



SUBCONTRACT AGREEMENT

DATE: 00/00/00

SUBCONTRACT AGREEMENT NO.: 0000000ABCDE

PHASE CODE: 00-000

SUBCONTRACTOR: **Company Name**
 Address
 City, State, Zip

PROJECT NAME: **XYZ**
 Address
 City, State, Zip

SUBCONTRACTOR PERFORMANCE/PAYMENT BONDS MAY BE REQUIRED AND FORM SHALL BE AS PROVIDED IN EXHIBIT A

As of the date written above, Henry Bros. Co. ("Contractor") and Subcontractor, by their duly authorized representatives, agree to enter into this Subcontract Agreement. **SUBJECT TO THE ATTACHED CONDITIONS OF THE SUBCONTRACT AGREEMENT**, Subcontractor is authorized to proceed with the work described below in connection with the Project, the Subcontract Amount of which is to be the lump sum amount of **XXXXXXXXXXXXXXXXXXXX and NO/100 Dollars (\$000,000.00)**.

SCOPE OF WORK

A. Subcontractor's Work. The Subcontractor's Work as defined in the Conditions of the Subcontract Agreement, which are incorporated into this Subcontract, also shall consist of furnishing all labor, materials, equipment, plant, scaffolding, hoisting, layout, tools, fasteners, anchors, supplies, taxes, freight, quality control documentation, competent supervisory personnel in adequate number, testing, training, insurance and other things necessary for the total, satisfactory and timely performance of all work in strict accordance with this Subcontract Agreement, the Conditions to the Subcontract Agreement, all Subcontract Exhibits and the other Subcontract Documents. In addition, any request for field modifications contrary to Contract Documents, must be requested in writing and approved by the Architect and Henry Bros. Co. prior to the start of the work. Verbal requests and or directions from any source will not be accepted. If work proceeds without written authorization, the subcontractor will be held solely responsible for any and all costs associated with any rejected and or required corrective work:

Furnish and Install the XXXXXXX per plans and specifications.

- 1. It is the intent to award a complete XXXXXXX Subcontract Agreement. Based on this Subcontractor's expertise in its portion of the Work and based on the information contained in the Contract Documents this Subcontractor acknowledges that the information is sufficient for it to complete the work under this Agreement. This also includes addendums 1, 2, 3, and 4.**
- 2. This Agreement includes the cost of all background checks if required.**
- 3. This Agreement includes all required submittals per the Contract Documents.**

4. **Include all hoisting equipment necessary to complete the work under this Agreement.**
5. **It is the responsibility of this Subcontractor to ensure that all vehicles being utilized during the performance of the Work under this Agreement have clean tires or machine tracks prior to entering on private or public streets.**
6. **Provide flagmen as necessary during material deliveries to ensure safety to the public and jobsite personnel.**
7. **The following work is excluded from this Agreement:**
 - A. **Sales tax.**
 - B. **Permits, except those required for transporting equipment.**
 - C. **Electric and water.**
 - D. **Dumpsters.**
 - E. **Precast Panels.**
11. **Time is of the essence on this project. HBCo. has contracted to complete this project in the most expeditious manner. ABCDE shall perform and complete portions and the whole work in accordance with the General Contractor's schedule in such a manner so as not to delay the work of any other trade or the completion of the Project.**

B. Insurance and Additional Insureds. (i) Subcontractor shall at all times and in all operations performed under this Subcontract carry insurance of the following minimum types of Coverage and minimum Limits of Liability unless the Contract Documents require additional or different insurance coverage, terms or limits:

(a) Workers' Compensation: Statutory Coverage as required by the laws of the State and Employers Liability Insurance with limits not less than \$1,000,000 per Accident;

(b) Commercial General Liability (including Premises and Operations, Contractual Liability for all Claims referred to in Paragraph 7 "Indemnity", Personal Injury Broad Form Property Damage to include Completed Operations in amounts not less than the following: \$1,000,000 per Occurrence for Bodily Injury and Property Damage/\$1,000,000 Personal Injury/\$2,000,000 Aggregate for Products and Completed Operations and \$2,000,000 General Aggregate on a Per Project basis;

(c) Business Auto Liability (for all Owned, Non-owned and Hired vehicles) in amounts no less than \$1,000,000, combined single limits of \$1,000,000 for Bodily Injury and Property Damage;

(d) Commercial Umbrella/Excess Liability in amounts not less than \$3,000,000 per Occurrence/ \$3,000,000 Aggregate for subcontract prices of \$1,000,000 or below (except for the trades of concrete, precast concrete, masonry, steel, curtainwall, electrical, plumbing, HVAC, elevator, insulation and fire protection which limit shall be as if the Subcontract price had been in excess of \$1,000,000), limit of \$5,000,000 for subcontract prices of \$1,000,001 to \$3,000,000 and limit of \$10,000,000 for subcontract prices above \$3,000,000.

(e) Professional Liability: If Subcontractor's scope of work includes the obligation to provide any architectural or professional/engineering services, Subcontractor shall provide professional liability insurance in minimum limits of \$2,000,000 each claim and \$2,000,000 aggregate coverage with a maximum of \$100,000 deductible (or self-insured retention).

(f) If Subcontractor is to provide Environmental or Remediation Service, Subcontractor shall provide Pollution Liability in minimum limits of \$1,000,000 each claim with \$1,000,000 total limit with a maximum of \$100,000 deductible.

(ii) (a) The Subcontract Amount includes and the Subcontractor shall name as additional insureds on the Subcontractor's Commercial General Liability Policy, employing ISO Form CG 20 10 [10/01 or 7/04 version] in conjunction with ISO Form CG 20 37 [10/01 or 7/04 version] or equivalents and Business Auto Liability and Subcontractor shall provide to Contractor the insurers' endorsement(s) confirming:

(b) The Additional Insured Endorsement to the applicable Subcontractor's Provided Insurance (as defined in Article 22 of the Conditions to this Agreement) policies shall provide: "With respect to any claims, losses, damages, expenses, or liabilities arising out of Subcontractor's Work and/or performance of the Subcontract, this Subcontractor's Provided Insurance will be primary over any other insurance available to Contractor or Owner or any of the Additional Insureds ("Non-Subcontractor Provided Insurance") and such Non-Subcontractor Provided Insurance shall be in excess of, non-contributory with and need not be horizontally exhausted to payment by any and all of workers compensation and primary commercial

general liability and commercial umbrella/excess liability insurance afforded by this Subcontractor's Provided Insurance."

Additional Insureds:

Per project specific contract documents

Henry Bros. Co. (certificate holder)
9821 S. 78th Ave.
Hickory Hills, IL 60457

(iii) Cancellation. Each of the Subcontractor's Provided Insurance policies must state that the Insurer is to provide Contractor thirty (30) days advance written notice of cancellation, reduction, or material change in coverage or limits.

(iv) Waiver of Subrogation (Workers Compensation). The Subcontractor will provide a Waiver of Subrogation endorsement in favor of the Henry Bros. Insureds which shall apply to provide that subrogation shall be waived against the Henry Bros. Insureds regarding workers compensation on all Projects to which this Subcontract Master Agreement applies.

C. Subcontractor's Timeliness. Subcontractor's obligation for timely performance is based on the dates provided in this Paragraph C and the dates, sequence and duration as established by Contractor's Project Schedule as amended from time to time by Contractor and not by any shorter or differing requirements of the Prime Agreement. Subject to the provisions of Article 9 of the Conditions to the Subcontract Agreement, Subcontractor agrees to commence and complete Subcontractor's Work in strict accordance with the dates provided in this Paragraph C below and Contractor's Project Schedule, as amended from time to time, and periodic updates as may be necessary from time to time, including short interval schedules issued by Contractor for performance of the Work. Project applicable milestones for Subcontractor's Work are:

- 1. Provide all specified submittals, including samples, within two weeks of receiving a notice to proceed.**
- 2. Confirm two weeks before materials are scheduled to be on site that they will be available.**
- 3. Attend all coordination meetings related to your scope of work and progress meeting starting two weeks before mobilizing on site through completion of your scope of work.**
- 4. Impacts from COVID-19 Pandemic and Its Variants**
 - a. The Contractor has accounted for the known impacts of the COVID-19 pandemic in agreeing to the Contract Sum and Contract Time. These known impacts include, but are not limited to, existing health and safety requirements and guidelines issued by authorities having jurisdiction that affect the means, methods and sequencing of construction and the known availability, pricing and timeliness of fabrication and delivery of construction materials and equipment ("Existing Conditions").**
 - b. If impacts caused by the COVID-19 pandemic or its variants, such as material shortages, extraordinary delays in delivery, labor unavailability or material price increases, arise after the Effective Date of the Agreement which are not Existing Conditions and such impacts could adversely affect the Contract Sum or the Contract Time of both ("New Conditions"), the Contractor shall explore all commercially reasonable measures to overcome such New Conditions that would not require an increase to the Contract Sum or an extension of the Contract Time, or, if required, to overcome the New Conditions, the Contractor shall apprise the Owner promptly in writing of the details of the measures considered by the Contractor so that the Owner is able to make informed decisions in cooperation with the Contractor which may include, without limitation, time extension or acceleration.**

- D. Subcontractor's Schedule of Values and Unit Prices each are set forth and described in this Paragraph D below:
1. Subcontractor warrants that Subcontractor's Schedule of Values set forth in this Paragraph D identifies all subcontractors and suppliers to Subcontractor for Subcontractor's Work, their respective sub-subcontract prices and quantities.
 2. If Subcontractor will self-perform any of Subcontractor's Work, Subcontractor shall submit in support of Subcontractor's Schedule of Values, a detailed labor, supervision and overhead cost breakdown by discipline, task and area.
 3. All work related to unit prices shall be performed in accordance with the requirements of the Contract Documents. Unit Prices include all labor, material, equipment, taxes, payroll costs, insurance, bonds, overhead, profit, mobilizations and demobilizations, and any other pertinent items. Should Contractor elect to have Subcontractor utilize these unit prices within the preparation of cost proposals in accordance with the Contract Documents, they shall be used for BOTH ADDS and DEDUCTS.
 4. The Subcontractor's Schedule of Values and Unit Prices are: Upon returning subcontract, subcontractor will submit an Estimated Schedule of Values as an attachment to the contract. (A Final Schedule of Values must be signed and approved by Henry Bros. Co.)
- E. Scope Clarification. The scope of work may be clarified in this Paragraph E below but such clarification does not relieve the Subcontractor from performing all Subcontractor's Work complete for this Project which complete Subcontractor's Work is the intent of this Subcontract Agreement:
- F. Subcontractor agrees to comply fully with Contractor's "Water Response and Mold Prevention Program", a copy of which is attached to and made a part of this Subcontract as Exhibit B.
- G. Exhibit C, Henry Bros. Co. Partial Lien Waivers and Final Lien Waivers forms for all Subcontractors and their Sub-Subcontractors and suppliers.
- H. A list of Drawings and Specifications containing certain of Subcontractor's Work is set forth on Exhibit D.
- I. Exhibit E, LCP Tracker
- J. If either (a) the Prime Agreement is with an agency of any local, state or federal government or (b) any local, state or federal government (i) is providing funding and (ii) requiring the use of specific subcontract provisions, such provisions are included as Exhibit F to this Agreement which is a Subcontract Document.

Subcontractor acknowledges that Subcontractor has reviewed and is familiar with this Subcontract Agreement, the Conditions to the Subcontract Agreement, the Exhibits and the Contract Documents and Subcontractor agrees to be bound to Contractor by their terms.

00-00000 Project Name

ACCEPTED: (Subcontractor)

HENRY BROS. CO. (Contractor)

Signature: _____

Signature: _____

Print Name: _____

Print Name: Sandy Austin

Print Title: _____

Print Title: CFO

Date: _____

Date: _____

CONDITIONS TO THE SUBCONTRACT AGREEMENT

The parties agree as follows:

1. SUBCONTRACTOR'S WORK. Subcontractor shall perform all work and shall furnish all labor, materials, equipment, plant, scaffolding, hoisting, tools, fasteners, anchors, supplies, taxes, freight, quality control documentation, supervisory personnel, testing, training, insurance and all other things necessary for the total, satisfactory and timely construction and completion of the work generically described in the Scope of Work section of the Subcontract Agreement and work incidental thereto whether shown or not (collectively, the "Subcontractor's Work"), in strict accordance and full compliance with the Prime Agreement between Owner (which term shall include all of the Owner's agents and representatives) and Contractor and incorporated contract documents (together, the "Contract Documents"), the Drawings and Specifications listed in Exhibit D to this Subcontract Agreement (which Drawings and Specifications take precedence over the drawings and specifications listed within the Prime Agreement, if those drawings and specifications listed in the Prime Agreement are an earlier edition from those bid by Subcontractor), Contractor's "Water Response and Program", all of the specific Prime Contract provisions set forth in Exhibit B on relevant Projects, Contractor's Quality Control Manual, Subcontractor's Schedule of Values (as approved by Contractor) and any addenda and Modifications to the Contract Documents or this Subcontract Agreement, Contractor's Schedule and, at Contractor's option exercised under Article 23 of these Conditions to the Subcontract Agreement, payment and performance bonds (all of the foregoing, collectively the "Subcontract Documents"), and to the satisfaction of Contractor and Owner. Subcontractor's Work is not limited by any titles on the drawings or headings in the Specifications because the parties intend that all work customarily performed with the Subcontractor's Work and required by the Contract Documents shall be performed by Subcontractor, including any and all items and services consistent with, contemplated by and reasonably inferable from, the Contract Documents, whether or not such items and services are specifically mentioned therein, unless expressly excluded.

2. COMPLETE AGREEMENT/SUBCONTRACTOR'S INVESTIGATIONS AND REPRESENTATIONS.

(a) This Subcontract includes the body of this Subcontract Agreement and these Conditions to the Subcontract Agreement and the Subcontract Documents. Further, subject to Article 3 of these Conditions to the Subcontract Agreement, the Contract Documents and any addenda and written Modifications to them all are hereby incorporated by reference and made a part of this Subcontract as if fully set forth herein. This Subcontract Agreement and these Conditions, the Subcontract Documents and the incorporated Contract Documents contain the entire agreement between Contractor and Subcontractor with respect to the Project. No proposals or bids of Subcontractor or any other agreements, representations, warranties, opinions, or other matters, oral or written, of the Contractor or any of Contractor's respective officers, agents or employees, shall be deemed to bind Contractor to Subcontractor with respect to the Project. This Subcontract cannot be amended, modified, or changed except in a written Change Order, signed by the designated representative of Contractor. Contractor shall be entitled unilaterally to alter, modify, add to or delete from any of the Subcontractor's Work, if within or related to the general scope of the Subcontractor's Work with adjustment in the Subcontract Price, if any, or Time, if any, to be in accordance with this Subcontract.

(b) Subcontractor represents and warrants that (i) Subcontractor is fully qualified and financially able to perform this Subcontract, (ii) Subcontractor is experienced in the type of Subcontractor's Work required by this Subcontract, and (iii) prior to the execution of this Subcontract, Contractor has supplied Subcontractor with full and complete access to the Subcontract Documents, the Contract Documents and the Project site, (iv) Subcontractor has thoroughly reviewed this Subcontract Agreement, the Subcontract Documents and the Contract Documents and the most current Project Schedule, (v) Subcontractor has visited and inspected the site of Subcontractor's Work and has independently investigated the local conditions and is fully aware of all the obligations, risks, responsibilities, difficulties, and limitations which this Subcontract Agreement, the Contract Documents, the locality, and the Project site impose, and (vi)

Subcontractor is fully aware of the rights and remedies provided to the Owner against Contractor and any limitations on the rights and remedies of Contractor against Owner pursuant to the Contract Documents. Subcontractor has entered into this Subcontract based on Subcontractor's own examination, investigation and evaluation of the Subcontract Agreement, the Subcontract Documents, the Contract Documents, the Project site and the local conditions. Any failure by Subcontractor to investigate independently and become fully informed will not relieve Subcontractor from Subcontractor's responsibilities hereunder. Subcontractor acknowledges and agrees that Contractor does not warrant the accuracy or reliability of any "as built" information, soils report, boring logs, or report of site conditions.

3. RELATIONSHIPS. Subcontractor agrees to be bound to Contractor by the terms of this Subcontract Agreement and all of the Contract Documents and to assume toward Contractor regarding Subcontractor's Work all the obligations, risks and responsibilities that Contractor by the Contract Documents, has assumed toward the Owner, all for the duration of the applicable statutes of limitations and repose provided (a) Subcontractor's insurance obligations shall be for the relevant duration(s) provided in Article 22 below, and (b) Subcontractor's express warranties shall be for the duration stipulated by such express warranty. In addition to the Contractor's rights and remedies in this Subcontract Agreement, Contractor also shall have the benefit of all rights and remedies against Subcontractor which Owner, under the Contract Documents, has against the Contractor. The terms and provisions of this Subcontract regarding Subcontractor's Work shall be in addition to, and not in substitution or derogation of, any of the terms of the Contract Documents including, without limitation, indemnity. Subcontractor must satisfy all notice or deadline periods in the Contract Documents, where shorter than the notice or deadline periods in these Subcontract Conditions, so as not to prejudice the ability of Contractor to pursue Contractor's rights and remedies against Owner relating in whole or in part, to Subcontractor's Work. Further, Subcontractor is not, and shall not be deemed to be a third-party beneficiary of any of the Contract Documents or any other agreement relating to the Project.

4. SUBCONTRACT AMOUNT. If Subcontractor is in compliance with this Subcontract Agreement, Contractor shall pay Subcontractor for total performance of Subcontractor's Work, subject to additions and deductions only by written change order which change orders are not effective unless and until signed by the designated representative of Contractor, the total sum as set forth on page 1 of the Subcontract Agreement, but receipt of payment by Contractor from Owner covering Subcontractor's Work shall be an express condition precedent to the right of Subcontractor to receive any payment, including progress, change orders, damages, retainage and final payments, and Subcontractor acknowledges that no payment will be due from Contractor unless and until fifteen (15) days, or such shorter applicable statutory period, have elapsed from the date Contractor receives the payment with respect to Subcontractor's Work from Owner. If all or a portion of Subcontractor's Work is to be performed on a unit price basis, then the Subcontract Amount set forth above shall be deemed an estimated total price for Subcontractor's Work and the actual Subcontract Amount shall be computed in accordance with the lump sum prices, if any, and the unit prices set forth in paragraph D based on actual quantities determined in accordance with the Contract Documents.

5. PROGRESS PAYMENTS. (a) Subject to Subcontractor's compliance with the payment application procedures of this Subcontract Agreement and the Contract Documents and receipt by Contractor from Subcontractor of all documentation requested by Contractor, and only if and when Owner pays Contractor the periodic payment estimate in which the Subcontractor's periodic payment estimate is incorporated, Contractor will pay Subcontractor progress payments in the amount of Subcontractor's Work included within an approved Application for Payment and which has been installed to Contractor's and Owner's satisfaction, less retainage in the percentage set forth in the Contract Documents, subject to any set-offs or recoupment's claimed by Contractor. At Contractor's option, retainage withholding may be discontinued in accordance with applicable provisions of the Contract Documents provided retainage for Subcontractor's Work is not withheld from payments to Contractor and provided further that, notwithstanding the provisions of the Contract Documents, Contractor shall have the right to reinstate

retainage withholding at Contractor's sole discretion or in the event that Owner reinstates retainage withholding. If the Contract Documents allow Contractor progress payments for materials, equipment or furnishings stored on-site, progress payments shall also be due Subcontractor in the amount of the Material, stored on-site to the satisfaction of Contractor, less retainage in the percentage set forth in the Contract Documents,, and for which payment has been made to Contractor by Owner. If the Contract Documents allow progress payment for Material stored off-site or in fabrication, such payments shall be made to Subcontractor in the amounts and under the standards set forth in the Contract Documents for off-site stored or in-fabrication Material but only if and when Contractor receives payment from Owner therefor and only upon receipt by Contractor from Subcontractor of all documentation requested by Contractor, and as otherwise required by this Subcontract Agreement and the Contract Documents.

(b) On a monthly basis, or as Contractor requests, Subcontractor shall submit an application for payment to Contractor, employing Contractor's Subcontract Request for Payment Form, completed in a manner acceptable to Contractor and Owner. As an additional condition precedent to payment of each application for payment prior to the application for final payment, Subcontractor also shall submit in a form acceptable to Contractor and Owner all documentation required by the Contract Documents and this Subcontract Agreement, including, but not limited to, Subcontractor's Affidavit and Subcontractors' Partial Release, Satisfaction and Waiver on Contractor's form and Partial or Final (as the case might be) Release, Satisfaction and Waiver on Contractor's form from each of Subcontractor's subcontractors and suppliers of any tier and Subcontractor's and its subcontractors' (of any tier) union wage and fringe benefit funds. Subcontractor shall cooperate fully with Contractor in securing payment to Contractor by Owner including, but not limited to, providing such supporting documentation as Owner or Contractor may require. No application for payment shall include any request for payment of amounts that Subcontractor does not intend to pay to Subcontractor's lower-tier subcontractors or suppliers because of a dispute or for any other reason unless Subcontractor presents a waiver of lien and payment bond claim from such sub-subcontractor or supplier for the withheld amount. In Subcontractor's agreement with each subcontractor, Subcontractor shall require each subcontractor to make payments to that subcontractor's sub-subcontractors in similar manner.

(c) As one of the conditions precedent to Contractor's obligations to pay a progress payment or final payment, each month Subcontractor shall submit a schedule (the "Outstanding Issue Schedule") listing all outstanding and unresolved or disputed change order requests and claims which have not become a part of the adjusted Subcontract sum by Contractor's acceptance by issuance of Change Orders (an "Outstanding Issue"). Failure to include an Outstanding Issue on the Outstanding Issues Schedule shall be a waiver by Subcontractor of any prior or subsequent request for Change Order or Claim regarding that subject matter.

(d) Notwithstanding the submission and approval of any Schedule of Values or Outstanding Issues Schedule, Contractor shall not be obligated to pay any amount of an application for payment beyond the net amount of the unpaid Subcontract Amount less the cost to complete.

(e) If Subcontractor is in compliance with this Subcontract Agreement and if, and only if, Owner pays Contractor, which is an express condition precedent to Contractor's duty to pay Subcontractor, progress payments shall be due to Subcontractor within fifteen (15) calendar days after receipt of payment from Owner to Contractor as long as Subcontractor remains in compliance with the terms of this Subcontract Agreement. Contractor shall have the right, but not the duty, to make joint check payments to Subcontractor's labor, health, welfare, pension and fringe benefit funds and subcontractors or suppliers of any tier. No progress payment made under this Subcontract shall be considered an acceptance of Subcontractor's Work, in whole or in part.

(f) All material and work incorporated into the Project or for which progress payment has been made to Subcontractor shall become the property of the Owner; however, this provision shall not relieve Subcontractor, and Subcontractor's surety and insurers, from the sole responsibility and liability for all work and materials as set forth in this Subcontract Agreement and the Contract Documents regardless of whether Contractor has made payments therefor.

6. FINAL PAYMENT. (a) Final payment, subject to withholdings, recouplement's and setoffs permitted

hereunder, shall be due to Subcontractor only if and within fifteen (15) calendar days after when Contractor has been paid in full for the entire Project and after the last of the following to occur, each of the foregoing and following are express conditions precedent to Contractor's obligation to make, and Subcontractor's right to receive, final payment:

(i) full completion of the work by Subcontractor, (ii) final acceptance thereof by Architect and Owner, (iii) the furnishing of satisfactory evidence by Subcontractor that Subcontractor has paid in full all persons furnishing labor or materials in connection with the Work including any wage, health, welfare, pension and fringe benefit contributions, taxes or governmental charges with respect thereto or with respect to the Work, all prevailing wages, and that neither Subcontractor nor any person claiming under or through Subcontractor has filed or has the right to maintain a lien or other claim against Owner, Contractor, Contractor's surety, if any, or on the Project funds or premises, (iv) the delivery of all certified payrolls, guarantees, warranties, bonds, instruction manuals, performance charts, diagrams, as built drawings and similar items required of Subcontractor or its suppliers with respect to Subcontractor's Work, and (v) Subcontractors' execution and delivery of Subcontractor's Full & Final Release, Satisfaction and Waiver on Contractor's form and Final Release, Satisfaction and Waiver on Contractor's form from each of Subcontractor's subcontractors and suppliers of any tier and Subcontractor's and its subcontractors' (of any tier) union wage and fringe benefit funds, and (vi) final payment by Owner to Contractor on account of Subcontractor's Work. Acceptance of final payment shall constitute a waiver of all claims of Subcontractor relating to the Project.

(b) If any progress payments, retainage reduction or final payment due Contractor is not fully paid by Owner to Contractor and the cause of the reduced payment to Contractor is either unspecified or specified by Owner to be the fault of someone other than Subcontractor, final payment to Subcontractor shall be made to the extent there are sufficient funds paid to Contractor to pay Contractor and all subcontractors and suppliers not specified to be at fault, but if the payment is insufficient to pay Contractor and all such subcontractors and suppliers, then in Contractor's sole discretion, Contractor shall apportion the nonpayment equitably among Contractor and Contractor's subcontractors and suppliers and reduce the payment requested by Subcontractor accordingly. If the cause of the reduced or unmade payment to Contractor is specified by the Owner to be the fault of Subcontractor, in whole or in part, the payment to Subcontractor shall be reduced by the amount of the shortfall in payment to Contractor allocable to Subcontractor without waiver of Contractor's rights under other provisions of this Subcontract Agreement.

7. LIENS & FINANCIAL CONDITION. (a) Subcontractor shall ensure that all lower-tier subcontractors, suppliers, employees, employee benefits, withholding taxes, and applicable taxes, at all times, are timely paid in connection with the performance of this Subcontract and, in all events, Subcontractor shall pay such subcontractors and suppliers all amounts then due promptly after receipt of payment from Contractor. Subcontractor authorizes Contractor to contact Subcontractor's subcontractors, suppliers, unions and pension and benefit funds to verify Subcontractor's prior payments and pending or future obligations. Subcontractor shall indemnify, defend and hold Contractor and Owner harmless from and against all liens, claims, demands, judgments, costs and attorneys', consultants' and experts' fees relating to any demand for payment of any of the foregoing. After the first progress payment hereunder, Contractor shall have the right to withhold any subsequent payments until Subcontractor submits evidence satisfactory to Contractor that all amounts owed in connection with performance of this Subcontract have been paid. Further, Subcontractor agrees that Contractor, after giving notice to Subcontractor, may pay all persons who have not been paid the monies due them in connection with this Subcontract Agreement whether or not a lien claim or payment bond claim has been filed, unless Subcontractor (i) demonstrates that such sums are not due, (ii) provides Contractor with a bond or security acceptable to Contractor and Owner, as applicable, and (iii) confirms in writing Subcontractor's obligation to indemnify, defend and protect fully the Owner and Contractor against loss by reason of such lien or claim.

(b) All payments made by Contractor to Subcontractor are made to, and accepted by, Subcontractor as trustee for the benefit of Subcontractor's employees, material suppliers and lower tier subcontractors and

suppliers. Contractor at all times shall have the right itself or to require Subcontractor to discharge or to defend against any lien or claim asserted by any of Subcontractor's subcontractors, suppliers, employees, sureties or creditors against Owner, Contractor, the Project, or the Project's funds or Contractor's payment bond. In discharging or defending, Contractor shall have the right to employ attorneys of Contractor's choice. In the event Contractor incurs expenses, pays or indemnifies any person in accordance with Contractor's rights under this Subcontract Agreement, Subcontractor shall immediately reimburse Contractor in full including reasonable attorneys', consultants' and experts' fees and costs. To the extent that Contractor has not recovered said amounts pursuant to withholding, Subcontractor shall pay those amounts to Contractor upon demand. Subcontractor also shall immediately reimburse Contractor for any amounts paid under Contractor's payment bond in connection with this Subcontract Agreement and all additional amounts paid by Contractor pursuant to any indemnity to surety. This paragraph is solely for the benefit of Contractor, is not intended to benefit any persons or entities not parties to this Subcontract Agreement including Subcontractor's surety, creditors, subcontractors or suppliers of any tier and creates no rights in them.

(c) To verify Subcontractor is continuing to honor Subcontractors' warranty of financial ability to perform this Subcontract under Section 2(b) of these Subcontract Terms & Conditions, and without Contractor having any duty to so request, Subcontractor shall promptly comply with any Contractor request that Subcontractor provide records of bank balances, audited financial statements, work in process reports, percent complete reports, current Worker's Compensation experience modifier, or other information, as Contractor deemed necessary.

8. PAYMENT NOT ACCEPTANCE. Contractor may withhold amounts otherwise due under this Subcontract Agreement or any other agreement between the parties to cover Contractor's reasonable estimate of any costs or liability Contractor has incurred or may incur for which Subcontractor might be responsible under this Subcontract Agreement or any other agreement between the parties or between one or more joint ventures in which one of the parties is a venturer. Neither partial nor final payment shall constitute or imply acceptance of any of Subcontractor's Work or waiver of any of Contractor's rights and remedies under this Subcontract Agreement and the Contract Documents.

9. TIME OF PERFORMANCE. (a) Subcontractor will proceed with Subcontractor's Work in a prompt and diligent manner, in accordance with Contractor's schedules as amended by Contractor from time to time. Contractor shall have the right to direct the sequence and pace of Subcontractor's Work, to modify the construction schedules, to suspend, to delay or to accelerate, in whole or in part, the commencement or execution of Subcontractor's Work, without monetary compensation to Subcontractor except as set forth in Article 10 below. Subcontractor shall adhere to Contractor's schedules and orders with respect to the progress of Subcontractor's work, including amendments thereto, even if such schedules or orders differ from schedules set forth in the Contract Documents, or revisions thereto, or the time of completion called for by the Contract Documents. Subcontractor will coordinate Subcontractor's Work with existing utilities, adjacent work, the work of Contractor, other subcontractors, and the Owner's separate contractors or employees, if any, and shall keep Subcontractor's Work in a state of forwardness so that no delays, obstruction, disruption or interference will occur in completion of any part or all of the Project or Contractor's Work or the work of other of Contractor's subcontractors or Owner's separate contractors or employees. Subcontractor shall complete punch list work within the time established by Contractor. **TIME IS OF THE ESSENCE.**

(b) Within ten days after signing this Subcontract and as requested thereafter, Subcontractor shall submit scheduling documents in form, detail, and format acceptable to Contractor, which shall comply with all scheduling requirements of the Contract Documents and Article 9 of this Subcontract. Subcontractor's schedules shall identify and input all project phases, sub-phases and activities, shall break project activity descriptions by task and area of the Subcontractor's Work so that there shall be no activity of greater than 10 work days duration, shall reflect all procurement, submittal and construction activities, shall provide and display logic relationships among all activities by predecessor and successor, shall consider crew size and labor resources available in computing planned durations and shall avoid constrained dates.

Contractor may from time to time, at Contractor's sole discretion, direct Subcontractor to make reasonable modifications and revisions in such schedules. Subcontractor's schedules are solely for the benefit of Contractor. Contractor's receipt, review and/or acceptance of Subcontractor schedules shall not constitute any amendment to the Subcontract Agreement. Subcontractor's provision of such detailed schedule(s) shall not satisfy any notice requirements of this Subcontract Agreement or of the Contract Documents. Subcontractor also shall furnish to Contractor periodic progress reports and detailed schedule updates including information on the status of materials and equipment to be purchased and delivered and comparison reports to Subcontractor's most recent schedule. Regardless of Subcontractor's schedules, Subcontractor shall be obligated to coordinate the timing, manpower and location of Subcontractor's Work so as not to disrupt other Subcontractors and to permit Contractor to cause the Project Work as a whole to proceed in the most expeditious manner as determined by Contractor.

(c) Although Contractor may choose, at Contractor's option, to direct Subcontractor's Work in accordance with a detailed schedule incorporated into the Contract Documents or, even if not incorporated into the Contract Documents, any detailed schedule accepted by the Owner, Contractor shall be entitled to change the logic or duration shown for any of the Subcontractor's Work or other work in such detailed schedule and to require multiple mobilizations and demobilizations and such shall not entitle Subcontractor to any claim for time extension or claim for compensation.

(d) At Contractor's sole discretion, Subcontractor and Subcontractor's subcontractors shall attend, by personnel at the level of superintendent or higher, as Contractor determines, all progress meetings, safety meetings, Owner-Architect-Contractor meetings where Subcontractor's Work, the sequence of Contractor's Work or other issues of coordination or performance of Subcontractor's Work are to be discussed. Regardless of whether Subcontractor attends, upon Contractor's forwarding of the minutes of such meeting, Subcontractor and Subcontractor's subcontractors shall be deemed to have received the information and direction given at such meeting and shall be liable for all consequences of Subcontractor's failure to act in accord with such information and direction.

(e) Subcontractor acknowledges that, in order for Contractor to coordinate and to manage the work required by the Contract Documents, Contractor must allocate site access and access to and completion and sequencing of work areas, utilities, storage space, disposal and other characteristics and resources of the Project site and the Project work (collectively "Site Resources"), certain trades may be given preference, at the discretion of Contractor, to Site Resources in order to maintain the optimum project schedule as determined by Contractor and suspensions, returns to work areas and multiple mobilizations of Subcontractor's workforces might be required to utilize Site Resources as Contractor deems desirable. Accordingly, as long as Contractor acts in good faith in allocating Site Resources and, notwithstanding any other provision of this Subcontract Agreement or the Contract Documents, Subcontractor waives any and all claims for damages, extensions of time or for increase to the Subcontract amount as the result of any delays, disruptions, multiple mobilizations, interferences, obstructions, hindrances, suspensions, accelerations, constructive accelerations, out-of-sequence work, changes or other causes arising from Contractor's allocation of Site Resources.

(f) If the Contract Documents provide for the payment to Owner by Contractor of liquidated damages, Subcontractor shall reimburse all such damages payable by Contractor (and any other damages) to the extent Subcontractor is at fault for causing the event(s) giving rise to Contractor's liability. Subcontractor acknowledges that the foregoing payment by Contractor of liquidated damages may not be the only element of actual damages suffered by Contractor as a result of Subcontractor's failure to prosecute or to complete Subcontractor's Work in a timely manner and that Contractor's actual damages also may include, without limitation, Contractor's extended overhead, acceleration and any damages of other subcontractors. Accordingly, Contractor's rights to damages against Subcontractor for Subcontractor's failure to prosecute or to complete Subcontractor's Work in a timely manner shall not be limited to reimbursement from Subcontractor of any damages paid by Contractor to Owner but also shall include payment of all other actual damages and all amounts from which Subcontractor has indemnified Contractor under this Subcontract.

10. EXTENSIONS OF TIME. (a) If ultimately caused by Owner, Owner's agents or Owner's separate

contractor, subject to the notice requirements and limitations set forth in this Subcontract Agreement and the Contract Documents, Subcontractor may be entitled to time extensions and/or additional compensation, respectively, (i) for compliance with schedule amendments, (ii) for damages for delay, disruption, obstruction, interference, out-of-sequence work, suspension, hindrance, acceleration, constructive acceleration, impacts of changes or other causes but only to the limited extent (x) the Contract Documents entitle Contractor to a time extension, damages or to a contract adjustment increasing the Amount or Guaranteed Maximum Cost of the Prime Agreement, (y) Contractor actually receives such a time extension and/or payment from the Owner, and (z) Subcontractor can prove entitlement to all or a portion thereof. Where Contractor, Subcontractor and any other subcontractor is involved, such time extension or damages shall be allocated pursuant to this Article 10 below.

(b) If ultimately caused by Contractor or Contractor's other subcontractors or suppliers and not by Owner, Owner's agents or Owner's separate contractors, subject to the notice requirements and limitations set forth in this Subcontract Agreement and the Contract Documents, Subcontractor may be entitled to time extensions and/or additional compensation, respectively, (i) for compliance with schedule amendments, (ii) for damages for delay, disruption, obstruction, interference, out-of-sequence work, suspension, hindrance, acceleration, constructive acceleration, impacts of changes or other causes but only to the limited extent Subcontractor can prove entitlement but not for Contractor's allocation of Site Resources as set forth in Article 9 above and Contractor shall have all defenses against Subcontractor for events caused by Contractor or Contractor's subcontractors or suppliers which Owner would have had under the Prime Agreement as if the events had been caused by Owner, Owner's agents or Owner's separate contractors.

(c) If not caused by Owner, Owner's agents, Owner's separate contractor, Contractor or Contractor's other subcontractors or suppliers, under no circumstances shall Subcontractor be entitled to additional compensation for delay, disruption, obstruction, interference, out-of-sequence work, suspension, hindrance, acceleration, constructive acceleration, impacts of changes or other causes.

(d) Any request for extension of time, or direct damages for delay, disruption, obstruction, hindrance, interference, out-of-sequence work, suspension, acceleration, constructive acceleration, changes, impacts of changes or other causes of increase in the Subcontract Amount must be made within five (5) days after the first occurrence of the event giving rise to the request or such shorter period as required by the Contract Documents and must be supported by a factual recitation of the cause and effect of the event and supporting documentation or the right to seek any time extensions, damages and/or any increase in the Subcontract Amount therefor shall be forever waived. Any request for direct damages or increase in the Subcontract amount must contain an itemized quantification of the amount of actual (if the delay or acceleration is completed) or estimated (if the delay or acceleration is not completed) direct damages to be provided within the five (5) days set forth above or such shorter period as required by the Contract Documents or the right to seek any direct damages and increase in the Subcontract Amount therefor for such event shall be forever waived. Subcontractor waives any and all claims for consequential damages including, without limitation, unabsorbed home office overhead, lost profits, lost bonding capacity and damages to collateral contracts. In the case of an estimate of direct damages, Subcontractor must convert the estimate to actual direct damages suffered and projected further damages and notify Contractor in writing of such quantification five (5) days after the occurrence of the delay event giving rise to the request or such shorter period as required by the Contract Documents, or any direct damages or increase in the Subcontract Amount therefor shall be forever waived. Contractor's consideration of any request for time extension, direct damages, or increase in the Subcontract Amount not made as required by this Article shall not constitute an admission of liability or a waiver of any of the notice, claims quantification or other requirements of the Subcontract Agreement or the Contract Documents.

11. CHANGES. (a) Contractor may, at any time, unilaterally or by agreement with Subcontractor, without notice to Subcontractor's sureties, order changes in or to Subcontractor's Work or the sequence or schedule thereof. Any unilateral order or bilateral agreement under this Article 11 shall be in writing. Subcontractor shall perform the Subcontractor's Work as changed without delay.

(b) Subject to the notice requirements and limitations set forth in this Subcontract Agreement and the

Contract Documents, Subcontractor shall submit to Contractor any requests or claims for adjustment in the Subcontract Amount, schedule or other provisions of the Subcontract for changes directed by Owner as a result of deficiencies or discrepancies in the Contract Documents, or for circumstances otherwise permitted by the Contract Documents or this Subcontract. Subcontractor shall submit within five (5) days after a Contractor request for change a reasonable quotation and/or time request. If Subcontractor does not do so and Contractor is required to submit a quotation and/or time request to Owner which includes a proposed change to Subcontractor's Work, Contractor may use Contractor's best estimate of the proposed change as it affects the Subcontract in Contractor's quotation to Owner, which estimate shall be the maximum adjustment due to Subcontractor but such adjustment shall be due to Subcontractor only if paid by Owner to Contractor and subject to the other provisions of this Subcontract.

(c) Regarding changes made by Owner, Subcontract price adjustments shall be made only to the extent that Contractor is entitled to and actually receives compensation for Subcontractor's Work from Owner and shall not exceed Subcontractor's allocable share of any adjustment in Contractor's contract with Owner. Subcontractor's allocable share shall be determined by Contractor, after allowance of Contractor's normal overhead and profit on any recovery and Contractor's expense of recovery, by making a reasonable apportionment, if applicable, between Subcontractor, Contractor and other subcontractors or persons with interests in the adjustment.

(d) An express condition precedent to payment to Subcontractor on account of changes made by Owner shall be that Contractor shall have received such payment from Owner for Subcontractor's changed work. Each payment to Subcontractor on account of change orders shall be equal to Subcontractor's allocable share, as determined by Contractor, of Contractor's payment from Owner for the change. Any amounts paid on account of changes are provisional and not an admission of liability and shall be repaid to Contractor on demand whenever Contractor determines there has been an overpayment.

(e) If Subcontractor considers any action or inaction by Contractor (other than a formal written change order) to be a change, or claims that Subcontractor is entitled to additional compensation for any reason other than in direct response to a Contractor request for change, Subcontractor shall so notify Contractor within three (3) days of said action, inaction or event giving rise to such Subcontractor claim and seek a written change order from Contractor. Subcontractor's notice shall contain a narrative explaining fully the basis for Subcontractor's entitlement, the amount of time and compensation requested, how calculated and back-up for such time and compensation calculation. Rental charges shall not exceed 65% of replacement value. Failure to so notify Contractor timely and with the required content shall constitute a waiver of the right to any compensation for the action, inaction or event.

(f) If Subcontractor is directed in a writing, distinct from Subcontractor's overtime tickets or time and material tickets, to furnish overtime labor or labor or materials on a time and materials basis, Subcontractor shall provide vouchers each day for verification and signature by Contractor's field representative, showing the actual labor and materials furnished to the Project. Subcontractor's failure to submit time and material vouchers on a daily basis waives Subcontractor's right to compensation for such time and materials extra work. Subcontractor also shall submit labor rates with a complete breakdown of all wages, benefits and insurance and supporting information prior to request for payment of any overtime or time and materials work. Subcontractor shall submit the signed vouchers with any request for payment of overtime or time and material work. Contractor shall have the right to audit the records of Subcontractor to verify amounts incurred by Subcontractor.

(g) All extra or changed work within the general scope of the Subcontract must be processed as a written change order through Contractor. Contractor's signature of any overtime ticket or time and materials voucher shall constitute confirmation that the Work was performed and is not authorization or agreement that the work is extra, absent a separate writing authorizing the Subcontractor to perform the work as extra or that the listed amount of time or materials, in fact, were employed. Subcontractor agrees that performance of any extra or changed work within the general scope of the Subcontract by Subcontractor directly for Owner is a material breach of this Subcontract.

12. WARRANTY. Subcontractor warrants Subcontractor's Work to Contractor on the same terms, and for the same period, as Contractor warrants Contractor's work to Owner under the Contract Documents. With respect to Subcontractor's Work, Subcontractor shall assume all warranty and correction obligations and responsibilities of Contractor under the Contract Documents and shall defend and indemnify Contractor from all claims of breach of warranty relating to Subcontractor's Work at Subcontractor's sole cost and expense. Subcontractor acknowledges that Contractor is entitled to cause Subcontractor to activate and energize, and Contractor may use, equipment installed by Subcontractor prior to Substantial Completion and, notwithstanding what may be provided otherwise by any supplier, Subcontractor's warranty and duty to correct shall commence upon Substantial Completion of Contractor's Work and shall extend for the same period as Contractor warrants Contractor's work to Owner under the Contract Documents.

13. SUBMISSIONS. (a) Subcontractor shall deliver to Contractor copies of shop drawings, catalogue cuts, installation instructions, brochures, samples, material lists and other submissions (collectively, "Submissions") required by Contractor or the Contract Documents in sequence and before purchasing or fabricating in any way for which Submissions are to be made and (i) within sufficient time so as not to delay performance of the Project which shall in no case be greater than 21 calendar days, or (ii) within sufficient time for Contractor to submit the same within the time stated in the Contract Documents, whichever is earlier. Submissions shall be in strict accordance with the Contract Documents. No approval granted by Contractor of a Submission shall relieve Subcontractor from full compliance with the Contract Documents. Regarding Subcontractor's obligations under this Subcontract, the review by Contractor or the Owner of Submissions is limited to conformance with the general design concept for the Project and shall not be construed as a complete check or approval, either in whole or in detail, nor shall it relieve the Subcontractor from responsibility for errors and/or omissions of any sort therein, or from the necessity of furnishing any Subcontractor's Work required by the Contract Documents which may have been omitted from the Submissions.

(b) If Subcontractor wishes to propose a deviation from the Contract Documents, such deviation shall be clearly identified as a deviation on the Submission and accompanied by a letter describing such deviation in detail and the effect, if any, on cost and time of performance of Subcontractor's Work. Requested deviations will be allowed only if Contractor gives specific written approval referencing the deviation to Subcontractor by Change Order.

(c) Notwithstanding the dimensions given on the Plans, Specifications and other Contract Documents, it shall be the obligation and responsibility of Subcontractor to take such measurements as will ensure the proper matching and fitting of Subcontractor's Work including with contiguous work of others. Quantities of materials listed in the Contract Documents are approximate only and Subcontractor shall deliver the actual needs and requirements of Subcontractor's Work.

14. AMBIGUITIES, INCONSISTENCIES AND OMISSIONS. Subcontractor has reviewed the Contract Documents in preparation for execution of this Subcontract. Any error, ambiguity, inconsistency or omission between or among the Contract Documents or between any of the Contract Documents and manufacturer's installation instructions, of which Subcontractor had, or should have had, knowledge may not be a basis for any increase in the Subcontract Amount or time to perform the Subcontractor's Work. If inconsistencies or omissions exist in, between or among the Contract Documents, or between the Contract Documents and manufacturer's installation instructions, of which Subcontractor did not have, and should not have had, knowledge before execution of this Subcontract, it shall be the duty of Subcontractor to notify Contractor in writing thereof within seventy-two (72) hours of the discovery of such inconsistencies or omissions. After receipt of Subcontractor's notice, Contractor may instruct Subcontractor in writing as to the actions to be taken, and Subcontractor shall comply with Contractor's written instructions.

15. INSPECTION AND DEFECTIVE WORK. (a) Without any duty of Contractor to provide continuous or exhaustive inspections, Subcontractor shall provide appropriate facilities for inspection by Contractor or the Owner of Subcontractor's Work and for inspection of Subcontractor's project documents for compliance with this Subcontract, the Subcontract Documents and the Contract Documents, whether at the Project site or any other place where items or services for such Subcontractor's Work, or documents may be in preparation, manufacture, testing, storage or installation. Subcontractor shall promptly replace or correct any Subcontractor's Work which Contractor or the Owner shall reject as failing to conform to the requirements of this Subcontract. If Subcontractor does not do so within 3 calendar days, Contractor shall have the right to do so and Subcontractor shall be liable to Contractor for the cost thereof. If, in the opinion of Contractor, it is not expedient to correct or replace all or any part of rejected Subcontractor's Work or materials, then Contractor, at Contractor's option, may deduct from the payments due, or to become due, to Subcontractor, such amount as in Contractor's reasonable judgment will represent (i) the difference between the fair value of the rejected Subcontractor's Work and the value thereof if Subcontractor's Work had complied with this Subcontract, or (ii) the cost of correction, whichever Contractor determines is more appropriate. If rejection is by the Owner, or by Contractor at request of the Owner, Subcontractor's remedy against Contractor for wrongful rejection of Subcontractor's Work shall be limited to the remedy of Contractor under the Contract Documents. Unless otherwise agreed in writing by Owner and Contractor, failure to inspect or the use by the Owner or Contractor, shall not constitute acceptance of Subcontractor's Work.

(b) Subcontractor shall not damage work adjacent to Subcontractor's Work and shall immediately repair adjacent work if damaged by Subcontractor. Subcontractor shall determine that work of other subcontractors or of Owner is completed and without patent defect before commencing Subcontractor's Work surrounding, adjacent to or covering such other work. If Subcontractor encounters any defect or variance from the Contract Documents in work of other subcontractors or of Owner's separate contractors or employees surrounding, adjacent to or to underlying Subcontractor's Work, Subcontractor shall give immediate notice to Contractor of such defect. Subcontractor shall be liable for the costs to replace, modify or correct, or for the correction, replacement or modification at Subcontractor's own cost, of any of Subcontractor's Work or the excess cost of correction, replacement or modification of any other work in excess of what that correction, replacement or modification otherwise would have cost but for the Subcontractor's failure to give such immediate notice to Contractor.

(c) Subcontractor's Work which is determined by Contractor, Owner (or any of Owner's successors or assigns, to be unsatisfactory, faulty, defective or nonconforming to the Contract Documents (whether arising from a Subcontractor's design or construction defect or deficiency), or which does not conform to applicable laws, regulations or construction permits, or which does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, fabricated without approved Submissions or which has been damaged by Subcontractor, shall be defined as the "Subcontractor's Defective Work." Subcontractor, prior to final payment and thereafter, at any time prior to the expiration of the applicable statutes of limitation and repose, at Subcontractor's sole cost and expense and at the earliest practical opportunity after receipt of notice from Contractor, shall re-execute, correct, repair or replace any and all Subcontractor's Defective Work and all portions of the Project adversely affected by or damaged by such Subcontractor's Defective Work and all other property of the Owner which is damaged by such Subcontractor's Defective Work; provided, however, that nothing in the foregoing shall in any way limit Contractor's rights or ability to recover from Subcontractor for Subcontractor's Defective Work, to the extent such Subcontractor's Defective Work constitutes a breach of (i) this Subcontract, or (ii) the warranty set forth at Article 12, or (iii) the negligent performance of the Subcontractor's Work and Subcontractor's obligations hereunder. Notwithstanding anything to the contrary in the foregoing, Contractor may undertake such emergency measures and repairs as Contractor may deem necessary or appropriate in order to prevent damage to property or injury to persons resulting from any Subcontractor's Defective Work after first providing Subcontractor with notice and the opportunity to effect such repairs, if possible, and Subcontractor's failure to do so within a reasonable period of time given the circumstances and conditions then existing at the Project, and all costs and

expenses so incurred by Contractor shall be reimbursed by Subcontractor upon demand.

(d) When Subcontractor considers itself to be Substantially Complete with Subcontractor's Work, Subcontractor shall prepare and submit to Contractor a punchlist of minor incomplete or incorrect Subcontract Work. Subcontractor shall promptly complete and repair all items on such Subcontractor's punchlist. Notwithstanding Subcontractor's completion and correction of Subcontractor's Work in accordance with Subcontractor's punchlist, Contractor shall be entitled to submit to Subcontractor and Subcontractor shall promptly perform all Subcontractor's Work listed on any punchlist prepared by Contractor, Owner, Architect, Construction Manager or Owner's Representative. Failure to complete or to correct punchlist items within fourteen (14) days after submission to Subcontractor of such punchlist shall be a material breach of the Subcontract.

16. CLEANUP. At Subcontractor's sole expense, Subcontractor shall clean, including without limitation, removal of any soiling, staining, mortar, plaster, concrete, dirt, etc. the Subcontractor's Work at all times and remove all debris resulting from Subcontractor's Work in conformance with the Contract Documents and on an ongoing basis and in a manner that will not impede either the progress of the Project or of other trades, create a safety hazard, rodent nuisance or otherwise. Subcontractor shall be responsible for the ongoing cleanup of trash, dirt, dust, and debris which results from Subcontractor's performance of the Work to a dumpster centrally located by Contractor. Subcontractor is not permitted to dispose of excess pallets, drums, uncrushed cardboard containers, chemicals or hazardous materials, concrete, furniture or appliances in the Contractor-provided dumpsters and Subcontractor shall sort and compact the debris before placing in the dumpster(s). Subcontractor must dispose of all hazardous materials and chemicals to a properly licensed facility in a manner and with all notices, as required by Laws as defined in Section 17(a) of these Subcontract Terms & Conditions. Upon 24 hours written notice and failure to cure, Contractor shall have the right to perform cleanup itself and charge Subcontractor the reasonable cost thereof including an allocation of the cost of cleanup not identifiable to any source. Subcontractor also shall clean the Subcontractor's Work after final installation of Subcontractor's Work as required for Owner's acceptance.

17. LAWS, TAXES AND PERMITS. (a) Subcontractor shall be bound by, and, at Subcontractor's own cost, shall comply and cause Subcontractor's employees and lower tier subcontractors and suppliers to comply with, including, without limitation, abiding by documentations requirements for, all federal, state and local laws, codes, ordinances, regulations, rules, orders and programs applicable to this Subcontract, the performance of the work hereunder, and the Project site, whether by reason of general law or by reason of provisions in this Subcontract Agreement or the Contract Documents, whether now or hereafter existing, including, without limitation, prevailing wage, equal employment opportunity, disadvantaged, minority, women and small business enterprises, workforce residency requirements, the hiring of aliens, environmental, storm water management, health and safety laws and regulations, etc. ("Laws"). Subcontractor and all lower-tier subcontractors shall be duly licensed to operate under the law of the applicable jurisdictions. To demonstrate compliance, Subcontractor shall furnish, and shall cause subcontractor's lower-tier Subcontractors to furnish, such licenses, reports, certified payrolls, and information and in such form and substance as may be reasonably requested by Contractor or the Owner or any other governmental body or agency requesting the same. Subcontractor shall defend, hold harmless and indemnify Contractor from any costs, damages, liquidated damages, penalties, attorneys' fees, costs or judgments relating to or arising from Subcontractor's failure to abide by Laws.

(b) Except as otherwise provided by the Contract Documents, or any addenda or Modifications thereto, the Subcontract Amount includes all federal, state and local contributions, taxes, duties or premiums arising out of the performance of this Subcontract, and all sales, use or other duties or taxes of whatever nature levied or assessed against the Owner, Contractor, Subcontractor or Subcontractor's subcontractors or suppliers of any tier arising out of this Subcontract, including any interest or penalties (collectively "Taxes"). Subcontractor agrees to pay and to comply with and to defend and to hold Contractor harmless against the payment of Taxes. Subcontractor waives any and all claims for additional compensation because of any new Taxes or any increase in the aforementioned Taxes unless payment

therefor is specifically provided for in the Contract Documents.

(c) Subcontractor shall coordinate, obtain and pay for all permits, licenses, fees and certificates of inspection (including for all equipment utilized by Subcontractor) necessary for the prosecution and completion of Subcontractor's Work. Subcontractor shall arrange for all necessary inspections and approvals by public officials, give Contractor prior written notice of same and provide Contractor with all inspection reports and certificates.

18. SUBCONTRACTOR'S LIABILITY & INDEMNITY. (a) Subcontractor hereby assumes the entire responsibility and liability for all work, supervision, labor and materials provided hereunder, whether or not erected in place, and for all plant, scaffolding, tools, apparatus, equipment, supplies and other things provided by Subcontractor until final acceptance of Subcontractor's Work by the Owner as defined by the Contract Documents. In the event of any loss, damage or destruction thereof from any cause, Subcontractor shall be liable therefor, and shall repair, rebuild and make good said loss, damage or destruction. If such loss, damage or destruction is in whole or in part caused by Subcontractor, then such repair, rebuilding or making good shall be at Subcontractor's sole cost.

(b) Subcontractor shall indemnify, defend and hold Contractor, Contractor's affiliates, subsidiaries and parent corporations and Owner and any other entity entitled to indemnification under the Contract Documents, and each of their officers, directors, agents, employees and consultants (the "Indemnified Parties"), harmless from and against any and all claims, demands, suits, actions, expenses, judgments, losses and liabilities, including fines and penalties, costs and attorneys', consultants' and experts' fees as a result of Subcontractor's actual or alleged failure to perform this Subcontract in accordance with the terms of this Subcontract Agreement or the Contract Documents. The foregoing obligations of Subcontractor shall include, but are not limited to, indemnifying, defending and holding harmless from claims made by any of the Indemnified Parties and claims made by third parties against any of the Indemnified Parties. Subcontractor's liability includes, but is not limited to, (1) damages and delay costs payable by Contractor; (2) Contractor's increased costs of performance, such as extended overhead and increased performance costs resulting from delays or hindrances caused by Subcontractor or omitted or defective Subcontractor's Work; (3) warranty, rework and repair costs; (4) liability to third parties, including, but not limited to, other subcontractors of Contractor and Owner's contractors; (5) excess procurement costs; (6) costs to ensure performance by Subcontractor, to obtain a substitute subcontractor or costs incurred to demand and ensure performance of Subcontractor's surety in the event of Subcontractor default; (7) consultants' and experts' fees; and (8) attorneys' fees and related costs. Subcontractor's actual or alleged failure to perform shall include the actual or alleged failure of Subcontractor's lower-tier subcontractors or suppliers to perform. The foregoing indemnity shall also be an obligation of Subcontractor's performance bond surety provided, however, the existence or non-existence of a performance or payment bond shall in no way limit or condition Contractor's right of indemnity or remedies against Subcontractor nor shall it limit Subcontractor's responsibilities hereunder.

(c) To the fullest extent permitted by law, Subcontractor agrees to indemnify, defend and hold harmless the Indemnified Parties and each of them, from and against any and all claims, demands, suits, actions, expenses, judgments, losses and liabilities, including fines and penalties, costs and attorneys', consultants' and experts' fees, arising out of or claimed to arise out of injuries to persons including, but not limited to, disease or death, or damage to tangible and intangible property including the loss of the use resulting therefrom, or arising or claimed to arise from violation of any Laws as defined in Section 17(a) of these Subcontract Terms & Conditions, occasioned by or growing out of the execution or performance of Subcontractor's Work hereunder by Subcontractor or Subcontractor's subcontractors of any tier. Subcontractor's indemnity obligations hereunder do not include any obligation to pay any claims, demands, judgments, expenses, losses, liabilities, including costs and attorneys fees to the proportional extent caused by an Indemnified Party's negligence. Subcontractor's indemnity obligation shall not be limited by any worker's compensation statute, disability benefit or other employee benefit or similar law or by any other insurance maintained by Subcontractor. Subcontractor hereby waives, and shall cause Subcontractor's subcontractors and suppliers of any tier to waive, any rights any of them may have to limit the amount of damages, losses, or obligations which may be recoverable against them by reason of

any Worker's Compensation Statute. Subcontractor's indemnity herein includes, but is not limited to, assumption of all liabilities on account of, or in any way related to, Subcontractor's Work which Contractor may have assumed pursuant to the Contract Documents or under agreements with third parties.

(d) In the event that Subcontractor or any of Subcontractor's agents, employees, suppliers, or lower-tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items belonging to or under the control of any of the Indemnified Parties or of any other subcontractor, Subcontractor agrees to indemnify, defend and save harmless the Indemnified Parties from and against any and all claims, demands, suits, actions, expenses, judgments, losses and liabilities, including fines and penalties, costs and attorneys', consultants' and experts' fees, arising out of such use, except to the proportional extent such loss or damage shall be caused by the negligence of any of the Indemnified Parties' employees operating any of the Indemnified Party-owned or Indemnified Party-leased equipment. The foregoing obligations of Subcontractor shall include, but are not limited to, indemnifying, defending and holding harmless from claims made by third parties against any Indemnified Party. Subcontractor's obligations under this paragraph shall not be limited by any Worker's Compensation statute, disability benefit or other employee benefit or similar law or by any other insurance maintained by Subcontractor. Subcontractor hereby waives, and shall cause Subcontractor's subcontractors and suppliers of any tier to waive, any contractual or statutory rights or immunity any of them may have as an employer to limit the amount of damages, losses, or obligations which may be recoverable against them by the Indemnified Parties by reason of any Worker's Compensation statute.

(e) One percent (1%) of the Subcontract Amount represents specific consideration to Subcontractor for the indemnifications and waivers set forth in this Subcontract.

(f) All amounts owed by Subcontractor to Contractor as a result of the indemnity, defense and liability provisions of this Subcontract shall be paid upon demand. With respect to the obligations of the Subcontractor to defend the Indemnified Parties set forth in this Article 18, and notwithstanding any limitation on Subcontractor's duty to indemnify the Indemnified Parties pursuant to this Article 18, Subcontractor initially shall pay all costs of defense incurred by all Indemnified Parties and costs of the prosecution of third-party claims regarding Subcontractor's Work asserted by all Indemnified Parties including attorneys', experts' and consultants' fees, pending entry of final judgment at which time any refund to Subcontractor for expenses paid beyond Subcontractor's proportional share of liability shall be adjusted.

(g) Subcontractor's indemnification obligations are independent from, and not limited in any manner by, the Subcontractor's insurance coverage obtained pursuant to this Article 22.

19. SUBCONTRACTOR'S FAILURE TO PERFORM. (a) If, in the opinion of Contractor, Subcontractor shall at any time (1) refuse or fail to provide sufficient properly skilled workers, adequate supervision or material of the proper quality, (2) fail in any material respect to prosecute Subcontractor's Work according to Contractor's current schedule or Contractor's order, (3) cause, by any action or omission, the stoppage, delay, disruption, obstruction, hindrance, interference, acceleration of the work of Contractor or of any other contractor or subcontractor, (4) fail to comply with any provision of this Subcontract Agreement or the Contract Documents, (5) fail to pay any subcontractor, supplier, employee, benefit fund or tax, (6) make an assignment for the benefit of Subcontractor's creditors or become insolvent, or have a receiver appointed, then, within three (3) calendar days either of transmittal of, or posting at Contractor's job site office in a conspicuous location, a written notice advising Subcontractor of the default, the duty to cure within three (3) calendar days and Contractor's intent to exercise one or more of the following options, Contractor, at Contractor's option, without voiding the other provisions of this Subcontract and without notice to Subcontractor's sureties, may (i) take such steps as are necessary to overcome the condition, including, without limitation, supplementing Subcontractor's workforce or supervision, in which case the Subcontractor shall cooperate fully with Contractor's efforts and Subcontractor shall be liable to Contractor for the cost thereof; (ii) terminate for default Subcontractor's performance of all or a part of the Subcontract Work; or (iii) obtain specific performance or interlocutory mandatory injunctive relief requiring performance of Subcontractor's obligations hereunder, it being

agreed by Subcontractor that such relief may be necessary to avoid irreparable harm to Contractor and/or the Owner. In the event of termination for default, Contractor may, at Contractor's option, (a) enter on the Project site, Subcontractor's or Subcontractor's subcontractors or suppliers or any storage premises, and take possession, for the purpose of completing the work, of all materials and equipment of Subcontractor, (b) take assignment of any or all of Subcontractor's subcontracts, and/or (c) either itself or through others complete the work by whatever method Contractor may deem expedient. In case of termination for default, Subcontractor shall not be entitled to receive any further payment until the Subcontractor's Work shall be fully completed and accepted by the Owner and payment in full is made by Owner to Contractor. At such time, if the unpaid balance of the Subcontract Amount shall exceed the expense incurred by Contractor including overhead and profit, such excess shall be paid by Contractor to Subcontractor. If such amount shall exceed such unpaid balance, the Subcontractor shall pay Contractor the difference on demand. Subcontractor agrees and acknowledges that in the event that Subcontractor or Subcontractor's creditors file a petition under any bankruptcy or similar law, Contractor need not consent to assumption or assignment of this Subcontract because, among other reasons, of the liquidated damages and other liabilities to which Contractor may be exposed. Contractor's failure to exercise any right under this Article 19 shall not be a waiver of such right.

(b) If Contractor wrongfully exercises Contractor's option to overcome a condition caused by Subcontractor's asserted act or omission, Contractor's wrongful exercise shall be treated as a deductive change only. If Contractor wrongfully exercises Contractor's option to terminate for default, that termination for default shall be considered a termination for Contractor's convenience and Subcontractor shall be entitled to the applicable compensation provided in Article 21. Subcontractor's remedies under this Article 19 shall be exclusive. Nothing herein shall bar withholdings or offsets by Contractor permitted by the provisions of this Subcontract from payments to Subcontractor.

(c) Termination of this Subcontract by Contractor or abandonment by Subcontractor shall not relieve Subcontractor from Subcontractor's obligations in connection with Subcontractor's Work performed prior to termination or abandonment nor will such termination or abandonment abrogate any obligations of Subcontractor under, or rights or remedies afforded to Contractor by, this Subcontract Agreement or the Contract Documents including without limitation, Subcontractor's indemnity obligations.

(d) If Owner or Contractor request that Subcontractor terminate any of Subcontractor's subcontractors or suppliers of any tier as the result of any allegation of neglect, violation of Laws, incompetence, delay, hindrance or defective work, Subcontractor immediately shall terminate such sub-subcontractor or supplier and promptly take all other action to protect the interests of Owner and Contractor and to ensure no delay or hindrance.

20. SETTLEMENT OF DISPUTES. (a) In the event of any dispute involving this Subcontract or the Subcontractor's Work performed or to be performed, or any claims of Subcontractor, Subcontractor nevertheless and without interruption, deficiency, or delay shall continue to perform the Subcontractor's Work in a diligent manner. In case of any dispute between Contractor and Subcontractor in any way relating to or arising from any act or omission of the Owner, Owner's agents or involving the Contract Documents or any provision thereof, Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to Owner, by the terms of the Contract Documents, and by any and all preliminary and final decisions, determinations or agreements made by or between Contractor or Owner or so authorized in the Contract Documents.

(b) If the Contract Documents require Contractor and the Owner to arbitrate any claim, dispute or other matter arising out of or relating to the Contract Documents, Subcontractor agrees that any claim, dispute or other matter arising out of or relating to the Subcontract, shall be subject to binding arbitration under the rules of procedure described in the Contract Documents, or if no such rules or procedures are so prescribed, pursuant to the Construction Industry Rules of the American Arbitration Association with a forum of Chicago, Illinois. In Contractor's sole discretion, any arbitration between Contractor and Subcontractor may be consolidated into and become a part of the arbitration proceedings between the Owner and Contractor which arbitration shall bind Contractor and Subcontractor. If the Contract Documents do not require Contractor to arbitrate, neither Contractor nor Subcontractor shall have the

right to arbitrate claims, disputes or other matters relating to this Subcontract or Subcontractor's Work.

21. TERMINATION FOR CONVENIENCE. Contractor shall have the right to terminate for convenience Subcontractor's performance of all or a part of the Subcontractor's Work by providing Subcontractor with a written notice of termination for convenience which shall be effective upon transmittal by Contractor. If there has been a termination of Contractor's contract with Owner, the Subcontractor shall be paid the amount due to Contractor from Owner for Subcontractor's Work, as provided in the Contract Documents, only if and when payment therefor is received by Contractor. If Contractor's contract with Owner has not been terminated, Subcontractor shall be paid the reasonable value of Subcontractor's Work performed prior to termination (which value shall not necessarily be fixed by a schedule of values or previous Subcontractor application for payment or payments made to Subcontractor) plus reasonable direct close-out costs if and when payment therefor is received by Contractor from Owner, which shall be a condition precedent to Contractor's obligation to pay Subcontractor, but in no event shall Subcontractor be entitled to unabsorbed overhead, anticipatory profit, cost reimbursement or damages of any kind.

22. INSURANCE. (a) Subcontractor shall obtain and maintain the insurance described in this Article 22, with the minimum terms and conditions described. Immediately upon receipt of this Subcontract, and as a condition precedent to any obligation of Contractor under this Subcontract, Subcontractor shall at the expense of Subcontractor furnish to Contractor certificate(s) of insurance in a form, and from an insurer(s), acceptable to Contractor with the endorsements required by this Article 22 attached. Contractor's failure to request or to obtain such certificate(s) of insurance from Subcontractor at Subcontract inception or prior to any payment shall not be a waiver of this, or any other, covenant or condition of this Subcontract.

(b) Subcontractor shall procure and maintain (and shall require its subcontractors and suppliers of any tier to procure and maintain), until expiration of the Contractor's warranty period, insurance policies with the following listed minimum insurance coverages and minimum limits of liability from insurers, of recognized responsibility, licensed to do business in all state(s) where Subcontractor's Work is being performed, and having at least an A.M. Best's rating of A VIII, a Standard & Poor's rating of AA, or a Moody's rating of Aa2, acceptable to Owner and Contractor and with the named Additional Insureds as set forth in Paragraph B of the Subcontract Agreement portion of this Subcontract Agreement or an Exhibit to the Subcontract ("Subcontractor's Provided Insurance") and where such coverages and limits as set forth in a Project's Contract Documents are equal to or less than the following, then as follows: (i) Worker's Compensation: Provide Worker's Compensation coverage in the amount of the statutory maximum, and Employer's Liability with a minimum limit of liability of: \$1,000,000 Per Accident, \$1,000,000 Disease Each Employee, \$1,000,000 Disease Aggregate, including a Waiver of Subrogation in favor of Henry Bros. and others required by the Contract Documents. (ii) Commercial General Liability (ISO 1986 ed. or later Occurrence Form): Furnish Commercial General Liability Insurance (Including Broad Form Contractual Liability) with minimum limits for Bodily Injury and Property Damage: \$1,000,000 Each Occurrence, \$1,000,000 Personal and Advertising Injury, \$2,000,000 General Aggregate, \$2,000,000 Products/Completed Operations Aggregate. The General Aggregate limit shall apply separately to each project/job location for a particular Project Work Authorization. Coverage shall include Premises Operations; Blanket Contractual Liability; Products-Completed Operations Liability (for four years after Owner's acceptance of the Project); Independent Contractor's Liability; Explosion, Collapse & Underground Damage ("XCU"); Broad Form Property Damage and Personal Injury. The policy shall not exclude from coverage damage to work performed by Subcontractor's subcontractors of any tier on Subcontractor's behalf whether under ISO Form Exclusions CG 22 94 [10/01 version], CG 22 95 [10/01 version] or otherwise. (iii) Business Automobile Liability (most current ISO form): Furnish Business Automobile Liability Insurance, hired, owned and non-owned vehicles, with minimum limits for: \$1,000,000 combined single limit each accident or at least \$1,000,000 per person for bodily injury, and \$1,000,000 per accident for bodily injury and \$1,000,000 per accident for property damage. (iv) Umbrella Excess Liability: Provide coverage with a limit to maintain minimum General

Liability/Automobile Liability/Employer's Liability for policies described at subparagraphs (b)(i), (ii) and (iii) above on a "follow form" basis for a minimum aggregate limit of \$3,000,000 for subcontract prices of \$1,000,000 or below (except for the trades of concrete, precast concrete, masonry, steel, curtain wall, electrical, plumbing, HVAC, elevator, insulation and fire protection which limit shall be as if the Subcontract price had been in excess of \$1,000,000), limit of \$5,000,000 for subcontract prices of \$1,000,001 to \$3,000,000 and limit of \$10,000,000 for subcontract prices above \$3,000,000 and Subcontractor agrees that Umbrella Excess Liability Insurance limits will not satisfy Subcontractor's obligation to provide primary general liability to the minimum limits of Subparagraph 22 (b) (ii) above or such higher limit(s) as may be provided in the Contract Documents; (v) Professional Liability Insurance: If Subcontractor's scope of work includes the obligation to provide any architectural or professional engineering service, Subcontractor shall provide professional liability insurance in minimum limits of \$2,000,000 each claim and \$2,000,000 aggregate with a maximum of \$100,000 deductible (or self-insured retention). Such insurance shall remain in force, and Subcontractor shall submit certificates of insurance on an annual basis, for four (4) years after final completion of Contractor's Work. (vi) Pollution Liability Insurance: If Subcontractor is to provide Environmental or Remediation Service, Subcontractor shall provide Pollution Liability in minimum limits of \$1,000,000 each claim with \$1,000,000 total limit with a maximum of \$100,000 deductible.

(c) Builder's Risk (Property) Insurance & Waiver of Subrogation: Owner or Contractor will provide coverage on buildings, structures, equipment and materials which are to become a permanent part of the completed Work (Builder's Risk (Property) Insurance). Notwithstanding that Owner or Contractor will provide the Builder's Risk (Property) Insurance, Subcontractor who suffers loss shall be responsible to bear the amount of any deductible (or self-insured retention) under such Builder's Risk (Property) Insurance policy. This Builder's Risk (Property) Insurance does not insure property owned or rented by Subcontractor that is not intended to be a permanent part of the completed Subcontractor's Work. Contractor will not be responsible for loss of Subcontractor's tools or equipment or other property. Where (a) Owner has purchased the Builder's Risk Insurance, provided Contractor shall have obtained a waiver of subrogation from Owner and Contractor has granted a waiver of subrogation on such Project, or (b) Contractor has purchased the Builder's Risk Insurance, and Contractor has granted a waiver of subrogation on such Project, Subcontractor and Subcontractor's insurers waive all rights, including subrogation, against Owner and Contractor for damages caused by fire or other perils to the extent covered by Builder's Risk Insurance or any other property insurance applicable to Subcontractor's Work, except such rights as Subcontractor may have to the proceeds of such insurance held by Owner or Contractor, as relevant, as trustee. Subcontractor shall require similar waivers in favor of the Owner, Contractor and subcontractor from Subcontractor's subordinate subcontractors.

(d) Contractor may furnish, erect or provide equipment, appurtenances and devices, motorized or otherwise, for Contractor's use to complete the Prime Contract. If Subcontractor uses such items (and Contractor need not consent to such use), Subcontractor agrees to indemnify, defend, hold harmless and insure Contractor against physical damage or destruction to the item and from claims of injury or damage caused by the use of such items while in Subcontractor's care, custody or control and Subcontractor shall name as additional insureds under the Commercial General Liability Insurance required by Subparagraph 22 (b) (ii) above the Additional Insureds set forth in Paragraph B of the Subcontract Agreement. Liability limits shall be the same as the Commercial General liability and Umbrella Excess Liability limits set forth in Subparagraphs 22 (b) (ii) and (iv) above. Physical damage insurance against damage to the items themselves shall be on a "Replacement Cost" basis.

23. PERFORMANCE AND PAYMENT BONDS. If required by Contractor, immediately upon receipt of this Subcontract, and as a condition precedent to any obligation of Contractor hereunder, Subcontractor shall at the expense of Subcontractor furnish to Contractor performance and payment bonds in a form, and from a surety, acceptable to Contractor, each in the full Subcontract Price. The only form of performance and payment bond(s) acceptable to Contractor shall be that (those) set forth as Exhibit A to

the Subcontract Agreement. Each bond must be issued by a domestic United States surety with an A.M. Best rating of at least A9. The bond form shall not limit the surety's responsibility to guarantee Subcontractor's performance and payment obligations under this Subcontract except the time for enforcement of any payment bond (not performance bond) may be limited provided such limit is no shorter than one year after Contractor's Substantial Completion of the Project. Contractor's failure to request or to obtain such bonds from Subcontractor at Subcontract inception shall not be a waiver of this, or any other, covenant or condition of this Subcontract. If the surety requires a payment for any incremental increase in the cost of bonds arising as a result of changes in Subcontractor's Work, such payment shall be the responsibility of Subcontractor and may be included as a part of Subcontractor's price quotation for proposed changes pursuant to Article 9.

24. LABOR. (a) Subcontractor shall not employ personnel, means, materials or equipment which may cause strikes, work stoppages or any disturbances by workmen employed by Subcontractor, Contractor, Owner or other contractors or subcontractors employed in connection with the Work or the Project or the location thereof or in violation of any Project Labor Agreement applicable to the Project. Subcontractor agrees that all disputes as to jurisdiction of trades shall be adjusted in accordance with any plan for the settlement of jurisdictional disputes which may be in effect either nationally or in the locality in which the work is being done and that Subcontractor shall be bound and abide by all such adjustments and settlements of jurisdictional disputes, provided that the provisions of this paragraph shall not be in violation or in conflict with any provisions of law applicable to the settlement of such disputes. Subcontractor includes within the Subcontract Price all costs to perform Subcontractor's Scope of Work with all unions claiming jurisdiction of any of Subcontractor's Work. Subcontractor acknowledges that Contractor is signatory to the following standard union agreements, which may make jurisdictional claims: Laborers; Cement Finishers; Carpenters; Teamsters; Bricklayers and Operating Engineers.

(b) Subcontractor shall procure a wage and fringe benefits bond to secure payment of wages and benefits to Subcontractor's union workforce through four months after final payment to Subcontractor and shall provide Contractor with evidence of such bond and replacement thereof. Subcontractor hereby authorizes (i) Subcontractor's unions and benefit funds at anytime and from time to time to disclose to Contractor the status of whether such obligations are current and amounts due and to become due; and (ii) Contractor to pay directly Subcontractor's wages or fringe benefit obligations to the payee to the extent such obligations relates to the Project without any obligation of Contractor to do so.

(c) Subcontractor shall employ an experienced competent superintendent present at the Project site at all times when Subcontractor is performing Subcontractor's Work. Subcontractor shall remove from the Project any employee of Subcontractor or Subcontractor's subcontractors or suppliers of any tier who Contractor determines to be detrimental to the Project, including, without limitation, Subcontractor's superintendent(s) or foremen. The removal of a superintendent or other employee shall not entitle Subcontractor to any additional compensation.

25. SAFETY & HEALTH. (a) The prevention of accidents and injuries shall be of primary concern to Subcontractor and its subcontractors of any tier in all work activities. Subcontractor and its subcontractors of any tier shall maintain a safe and healthful work environment in accordance with each subcontractor's Safety Program, ensuring compliance with all applicable federal, state and municipal health and safety statutes, rules, regulations and interpretations and as amended as well as those of Contractor and Owner. Within five (5) days after Notice of Award, but not later than fifteen (15) days prior to start of activities on the project, Subcontractor shall submit a copy of Subcontractor's safety program together with the name and experience of Subcontractor's on-site safety representative. Subcontractor's safety program shall include a safety and health policy providing detailed disciplinary action to be taken with respect to employees violating safety and health requirements. Subcontractor agrees to comply with the Occupational Safety and Health Act of 1970, as later amended, in the performance of Subcontractor's Work, and further agrees to abide by and comply with all regulations issued under that Act. Subcontractor agrees to comply with the Hazard Communication Standard (29 CFR 1926.59) and to provide to Contractor at the address listed above referencing the project name and

number, all applicable Material Safety Data Sheets ("MSDS") required pursuant to that Standard for the proper performance of the Subcontractor's obligation. In addition to safety and health requirements imposed by law, Subcontractor shall comply with all safety and health requirements imposed by Contractor and will conduct operations in a safe and healthy manner. In the event Subcontractor is cited for violations of the Occupational Safety and Health Act, the Hazard Communication Standard or any other safety or health statute, rule, regulation or interpretation, Subcontractor shall be responsible for all penalties assessed against Subcontractor. In the event Contractor is cited or penalized due to the Subcontractor's actions or failure to comply with the Occupational Safety and Health Act, the Hazard Communication Standard or any other safety or health statute, rule, regulation or interpretation or fails to operate safely and in a healthy manner, Subcontractor shall indemnify, defend and hold Contractor harmless from any costs, expenses, suits, penalties, fines or damages (including attorneys' and consultants' fees and costs) arising from any such citations or penalties or failure to operate safely and in a healthy manner and such sums may be deducted from amounts otherwise due under the Subcontract and are otherwise payable on demand. Subcontractor shall not be held liable for violations by Contractor provided the Subcontractor itself has no liability. Contractor may conduct safety and health inspections from time to time but Contractor shall have no responsibility for maintaining site safety and health. Such inspections shall not relieve Subcontractor from Subcontractor's obligations to adhere to safety and health requirements nor shall such inspections create any Contractor liability. Subcontractor, not Contractor, shall have full and sole responsibility for the safety and health of Subcontractor's means, methods and instrumentalities. Subcontractor shall attend the weekly project safety meetings.

(b) Subcontractor shall abide strictly to the following Contractor's Safety Rules but compliance with such Safety Rules does not limit Subcontractor's obligation to perform the Subcontract Work in a safe manner: Subcontractor's employees, are charged with obeying the law and the following basic safety rules:

1. All incidents and injuries, no matter how minor, must be reported to your supervisor immediately. Subcontractor shall forward the Incident/Accident Report to Henry Bros.' Superintendent within 24 hours of the occurrence.
2. Horseplay, practical jokes, drinking of alcoholic beverages or ingesting or being under the influence of any illegal or those prescription drugs that adversely affect performance are grounds for dismissal.
3. All personnel, including visitors, shall wear an approved (ANSI-Z89.1) hard hat at all times during working hours.
4. All leather work shoes, with reinforced slip resistant soles, shall be worn at all times. No loose clothing or dangling jewelry shall be worn.
5. Eye protection (ANSI-787.1 approved) shall be worn when there is a risk of flying particles or corrosive materials, punctures, abrasions, contusions, or burns from all welding, cutting, grinding, and chipping.
6. Ear plugs or muffs must be used when noise levels are above 85 DBA or as employee or foreman determines necessary.
7. Contractors are required to comply with OSHA respiratory protection standard when employee must wear a respirator. Respirators are required when dusts, fumes, or vapors exceed OSHA Permissible Exposure levels. Job conditions may require use of dust masks, half or full face respirators for Asbestos, Painting or Paint Removal, Cutting & Burning, Bacteria & Fungus, Demolition, etc. Air quality shall be determined prior to start and during all work activities by Subcontractor's Superintendent.
8. Suitable hand protection is required for employees exposed to cuts, burns, irritating substances, or electrical hazards.
9. Scaffolding must be in a safe operating condition and used with railings, toe boards, and outriggers if required. Scaffold wheels must be in a locked position.
10. Do not use a defective ladder. Adjust ladder to proper angle and height before using. Secure ladder at top to prevent falls. All straight ladders shall extend 36" or more above the landing surface. Do not use the top three rungs of an extension ladder or top two rungs of a step ladder.
11. Cylinders containing oxygen, acetylene, or other fuels must be secured in the upright position.

- Gas cylinders and oxidizers shall be separated by 20 feet or by a non-combustible barrier at least five feet high with a fire resistance rating of at least 1/2 hour. Attach caps or gauges.
12. Keep source of ignition away from flammables. Fire extinguishers are provided for emergency use. Do not tamper with, or remove, extinguishers without authorization.
 13. Make certain that safety devices are operative and guards are in place before using power tools, machines, or equipment.
 14. Cranes, aerial lifts, scaffolds, working platforms, ladders, materials, etc., shall never be operated within a minimum of 10 feet of overhead power lines up to 50KV and the distances outlined in Table A Minimum Clearance Distances in 1926.1408 OSHA powerline safety. Contractors who encroach closer than 10 feet to power lines must have consultation with utility owner/operator.
 15. Lift correctly. Obtain help when needed.
 16. Good housekeeping is essential. Keep your area clean.
 17. All electrical tools, including extension cords, must be a 3-wire cord and plugged into a grounded receptacle, have a grounding pin or be double insulated.
 18. Rubber gloves and face protection must be worn when handling chemicals and corrosives for coil cleaning, descaling, and boiler burnouts.
 19. Observe good personal hygiene habits while working around insulation products.
 20. Every effort shall be made to de-energize electrical equipment prior to working on it. When de-energizing equipment isn't possible electrical hot work procedures shall be established. No electrical work should be done while energized unless means and methods allow hot work to be performed.
 21. All circuits shall be treated as though they were live.
 22. Electrical Contractors shall warn others of any electrical hazards of which they may not be aware.
 23. Electrical Contractors shall inspect all temporary power and electrical cables periodically.
 24. Electrical Contractors shall remove fuses, lock out or tag boxes or switches before working on any motor or circuit.
 25. Electrical Contractors shall install temporary lighting to provide at least five foot candles in all work area, stairwells, corridors, and exits.
 26. Ground Fault Circuit Interrupters (GFCI's) are required on all 120 volt, 15 and 20 amp single phase circuits. GFCI's shall be Class A for construction use.
 27. All openings in or at the edge of working surfaces, which could permit a drop of more than four feet, shall be provided with railings and barriers capable of withstanding a load of 200 pounds. These railings or barriers shall be put in place before any other work is permitted in the area. Floor and roof openings shall be covered with 3/4" plywood or the equivalent, capable of supporting at least twice the maximum load expected to cross over the cover, be secured in place and marked "hole" or "cover".
 28. When employees are working at grade or at the same surface or level of work as rebar, the rebar is to be protected against the hazard of impalement by guarding the exposed ends with approved plastic covers, or troughs. ("Mushroom" caps are prohibited.)
 29. Confined space industry procedures shall be followed prior, during and after entry. Check the air quality in vaults and manholes before entering.
 30. Report all unsafe conditions and work practices to your supervisors.
 31. Industry standards for trenching and excavation shall be followed. All trench sidewalls shall be protected by shoring, slide box, or laid back to the angle of repose.
 32. Observe all traffic rules or regulations and practice defensive driving at all times.
 33. Never leave running equipment unattended.
 34. Avoid standing/walking under suspended load or under the boom of a crane.
 35. Know the location of fire extinguishers and how to operate them.
 36. Tool box talks will be held the first day of work and every five working days thereafter. Contractors will hold a meeting with Foremen in attendance; and their employees in attendance. The report shall include the project name, date, time, safety subject, safety suggestions, action to be taken, and signatures. Subcontractor's Foreman's meeting report shall be given to

- Contractor's Superintendent weekly.
37. Subcontractor shall comply with the Hazard Communication Act/Global Harmonized System (GHS)
 38. Keep material, hoses, electrical cords, etc. out of the walkways.
 39. All equipment and material must be placed on stable, level ground.
 40. Protruding nails, etc. shall be removed or made flush.
 41. Only authorized and trained individuals shall operate power tools.
 42. The public shall be protected by barricades from all hazardous conditions and operations (i.e. tripping on loose floor or sidewalks).
 43. Subcontract shall provide fall protection as per OSHA standards for the Construction Industry.
 44. Subcontractor's engineering and design controls such as guard railing, hand railing, nets, covers, etc. must meet OSHA regulations and be installed by Subcontractor under the direction of a competent person and controls may not be removed without the consent of Henry Bros.' Superintendent.
 45. If Subcontractor's scope of work includes demolition of any system containing asbestos, asbestos containment or remediation or renovation on or near asbestos-containing materials or Subcontractor contacts asbestos-containing materials, Subcontractors shall monitor the conditions of asbestos material and the level of airborne asbestos materials, if they exist. Such Subcontractor and its subcontractors, their respective employees, suppliers, agents, and other invitees shall agree not to be exposed to any levels of airborne asbestos material in excess of legal limits. Such Subcontractors will defend, indemnify and hold harmless Contractor, Contractor's officers and employees, from any claims of whatever nature associated with the release of asbestos-containing material except to the extent of Contractor's negligence.
 46. Subcontractors shall include asbestos protection methods and equipment as outlined in the building owners' Operation & Maintenance procedure manual or as directed by the building owners/general contractor's environmental consultant including but not limited to: protective disposable clothing, approved respirators, air tight partitions, wash down partitions, negative air machines/temporary ventilation, and approved removal equipment.
 47. Subcontractors will provide a written safety plan for all affected employees exposed to hazards on each job site according to OSHA and ANSI regulations. The plan shall include company policy, protection systems to be used on project, and monitoring of systems. Plans must be submitted for asbestos, lead, trenching and excavation, fall protection, scaffolding, confined space, as well as any others deemed necessary by Contractor. The above safety rules are not all inclusive. The responsibility of the Subcontractor is to follow all local, state and federal safety and health regulations as well as any safety procedures deemed necessary by Contractor. Review these rules with your jobsite foreman.
 48. The Subcontractor is responsible for the removal of snow and ice for their work area and access to it.

26. ASSIGNMENT AND SUBCONTRACTING. (a) Subcontractor shall not assign or transfer this Subcontract, or funds due hereunder, without the prior written consent of Subcontractor's surety and Contractor. Contractor shall not unreasonably withhold Contractor's consent to the assignment of funds due hereunder but, in all instances, the person or entity claiming funds as assignee shall acknowledge in writing that the funds are not due to Subcontractor if Subcontractor has failed to meet any obligation to Subcontractor's subcontractors or supplier of any tier, or to employees or for benefits relating to the Project, or to Contractor under this Subcontract or under any other subcontract or agreement between Contractor and Subcontractor. Lower-tier subcontracts are subject to the provisions of this Subcontract, and Subcontractor shall incorporate in Subcontractor's subcontracts all provisions of the Contract Documents, this Subcontract Agreement. Subcontracting by Subcontractor to approved sub-subcontractors shall not abrogate any obligation of Subcontractor under this Subcontract. Contractor shall be deemed a third party beneficiary of all lower tier subcontracts.

(b) Subcontractor, by execution of this Subcontract, contingently assigns to Contractor all Subcontractor's

subcontracts and purchase orders relating to the Project and to Owner, this Subcontract and Subcontractor's subcontracts and purchase orders relating to the Project. The contingent assignment to Contractor of each of Subcontractor's subcontracts and purchase orders shall take effect only upon Subcontractor's termination under Article 19 and Contractor's affirmative acceptance of the assignment of the specific subcontract or purchase order by written notice to Subcontractor and Subcontractor's subcontractor or material supplier. Contractor shall have no liability to any of Subcontractor's subcontractors or material suppliers unless and until Contractor affirmatively accepts the assignment as provided above and then such liability shall relate to work performed and material or supplies ordered only from the date of Contractor's acceptance of the assignment after Subcontractor's termination. The contingent assignment to Owner shall take effect only upon Owner's termination of Contractor for cause and Owner's written notice to Subcontractor of exercise of the assignment

27. INTELLECTUAL PROPERTY AND ROYALTIES. Except as otherwise provided by the Contract Documents, Subcontractor shall pay all royalties and license fees which may be due with respect to Subcontractor's Work. Subcontractor shall pay the cost to defend and any settlement of or judgment entered on all suits or claims for infringement of any intellectual property rights that may be brought against Subcontractor, Contractor, or the Owner arising out of Subcontractor's Work. Contractor, at Contractor's option, may designate counsel to defend and Subcontractor shall be liable to Contractor and the Owner for all costs, expenses and attorneys', consultants' and experts' fees as well as for any settlement or judgment.

28. SEVERABILITY AND WAIVER. The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. If any provision is invalid, in whole or in part, the provision shall be considered reformed to reflect the intent thereof to the greatest extent possible consistent with law. The failure of Contractor to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Subcontract, or to exercise any right or remedy, shall not be construed as a waiver or relinquishment of such term, covenant, condition, right or remedy.

29. INTERPRETATION OF CONTRACT DOCUMENTS. (a) It is the intention of the parties that all terms of this Subcontract Agreement and the Contract Documents are to be considered as complementary. However, in the event that such an interpretation is not possible, the order of precedence of such documents shall be: (1) Modifications of this Subcontract; (2) Modifications of the Contract Documents; (3) this Subcontract Agreement and Conditions to the Subcontract Agreement, unless the Contract Documents impose a higher standard or greater requirement on the Subcontractor, in which case the Contract Documents; and (4) the Contract Documents, unless the provisions of item (3) apply.

(b) Except as otherwise provided, all references herein to days shall be to calendar days. The term "Subcontractor's subcontractor" shall mean any subcontractor, vendor or material man who is supplying material or performing work in connection with the Subcontract and who has a direct contractual relationship with Subcontractor. The term "lower-tier subcontractor" shall mean any subcontractor, vendor or material man at any tier supplying material or performing work in connection with the Subcontract. The term "subcontract" when referencing contractual arrangements between Subcontractor and Subcontractor's subcontractors shall include purchase orders and contracts for construction, materials and/or services relating to the Project.

(c) Any and all headings of this Subcontract are for convenience of reference only and do not modify, define or limit the provisions thereof. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise indicate. All references to any Exhibit or document shall be deemed to include all Modifications to any such Exhibit or document entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such person or entity in accordance with the terms of this Subcontract.

(d) Neither Contractor nor Subcontractor shall be deemed to be the author or drafter of this Subcontract for the purposes of any common law, evidence, statutory or other presumption or rule that contract ambiguities be construed against the author or drafter of an agreement.

30. OWNER'S PROPERTY. Subcontractor shall use, and shall cause Subcontractor's lower-tier subcontractors to use, a reasonable degree of care when entering upon any property owned by the Owner in connection with the Project. In the case of property not owned by the Owner, Subcontractor and Subcontractor's lower-tier subcontractors shall comply with any and all instructions and requirements for the use of such property.

31. ADDITIONAL PROVISIONS. The following Additional Provisions are also specifically included in Subcontractor's work: (a) Subcontractor specifically agrees to provide all necessary coordination, supervision, manpower, tools and equipment, required to fully complete Subcontractor's Work in accordance with the scheduling requirements of the Project as set forth by Contractor. CONTRACTOR MAY DIRECT SUBCONTRACTOR TO BEGIN WORK OR OFFSITE FABRICATION/MANUFACTURING ACTIVITIES PRIOR TO SUBCONTRACTOR'S ANTICIPATED START DATE DUE TO EARLIER THAN ANTICIPATED ACCESSIBILITY, WINDOWS OF OPPORTUNITY, OR TO COMMENCE OR COMPLETE WORK ACTIVITIES DUE TO ANTICIPATED WEATHER CONDITIONS, EARLIER DELIVERIES, OR TO AVOID FUTURE COORDINATION PROBLEMS. SUBCONTRACTOR WILL PERFORM AS DIRECTED WITH THE UNDERSTANDING THAT ANY SUCH DIRECTIVES ARE FOR THE BENEFIT OF THE PROJECT AND THE SUBCONTRACTOR. SUCH DIRECTIVES WILL NOT BE CONSIDERED DIRECTIVES TO ACCELERATE SUBCONTRACTOR'S WORK.

(b) Subcontractor is responsible for shipping, receiving, unloading, hoisting, reloading, and off loading of transport material from lay down storage areas and to work areas and is responsible for protection and safekeeping of material until acceptance by Owner. Subcontractor shall have the option of unloading materials as close as practical to the work areas as long as it does not interfere with Work of other subcontractors or Owner. All work and deliveries shall be coordinated with Contractor. Subcontractor shall coordinate lay down, field office, and storage areas with Contractor.

(c) Subcontractor shall supply for his own use the following if required: (I) all temporary field trailers and storage facilities as required, (ii) temporary utilities required to perform the work, except as otherwise noted herein, (iii) drinking water and ice, (iv) surveying/layout, (v) lifting equipment.

(d) This Subcontract is issued contingent upon Owner's approval but Subcontractor nevertheless shall commence and continue work until Contractor directs otherwise. In the event Owner fails to approve the Subcontract, Contractor shall be entitled to terminate for convenience.

(e) Subcontractor shall complete all punch list items within time limits established by the Contractor and hereby authorizes Contractor to complete any punch list work at Subcontractor's expense upon 48 hours notice from Contractor, if Subcontractor fails to begin or fails to make adequate progress towards completing punchlist work as directed by Contractor. Subcontractor hereby agrees that such action on Contractor's part will not be cause for prejudicing warranty or any other contract obligations of Subcontractor.

(f) The Subcontract Amount payable under this Agreement shall be firm for the duration of the Agreement, and is not subject to any escalation for material, labor or equipment.

(g) The Contractor will provide Subcontractor one complete set of Drawings and Specifications. Additional sets of Contract Documents will be supplied at cost.

(h) Subcontractor shall provide touch-up paint for factory finishes on equipment furnished under this scope of work.

(I) Subcontractor shall pay to provide or install, or both, as appropriate, access doors required to accommodate access to systems installed under this Subcontract.

(j) Subcontractor shall submit all warranties, as-built drawings and operation and maintenance manuals, as required by the contract documents (Project Close-Out). In the event that the Subcontractor fails to complete Project Close-Out within ten calendar days after written notice by Contractor, Contractor may, without violating this agreement, perform or have performed, all work required to complete

Subcontractor's Project Close-Out, and any cost incurred by reason thereof, shall be a charge against the Subcontractor and may be offset from any amounts owed to Subcontractor. If the payments due the Subcontractor are not sufficient to cover such cost, Subcontractor shall pay the difference to Contractor. The Contractor's performance of any work to complete Subcontractor Project Close-Out shall not relieve Subcontractor from any obligation or warranties which the Subcontractor owes under this Subcontract.

Subcontractor acknowledges that Subcontractor has reviewed and is familiar with this Subcontract Agreement and the Conditions to the Subcontract Agreement and Subcontractor agrees to be bound to Contractor by their terms.

ACCEPTED: (Subcontractor)

Henry Bros. Co.

Signature: _____

Signature: _____

Print Name: _____

Print Name: Sandy Austin

Print Title: _____

Print Title: CFO

Date: _____

Date: _____



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Performance Bond

CONTRACTOR *(Name, Legal Status and Address):*

SURETY *(Name, Legal Status and Principal Place of Business):*

OWNER *(Name, Legal Status and Address):*

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description *(Name and Location):*

BOND

Date *(Not earlier than Construction Contract Date):*

Amount: \$

Modifications to this Bond: None See Section 13

CONTRACTOR AS PRINCIPAL
Company: *(Corporate Seal)*

SURETY
Company: *(Corporate Seal)*

Signature: _____
Name and Title:
(Any additional signatures appear on the last page)

Signature: _____
Name and Title:

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE
(Architect, Engineer or other party):

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contract, Surety, Owner or other party shall be considered plural where applicable.

Init.

§ 1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Section 3.1.

§ 3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

§ 3.1 The Owner has notified the Contractor and the Surety at its address described in Section 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

§ 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Section 3.1; and

§ 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

§ 4 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

§ 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

§ 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

§ 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

§ 5 If the Surety does not proceed as provided in Section 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Section 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

§ 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

§ 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 4; and

§ 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

§ 8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

§ 11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 12 DEFINITIONS

§ 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

§ 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

§ 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

§ 13 MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*

SURETY

Company: *(Corporate Seal)*

Signature: _____
Name and Title:
Address:

Signature: _____
Name and Title:
Address:

Init.

User Notes:

(1112171337)



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Payment Bond

CONTRACTOR (*Name, Legal Status and Address*):

SURETY (*Name, Legal Status and Principal Place of Business*):

OWNER (*Name, Legal Status and Address*):

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description (*Name and Location*):

BOND

Date (*Not earlier than Construction Contract Date*):

Amount: \$

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL
Company: (*Corporate Seal*)

SURETY
Company: (*Corporate Seal*)

Signature: _____
Name and
Title:
(*Any additional signatures appear on the last page*)

Signature: _____
Name and
Title:

(*FOR INFORMATION ONLY - Name, Address and Telephone*)

AGENT or BROKER:

OWNER'S REPRESENTATIVE
(*Architect, Engineer or other party*):

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contract, Surety, Owner or other party shall be considered plural where applicable.

Init.

User Notes:

(1953911905)

§ 1 The Contractor and the Surety, jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 With respect to the Owner, this obligation shall be null and void if the Contractor:

§ 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

§ 2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Section 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

§ 3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

§ 4 The Surety shall have no obligation to Claimants under this Bond until:

§ 4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Section 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

§ 4.2 Claimants who do not have a direct contract with the Contractor:

- 1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
- 2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
- 3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Section 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

§ 5 If a notice required by Section 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

§ 6 When the Claimant has satisfied the conditions of Section 4, the Surety shall promptly and at the Surety's expense take the following actions:

§ 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

§ 6.2 Pay or arrange for payment of any undisputed amounts.

§ 7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

Init.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Section 4.1 or Section 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 15 DEFINITIONS

§ 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

§ 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

§ 16 MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____ (Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

SURETY

Company: _____ (Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

EXHIBIT B



HENRY BROS. CO.

WATER RESPONSE AND MOLD PREVENTION PROGRAM DECEMBER, 2006

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Section One

Objectives and Introduction

1.1 Purpose and Objectives

The purpose of the Water Response and Mold Prevention Program (“Program”) is to minimize property damage and liabilities resulting from a Water Damage or mold growth condition associated with on-going construction activities performed by Henry Bros. Co. or subcontractors acting on behalf of Henry Bros. Co.

The objectives of the Program are to:

- Detect Water Damage and mold growth early to minimize property damage and liability;
- Provide guidance for preventing and responding to moisture/water or mold growth conditions; and
- Outline the minimum required procedures for responding to a moisture/water or mold growth condition.

1.2 Application

This Program is only applicable to the on-going construction activities under the control of Henry Bros. Co. Following the completion of construction activities, the buildings (current and previous) are the clients’ responsibility.

Section Two

Roles and Responsibilities

In order for the Mold Program to be fully implemented, it is important for all involved employees to understand roles and responsibilities for specific tasks and management authority for specific aspects of the Program. Following is an outline of key roles and responsibilities under this Program.

Henry Bros. Co. Management is responsible for:

- Implementing an effective Program
- Providing, employee training

Project Manager is responsible for:

- Overseeing and administering the Program
- Ensuring, in conjunction with the Project Superintendents, that safety and health procedures are in place for personnel responding under the Program
- Communicating to the Henry Bros. Co. Management Staff any information regarding Water Damage or mold-contaminated building materials associated with on-going construction activities performed by Henry Bros. Co.
- Keeping the Henry Bros. Co. Management Staff updated on the status of any water extraction or mold remediation activities being conducted by Henry Bros. Co.
- Retaining and maintaining all documentation under the Program
- Assistance in the development of Henry Bros. Co. employee training
- Work with Superintendents, to make sure a preventive maintenance (PM) program is in place to minimize the likelihood of Water Damage associated with the on-going construction activities performed by Henry Bros. Co. employees or subcontractors
- Determining the level of response required following observation of a moisture/water or mold growth condition

Project Superintendents are responsible for:

- Ensuring, in conjunction with the Project Managers, that safety and health procedures are in place for personnel responding under the Program
- Ensuring, in conjunction with the Project Managers, a Preventative Maintenance Program is in place to minimize the likelihood of a Water Damage associated with the on-going construction activities performed by Henry Bros. Co. employees or it's subcontractors

- Protecting, in conjunction with Subcontractors, all porous building materials to be installed by Henry Bros. Co. employees or subcontractors from precipitous weather exposure (e.g., morning dew, rain, sleet, snow, etc.) prior to and during installation within the building
- Ensuring that any dampened/wetted building materials are dried and inspected for signs of moisture, water damage, and mold growth, prior to installation
- Ensuring that no mold-contaminated or damp materials (especially porous materials) are installed at an on-going construction project
- Ensuring that Programmed inspections for mold contamination and moisture/water are being performed at project sites.
- Reporting, in conjunction with the Project Engineers, Water Damage or mold-contaminated building materials resulting from on-going construction activities to the Project Managers by submitting a completed “Water Damage and Mold Contaminated Building Materials Incident Report Form”(See Appendix Two)
- Confirming, in conjunction with the Project Managers, water/moisture or mold growth conditions reported on incident report forms
- Working with the Project Managers to coordinate emergency water extraction, mold remediation, and/or mold inspection activities
- Reporting all client complaints/concerns of a possible moisture/water or mold growth condition at a project site to the Project Managers
- Conducting on-site inspections following client complaints/concerns of a possible moisture/water or mold growth condition under the Project Manager’s direction
- Ensuring that when a Water Damage or mold growth condition is discovered that a “Water Damage and Mold Contaminated Building Materials Incident Report Form” is completed and submitted to the Project Managers

Henry Bros. Co. Project Subcontractors are responsible for:

- Protecting, in conjunction with the Project Superintendents, their porous building materials for the project from precipitous weather exposure (e.g., morning dew, rain, sleet, snow, etc.) prior to and during installation within the building
- Subcontractors are responsible for notifying Henry Bros. Co. **in writing**, if conditions exist that are not suitable for installation of material or performance of work

Section Three

Communication

Communication is a vital part of the Program. Upon discovery of a moisture/water or mold growth condition associated with on-going construction activities under Henry Bros. Co. control, the Project Managers is to be notified immediately by the Henry Bros. Co. site staff and an incident report form must be submitted to the Project Manager by the reporting party.

All client complaints/concerns regarding a water/moisture or mold growth condition/response are to be handled by the Project Manager. The Project Manager is also responsible for providing reports of moisture/water or mold growth conditions and follow-up response activities to the Henry Bros. Co. management staff.

Coordination of water extraction, mold remediation, and/or mold investigation will be handled by the Project Manager. All written reports of such activities will be provided to the Project Manager.

Section Four

Documentation/Record Keeping

The following checklists/forms are to be used to document: a) inspections for potential Water Damage and mold-contaminated building materials to be carried out under this Program; b) reports of moisture/water or mold growth conditions; and c) water extraction and mold remediation activities. A description of each form's intended use and how long the document should be retained and by whom follows below:

- Water Damage and Mold-Contaminated Building Materials Inspection Checklist (Appendix One)

This checklist is to be used to evaluate the equipment and building material installed at an on-going construction project for signs of moisture, water damage and/or mold growth.

- Water Damage and Mold-Contaminated Building Materials Incident Report (Appendix Two)

This form is to be completed once a moisture/water or mold growth condition associated with on-going construction activities under Henry Bros. Co. control is discovered/reported. It is to be used to investigate and document the extent and cause of the damage present. Whenever possible, photographs of affected building materials are to be attached to the form.

- The form will also be used to document any corrective or emergency actions necessary to remove water and/or damp/wet building materials.
- Completed incident report forms are to be forwarded to the Project Manager. The individual Project Manager is to receive the original report form and a copy should be retained by the Project Superintendent.
- The Project Manager is to retain the report forms and any associated photographs for a minimum of three (3) years.
- Water Damage and Mold Contaminated Building Materials Follow-up Tracking Form (Appendix Two)
 - This form is to be used to document water extraction, mold remediation and/or mold inspection activities taken in response to a report of a moisture/water or mold growth condition.
 - The form will also be used to document the outcomes of water extraction, mold remediation and/or mold inspection activities.
 - The Project Manager is to retain the follow-up tracking form and all associated reports for three (3) years.

Section Five

Competencies and Training

5.1 Henry Bros. Co. Employees

Henry Bros. Co. Project Managers, Engineers and Superintendents will receive a minimum of one (1) hour **awareness** training on:

- The objectives of the Program;
- Basic awareness of construction issues that may lead to a moisture/water or minor mold growth condition; and
- Recognition of dampened or wetted building materials that can lead to potential mold growth

Henry Bros. Co. employees involved with the water extraction and/or minor mold remediation activities will receive a minimum of three (3) hours **advanced** training on:

- The objectives of the Program;
- Their specific roles and responsibilities under the Program;
- Awareness of construction issues that may lead to a moisture/water or mold growth condition;
- Recognition of dampened or wetted building materials that can lead to potential mold growth;
- Emergency dry out procedures; and
- Remediation of areas with fungal growth, including:
 - Containment procedures;
 - Use of proper personal protective equipment (PPE) during remediation;
 - Necessary remediation activities for different types of materials (porous, non-porous, and semi-porous);
 - Proper removal of damp/wet or mold-containing materials from an affected area; and
 - Proper cleaning activities following the removal of all damp/wet and mold-containing materials

The person conducting the training will be knowledgeable in the subject matter. The necessary training must be updated when a change is made to the Program. The Henry Bros. Co. In-house Mold Specialist, in conjunction with the Project Manager, is responsible for providing assistance in the development of this training, keeping proper training records, and ensuring that the necessary training is provided to all Henry Bros. Co. employees.

Section Six

Other Program Requirements

6.1 Preventive Maintenance

The Project Managers and Project Superintendent are responsible for ensuring that a preventive maintenance (PM) Program is in place to minimize the likelihood of a Water Damage associated with the on-going construction activities under Henry Bros. Co. control. The purpose of the PM Program is to be proactive in minimizing potential causes of moisture/water or mold growth conditions at project sites in which Henry Bros. Co has been employed.

6.2 Programmed Inspections

On-going Henry Bros. Co. project sites will be routinely inspected for signs of moisture, standing water, water-damaged building materials, and mold growth. These inspections will include examination of the interior building shell (i.e., ceiling, walls, windows, doors, and floors), exterior building shell (i.e., roof and exterior siding), and obvious sources of potential water leaks (i.e., plumbing sources). During these inspections, the interior and exterior components of the heating, ventilation, and air-conditioning (HVAC) system(s) will also be inspected for signs of moisture, standing water, water-damaged building materials, and mold growth. The purpose of these inspections is to detect obvious signs of moisture/water, water damage, or mold growth, prior to, during, and upon completion of Henry Bros. Co. construction projects. These inspections will help provide early detection of moisture/water or mold growth conditions and reduce costs associated with such losses.

Inspections shall be fully documented using the “Water Damage and Mold-Contaminated Building Materials Inspection Checklist” (see Appendix Two). It is the responsibility of the Project Manager to maintain and update this checklist. The Project Manager is responsible for ensuring that the Project Superintendents and Project Engineers they supervise are completing routine Water Damage and mold-contaminated building materials inspections and maintaining records of these inspections for a period of three (5) years following on-site activities. At a minimum, such inspections will be conducted during the following:

- Prior to starting a construction project at an existing building (this measure will provide documentation of any existing issues prior to beginning work)
- Following client/occupant or any source reporting any moisture/water or mold growth condition resulting from on-going construction activities under Henry Bros. Co. control
- Following severe weather (high winds or heavy rainstorms)

- Upon completion of a construction project (this measure will provide documentation that no existing issues to the best of Henry Bros. Co. knowledge, are present at the completion of Henry Bros. Co. work)

Upon observation of a moisture/water, water damage, or mold growth condition, a “Water Damage and Mold-Contaminated Building Materials Incident Report Form” (see Appendix Two) will be filled out by either the Project Superintendent or Project Engineer and submitted to the Project Manager to determine the response required following verification of the presence of moisture/water, water damage, or mold growth by him/her or the Project Superintendent.

6.3 Weather Exposure

Precautionary measures should be taken so that porous building materials (i.e., drywall, ductboard, insulation, etc.) are not exposed to moisture or water. To that end, the Project Superintendents, in conjunction with the Project Subcontractors, must protect all porous building materials to be installed by Henry Bros. Co. employees or subcontractors from precipitous weather exposure (e.g., morning dew, rain, sleet, snow, etc.) prior to and during installation within the building. If porous building materials cannot be protected from precipitous weather exposure, the Project Superintendent must ensure that all dampened/wetted building materials are dried thoroughly and are inspected for signs of moisture, water damage, and mold growth, prior to their installation within the building.

6.4 Subcontractor Expectations

Henry Bros. Co. expects, under the Program, that Subcontractors contracted by Henry Bros. Co. will implement/perform the following:

- Routine inspections of the building materials/equipment being installed by the Project Subcontractor’s employees for signs of moisture, standing water, water-damaged building materials, and mold growth.

Upon observation of signs of moisture, standing water, water-damaged building materials, or suspected mold growth, the Project Subcontractor will notify in writing the Project Manager and/or Project Superintendent.

Section Seven

Procedures for Responding to Water Damage and/or Mold Contamination

Despite preventive measures taken to minimize the potential for moisture/water and mold growth conditions, these conditions may arise. If this occurs, it is important to follow an established process to resolve each incident. This section describes Henry Bros. Co. process for responding and investigating potential Water Damage and/or mold contamination allegedly resulting from construction activities under Henry Bros. Co. control.

All inspections carried out in the procedures below are to be documented on the Water Damage and Mold-Contaminated Building Materials Inspection Checklist (see Appendix One). Any findings of moisture/water, water damage, or mold growth from such inspections are to be documented on the Water Damage and Mold-Contaminated Building Materials Incident Report Form (see Appendix Two). Finally, all subsequent actions to further evaluate or remediate the conditions reported on an incident report form are to be documented by the Project Managers using the “Water Damage and Mold-Contaminated Building Materials Follow-up Tracking Form” (see Appendix Two).

7.1 Management of a Complaint or Concern

1. Once a complaint or concern regarding potential Water Damage and/or mold contamination is received, the Project Manager must be notified.
2. The Project Manager will then with that the Project Superintendent, coordinate an investigation of the alleged moisture/water or mold growth conditions within twenty-four (24) hours for non-emergency situations or immediately in emergency situations (i.e., water line rupture and standing water is present) to investigate the client/tenant report.
3. Any findings of moisture/water or mold growth will prompt:
 - a. The completion of a Water Damage and Mold-Contaminated Building Materials Incident Report Form (see Appendix Two), which will be immediately forwarded to the Project Manager and Project Superintendent.
 - b. Notification to the client by the Project Manager.
 - c. Follow-up water extraction, mold remediation and/or inspection activities (see Sections 7.2 through 7.3 of the Program).
4. The Project Manager must also be notified if no obvious signs of moisture/water, water damage, or mold growth are found. The Project Manager will then forward

the results of findings to Management. Should Management still be concerned, an on-site meeting with Management and Project Manager and/or the Project Superintendent will be held to investigate the matter. If no resolution can be made, Henry Bros. Co. will seek outside assistance (i.e. contracting a qualified consultant to conduct an independent investigation) in resolving the matter.

7.2 Management of an Observed Moisture/Water Condition

1. All reports of a moisture/water condition will be documented on an incident report form (see Appendix Two). The incident report form is to be completed by the Project Superintendent or Project Engineer and forwarded to the Project Manager for prompt action.
2. Upon notification of a moisture/water condition, the Project Manager or Project Superintendent will verify the condition as soon as practical based on the report and may perform a site inspection to gather further information concerning the observed conditions at the client site.
3. The Project Manager will consult with the Project Superintendent and determine which of the following responses to take:
 - a. If the reported moisture/water condition does not appear to be the result of the construction activities under Henry Bros. Co. control the Project Manager will notify Henry Bros. Co.'s client of the observed condition. After Henry Bros. Co. documents the communication with the Owner, no further actions will be required by Henry Bros. Co.
 - b. If the reported moisture/water condition appears to be the result of construction activities under Henry Bros. Co. control, the Project Manager will:
 - i. Instruct on-site personnel to control the source of moisture/water causing the condition to occur, if known and possible. If the source is unknown, Henry Bros. Co. will seek internal or external resources to properly identify the cause of the moisture/water condition to ensure that it does not occur again.
 - ii. If there is no risk of electrical shock, instruct on-site personnel to turn off the circuit breakers supplying electricity to wet areas and/or unplug and remove any small electrical devices currently located on the wet floor coverings or other wet surfaces.
 - iii. Determine whether water extraction activities should take place. If the Water Damage was identified within forty-eight (48) hours of its initial occurrence, water extraction activities should be conducted as per Table 1, if identified after forty-eight (48) hours, refer to Table 2.
 - iv. Determine whether the affected area should be managed as an observed/likely mold growth condition, in which case the procedures in Section 7.3 are to be followed. Porous building materials suspected of

being wet for greater than forty-eight (48) hours should be treated as though microbial growth is present.

- v. Notify Management of the moisture/water condition and any corrective actions that Henry Bros. Co. is planning to take.
4. Following dry out procedures by Henry Bros. Co. the Project Manager or Project Superintendent will inspect the affected area(s) to determine if the dry-out procedures appear to be effective (that is building materials were dried out promptly and no apparent signs of mold growth are present).
 - a. If the dry-out procedures were believed to be successful, the Project Manager will file a follow-up Tracking form (see Appendix Two)
 - b. If the dry-out procedures are determined to be unsuccessful by the Project Manager or Project Superintendent, the procedures outlined in Section 7.3 are to be followed.
5. Upon successful completion of the water extraction or determination that mold remediation activities are necessary, the Project Manager will inform the necessary parties what future activities, if any, will be taken.

7.3 Management of an Observed/Suspected Mold Growth Condition

1. All reports of a mold growth condition will be documented on an incident report form. The incident report form is to be completed by the Project Superintendent or Project Engineer and forwarded to the Project Manager immediately for prompt action.
 - a. An exception to this reporting requirement is made whenever mold growth has resulted after performing a water extraction. In this case, the preliminary reporting requirements would have already been made to the Project Manager.
2. Upon notification of a mold growth condition, the Project Manager or Project Superintendent will verify the condition as soon as practical based on the report and may perform a site inspection to gather further information concerning the observed conditions at the client site.
3. The Project Manager will consult with the Project Superintendent and determine which of the following responses to take:
 - a. If the reported mold growth condition does not appear to be the result of the construction activities under Henry Bros. Co. control, the Project Manager will notify Henry Bros. Co.'s client of the observed condition. After Henry Bros. Co. documents the communication with the Owner, no further actions will be required by Henry Bros. Co.
 - b. If the reported mold condition appears to be the result of the construction activities under Henry Bros. Co. control, the Project Manager will:
 - i. Instruct on-site personnel to control the source of moisture/water (if it has not already) causing the condition to occur, if known and possible. If the

source is unknown, Henry Bros. Co. will seek internal or external resources to properly identify the cause of the moisture/water event in order to ensure that it does not occur again following the completion of mold remediation activities.

Determine whether trained Henry Bros. Co. employees will perform mold remediation or a mold remediation subcontractor will be called.

- ii. If necessary notify the client of the mold growth condition and any corrective actions that Henry Bros. Co. is planning to take.
4. Following mold remediation activities by Henry Bros. Co. or a mold remediation subcontractor, an investigation and follow up must occur:
 - a. If further mold remediation activities are necessary, additional mold and follow-up inspections will be conducted until an approval can be issued.
5. Upon receiving approval of the mold remediation activities, the Project Manager will inform Management that Henry Bros. Co. has successfully remediated the mold growth previously present

Table 1: Water Damage - Cleanup and Mold Prevention

Table 1 presents strategies to respond to water damage within 24-48 hours. These guidelines are designed to help avoid the need for remediation of mold growth by taking quick action before growth starts. If mold growth is found on the materials listed in **Table 1**, refer to [Table 2](#) for guidance on remediation. Depending on the size of the area involved and resources available, professional assistance may be needed to dry an area quickly and thoroughly.

Table 1: Water Damage - Cleanup and Mold Prevention	
Guidelines for Response to Clean Water Damage within 24-48 Hours to Prevent Mold Growth*	
Water-Damaged Material†	Actions
Books and papers	<ul style="list-style-type: none"> • For non-valuable items, discard books and papers. • Photocopy valuable/important items, discard originals. • Freeze (in frost-free freezer or meat locker) or freeze-dry.
Carpet and backing - dry within 24-48 hours§	<ul style="list-style-type: none"> • Remove water with water extraction vacuum. • Reduce ambient humidity levels with dehumidifier. • Accelerate drying process with fans.
Ceiling tiles	<ul style="list-style-type: none"> • Discard and replace.
Cellulose insulation	<ul style="list-style-type: none"> • Discard and replace.
Concrete or cinder block surfaces	<ul style="list-style-type: none"> • Remove water with water extraction vacuum. • Accelerate drying process with dehumidifiers, fans, and/or heaters.
Fiberglass insulation	<ul style="list-style-type: none"> • Discard and replace.
Hard surface, porous flooring§ (Linoleum, ceramic tile, vinyl)	<ul style="list-style-type: none"> • Vacuum or damp wipe with water and mild detergent and allow to dry; scrub if necessary. • Check to make sure underflooring is dry; dry underflooring if necessary.

<p>Non-porous, hard surfaces (Plastics, metals)</p>	<ul style="list-style-type: none"> • Vacuum or damp wipe with water and mild detergent and allow to dry; scrub if necessary.
<p>Upholstered furniture</p>	<ul style="list-style-type: none"> • Remove water with water extraction vacuum. • Accelerate drying process with dehumidifiers, fans, and/or heaters. • May be difficult to completely dry within 48 hours. If the piece is valuable, you may wish to consult a restoration/water damage professional who specializes in furniture.
<p>Wallboard (Drywall and gypsum board)</p>	<ul style="list-style-type: none"> • May be dried in place if there is no obvious swelling and the seams are intact. If not, remove, discard, and replace. • Ventilate the wall cavity, if possible.
<p>Window drapes</p>	<ul style="list-style-type: none"> • Follow laundering or cleaning instructions recommended by the manufacturer.
<p>Wood surfaces</p>	<ul style="list-style-type: none"> • Remove moisture immediately and use dehumidifiers, gentle heat, and fans for drying. (Use caution when applying heat to hardwood floors.) • Treated or finished wood surfaces may be cleaned with mild detergent and clean water and allowed to dry. • Wet paneling should be pried away from wall for drying.
<p>* If mold growth has occurred or materials have been wet for more than 48 hours, consult Table 2 guidelines. Even if materials are dried within 48 hours, mold growth may have occurred. Items may be tested by professionals if there is doubt. Note that mold growth will not always occur after 48 hours; this is only a guideline.</p> <p>These guidelines are for damage caused by clean water. If you know or suspect that the water source is contaminated with sewage, or chemical or biological pollutants, then Personal Protective Equipment and containment are required by OSHA. An experienced professional should be consulted if you and/or your remediators do not have expertise remediating in contaminated water situations. Do not use fans before determining that the water is clean or sanitary.</p> <p>† If a particular item(s) has high monetary or sentimental value, you may wish to consult a restoration/water damage specialist.</p> <p>§ The subfloor under the carpet or other flooring material must also be cleaned and dried. See the appropriate section of this table for recommended actions depending on the composition of the subfloor.</p>	

Table 2: Guidelines for Remediating Building Materials with Mold Growth Caused by Clean Water

Table 2 presents remediation guidelines for building materials that have or are likely to have mold growth. The guidelines in **Table 2** are designed to protect the health of occupants and cleanup personnel during remediation. These guidelines are based on the area and type of material affected by water damage and/or mold growth. Please note that these are guidelines; some professionals may prefer other cleaning methods.

If possible, remediation activities should be scheduled during off-hours when building occupants are less likely to be affected.

Although the level of personal protection suggested in these guidelines is based on the total surface area contaminated and the potential for remediator and/or occupant exposure, professional judgment should always play a part in remediation decisions. These remediation guidelines are based on the size of the affected area to make it easier for remediators to select appropriate techniques, not on the basis of health effects or research showing there is a specific method appropriate at a certain number of square feet. The guidelines have been designed to help construct a remediation plan. The remediation manager will then use professional judgment and experience to adapt the guidelines to particular situations. When in doubt, caution is advised. Consult an experienced mold remediator for more information.

In cases in which a particularly toxic mold species has been identified or is suspected, when extensive hidden mold is expected (such as behind vinyl wallpaper or in the HVAC system), when the chances of the mold becoming airborne are estimated to be high, or sensitive individuals (e.g., those with severe allergies or asthma) are present, a more cautious or conservative approach to remediation is indicated. Always make sure to protect remediators and building occupants from exposure to mold.

Table 2: Guidelines for Remediating Building Materials with Mold Growth Caused by Clean Water*			
Material or Furnishing Affected	Cleanup Methods†	Personal Protective Equipment	Containment
SMALL - Total Surface Area Affected Less Than 10 square feet (ft²)			
Books and papers	3	Minimum N-95 respirator, gloves, and goggles	None required
Carpet and backing	1, 3		
Concrete or cinder block	1, 3		
Hard surface, porous flooring (linoleum, ceramic tile, vinyl)	1, 2, 3		
Non-porous, hard surfaces (plastics, metals)	1, 2, 3		
Upholstered furniture	1, 3		

& drapes			
Wallboard (drywall and gypsum board)	3		
Wood surfaces	1, 2, 3		
MEDIUM - Total Surface Area Affected Between 10 and 100 (ft²)			
Books and papers	3	Limited or Full Use professional judgment, consider potential for remediator exposure and size of contaminated area	Limited Use professional judgment, consider potential for remediator/occupant exposure and size of contaminated area
Carpet and backing	1,3,4		
Concrete or cinder block	1,3		
Hard surface, porous flooring (linoleum, ceramic tile, vinyl)	1,2,3		
Non-porous, hard surfaces (plastics, metals)	1,2,3		
Upholstered furniture & drapes	1,3,4		
Wallboard (drywall and gypsum board)	3,4		
Wood surfaces	1,2,3		
LARGE - Total Surface Area Affected Greater Than 100 (ft²) or Potential for Increased Occupant or Remediator Exposure During Remediation Estimated to be Significant			
Books and papers	3	Full Use professional judgment, consider potential for remediator/occupant exposure and size of contaminated area	Full Use professional judgment, consider potential for remediator exposure and size of contaminated area
Carpet and backing	1,3,4		
Concrete or cinder block	1,3		
Hard surface, porous flooring (linoleum, ceramic tile, vinyl)	1,2,3,4		
Non-porous, hard surfaces (plastics, metals)	1,2,3		
Upholstered furniture	1,2,4		

& drapes			
Wallboard (drywall and gypsum board)	3,4		
Wood surfaces	1,2,3,4		

Table 2 continued

*Use professional judgment to determine prudent levels of Personal Protective Equipment and containment for each situation, particularly as the remediation site size increases and the potential for exposure and health effects rises. Assess the need for increased Personal Protective Equipment, if, during the remediation, more extensive contamination is encountered than was expected. Consult [Table 1](#) if materials have been wet for less than 48 hours, and mold growth is not apparent. These guidelines are for damage caused by clean water. If you know or suspect that the water source is contaminated with sewage, or chemical or biological pollutants, then the Occupational Safety and Health Administration (OSHA) requires PPE and containment. An experienced professional should be consulted if you and/or your remediators do not have expertise in remediating contaminated water situations.

†Select method most appropriate to situation. Since molds gradually destroy the things they grow on, if mold growth is not addressed promptly, some items may be damaged such that cleaning will not restore their original appearance. If mold growth is heavy and items are valuable or important, you may wish to consult a restoration/water damage/remediation expert. Please note that these are guidelines; other cleaning methods may be preferred by some professionals.

Cleanup Methods

- **Method 1:** Wet vacuum (in the case of porous materials, some mold spores/fragments will remain in the material but will not grow if the material is completely dried). Steam cleaning may be an alternative for carpets and some upholstered furniture.
- **Method 2:** Damp-wipe surfaces with plain water or with water and detergent solution (except wood -- use wood floor cleaner); scrub as needed.
- **Method 3:** High-efficiency particulate air (HEPA) vacuum after the material has been thoroughly dried. Dispose of the contents of the HEPA vacuum in well-sealed plastic bags.
- **Method 4:** Discard - remove water-damaged materials and seal in plastic bags while inside of containment, if present. Dispose of as normal waste. HEPA vacuum area after it is dried.

Personal Protective Equipment (PPE)

- Minimum: Gloves, N-95 respirator, goggles/eye protection
- Limited: Gloves, N-95 respirator or half-face respirator with HEPA filter, disposable overalls, goggles/eye protection
- Full: Gloves, disposable full body clothing, head gear, foot coverings, full-face respirator with HEPA filter

Containment

- Limited: Use polyethylene sheeting ceiling to floor around affected area with a slit entry and covering flap; maintain area under negative pressure with HEPA filtered fan unit. Block supply

and return air vents within containment area.

- Full: Use two layers of fire-retardant polyethylene sheeting with one airlock chamber. Maintain area under negative pressure with HEPA filtered fan exhausted outside of building. Block supply and return air vents within containment area.

Appendix One

Water Damage and Mold-Contaminated Building Materials Inspection Checklist

Water Damage and Mold-Contaminated Building Materials Inspection Checklist

Inspection completed by: _____ Date of inspection: _____

Reason for Inspection: _____

Location(s)/area(s) inspected: _____

Instructions to the inspector(s):

Personnel completing this Programmed inspection must have advanced mold and Water Damage recognition training. When inspecting the building systems and materials outlined below, look for signs of moisture, water damage and/or mold growth. Where signs are present, note your observations in the comment section below each inspection sub-set and complete an "Incident Report Form." "Yes" indicates a problem was observed. "No" means that no signs of water/moisture or mold growth were present. "NA" means not applicable.

	Yes	No	NA
Plumbing inspection – The focus of this part of the inspection is to ensure that plumbing lines and water using appliances, sinks, etc... are not leaking or causing excessive sweating.			
Inspect flooring, walls, and cabinets around sinks, bathtubs, showers, water heaters, water softeners, dishwashers, AC units, and other plumbing sources.			
Inspect the flooring and lower sections of walls in areas/rooms adjacent to sinks, bathtubs, showers, water heaters, water softeners, dishwashers, AC units, and other plumbing sources.			
Inspect plumbing lines and insulation for excessive sweating and mold-growth. Where excessive sweating is occurring, inspect surrounding building materials and line insulation, if present, closely for signs of moisture, water damage and/or mold growth			
Inspect condition of building materials present behind plumbing access panels.			
Inspect building materials adjacent to plumbing pathways throughout the structure.			
Comments: 			
General interior inspection – The focus of this part of the inspection is to ensure that water is not infiltrating the structure through the exterior and that excessive condensation is not forming on building surfaces.			
Inspect doors, doorjambs, door thresholds and door trim around exterior doors.			

	Yes	No	NA
Inspect windows, including skylights, and exterior walls throughout the building for signs of water infiltration or condensation issues.			
Inspect ceilings throughout the building.			
Comments:			
HVAC system inspection – The focus of this part of the inspection is to ensure that air-handling units, chillers, and/or dehumidification equipment are draining properly, not allowing condensation or excessive humidity to occur downstream, and not being affected by other sources of moisture/water inside the building.			
Inspect the interior and exterior of all air-handling units, chillers, and dehumidification equipment (i.e. cooling coils, fans, interior/exterior insulation, and drain pans) for signs of moisture, icing, water or mold growth			
Inspect drip pans, drain lines, and chillers/AHUs for proper drainage and physical and installation damage. In addition, inspect the building materials surrounding them.			
Inspect for condensation and/or mold growth on diffusers and air-filters. Where possible, shine a flashlight into the diffusers and behind air-filters to inspect the ductwork and buckets behind them for these same conditions.			
Inspect the condition of the seals around ductwork, return air plenums, fresh air intakes, and distribution plenums. Where signs of condensation are occurring around any of these seals, inspect inside the ductwork/plenum/AHU and the building materials around these problem areas.			
Monitor relative humidity levels of air coming out of a representative number of supply diffusers associated with each HVAC system in the building. If relative humidity levels are greater than 55%, inspect the duct interior closely for signs of condensation and mold growth.			
Comments:			
Perimeter inspection – The focus of this part of the inspection is to ensure that the exterior shell of the structure is not compromised and that landscaping/beautification practices around the structure do not cause water infiltration into the structure.			
Inspect the roofing and exterior siding/walls for openings to the environment. Porous building materials (drywall, insulation, acoustical tiles, etc...) should not be installed until the openings have been sealed and structural members inside are adequately dried.			

Appendix Two

Water Damage and Mold-Contaminated Building Materials Incident Report, Log, and Follow-up Tracking Forms

Water Damage and Mold-Contaminated Building Materials Incident Report Form

Instructions:

Complete a separate incident report form for each Water Damage and/or area of mold growth found within the building. Complete the form to the best of your knowledge and then forward it to the Project Manager (phone number: 708-658-XXXX) at 9821 S. 78th Ave., Hickory Hills, IL 60457. Whenever possible, photograph affected areas and forward them to the Project Manager as well.

Completed by: _____ Date Completed: _____

Building location and area(s) found to be affected: _____

Describe what was found (water staining, suspected mold growth, etc...) and where: _____

Suspected cause of water damage and/or mold growth observed: _____

Are building materials still wet? If so, where and to what extent: _____

Is gray or black water present? _____

Is standing water present? If so, how much water is present: _____

Estimated surface area of the building materials wetted or having mold growth present: _____

Date Water Damage and/or mold growth was discovered: _____

Estimated length of time that the Water Damage and/or mold growth has been present: _____

Corrective actions, if any, taken to this point: _____

Planned actions, if any, at this point: _____

Additional comments/observations: _____

For Project Manager Use Only.	Assigned Incident Report Number:	
--------------------------------------	----------------------------------	--

Water Damage and Mold-Contaminated Building Materials Incident Report Log

Assigned incident report number	Date of incident report	Building and area(s) affected	Brief description of the loss

Water Extraction (applicable only if the loss was caught within 48 hours)

Describe the dry out process performed, who performed it and when:

Who performed the post dry out assessment for mold contamination and when?

Briefly summarize the results of the post dry out assessment:

Moisture Source Determination

What caused the Water Damage to occur?

What actions were taken to correct the source of water/moisture?

If the source was not positively identified, what follow-up inspection activities have been put in place to track the problem area(s)?

Mold Remediation

Briefly describe the extent of mold contamination remediated:

Who performed the remediation and when:

Who performed the post remediation clearance assessment(s) and when?

Briefly summarize the results of the clearance assessment(s):

Corrective Actions Taken to Prevent this Occurrence in the Future and Additional Follow-up Notes

STATE OF ILLINOIS } SS
COUNTY OF

Gty # _____
Loan # _____

TO WHOM IT MAY CONCERN:

WHERE AS the undersigned has been employed by _____
to furnish _____
for the premises known as _____
of which _____ is the owner.

THE undersigned, for and in consideration of _____ (\$ _____)

Dollars, and other good and valuable consideration, the receipt whereof is hereby acknowledged, do(es) hereby waive and release any and all lien or claim of, or right to, lien, under the statutes of the State of Illinois, relating to mechanics' liens, with respect to and on said above-described premises, and the improvements thereon, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the owner, on account of labor services, material, fixtures, apparatus or machinery furnished, or which may be furnished at anytime hereafter, by the undersigned for the above-described premises, INCLUDING EXTRAS.*

DATE _____ COMPANY NAME _____ ADDRESS _____

SIGNATURE AND TITLE _____

*EXTRAS INCLUDE BUT ARE NOT LIMITED TO CHANGE ORDERS, BOTH ORAL AND WRITTEN, TO THE CONTRACT.

STATE OF ILLINOIS } SS
COUNTY OF

CONTRACTOR'S AFFIDAVIT

TO WHOM IT MAY CONCERN:

THE UNDERSIGNED, (NAME) _____ BEING DULY SWORN
DEPOSES AND SAYS THAT HE OR SHE IS (POSITION) of the _____ OF (COMPANY NAME)
_____ WHO IS THE CONTRACTOR FURNISHING
_____ WORK ON THE BUILDING LOCATED
AT _____ OWNED BY _____

That the total amount of the contract including extras* is \$ _____ on which he or she has received payment of \$ _____ prior to this payment. That all waivers are true, correct and genuine and delivered unconditionally and that there is no claim either legal or equitable to defect the validity of said waivers. That the following are the names of all parties who have furnished material or labor, or both, for said work and all parties having contracts or sub contracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each, and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

Table with 6 columns: NAMES AND ADDRESSES, WHAT FOR, CONTRACT PRICE INCLUDING EXTRAS*, AMOUNT PAID, THIS PAYMENT, BALANCE DUE. Includes a total row for labor and material.

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said work other than above stated.

DATE _____ SIGNATURE _____
SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 19 _____.

NOTARY PUBLIC

*EXTRAS INCLUDE BUT ARE NOT LIMITED TO CHANGE ORDERS, BOTH ORAL AND WRITTEN, TO THE CONTRACT

LCP Tracker is the online program for submitting certified payrolls that is mandatory for this project. The web address is www.lcptracker.com. Please fill out the form below and email to kkohler@henrybros.com to be setup.

Project Name: _____

Subcontractor Name: _____

Full Address: _____

Phone Number: _____

Federal Tax ID Number: _____

Contact Name: _____

Contact Email Address: _____

Company Ethnicity: _____

Date to Start Work on-site: _____

If you already have an existing username for LCP Tracker, please list it here: _____

If applicable, Subcontractor of: _____

Please note, your subcontractors who will be working on-site will have to fill out these forms and enter certified payroll through LCP Tracker as well.