITUTIONS No substitutions shall be made in the Subcontract Work unless permitted in the Subcontract Documents, and only upon the Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions.

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

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

3.27 SUBCONTRACT BONDS (Only if specifically required)

3.27.1 The Subcontractor shall furnish, if specifically required by the STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR, to the Contractor, as the named Obligee, appropriate surety bonds to secure the faithful performance of the Subcontract Work and to satisfy all Subcontractor payment obligations related to Subcontract Work.

3.27.2 If a performance or payment bond, or both, are required of the Subcontractor under this Agreement, the bonds shall be in a form and by a surety mutually agreeable to the Contractor and Subcontractor, and in the full amount of the Subcontract Amount, unless otherwise specified.

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

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

3.29 COMPLIANCE WITH LAWS The Subcontractor agrees to be bound by, and at its own costs comply with, all federal, state and local laws, ordinances and regulations (the Laws) applicable to the Subcontract Work, including but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety and all other Laws with which the Contractor must comply. The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply with Laws, including, but not limited to, any fines, penalties or corrective measures, except as provided in Subparagraph 3.14.9.

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

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

3.32 LABOR RELATIONS (Insert here any conditions, obligations or requirements relative to labor relations and their effect on the project. Legal counsel is recommended.)

3.33 Subcontractor hereby agrees to and shall at all times defend, indemnify and hold Contractor and its officers, agents and employees wholly harmless from any and all losses, costs, expenses, penalties, response costs (including court costs and attorney's fees, interest and profits), claims, demands, suits by any person, persons, or entities, injuries, damages or death and other liabilities of whatsoever kind or nature arising out of or resulting from the performance of the Work or caused by, incident to, connected with or arising directly or indirectly out of performance of this Subcontract by the Subcontractor or the Subcontractor's directors, officers, employees, sub-subcontractors or agents of anyone directly or indirectly employed by any of them or anyone for those acts any of them may be liable, including but not limited to the following:

3.33.1 Any infringement (actual or claimed) of any intellectual property right, whether it be trade secret, patent, trademark, copyright or trade name by reason of any work to be performed hereunder or by reason of anything to be supplied hereunder;

3.33.2 Bodily injury, sickness, disease, or death or to injury to, or destruction of, tangible property including the loss of use resulting therefrom caused by, incident to, connected with, or arising, directly or indirectly, out of the performance of the Subcontract; or arising directly or indirectly out of the presence of any person in, on, or about any part of the Project site or the streets, sidewalks, and property adjacent thereto; or arising directly or indirectly out of use, misuse, or failure of any machinery or equipment (including, but not limited to, scaffolding, ladders, hoists, rigging, supports, etc.) whether or

not such machinery or equipment was furnished, rented or loaned by the Contractor, its officers, employees, agents, or servants, or other;

3.33.3 Failure to comply with the requirements of the Fair Labor Standards Act, as amended, and all other applicable federal, state, or local statutes, laws, ordinances, rules, regulations (including, but not limited to, the Occupational Safety and Health Act of 1970) or orders of any term or provision of this Agreement (with all of which the Subcontractor agrees to fully comply);

3.33.4 Failure to comply with any federal, state, or local environmental laws, rules, or regulations, including but not limited to: (1) the Resource Conservation and Recovery Act of 1976, 42 USC '6901 et. seq. (RCRA); (2) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC '9601 et. seq. (CERCLA); (3) EPA Federal Regulations promulgated thereunder and codified in 40 C.F.R. Parts 260-265 and Parts 122-124; (4) New Hampshire R.S.A. Ch. 147, 147A and 147B; (5) New Hampshire Water Supply and Pollution Control Regulations ' 410 et. seq.; (6) Federal Water Pollution Control Act, Clean Air Act (42 USCA 0050 ' 7401 et. seq.), Clean Water Act (33 USCA ' 1251 et. seq.), National Oil and Hazardous Substances Contingency Plan (40 CFR 300), National Environmental Policy Act (42 USCA ' 4321 et. seq.), Superfund Amendments and Reauthorization Act of 1986 (see CERLCA), Safe Drinking Water Act (42 USCA ' 300f et. seq.), Toxic Substances Control Act (15 USCA ' 2601 et. seq.), and (7) any federal, state, or local regulations, rules, or orders issued or promulgated under or pursuant to any of the foregoing or otherwise by any department, agency, or other administrative, regulatory, or judicial body.

3.33.5 Any matter indemnified against under any provision of this Subcontract.

3.34 SPOILIATION Subcontractor is required to retain all electronic record (including emails) generated in connection with the project to which the contract pertains for three years following substantial completion. These records shall be made available in hard copy if needed as well.

ARTICLE 4 CONTRACTOR'S RESPONSIBILITIES

4.1 CONTRACTOR'S REPRESENTATIVE The Contractor shall designate a person who shall be the Contractor's authorized representative. The Contractor's representative shall be the only person(s) the Subcontractor shall look to for instructions, orders and/or directions, except in an emergency.

4.2 PAYMENT BOND REVIEW The Contractor's payment bond for the Project, if any, shall be made available by the Contractor for review and copying by the Subcontractor.

4.3 OWNER'S ABILITY TO PAY

4.3.1 The Subcontractor shall have the right upon request to receive from the Contractor such information as the Contractor has obtained relative to the Owner's financial ability to pay for the Work, including any subsequent material variation in such information. The Contractor, however, does not warrant the accuracy or completeness of the information provided by the Owner.

4.3.2 If the Subcontractor does not receive the information referenced in Subparagraph 4.3.1 with regard to the Owner's ability to pay for the Work as required by the Contract Documents, the Subcontractor may request the information from the Owner and/or the Owner's lender.

4.4 INFORMATION OR SERVICES The Subcontractor is entitled to request through the Contractor any information or services relevant to the performance of the Subcontract Work which is under the Owner's control. To the extent the Contractor receives such information and services, the Contractor shall provide them to the Subcontractor. The Contractor, however, does not warrant the accuracy or completeness of the information provided by the Owner.

4.5 STORAGE AREAS The Contractor shall allocate adequate storage areas, if available, for the Subcontractor's materials and equipment during the course of the Subcontract Work. Unless otherwise agreed upon, the Contractor shall

reimburse the Subcontractor for the additional costs of having to relocate such storage areas at the direction of the Contractor.

4.6 TIMELY COMMUNICATIONS The Contractor shall transmit to the Subcontractor, with reasonable promptness, all submittals, transmittals, and written approvals relative to the Subcontract Work. Unless otherwise specified in the Subcontract Documents, communications by and with the Subcontractor's subcontractors, materialmen and suppliers shall be through the Subcontractor.

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

ARTICLE 5 PROGRESS SCHEDULE

5.1 TIME IS OF THE ESSENCE Time is of the essence for both parties. They mutually agree to see to the performance of their respective obligations so that the entire Project may be completed in accordance with the Subcontract Documents and particularly the Progress Schedule as dictated by the project **substantial completion date**.

5.2 SCHEDULE

5.2.1 PROGRESS SCHEDULE The Subcontractor shall provide the Contractor with any scheduling information proposed by the Subcontractor for the Subcontract Work. In consultation with the Subcontractor, the Contractor shall prepare the schedule for performance of the Work (the Progress Schedule) and shall revise and update such schedule, as necessary, as the Work progresses. Both the Contractor and the Subcontractor shall be bound by the Progress Schedule. The Progress Schedule and all subsequent changes and additional details shall be submitted to the Subcontractor promptly and reasonably in advance of the required performance. The Contractor shall have the right to determine and, if necessary, change the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the Subcontract Work.

5.2.2 ACCELERATION Upon receipt of written or oral notice from the Contractor, the Subcontractor agrees, without additional compensation, to accelerate the Subcontract Work by adding additional crews, extending work days and working Saturdays, Sundays or holidays, as directed by the Contractor, in order to meet the Progress Schedule or any other scheduling requirements communicated by the Contractor.

5.3 DELAYS AND EXTENSIONS OF TIME

5.3.1 OWNER CAUSED DELAY Subject to Subparagraph 5.3.2, if the commencement and/or progress of the Subcontract Work is delayed without the fault or responsibility of the Subcontractor, the time for the Subcontract Work shall be extended by Subcontract Change Order to the extent obtained by the Contractor under the Subcontract Documents, and the Progress Schedule shall be revised accordingly.

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

5.3.3 CONTRACTOR CAUSED DELAY Nothing in this Article shall preclude the Subcontractor's recovery of delay damages caused by the Contractor.

5.3.4 CLAIMS RELATING TO CONTRACTOR The Subcontractor shall give the Contractor written notice of all claims not included in Subparagraph 5.3.2 within seven (7) days of the Subcontractor's knowledge of the facts giving rise to the event for which claim is made; otherwise, such claims shall be deemed waived. All unresolved claims, disputes and other matters in question between the Contractor and the Subcontractor not relating to claims included in Subparagraph 5.3.2 shall be resolved in the manner provided in Article 11.

5.3.5 SUBCONTRACTOR DELAYS To the extent provided in the Subcontract Form Agreement Between Contractor and Subcontractor (which is a companion document to these General Provisions) the Subcontractor shall be assessed daily liquidated damages for delays caused by the Subcontractor or any other lower tier subcontractor, supplier, vendor or other party for whom it is legally responsible. Such damages may be deducted by the Contractor from any unpaid balance due to the Subcontractor, or collected from the Subcontractor in the event that such damages exceed the unpaid balance of the Subcontract.

5.3.5.1 DAMAGES If the Subcontract Documents provide for liquidated or other damages for delay beyond the completion date set forth in the Subcontract Documents, and such damages are assessed, the Contractor may assess a share of the damages against the Subcontractor in proportion to the Subcontractor's share of the responsibility for the delay. However, the amount of such assessment shall not exceed the amount assessed against the Contractor. This Paragraph 5.3 shall not limit the Subcontractor's liability to the Contractor for the Contractor's actual delay damages caused by the Subcontractor's delay.

5.4 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

5.4.1 To the extent the Owner-Contractor agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, the Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Agreement, including to the extent provided in the Owner-Contractor agreement, damages for principal office expenses and the compensation of personnel stationed there; loss of financing, business and reputation; and for loss of profit. Similarly, the Subcontractor shall obtain from its sub-subcontractors mutual waivers of consequential damages that correspond to the Subcontractor's waiver of consequential damages herein. To the extent applicable, this mutual waiver applies to consequential damages due to termination by the Contractor or the Owner in accordance with this Agreement or the Owner-Contractor agreement. To the extent the Owner-Contractor agreement does not preclude the award of liquidated damages, nothing contained in this Paragraph 5.4 shall preclude the imposition of such damages, if applicable in accordance with the requirements of the Subcontract Documents.

5.4.2 To the extent the Owner-Contractor agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, damages for which the Contractor is liable to the Owner including those related to Subparagraph 9.1.1 are not consequential damages for the purpose of this waiver. Similarly, to the extent the Subcontractor-sub-subcontractor agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, damages for which the Subcontractor is liable to lower-tiered parties due to the fault of the Owner or Contractor are not consequential damages for the purpose of this waiver.

ARTICLE 6 SUBCONTRACT AMOUNT

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

- (a)** the fixed-price indicated in the STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR subject to additions and deductions as provided for in the Subcontract Documents; and/or
- (b)** unit prices in accordance with the attached schedule of Unit Prices and estimated quantities, which if required will be included in the STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR.

The fixed-price and unit prices are referred to as the Subcontract Amount.

ARTICLE 7 CHANGES IN THE SUBCONTRACT WORK

7.1 SUBCONTRACT CHANGE ORDERS When the Contractor orders in writing, the Subcontractor, without nullifying this Agreement, shall make any and all changes in the Subcontract Work which are within the general scope of this Agreement. Any adjustment in the Subcontract Amount or Subcontract Time shall be authorized by a Subcontract Change Order. No adjustments shall be made for any changes performed by the Subcontractor that have not been ordered by the Contractor in writing. A Subcontract Change Order is a written instrument prepared by the Contractor and signed by the Subcontractor stating their agreement upon the change in the Subcontract Work.

7.1.1 All changes to this Subcontract and all changes in the scope of the Work, except those resulting from subcontractor's failure in the performance of its obligations hereunder, shall be effected only in writing signed by the Contractor. The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work consisting of extras, additions, deletions or other revisions, the Subcontract Amount and the Completion Date being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall within 24 hours of the request submit to the Contractor written copies of any claim for adjustment to the Subcontract Amount and Completion Date for such revised Work in a manner consistent with the Contract Documents. Receipt of payments by Contractor from the Owner for changes in the Work shall be in each instance a condition precedent to the Subcontractor's rights to receive his share of any such payment from Contractor. Payment for any such extras or additions shall be subject to the retainage and other provisions of this Subcontract. No such contract revision shall be allowed under any extra or addition where (a) the amount charged by Subcontractor includes labor rates in excess of the Maximum Labor Rate, (b) contains a markup on material costs in excess of (i) 10% of actual cost and (ii) the most restrictive markup allowed under any of the Contract Documents, or (c) contains a markup on Subcontractor subcontractors (if allowed in writing by Contractor) in excess of the lesser of (i) 5% of actual costs and (ii) the most restrictive markup allowed under any of the Contract Documents. Subcontractor assumes the risk that extras or additions requested by Contractor will result in bond premiums which may increase Subcontractor's costs in connection with the completion of the Work (including such extra or addition). No such increased costs shall be paid by any party other than the Subcontractor and the Subcontractor agrees that it will not submit such costs as a proposed extra or addition.

7.2 CONSTRUCTION CHANGE DIRECTIVES To the extent that the Subcontract Documents provide for Construction Change Directives in the absence of agreement on the terms of a Subcontract Change Order, the Subcontractor shall promptly comply with the Construction Change Directive and be entitled to apply for interim payment if the Subcontract Documents so provide.

7.3 UNKNOWN CONDITIONS If in the performance of the Subcontract Work the Subcontractor finds latent, concealed or subsurface physical conditions which differ materially from those indicated in the Subparagraph Documents or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist, and not generally recognized as inherent in the kind of work provided for in this Agreement, the Subcontract Amount and/or the Progress Schedule shall be equitably adjusted by a Subcontract Change Order within a reasonable time after the conditions are first observed. The adjustment which the Subcontractor may receive shall be limited to the adjustment the Contractor receives from the Owner on behalf of the Subcontractor, or as otherwise provided under Subparagraph 5.3.2. The nature of the condition is to be verified by the plan engineer prior to submission to the Owner.

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

- .1 mutual acceptance of an itemized lump sum;
- .2 unit prices as indicated in the Subcontract Documents or as subsequently agreed to by the parties; or
- .3 costs determined in a manner acceptable to the parties and a mutually acceptable fixed or percentage fee; or
- .4 another method provided in the Subcontract Documents.

7.5 SUBSTANTIATION OF ADJUSTMENT If the Subcontractor does not respond promptly or disputes the method of adjustment, the method and the adjustment shall be determined by the Contractor on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Subcontract Amount, an allowance for overhead and profit of the percentage provided in Paragraph 7.6. The Subcontractor may contest the reasonableness of any adjustment determined by the Contractor. The Subcontractor shall maintain for the Contractor's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Subcontract Change Order:

- .1 labor costs, including Social Security, health, welfare, retirement and other fringe benefits as normally required, and state workers' compensation insurance;
- .2 costs of materials, supplies and equipment, whether incorporated in the Subcontract Work or consumed, including transportation costs;
- .3 costs of renting machinery and equipment other than hand tools;
- .4 costs of bond and insurance premiums, permit fees and taxes attributable to the change; and
- .5 costs of additional supervision and field office personnel services necessitated by the change.

7.6 Adjustments shall be based on net change in Subcontractor's reasonable cost of performing the changed Subcontract Work plus, in case of a net increase in cost, an agreed upon sum for overhead and profit.

7.7 NO OBLIGATION TO PERFORM The Subcontractor shall not perform changes in the Subcontract Work until a Subcontract Change Order has been executed or written instructions have been issued in accordance with Paragraphs 7.2 and 7.9.

7.8 EMERGENCIES In an emergency affecting the safety of persons and/or property, the Subcontractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Subcontract Amount and/or the Progress Schedule on account of emergency work shall be determined as provided in this Article.

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

7.10 CLAIMS The Subcontractor shall not make any claims for additional compensation for any Work performed by the Subcontractor for damages sustained by the Subcontractor or by reason of any act or omission of the Contractor, Owner, or Architect during the performance of this Subcontract unless such Work is done pursuant to a written order from the Contractor, and such claim is made in the manner set forth in the Contract Documents.

7.10.1 Notice of all such claims shall be given to the Contractor in writing within seven (7) days after the occurrence of the event giving rise to such claim, or the claim shall be considered abandoned by the Subcontractor. Notwithstanding anything to the contrary herein contained, the Subcontractor shall have no claims for additional compensation except to the extent that the Contractor shall have such claim under the General Contract, and such Contractor's claim and allowance thereof by the Owner shall be a condition precedent to the Subcontractor's claim and allowance thereof by the Contractor. In connection with any such claims, the Contractor agrees to allow the Subcontractor to use the Contractor's name in procedures set up in the Contract Documents or as provided by law for the prosecution of such claims. The Contractor further agrees, upon reasonable notice, to include any claims of the Subcontractor in any action brought by the Contractor against the Owner. The Subcontractor agrees to become a party to and be bound by any legal and/or arbitration proceedings involving the Contractor, the Architect, or the Owner to the extent that such proceedings involve any of the rights or obligations of the Subcontractor. The Subcontractor agrees to be bound by the results of any proceedings in the same manner that the Contractor is bound by such results.

7.10.2 In the event of a claim, dispute or any other matter in question arising out of or related to the provisions of this Paragraph 7.10, the Subcontract or the breach thereof, the Subcontractor shall carry on the Work and maintain the job progress schedule as directed by the Contractor during any proceedings to settle, arbitrate or litigate the dispute, unless

otherwise directed by the Contractor in writing. In no event shall delay in the resolution of any dispute excuse the prompt performance of the Work.

ARTICLE 8 PAYMENT

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

8.2 PROGRESS PAYMENTS

8.2.1 APPLICATIONS The Subcontractor's applications for payment shall be itemized and supported by substantiating data as required by the Subcontract Documents. **A "Receipt and Waiver of Lien" form, as shown in Exhibit E must be completed and submitted monthly with the application for payment.** If the Subcontractor is obligated to provide design services pursuant to Paragraph 3.8, Subcontractor's applications for payment shall show the Designer's fee and expenses as a separate cost item. The Subcontractor's application shall be notarized if required and if allowed under the Subcontract Documents may include properly authorized Subcontract Construction Change Directives. The Subcontractor's progress payment application for the Subcontract Work performed in the preceding payment period shall be submitted for approval of the Contractor in accordance with the schedule of values if required and Subparagraphs 8.2.2, 8.2.3, and 8.2.4. The Contractor shall incorporate the approved amount of the Subcontractor's progress payment application into the Contractor's payment application to the Owner for the same period and submit it to the Owner in a timely fashion. The Contractor shall immediately notify the Subcontractor of any changes in the amount requested on behalf of the Subcontractor.

8.2.1.1 PAYMENT VERIFICATION One of the following three methods for securing payment to all Suppliers, second-tier Subcontractors, or Vendors will be required **unless this paragraph and subparagraphs are waived in writing by an officer of Jewett Construction Co., Inc.** The STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR will address the required method applicable to the specific Subcontract.

- .1 Joint check agreements. Any joint check processed will incur a \$250.00 admin charge. If sub or supplier of Subcontractor files Notice of Intent to Lien, Contractor will require joint checks as form of payment.
- .2 Signed lien waivers from suppliers, vendors, and/or second-tier subcontractors. It is the responsibility of the Subcontractor to inform the Contractor (Jewett Construction) which of your second-tier suppliers and second-tier Subcontractors, if any, you will use during the project. All vendors, suppliers, and/or subcontractors from whom you purchase supplies, equipment, materials, labor, or any entity that has the potential to lien this project, must complete the attached supplier/second-tier subcontractor lien waiver form. If this information is not accurate, or if the Contractor needs to investigate to obtain this information, you will be charged a \$250.00 administration fee per occurrence. These documents must be included with the Subcontractor's next monthly requisition. Failure to provide this information will result in the issuance of joint checks.
- .3 Payment bond.

8.2.2 RETAINAGE The rate of retainage shall be identified in the STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR. If the Subcontract Work is satisfactory and the Subcontract Documents provide for reduction of retainage at a specified percentage of completion, the Subcontractor's retainage may also be reduced when the Subcontract Work has attained the same percentage of completion and the Contractor's retainage for the Subcontract Work has been so reduced by the Owner.

8.2.3 TIME OF APPLICATION The Subcontractor shall submit progress payment applications to the Contractor no later than the 25th day of each payment period, unless otherwise specified in the STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR, for the Subcontract Work performed up to and including the last day of the payment period indicating work completed and, to the extent allowed under Subparagraph 8.2.4, materials suitably stored during the preceding payment period.

8.2.4 STORED MATERIALS Unless otherwise provided in the Subcontract Documents, and if approved in advance by the Owner, applications for payment may include materials and equipment not incorporated in the Subcontract Work but delivered to and suitably stored at the site or at some other location agreed upon in writing. Approval of payment applications for such stored items on or off the site shall be conditioned upon submission by the Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to the Owner and Contractor to establish the Owner's title to such materials and equipment, or otherwise to protect the Owner's and Contractor's interest including transportation to the site.

8.2.5 TIME OF PAYMENT Receipt of payment by the Contractor from the Owner for the Subcontract Work is a condition precedent to payment by the Contractor to the Subcontractor. The Subcontractor hereby acknowledges that payment by the Owner is the exclusive fund from which the Subcontractor shall be paid. Progress payments received from the Owner for the Subcontractor for satisfactory performance of the Subcontract Work shall be made **no later than ten (10) days after receipt by the Contractor** of payment from the Owner for the Subcontract Work. If Subcontractor requests an early payment, and the Contractor is in a position to pay, a 5% early payment fee will be deducted from said payment.

8.2.6 PAYMENT DELAY If the Contractor has received payment from the Owner and if for any reason not the fault of the Subcontractor, the Subcontractor does not receive a progress payment from the Contractor within ten (10) days after the date such payment is due, as defined in Subparagraph 8.2.5, the Subcontractor, upon giving seven (7) days' written notice to the Contractor, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to the Subcontractor has been received. The Subcontract Amount and Time shall be adjusted by the amount of the Subcontractor's reasonable and verified cost of shutdown, delay, and startup, which shall be effected by an appropriate Subcontractor Change Order.

8.2.7 PAYMENTS WITHHELD The Contractor may reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, as may reasonably be necessary to protect the Contractor from loss or damage based upon:

- .1 the Subcontractor's repeated failure to perform the Subcontract Work as required by this Agreement;
- .2 loss or damage arising out of or relating to this Agreement and caused by the Subcontractor to the Owner, Contractor or others to whom the Contractor may be liable;
- .3 the Subcontractor's failure to properly pay for labor, materials, equipment or supplies furnished in connection with the Subcontract Work;
- .4 rejected, nonconforming or defective Subcontract Work which has not been corrected in a timely fashion;
- .5 reasonable evidence of delay in performance of the Subcontract Work such that the Work will not be completed within the Subcontract Time, and that the unpaid balance of the Subcontract Amount is not sufficient to offset the liquidated damages or actual damages that may be sustained by the Contractor as a result of the anticipated delay caused by the Subcontractor;
- .6 reasonable evidence demonstrating that the unpaid balance of the Subcontract Amount is insufficient to cover the cost to complete the Subcontract Work;
- .7 third party claims involving the Subcontractor or reasonable evidence demonstrating that third party claims are likely to be filed unless and until the Subcontractor furnishes the Contractor with adequate security in the form of a surety bond, letter of credit or other collateral or commitment which are sufficient to discharge such claims if established;
- .8 failure to submit close-out documentation as follows: Prior to the release of payment for the "period to," which signifies 50% or more of the "Total Completed and Stored to Date" amount, one (1) hard copy and (1) electronic copy of all project close-out documentation requirements shall be complete and submitted to Jewett Construction Co., Inc. for submission to and approval from the Owner and Architect (i.e.: warranties, operation & maintenance manuals, sequence of operations, catalogs and other close-out requirements – less record drawings; record drawings will be required before final payment release). There will be no exceptions. The application for payment requisition for that month will not be accepted without full compliance and approval of all warranties, O&M Manuals, etc. as noted above.

The Contractor shall give written notice to the Subcontractor, at the time of disapproving or nullifying an application for payment stating its specific reasons for such disapproval or nullification. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be made for amounts previously withheld.

8.3 FINAL PAYMENT

8.3.1 APPLICATION Upon acceptance of the Subcontract Work by the Owner and the Contractor and receipt from the Subcontractor of evidence of fulfillment of the Subcontractor's obligations in accordance with the Subcontract Documents and Subparagraph 8.3.2, the Contractor shall incorporate the Subcontractor's application for final payment into the Contractor's next application for payment to the Owner without delay, or notify the Subcontractor if there is a delay and the reasons thereof.

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

- .1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontract Work for which the Owner or its property or the Contractor or the Contractor's surety might in any way be liable, have been paid or otherwise satisfied;
- .2 consent of surety to final payment, if required;
- .3 Satisfaction of required closeout procedures;
- .4 certification that insurance required by the Subcontract Documents to remain in effect beyond final payment pursuant to Clauses 9.2.3.1 and 9.2.6 is in effect and will not be cancelled or allowed to expire without at least thirty (30) days' written notice to the Contractor unless a longer period is stipulated in this Agreement;
- .5 other data, if required by the Contractor or Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be designated by the Contractor or Owner;
- .6 written warranties, equipment manuals, startup and testing required in Paragraph 3.28; and
- .7 as-built drawings if required by the Subcontract Documents.

8.3.3 TIME OF PAYMENT Receipt of final payment by the Contractor from the Owner for the Subcontract Work is a condition precedent to payment by the Contractor to the Subcontractor. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Contractor for payment of Subcontract Work. Final payment of the balance due of the Contract Price shall be made to the Subcontractor.

- .1 upon receipt of the Owner's waiver of all claims related to the Subcontract Work except for unsettled liens, unknown defective work, and non-compliance with the Subcontract Documents or warranties; and
- .2 within ten (10) days after receipt by the Contractor of final payment from the Owner for such Subcontract Work.

8.3.4 FINAL PAYMENT DELAY If the Owner or its designated agent does not issue a certificate for final payment or the Contractor does not receive such payment for any cause which is not the fault of the Subcontractor, the Contractor shall promptly inform the Subcontractor in writing. The Contractor shall also diligently pursue, with the assistance of the Subcontractor, the prompt release by the Owner of the final payment due for the Subcontract Work. At the Subcontractor's request and expense, to the extent agreed upon in writing, the Contractor shall institute reasonable legal remedies to mitigate the damages and pursue payment of the Subcontractor's final payment including interest.

8.3.5 WAIVER OF CLAIMS Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontract Work, but shall in no way relieve the Subcontractor of liability for the obligations assumed under Paragraphs 3.21 and 3.22, or for faulty or defective work or services discovered after final payment.

8.4 LATE PAYMENT INTEREST To the extent obtained by the Contractor under the Subcontract Documents, progress payments or final payment due and unpaid under this Agreement shall bear interest from the date payment is due at the rate provided in the Subcontract Documents.

8.5 CONTINUING OBLIGATIONS Provided the Contractor is making payments on or has made payments to the Subcontractor in accordance with the terms of this Agreement, the Subcontractor shall reimburse the Contractor for any costs and expenses for any claim, obligation or lien asserted before or after final payment is made that arises from the performance of the Subcontract Work. The Subcontractor shall reimburse the Contractor for costs and expenses including attorneys' fees and costs and expenses incurred by the Contractor in satisfying, discharging or defending against any such claims, obligation or lien including any action brought or judgment recovered. In the event that any applicable law, statute, regulation or bond requires the Subcontractor to take any action prior to the expiration of the reasonable time for payment referenced in Subparagraph 8.2.5 in order to preserve or protect the Subcontractor's rights, if any, with respect to mechanic's lien or bond claims, then the Subcontractor may take that action prior to the expiration of the reasonable time for payment and such action will not create the reimbursement obligation recited above nor be in violation of this Agreement or considered premature for purposes of preserving and protecting the Subcontractor's rights.

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

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

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

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

8.10 SUBCONTRACTOR ASSIGNMENT OF PAYMENTS The Subcontractor shall not assign any moneys due or to become due under this Agreement, without the written consent of the Contractor, unless the assignment is intended to create a new security interest within the scope of Article 9 of the Uniform Commercial Code. Should the Subcontractor assign all or any part of any moneys due or to become due under this Agreement to create a new security interest or for any other purpose, the instrument of assignment shall contain a clause to the effect that the assignee's right in and to any money due or to become due to the Subcontractor shall be subject to the claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Subcontract Work.

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

8.12 All sums tentatively earned by the Subcontractor by the partial or complete performance of the Subcontract Work and any balance of unearned Subcontract price, if and when paid by Owner to the Contractor, shall constitute a fund for the purpose of (a) full and timely completion of the Subcontract Work and fulfillment of all Subcontract requirements, (b) payment of any backcharges or claims due the Contractor from Subcontractor based upon this Subcontract or otherwise, and (c) payment to the sub-subcontractors, workers, design professionals, material and service suppliers of Subcontractor, and others who have enforceable mechanic's lien claims or enforceable bond claims (if the project is bonded). Such tentative earnings shall not be due or payable to the Subcontractor or anyone else claiming in the Subcontractor's place and stead, including but not limited to a Trustee in bankruptcy or receiver, until and unless such Subcontract Work is fully and satisfactorily completed, all Subcontract requirements are fulfilled, and the Contractor and such persons are fully paid. The Subcontractor agrees to promptly pay all sub-subcontractors, workers, vendors and suppliers of the Subcontractor and to provide the Contractor with each application for periodic progress payments, and the final payment, such lien waivers or proof of such payment as the Contractor may require. At any time, the Contractor may demand additional written evidence of the Subcontractor's capability to perform and of such payments to such persons by the Subcontractor. The Subcontractor declares that all funds received by the Subcontractor from the Contractor hereunder shall be deemed to be held by the Subcontractor in Trust for the benefit of those furnishing work, labor, materials, services, equipment, etc., to or through the Subcontractor for the Subcontract Work.

8.13 In any case where (i) the Contractor is allowed under this Subcontract to deduct or retain sums paid or to be paid to Subcontractor, or (ii) the Subcontractor owes the Contractor on account of any matter (whether or not arising under this Subcontract or in relation to the Project), then, with or without notice to the Subcontractor, the Contractor may (i) deduct or retain the sums from any sums paid or to be paid to the Subcontractor on account of any other job, contract or relationship, if any, in which case the Subcontractor hereby agrees that such act shall not constitute a breach or violation of this Subcontract or the other job, contract or relationship, notwithstanding the existence of any writing to the contrary, and/or (ii) deduct or retain the sums from any sums paid or to be paid Subcontractor on account of this Subcontract or any other job, contract or relationship notwithstanding the existence of any writing to the contrary and/or (iii) whether or not there are expected to be any sums paid under this Subcontract or the Project or any other job, contract or relationship, demand immediate payment of the sum from the Subcontractor, in which case failure to immediately pay the sums to the Contractor in full shall constitute a material breach of this Subcontract, entitling the Contractor to damages, costs, interest, and attorney's fees incurred in connection with the collection of the sums.

8.14 MECHANIC'S LIENS The Subcontractor shall use his best efforts to prevent any laborer's, materialmen's, mechanic's or other similar liens from being filed or otherwise imposed by any sub-subcontractor, materialman or supplier in connection with the Work. If the Subcontractor does not cause any such lien to be released and discharged forthwith or file a bond in lieu thereof, the Contractor shall have the right to pay all sums necessary to obtain its release and discharge, and to deduct all amounts so paid from the Subcontract Amount or to deduct the same from the next succeeding Requisition until the total amount expended shall be recouped. The Subcontractor shall indemnify, defend and hold harmless the Contractor and Owner from all costs and expenses, including attorney's fees, claims, losses, demands, causes of action or suits of whatever nature arising out of any such lien. The Subcontractor shall not give any notice of intent to claim a lien, notice of contract or commence any proceeding to perfect a mechanic's lien or notify the Owner of its intent to do so unless and until Subcontractor has given 30 days written notice to Contractor of such intent, which notice shall include: (i) copies of all requisitions submitted by Subcontractor in respect of the Project; (ii) the dates and amounts of all payments to Subcontractor in respect to the Project; (iii) an itemization of the labor performed and materials supplied to the Project for which Subcontractor alleges it has not been paid; (iv) copies of all lien waivers previously signed by Subcontractor in respect to the Project; (v) copies of any written authorizations signed by Contractor for any extras or additions to the Work as required by Paragraph 7.1.1. In the event Subcontractor fails to send a complete notice within said thirty-day period or within said period Contractor notifies Subcontractor that its alleged claim is faulty or erroneous in any manner and Subcontractor prosecutes any lien rights it may have, then: Subcontractor shall be responsible for all costs, expenses, and damages (including delay damages) actually caused by such action and, in the event all or any part of Subcontractor's claim and/or lien is denied by the court of appropriate jurisdiction, then Subcontractor shall be responsible for all attorney's fees incurred in respect to such lien by the Contractor and Owner. The Subcontractor agrees that its failure to send a complete notice to Contractor as provided above shall, in addition to any requirements imposed by law, represent a complete defense to the maintenance of such a lien. It is the intent of this Paragraph and procedure in respect of the Subcontractor's mechanic's liens to avoid, where possible, the waste of judicial time and resources with its concomitant costs and fees by requiring the Subcontractor to clearly identify any alleged claim with enough supporting documentation such that any such matter be resolved without the necessity of costly formal action.

ARTICLE 9 INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION

9.1 INDEMNITY

9.1.1 INDEMNITY To the fullest extent permitted by law, the Subcontractor hereby acknowledges and agrees that it shall indemnify, hold harmless and defend the General Contractor, the Owner, Architect and Engineer and any of their officers, directors, employees, agents, affiliates, subsidiaries and partners from and against all claims, damages, losses and expenses, including but not limited to, attorney's fees, arising out of or resulting from the performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than to the Work itself) including loss of use resulting there from, and (2) is CAUSED in whole or in part by any acts or omissions of the Subcontractor, its employees, agents or subcontractors or anyone directly or indirectly employed by any of them, or anyone whose acts any of them may be liable. Such damages may be deducted by the Contractor from any unpaid balance due to the Subcontractor, or collected from the Subcontractor in the event that such damages exceed the unpaid balance of the Subcontract. Subcontractor waives the right to lien any projects that may have said unpaid balances due as a result of this deduction.

9.1.2 The Subcontractor hereby acknowledges its obligation under the foregoing paragraph to indemnify the General Contractor against judgments suffered because of the subcontractor's work and to assume the cost of defending the General Contractor against claims as described in the foregoing paragraph.

9.1.3 STATE-SPECIFIC INDEMNITY CLAUSES

NEW HAMPSHIRE To the fullest extent permitted by law, the Subcontractor hereby acknowledges and agrees that it shall indemnify, hold harmless and defend the General Contractor and the Owner, and each of their officers, directors, members, employees, agents, affiliates, subsidiaries and partners, from and against all claims, damages, judgments, settlements, losses and expenses, including but not limited to attorney's fees, arising out of injury or damage to persons or property caused by any act or omission of the Subcontractor, its employees, agents or subcontractors.

To the fullest extent permitted by law, the Subcontractor hereby agrees to fully defend the General Contractor and the Owner, and each of their officers, directors, members, employees, agents, affiliates, subsidiaries and partners, from any complaint against any of them for injury or damage to persons or property that is alleged in the complaint to have been caused in whole or in part by any act or omission of the Subcontractor, its employees, agents or subcontractors. The party defended hereunder shall have the right to choose its own counsel to be paid for by the Subcontractor.

MASSACHUSETTS To the fullest extent permitted by law, the Subcontractor hereby acknowledges and agrees that it shall indemnify, hold harmless and defend the General Contractor and the Owner, and each of their officers, directors, members, employees, agents, affiliates, subsidiaries and partners from and against all claims, damages, judgments, settlements, losses and expenses, including but not limited to, attorney's fees, arising out of or resulting from the performance of the Subcontractor's Work and/or arising out of or resulting from any act or omission of the Subcontractor, its employees, agents or subcontractors.

To the fullest extent permitted by law, the Subcontractor hereby agrees to fully defend the General Contractor and the Owner, and each of their officers, directors, members, employees, agents, affiliates, subsidiaries and partners, (1) from any complaint against any of them for injury or damage that is alleged in the complaint to arise, in whole or in part, out of the subcontractor's work, or out of any act or omission of the Subcontractor, its employees, agents or subcontractors and/or (2) from any complaint against any of them alleging injury or damage to an employee of the Subcontractor. The party defended hereunder shall have the right to choose its own counsel to be paid for by the Subcontractor.

MAINE To the fullest extent permitted by law the Subcontractor agrees to assume the entire responsibility and liability for all damages or injury to all persons, and to all property, arising out of or in any manner connected with the execution of the Work under this Subcontract and to the fullest extent permitted by law, the Subcontractor shall defend

and indemnify the Contractor from all such claims including without limitation claims for which the Contractor may be or may be claimed to be liable by reason of its own independent negligence.

The Subcontractor agrees to assume entire responsibility and liability for all damages or injury to all persons, whether employees or otherwise, and to all property arising out of or in any manner connected with the execution of the "Work" under this Subcontract.

The Subcontractor's obligation under this section 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.

The Subcontractor shall defend and indemnify the Contractor from all such claims, including without limitation, claims for which the Contractor may be or may be claimed to be liable in whole or in part, and legal fees and disbursements paid or incurred to defend any such claims, as well as legal fees paid or incurred in connection with enforcing the provisions of this section.

The Subcontractor further agrees to obtain, maintain and pay for such general liability insurance coverage as will insure the provisions of this section and other contractual indemnification assumed by the Subcontractor in this Subcontract.

VERMONT To the fullest extent permitted by law, the subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants and agents and employees of any of them from and against all injuries, claims, damages, losses and expenses, including but not limited to attorney's fees, arising directly or indirectly out of the obligations herein undertaken or resulting out of operations conducted by the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such injury, claim, damage, loss or expense is caused in part by a party indemnified hereunder, save and except claims or litigation caused by or resulting from the sole negligence of the party indemnified hereunder. Such obligation shall not negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

CONNECTICUT To the fullest extent permitted by law, the Subcontractor shall indemnify, and hold harmless, and defend the Owner, Contractor, Architect, Architect's consultants, and the agents and employees of any of them from an against all injuries, claims, damages, losses, and expenses, including, but not limited to attorney's fees, directly or indirectly arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property (other than the Work itself), but only if the claim, damage, loss or expense is caused by, connected with, arising out of or resulting from an act or omission of the Subcontractor, the Subcontractor's sub-subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable. The Subcontractor shall not be required by this agreement to indemnify a party for that portion of any loss that is directly attributable to the negligence of the party to whom indemnification is owed, except to the extent such indemnification is permitted by law.

Such obligations shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this section.

To the fullest extent permitted by law, the Subcontractor agrees to assume the defense of the Owner, the Contractor, the Architect, the Architect's consultants, and the agents and employees of any of them, in any claim, proceeding, lawsuit, and/or litigation arising out of any accident, incident, or occurrence that is caused by, connected with, arising out of, or resulting from the performance of the Subcontractor's work under this contract.

The Subcontractor agrees that the obligation to defend commences when a claim is made against the Owner, Contractor, Architect, Architect's consultants, and/or the agents and employees of any of them, even if the Subcontractor disputes its obligation to indemnify and hold harmless. The party being defended shall have the right to choose its own counsel. The Subcontractor agrees to pay for defense of the Owner, Contractor, Architect, Architect's consultants, and the agents and employees of any of them, with counsel chosen by the party to be defended, upon demand.

The Subcontractor agrees to be bound to the Contractor by the terms and conditions of the Contractor's agreement with the Owner, a copy of said agreement being available for inspection at the office of the Contractor. The Subcontractor

further agrees that all conditions and requirements imposed, upon the Contractor by its contract with the owner shall be performed by the Subcontractor insofar as applicable to the work under the subcontract, and the Subcontractor hereby assumes toward the Contractor all obligations and responsibilities that the Contractor, by contract, has assumed or will assume toward the Owner with respect to said work.

9.2 INSURANCE

9.2.1 SUBCONTRACTOR'S INSURANCE Subcontractor shall maintain worker's compensation, general liability, automobile, and umbrella insurance for the minimum amount required by the general contract that this subcontract applies to or as outlined below, whichever limits and coverages are higher. Insurance certificates shall be provided. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor's Commercial General Liability Policy. These certificates and the insurance policies shall contain a provision that coverage is afforded under the policies will not be cancelled or allowed to expire until 30 days prior written notice has been given to Jewett Construction Co., Inc. The Owner, Architect, Engineer and Jewett Construction Co., Inc. shall be named as an additional insured on a primary and non-contributory basis on all liability and excess policies. Coverage for Jewett Construction Co., Inc. shall include completed operations coverage.

9.2.2 MINIMUM LIMITS OF LIABILITY AND COVERAGE Minimum required insurance limits (coverage on an occurrence basis):

9.2.3.1 COMMERCIAL GENERAL LIABILITY (CGL)

9.2.3.1.1 CGL with limits of Insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.

9.2.3.1.2 If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.

9.2.3.1.3 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.

9.2.3.1.4 General Contractor, Owner and all other parties required of the General 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. It 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.

9.2.3.1.5 Subcontractor shall maintain CGL 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 3 years after completion of the Work.

9.2.3.2 AUTOMOBILE LIABILITY

9.2.3.2.1 Business Auto Liability with limits of at least \$1,000,000 each accident.

9.2.3.2.2 Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.

9.2.3.2.3 General Contractor, Owner and all other parties required of the General Contractor, shall be included as insureds on the auto policy.

9.2.3.3 COMMERCIAL UMBRELLA

9.2.3.3.1 Umbrella limits must be at least \$5,000,000.

9.2.3.3.2 Umbrella coverage must include as insureds all entities that are additional insureds on the CGL.

9.2.3.4 WORKERS COMPENSATION AND EMPLOYERS LIABILITY

9.2.3.4.1 Employers Liability Insurance limits of at least \$500,000 each accident for bodily injury by accident and \$500,000 each employee for injury by disease.

9.2.3.4.2 Where applicable, U.S. Longshore and Harborworkers Compensation Act Endorsement shall be attached to the policy.

9.2.3.4.3 Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.

9.2.4 WAIVER OF SUBROGATION

Subcontractor waives all rights against Contractor, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability maintained per requirements stated above.

9.2.5 PROFESSIONAL LIABILITY INSURANCE

9.2.5.1 PROFESSIONAL LIABILITY INSURANCE The subcontractor shall require the Designer(s) to maintain Project Specific Professional Liability Insurance with a company satisfactory to the Contractor, including contractual liability insurance against the liability assumed in Paragraph 3.8, and including coverage for any professional liability caused by any of the Designer’s (s’) consultants. Said insurance shall have specific minimum limits as set forth below:

Limit of	at least \$1,000,000 per claim
General Aggregate of	at least \$1,000,000 for the subcontract services rendered

The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all subcontract services rendered by Designer. Said insurance shall be continued in effect with an extended period of two years following final payment to the Designer. Such insurance shall have a maximum deductible amount of \$5,000 per occurrence. The deductible shall be paid by the Subcontractor or Designer.

9.2.5.2 The subcontractor shall require the Designer to furnish to the Subcontractor and Contractor, before the Designer commences its services, a copy of its professional liability policy evidencing the coverages required in this Paragraph. No policy shall be cancelled or modified without thirty (30) days’ prior written notice to the Subcontractor and Contractor.

9.2.6 BUILDER’S RISK INSURANCE

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

9.2.6.2 If the Owner or Contractor has not purchased Builder’s Risk Insurance satisfactory to the Subcontractor, the Subcontractor may at its own expense procure such insurance as will protect the interests of the Subcontractor, its subcontractors and their subcontractors in the Subcontract Work.

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

9.2.7 PERSONAL LIABILITY CLAUSE

9.2.7.1 Subcontractor personally and unconditionally guarantees the performance of all obligations of the Subcontractor under the terms of this Agreement and its General Provisions, including reimbursement of all collection costs and attorneys' fees.

ARTICLE 10 CONTRACTOR'S RIGHT TO PERFORM SUBCONTRACTOR'S RESPONSIBILITIES AND TERMINATION OF AGREEMENT

10.1 FAILURE OF PERFORMANCE

10.1.1 NOTICE If the Subcontractor refuses or fails to supply enough properly skilled workers, proper materials, maintain the Progress Schedule, fails to comply fully with an acceleration order issued by the Contractor in accordance with Article 5.2.2, fails to make prompt payment to its workers, subcontractors or suppliers, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, the Subcontractor shall be deemed in default of this Agreement. The Contractor shall provide written notice of default to the Subcontractor by mail, e-mail or fax.

10.1.2 ACTION PLAN Within one (1) business day following receipt of written notice of default from the Contractor, the Subcontractor shall provide a written action plan to the Contractor which sets forth in detail the method by which the Subcontractor intends to cure the default. The Contractor shall approve or disapprove the action plan within one (1) business day following receipt. If the action plan is approved, the Subcontractor shall proceed according to the plan. If the action plan is disapproved, the default shall be deemed to continue and the Contractor shall be entitled to exercise all of its rights under this Article. The Subcontractor shall only be entitled to one notice of default. Upon receipt of a second notice of default, the Contractor may proceed directly to its remedies under section 10.1.3.

10.1.3 DEFAULT REMEDIES In the event that the Subcontractor fails to comply with the action plan described in Article 10.1.2. above, or the Subcontractor has received a previous notice of default, then the Contractor without prejudice to any other rights or remedies, after three (3) days prior written notice to the Subcontractor, shall have the right to exercise any or all of the following remedies:

- .1 supply workers, materials, equipment and facilities as the Contractor deems necessary for the completion of the Subcontract Work or any part which the Subcontractor has failed to complete or perform after written notification, and charge the cost, including reasonable overhead, profit, attorneys' fees, costs and expenses to the Subcontractor;
- .2 contract with one or more additional contractors to perform such part of the Subcontract Work as the Contractor determines will provide the most expeditious completion of the Work, and charge the cost to the Subcontractor as provided under Clause 10.1.1.1; and/or
- .3 withhold any payments due or to become due the Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of the Contractor.

In the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice, but the Contractor shall give the Subcontractor notice promptly after the fact as a precondition of cost recovery.

10.1.4 TERMINATION BY CONTRACTOR If the Subcontractor (1) fails to comply with its responsibilities under Article 10.1.2 or (2) has received more than one notice of default pursuant to 10.1.1, then the Contractor may, upon three (3) days prior written notice to the Subcontractor, terminate this Subcontract.

10.1.5 BACKCHARGE AUTHORITY In the event of a termination in accordance with Article 10.1.4, the Contractor may furnish those materials, equipment and/or employ such workers or subcontractors as the Contractor deems necessary to complete the Subcontract Work in accordance with the requirements of the Subcontract Documents. All costs incurred by the Contractor in performing the Subcontract Work, including reasonable overhead, profit and attorneys' fees, costs and

expenses, shall be deducted from any moneys due or to become due the Subcontractor and the Subcontractor shall be liable for the payment of any amount by which the cost associated with such performance exceed the unpaid balance of the Subcontract Amount. At the Subcontractor's request, the Contractor shall provide an accounting of the costs to finish the Subcontract Work.

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

10.1.7 FINANCIAL UNCERTAINTY Additionally, the Contractor shall have the right to terminate this Subcontract if the Subcontractor (i) shall become involved in financial difficulties such that he is unable to pay his debts generally as they become due or (ii) shall suffer adverse changes in his financial position which, in the Contractor's sole judgment exercised in good faith, would substantially impede the Subcontractor's due performance hereunder or (iii) should an order for relief be entered by or against Subcontractor under the Bankruptcy Code or should Subcontractor make an assignment for the benefit of creditors or (iv) should a receiver or trustee be appointed to administer the Subcontractor's property and affairs.

10.1.8 In the event of a termination of the Work not caused by a default of the Subcontractor, including those caused by any failure or refusal of the Owner to approve the Subcontract or the failure of the Owner and Contractor to enter into a General Contract, the Subcontractor shall be compensated for the cost of the Work completed prior to the termination from the funds actually paid to the Contractor by the Owner. Receipt of funds by Contractor shall in each instance be a condition precedent to payment of Subcontractor. Any claims of the Subcontractor arising out of the Subcontractor's termination pursuant to this paragraph shall be governed by Paragraph 7.10.2 hereof.

10.2 BANKRUPTCY

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

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

10.3 SUSPENSION BY OWNER Should the Owner suspend the Work or any part which includes the Subcontract Work and such suspension is not due to any act or omission of the Contractor, or any other person or entity for whose acts or omissions the Contractor may be liable, the Contractor shall notify the Subcontractor in writing and upon receiving notification the Subcontractor shall immediately suspend the Subcontract Work. In the event of Owner suspension, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor.

10.4 TERMINATION BY OWNER FOR CAUSE OR CONVENIENCE Should the Owner terminate its contract with the Contractor or any part which includes the Subcontract Work, the Contractor shall notify the Subcontractor in writing within

three (3) days of the termination and upon written notification, this Agreement shall be terminated and the Subcontractor shall immediately stop the Subcontract Work, follow all of Contractor's instructions, and mitigate all costs. In the event of Owner termination, the Contractor's liability to the Subcontractor shall be limited to payment for work completed prior to the Subcontractor's receipt of written notification of the termination and such payment shall only be made to the extent the Contractor recovers such amount from the Owner. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the Owner termination and to permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor.

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

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

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

10.8 TERMINATION BY SUBCONTRACTOR If the Subcontract Work has been stopped for thirty (30) days because the Subcontractor has not received progress payments or has been abandoned or suspended for an unreasonable period of time not due to the fault or neglect of the Subcontractor, then the Subcontractor may terminate this Agreement upon giving the Contractor seven (7) days' written notice. Upon such termination, Subcontractor shall be entitled to recover from the Contractor payment for all Subcontract Work satisfactorily performed but not yet paid for, including reasonable overhead, profit and attorneys' fees, costs and expenses, subject to the terms of Paragraphs 8.2 and 8.3. The Contractor's liability for any other damages claimed by the Subcontractor under such circumstances shall be extinguished by the Contractor pursuing said damages and claims against the Owner, on the Subcontractor's behalf, in the manner provided for in Subparagraphs 10.3 and 10.4 of this Agreement.

ARTICLE 11 DISPUTE RESOLUTION

11.1 INITIAL DISPUTE RESOLUTION If a dispute arises out of or relates to this Agreement or its breach, the parties may endeavor to settle the dispute first through direct discussions. If the dispute cannot be resolved through direct discussions, the parties shall participate in mediation under the Construction Industry Mediation Rules of the American Arbitration Association. The location of the mediation shall be at a mutually agreed location. Once a party files a request for mediation with the other party and with the American Arbitration Association, the parties agree to commence such

mediation within thirty (30) days of filing of the request. Either party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person to the other party and the mediator.

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

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

11.4 MULTIPARTY PROCEEDING The parties agree that to the extent permitted by Subcontract Document all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. To the extent disputes between the Contractor and Subcontractor involve in whole or in part disputes between the Contractor and the Owner, disputes between the Subcontractor and the Contractor shall be decided by the same tribunal and in the same forum as disputes between the Contractor and the Owner.

11.5 DISPUTES BETWEEN CONTRACTOR AND SUBCONTRACTOR In the event that the provisions for resolution of disputes between the Contractor and the Owner contained in the Subcontract Documents do not permit consolidation or joinder with disputes of third parties, such as the Subcontractor, resolution of disputes between the Subcontractor and the Contractor involving in whole or in part disputes between the Contractor and the Owner shall be stayed pending conclusion of any dispute resolution proceeding between the Contractor and the Owner. At the conclusion of those proceedings, disputes between the Subcontractor and the Contractor shall be submitted again to mediation pursuant to Paragraph 11.1. Any disputes not resolved by mediation shall be decided in the manner selected in the agreement between the Owner and the Contractor.

11.6 COST OF DISPUTE RESOLUTION The cost of any mediation proceeding shall be shared equally by the parties participating. The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by a dispute resolution procedure designated in the Subcontract Documents shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such dispute resolution process.

11.7 Any sum or sums chargeable to the Subcontractor under this provision, or any other provision, of this Subcontract may, at the election of the Contractor, be deducted from any payments otherwise due or to become due to the Subcontractor under this or any other subcontract between the Contractor and the Subcontractor, and if such deduction should fail to make the Contractor whole and leave any amount remaining due, the Contractor may sue the Subcontractor and recover damages thereof. Subcontractor waives the right to lien any projects that may have said unpaid balances due as a result of this deduction.

ARTICLE 12 MISCELLANEOUS PROVISIONS

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

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

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

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

12.5 JOINT DRAFTING The parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution.



Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

12.6 Subcontractor is responsible for any and all parking fees and municipal charges.

End of document.