



**WELLIVER McGUIRE INC.**  
**GENERAL CONDITIONS**  
**OF THE SUBCONTRACT AGREEMENT**

January 1, 2009

**ARTICLE 1**  
**THE WORK**

**1.1** The Construction Agreement, Subcontract Agreement, Welliver McGuire Inc. General Conditions of the Subcontract Agreement ("General Conditions"), the Project Manual, plans, specifications, other general and special conditions, advertisement for bids, instructions to bidders, Project Schedule, Subcontractor Schedule, any addenda, alternates and amendments issued prior to the date of the Subcontract Agreement and Change Orders or other duly executed modifications to the Subcontract Agreement constitute the Contract Documents.

**1.2** SUBCONTRACTOR assumes toward CONTRACTOR all obligations, risks and responsibilities which CONTRACTOR has assumed towards Owner in the Contract Documents and shall be bound to CONTRACTOR in the same manner and to the same extent CONTRACTOR is bound to the Owner by the Contract Documents;

**1.3** The term "Contractor's Work" means that portion of the construction services required by the Contract Documents to be provided by the CONTRACTOR to fulfill the CONTRACTOR's obligations under the Contract Documents. The term "Work" includes that portion of Contractor's Work required of Subcontractor. The SUBCONTRACTOR shall perform the Work including all supervision, labor, materials, plant, scaffolding, tools, equipment, supplies and other things necessary for the construction and completion of the Work. SUBCONTRACTOR shall obtain and the Work includes all permits, licenses, fees, inspections and certificates of inspection necessary for SUBCONTRACTOR's performance of the Work.

**1.4** SUBCONTRACTOR shall provide any temporary field office, utilities and storage facilities it requires. All temporary facilities and their location at the Project site are subject to CONTRACTOR's approval.

**1.5** SUBCONTRACTOR agrees to unload and properly store its materials and equipment required for the Work, whether furnished by Owner, CONTRACTOR or SUBCONTRACTOR, as directed by CONTRACTOR. SUBCONTRACTOR assumes full responsibility for the protection and safety of all such materials and equipment.

**1.6** Prior to the start of construction and as requested by CONTRACTOR during the course of the Project, SUBCONTRACTOR shall complete and submit to CONTRACTOR the Sub-subcontractors and Suppliers List which shall include the names, phone numbers and addresses

of all sub-subcontractors, material suppliers and equipment rental suppliers it intends to use on the Project.

**1.7** No agreement between SUBCONTRACTOR, its sub-subcontractors or suppliers and any other subcontractor shall bind or purport to bind CONTRACTOR. SUBCONTRACTOR its sub-subcontractors and suppliers shall cooperate with CONTRACTOR and other subcontractors. All agreements entered into by SUBCONTRACTOR on account of the Work shall, upon CONTRACTOR's request, be assigned to CONTRACTOR should the SUBCONTRACTOR be terminated for any reason. SUBCONTRACTOR shall not assign or transfer funds due it by the CONTRACTOR, without the prior written consent of CONTRACTOR and SUBCONTRACTOR's surety, if any.

**1.8** SUBCONTRACTOR shall provide all layouts and engineering for the Work from control points established by CONTRACTOR and shall verify and be responsible for the correctness of all measurements. No claims shall be allowed because of discrepancies between actual and indicated dimensions. Discrepancies shall be reported to CONTRACTOR prior to SUBCONTRACTOR proceeding with the Work. Inspection by CONTRACTOR shall not relieve SUBCONTRACTOR of its responsibility for accurate dimensions.

**1.9** SUBCONTRACTOR shall coordinate the Work with the work of CONTRACTOR, other subcontractors, and any prime contractors retained by Owner. SUBCONTRACTOR shall take all necessary precautions to protect the work of others from damage caused by SUBCONTRACTOR'S operations. SUBCONTRACTOR shall be responsible for any damage caused by it to the work of others and CONTRACTOR may withhold from payments due SUBCONTRACTOR sufficient monies to cover the cost of any such damages.

**1.10** SUBCONTRACTOR shall provide a sufficient number of skilled workers to timely perform the Work in a neat, workmanlike manner.

**1.11** If there is any inconsistency in the Contract Documents affecting the work of SUBCONTRACTOR, the SUBCONTRACTOR shall provide or perform the greater quality and the greater quantity of work, labor, materials or services.

## **ARTICLE 2** **TIME OF PERFORMANCE**

**2.1** SUBCONTRACTOR shall commence the Work when directed by CONTRACTOR and proceed in a prompt and diligent manner to maintain the schedules and milestones ("Project Schedule") established by CONTRACTOR. SUBCONTRACTOR shall complete portions of the Work and the whole of the Work in accordance with the Project Schedule and the Contract Documents.

**2.2** The Project Schedule is subject to review and revision. Any revisions will be available for SUBCONTRACTOR's information at CONTRACTOR's Project site office. SUBCONTRACTOR agrees it is the responsibility of SUBCONTRACTOR to attend project meetings and stay informed of any schedule revisions. SUBCONTRACTOR shall not be entitled to additional compensation for compliance with Project Schedule revisions unless and only to the extent that the Contract Documents entitle CONTRACTOR to reimbursement with respect to SUBCONTRACTOR's claims for such additional compensation, subject to the requirements of Article 5.

**2.3** Prior to the start of construction, SUBCONTRACTOR shall submit to CONTRACTOR, if requested, a detailed schedule for performance of the Work ("Subcontractor's Schedule"). This schedule shall comply with the Project Schedule and the Contract Documents. The estimated percentage completion for each phase of the Work as well as the Work as a whole shall be indicated as required from commencement to completion of the Work. SUBCONTRACTOR agrees to make additional estimates of completion time and progress of the Work as CONTRACTOR may reasonably require. SUBCONTRACTOR shall prepare a staffing chart, if requested, indicating the

estimated number of employees required to maintain the Subcontractor's Schedule. SUBCONTRACTOR agrees not to make any departure from its work schedule, work force or working hours without prior notice and approval of CONTRACTOR, except in emergency situations.

**2.4** SUBCONTRACTOR shall submit to CONTRACTOR, if requested, a listing of all delivery dates for critical equipment and materials.

**2.5** SUBCONTRACTOR understands that the Work is phased and may be performed in different locations of the Project simultaneously. SUBCONTRACTOR shall commence the several parts of the Work at such times and in such order as the CONTRACTOR may direct.

**2.6** SUBCONTRACTOR shall be liable to CONTRACTOR for any damages sustained by CONTRACTOR on account of SUBCONTRACTOR's failure to timely complete the Work.

**2.7** If SUBCONTRACTOR is delayed or disrupted in the performance of the Work through no fault attributable to SUBCONTRACTOR; then SUBCONTRACTOR may be entitled to an appropriate extension of time for the performance of the Work on the condition that SUBCONTRACTOR complies with the requirements of Article 5.

### **ARTICLE 3 CONTRACT PRICE**

**3.1** The Contract Price set forth in the Subcontract Agreement includes all applicable Federal, State, county, municipal and other taxes imposed by law in connection with the Work, whether levied or assessed upon the Owner, CONTRACTOR or SUBCONTRACTOR. The Contract Price includes all payroll taxes and contributions levied against SUBCONTRACTOR on account of Social Security, unemployment compensation, workers' compensation acts and collective bargaining agreements with any labor organization. SUBCONTRACTOR agrees to indemnify and hold harmless CONTRACTOR and Owner from any liability for any taxes or contributions imposed upon, arising out of or relating to the Work. This indemnity shall survive the termination of the Subcontract Agreement.

**3.2** Prior to the start of construction, SUBCONTRACTOR shall submit to CONTRACTOR for approval, a breakdown of the Contract Price ("Schedule of Values") divided between material and labor for each item of the Work. The Schedule of Values, when accepted by CONTRACTOR, shall be used as the basis for SUBCONTRACTOR's applications for payment.

**3.3** If required by an audit clause in the Construction Agreement, applicable law or court order, SUBCONTRACTOR shall maintain and make available to CONTRACTOR and OWNER at SUBCONTRACTOR's place of business, records and books of account detailing all costs and expenses of the Work.

### **ARTICLE 4 TERMS OF PAYMENT**

**4.1** On or before the 20th day of each month (or other date if mutually agreed upon or required by the Construction Agreement), SUBCONTRACTOR shall deliver to CONTRACTOR's principal office, two original applications (corresponding to an approved draft or pencil copy if applicable) for payment on a form approved by CONTRACTOR. The applications shall request payment for work in place and materials stored on the Project in accordance with the Schedule of Values. Applications received from SUBCONTRACTOR after an applicable deadline may not be processed until the next billing cycle.

**4.2** All applications for payment must be signed, notarized, and accurately represent the Work in place or stored. Revisions to applications due to inaccuracy may delay payment until the next billing cycle.

**4.3** SUBCONTRACTOR shall submit with each application for payment SUBCONTRACTOR's duly executed General Release of Liens and Claims ("Release") and such other documents or instruments reasonably required by CONTRACTOR or Owner. Each Release submitted during the course of the Work releases every claim (as defined in Article 24) of the Subcontractor against the Contractor, its surety, the Owner, the Project and the premises from the commencement of the Contractor's Work through the date of the Release or corresponding application for payment. Only claims timely, continuously and expressly reserved as provided for in the Release shall be reserved. This provision supersedes any notice of claim and subsequent substantiation submitted under Article 5. Subcontractor acknowledges that the consideration given for the Subcontract Agreement (including any Change Orders) is sufficient to cover the Releases.

**4.4** Payment in current funds shall be due SUBCONTRACTOR promptly after CONTRACTOR's receipt of payment from the Owner for the Work covered by the application for payment. CONTRACTOR may withhold up to ten percent from payments by the Owner on account of the Work as retainage. All Work covered by the application for payment shall become the property of CONTRACTOR, or, if the Contract Documents so provide, the property of the Owner. This provision shall not release SUBCONTRACTOR from sole responsibility for all Work and materials upon which payments have been made. The SUBCONTRACTOR acknowledges that ten percent retainage is in lieu of providing a payment and performance bond with a penal sum equal to the Contract Price. SUBCONTRACTOR reserves the right to provide a payment and performance bond with a penal sum equal to the Contract Price at SUBCONTRACTOR's expense in exchange for CONTRACTOR reducing the percent of retainage to the same percentage withheld by the Owner under the Construction Agreement.

**4.5** In strict compliance with applicable law, SUBCONTRACTOR shall promptly pay its employees, sub-subcontractors and suppliers all amounts due in connection with the Work. CONTRACTOR shall have the right at any time, to communicate with SUBCONTRACTOR's sub-subcontractors, unions and suppliers for the purpose of verifying that SUBCONTRACTOR's payment obligations are being met. In the event CONTRACTOR reasonably believes SUBCONTRACTOR is not fulfilling its payment obligations, CONTRACTOR may take reasonable steps to insure that SUBCONTRACTOR discharges its payment obligations. Those steps include without limitation, (i) the issuance of joint checks; (ii) withholding from progress payments an amount to protect CONTRACTOR from any and all claims, losses or damages, including reasonable attorney's fees, arising out of any claim; and (iii) any other reasonable actions. When SUBCONTRACTOR submits evidence satisfactory to CONTRACTOR and Owner that its payment obligations in connection with the Work have been met, CONTRACTOR shall pay all amounts due SUBCONTRACTOR less any reasonable costs incurred enforcing the provisions of this paragraph.

**4.6** No payment shall be made to SUBCONTRACTOR until SUBCONTRACTOR has provided to CONTRACTOR proof of required insurance coverage, properly executed Subcontract Agreement, Release and the Schedule of Values and other documentation or instruments required by the Contract Documents.

**4.7** Final payment, including any retainage withheld, shall be made promptly after the CONTRACTOR's Work has been completed and accepted by Owner, Architect/Engineer and CONTRACTOR, satisfactory proof of payment of all amounts owed by SUBCONTRACTOR in connection with the Work has been provided to CONTRACTOR, CONTRACTOR has been paid in full for the entire Project, and SUBCONTRACTOR has submitted to CONTRACTOR: (i) a final Release ; (ii) executed warranties as required by the Contract Documents and Article 12; (iii) "as-built" drawings, if required; (iv) written consent of SUBCONTRACTOR's surety; and (v) such other documents or instruments CONTRACTOR may reasonably require or are required by the Contract Documents.

**4.8** No payments made under Article 4, including the final payment, shall be deemed to be conclusive evidence of the acceptability of the Work, either in whole or in part. No payment shall be deemed an acceptance of defective work or defective or improper materials. No occupancy or use by the Owner shall constitute acceptance of the Work.

**4.9** The liability of CONTRACTOR's surety on the payment bond, if any, issued for this Project shall not be greater than the liability of the CONTRACTOR hereunder. The Contract Documents shall be deemed incorporated into any such payment bond and the question of whether or not any funds may be due or justly due to the SUBCONTRACTOR, as may be referenced within any such bond, shall solely be determined by reference to the Contract Documents. Any surety issuing such payment bond shall be an intended beneficiary of the provisions of the Contract Documents.

**4.10** Conditions Precedent. Subcontractor's compliance with paragraphs 4.1, 4.2, 4.3, 4.6 and 4.7 is a condition precedent to the CONTRACTOR's obligation to pay any interim or final payment. This provision shall survive any termination of the Subcontract Agreement.

## **ARTICLE 5**

### **CHANGES AND CLAIMS**

**5.1** SUBCONTRACTOR shall not claim, and CONTRACTOR shall not be obligated to pay SUBCONTRACTOR any additional sums of money over and above the Contract Price unless authorized by written Change Order. All modifications to the Contract Documents including without limitation, any addition or deduction to the Contract Price or request for an extension of time shall be by written Change Order.

**5.2** CONTRACTOR may at any time unilaterally or by agreement with SUBCONTRACTOR and without notice to the sureties, if any, make changes in the Work. Any unilateral order or agreement shall be in writing. SUBCONTRACTOR shall perform the Work as changed without delay, provided SUBCONTRACTOR has received a written directive from CONTRACTOR to proceed with the changed work, unless an emergency requires SUBCONTRACTOR to proceed without a written order. In the event CONTRACTOR and SUBCONTRACTOR cannot agree upon the addition or deletion to the Contract Price or time caused by such change, SUBCONTRACTOR shall proceed with the work and the value of that work shall be determined pursuant to Paragraph 5.3 or 5.4 as appropriate.

**5.3** SUBCONTRACTOR shall submit all claims in writing to CONTRACTOR. Written notice of a claim or claims shall be delivered by the SUBCONTRACTOR to CONTRACTOR within five days from the beginning of the event for which the claim is made; otherwise such claims shall be waived. SUBCONTRACTOR shall substantiate in writing any such claim within ten days of having given written notice, otherwise such claims shall be deemed waived. CONTRACTOR shall process such claims according to the provisions of the Contract Documents. If agreed to by CONTRACTOR, the value of the work for which a Change Order will be authorized shall be determined by lump sum or by unit price, if any, stipulated in the Subcontract Agreement for such work. If no such prices are stipulated, the value so determined shall not exceed the lesser of the value obtained under the following methods:

- a. By adding or deducting a lump sum or an amount determined by unit price agreed upon by CONTRACTOR and SUBCONTRACTOR; or
- b. By adding (i) the actual cost of labor to SUBCONTRACTOR, in accordance with established rates but not at rates higher than standard in the area where the Work is located; and (ii) the actual cost of materials and equipment, less all savings, discounts, rebates and credits; and (iii) allowances for overhead and profit upon SUBCONTRACTOR'S direct labor and materials and upon work performed by sub-subcontractors. The above allowances are subject to acceptance by the Owner.

- c. Payment to SUBCONTRACTOR for such Change Orders shall be in accordance with Article 4 of this Subcontract Agreement.

The requirements of written notice, substantiation and their corresponding timeframes set forth in paragraphs 5.3 and 5.4 are conditions precedent to any obligation of the Contractor to initiate, process or pay any Change Order or claim(s) subject to this provision.

**5.4** SUBCONTRACTOR shall submit in writing to CONTRACTOR all claims not subject to paragraph 5.3 within five days from the beginning of the event for which the claim is made or such claims will be waived. All unresolved claims shall be subject to the dispute resolution provisions set out in Article 24.

## **ARTICLE 6** **SUBMITTALS**

**6.1** SUBCONTRACTOR shall, at its expense, promptly prepare and deliver to CONTRACTOR copies of all submittals or other documentation CONTRACTOR reasonably deems necessary under the Contract Documents, in the number required for review and within such time as required to prevent delay. By delivering submittals, SUBCONTRACTOR represents that it has determined and verified all field measurements, field construction criteria, contiguous work, materials, catalog numbers and similar data and that it has verified each submittal's compliance with the requirements of the Contract Documents.

**6.2** CONTRACTOR's review and approval of Submittals is only for the convenience of the Owner and shall not be construed as (i) an assumption of design responsibility; (ii) a determination that the Work (including products and assemblies) described conforms to the Contract Documents, applicable statutes, codes, ordinances and regulations; or (iii) any type of warranty, express or implied.

**6.3** Any review or approval of submittals by CONTRACTOR, Owner, Architect or Engineer will not relieve SUBCONTRACTOR from its obligations to perform the Work in strict accordance with the Contract Documents including without limitation, Articles 1, 11 and 12 herein.

**6.4** If SUBCONTRACTOR submits an alternate product than that specified in the Contract Documents ("Substitution"), SUBCONTRACTOR warrants that (i) the Substitution conforms to the requirements of the Contract Documents and (ii) the SUBCONTRACTOR accepts all warranty and correction obligations with respect to the Substitution as if originally specified in the Contract Documents.

## **ARTICLE 7** **REMOVAL OF DEBRIS AND CLEAN UP**

**7.1** At all times the SUBCONTRACTOR shall keep all areas of the Project free from SUBCONTRACTOR's rubbish, excess material and equipment. If SUBCONTRACTOR fails to remove any of its rubbish, materials, tools or equipment promptly after written notice, CONTRACTOR may, without further notice to SUBCONTRACTOR, remove any or all of same and charge the cost against monies due or to become due SUBCONTRACTOR.

## **ARTICLE 8** **LIABILITY**

**8.1** SUBCONTRACTOR assumes all responsibility and liability for all of its work, supervision, labor, equipment, materials, scaffolding, tools and all else provided by SUBCONTRACTOR. In the event of any loss, damage or destruction to the Work (other than damages proximately caused

by others), SUBCONTRACTOR shall be liable for and shall repair, rebuild or otherwise remedy any loss, damage or destruction at SUBCONTRACTOR's expense.

**8.2** SUBCONTRACTOR shall be liable to CONTRACTOR for all costs and damages CONTRACTOR incurs as a result of SUBCONTRACTOR's, its sub-subcontractor's or suppliers' failure to perform the Work in accordance with the terms of the Contract Documents.

**8.3** To the fullest extent permitted by law, SUBCONTRACTOR agrees to hold harmless, defend and indemnify the CONTRACTOR, Owner, Architect/Engineer, their affiliates, parents, subsidiaries, officers, directors, employees, shareholders and agents, at SUBCONTRACTOR's expense, against each and every claim, demand, damage, expense, loss, liability and suit or other action arising out of any injury, including death, to persons, including SUBCONTRACTOR's employees and property, occasioned in any way by (i) the actions or omissions of SUBCONTRACTOR, its sub-subcontractors, suppliers, sub-subcontractors' agents, employees or other persons while engaged in the performance of the Work or while in or about the premises of Owner or (ii) the breakage or malfunctioning of any tools, supplies, scaffolding or other equipment, similar or dissimilar to the foregoing, used by or furnished to SUBCONTRACTOR, its sub-subcontractors, or sub-subcontractors' agents or employees. This provision shall not be construed to require the SUBCONTRACTOR to indemnify the CONTRACTOR for the CONTRACTOR's negligence, to the extent the CONTRACTOR's negligence proximately caused the damages complained for.

**8.4** SUBCONTRACTOR's assumption of liability is independent from, and not limited in any manner by, SUBCONTRACTOR's insurance coverage obtained pursuant to Article 14, or otherwise.

## **ARTICLE 9**

### **LABOR**

**9.1** SUBCONTRACTOR understands that contracts may be awarded by CONTRACTOR on the Project regardless of SUBCONTRACTOR's affiliation with any labor or collective bargaining organization. SUBCONTRACTOR agrees to employ people, agents, suppliers and Sub-subcontractors who will perform the Work whether or not other employees or mechanics on the Project are members or non-members of any labor or collective bargaining organization. Any labor disputes involving SUBCONTRACTOR are those of SUBCONTRACTOR and not CONTRACTOR or Owner.

**9.2** SUBCONTRACTOR shall hold harmless, defend and indemnify CONTRACTOR from any and all suits, claims, demands and liabilities of whatever kind or nature that shall arise out of or by reason of any action that shall be taken by any union for the purpose of securing compliance with its collective bargaining agreements as a result of acts or omissions by SUBCONTRACTOR.

## **ARTICLE 10**

### **SAFETY**

**10.1** SUBCONTRACTOR agrees that the prevention of accidents to workers engaged in the Work is the responsibility of SUBCONTRACTOR and shall maintain a safe and healthful working environment for SUBCONTRACTOR's employees, sub-subcontractors and suppliers. SUBCONTRACTOR shall comply with the requirements of OSHA Safety and Health Standards (29 CFR 1926) and all other applicable Federal, State and local safety laws, rules and regulations, including site safety rules required by CONTRACTOR or Owner. **SUBCONTRACTOR shall enforce the Contractor's safety and substance abuse policies, and acknowledges receipt of and agreement with those policies.**

**10.2** SUBCONTRACTOR recognizes that certain federal and state statutes and regulations impose liability upon the Owner or CONTRACTOR without fault on their part for injuries to SUBCONTRACTOR's employees. As between SUBCONTRACTOR, Owner and CONTRACTOR, SUBCONTRACTOR agrees that it has the responsibility of providing its employees with a safe place to work. To the fullest extent permitted by law, SUBCONTRACTOR shall hold harmless, defend and indemnify Owner and CONTRACTOR from any liability for damages arising from the failure to provide SUBCONTRACTOR's employees with a safe place to work or to comply with statutes and regulations.

**10.3** SUBCONTRACTOR shall comply with all applicable Federal, State and local Hazardous Material Right to Know laws, rules and regulations (HAZMAT). SUBCONTRACTOR shall cooperate with CONTRACTOR in complying with and implementing procedures required by HAZMAT including providing Material Safety Data Sheets required for the Work.

**10.4** SUBCONTRACTOR shall report all accidents involving its employees to the CONTRACTOR's site Superintendent as soon as practicable after the occurrence of an accident. A written report of the accident must be delivered to CONTRACTOR's site Superintendent within 24 hours following an accident.

**10.5** SUBCONTRACTOR shall on a daily basis inspect areas where its employees are working and give CONTRACTOR immediate notice of any condition beyond its control that SUBCONTRACTOR believes is hazardous to the safety or health of its employees. SUBCONTRACTOR shall give CONTRACTOR written notice within 24 hours after discovering any such condition.

**10.6** SUBCONTRACTOR agrees to stop any part of the Work that CONTRACTOR reasonably deems unsafe until corrective measures satisfactory to CONTRACTOR have been taken. Should SUBCONTRACTOR neglect to adopt such corrective measures, CONTRACTOR may perform them and deduct the cost from payments due or to become due to SUBCONTRACTOR.

## **ARTICLE 11** **CONDUCT OF THE WORK**

**11.1** SUBCONTRACTOR agrees to be bound by all rules and regulations of Federal, State and local laws, codes and ordinances applicable to the Work.

**11.2** SUBCONTRACTOR is an independent contractor and shall be responsible for all construction means and methods employed in the Work, the direction of its employees, sub-subcontractors and suppliers. SUBCONTRACTOR shall enforce compliance by its employees, sub-subcontractors and suppliers with those regulations and practices set forth herein and shall remove or cause to be removed from the Project premises any such employee whose presence is detrimental to safety or the orderly prosecution of the Work.

**11.3** Prior to commencing the Work, SUBCONTRACTOR shall furnish to CONTRACTOR, upon request, the name, qualifications and experience of a competent superintendent who shall be acceptable to CONTRACTOR, with whom CONTRACTOR may communicate relative to the performance of the Work. The superintendent shall be present at the Project at all times during the course of the Work.

## **ARTICLE 12** **MATERIALS, WORKMANSHIP, INSPECTION AND WARRANTY**

**12.1** SUBCONTRACTOR shall perform the Work in strict accordance with the Contract Documents and the best industry practices. All materials are to be new, unless specified otherwise. SUBCONTRACTOR, at its expense shall remove and replace materials not meeting



specification or materials failing to perform as represented or warranted by the manufacturer, whether incorporated in the Work or not. SUBCONTRACTOR shall promptly replace or correct any work or materials that CONTRACTOR or Owner (including Owner's agent or design professional) shall reject as failing to conform to the requirements of the Contract Documents.

**12.2** SUBCONTRACTOR warrants the Work and its performance to CONTRACTOR on the same terms as CONTRACTOR warrants the Work to Owner under the Contract Documents. SUBCONTRACTOR shall perform all warranty obligations and responsibilities for the Work under the Contract Documents. SUBCONTRACTOR at its expense, shall remedy defects due to improper and/or defective workmanship or materials appearing within one year of CONTRACTOR completing the Project or such longer period as may be set forth in the Contract Documents ("Correction Period"). Upon completion of the Work, SUBCONTRACTOR shall submit to CONTRACTOR all written warranties and guarantees from SUBCONTRACTOR's suppliers and material manufacturers. If a warranty assigned to the CONTRACTOR or Owner by a supplier or manufacturer is available, the CONTRACTOR will first diligently pursue remedies under such warranty and SUBCONTRACTOR shall fully cooperate in such effort. The SUBCONTRACTOR acknowledges that its obligations to the CONTRACTOR and Owner under this Article 12 shall be joint and several during the Correction Period with its suppliers, vendors and material manufacturers for all materials supplied on account of the Work. Any notice given to SUBCONTRACTOR by CONTRACTOR regarding any deficiency in the Work covered by this Article 12 shall toll the Correction Period until corrections or remedial actions necessary hereunder have been taken. SUBCONTRACTOR shall be responsible for all harm caused by its failure to perform the Work in strict accordance with any manufacturer's requirements or its failure to maintain equipment and materials installed hereunder through the CONTRACTOR's completion of the Project. The requirements of this Article 12 shall continue notwithstanding the termination of Subcontractor for any reason.

### **ARTICLE 13** **FAIR EMPLOYMENT PRACTICE**

**13.1** SUBCONTRACTOR agrees to comply with all laws, rules and regulations applicable to the Work prohibiting discrimination in employment.

**13.2** SUBCONTRACTOR shall permit access to its records by representatives of CONTRACTOR or Owner for purposes of investigation to ascertain compliance with the provisions of this Article 13. Should SUBCONTRACTOR fail to comply with the equal opportunity provisions herein, the Subcontract Agreement may be terminated. SUBCONTRACTOR shall include the provisions of this Article 13 in its sub-subcontracts and purchase orders.

### **ARTICLE 14** **INSURANCE**

**14.1** SUBCONTRACTOR shall procure and maintain liability insurance in accordance with the provisions and minimum limits set forth in Paragraph 14.7. The commercial general liability policy shall name CONTRACTOR, Architect and Owner as additional insureds and provide coverage for the defense and indemnification of SUBCONTRACTOR, CONTRACTOR, Architect and Owner, their agents and employees, against all claims for damages arising from any activities conducted in connection with the Work, including all claims by or on behalf of any person for injury to person or persons, including death, property damage and loss. **SUBCONTRACTOR'S liability insurance shall be primary and written on an occurrence basis. The Contractor's, Owner's and Architect/Engineer's policies shall be excess and noncontributory.**

**14.1.1 Waiver of Subrogation.** The CONTRACTOR and SUBCONTRACTOR waive all rights of subrogation against each other the Architect, Owner and other contractors working at the

Project, their agents and employees, for damages or other perils to the extent covered by insurance obtained pursuant to this Article 14. The SUBCONTRACTOR shall require similar waivers from all parties with whom it contracts pursuant to the Work. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly and whether or not the person or entity had an insurable interest in damaged property.

**14.2** Before commencing the Work, SUBCONTRACTOR shall submit certificates of insurance to CONTRACTOR as evidence of SUBCONTRACTOR's compliance with this Article 14. If requested by CONTRACTOR, true copies of the policies shall be submitted in addition to certificates. Such certificates or policies shall be underwritten by a carrier reasonably satisfactory to CONTRACTOR. The policies shall be identified by title, policy number, effective date, expiration date, coverage, and limits of liability. Endorsements as required above and any non-standard exclusion endorsements for any required policies shall be attached to or be a part of the policy scope. All certificates and policies must be endorsed to require that the insurance company provide CONTRACTOR with a minimum of 30 days prior written notice of cancellation or material change.

**14.3** SUBCONTRACTOR shall include coverage for its sub-subcontractors in its policy or submit similar insurance certification from each of its sub-subcontractors before the Work commences. Each sub-subcontractor must be covered by insurance of the same character and in the same amounts as SUBCONTRACTOR. SUBCONTRACTOR shall not permit any sub-subcontractor to enter upon or continue the performance of the Work unless such sub-subcontractor is insured in accordance with all requirements.

**14.4** During the course of the Work, whenever there is a lapse in the SUBCONTRACTOR's required insurance through cancellation, expiration, failure to renew, or any other cause, SUBCONTRACTOR shall cease performing the Work until complying with this Article 14. SUBCONTRACTOR shall have no claim against CONTRACTOR as a result of any such delays nor shall there be any extension of time. It shall be the sole responsibility of SUBCONTRACTOR to remedy any such delay. CONTRACTOR reserves its rights under Article 22 herein should SUBCONTRACTOR fail or refuse to promptly remedy any such delay.

**14.5** SUBCONTRACTOR shall carry Commercial General Liability Insurance with limits as specified in Article 14.7 for:

- a. **Personal Injury:** To protect SUBCONTRACTOR, CONTRACTOR AND OWNER, their heirs, successors and assigns against all claims for injury to or death of a person or persons caused by an event resulting from operations required by the Work. Such insurance shall cover the use of any equipment, machinery and vehicles. This Personal Injury Liability Insurance will be carried from commencement of the Work to final acceptance of the Work and will be extended to include insurance for completed operations. The completed operations portion shall be extended for the entire period of the warranties, but not less than two years following Final Completion (or longer if required by the Construction Agreement).
- b. **Property Damage:** To protect SUBCONTRACTOR, CONTRACTOR AND OWNER, their heirs, successors and assigns from all claims for property damage which may arise from operations required by the Work. Property Damage Liability shall be extended to provide for Broad Form coverage and shall also include insurance of completed operations as stated in (a). The completed operations portion of the Property Damage Liability Insurance shall also be extended as provided in (a) above.
- c. **Contractual Liability:** To protect SUBCONTRACTOR, CONTRACTOR and OWNER from claims for liability arising or assumed under the Contract Documents, including claims for injuries to SUBCONTRACTOR'S employees and other persons for whom SUBCONTRACTOR is responsible.

- d. Commercial General Liability shall include liability for personal injury or damages to property as a result of blasting, explosion, collapse of buildings or structures and damage to underground installations if applicable.
- e. The termination date of the policy or any applicable extended reporting period shall be no earlier than the termination date of all such coverage as required to be maintained herein.

**14.6** SUBCONTRACTOR shall carry Automobile Liability Insurance for bodily injury and property damage with the limits as specified to protect SUBCONTRACTOR, CONTRACTOR AND OWNER their heirs, successors and assigns from all claims for any bodily injury or property damage arising out of the ownership, maintenance or use including loading and unloading, of any vehicles during the operations required by the Work. This coverage shall include owned, hired and non-owned vehicles.

**14.7** SUBCONTRACTOR shall take out such insurance with a company or companies satisfactory to CONTRACTOR and Owner. The insurance shall be in at least the following minimum amounts:

- |    |  |   |
|----|--|---|
| A. | Worker's Compensation<br>Employer's Liability  | Limits - Statutory<br>Limits - 1 Million                        |
| B. | Commercial General<br>Liability: Including<br>Products/Completed Operations,<br>Contractor's Protective<br>& Contractual Liability | Limits - 1 Million (each occurrence)<br>- 2 million (aggregate) |
| C. | Comprehensive Automobile<br>Liability: (Owned, hired<br>and non-owned)   | Limits - 1 Million  |
| D. | Excess Liability<br>(Maximum \$10,000 retention)   | Limits - 5 Million  |

**NOTE:** All Commercial General Liability Insurance shall be endorsed specifically to cover the contractual liability stated in Paragraphs 8.3, 10.2 and otherwise. Coverage must conform to the scope of the Work. The limits of each policy are to be solely applicable to each Subcontract Agreement regardless of whether Subcontractor has multiple Subcontracts with Contractor or separate contracts with Owner being performed simultaneously.

**ARTICLE 15**  
**PRICE INCREASES**

**15.1** It is agreed that any and all risks of increases in the price of labor and materials during the performance of the Subcontract Agreement has been contemplated by SUBCONTRACTOR and has been taken into full consideration in arriving at the Contract Price.

**ARTICLE 16**  
**TITLE TO WORK AND MATERIALS**

**16.1** As between CONTRACTOR and SUBCONTRACTOR and parties claiming through either of them, in addition to title acquired by law, the title to all the Work, whether completed or in the course of construction at the site of the Work and the title to all materials and supplies, shall transfer to CONTRACTOR at the time of payment by CONTRACTOR to SUBCONTRACTOR.

Responsibility for protection of such materials and supplies shall remain with SUBCONTRACTOR until final acceptance by Owner.

**ARTICLE 17**  
**OWNERSHIP OF DRAWINGS AND SPECIFICATIONS**

**17.1** Upon request, all written data, including drawings and specifications furnished by CONTRACTOR, shall be returned to CONTRACTOR upon completion of the Work. CONTRACTOR shall furnish SUBCONTRACTOR with one set of complete drawings and one set of specifications to perform the Work.

**ARTICLE 18**  
**NOTICES**

**18.1** All notices shall be addressed to the parties at the addresses on the Subcontract Agreement. Notice shall be considered delivered when postmarked, if dispatched by registered mail or when received in all other cases.

**ARTICLE 19**  
**LIENS**

**19.1** So long as SUBCONTRACTOR has been paid for amounts properly due under Article 4 of this Agreement, SUBCONTRACTOR shall indemnify and save harmless CONTRACTOR and Owner from all claims, demands, causes of action, or suits of whatever nature arising out of the labor and materials furnished by SUBCONTRACTOR, its sub-subcontractors or suppliers. SUBCONTRACTOR shall keep the Work and property free and clear of all liens, claims, and encumbrances arising from the performance of the Work by SUBCONTRACTOR, its sub-subcontractors and suppliers. In the event that any one records a lien arising out of or relating to the Work, SUBCONTRACTOR agrees to discharge by substitution of a surety bond, or otherwise, any lien within 30 days of receiving notice of lien. In the event SUBCONTRACTOR shall not discharge such a lien, CONTRACTOR may discharge the lien or liens and recover from SUBCONTRACTOR all costs including attorneys' fees.

**ARTICLE 20**  
**TERMINATION BY OWNER**

**20.1** In the event the Owner terminates the Construction Agreement, the provisions of the termination article of the Construction Agreement shall become operative as if set forth here. CONTRACTOR shall have the same rights, remedies and privileges towards SUBCONTRACTOR as the Owner possesses with respect to CONTRACTOR, and SUBCONTRACTOR expressly agrees to comply with all obligations with respect to the termination that CONTRACTOR is required to comply with under the terms of the Construction Agreement. In the event of such termination, CONTRACTOR's liability to SUBCONTRACTOR shall be limited to any termination allowance which may be made by the Owner to CONTRACTOR for the Work, less CONTRACTOR's overhead and profit allocable thereto.

**ARTICLE 21**  
**TERMINATION FOR CONVENIENCE**

**21.1** In addition to any other right to terminate the Subcontract Agreement, CONTRACTOR shall have the right in its sole discretion to terminate the Subcontract Agreement in whole or in part for its convenience. If terminated for convenience, SUBCONTRACTOR shall be paid the value of the Work performed to date of termination only in accordance with the terms of Article 4 herein. SUBCONTRACTOR shall not claim for lost profits or any consequential damages.

**ARTICLE 22**  
**FAILURE TO PERFORM**

**22.1** If, in the opinion of CONTRACTOR, SUBCONTRACTOR at any time shall refuse or fail to provide sufficient skilled workers or materials, fail in any respect to timely prosecute the Work, cause by any act or omission the stoppage, delay or interference with the work of CONTRACTOR or any other subcontractor, fail to comply with any provisions of the Contract Documents, make a general assignment for the benefit of its creditors or if a receiver should be appointed on account of SUBCONTRACTOR's insolvency, then, after serving 48 hours written notice, unless the conditions specified in such notice shall have been eliminated within the 48 hours, CONTRACTOR may without prejudice to any other remedies it may have and without voiding other provisions of the Contract Documents and without notice to the sureties either: (i) take such steps as are necessary to overcome the condition, in which case SUBCONTRACTOR shall be liable to CONTRACTOR for the direct and indirect costs of such action; or (ii) terminate the Subcontract Agreement for default. In either of such events CONTRACTOR may enter the premises, take possession of all materials and equipment of SUBCONTRACTOR, require SUBCONTRACTOR to assign to CONTRACTOR any or all of its subcontracts or purchase orders involving the project and complete the Work by itself, through others, or by whatever method or methods CONTRACTOR deems expedient. In case of termination for default, SUBCONTRACTOR shall not be entitled to receive any further payment until the Work shall be fully completed and accepted by Owner. At such time, if the unpaid balance of the Contract Price shall exceed the costs incurred by CONTRACTOR in completing the Work, CONTRACTOR shall pay such amount to SUBCONTRACTOR upon SUBCONTRACTOR's compliance with Article 4. If the costs to complete the Work shall exceed the unpaid balance of the Contract Price, SUBCONTRACTOR shall pay CONTRACTOR the difference within five business days following demand by CONTRACTOR. SUBCONTRACTOR shall pay all reasonable costs of collection, including reasonable attorneys' fees. These obligations survive the termination of the Subcontract Agreement.

**22.2** If CONTRACTOR is subsequently determined to have improperly or wrongfully exercised any option under Paragraph 22.1, such exercise shall be deemed a Termination for Convenience and SUBCONTRACTOR shall be compensated as provided for in Article 21. This Article 22 shall be in addition to any other rights CONTRACTOR may have against SUBCONTRACTOR by virtue of SUBCONTRACTOR'S default or failure to perform in accordance with the provisions of the Subcontract Agreement.

**ARTICLE 23**  
**SEVERABILITY AND WAIVER**

**23.1** The partial or complete invalidity of any one or more provisions of the Contract Documents shall not affect the validity or continuing force and effect of any other provision. Any failure by CONTRACTOR at any time, or from time to time, to enforce any of the terms, covenants or conditions of the Subcontract Agreement, or to exercise any right shall not constitute a waiver of such terms, covenants, conditions or right and shall not affect or impair such terms or conditions in any way or the right of CONTRACTOR at any time to avail itself of any remedies it may have for any breach.

**ARTICLE 24**  
**RESOLUTION OF DISPUTES**

**24.1** In the event that Owner makes any claim against CONTRACTOR which arises out of or on account of the Work, SUBCONTRACTOR agrees to litigate or contest the same in the forum provided in the Contract Documents for resolution of disputes between the Owner and Contractor and to be bound by the results thereof, provided that CONTRACTOR gives notice of such claim

and provides SUBCONTRACTOR, to the extent permitted by the Contract Documents and the rules of such forum, with an opportunity to participate in the defense thereof. In the event of a claim by SUBCONTRACTOR against CONTRACTOR which CONTRACTOR has or claims a right to seek relief over against the Owner, SUBCONTRACTOR agrees to assert such claim in a forum where CONTRACTOR has the right to claim relief against Owner. SUBCONTRACTOR'S participation in a claim asserted by the CONTRACTOR against the Owner shall not toll any applicable limitations period.

**For the purposes of the Subcontract Agreement, a claim or claims shall mean the demand or assertion by one of the parties seeking adjustment or interpretation of the terms of the Contract Documents, the payment of money, an extension of time or other similar relief arising out of or relating to the Construction Documents or the Work. The term "claim" or "claims" can also mean any other disputes, liens or matters (regardless of whether such claims are unknown or incapable of assertion) between the Subcontractor and Contractor (including other subcontractors or the Owner) arising out of or relating to the Contract Documents (including their breach, termination or validity) or the Work.**

**24.1.1** The SUBCONTRACTOR and CONTRACTOR will attempt in good faith to resolve any claim arising out of or relating to this Agreement.

**24.2** If the claim or claims have not been resolved at the time the Project is complete, the SUBCONTRACTOR and CONTRACTOR will attempt in good faith to resolve all claims through non-binding mediation with mediation proceeding in the state where the Project is located.

**24.3** If claims have not been resolved pursuant to the mediation procedure within 60 days of the commencement of such procedure, claims shall be settled upon the election of the CONTRACTOR either by:

- a. arbitration in accordance with the Construction Industry Rules of the American Arbitration Association; or
- b. if CONTRACTOR shall, in its reasonable discretion, reject arbitration, then by resort to litigation proceedings in a court of general jurisdiction venued within a reasonable proximity of the Project. Notwithstanding the preceding sentence, any dispute, claim or controversy arising on a Project located in New York State shall be litigated in New York State Supreme Court, Schuylar County.

Should the CONTRACTOR be served with a demand for arbitration, the CONTRACTOR shall irrevocably elect whether or not it will proceed in arbitration within 30 days of having received such demand. Any such demand shall be served upon the CONTRACTOR's corporate Secretary.

**24.4** In no event shall a demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

**24.5** Should the CONTRACTOR elect arbitration, the agreement to arbitrate shall be specifically enforceable in accordance with applicable law by any court having jurisdiction.

**24.6** SUBCONTRACTOR shall carry on the Work and maintain the Contractor's Schedule during any proceeding under this Article.

**24.7.1** In any action or arbitration, the party prevailing shall be entitled to be compensated for all reasonable costs, attorney's fees and other expert and witness fees and disbursements that it incurred in prosecuting or defending the claims at issue. The arbitrator deciding the matter or the judge presiding over the litigation shall, as part of the award or judgment, determine who is the prevailing party and what fees, costs and disbursements are reasonable.

**24.7.2** CONTRACTOR AND SUBCONTRACTOR mutually waive and release any right or claim to collect interest on any monies found or agreed to be owing at the conclusion of proceedings under this Article or in any action against either parties' surety. The term "conclusion of proceedings" shall for the purposes of this Article mean the (i) date of any settlement agreement, or (ii) the entry of an order following a trial or arbitration.

**24.8** The laws of the State where the Project is located, without reference to its conflicts of law principles, shall govern the Agreement.

**24.9 Express limitation on time to assert Subcontractor claims.** The Subcontractor acknowledges and agrees with respect to any claim or claims arising out of or relating to this Agreement or the Work (excluding claims for retainage or amounts properly due and duly invoiced for in accordance with this Agreement), that such claim or claims must be asserted in accordance with this Article within 60 calendar days of the last date upon which the Subcontractor provided material or labor to the project. Any such claim or claims not asserted by the Subcontractor within this timeframe shall be deemed waived and incapable of assertion under this Article or by resort to any court proceeding, arbitration, mediation or similar proceeding in the same manner as if a statutory limitations period had run or expired. For the purpose of determining the last date upon which labor and materials were provided to the project, any labor or material provided to satisfy any warranty obligation or complete any punchlist work shall not toll the 60 day period. This provision shall not be construed to limit any claim by the Owner or Contractor against the Subcontractor for any breach of this Agreement, any warranty or other similar requirements. This provision shall not be deemed or interpreted to limit or expand any applicable lien laws.

#### **24.9.1 WAIVER OF JURY TRIAL**

The Contractor and Subcontractor mutually hereby knowingly, voluntarily and intentionally waive the right to a trial by jury with respect to any litigation arising out of or related to the agreement, the work or with any other course of conduct, course of dealings, statements (whether verbal or written), or other related actions and further agree that neither party will seek to consolidate any such proceeding with any other proceeding in which a jury trial cannot be or has not been waived.

### **ARTICLE 25** **INTERPRETATION OF THE CONTRACT DOCUMENTS**

**25.1** In the event of conflicts or discrepancies among the Contract Documents, interpretations shall be based on the following priorities:

1. Duly executed Change Orders, modifications and addenda, with those of later date having precedence over those of earlier date;
2. The Subcontract Agreement;
3. The Welliver McGuire Inc. General Conditions of the Subcontract Agreement;
4. The Project Manual, Plans and Specifications;
5. The Construction Agreement; and
6. Other general or special conditions.