



**W. G. YATES & SONS CONSTRUCTION COMPANY**

**SUBCONTRACT**

This Subcontract is made between W. G. YATES & SONS CONSTRUCTION COMPANY, hereafter called the Contractor, and the Subcontractor as listed below.

**SUBCONTRACTOR:**

**DATE:**

**JOB NUMBER/PHASE NUMBER:**

Contact:  
Phone:

**PROJECT NAME & LOCATION:**

**OWNER/ARCHITECT/ENGINEER:**

Owner:

Architect:

Landscape Architect:

Civil Engineer:

Mechanical Engineer:

Electrical Engineer:

Structural Engineer:

**SCOPE OF SUBCONTRACT WORK:** The above-named Subcontractor shall furnish all labor, materials, tools, equipment, facilities, supervision, management, financing, services, shop drawings, submittals, testing, and other items necessary for the proper execution and functioning and shall make all installations and connections necessary, specified, customary, or otherwise appropriate to perform fully and to complete in every respect the Subcontract work generally described as follows: (Specification or drawing references included in the following statement of Subcontract work are applicable but not necessarily all-inclusive):



**EXCLUSIONS: (NONE IF BLANK)**

**Description**

**Notes**

**SUBCONTRACT AMOUNT:**

(The Subcontractor's price includes performance of all Subcontract work for the Project in strict accordance with the terms and conditions set forth herein)

**ARTICLE I: GENERAL OBLIGATIONS**

1.0 The Subcontractor shall be bound to the Contractor by all terms and conditions of this Subcontract and, except as otherwise provided herein, by all terms and conditions of the Prime Contract between the Owner and Contractor, which is incorporated by reference into this Subcontract and is an integral part of this Subcontract. The Prime Contract includes, but is not limited to, the Agreement between the Contractor and the Owner; all general, supplementary, special conditions; all drawings, specifications, details, and standards; all addenda, modifications, and revisions to any of the foregoing; and all other documents or requirements incorporated into or referenced by the foregoing. The Subcontractor shall assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Prime Contract, assumes toward the Owner. In the event of an ambiguity, inconsistency, or conflict in payment or other provisions between or among the Prime Contract, this Subcontract, any bond, and/or other agreement or instrument, this Subcontract shall govern. In no event shall the Subcontractor be entitled to greater rights, higher entitlements, or more relief against the Contractor than the Contractor actually obtains from the Owner on Subcontractor's behalf with respect to the Subcontract work.

1.1 The Subcontractor shall perform its work in strict accordance with this Subcontract and with the Prime Contract. Anything pertaining to the Subcontractor's work that is mentioned in the specifications but not shown in the drawings, or shown in the drawings but not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. All work of the Subcontractor shall be subject to the approval of the Contractor, Architect, Owner, and any authorities having jurisdiction over the Subcontract work. The Subcontractor's work includes all work specifically set forth in this Subcontract and covered by parts of the Prime Contract applicable thereto, and it further includes everything reasonably necessary or customary for the proper execution, functioning, connection, and completion of all work referred to by this Subcontract. All provisions of this Subcontract and of all incorporated, referenced, and attached documents, including but not limited to the Prime Contract, shall be construed together and harmonized to the extent reasonable and consistent with the intent of this Subcontract for proper completion and functioning of the entire scope of work being subcontracted. If there is any conflict, ambiguity, or inconsistency within or between any such documents or a difference in interpretation, the matter shall be referred to the appropriate design professional whose decision the Subcontractor shall implement at no additional cost. If the design professional does not render a decision in a timely manner, the Subcontractor shall perform as directed by the Contractor at no additional cost.

1.2 Subcontractor shall promptly prepare and submit to Contractor such drawings, details, product data, samples, and other submittals ("submittals") as may be required by the Prime Contract or the Contractor. Subcontractor shall perform no portion of the subcontract work requiring submission and review of submittals until the respective submittal has been approved. By submitting such submittals, Subcontractor represents that it has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information



contained within such submittals with the requirements of the Subcontract. The Subcontractor shall call specific attention in writing to the Contractor to any and all proposed deviations from the Prime Contract at the time of delivery of such submittals, and no deviation shall be permitted unless specifically requested in writing by Subcontractor and expressly approved in writing by an Authorized Representative of the Contractor. Contractor shall have no duty to discover any mistake, error, or deviation in any submittals from the Prime Contract requirements, and Contractor's or Architect's approval thereof shall not relieve Subcontractor from responsibility or liability for any mistakes, error, or deviation, or of Subcontractor's obligation to perform its work in strict accordance with the Prime Contract. The Subcontractor shall obtain submittals directly from other subcontractors and suppliers and provide its submittals directly to others as necessary to coordinate the Subcontract work so as to avoid conflict or interference with other subcontractors' work.

1.3 The Subcontractor represents and warrants that it is fully qualified and experienced in every respect to perform the work and that it is properly licensed, equipped, organized and financed to perform such work. The Subcontractor further certifies that it has carefully examined the Subcontract and is fully familiar with all of the terms and conditions thereof and has fully acquainted itself with job site conditions that may affect the cost or timeliness of the Subcontractor's performance, that it has made all investigations essential to a full understanding of the difficulties which may be encountered in performing the work and that it is not relying on any opinions or representations of Contractor; and, as between the parties hereto, Subcontractor will assume full and complete responsibility for all conditions relating to the work, the site and its surroundings, and all risks in connection therewith.

1.4 The Subcontractor is responsible for the proper location and layout of its work (including the responsibility for the accuracy and expense of engineering services related thereto), and the Subcontractor shall verify all previous and surrounding work and conditions to ensure that all work fits together and functions properly. Before beginning any portion of the work, the Subcontractor shall detect and report in writing any condition or problem caused by others which could affect Subcontractor's work; otherwise, Subcontractor shall accept full responsibility and cost for correcting or overcoming such conditions or problems.

1.5 The Subcontractor agrees and acknowledges that meetings will be held at the jobsite as called for by the Contractor or as otherwise required herein. Attendance by the Subcontractor is required at the meeting held immediately prior to the commencement of its work and each meeting thereafter until this Subcontract work is complete and accepted by the Owner, and at other times when deemed necessary by the Contractor. The Subcontractor shall have a representative present who shall have the authority to act and make binding decisions for the Subcontractor.

1.6 No temporary office building, storage trailer, sign, or other structure shall be placed on the jobsite by the Subcontractor unless approval in writing of the location, design and painting thereof has first been received from the Contractor.

1.7 The Subcontractor shall clean up and remove from the site and dispose of trash and debris on a daily basis or as often as directed by the Contractor. The Subcontractor shall also do its part in keeping the Project in a clean and neat condition and shall clean up any adjacent work soiled by his workmen and leave floors "broom clean", as directed by the Contractor. If Subcontractor fails to comply with this paragraph, then Contractor may perform such necessary clean-up and deduct the costs from any amount(s) due the Subcontractor.

1.8 The Subcontractor shall provide sufficient, safe and proper facilities, equipment, and working conditions, which shall at all times be subject to inspection by Contractor, the Owner, or their representatives. The Subcontractor shall immediately proceed to take down and remove from the premises of the Project all portions of the work, equipment, and facilities, which the Contractor shall deem as unsound or improper or which fail to conform in any way to the Subcontract requirements. The Subcontractor shall make good all such disapproved work, equipment, and facilities and restore all other work damaged or destroyed in removing or making good such disapproved items, all at Subcontractor's sole risk and expense. However, Subcontractor shall not remove any other materials from the Project site without the written permission of an Authorized Representative of Contractor. Subcontractor agrees to abide by Contractor's decisions as to allotment of all storage and working space at the Project site and as to all other matters respecting the organization, flow, coordination, and sequencing of work.



1.9 If requested by Contractor, the Subcontractor shall provide the Contractor with a copy of all material suborders prior to commencing its work. The Subcontractor must provide monthly, or more often if required by the Contractor, a complete list and delivery status of all orders, progress schedules, and CPM completion schedules satisfactory in form and content to the Contractor (including, without limitation, containing planned manpower and other resources by specific areas of the work). If requested by Contractor, the Subcontractor shall also provide the Contractor daily reports indicating work performed and manpower for the previous day.

1.10 The Subcontractor shall not start any part of its respective work until the Subcontractor has delivered to the Contractor at least two executed originals of this Subcontract, together with all other required documentation (specifically including, but not limited to, insurance certificates and, if required, performance and payment bonds). An executed Subcontract and acceptable insurance certificates (and, if required, performance and payment bonds) in the Contractor's possession are conditions precedent to being paid all or any part of the Subcontract amount.

1.11 The Subcontractor's commencement of any part of its work or responsibilities, whether at the Project site or elsewhere, shall constitute the Subcontractor's agreement to all terms and conditions of this Subcontract, without limitations or modification, and shall further constitute the Subcontractor's acceptance of all conditions at the Project site. The Contractor and Subcontractor agree that the terms and conditions of this Subcontract, establish a course of dealing between them and shall apply to this and all other projects, unless before commencement of the Subcontractor's work on such project, either the Contractor or the Subcontractor gives written notice of objection to the terms and conditions of this Subcontract or the parties enter into a different written agreement with respect to such project. Otherwise, the Subcontractor's commencement of any performance of work on any project, including but not limited to the preparation of submittals, shall constitute the agreement of both the Contractor and the Subcontractor that the terms and conditions of this Subcontract apply to such project and constitute a waiver by both parties of all objections to any of the terms and conditions of this Subcontract even if a Subcontract has not been fully executed at the time such work commences. Either the Contractor or Subcontractor will be entitled to specific performance of this provision with respect to future projects.

1.12 Subcontractor hereby grants Contractor an irrevocable license to use any and all documents (including without limitation, all test results, submittals, drawings, details, plans, reports, photographs, schedules, certificates, models, computer drawings, sketches, and other expression) that are prepared by or for Subcontractor in connection with the Work.

1.13 Any work performed in violation of any section of this Subcontract shall be at the Subcontractor's sole risk, cost, and liability.

## **ARTICLE II: BONDING OF SUBCONTRACTOR**

2.0 If required by the Contractor prior to or during performance of this Subcontract, the Subcontractor shall furnish performance and payment bonds with a responsible surety acceptable to the Contractor including, without limitation, a minimum rating of A- or better by A.M. Best Company, in a form and with terms acceptable to the Contractor and with respective penal amounts of no less than the amount of this Subcontract, as may be adjusted. The Subcontractor's failure to deliver satisfactory bonds to the Contractor within ten (10) days after demand shall be a material breach of this Subcontract. If the Contractor requires a bond after the parties have agreed to a Subcontract price, the Subcontract price shall be equitably adjusted to include the reasonable, direct cost of the bond (without markup), provided that the Subcontractor has previously notified the Contractor in writing that the cost of the bond was not included in the Subcontract price.

2.1 In addition to the language of any bond, the Subcontractor and the Subcontractor's sureties agree that the protection and coverage of the Subcontractor's bonds shall extend at least to the entities protected and the type of claims covered by the Contractor's bonds with respect to the Subcontract work so that any claim that can be made against the Contractor's bond shall be also valid and recoverable against the Subcontractor's bond. Any increases in the Subcontract amount shall automatically increase the respective penal sums of the performance bond and of the payment bond furnished by the Subcontractor.



2.2 Any obligation of the Subcontractor under this Subcontract, including but not limited to warranty or other performance obligations extending beyond substantial completion, shall be equally the obligation of the surety for the Subcontractor's performance bond as if all terms and conditions of this Subcontract were set forth verbatim in the performance bond. The Subcontractor's surety's obligations shall not terminate upon substantial or final completion of either the Subcontractor work or of the Project as a whole but shall continue thereafter for so long as the Subcontractor has any obligations of whatever nature under this Subcontract. The Subcontractor's surety shall be bound by any judgment, arbitration award, settlement agreement, or other decision rendered against the Subcontractor with respect to the Subcontractor's obligations under this Subcontract. The Contractor shall have the absolute right to perform, either with its own forces or others, the Subcontractor's obligations during the term of any surety investigation, and the Subcontractor and the Surety shall be fully responsible for the costs and expenses associated with such performance.

#### **ARTICLE III: RELATIONSHIP WITH CONTRACTOR**

3.0 The Subcontractor shall have a competent and experienced superintendent at the Project at all times while the Subcontractor's work is or should be in progress and as otherwise necessary to ensure full performance of all obligations under this Subcontract. The Subcontractor's superintendent shall have the authority to act for and on behalf of the Subcontractor in all matters relating to the Subcontractor's work. The Subcontractor shall do, without additional charge, whatever is necessary in the performance of this Subcontract or whatever the Contractor directs to ensure harmonious labor relations at the Project and to prevent strikes, disputes, and violation of labor agreements, labor laws, and labor regulations.

3.1 The Subcontractor shall designate a quality control representative who shall have authority to act for and on behalf of the Subcontractor in all matters related to the quality of the Subcontractor's work. The Subcontractor shall fully comply with the Contractor's quality assurance plan.

3.2 Subcontractor shall enforce strict discipline and good order among its employees. The Subcontractor shall report in writing to the Contractor within twenty-four (24) hours an injury to an employee or agent of the Subcontractor or any other liability claim whatsoever that occurred at the site or connected with the Subcontractor's work.

3.3 The Subcontractor is in all respects an independent contractor and is not an agent of the Contractor. No personnel employed by Subcontractor shall be deemed under any circumstances to be agents, representatives or employees of Contractor. The Subcontractor shall have no authority to bind the Contractor by any representation, promise, or statement of any kind without first obtaining the Contractor's specific written consent and authorization. The Subcontractor agrees not to enter into any other contract relating to the Project without the Contractor's prior written consent.

3.4 The Subcontractor shall not interfere with the Contractor's relationship with the Owner, and the Subcontractor shall not deal directly with either the Owner or the Architect without prior written authorization in each instance from an Authorized Representative of the Contractor. Specifically, without limiting the generality of the foregoing, the Subcontractor shall not negotiate directly with the Owner for any addition(s), deletion(s), or alteration(s) on the Project covered hereunder.

#### **ARTICLE IV: TIME**

4.0 Time is of the essence, and unless herein otherwise specifically provided, Subcontractor shall commence work when directed by the Contractor. The Subcontractor recognizes that it may be working concurrently with the Contractor, Owner's forces, or other contractors or subcontractors. Subcontractor shall cooperate with the Contractor and prosecute the work diligently and so as to avoid delaying, conflicting, or interfering with the progress of Contractor, Owner's forces, or other contractors or subcontractors on other portions of the Project work. The Contractor has the right to require the Subcontractor, without cost or liability to the Contractor, to schedule work hereunder in such a manner as will minimize interference, delay and expense of work of others or for the best interests of the Project as the Contractor may determine. If so ordered by the Contractor, the Subcontractor shall prosecute certain portions of the Subcontract work in preference to other portions, at no increase in Subcontract price. Subcontractor shall keep and maintain on the Project a sufficient number of properly qualified workmen and a sufficient quantity of materials, equipment and supplies to perform the work as required without delay.



Should Subcontractor cause delay in the progress or completion of the Project, the damages resulting therefrom, including, but not limited to, liquidated and/or actual damages assessed by Owner and attributable thereto, shall be the obligation of Subcontractor.

4.1 Subcontractor shall reimburse the Contractor for any damages assessed by the Owner or other subcontractors, whether liquidated or otherwise, against the Contractor and for any damages otherwise incurred by or asserted against the Contractor as a result of delays or difficulties caused by or attributable to the Subcontractor. Furthermore, the Subcontractor shall pay the Contractor's acceleration costs, extended job site overhead, unabsorbed home office overhead, and all other direct and indirect expenses of whatever nature, including attorneys' fees, caused in whole or in part by delays, disruptions, or other reasons attributable to the Subcontractor.

4.2 If the Subcontractor falls behind the Contractor's schedule for the Subcontractor work or if, in the opinion of the Contractor, the Subcontractor is otherwise not maintaining a satisfactory rate of progress as determined by the Contractor, the Contractor may direct the Subcontractor to take such action as the Contractor deems necessary or appropriate to improve the Subcontractor's rate of progress including, but not limited to, increasing the number of superintendents, foremen, skilled labor, and unskilled labor, increasing the number of crews, increasing the number of shifts, employing more or better equipment, working overtime, expediting delivery of materials, substituting materials, changing sequence of performance, prosecuting parts of the Subcontract work in preference to other parts, and any other increase or acceleration of effort, all of which shall be performed by the Subcontractor at no cost to the Contractor. In addition to the foregoing, the Contractor shall have the right, but not the obligation and without prejudice to any other right or remedy, to provide, either with Contractor's own forces or with others, any additional labor, materials, equipment, supervision, or other item and to take such further actions as the Contractor deems necessary or appropriate, which shall be at the Subcontractor's cost and which the Contractor shall be entitled to deduct from any payment, whether then due or thereafter to become due to the Subcontractor. The Contractor's administrative and overhead expenses will be included in this cost. The Contractor's decisions and directives under this paragraph shall be final and binding.

4.3 The Subcontract amount provided herein constitutes full and complete payment to the Subcontractor for all Subcontract work to be performed, for all loss or damage arising out of the nature of the work, for any unforeseen difficulties or obstructions which may arise or be encountered during prosecution of the work, for all risks of every description connected with the work, for all expenses incurred by or in consequence of suspension, interference, disruption, hindrance, or discontinuation of the work. If the Subcontractor's work is delayed, hindered, suspended, disrupted, interfered with, rendered less efficient or more costly, or adversely affected in any way by any cause whatsoever whether such delays or hindrances are avoidable or unavoidable, anticipated or unanticipated, reasonable or unreasonable (including, but not limited to, acts or omissions of the Contractor or the Owner, the Architect or other subcontractors, by unusually severe weather, by acts of God, by unavoidable casualties, war, strikes, picketing, boycott, lockouts, or by any other reason beyond the Subcontractor's control and without fault or contribution by the Subcontractor), the sole and exclusive remedy of the Subcontractor shall be to receive from the Contractor an extension of time for each day of proven actual, excusable, and non-concurrent delay to the Subcontractor's work which, at the time of such delay, was on the Project's critical path. Notwithstanding anything to the contrary indicated in this Subcontract or in the Prime Contract, the Subcontractor shall have no claim for damages and shall have no right of additional compensation from the Contractor by reason of any delay, hindrance, disruption, suspension, interference, obstruction, inefficiency or any other adverse impact or increased expense to the Subcontractor's work, except for an extension of time as provided in this provision. Notwithstanding any other provision or notice requirement herein, an extension of time for delays under this section may be granted only upon written application(s) by the Subcontractor made within forty-eight (48) hours from the beginning of the claimed delay. Under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire Project within the time allowed Contractor by Owner for such completion.

4.4 Contractor may, with or without cause, order Subcontractor to stop or suspend all or any part of the work under this Subcontract for such time as may be determined to be appropriate for the convenience of Contractor. Phased work or interruption of the Subcontract work for short periods of time shall not be considered a suspension. The preceding section shall apply in the event of suspension ordered by the Contractor and the Subcontractor shall be entitled to, as its sole and exclusive remedy, an extension of time as set forth above, but not an adjustment of Subcontract price. The Subcontract time



shall not be adjusted for any suspension, to the extent that performance would have been suspended, due in whole or in part, to the fault or negligence of the Subcontractor or by a cause for which Subcontractor would have been responsible.

4.5 The Subcontractor represents that the Subcontract amount allows for variations or revisions in the Project schedules, as more specifically described herein. The Contractor shall have no claim for credit if the Subcontractor's actual as-built schedule is more favorable than planned, and the Subcontractor shall have no monetary claim against the Contractor if the Subcontractor's actual as-built schedule is less favorable than planned. All float in any CPM schedule shall belong entirely to the Contractor and shall be available for the Contractor's exclusive use in scheduling the overall Project.

#### **ARTICLE V: BREACH, DEFAULT, SUPPLEMENTATION, AND TERMINATION**

5.0 The Subcontractor shall be deemed in default, if at any time, the Subcontractor shall, in the opinion of Contractor: (a) fail to perform the Subcontract Work in strict compliance with the terms of this Subcontract; (b) fail to commence and continually prosecute the Subcontract Work in a timely and proper manner and with such effort, speed, and diligence as to maintain Project schedules, to include the current revision of milestone dates, interim completion dates, activity durations, and final completion dates, and to facilitate the orderly progress of the Project as a whole; (c) fail to perform the Subcontract Work so as not to interfere with, disrupt, or delay the work of the Contractor, subcontractors, or others; (d) refuse or for any reason fail at any time to prosecute the Subcontract work in a diligent, timely, workmanlike, skillful, cooperative, safe, and careful manner, (e) fail to supply sufficient, adequate or competent supervision, (f) fail to furnish a sufficient number of properly skilled workmen, (g) fail to have at the Project sufficient materials and equipment of the proper quality and quantity, (h) fail to promptly correct defective or unapproved work, (i) fail to promptly pay its bills and discharge its obligations on this Project or otherwise, (j) fail to furnish and maintain required insurance or bonds (k) fail to proceed with performance despite the existence of a claim, dispute, or matter in controversy or question; or (l) fail to perform any term or condition of any part of the Subcontract, all of which are material. The parties acknowledge that each of the foregoing is a material breach of the Subcontract. After notice to the Subcontractor to remedy such breach or breaches, Subcontractor shall immediately, and in no event longer than three (3) days, remedy such breach or breaches in such manner and with such diligence and promptness as may be required by the Contractor and without any cost or additional liability to the Contractor.

5.1 Upon any one of the foregoing breaches, the Contractor may, at its option, and without prejudice to any other right or remedy, after notice to Subcontractor, do one or more of the following: (1) take whatever action is deemed necessary or desirable to perform all or part of the Subcontract work, including taking possession of all drawings, materials, equipment, tools, and other items belonging to the Subcontractor for such purpose of supplementing the Subcontractor, with the Contractor's own forces or with others or with both; or (2) terminate this Subcontract in whole or in part and complete the Subcontract with the Contractor's own forces or with others or with both; or (3) issue a deductive change to eliminate portions of the Subcontract Work; or (4) use all funds due the Subcontractor on this Project or on any other project to pay Subcontractor's bills and discharge Subcontractor's obligations; or (5) take any other action which the Contractor in good faith deems reasonable under the circumstances. The Contractor shall be entitled to exercise its discretion as to the means and methods for fulfilling Subcontractor's obligations and for prosecution and completion of the Subcontract work as the Contractor in good faith deems appropriate and in the interests of the Project as a whole. The Subcontractor shall be liable to the Contractor for all expenditures, damages, losses, expenses, liabilities, and costs of whatever nature, including without limitation, attorneys' fees, incurred by the Contractor in supplementing the Subcontractor, in completing the Subcontract Work, in remedying deficiencies in the Subcontract Work, or otherwise as a result of Subcontractor's performance delays, failures, inadequacies, or defaults. The Contractor's records will be the sole basis for computing the cost of this work, and the Contractor's administrative and overhead expenses will be included in this cost.

5.2 Additionally, upon any one of the foregoing breaches, the Subcontractor shall not be entitled to receive any further payments on this Project or any other project until the Subcontract work has been completed and accepted by the Contractor, Architect and Owner and not until final payment for same has been received by the Contractor. Acceptance of the Subcontractor's Work and receipt of payment from the Owner shall be absolute conditions precedent to Contractor's obligation to pay Subcontractor for its Work. If, upon final payment by Owner to Contractor, the unpaid Subcontract balance exceeds all expenditures, damages, losses, expenses, liabilities, and costs of whatever nature, including without limitation, attorneys' fees, incurred or sustained by Contractor by reason of breaches of the Subcontract, such excess shall be paid by



Contractor to Subcontractor, subject always to the limitations imposed by Section 5.4 below. If the Contractor's expenditures, damages, losses, expenses, liabilities, and costs of whatever nature, including without limitation, attorneys' fees, exceed the unpaid Subcontract balance, Subcontractor shall immediately pay the difference to the Contractor. In no event shall the Subcontractor be entitled to be paid or to recover from the Contractor more than the amount due under this Subcontract for the work completed at the date of termination of the Subcontract.

5.3 Inasmuch as the injury or damage to the Contractor by reason of any breach hereunder by the Subcontractor is difficult to determine with any degree of certainty, it is agreed that in computing the amount of the Contractor's expenditures, damages, losses, expenses, liabilities, and costs of whatever nature, including without limitation, attorneys' fees, of performing any of the Subcontractor's work as above provided in this Article, there shall be added to such amount a sum equal to ten (10%) percent of such amount, and said amount is hereby agreed upon, fixed, and determined by the parties hereto not as a penalty but as the liquidated damages to cover the losses, risks, and indirect costs that are not readily quantifiable that the Contractor will suffer by such failure. These liquidated damages are in addition to any actual or liquidated damages that may be imposed by the Owner as a result of time delays Subcontractor has caused. The Contractor shall not be liable or accountable to Subcontractor in any way for the manner in which it may perform the work, nor shall the remedies and rights given above be construed as a substitute for or a waiver of any of the legal rights of the Contractor against the Subcontractor.

5.4 The Contractor shall have the right to terminate this Subcontract without fault of the Subcontractor. Upon receipt of notice from the Contractor of the termination, the Subcontractor shall do only that work set forth in the Contractor's notice and shall preserve and protect the materials and equipment pertaining to the Subcontractor's work. In the event of such no fault termination, and subject to the conditions precedent to any payment to the Subcontractor set forth in this Subcontract, the Subcontractor shall be entitled to payment, as its sole and exclusive remedy, for the lesser of either (1) the value of all work satisfactorily performed and for all materials satisfactorily stored on site or in transit in accordance with the approved schedule of values, which are not saleable in the Subcontractor's ordinary course of business and which the Subcontractor can transfer to the Contractor free of any liens or encumbrances or (2) the reasonable, actual direct costs for such work plus a single allowance, of ten percent (10%), for both overhead (including job site and home office) and profit on such costs. In the event the termination is for convenience of the Owner, rather than convenience of the Contractor, this paragraph shall not apply and settlement would be made under provisions of the Prime Contract, subject always to the conditions precedent to payment set forth in this Subcontract.

5.5 If the Contractor terminates the Subcontractor for default, and it is determined for any reason that the Subcontractor was not actually in default under this Subcontract at the time of termination, the Subcontractor shall be entitled to recover from the Contractor, as its sole and exclusive remedy, the same amount as the Subcontractor would be entitled to receive under a no fault termination, and such amount shall be limited to the amount set forth in Section 5.4 above.

5.6 Notwithstanding anything to the contrary herein and regardless of whether the termination is complete or partial, whether the termination is for default or for no fault, and whether the termination converted from default to no fault, the Subcontractor's sole and exclusive remedies for termination of this Subcontract shall be those expressly provided and under no circumstances, shall the Subcontractor be entitled to other recovery of any nature except for payment for Subcontract work properly performed and actually completed by the Subcontractor. In no event shall the Subcontractor be entitled to any compensation for Subcontract work not performed by the Subcontractor or for payment in excess of the Subcontract amount as may be adjusted by properly authorized written Change Orders.

5.7 In the event of termination, Subcontractor shall be deemed to have assigned any of its purchase orders and subcontracts to Contractor if Contractor, in its sole and absolute discretion, consents to such assignment(s). Subcontractor agrees to incorporate such provisions in its agreements with its suppliers and subcontractors to effectuate this provision. Nothing herein shall create any duty on the part of Contractor to accept the assignment of any purchase order or subcontract





hereunder.

5.8 If the Subcontractor institutes or has instituted against it a case under the United States Bankruptcy Code, such event is presumed to impair or frustrate the Subcontractor's ability to perform its obligations under the Subcontract. Within ten (10) days after Contractor's request, the Subcontractor (or its trustee, successor, or other party acting for the Subcontractor) shall deliver to Contractor adequate assurance of Subcontractor's ability to perform all material obligations under the Subcontract. Additionally, the Subcontractor shall file, at the earliest time permitted by law, an appropriate action for assumption or rejection of the Subcontract and the Subcontractor shall diligently pursue such action. If the Subcontractor fails to comply strictly with the foregoing obligations, the Contractor shall be entitled and is hereby authorized to request the Bankruptcy Court to reject the Subcontract, to declare the Subcontract terminated, and to permit the Contractor to pursue any other recourse or remedies available. The rights and remedies under this section are not intended and shall not be construed to limit any other rights and remedies of the Contractor under this Subcontract or as otherwise afforded by law, including the Contractor's entitlement to seek relief from any automatic stays under the Bankruptcy Code and from any order of a court of competent jurisdiction. In particular, the Contractor shall be entitled to assert all rights and remedies against any bond or policy of insurance furnished by the Subcontractor, notwithstanding any case instituted by or against the Subcontractor under the Bankruptcy Code.

#### **ARTICLE VI: COMPLIANCE WITH LAWS**

6.0 The Subcontractor shall perform the Subcontract work in a safe and proper manner and shall comply with all laws, ordinances, building codes, interpretations and directions of code officials, safety requirements, and regulations of whatever nature that apply to this Subcontract, including but not limited to OSHA. In the event that the Subcontractor's performance fails to meet the foregoing requirements, Contractor has the right, but not the obligation, to require Subcontractor to assign a full-time, credentialed (ASSE or other recognized organization acceptable to Contractor) site safety professional to the Project. The Subcontractor shall give adequate notices pertaining to the work of the Subcontractor to proper authorities and secure and pay for all necessary licenses and permits to carry on Subcontractor's work. The Subcontractor is responsible for all inspection requirements and regulations of all governmental agencies and authorities, including OSHA, with respect to the Subcontractor's work and shall pay any fine(s) (including those which may be assessed against the Contractor) and other expenses (including, but not limited to Contractor's attorneys' fees) which may be attributable to the Subcontractor's failure to comply with any regulation. The Subcontractor agrees to follow all the Contractor's rules, policies, and procedures pertaining to the Subcontractor's work, including compliance with Contractor's Supplier Code of Conduct found at: **W. G. YATES & SONS CONSTRUCTION COMPANY's Supplier Code of Conduct**

6.1 The Subcontractor shall employ labor, make purchases and transact its business without discrimination as to race, color, gender, creed, or religion and also without discrimination as to whether employees of the Contractor, other subcontractors, material suppliers, or other entities involved in the Project are members or are not members of any labor union or other labor organization. The Subcontractor agrees to comply with all laws, including but not limited to, Executive Order 11246, if applicable. If required by Contractor or Owner, Subcontractor agrees to meet any minority or other goals.

6.2 The Subcontractor has full and exclusive liability for all contributions, taxes, deposits, and payments required of employers by federal, state, or local governments, with respect to wages, salaries, remuneration, or benefits paid or owed by the Subcontractor to any of Subcontractor's employees or others who perform work or render services for Subcontractor in connection with this Subcontract. The Subcontractor has exclusive liability for all income, gross receipts, sales, use, or other taxes applicable to the Subcontractor's work and to any item furnished or employed, any expense incurred, all work performed, and all revenue earned by the Subcontractor pursuant this Subcontract. In the event the Contractor is held liable to pay any such tax or contribution on behalf of the Subcontractor, the Subcontractor agrees to supply the Contractor with all records necessary to compute the same and to fully reimburse the Contractor upon demand for the amount thereof (including penalties and interest) paid by the Contractor; the Contractor shall have the further right to deduct any amount so paid, plus attorneys' fees and a reasonable overhead expense from any sums due the Subcontractor by the Contractor on this or any other project.

6.3 The Subcontractor bears full and exclusive responsibility and liability for the proper discovery, identification, reporting, handling, removal, and disposal, whether on site or off site, of all materials encountered, used, or generated in the performance of the Subcontract work which are defined or considered as hazardous by federal, state or local authorities



having jurisdiction over the Project, and the Subcontractor shall comply with all laws, regulations, standards, and safety requirements with respect to such hazardous materials. If the Subcontractor fails to comply with its responsibilities under this paragraph, the Contractor may perform such work with Contractor's forces or through others at the expense of the Subcontractor.

6.4 The Subcontractor shall not employ any illegal immigrant or other person not properly authorized or legally entitled either to be present at the place of the Project or to work in any capacity affecting the Project. The Subcontractor shall discharge promptly, properly, continuously, and fully all of Contractor's obligations imposed by the Mississippi Employment Protection Act (if applicable) and all other laws and regulations with respect to individuals hired by or working for the Subcontractor on this Project or in connection with this Subcontract. The Subcontractor represents that, as regards all those employed by or for whom the Subcontractor is legally responsible, all requirements for verification of legal status through the federal government's E-Verify System or otherwise have been and will continue to be strictly followed for the duration of Subcontractor's performance of or obligations under this Subcontract. The Subcontractor acknowledges that the Contractor will rely upon Subcontractor's representations, and the Subcontractor shall indemnify and defend Contractor from any and all liability, cost, and expense, including attorneys' fees, attributable to Subcontractor's failure to discharge the obligations set forth herein.

#### **ARTICLE VII: PAYMENT**

7.0 Subcontractor agrees to submit to the Contractor applications for payment using the forms provided through Textura Payment Management ("TPM") which include an application for payment and a continuation sheet, in such reasonable time as to enable the Contractor to apply for payment as provided in the Prime Contract. Subject to the terms and conditions of this Subcontract, including, without limitation, all conditions precedent contained within the Subcontract, the Contractor agrees to send payment less retainage for the approved Subcontractor's application for payment within ten (10) working days after the Contractor receives payment from the Owner for the Contractor's application. Should the Subcontractor's portion of the Contractor's application be reduced or denied for any reason, the Contractor's payment to the Subcontractor will be reduced or denied accordingly.

7.0.1 Subcontractor shall furnish such evidence as the Contractor may require as proof of payment of all obligations and claims in connection with this Subcontract including, but not limited to, sworn statements showing all parties who furnish labor, materials, or services, to the Subcontractor with their names, addresses, and amount due or to become due each. Like statements may be required of subcontractors, vendors, suppliers, etc. of Subcontractor. Contractor is not required to make any payment to Subcontractor, regardless of whether payment has been received from the Owner, unless Subcontractor shall previously have provided releases executed by all persons who might have mechanic's lien, stop notice or labor and material bond rights arising out of work performed under the Subcontract, using Contractor's forms. Contractor reserves the right to make payment by joint check or by direct check to Subcontractor and Subcontractor's suppliers or subcontractors or any person having a right of action against Contractor, its surety or Owner under any law. In the event that the Contractor wishes to furnish the equipment, materials and supplies, or portion thereof, necessary to effect performance of all or any portion of the Project described herein, the Subcontractor agrees to allow the Contractor, at the Contractor's option, to make payment directly to the manufacturer or vendor for some or all material required by the Subcontractor and to credit the value of the material so paid against the Subcontract sum. As a condition precedent to final payment to the Subcontractor, and in addition to the other conditions precedent to final payment to the Subcontractor set forth in this Subcontract, the Subcontractor shall furnish Contractor an affidavit of payment of all bills and obligations, a release of liens or other encumbrances respecting the Project, and a general release of claims, together with such other affidavits and other documents as may be required by the Contractor.

7.0.2 Unless otherwise directed or authorized in writing by Contractor, all Applications for Payment and all supporting documents (including but not limited to lien waivers, sworn statements, and the like) for Subcontractor and its sub-subcontractors and suppliers, shall be in electronic format and shall be submitted to Contractor using Textura Payment Management ("TPM"). Subcontractor shall include a similar provision in its sub-subcontracts and purchase orders. Subcontractor shall be responsible for the fees and costs owed associated with Subcontractor's and its sub-subcontractors' and suppliers' use of Textura Payment Management ("TPM").



7.1 Subcontractor warrants that he has sufficient funds and credit to pay currently all bills incurred in the performance of the work hereunder without the necessity of resorting to earnings for work performed and agrees that failure to pay such bills shall be a breach of this Subcontract for which Contractor may, but shall not be required to, withhold all sums otherwise payable hereunder for past and future earnings until Subcontractor presents satisfactory evidence of payment. In case any such bill or related claim is disputed by Subcontractor, Contractor may, for the purposes of this section, consider the same to be valid until discharged and released or until satisfactory security is given for Contractor's indemnification. At Contractor's option, Contractor may, but shall not be required to, pay any such bill or claim and recover the same from Subcontractor or any Surety or deduct the same from any payments otherwise due to Subcontractor. Any and all payments made on good faith in the belief that Contractor is liable, whether liable or not, shall be conclusive of Contractor's right to reimbursement and a sworn itemized statement thereof or the checks or other evidence of payment shall be prima facie evidence of the fact and extent of Subcontractor's liability. Notwithstanding the foregoing, the Contractor shall not have a duty to determine or adjust any claims or disputes between those parties furnishing labor, materials, equipment or other things hereunder, or to withhold any money for their protection; nor shall Contractor be liable for its failure to do so.

7.2 The Subcontractor agrees that the Contractor has the right, but not the obligation, to withhold payments otherwise owed to Subcontractor on this or any other subcontracts or projects and to pay any bills or past due obligations of the Subcontractor arising on this or other projects, including backcharges owed to the Contractor. If the Contractor is exposed to liability by any act or omission of the Subcontractor, the Contractor shall be entitled to withhold or offset against any amounts the Contractor owes to the Subcontractor, whether on this or other projects, equal to the full extent of the Contractor's exposure to liability attributable to the Subcontractor. Without limiting the generality of the foregoing, payments otherwise payable hereunder may be withheld in whole or in part by Contractor on account of: (1) defective materials or work not remedied, missing materials not furnished or cleanup not performed; (2) claims filed or reasonable evidence indicating potential filing of claims by unpaid suppliers of labor, materials or equipment to Subcontractor; (3) failure of Subcontractor to make payments properly to its subcontractors, or for labor, materials or equipment, transportation or shipping costs, taxes, fees or other claims arising out of Subcontractor's work; (4) reasonable doubt that Subcontractor can complete the scope of work to be performed within the time required or for the balance of the Subcontract price then unpaid; (5) damage to another subcontractor, Owner and/or Contractor; (6) unsatisfactory prosecution of the work by the Subcontractor; (7) failure to deliver any required "as-built" drawings, operation or maintenance manuals, written guarantees or warranties; (8) failure to obtain the approvals required by any authority having jurisdiction over Subcontractor's work; (9) failure to provide certificates or other evidence of insurance or Subcontract bonds acceptable to Contractor; or (10) failure of Subcontractor to cure any default or to perform in accordance with this Subcontract. If the foregoing conditions are removed to Contractor's satisfaction, the withheld payments shall promptly be made. If such conditions are not so removed, Contractor may take such steps as in its judgment may be required to rectify the same and all costs and expenses incurred by Contractor, including attorneys' fees, therefore shall be paid by Subcontractor or be credited against payments otherwise payable to Subcontractor. The provisions of this Article 7 shall apply regardless of whether payment has been received from the Owner.

7.3 Notwithstanding anything to the contrary in this Subcontract, in the Prime Contract or in any bond or other document, the Owner's approval of the Subcontract work for which payment is requested and the Contractor's actual receipt of each progress payment, final payment or any other payment from the Owner shall each be an absolute condition precedent to any obligation of Contractor to make any progress payment, final payment or any other payment whatsoever to Subcontractor, including but not limited to the obligation to pay for extra or changed work (if any) to the extent allowable pursuant to this Subcontract. Both progress payments and final payment to the Subcontractor shall be made only out of funds actually received by the Contractor from the Owner for progress payments or for final payment of the Prime Contract and only to the extent said progress payments or final payment reflect Subcontract work which has been satisfactorily performed by Subcontractor in strict accordance with this Subcontract and which has been approved and paid by Owner. Subcontractor hereby expressly warrants and agrees that Subcontractor is relying upon the credit, solvency and financial stability of the Owner and not the Contractor for payments of work performed under this Subcontract. The Subcontractor expressly accepts the risk of loss if the Owner cannot or will not pay the Contractor.

7.4 The Contractor, may, at its option, withhold up to ten (10%) percent retainage for payment otherwise due and payable to the Subcontractor until final payment. Final payment and release of retainage shall be made at the completion of the work



covered by this Subcontract, but only: (1) upon written acceptance thereof by the Contractor, Architect, and Owner; (2) after Subcontractor has provided documentation required by this Subcontract or as otherwise reasonably required by the Contractor or Owner; and (3) as a condition precedent, the Owner has made final payment and has released retainage to the Contractor. The Subcontractor's acceptance of final payment constitutes the Subcontractor's general release of the Contractor, the Contractor's surety and the Owner from all claims and all claims and liabilities of whatever nature. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and the Subcontractor shall remain responsible and liable for performance of its work in strict compliance with this Subcontract. In the event the Contractor's retainage is reduced, the Contractor will reduce the Subcontractor's retainage in like percentage but only if the Subcontractor has provided a bond hereunder, satisfactorily completed at least 50% of its scope of work, the Subcontractor's work is on schedule, and the Subcontractor is in compliance with all terms and conditions of the Subcontract.

#### **ARTICLE VIII: LIENS**

8.0 To the fullest extent permitted by law, Subcontractor, for itself, its subcontractors, its suppliers, and all parties acting through or under it, hereby covenants and agrees not to file any lien or make any claim against the Project or the premises related thereto or any part thereof or against any building or buildings or other improvements erected or made to be erected or made thereon, or file any lien, make any claim, or issue any stop payment notice against any monies due or to become due to Contractor, in accordance with any statute, state or federal, for any cause whatsoever.

8.1 Subcontractor shall promptly pay or discharge in full or provide adequate security for the payment of all claims of any persons, firms or corporations furnishing or claiming to have furnished labor, materials, tools, equipment, or incidentals used in, upon, or for the work, whether or not as to any such claim a lien or right of enforcement is established or attempted to be established upon or against the work, the real property upon which the work is situated, upon any bond furnished by Contractor or upon any monies payable to Contractor by Owner.

8.2 Further, in case suit on any such claims is brought, Subcontractor shall defend said suit at his own cost and expense, and will pay and satisfy any such lien or judgment as may be established by the decision of the court in said suit. Subcontractor agrees within ten (10) days after written demand, to cause the effect of any suit, lien or stop notice to be removed from the premises, and in the event Subcontractor shall fail to do so, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said suit, stop notice or lien to be removed or dismissed and the cost thereof shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any lien or suit above described provided Subcontractor causes the effect thereof to be removed promptly, in advance, from the premises and shall further do such things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such liens or suits.

8.3 Subcontractor agrees and covenants that monies received for performance under this Agreement shall be used solely for the benefit of persons and firms supplying labor, materials, supplies, tools, machines, equipment, plant or services exclusively for this Project in connection with this Subcontract and having the right to assert liens or other claims against the land, improvements or funds involved in this Project or against any bond or other security posted by Contractor or Owner, and that any monies paid to Subcontractor pursuant to this Subcontract shall immediately become and constitute a trust fund for the benefit of said persons and firms and shall not in any instance be directed by Subcontractor to any other purpose until all obligations arising hereunder have been fully discharged and all claims arising therefrom have been fully paid.

#### **ARTICLE IX: INSURANCE**

9.0 Subcontractor shall obtain, before commencement of work, and shall maintain until final acceptance of the Prime Contract work and, thereafter, as long as necessary to protect against claims until the expiration of the appropriate statute of limitations/repose, full insurance coverage, including as a minimum (i) the same types of insurance and insurance language at the same policy limits which are specified by the Prime Contract or (ii) the types of insurance and insurance



language at the same policy limits which the Contractor requires for this Project as set forth in Attachment "A", which is hereby incorporated into this subcontract by this reference, whichever are greater. The Subcontractor is hereby made responsible for determining and obtaining the types and extent of such additional insurance as may be necessary to give adequate and complete protection to the Subcontractor, the Contractor, and the Owner from claims for property damage and from claims for bodily injury, including death, which may arise from or be connected with this Subcontract, whether such claims relate to acts or omissions of Subcontractor, of any of its subcontractors or suppliers, or anyone directly or indirectly employed by any of them. The Subcontractor shall name the Contractor and Owner as additional insureds for ongoing and completed operations (but not subject to premium terms or liability) on all insurance policies and coverages, and the Subcontractor's insurance shall be primary and non-contributory as to any other valid insurance available to the Contractor. This additional insured endorsement shall also appear on the Certificate of Insurance furnished by the Subcontractor (but failure to appear on the Certificate of Insurance as required shall not affect the obligation hereunder). The insurance protection and coverage provided hereunder by the Subcontractor for the Contractor's benefit shall not be solely restricted to the Subcontractor's indemnity obligations but are intended to extend to all claims, liability, or loss of whatever nature arising from or relating to the Subcontractor, to the Subcontract work, or to this Subcontract, regardless of the alleged liability or fault of any party indemnified under this Subcontract. The coverage provided under the completed operations section shall apply to "the work" of the Subcontractor and shall not be limited to "ongoing operations". All Subcontractor's insurance shall be on an occurrence based policy or policies, unless specifically provided to the contrary in Attachment "A". Subcontractor's insurance may not have a deductible on any policy nor on any coverage thereunder in excess of \$25,000 without the Contractor's prior written approval. Any general aggregate limit of Subcontractor's Insurance shall apply separately to this Project.

9.0.1 To the extent any loss, cost, expense, damage, or claim is covered and/or paid by insurance, the Subcontractor waives all rights and causes of action against the Contractor, against entities for whose acts or omissions the Contractor may be liable, against entities to whom the Contractor may be liable, and against the Contractor's sureties, insurers, and others through whom claims may otherwise be asserted against the Contractor. Subcontractor's waiver shall preclude claims of insurers or others by right of subrogation because of payments made to or on behalf of the Subcontractor, even if an express waiver of subrogation clause is not contained in a policy of insurance. Subcontractor's waiver applies to any loss covered by insurance without restriction to type, cause, time, or location of occurrence or loss. The Subcontractor's insurance shall contain a standard cross-liability endorsement, severability of interests clause, and a waiver of all rights of subrogation by Subcontractor's insurer as against the Contractor, Owner, Contractor's surety, Contractor's insurers, and others to whom the Contractor may be liable or through whom claims may otherwise be asserted against the Contractor. This waiver of subrogation shall also appear on the Certificate of Insurance furnished by the Subcontractor (but failure to appear on the Certificate of Insurance as required shall not affect the obligation hereunder).

9.1 If the Contractor or the Owner carries builders' risk or other insurance which may apply to the Subcontract work or which may otherwise inure to the benefit of the Subcontractor, the Subcontractor shall be responsible for all deductibles and for any inadequacy or absence of coverage, and the Subcontractor shall have no claim or other recourse against the Contractor or against the Owner for any costs or loss attributable to such deductibles or to coverage limitations, exclusions, or unavailability.

9.2 Before beginning any Subcontract work, the Subcontractor shall deliver to the Contractor three (3) copies of Certificates of Insurance, certifying the types and the amounts of coverage, certifying that said insurance was in force before Subcontractor started work, certifying that said insurance applies to the Subcontract work and to all activities and liability of the Subcontractor pursuant to this Subcontract, and certifying that the Contractor is an additional insured on Subcontractor's policies of insurance by endorsement in a form acceptable to Contractor. The Subcontractor shall, if requested by the Contractor, deliver to the Contractor a duplicate of the entire insurance policy.

9.3 No policy of insurance may be canceled, materially modified or reduced during the period of construction, and the Subcontractor shall obtain an endorsement to its policies providing substantially as follows: "Insurer may not cancel this policy, modify or amend its terms or reduce coverage for a period of thirty (30) days after W. G. YATES & SONS CONSTRUCTION COMPANY has acknowledged receipt of written notice of the Insurer's intention to cancel, modify, amend or reduce the coverage." The foregoing notice must appear on the Certificates of Insurance furnished by the Subcontractor.



9.4 The insurance and indemnity obligations of this Subcontract are non-delegable. The Subcontractor shall not sublet nor subcontract any part of this Subcontract without retaining absolute responsibility for requiring similar insurance from its subcontractors and suppliers. The Subcontractor's failure to maintain complete insurance as required by this Subcontract shall be a material breach authorizing the Contractor, at the Contractor's sole election and without prejudice to any other right or remedy, either to terminate this Subcontract for default or to provide appropriate insurance coverage at the Subcontractor's sole expense.

9.5 The Subcontractor shall be responsible for payment of all premiums for insurance required by this Subcontract, but the Subcontractor's obligations shall not be limited by or to the purchase of insurance. The Subcontractor shall indemnify and hold harmless the Contractor for all damages, as described in this Subcontract, irrespective of whether said insurance was actually obtained.

9.6 The Subcontractor shall be solely responsible for all loss or damage to vans, sheds, trailers, machinery, tools, materials, equipment (rented or owned) and all property of the Subcontractor, and its Subcontractors, their agents, servants and employees, not destined to become a part of the work, it being understood that the Subcontractor may at its own expense carry any insurance which may be required to provide necessary protection against such loss, damage or liability resulting therefrom.

#### **ARTICLE X: PROTECTION OF PERSONS AND PROPERTY**

10.0 The Subcontractor shall be responsible for safety. The Subcontractor shall comply with all safety laws, rules, regulations, standards, best practices, procedures, specifications, manuals, and policies, including but not limited to those of federal, state and local governments, the Occupational Safety & Health Administration ("OSHA"), applicable industry and trade associations, the Owner, and the Contractor and, in case of conflict among them, shall adhere to the most stringent requirements. The foregoing establish a minimum standard of safety; the Subcontractor shall institute, observe, and enforce such other safety measures and policies as may be required by the nature of the Subcontract Work or particular circumstances of performance.

10.1 Subcontractor specifically agrees that before persons, material or equipment are moved to the Project, and continually thereafter, Subcontractor will examine, test and inspect all hoists, scaffolding, platforms and other work areas whether installed itself or by others, to assure that said facilities and work areas are safe; and the Subcontractor assumes full responsibility for any damage caused by any such facilities or work areas.

10.2 The Subcontractor shall obtain permission, subject to the sole and absolute discretion of the Contractor, from the Authorized Representative of the Contractor before using any equipment, scaffolding, goods, materials, temporary installations, or other property owned, rented, or provided by Contractor (herein "Contractor's property"). Subcontractor shall assume all risk and responsibility of independently verifying before each such use that Contractor's property is correctly assembled, properly located, in good working order, safe, sufficient for purposes intended, and in compliance with all laws, rules, regulations, standards, guidelines, and regulations of governing authorities, applicable manufacturers, and best practices of the industry. Subcontractor shall permit only properly trained and appropriately qualified personnel to use Contractor's property and only in ways for which Contractor's property may be employed safely. Subcontractor shall discontinue use of Contractor's property immediately upon notice from the Contractor.

10.3 Subcontractor shall effectually secure and protect the work done hereunder and shall assume full responsibility for any and all risk of loss or damage to the work and all materials, tools, equipment, or incidentals until final acceptance thereof and release of responsibility therefor by Owner. Subcontractor shall protect the work, workmen, materials, tools, equipment and property of Subcontractor, Owner, Contractor and others on the Project against injury or damage in any way arising out of or connected with the operations conducted by Subcontractor hereunder or anyone acting under its direction or control, or on its behalf.



10.4 If Subcontractor damages the work of another subcontractor or the equipment or property of Owner, Contractor will issue a backcharge to Subcontractor for an adjustment in the Subcontract price to reflect the costs to correct the damage. If the subcontractor which caused the damage to an area of the Project cannot be identified, all subcontractors which performed work in the area of the damage within the time frame in which the damage occurred will be backcharged a pro-rata share of the cost of repair, which such pro-rata share shall be determined solely by Contractor.

10.5 The Subcontractor shall sequence and coordinate its work with the work of Contractor and other contractors in a manner to protect the work of Contractor and other contractors and the Project's interior from weather damage and water intrusion. The Subcontractor's obligation hereunder to protect the work includes protecting its own work and materials as well as the work and materials of Contractor and other contractors and the Project's interior from weather damage and water intrusion. In the event that water intrusion occurs from weather or any other cause due to Subcontractor's failure to carry out its obligations hereunder, Subcontractor shall be responsible for the cost to remedy all damages caused thereby, including, but not limited to, the cost of remediation of mold and mold spores and the testing for such mold and mold spores before and after remediation occurs.

#### **ARTICLE XI: INDEMNIFICATION**

**11.0 TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR COVENANTS TO DEFEND, INDEMNIFY, HOLD HARMLESS, PROTECT, AND EXONERATE BOTH THE CONTRACTOR AND ITS AFFILIATES, AGENTS, EMPLOYEES, REPRESENTATIVE, AND SURETIES AND THE OWNER, ARCHITECT, AND ENGINEERS, JOINTLY AND SEVERALLY, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, DAMAGES, LOSSES, SUITS, ACTIONS, DEMANDS, LIENS, ARBITRATIONS, ADMINISTRATIVE PROCEEDINGS, AWARDS, JUDGMENTS, EXPENSES, COSTS, AND ATTORNEYS' FEES PERTAINING TO ECONOMIC LOSS OR DAMAGE, LABOR DISPUTES, SAFETY REQUIREMENTS, PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, CERTIFICATIONS, PROPERTY RIGHTS OF THIRD PARTIES, PERSONAL INJURY, BODILY INJURY, SICKNESS, DISEASE, DEATH, OR DAMAGE TO OR DESTRUCTION OF PROPERTY (INCLUDING LOSS OF USE THEREOF) WHICH (I) ARE CAUSED IN WHOLE OR IN PART BY THE SUBCONTRACTOR (HEREIN DEFINED TO INCLUDE BUT NOT BE LIMITED TO THE SUBCONTRACTOR'S OWNERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS, SUPPLIERS, CONTRACTEES, AND INVITEES OR OTHER THIRD PARTIES CONNECTED WITH THE SUBCONTRACT OR THE AGENTS OR EMPLOYEES OF ANY OF THEM), (II) ARISE FROM OR OCCUR IN CONNECTION WITH WORK UNDERTAKEN OR TO BE PERFORMED BY THE SUBCONTRACTOR, REGARDLESS OF WHETHER THE SAME IS WITHIN OR BEYOND THE SCOPE OF WORK, OR (III) ARISE FROM OR ARE CONNECTED WITH ANY OTHER ACT OR OMISSION RELATING TO THE SUBCONTRACTOR, THIS SUBCONTRACT, OR THE SUBCONTRACT WORK. IT IS THE SPECIFIC AND EXPRESS INTENT OF THIS SUBCONTRACT FOR THE FOREGOING COVENANTS AND INDEMNITY OBLIGATIONS TO APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER THE LIABILITY IS CAUSED IN PART BY A PARTY INDEMNIFIED HEREUNDER INCLUDING, WITHOUT LIMITATION, WHETHER OR NOT THE SAME BE CAUSED BY, OR ARISE OUT OF, THE JOINT, CONCURRENT, OR CONTRIBUTORY NEGLIGENCE OF A PARTY INDEMNIFIED HEREUNDER.**

11.1 With respect to any matter to which the Subcontractor's defense obligations apply, Subcontractor, at Contractor's sole discretion, either shall defend the Contractor at Subcontractor's sole expense or shall pay for the Contractor's defense. The Contractor may make its election and may change its election at any time, without prejudice to any rights hereunder, including Subcontractor's obligation to pay all costs of defense. If the Contractor elects to undertake its own defense with attorneys and other personnel of Contractor's choosing or if the Contractor incurs expenses in connection with a defense undertaken by the Subcontractor, Subcontractor shall reimburse Contractor for all attorneys' fees and other expense related to the preparation and defense obligations to Contractor, with such payment required of the Subcontractor within ten (10) days of Subcontractor's receipt of a statement of such fees and expenses from the Contractor. The Subcontractor shall cooperate and secure the cooperation of its employees, agents, servants, and others in asserting any and all defenses available to the Contractor. The Subcontractor's obligations to defend the Contractor shall be independent of and in addition to Subcontract provisions for indemnity and shall apply to the fullest extent permitted by applicable law.

11.1.1 Subcontractor's indemnification and defense obligations extend not only to third party claims with respect to a matter indemnified but also to liability, losses, costs, and expenses of whatever nature, including attorneys' fees, incurred by



the Contractor as a result of a matter indemnified, with or without formal claim having been made, and to any and all disputes, arbitrations, and litigations directly between Subcontractor and Contractor, including but not limited to an arbitration or action to establish the right to indemnity or to enforce any provisions of or rights arising under the Subcontract.

11.2 The Subcontractor's liability insurance policies shall each contain contractual liability coverage (including, but not limited to, products liability and completed operations) so as to effectuate Subcontractor's indemnity and defense obligations and to protect fully Subcontractor, Contractor, and Owner.

11.3 Subcontractor's indemnification obligations under this Subcontract shall in no way be limited by the limitation on amount or type of damages, compensation or benefits payable by or for Subcontractor, or any of its subcontractors, under any workers' compensation act, employer liability act, disability act or other employee benefit act. The Subcontractor's indemnity obligations under this Subcontract further shall not be restricted to amounts available under insurance, whether actually obtained or which should have been obtained, but shall extend to the fullest extent, as set forth in this Subcontract. The indemnification provisions of this Subcontract shall survive final payment and/or termination of this Subcontract.

#### **ARTICLE XII: CHANGES**

12.0 The Contractor may issue written change to this Subcontract, without notice to Subcontractor's sureties. Changes may be additive or deductive. Subcontractor shall make any and all changes in the work described in the Subcontract as directed by an Authorized Representative of Contractor in writing. Such change or written direction shall not invalidate this Subcontract. If there is a dispute as to whether the work at issue is a change in the Subcontractor's work or there is a dispute as to the value of such change, the Contractor shall be entitled to issue a directive to the Subcontractor to perform the work in question and the Subcontractor shall be obligated to proceed with and complete performance of such work, without either party waiving its respective rights. The Subcontractor agrees that it shall have no claim nor entitlement to additional compensation under this Subcontract unless Subcontractor has received as a condition precedent (i) a written change order for an agreed price or written directive to proceed (ii) signed by an Authorized Representative of the Contractor, (iii) in advance of Subcontractor's commencement of the work or Subcontractor's incurring of costs for the event upon which Subcontractor's claim is based. No time extension shall be granted to the Subcontractor because a change order has been issued, unless it is expressly stated therein. No separate claim shall be made for delay or additional costs based on the number, nature, or extent of the changes made.

12.1 The Contractor, without invalidating this Subcontract or any bonds or security furnished hereunder, and without notice to the sureties, if any, may, at any time after the execution of this Subcontract, reduce or omit the Subcontractor's scope of work. The Contractor shall order such reductions or omissions by giving notice to the Subcontractor prior to when the work that has been reduced or omitted was scheduled to begin. When work is omitted or reduced, in whole or in part, the Contractor shall pay, subject to the provisions of this Subcontract, for all cost of work actually properly performed. Subcontractor is not entitled to compensation or damages for any losses, including loss of profit or overhead relating to the unperformed portion of reduced or omitted work.

12.2 Subcontractor shall not make any changes in the work described in this Subcontract or in any way cause or allow the work to deviate from the Subcontract without written direction from Contractor. If Subcontractor makes any changes in the work described in the Subcontract without written direction from an Authorized Representative of Contractor, then such change constitutes an agreement by Subcontractor that it need not be paid for that changed work, even if it received verbal direction from Contractor or any form of direction, written or otherwise, from Owner or any other person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses, damages, and liability of any nature whatsoever associated with or in any way arising out of any such change it makes without written direction from an Authorized Representative of Contractor.

12.3 In the manner and form and in such detail as required by the Prime Contract, Subcontractor shall give written notice of any changes, cost reimbursement, additive or deductive adjustment in Subcontract time or amount, additional compensation, or other claim of any nature (individually and collectively referred to as "requested change"), at least five (5) working days before the time the Prime Contract requires the Contractor to give notice of same to the Owner and at least one





week before the work related to such requested change begins. This provision shall not be interpreted to give the Subcontractor a right to any remedy for issues covered by Section 4.3 (except as provided therein) or otherwise disallowed by the provisions of this Subcontract. Timely notice as required above is an absolute condition precedent to the Subcontractor receiving any relief whatsoever for any such requested change. The Subcontractor shall not begin the work related to the requested change until authorized in writing by an Authorized Representative of the Contractor. If elected by the Contractor, the Subcontractor is obligated to pass through the Contractor to the Owner all claims which are in good faith believed by the Contractor to have been caused, in whole or in part, by the Owner or by others for whom the Owner is liable or by circumstances for which the Owner is liable; and in such instance, the Subcontractor shall be bound by the Owner's decision with regard to the Subcontractor's claims passed through to the Owner, and the Subcontractor's sole and exclusive remedy shall be limited to whatever relief the Contractor actually obtains from the Owner for the Subcontractor's pass through claims. The Subcontractor agrees to stay any and all legal actions against the Contractor or its Surety until a final non-appealable decision has been obtained from or against the Owner with respect to the requested change. The Subcontractor's recovery for any requested change shall be limited to the extent of any amounts and time extensions that the Contractor, on behalf of the Subcontractor, actually receives from the Owner for such requested change. Such price increase shall not exceed the Subcontractor's pro rata share of the total increase as determined by the Contractor and as approved and paid by the Owner.

12.4 The Subcontractor agrees that any requested change shall be based upon the Subcontractor's actual direct costs and actual time incurred or saved with respect to the work or other subject matter of such requested change. The Subcontractor shall submit current, accurate, complete data which are based on verifiable records and data maintained on a contemporaneous basis as costs and delay are being incurred that result from and are properly allocable to such requested change. Subcontractor shall identify, segregate, separately code, and fully substantiate with such contemporaneous records and data any actual direct costs and any actual time claimed, and Subcontractor shall be entitled to relief, if otherwise permitted herein, only for such costs and time proven to result solely from the subject matter of the requested change and from no other factor. In no event shall the Subcontractor be entitled to receive compensation or time adjustment for any requested change on a "total cost" or "total time" basis, or any variation thereof. Except to the extent further restricted or disallowed by other provisions of this Subcontract, Subcontractor's monetary relief for any requested change shall be limited to the Subcontractor's actual direct and reasonable costs as provided above and a single markup on such actual costs not to exceed ten percent (10%) for all supervision, overhead, profit, indirect costs, and other damages of every kind or nature.

12.5 The Subcontractor shall disclose only to the Contractor any price or quotation on the cost of contemplated changes in the work. If the Contractor or Owner requires certification of any requested change or the submission of cost or pricing data respecting any change or alteration, the Subcontractor covenants and agrees to furnish the Contractor with a certification of any and all of Subcontractor's requested changes and of Subcontractor's cost or pricing data as an absolute condition precedent to the Subcontractor receiving any relief whatsoever for any such requested change.. The Subcontractor's certification shall be in a form satisfactory to the Contractor. The Subcontractor shall give the Contractor, including the Contractor's designated representatives, access at all reasonable times and the right to examine, reproduce, and audit the Subcontractor's books, records, documents, information and data which are related to the Subcontractor's costs or time of performance or which are necessary or appropriate, in the Contractor's sole judgment, to evaluate any requested change made by the Subcontractor or any defense or offset asserted by the Subcontractor to any requested change made by the Contractor with respect to the Subcontract work. Contractor shall bear the cost of such examination or audit unless the Subcontractor's records or data are not complete, current, accurate, and verifiable in which case Subcontractor shall bear such costs. The Subcontractor shall indemnify, defend, exonerate, and hold harmless the Contractor from any losses, claims, damages, or expenses which Contractor may suffer or incur, including attorneys' fees and related costs, as a result of Subcontractor's failure or inability to support any part of its requested change or as a result of Subcontractor's failure to provide complete, current, and accurate cost or pricing data.

12.5.1 The Contractor shall not be liable for Subcontractor's overtime costs unless Contractor specifically directs and agrees to pay for such overtime by written change order signed in advance of overtime being incurred by an Authorized Representative of the Contractor. The Subcontractor specifically agrees not to rely on "signed tickets" for additional compensation unless such tickets are signed by an Authorized Representative of Contractor. Unless expressly provided otherwise in such change order, the Contractor shall pay only the premium portion of overtime plus applicable payroll taxes,



but Contractor shall not be liable for any alleged loss of productivity, overhead, profit, or any other cost factor whatsoever related to Subcontractor's overtime.

12.6 No change, alteration, or modification to or deviation from the work described in this Subcontract, whether made in the manner provided in this section or not, shall release or exonerate, in whole or in part, any bond or any surety on any bond given in connection with this Subcontract, and no notice is required to be given to such surety of any such change, alteration, modification, or deviation. Any increases in the Subcontract price shall automatically increase the respective penal sums of the performance bond and of the payment bond furnished by the Subcontractor; however, the penal sum shall not decrease in the event of a decrease in Subcontract price.

#### **ARTICLE XIII: WARRANTY**

13.0 The Subcontractor hereby guarantees and warrants its work shall comply strictly with this Subcontract and with all parts of the Prime Contract applicable to the Subcontractor's work, and the Subcontractor further guarantees and warrants its work to be of good material and workmanship, free from defects, fit, safe, merchantable, and sufficient for the purposes intended. The Subcontractor further guarantees and warrants that the Subcontractor has good title to all such work, material, and equipment covered by this Subcontract, and Subcontractor shall deliver and install same free from any liens, security interest, or encumbrance. In addition to Subcontractor's warranties and guarantees as provided by the Prime Contract and by this Subcontract, the Subcontractor shall also have the obligation to correct any Subcontract work which does not fully satisfy and comply strictly with the requirements of this Subcontract, including the foregoing warranties and guarantees, and this period of mandatory correction shall extend for the same period as the Contractor's correction of work and/or call-back obligations under the Prime Contract or for one year after final payment to the Subcontractor or final payment by Owner to Contractor, whichever is longer. The warranties and guarantees set forth herein are in addition to any other warranties or guarantees required by the Prime Contract, provided by law, or set forth by separate agreement. Any Subcontract work not conforming to the requirements of this Subcontract, including substitutions not properly authorized, shall be considered defective and shall be promptly replaced or corrected as directed by the Contractor.

13.1 If at any time during the warranty period, any part of the materials or workmanship furnished by the Subcontractor shall become defective or not be in conformance with the plans and specifications as determined by the Contractor, the Subcontractor will, upon notice to that effect from the Contractor, repair or replace within three (3) days to the satisfaction of and without cost to the Contractor. The Subcontractor's warranty is in addition to and not in lieu of any warranty afforded the Owner under applicable law. The terms and conditions of this Subcontract shall apply to any and all modification, repair and replacement of the work, whether within the warranty period or thereafter.

13.2 The Subcontractor shall be responsible for its own quality control of the work performed by it pursuant to this agreement. No action or inaction of the Contractor will be deemed to excuse or relieve the Subcontractor for its own quality control or for any defective work performed or non-conforming materials furnished by the Subcontractor. In the event the scope of work includes installation of materials or equipment furnished by others or work to be performed in areas to be constructed or prepared by others, it shall be the responsibility of Subcontractor to examine and accept, at the time of delivery or first access, the items so provided and thereupon handle, store and install the items with such skill and care as to insure a satisfactory completion of the work. Use of such items or commencement of work by Subcontractor in such areas shall be deemed to constitute acceptance thereof by Subcontractor.

13.3 The Subcontractor shall provide all Project record documentation, shop drawings, submittals, scheduling information, as-built drawings, operating and maintenance manuals, manufacturer's instructions, labeling and marking of installations, warranties, commissioning requirements, certifications, monitoring or testing results, reports, close-out information, and other documentation of whatever nature pertaining to the Subcontract Work to the same extent that the Owner requires such documentation of the Contractor.

#### **ARTICLE XIV: DISPUTE RESOLUTION**

14.0 This Subcontract shall be deemed entered into in Philadelphia, Mississippi, upon execution by the parties. The



laws of the state of Mississippi govern this Subcontract and all actions or proceedings instituted by or against the Contractor upon any claim or cause of action arising out of or relating to this Subcontract or this Project shall be commenced in Mississippi state court in Neshoba County, or, if applicable, in the U.S. District Court for the Southern District of Mississippi, subject to Section 14.1 and Section 14.2.

14.1 Claims, disputes, and other matters in controversy between the Contractor and the Subcontractor (including any affiliates, agents, employees, representatives, and sureties of either of them) arising out of or relating to this Subcontract shall be decided by binding arbitration in accordance with the current and applicable Construction Industry Rules and procedures of the American Arbitration Association, except if the Contractor in good faith believes that any claim, dispute, or matter in controversy with the Subcontractor also involves rights or liabilities of the Owner, Architect, or other third party, then, at the Contractor's sole election, the Subcontractor agrees to resolve such issues in the same forum or proceeding, including arbitration, court, or administrative authority, which has jurisdiction over some or all claims, disputes, and matters in controversy involving the Owner, Architect, or other third party so as to promote economy and avoid inconsistent results. This also applies to any claim, dispute, or matter(s) in controversy or in question between the Subcontractor and any of the Contractor's employees or agents of the Contractor's affiliated businesses or their employees or agents. The agreement to arbitrate contained herein shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered into upon it in accordance with applicable law in Mississippi state court in Neshoba County, or, if applicable, in the U.S. District Court for the Southern District of Mississippi, or, alternatively, in any other court having jurisdiction thereof.

14.2 The Contractor and Subcontractor intend and agree that the foregoing dispute resolution provisions given to the Contractor are not independent of or severable from the remainder of the Subcontract and that such provisions and election rights are supported by the consideration and mutuality of the Subcontract as a whole. The locale for any arbitration or litigation involving the Subcontractor and the Contractor shall be Neshoba County, Mississippi, unless (i) the Contractor agrees to designate another locale to facilitate joinder of parties, to consolidate claims, or for any other reason or (ii) the designated locale is prohibited by applicable law, in which case the locale for any arbitration or litigation shall be the location of the Project. To the full extent permitted by law, the parties hereby expressly and knowingly waive any right to a jury trial they may have for all causes, claims, and issues in any way relating to or directly, indirectly, wholly, or in part, arising from this Subcontract.

14.3 Should the Contractor through litigation, arbitration, or other means seek to recover on any surety bond given by the Subcontractor under this Subcontract, the Subcontractor and its surety, jointly and severally, agree to pay Contractor for all its costs, expenses, and attorneys' fees incurred in the investigation preparation, and trial or hearing of such matters and otherwise reasonably related thereto.

14.4 Each party shall be solely responsible for its respective costs, expenses and attorneys' fees, unless specifically allowed to be recovered pursuant to another provision of this Subcontract.

14.5 No claim, dispute, or matter in controversy or question shall interfere with the progress of construction, and the Subcontractor shall proceed diligently with performance of this Subcontract, notwithstanding the existence of any claim, dispute, or matter in controversy or question.

14.6 Except as allowed or provided for elsewhere in this Subcontract, each party hereby waives all rights it might otherwise have to recover special, consequential, or punitive damages from the other arising from or relating to this Subcontract.

14.7 If, through acts, omissions, or neglect on the part of any entity other than Contractor, including, without limitation, any other contractor or subcontractors, Subcontractor shall suffer loss or damage, Subcontractor agrees to resolve such alleged damages or claims directly with such other entity. If another entity shall assert any claim against Contractor on account of any loss or damage, Contractor shall notify the Subcontractor, who shall defend indemnify and save harmless Contractor against any such claim.



#### **ARTICLE XV: NOTICES**

15.0 Any notice provided for herein to the Subcontractor may be given in writing by United States mail, and shall be considered as given when addressed to the last known address of the Subcontractor and deposited in the United States mail, and shall be effective for all purposes, as of the time of such deposit, whether actually received by the Subcontractor or not. Notice by any other means (including, without limitation, e-mail and facsimile) shall be effective when communicated to or received by the Subcontractor.

15.1 Any notice provided for herein to the Contractor shall be given to an Authorized Representative of Contractor via facsimile and in duplicate to William G. Yates, Jr., by United States mail, return receipt requested, at One Gully Avenue; Philadelphia, Mississippi 39350.

15.2 Subcontractor shall notify Contractor within seven (7) days of any change in the ownership of Subcontractor.

#### **ARTICLE XVI: ASSIGNMENT**

16.0 The Subcontractor shall not subcontract nor assign any part of this Subcontract without first obtaining the written consent and approval of the Contractor (which may be withheld in its sole discretion). Assignments of Subcontract proceeds are permissible but only if written notice of same is received and acknowledged in writing by an Authorized Representative of Contractor at least thirty (30) days before the assigned proceeds are due and payable to the Subcontractor. The Subcontractor and the Subcontractor's assignee shall ensure that the assignment of Subcontract proceeds does not adversely affect the performance of this Subcontract, including the full and timely payment of all bills and obligations owed by the Subcontractor. To the extent Subcontractor proceeds are paid to the Subcontractor's assignee the Subcontractor and the Subcontractor's assignee hereby agree to indemnify, defend, save harmless, and exonerate the Contractor from any loss, liability, or expense (including attorney's fees) which the Contractor incurs or which is claimed against either the Contractor or the Contractor's surety as a result of the Subcontractor's failure to perform work in accordance with the Subcontract or as a result of the Subcontractor's failure to pay its bills and discharge its obligations relating to this Subcontract. Any assignments of Subcontract proceeds and any payments made pursuant to assignments shall be subject to and conditioned upon the Subcontractor's compliance with all terms and conditions of this Subcontract and any payments under such assignments are expressly conditioned upon and restricted to the amount actually collected by the Contractor from the Owner for work performed by the Subcontractor and accepted by the Owner, less retainage, backcharges, or other offsets which are chargeable by the Contractor against the Subcontractor, whether on this Project or otherwise. Acknowledgment, acceptance or approval of an assignment by the Contractor does not constitute any representation or agreement by the Contractor that the Subcontractor is owed the amount assigned or any specific amount whatsoever.

#### **ARTICLE XVII: INTERPRETATION**

17.0 This Subcontract, and all documents incorporated by reference herein, represent the entire and integrated agreement between the parties and supersede all prior negotiations, representations, proposals, stipulations, or agreements, either written or oral. All prior or contemporaneous agreements to be included in this Subcontract are expressly identified herein. No agent or representative of either party has authority to make, and the parties shall not be bound by nor liable for, any statement, representation, promise or agreement not set forth herein.

17.1 The terms and provisions of this Subcontract will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof; provided that if any provision of this Subcontract, as applied to any party or to any circumstance, is adjudged by a court or arbitrator not to be enforceable in accordance with its terms, the parties hereto agree that it is their desire that that the court or arbitrator making such determination modify the provision, including, without limitation, deleting specific words or phrases, in a manner consistent with its objectives, and in its modified form, such provision will then be enforceable and will be enforced. It is the intent of the parties hereto that the court or arbitrator, in determining any such enforceable modified provision, recognize that it is their intent that the provisions hereof be imposed and maintained to the greatest extent possible.



17.2 The terms and conditions hereof shall inure to and be binding upon the parties hereto, their successors, assigns, executors, administrators and legal representatives. All of the Subcontractor's obligations under this Subcontract shall survive final payment and/or termination of this Subcontract.

17.3 The Contractor and Subcontractor agree that it is in their mutual interests to have certainty in the scope of their contractual obligations. Accordingly, with the sole exception of a written directive issued by the Contractor pursuant to Section 12.0, each party represents to the other that it will not change, modify, or amend nor assert a change, modification or amendment in this Subcontract, except through a written change order, modification, or amendment executed by an authorized representative of each party. The Contractor and Subcontractor agree that any purported oral, unsigned, or other change, modification, or amendment not fully compliant with the requirement for mutually approved and executed writings as set forth in this section shall be invalid and utterly unenforceable, including any claim of oral amendment to this section itself.

17.4 No waiver or failure by the Contractor to exercise rights under this Subcontract shall limit any of the Contractor's rights as to any subsequent or continuing failure by the Subcontractor to comply strictly with all terms and conditions of this Subcontract.

17.5 In the event of any mistake, ambiguity, or conflict with this Subcontract, neither party shall be considered the author of the Subcontract, and no mistake, ambiguity, or conflict shall be construed more strongly against or more favorably toward either party hereto.

17.6 Headings used in this Subcontract are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope or intent of this contract, nor do they in any way affect this contract.

17.7 Nothing in this Subcontract is intended nor shall be construed to create any rights for or to the benefit of any third parties.

**ARTICLE XVIII: AUTHORIZED REPRESENTATIVES**

The Contractor's Authorized Representatives shall be:

Name: Title: Phone:

Name: Title: Phone:

The Subcontractor's Authorized Representative for the Project shall be:

Name: Title: Phone:

ONLY THE CONTRACTOR'S PRESIDENT OR AUTHORIZED REPRESENTATIVES, AS SET FORTH ABOVE, MAY MAKE BINDING COMMITMENTS ON BEHALF OF THE CONTRACTOR.

The following have agreed to the terms of this Subcontract and have signed this Subcontract as officers of their respective organizations, having been duly authorized to do so.

EQUAL OPPORTUNITY EMPLOYER  
M/F H/V

DRAFT

**Subcontract**  
**Attachment "A"**  
**SUBCONTRACTOR INSURANCE**

1. The insured's name must appear the same on the insurance certificate and the Subcontract with W. G. YATES & SONS CONSTRUCTION COMPANY.
2. The policy numbers and expiration dates for each type of coverage must be listed.
3. Insurance carrier listed on certificate must have an Ambest rating of A- or better.
4. Minimum coverage required (unless higher limits required by Owner):

A. General Liability:	Each Occurrence	\$1,000,000
	Damage to Rented Premises	\$50,000
	Medical Expense (any one person)	\$5,000
	Personal & Adv Injury	\$1,000,000
	General Aggregate	\$2,000,000
	Products - Comp/OP Aggregate	\$2,000,000
B. Auto Liability:	Combined Single Limit	\$1,000,000
C. Excess / Umbrella	Each Occurrence	\$1,000,000
	Aggregate	\$1,000,000
D. Workers' Comp:	Each Accident	\$1,000,000
	Diseases (Policy Limit)	\$1,000,000
	Diseases (Each Employee)	\$1,000,000

\*If the subcontractor has no employees other than himself/herself, then workers comp is not required by W. G. YATES & SONS CONSTRUCTION COMPANY .

5. In the section of "Special Terms", or "Description of Operations" The following language shall be on the Certificate:  
"(Certificate Holder), the Owner & all other parties as required by contract are named as additional insured on Auto Liability, General Liability (including completed operations) and excess liability on a primary and non-contributory basis. All policies include waiver of subrogation in favor of the additional insureds."

**Note: The actual Policy must be submitted with the Certificate.**

We prefer the additional insured endorsement form CG 20 10 1 1 85. If we can not get this from the subcontractor, our second choice is to have two forms: CG 20 10 10 01 and CG 20 37 10 01. As a last resort, we can accept the following two forms: CG 20 10 7 04 and CG 20 37 7 04.

6. The specific job/project the subcontractor is working on must be shown on the Certificate of Insurance. An exception to this will be if the wording on the certificate references "All Jobs."
7. Certificate of insurance must include cancellation verbiage stating if any of the policies are cancelled before the expiration date thereof, the issuing company will mail 30 days written notice to W. G. YATES & SONS CONSTRUCTION COMPANY.
8. If the Subcontractor is required to furnish professional services as part of the Work, The Subcontractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than \$2,000,000 per claim and \$2,000,000 in the aggregate.
9. If the Work involves the transport, dissemination, sue or release of pollutants, the Subcontractor shall procure Pollution Liability insurance, with policy limits of not less than \$2,000,000 per claim. W. G. YATES & SONS CONSTRUCTION COMPANY must be listed as additional insured.

**Note: No exceptions will be made to these requirements without written approval of the Risk Manager.**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

<b>PRODUCER</b> AGENT NAME AGENT PHONE NUMBER AGENT ADDRESS	THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
<b>INSURED</b> SUBCONTRACTOR NAME PHONE NUMBER COMPLETE ADDRESS	<b>INSURERS AFFORDING COVERAGE</b> INSURER A: INSURANCE COMPANY A INSURER B: INSURANCE COMPANY B INSURER C: INSURANCE COMPANY C INSURER D: INSURANCE COMPANY D INSURER E: INSURANCE COMPANY E	<b>NAIC #</b>     

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSURER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER POLICY <input checked="" type="checkbox"/> PER OCCUR <input type="checkbox"/> LOC	POLICY NUMBER			EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS-COM/PROP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS  <input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO	POLICY NUMBER			COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY AGG \$
C	<input checked="" type="checkbox"/> EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000	POLICY NUMBER			EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ \$ \$
D	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROVISION FOR RENEWAL EXCLUSIVE OF FIDUCIARY MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	POLICY NUMBER			WC STATUS/ OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
E	<input type="checkbox"/> OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Project Name/Number or "All Jobs" -  
 (Certificate holder), the owner, and all other parties as required by contract are named as additional insured on auto liability, general liability (including completed ops), and excess liability on a primary and non-contributory basis. All policies include a waiver of subrogation in favor of the additional insured.

**CERTIFICATE HOLDER**

W. G. YATES & SONS CONSTRUCTION COMPANY

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



## IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## **ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - (FORM B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. Section II - **Who Is An Insured** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

8. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG20 3710 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## **ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS- COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:
Location And Description of Completed Operations:
Additional Premium:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

Section II - Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" at the location designated and described in the schedule of this endorsement performed for that insured and included in the "products completed operations hazard".


THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
	
Information required to complete this Schedule, if not shown above. Will be shown in the Declarations.	

A. Section II - **Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

8. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 20 37 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II - **Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the products-completed operations hazard".