

SUBCONTRACT TERMS AND CONDITIONS

1. SCOPE OF WORK

1.1 Subcontractor shall do the Work in accordance with the Contract Documents. Subcontractor shall furnish all necessary supervision, management, labor, tools, material, equipment, supplies, engineering testing and/or services. The performance of the Work and materials used shall be satisfactory to Contractor and Owner and in strict compliance with the Owner-Contractor Agreement. All incidental Work reasonably necessary to complete the Work shall be accomplished by Subcontractor notwithstanding the same may have been omitted or not specifically mentioned in the Contract Documents. All plans and specifications shall remain the property of the Owner. In the event of any question arising with respect to the true meaning of the plans and specifications, the decision of Contractor thereon shall be final and conclusive.

1.2 The Work shall be subject to the final approval of Architect and Owner. The Architect's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of the Contract Documents.

1.3 All labor and/or materials supplied under this Subcontract shall meet or exceed applicable codes or requirements of any governing agencies.

Subcontractor shall furnish to Contractor proof of Subcontractor's Builders Board registration within five days of execution of the Agreement and prior to the commencement of the Work.

1.4 Subcontractor warrants to Owner, Architect, and Contractor that all materials and equipment furnished shall be new unless otherwise specified and that all Work under this Subcontract shall be of good quality, free from faults and defects, and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Subcontractor shall fulfill any warranties of manufacturers of material or equipment installed and shall repair or replace any part of the material or Work which proves defective in workmanship or material, irrespective of contract compliance when originally furnished, within one year of the date of Substantial Completion of the Project and acceptance by Owner; and all damage to other work resulting therefrom. These warranties shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. Subcontractor further agrees to execute in writing, any guarantees, maintenance agreements, or other documents required by the Contract Documents. Subcontractor shall defend, indemnify and hold Contractor harmless from any and all claims, losses, liability, suits, actions, costs, counsel fees, expenses, damages, judgments or decrees arising out of or resulting from said defects or breaches of warranty. This Section 1.4 shall survive acceptance of the Work and completion of the Contract.

1.5 The items of Work listed in Paragraph II of the Subcontract Agreement are for the purpose of clarifying their inclusion in the Work. If this listing is by specification section the Subcontractor's Work shall include all items of Work listed therein plus any items normally performed by such Subcontractor in association with its Work, including items which may be specified in other parts of the Contract Documents. Unless specifically provided for herein, Subcontractor shall also be responsible for any items which may be included in the specifications but excluded by the Subcontractor from his bid and any items included in Subcontractor's bid but not included in the designated specification sections above.

1.6 Subcontractor represents that it has made all investigations essential to a full understanding of the difficulties which may be encountered in performing the work and that, anything in the Owner-Contractor Agreement, Subcontract Agreement, any representations, statements, or information made or furnished by Contractor or Owner notwithstanding, Subcontractor will complete the Work for the compensation stated in the Subcontract Agreement and assume full and complete responsibility for the conditions (including subsurface) existing at the site and its surroundings.

1.7 If the Work is performed and paid for on a unit price basis, quantities shown in the Contract Documents are estimated to be required under the Contract and are not binding on the Contractor; the actual quantities shall be in such amounts as may eventually be required and determined under the Owner-Contractor Agreement. The estimated quantities under this Subcontract Agreement are subject to the same conditions of increase and decrease as the estimated quantities under the Owner-Contractor Agreement.

1.8 The materials and Work of Subcontractor shall at times be subject to inspection by Contractor and Owner. Subcontractor shall at all times provide safe and necessary access and facilities for such inspection. In the event that any portion of the Work or any material is determined by Contractor or Owner to be improper or defective, Subcontractor shall immediately, upon notification by Contractor, proceed to remove and dispose of and replace the improper or defective Work at its own cost and expense. Lack of inspection or failure to direct repair or replacement of Work shall not constitute or imply acceptance of any part of Subcontractor's Work.

2. TIME OF PERFORMANCE

2.1 Subcontractor will be provided Contractor's schedule of Work. If written objection to Contractor's schedule is not received by Contractor within five (5) days of receipt of the schedule by Subcontractor, Subcontractor agrees to prosecute and complete the work according to the schedule. Contractor may from time to time modify its schedule. Subcontractor agrees to make no claim for acceleration or delay by reason of schedule modifications so long as such modifications are of the type normally experienced in Work of this scope and complexity. Subcontractor shall make any objections in the same manner as provided for the original schedule.

2.2 Subcontractor will be given reasonable notice by Contractor of commencement of Work. Subcontractor agrees to commence Work pursuant to that notice with proper crews, equipment, and tools and to cooperate with Contractor in scheduling and performing Subcontractor's Work so as to avoid conflict, delay or interference with the Work of Contractor, other subcontractors or Owner's own forces.

2.3 Subcontractor shall submit shop drawings, product data, samples, and other submittals required by the Contract Documents promptly and in such sequence as to cause no delay in the Work of Contractor, other subcontractors or Owner. Subcontractor shall notify Contractor in writing of a reasonable return date necessary to comply with Contractor's construction schedule. Subcontractor shall be responsible for making field measurements necessary for the completion of the Work.

2.4 Subcontractor shall be liable for and compensate Contractor for all actual damages incurred by Contractor as a result of any default or breach by Subcontractor.

2.5 Paragraph 2.4 herein shall apply notwithstanding any provisions to the contrary in the Contract Documents that become part of this Subcontract pursuant to Paragraphs 6.1 and 7.1 herein.

2.6 Time is of the essence of this Agreement.

3. PRICE AND PAYMENTS

3.1 On or before the 25th day of each month Subcontractor shall submit, in a form acceptable to the Contractor, an Application for Payment indicating the value of labor and materials acceptably incorporated into the Project during that calendar month. If the Application for Payment is received by the Contractor after the date fixed above, then the work covered by the Application shall be included in the Contractor's next Application for Payment.

3.2 If requested by Contractor, Subcontractor shall submit to the Contractor a schedule of values of the various parts of the Work aggregating the total sum of this Agreement, made out in such detail and supported by evidence of its accuracy as Contractor or Owner may require. This schedule, when approved by Contractor, shall be used only as a basis for Applications for Payment. Subcontractor shall submit Applications for Payment based upon this schedule.

3.3 Applications for Payment shall include the value of materials or equipment not incorporated in the Work, but delivered and suitably stored at the site or some other location, agreed upon in writing by the parties hereto. Title to all equipment and material shall pass to Contractor upon payment therefore or incorporation in the Work, whichever shall first occur. Subcontractor shall prepare and execute all documents necessary to effect and perfect such transfer of title.

3.4 There shall be a 10% retention of all sums due. The retention shall be paid to Subcontractor after completion of the Project, acceptance by Owner, and upon receipt of satisfactory evidence that all obligations incurred by Subcontractor pursuant to this Agreement which may be the basis for a lien against the premises, retainage, or payment bond have been paid in full.

3.5 It is expressly a condition precedent to payment of any sums to Subcontractor that Contractor first receive payment for such Work from Owner. Any and all payments from Contractor to Subcontractor shall be made exclusively from funds received by Contractor from Owner. All subcontractors of Contractor and Contractor shall receive a pro-rata share of said funds based upon the total price of their respective contracts and their percentage of Work performed thereunder.

3.6 It is a condition precedent to Subcontractor's rights to any payments under the Subcontract that all bills for labor, equipment, supplies or materials including labor, equipment, supplies or materials supplied by or to Subcontractor shall have been paid in full. If requested by Contractor, Subcontractor shall submit lien waivers, including Subcontractor's own lien waiver, as evidence of payment in full of all such accounts. As a further condition precedent to Subcontractor's right to payments under this Agreement, if requested by Contractor, Subcontractor shall submit a lien waiver before any payment and a final lien waiver stating Subcontractor has been paid in full prior to the final payment. No payment made under this Subcontract shall be evidence of the performance of the Subcontractor, either wholly or in part, and no payment shall be construed to be an acceptance of defective Work or improper materials.

3.7 Payments otherwise due Subcontractor may be withheld by Contractor on account of defective work not remedied, any breach by Subcontractor of any provision or obligation of this Subcontract, the reasonable apprehension of claims by third parties or Owner arising from the subcontracted Work, or a reasonable doubt that Subcontractor can complete the Work of this agreement for the balance then unpaid. In the event it appears Subcontractor is unable to currently pay bills incurred in the performance of its Work, the Contractor may take such steps as it deems necessary to ensure that payment to the Subcontractor will be utilized to discharge such bills. Contractor may at any time issue payment by joint check to ensure that Subcontractor's bills incurred in the performance of its Work are paid.

3.8 Subcontractor will keep the improvements referred to in this Agreement and the real property upon which they are situated free from all liens or claims by reason of his Work. If Subcontractor fails to remove any lien or other claim relating to its Work, by bonding or otherwise, Contractor may retain sufficient funds out of any money due or thereafter to become due by Contractor to Subcontractor to pay the same and all costs incurred. Contractor may, without recourse by Subcontractor, pay the lien or claim and costs out of any funds owing to Subcontractor. Contractor may, at its sole discretion, issue a joint check to Subcontractor and the lienor or claimant. Subcontractor shall defend, indemnify and hold harmless Contractor and Owner from the operation and effect of any lien or encumbrance.

3.9 No extra payment will be made over and above the Subcontract Price on account of any difference between the information relating to soil and foundation conditions provided by Owner or Contractor and the actual conditions disclosed at the site of the Work during the progress of the Subcontract. No extra payment will be made over and above the Subcontract Price for any latent physical conditions encountered at the site of the Work differing materially from those indicated in the Contract Documents or any reports giving the results of soil investigations or borings or unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of a character provided for in the Contract Documents.

4. PERFORMANCE AND PAYMENT BONDS

4.1 Upon acceptance of this Agreement or, as a condition to continue performance thereunder, Subcontractor, at the option of Contractor, shall forthwith execute a separate Performance bond and Payment bond each in an amount equal to the total amount of this Subcontract and fully executed by a Surety Company authorized to do business in the State of Oregon. In the event the Subcontract Price is increased, Subcontractor shall increase the bonds in the same amount as the increase in the Subcontract Price. Such bond shall be in a form furnished by and with a surety satisfactory to the Contractor. Reasonable premiums for such bonds shall be paid by the Contractor unless otherwise agreed in writing by the parties.

5. GENERAL DUTIES OF THE SUBCONTRACTOR

5.1 Subcontractor shall be bound to Contractor by the terms of this Agreement and Subcontractor shall assume toward Contractor all the obligations and responsibilities which Contractor assumes toward Owner and Architect and shall have the benefit of all rights, remedies, and redress against Contractor which Contractor has against Owner, provided that where any provision of the Contract Documents is inconsistent with any provision of this Agreement this Agreement shall control.

5.2 Subcontractor shall cooperate with Contractor and other Subcontractors in scheduling and performing the Work so that the Work of the entire Project may be performed with the utmost speed consistent with good practice. In the case of conflict or other reasons for coordination, Contractor may direct the necessary performance of certain work which the Subcontractor will execute even at increased expense to Subcontractor.

5.3 Subcontractor shall furnish periodic progress reports on the Work as requested by Contractor including information on the status of materials and equipment which may be in the course of preparation or manufacture.

5.4 Subcontractor shall give all notices and comply with all building codes, laws, ordinances, rules, regulations, and orders of any public authority bearing on the safety of persons or property or performance of the Work under this Agreement. Subcontractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of Subcontractor's Work, the furnishing of which is required of Contractor by Contract Documents. All penalties levied by State or Federal officials attributable to Subcontractor's work shall be paid by Subcontractor.

5.5 Subcontractor shall comply with Federal, State, and local tax laws, social security acts, unemployment compensation acts and worker's or workmen's compensation acts insofar as applicable to the performance of this Agreement. Subcontractor agrees to comply with all Federal and State laws and regulations regarding nondiscrimination in employment, employee benefits and facilities.

5.6 Subcontractor shall comply with the applicable Federal and State laws and regulations governing public contracts, including but not limited to the provisions of ORS Chapter 279. Failure of Subcontractor to comply with applicable Federal or State laws will be grounds for termination by Contractor under the procedure set out in Article 13.

5.7 In carrying out the Work Subcontractor shall take necessary precautions to protect properly his Work and the finished Work of other trades from damage caused by his operations until final completion and acceptance thereof by the Owner. Subcontractor will make good or replace at no expense to Contractor or Owner any damage to its work which occurs prior to said final acceptance. Where Subcontractor performs any excavation or earth moving or any other underground or subsurface work, Subcontractor shall be responsible for locating existing utilities whether or not indicated by the Contract Documents.

5.8 Subcontractor shall at all times keep the premises free from accumulation of waste materials or rubbish arising out of the operations of this Agreement. Upon completion of the Work Subcontractor shall leave the premises in a broom clean condition. Subcontractor shall be responsible for disposal of debris off site. If Subcontractor fails to comply with this paragraph within seventy-two (72) hours after receipt of notice of non-compliance, Contractor may perform necessary clean-up and deduct the cost from any amounts due Subcontractor.

5.9 Subcontractor shall store materials, tools and equipment only in a location designated by Contractor and shall not unnecessarily encumber the premises. Subcontractor shall provide for security for on-site storage of Subcontractor's materials, tools and equipment. Subcontractor shall bear the risk of loss for any of Subcontractor's tools, equipment, or materials stored on-site.

5.10 Subcontractor shall comply with all statutory and/or contractual safety requirements applying to his work and/or initiated by the Contractor, and shall report within three (3) days to Contractor any injury to Subcontractor's employees at the site of the project.

5.11 Immediately upon the performance of any part of the Work, as between Subcontractor and Contractor, title thereto shall vest in Contractor provided, however, the vesting of such title shall not impose any obligation on Contractor or relieve Subcontractor of any of its obligations hereunder.

5.12 All communications between the Subcontractor and the Owner with respect to the Work shall be transmitted through the Contractor.

5.13 Whenever it may be useful or necessary, Contractor or Owner shall be permitted to occupy and/or use any portion of the Work which has been either partially or fully completed by Subcontractor before final inspection and acceptance thereof by Owner; but such use and/or occupation shall not relieve Subcontractor of his guarantee of the Work nor of his obligation to make good at his own expense any defect in materials and/or workmanship which may occur or develop prior to Contractor's release from responsibility to Owner.

5.14 Unless otherwise expressly provided herein Subcontractor shall provide all its own facilities and conveniences that it may require for the performance of the Work. Subcontractor shall be responsible for unloading, hoisting, and storage of all materials required for the Work, whether furnished by Subcontractor or Contractor.

5.15 Subcontractor shall provide a qualified supervisor to oversee the Work, and who shall be present whenever work is being performed under this Agreement. The designated supervisor shall not be replaced without the written consent of the Contractor.

5.16 Subcontractor shall furnish other contractors whose work is fitted into his, detail and erection drawings showing full information regarding the fabrication and assembly of Subcontractor's Work. When possible, drawings shall show verified field measurements.

6. GENERAL DUTIES OF CONTRACTOR

6.1 The Contractor shall be bound to Subcontractor by the terms of this Agreement and Contractor shall assume toward Subcontractor all the obligations which Owner assumes toward Contractor and shall have the benefit of all rights, remedies and redress against Subcontractor which Owner has against Contractor, provided that where any provision of the Contract Documents is inconsistent with any provision of this Agreement this Agreement shall control.

7. JOB CONDITIONS

7.1 Contractor does not warrant the correctness of any soil investigations or borings, or any interpretation, deduction, or conclusion given in any report relative to subsurface conditions. Subcontractor has made and shall make his own deductions and conclusions as to the nature of the materials to be excavated, the difficulties of making and maintaining the required excavation, the difficulties which may arise from subsurface conditions and of doing any other work affected by the subsurface conditions, and shall accept full responsibility thereof.

7.2 Contractor has no control and seeks no control over the labor relations of Subcontractor. Subcontractor agrees that all benefits and wages, due its employees and to employees of its Subcontractors and their Subcontractors related to this Project, shall be timely paid.

7.3 Subcontractor agrees that if picketing or other work disturbances or labor disputes of any kind occur there will be no interruption or delay to Subcontractor's Work and Subcontractor's employees will enter the job site and perform Subcontractor's Work as scheduled. Subcontractor agrees to provide sufficient workers, materials, and equipment to allow it to complete the Work in the time specified in Paragraph 2.1 of this Agreement. Subcontractor's obligation to complete the Work within that time is not excused by the occurrence of any strike, work stoppage, work slow down, or labor dispute of any kind.

7.4 If requested, Subcontractor shall be provided with one set of drawings, specifications and addenda. Additional sets shall be provided at Subcontractor's expense, paid directly to the party furnishing the documents.

7.5 Application of Subcontractor's materials to substrate furnished by others shall constitute acceptance of that substrate. No claim for extra work due to inadequate or improper substrate shall be considered unless claim for such extra work is made as required in Article 9, prior to the commencement of the Work.

7.6 Unless provided otherwise in this agreement, weather protection shall be provided by Subcontractor to the extent required to allow Work to proceed during typical weather conditions for the season and location of the Project.

8. INSURANCE

8.1 Prior to commencing work Subcontractor agrees to obtain and maintain at its own expense, from inception until completion of the Work, the following minimum amounts and units of insurance:

8.1.1 Comprehensive General Liability, including but not limited to Contractor Protective, Broad Form Property Damage, Personal Injury and employees as insured, Completed Operations, Contractual and XCU Coverage Liability. Limits shall not be less than \$1,000,000 to cover each injury or claim of any one person, not less than \$2,000,000 to cover injury or death to two or more persons from any one accident, and not less than \$2,000,000 to cover the claims of two or more persons arising out of any accident causing property damage.

8.1.2 Automobile Liability including Owned Automobiles and Automobiles Under Long Term Lease, Hired Automobiles, and Non owned Automobiles. Liability limits shall be not less than \$1,000,000 for each claim and \$2,000,000 from any one accident.

8.1.3 Worker's Compensation and Employer's Liability Insurance for protection of Subcontractor's employees as required by statute in the state in which the Work is to be performed. With respect to work to be performed in Oregon, Subcontractor shall provide evidence to Contractor that Subcontractor has qualified as a direct responsibility employer or as a contributing employer under ORS Chapter 656; if Subcontractor is unable to show qualification,

Contractor and Subcontractor shall file a joint declaration as provided by law that the services rendered under this Agreement are rendered by Subcontractor as an independent contractor. If Subcontractor has persons working for him who are not covered by Subcontractor's Worker's Compensation Insurance Policy, Subcontractor shall also cause such persons to file a joint declaration with Contractor that each of such persons renders services as an independent contractor.

8.2 All policies shall name Contractor as additional insured and shall contain a waiver of subrogation rights against Contractor.

8.3 Subcontractor shall be responsible for any deductible applicable to any Builder's Risk policy in force.

8.4 Subcontractor shall, within five (5) days after the execution of this Agreement, and prior to the commencement of any Work, submit, in the number of copies requested, in a form satisfactory to Contractor, from an insurance carrier or carriers acceptable to Contractor, certification that all of the required insurance has been effected and that Subcontractor is covered thereby. If evidence of the required insurance coverage is not produced promptly on demand Contractor shall have the immediate right to procure the required insurance on behalf of Subcontractor and to charge and deduct the cost thereof from the subcontract price, retained percentage or the next due payment, but Contractor shall not be under any liability to do so. The foregoing shall be the minimum insurance required and Subcontractor shall obtain and maintain additional insurance, if any, which may be required by the Contract Documents. If Subcontractor does not provide proof of the required insurance coverage, failure of Subcontractor to procure the insurance as required in this Paragraph 8.4 will be grounds for termination by Contractor under the procedure set out in Article 14.

8.5 Subcontractor's insurance policy (or if more than one, all policies) shall require not less than thirty (30) days prior written notice to Contractor of reduction or cancellation of coverage.

8.6 Subcontractor shall be responsible for all material delivered to him, regardless of how shipped or delivered, and shall pay all demurrage and storage charges which accrue after delivery. Any material lost or damaged after delivery to Subcontractor from any cause whatsoever, shall be replaced by or at the expense of Subcontractor.

9. CHANGES IN THE WORK

9.1 Subcontractor may, without notice to its surety, be ordered in writing by Contractor, without invalidating this Agreement, to make changes in the Work within the general scope of this Agreement consisting of additions, deletions, or other revisions, with the Contract Sum and the Contract Time accordingly adjusted. Subcontractor, prior to the commencement of such changed or revised work, or within five (5) calendar days of receipt of notice of the change, whichever is earlier, shall submit to Contractor written copies of any claim for adjustment of the Contract Sum and/or Contract Time for such revised Work, in a manner consistent with the Contract Documents.

9.2 If Contractor and Subcontractor are unable to agree upon a lump sum for the changes and if, in the opinion of Contractor, the work must proceed before an agreement can be negotiated for a lump sum, Contractor will issue a written order to Subcontractor to proceed with the changes, and Subcontractor shall so comply. In such event Subcontractor shall keep itemized daily records as to all labor, material, equipment, and supplies used in connection with such changes, and shall submit the records to Contractor on a daily basis. If subcontractor fails to keep such records all work shall be deemed to have been performed at Subcontractor's own expense. Contractor and Subcontractor shall attempt to negotiate a fair and reasonable lump sum for such changes and in connection with such negotiations Subcontractor shall submit to Contractor all evidence to support its proposal. If an agreement is not reached the matter may be referred to mediation and/or arbitration as provided elsewhere in this Agreement. In no event shall Subcontractor proceed with changes in the Work without a written order from Contractor to so proceed. Contractor shall be under no obligation to pay for unauthorized additional or different work performed by Subcontractor without a written Change Order executed by Contractor.

10. DELAYS AND INTERFERENCE WITH WORK

10.1 Time is of the essence of this Agreement. Subcontractor agrees to furnish labor, materials, equipment and supplies in such quantities, and work such hours, as may be necessary to comply with Contractor's schedule. Should Subcontractor be delayed in the Work by the act, neglect, delay or default of the Contractor, Owner, or any other subcontractor employed by the Contractor, or for other reasons beyond the control of the Subcontractor, then the time fixed for completion of the Work shall be extended for a period equivalent to the time lost; but, no extension shall be made unless written claim is made no later than five (5) calendar days from such event or, if the Owner-Contractor Agreement provides for a shorter period, with sufficient time to permit the Contractor to give notice to Owner within the time allowed by the Owner-Contractor Agreement for such notice. The duration of such delay shall be determined by the Contractor, but only upon the same terms and conditions and only to the extent actually allowed to Contractor by Owner. The extension of time approved shall be the Subcontractor's exclusive remedy in event of such delay, no matter how or by whom caused, and Subcontractor shall not be entitled to any increase in the Subcontract Price, or to damages or additional compensation as a consequence of such delays.

10.2 Contractor and Subcontractor shall not be liable to one another for any delays arising out of Acts of God, strikes, embargoes, or other causes explicitly determined to be beyond their control, except in the event that the Owner should assess actual or liquidated damages or penalties against Contractor. In that case, Subcontractor shall be responsible for such portion of the assessment as may be directly attributable to it, regardless of the cause of delay.

10.3 Re-submittal of required submittals shall not be a cause for delay.

11. SETOFFS AND ADDITIONAL RETAINAGES

11.1 Contractor may deduct from any moneys due or to become due to Subcontractor any sum owed by Subcontractor to Contractor. In the event of any breach by Subcontractor of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against Contractor or the premises arising out of Subcontractors performance, Contractor shall have the right to retain out of any payments due or to become due to Subcontractor an amount sufficient to completely protect Contractor and Owner from any and all loss, damage, or expense until Subcontractor provides evidence, satisfactory to Contractor, that the alleged claim or lien has been satisfied and/or released.

12. INDEMNITY

12.1 Contractor and Subcontractor desire to allocate as between themselves and Owner the cost and expense of all risks of personal injury, property damage, and all other losses on a predictable basis immediately upon the filing of a claim or lawsuit, rather than upon the generally debatable and indeterminate criteria of whose negligence, if any, caused the injury damage or loss, and the degree of such cause.

12.2 Subcontractor shall defend, indemnify, and save Contractor harmless from all liability, loss, damages, causes of action, claims or judgments (including attorney fees) because of injury or death to any person, including Subcontractor employees, or damage to any property, or any other liability or claims against Contractor or any bond obtained by Contractor, that may occur or may be alleged to have occurred arising out of or connected with the performance of the Work, as a result directly or indirectly, of Subcontractor or its sub-subcontractors or materialmen's acts or omissions, or of their servants, agents and employees, and whether or not such injury or damage is also attributable to Contractor's fault or negligence. Except for those damages or injuries resulting from the sole negligence of Contractor, Subcontractor shall indemnify Contractor under this section for any act or omission by Contractor, be it negligent or willful or active or passive.

12.3 In any and all claims against Contractor or any of its agents or employees these indemnification obligations shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for Subcontractor's workers or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

12.4 To the extent Contractor's agreement to indemnify Owner is broader than Subcontractor's indemnity obligation, Subcontractor agrees to indemnify Contractor in accordance with the indemnity provision between Owner and Contractor.

12.5 At any time before final settlement or adjudication of any loss, damage, liability claim, suit, or cause of action for which Subcontractor has by this Agreement agreed to indemnify and save Contractor harmless, Contractor may withhold from any payment due or to become due under this Agreement, an amount sufficient to completely protect Contractor and Owner from any and all loss, damage, or expense. This Article 12 shall survive completion and acceptance of the Work.

13. ASSIGNMENTS

13.1 Subcontractor shall not assign, sell, or otherwise dispose of any earnings under this Agreement without the express written consent of Contractor. Such assignment shall not in any event have priority over any claims for labor, material, supplies, or other obligations incurred by Subcontractor which may be a claim against Contractor's bond or a lien against the improvements, and shall not have priority over any claim of Contractor.

13.2 Subcontractor shall not assign or sublet its performance under this Contract or any claims resulting therefrom from without Contractor's written consent.

13.3 Subcontractor may sub-subcontract portions of its performance of this contract provided that Subcontractor shall provide to Contractor a written list of such sub-subcontractors not less than five (5) working days before any sub-subcontracts are executed or any sub-subcontractors commence work on the job site. Subcontractor shall not change such sub-contractor without the written consent of the Contractor. Contractor shall have the right, for good cause, to disapprove the use of any sub-subcontractors. Without limiting other grounds for good cause, Contractor may disapprove a sub-subcontractor for any of the following reasons:

13.3.1 Sub-subcontractor is disapproved by the Owner, Architect or Engineer.

13.3.2 Sub-subcontractor is not duly licensed and bonded under the laws of the State in which the job site is located or is not able to obtain any performance or payment bond required by the Contract Documents.

13.3.3 The employment of sub-subcontractor would be in violation of any applicable labor agreement.

13.3.4 Sub subcontractor is not recognized as an independent contractor under the laws of the State in which the job site is located by such agencies that have a right to claim a lien against the job site in the event payments are not made as required by law.

13.3.5 The performance of sub-subcontractor on a previous job (regardless of whether Subcontractor or Contractor worked on such job) was in Contractor's opinion unsatisfactory.

13.4 Contractor shall give Subcontractor written notice of disapproval of any sub-subcontracts not later than three (3) working days after receipt of Subcontractors list. Contractor's approval of any Subcontractor shall not relieve Subcontractor of liability for the sub-subcontractor's performance.

13.5 Subcontractor agrees that if any portion of the Work covered by this Agreement is further subcontracted, then such subcontractors shall be required to be bound by and observe the provisions of this Agreement to the same extent as herein required by Subcontractor and that a copy of this clause imposing such obligations upon the sub-subcontractor shall be included in any further subcontract.

13.6 No person or entity shall work upon the job site as an independent contractor, regardless of the persons with whom such person or entity is in direct contract, if such person or entity would not be approved as a sub-subcontractor under this Agreement.

13.7 Subcontractor hereby assigns to Contractor (and its assigns) all its interest in any sub-subcontracts and purchase orders now existing or hereinafter entered into by Subcontractor for performance of any part of the Work, which assignment will be effective upon acceptance by Contractor in writing and only as to those sub-subcontracts and purchase orders which Contractor so designates in the writing. Contractor may accept the assignment at any time during the course of construction prior to final completion. All sub-subcontracts and purchase orders shall provide that they are freely assignable by Subcontractor to Contractor and assigns. Such assignment is part of the consideration to Contractor for entering into this Agreement with Subcontractor and may not be withdrawn prior to final completion of the Work.

14. TERMINATION

14.1 If Subcontractor shall:

14.1.1 Fail to commence the work in accordance with Paragraph 2.1;

14.1.2 Fail to diligently prosecute the work to completion in a diligent, efficient, timely, workmanlike, skillful, and careful manner;

14.1.3 Fail to complete the work in strict accordance with the provisions of the Contract Documents;

14.1.4 Fail to adequately man the job with men, materials, or equipment sufficient to complete the Work in accordance with the Contractor's schedule;

14.1.5 Fail to perform any of its obligations under the Contract Documents;

14.1.6 Fail to make prompt payments to its sub-subcontractor, materialmen, or laborers;

14.1.7 Does, or omits to do, anything whereby safety or proper construction may be endangered, or whereby damage or injury may result to person or property;

Then Contractor shall have the right, if Subcontractor fails to cure within three (3) days of written notice, to:

14.1.8 Terminate this Agreement or;

14.1.9 Take possession of and use all or any part of Subcontractor's materials, tools, equipment, supplies, and other property of any and every kind used by Subcontractor in the performance of the Work, and to use such property in the completion of the work, or;

14.1.10 Complete the Work in any manner it deems desirable or;

14.1.11 Without taking over the Work, engage the services of other parties to assist in its completion;

and may, without waiving any other right or claim, deduct the cost therefore, including overhead, from the amount included in the Subcontract Price which is due or which may thereafter become due Subcontractor.

14.2 Notwithstanding the above, if Subcontractor fails, within twenty-four (24) hours of written notice, to adequately man the job in order to comply with Contractor's schedule, Contractor may exercise any remedy provided in Paragraph 14.1.

14.3 Contractor may terminate this Agreement without cause by giving seven (7) calendar days prior written notice to Subcontractor. In such event Contractor will pay Subcontractor for that portion of the Subcontract Price, less the aggregate of previous payments, allocable to the Work completed as of the date of termination. Contractor will not be responsible for reimbursement for overhead, general expenses, or profit, anticipated or otherwise, for Work not completed. Contractor will reimburse Subcontractor for costs necessarily incurred in organizing and carrying out the stoppage of the Work and paid directly by Subcontractor, not including overhead, general expenses, or profit. Contractor will not be responsible to reimburse Subcontractor for any continuing contractual commitments to sub-subcontractors or materialmen or penalties or damages for canceling such contractual commitments, inasmuch as Subcontractor shall make all sub-subcontracts and other commitments subject to this provision.

14.4 If Subcontractor is adjudged a bankrupt or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of Subcontractor's insolvency, Subcontractor's performance of this Agreement could be impaired or frustrated. Accordingly, upon the occurrence of any such event, Contractor shall be entitled to request of Subcontractor or its successor in interest adequate assurance of future performance in accordance with the terms and condition hereof. Failure to comply with such request within seven (7) days of delivery of the request shall entitle Contractor to terminate this Agreement and to the accompanying rights set forth above. In all events, pending receipt of adequate assurance of performance and actual performance in accordance therewith, Contractor shall be entitled to proceed with the Work with its own forces or with other contractors on a time and materials or appropriate basis, the cost of which will be back charged against the Subcontract Price hereof.

14.5 Upon a determination by an arbitrator or a court that termination by Contractor of Subcontractor or its successor in interest was wrongful, such termination will be deemed converted to a termination for convenience as set forth above and Subcontractor's remedy for wrongful termination is limited to the recovery of the payments permitted for such termination for convenience as set forth herein in Subparagraph 14.3 of this Article.

14.6 In the event of termination, including termination without cause, Contractor may require Subcontractor to promptly assign to it all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and any other commitments which Contractor in its sole discretion chooses to take by assignment and in such event Subcontractor shall promptly execute and deliver to Contractor written assignments of the same which have not been heretofore assigned as required under Article 13 herein.

14.7 Termination by Contractor shall not constitute any waiver of rights, claims, or causes of action Contractor may have against Subcontractor.

14.8 In the event Owner, for any cause, suspends work under the Owner-Contractor Agreement, Contractor may order Subcontractor to suspend work under this Agreement. Subcontractor shall not be entitled to any additional compensation or damage for such suspensions except and only to the extent Contractor receives additional compensation from Owner under the provision of the Owner-Contractor Agreement for work covered by this Agreement. Subcontractor shall not be entitled to profit on its costs attributable to any suspension of work.

15. MEDIATION/ARBITRATION

15.1 Contractor and Subcontractor mutually agree that any dispute arising under this Agreement shall be submitted to a mediator agreed to by both parties as soon as such dispute arises, but in any event prior to the commencement of arbitration or litigation. Mediation shall occur at the place where the Project is located and the mediator's fees and expenses shall be shared equally by the parties. Contractor and Subcontractor agree to exercise their best efforts and good faith to resolve all disputes in mediation.

15.2 As to any claims asserted by Subcontractor for or on account of acts or omissions of the Owner or his Architect or any claims made by the Owner for which the Subcontractor is responsible, which claims are not disposed of by agreement, the Subcontractor agrees to prosecute or defend such claims in Contractor's name in accordance with the provision in the Owner-Contractor Agreement for determining disputes. Contractor shall have the option to present such claims upon Subcontractor's behalf, in advance of and even without Subcontractor's written request. Contractor and Subcontractor further agree to cooperate in prosecuting or defending claims. Subcontractor shall have full responsibility for preparation and presentation of such claims and shall bear expenses thereof, including attorney's fees. Subcontractor agrees to be bound by the procedure and final determination as specified in any such disputes clause, and agrees that it will not take, or will suspend, any other action or actions with respect to any such claims and will not pursue any independent litigation with respect thereto, pending final determination under such disputes clause. Subcontractor shall not be entitled to receive any greater amount from Contractor than Contractor actually receives from the Owner on account of Subcontractor's Work, less markups or costs incurred by the Contractor and to which the Contractor is otherwise entitled. Subcontractor agrees that it will accept such amount, if any, received by Contractor from Owner as full satisfaction and discharge of all claims for or on account of acts or omissions of the Owner.

15.3 Any controversy or claim arising out of or relating to this Agreement or the breach of this Agreement shall be exclusively settled by arbitration in Portland, Oregon, under the laws of the State of Oregon, and in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. All disputes shall be heard and decided by one arbitrator unless either party makes claims which exceed \$300,000.00 in which event each party hereto shall select one arbitrator and the two so selected shall then select a third arbitrator. Each party hereto accepts jurisdiction of the courts of the State of Oregon for the purposes of commencing, conducting, and enforcing such arbitration proceedings and agrees to accept notice in writing by registered letter, addressed to said party, of intention to proceed with arbitration, and of any other step in connection therewith or for enforcement thereof, with the same effect as though personally served in the State of Oregon. The decision of the arbitrator shall be final and binding upon both parties, who hereby agree to comply therewith.

15.4 Where the Arbitrator decides that Contractor has properly fulfilled the Agreement, or where Contractor has offered settlement, before the arbitration decision was rendered, that meets or exceeds the arbitrator's award and which Subcontractor refused to accept, Subcontractor shall pay all costs and fees, including attorney and arbitration fees, incurred or necessitated by the arbitration proceeding.

15.5 Subcontractor consents to consolidation of any arbitration between Contractor, Owner, and/or Subcontractor with any other arbitration involving, arising from, or relating to the Project.

15.6 In the event of any claim or dispute between Contractor and Subcontractor it is specifically agreed by the parties hereto that no claim, dispute, or controversy shall interfere with the progress and performance of the Work required to be performed under this Agreement and that Subcontractor shall proceed as directed by Contractor in all instances with its Work under the Agreement.

16. ATTORNEY FEES

16.1 In the event suit or action is instituted to enforce any right granted herein, the prevailing party shall be entitled to, in addition to the statutory costs and disbursements, a reasonable attorney's fee to be fixed by the trial court and on appeal, if any, similar fees in the appellate court, to be fixed by the appellate court.

17. APPLICABLE LAW

17.1 This agreement shall be considered to have been made in and shall be interpreted under the laws of the State of Oregon.

17.2 The site for any arbitration or venue for any lawsuit arising out of the Agreement or the Work thereunder shall be Portland, Oregon and except as provided in Paragraph 15.3 all proceedings shall be strictly in accordance with the laws of the State of Oregon.