

Job No.: _____
Code: _____
Subcontract No.: _____

Date: _____
Subcontractor Phone: _____
Subcontractor Fax: _____

SUBCONTRACT AGREEMENT

This Subcontract Agreement ("Agreement") made as of the date set forth above is
between **STREETER ASSOCIATES, INC.** ("Contractor")
P.O. Box 118
Elmira, NY 14902-0118

and _____ ("Subcontractor")

The Contractor and _____ ("Owner")

entered into a Contract for construction services ("Construction Agreement") to be performed at
_____ ("Location")

To construct: _____ (the "Project").

The Contractor and the Subcontractor agree as set forth below:

1. **General Conditions.** This Agreement is to be used in conjunction with the Streeter Associates, Inc. General Conditions of the Subcontract Agreement dated September 1, 2007 ("General Conditions"), which General Conditions are incorporated by reference and made a part of this Agreement. Unless otherwise defined herein, capitalized terms shall be used herein as defined in the General Conditions. This Agreement, the General Conditions and other Contract Documents comprise the entire and integrated agreement between the Contractor and Subcontractor superseding prior negotiations, agreements and representations, oral or written. No modification of this Agreement shall be effective unless it is in writing and signed by a duly authorized officer of Contractor, nor may the provisions of this clause be waived except by such a writing. This Agreement shall be binding upon and inure to the benefit of Contractor, Subcontractor, their successors, assigns and legal representatives.
2. **Work.** The Work of this Agreement is as follows:

See Exhibit A – Scope of Work
3. **Contract Price.** Contractor shall pay Subcontractor for the satisfactory performance and completion of the Work \$ _____ ("Contract Price"). If the Contract Price is based upon Unit Prices, payment shall be made in accordance with the Unit Price Schedule attached hereto. Payment shall be made in accordance with the terms set forth in the General Conditions unless otherwise set forth below:
4. **Commencement and Completion.**
 - a. The Subcontractor shall commence the Work on _____.
 - b. The Work shall be substantially complete not later than _____. Time is of the essence in the performance of this Agreement.

5. **Surety Bond.**

a. If as of the date of this Agreement, Contractor requires Subcontractor to provide performance and/or payment bonds, the Contract Price includes all costs incident thereto and such bonds shall be delivered to Contractor in such form as Contractor shall reasonably require.

b. Surety Bonds required for this Subcontract.

Yes or No

_____/_____
(Contractor's Initials) (Subcontractor's Initials)

Notwithstanding any contrary provisions, Contractor reserves the right to require Subcontractor to furnish performance and/or payment bonds during the course of the Work. If such bonds are required subsequent to the date of this Agreement, the Contract Price shall be increased by the Subcontractor's cost to obtain the required bonds with no additional markup by Subcontractor.

6. **Insurance.** Subcontractor shall obtain insurance coverage under policies which shall name Contractor and Owner as additional insureds, conforming to the scope of the Work. Insurance requirements are set forth in the General Conditions. Proof of coverage shall be in a form satisfactory to Contractor and Owner. Noted aggregates are to be solely applicable to the Work and not applicable to Subcontractor's operations at any other site even if Subcontractor's operations at other sites involve Contractor or Owner. Subcontractor's insurance shall be primary.

7. **Representations.** Subcontractor represents that it is fully qualified to perform the Work. Prior to executing this Agreement, Subcontractor independently investigated the Work, the conditions involved in performing the Work, the obligations of this Agreement, the Contract Documents and all information furnished by Contractor or others. Based on this, Subcontractor has (i) satisfied itself that the information provided by the Contract Documents, the Contractor and the Owner is accurate; and (ii) made all examinations and tests and obtained all information it deems necessary to determine the difficulties and hazards incident to the performance of the Work. The Contract Price includes all costs incident to the results of any examinations or tests, difficulties and hazards. Any difficulties or hazards not discovered shall, nevertheless be the sole responsibility of Subcontractor. This Agreement is signed and executed by a legal representative of Subcontractor, authorized to bind Subcontractor to the terms of this Agreement. Subcontractor further represents and warrants that if it is a corporation, it is validly existing, in good standing and qualified to do business in the state in which the Work is to be performed.

8. **Counterparts.** This Agreement may be executed in any number of counterparts and no counterpart must contain the signatures of all the parties as long as at least one separate counterpart has been signed by each party. Evidence of signature given by facsimile shall be binding. Each counterpart shall constitute an original instrument, but all such counterparts shall constitute one and the same Agreement.

Contractor and Subcontractor by their duly authorized representatives, have executed this Agreement as of the date set forth above.

STREETER ASSOCIATES, INC.

SUBCONTRACTOR

By _____

By _____

Its _____

Its _____



GENERAL CONDITIONS OF THE SUBCONTRACT AGREEMENT

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STREETER ASSOCIATES, INC.

GENERAL CONDITIONS OF THE SUBCONTRACT AGREEMENT

ARTICLE 1

THE WORK

1.1 The Construction Agreement, Subcontract Agreement, Streeter Associates, Inc. General Conditions of the Subcontract Agreement, plans, specifications, other general and special conditions, advertisement for bids, instructions to bidders, Project Schedule, Subcontractor Schedule, any addenda, alternates, amendments and subsequent Change Orders constitute the Contract Documents.

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

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

1.4 Unless otherwise agreed, CONTRACTOR will provide temporary sanitary facilities and potable water. SUBCONTRACTOR shall provide any temporary field office, utilities and storage facilities it requires. All temporary facilities and their location at the Project site are subject to CONTRACTOR'S approval.

1.5 SUBCONTRACTOR agrees to unload and properly store its materials and equipment required for the Work, whether furnished by Owner, CONTRACTOR or SUBCONTRACTOR, as directed by CONTRACTOR. SUBCONTRACTOR assumes full responsibility for the protection and safety of all such materials and equipment and any loss or damage incurred shall be the sole responsibility of SUBCONTRACTOR regardless of circumstances. Any materials or equipment delivered and stored at the Project site by SUBCONTRACTOR, or its Sub-subcontractors or suppliers, for incorporation into the Work, shall not be removed from the Project site without the written approval of CONTRACTOR.

1.6 Prior to the start of construction and as requested by CONTRACTOR during the course of the Project, SUBCONTRACTOR shall complete and submit to CONTRACTOR the Sub-subcontractors and Suppliers List which shall include the names and addresses of all sub-subcontractors, material suppliers and equipment rental suppliers it intends to use on the Project and, upon request, copies of the proposed contracts and purchase orders with sub-subcontractors and suppliers. SUBCONTRACTOR shall promptly notify CONTRACTOR of any changes to this list.

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

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

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

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

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

ARTICLE 2

TIME OF PERFORMANCE

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

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

2.3 Prior to the start of construction, SUBCONTRACTOR shall submit to CONTRACTOR, if requested, a detailed schedule for performance of the Work ("Subcontractor's Schedule"). This schedule shall comply with the Project Schedule and the Contract Documents. The estimated percentage completion for each phase of the Work as well as the Work as a whole shall be indicated as required from commencement to completion of the Work. SUBCONTRACTOR agrees to make additional estimates of completion time and progress of the Work as CONTRACTOR may reasonably require. SUBCONTRACTOR shall prepare a staffing chart, if requested, indicating the estimated number of employees required to maintain the Subcontractor's Schedule. SUBCONTRACTOR agrees not to make any departure from its work schedule, work force or working hours without prior notice and approval of CONTRACTOR, except in emergency situations.

2.4 SUBCONTRACTOR shall submit to CONTRACTOR, if requested, a listing of all equipment and materials, the delivery of which is critical to maintaining the Subcontractor's Schedule, indicating current promised delivery dates.

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

2.6 SUBCONTRACTOR shall be liable to CONTRACTOR for any damages, including liquidated damages, sustained by CONTRACTOR on account of SUBCONTRACTOR'S failure to timely complete the Work.

2.7 If SUBCONTRACTOR is delayed or disrupted in the performance of the Work through no fault attributable to SUBCONTRACTOR; then SUBCONTRACTOR shall be entitled to an appropriate extension of time for the performance of the Work. The extension of time shall be the sole remedy for any delay or disruption. Neither CONTRACTOR nor Owner shall be liable to SUBCONTRACTOR for any damages resulting from delay or disruption, including without limitation, claims for extended overhead, labor or material escalation, labor inefficiency or lost productivity.

ARTICLE 3

CONTRACT PRICE

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

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

3.3 SUBCONTRACTOR agrees to maintain and make available to CONTRACTOR and OWNER at SUBCONTRACTOR'S place of business, records and books of account detailing all costs and expenses of the Work.

ARTICLE 4

TERMS OF PAYMENT

4.1 On or before the 20th day of each month, SUBCONTRACTOR shall deliver to CONTRACTOR'S principal office, two original applications for payment on a form approved by CONTRACTOR. The applications shall request payment for work in place and materials stored on the Project in accordance with the Schedule of Values. Applications received from SUBCONTRACTOR after the 20th day of the month may not be processed until the next billing cycle.

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

4.3 SUBCONTRACTOR shall submit with each application for payment SUBCONTRACTOR'S Waiver of Lien and Claims for all funds paid to SUBCONTRACTOR by CONTRACTOR including the current application period, a certified list of sub-subcontractors and suppliers included in the application for payment and such other documents or instruments reasonably required by CONTRACTOR or Owner, executed by a duly authorized representative of SUBCONTRACTOR and SUBCONTRACTOR'S sub-subcontractors and suppliers. Should SUBCONTRACTOR fail or refuse to furnish the waiver, CONTRACTOR may withhold from any payments due SUBCONTRACTOR an amount equal to the cost of the Work performed or materials furnished to SUBCONTRACTOR for which the waiver has not been furnished.

4.4 Subject to Paragraph 4.6, payment in current funds shall be due SUBCONTRACTOR within ten working days after receipt of payment by CONTRACTOR from Owner for the Work covered by the application for payment. CONTRACTOR may withhold up to ten percent from payments by the Owner on account of the Work as retainage. All material and work covered by the application for payment shall become the property of CONTRACTOR, or, if the Contract Documents so provide, the property of the Owner. This provision shall not release SUBCONTRACTOR from sole responsibility for all Work and materials upon which payments have been made.

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

4.6 If through no fault of SUBCONTRACTOR, CONTRACTOR or CONTRACTOR'S other subcontractors, CONTRACTOR is not paid by Owner according to the terms of the Construction Agreement and CONTRACTOR has not paid SUBCONTRACTOR, then all sums properly due to SUBCONTRACTOR shall become due and payable but subject to the terms and conditions of Paragraphs 4.6.1 - 4.6.5.

4.6.1 If SUBCONTRACTOR elects to take legal action to collect any amounts properly approved and due but unpaid for the reasons set forth in Paragraph 4.6, SUBCONTRACTOR shall be obligated, as a condition precedent to maintaining a claim against Contractor or its surety, if any, to timely file a mechanic's lien and to timely commence and diligently exhaust all rights and remedies including the following: (i) a lien foreclosure action to its final conclusion; and (ii) any available deficiency judgment proceeding against Owner and any other party responsible to SUBCONTRACTOR other than CONTRACTOR and its surety to the extent of any amounts legally due.

4.6.2 If Owner files for protection under the bankruptcy laws, as a condition precedent to asserting a claim against the Contractor or its surety, if any, SUBCONTRACTOR must (i) timely file a mechanic's lien, (ii) timely file a claim in the bankruptcy proceeding, and (iii) diligently prosecute that claim to a final conclusion. For purposes of Paragraphs 4.6.2 and 4.6.3, "final conclusion" means either full payment to the SUBCONTRACTOR of its claim in bankruptcy or a final disposition of the bankruptcy.

4.6.3 In the event of a dismissal of the bankruptcy proceeding prior to its final conclusion, SUBCONTRACTOR agrees to pursue all remedies under Paragraph 4.6.1 prior to maintaining a claim against CONTRACTOR or its surety, if any.

4.6.4 CONTRACTOR shall fully cooperate with SUBCONTRACTOR in SUBCONTRACTOR'S pursuit of remedies under Paragraphs 4.6.1, 4.6.2 and 4.6.3. This cooperation shall be without prejudice to CONTRACTOR or its surety, if any, in any suit maintained by SUBCONTRACTOR against CONTRACTOR for any amount payable under the Subcontract Agreement.

4.6.5 Because CONTRACTOR lacks control over SUBCONTRACTOR'S election or pursuit of its rights or remedies in the event of Owner's insolvency or substantial default, SUBCONTRACTOR agrees that any interest on the claims against CONTRACTOR or its surety shall not accrue or commence to run until after all of SUBCONTRACTOR'S remedies have been fully exhausted as provided above.

4.7 In the event the Owner fails to pay the CONTRACTOR for any reason and if the CONTRACTOR did not provide a payment bond for the Project or the CONTRACTOR provided a payment bond but the SUBCONTRACTOR failed to satisfy any condition to maintaining an action on the payment bond, then:

- (a) SUBCONTRACTOR agrees that all of its rights and remedies in obtaining payment from CONTRACTOR or its surety under this Subcontract Agreement shall be limited solely to the estate, interest and property of the Owner, including the real property and improvements for which the Work is being performed;
- (b) SUBCONTRACTOR shall not have any recourse to, or rights or claims against, the CONTRACTOR, any property or assets of CONTRACTOR, its shareholders, partners, joint venturers, employees, agents, affiliates, alter egos, beneficiaries, successors, assigns, representatives or insurers; and
- (c) The CONTRACTOR'S assets accounts shall not be subject to levy, execution, enforcement or attachment for the satisfaction of SUBCONTRACTOR'S remedies arising from or relating to the Subcontract Agreement or the Work.

4.8 No payment shall be made to SUBCONTRACTOR until SUBCONTRACTOR has provided to CONTRACTOR proof of required insurance coverage, properly executed Subcontract Agreement, completed sub-subcontractors and suppliers list, required performance and payment bonds, if any, and the Schedule of Values and other documentation required by the Contract Documents.

4.9 Final payment, including any retainage withheld, shall be made thirty (30) days after the Work has been completed and accepted by Owner, Architect/Engineer and CONTRACTOR, satisfactory proof of payment of all amounts owed by SUBCONTRACTOR in connection with the Work has been provided to CONTRACTOR, CONTRACTOR has been paid in full for the entire Project, and SUBCONTRACTOR has submitted to CONTRACTOR: (i) full and complete releases of liens and any claims against CONTRACTOR, its surety, the Owner and the Project; (ii) executed warranties as required by the Contract Documents and Article 12; (iii) "as-built" drawings, if required; (iv) written consent of SUBCONTRACTOR'S surety; and (v) such other documents or instruments CONTRACTOR may require or are required by the Contract Documents. All of the aforementioned to be completed and duly executed by an authorized representative of SUBCONTRACTOR. The acceptance of final payment shall constitute a waiver of all claims by SUBCONTRACTOR.

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

4.11 The liability of CONTRACTOR'S surety on the payment bond, if any, issued for this Project is co-extensive with that of the CONTRACTOR hereunder. The Contract Documents shall be deemed incorporated into any such payment bond and the question of whether or not any funds may be due or justly due to the SUBCONTRACTOR, as may be referenced within any such bond, shall solely be determined by reference to the Contract Documents. Any surety issuing such payment bond shall be an intended beneficiary of the provisions of the Contract Documents.

ARTICLE 5

CHANGES AND CLAIMS

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

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

5.3 SUBCONTRACTOR shall submit in writing to CONTRACTOR all claims for adjustment in the Contract Price, the Subcontractor's Schedule or for damages for which the Owner is liable in the manner provided in the Contract Documents for like claims by CONTRACTOR against Owner. Such claims must be submitted by SUBCONTRACTOR to CONTRACTOR within five (5) days from the beginning of the event for which the claim is made, otherwise such claims shall be waived. SUBCONTRACTOR shall substantiate in writing any such claim within ten (10) days of the beginning of the event, otherwise such claim shall be deemed waived. CONTRACTOR shall process such claims according to the provisions of the Contract Documents. CONTRACTOR'S liability to SUBCONTRACTOR for such claims is limited to any adjustment which shall be made by Owner to the Construction Agreement on account of SUBCONTRACTOR'S claim. If agreed to by CONTRACTOR, the value of the work for which a Change Order will be authorized shall be determined by lump sum or by unit price, if any, stipulated in the Subcontract Agreement for such work. If no such prices are stipulated, the value so determined shall not exceed the lesser of the value obtained under the following methods:

- a. By adding or deducting a lump sum or an amount determined by unit price agreed upon by CONTRACTOR and SUBCONTRACTOR; or
- b. By adding (i) the actual cost of labor to SUBCONTRACTOR, in accordance with established rates but not at rates higher than standard in the area where the Work is located; and (ii) the actual cost of materials and equipment, less all savings, discounts, rebates and credits; and (iii) an allowance of _____ percent for overhead and profit on labor and materials. SUBCONTRACTOR shall be allowed an allowance of _____ percent for overhead and profit for work performed by a sub-subcontractor. The above allowances are subject to acceptance by the Owner. Notwithstanding any provisions in this Paragraph 5.3, any contrary provisions set forth in the Contract Documents shall control.
- c. Payment to SUBCONTRACTOR for such Change Orders shall be in accordance with Article 4 of this Subcontract Agreement.

5.4 SUBCONTRACTOR shall submit in writing to CONTRACTOR all claims not included in Article 5.3 within five days from the beginning of the event for which the claim is made or such claims will be waived. All unresolved claims shall be resolved in accordance with Article 24.

ARTICLE 6

SUBMITTALS

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

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

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

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

ARTICLE 7

REMOVAL OF DEBRIS AND CLEAN UP

7.1 At all times the SUBCONTRACTOR shall keep all areas of the Project free from SUBCONTRACTOR'S rubbish, excess material and equipment. SUBCONTRACTOR shall leave affected areas of the Project broom clean and free of all obstructions. If SUBCONTRACTOR fails to remove any of its rubbish, materials, tools or equipment within 24 hours after written notice, CONTRACTOR may, without further notice to SUBCONTRACTOR, remove any or all of same and charge the cost against monies due or to become due SUBCONTRACTOR.

ARTICLE 8

LIABILITY

8.1 SUBCONTRACTOR assumes all responsibility and liability for all of its work, supervision, labor, equipment, materials, scaffolding, tools and all else provided by SUBCONTRACTOR. In the event of any loss, damage or destruction to the Work from any cause, SUBCONTRACTOR shall be liable for and shall repair, rebuild or otherwise remedy any loss, damage or destruction at SUBCONTRACTOR'S expense.

8.2 SUBCONTRACTOR shall be liable to CONTRACTOR for all costs CONTRACTOR incurs as a result of SUBCONTRACTOR'S, its sub-subcontractor's or suppliers' failure to perform the Work in accordance with the terms of the Contract Documents. SUBCONTRACTOR'S liability shall include, without limitation, direct and consequential damages arising out of delay, increased costs of performance, warranties, corrective action, third-party actions and reasonable attorney's fees and costs.

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

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

ARTICLE 9
LABOR

9.1 SUBCONTRACTOR understands that contracts will be awarded by CONTRACTOR and labor will be employed on the Project without discrimination as to whether employees, agents or suppliers of the CONTRACTOR or any other subcontractor, including those that may be employed by the Owner of the Project, are members or non-members of any labor or collective bargaining organization.

9.2 There shall be no manifestation on the Project of any dispute between any labor organization and SUBCONTRACTOR. SUBCONTRACTOR agrees to employ people, agents, suppliers and Sub-subcontractors who will perform the Work whether or not other employees or mechanics on the Project are members or non-members of any labor or collective bargaining organization. Any labor disputes involving SUBCONTRACTOR are those of SUBCONTRACTOR and not CONTRACTOR.

9.3 SUBCONTRACTOR agrees not to participate in or permit any cessation of work which may occur as a result of any labor dispute, regardless of whether the dispute involves SUBCONTRACTOR or another subcontractor or supplier on the Project.

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

ARTICLE 10
SAFETY

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

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

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

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

10.5 SUBCONTRACTOR shall on a daily basis inspect areas where its employees are working and give CONTRACTOR immediate notice of any condition beyond its control that SUBCONTRACTOR believes is hazardous

to the safety or health of its employees. SUBCONTRACTOR shall give CONTRACTOR written notice within twenty-four (24) hours after discovering any such condition.

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

ARTICLE 11

CONDUCT OF THE WORK

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

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

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

ARTICLE 12

MATERIALS, WORKMANSHIP, INSPECTION AND WARRANTY

12.1 SUBCONTRACTOR shall perform the Work in strict accordance with the Contract Documents and the best industry practices. All materials are to be new, unless specified otherwise. SUBCONTRACTOR, at its expense shall remove and replace materials not meeting specification or materials failing to perform as represented or warranted by the manufacturer, whether incorporated in the Work or not. SUBCONTRACTOR shall promptly replace or correct any work or materials which CONTRACTOR or Owner shall reject as failing to conform to the requirements of the Contract Documents.

12.2 SUBCONTRACTOR warrants the Work and its performance to CONTRACTOR on the same terms as CONTRACTOR warrants the Work to Owner under the Contract Documents. SUBCONTRACTOR shall perform all warranty obligations and responsibilities for the Work under the Contract Documents. SUBCONTRACTOR at its expense, shall remedy defects due to improper and/or defective workmanship or materials appearing within one (1) year of CONTRACTOR completing the Project or such longer period as may be set forth in the Contract Documents ("Correction Period"). Upon completion of the Work, SUBCONTRACTOR shall submit to CONTRACTOR all written warranties and guarantees from SUBCONTRACTOR'S suppliers and material manufacturers. If a warranty assigned to the CONTRACTOR or Owner by a supplier or manufacturer is available, the CONTRACTOR will first diligently pursue remedies under such warranty and SUBCONTRACTOR shall fully cooperate in such effort. The SUBCONTRACTOR acknowledges that its obligations to the CONTRACTOR and Owner under this Article 12 are joint and several during the Correction Period with its suppliers, vendors and material manufacturers for all materials supplied on account of the Work. Any notice given to SUBCONTRACTOR by CONTRACTOR regarding any deficiency in the Work covered by this Article 12 shall toll the Correction Period until corrections or remedial actions necessary hereunder have been taken. SUBCONTRACTOR shall be responsible for all harm caused by its failure to perform the Work in strict accordance with any manufacturer's requirements or its failure to maintain equipment and materials installed hereunder through the CONTRACTOR'S completion of the Project. The requirements of this Article 12 shall continue notwithstanding the termination of Subcontractor for any reason.

ARTICLE 13

FAIR EMPLOYMENT PRACTICE

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

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

ARTICLE 14

INSURANCE

14.1 SUBCONTRACTOR shall procure and maintain liability insurance in accordance with the provisions and minimum limits set forth in Paragraph 14.7. Each insurance policy (except Worker's Compensation and Auto) shall name CONTRACTOR and Owner as additional insureds and provide coverage for the defense and indemnification of SUBCONTRACTOR, CONTRACTOR and Owner, their agents and employees, against all claims for damages arising from any activities conducted in connection with the Work, including all claims by or on behalf of any person for injury to person or persons, including death, property damage and loss, regardless of who allegedly caused or contributed to such damages. The General Liability insurance shall provide that the additional insured status afforded to Contractor in SUBCONTRACTOR's insurance shall be primary and non-contributory. SUBCONTRACTOR'S insurance endorsement providing additional insured status to CONTRACTOR shall be I.S.O. form CG2010 (11/85), or CG2010 (10/01) and CG2037, or equivalent coverage.

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

14.2 Before commencing any of the Work, SUBCONTRACTOR shall submit certificates of insurance to CONTRACTOR as evidence of SUBCONTRACTOR'S compliance with this Article 14. A copy of the Additional Insured endorsement as required in Paragraph 14.5.e below shall be attached to the certificate of insurance when submitted. If requested by CONTRACTOR, true copies of the policies shall be submitted in addition to certificates. Such certificates or policies shall be underwritten by a carrier satisfactory to CONTRACTOR. The policies shall be identified by title, policy number, effective date, expiration date, coverage, and limits of liability. Endorsements as required above, including Additional Insured endorsements, and any non-standard exclusion endorsements for any required policies shall be attached to or be a part of the policy scope. All certificates and policies must be endorsed to require that the insurance company provide CONTRACTOR with a minimum of 30 days prior written notice of cancellation or material change.

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

14.4 During the course of the Work, whenever there is a lapse in the SUBCONTRACTOR'S required insurance

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

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

- a. Personal Injury: To protect SUBCONTRACTOR, CONTRACTOR AND OWNER, their heirs, successors and assigns against all claims for injury to or death of a person or persons caused by an event resulting from operations required by the Work. Such insurance shall cover the use of any equipment, machinery and vehicles. This Personal Injury Liability Insurance will be carried from commencement of the Work to final acceptance of the Work and will be extended to include insurance for completed operations. The completed operations portion of the Personal Injury Liability Insurance shall be extended for the entire period of the warranties, but not less than two years following final completion, and will continue to name the contractor as an Additional Insured for the same period.
- b. Property Damage: To protect SUBCONTRACTOR, CONTRACTOR AND OWNER, their heirs, successors and assigns from all claims for property damage which may arise from operations required by the Work. Property Damage Liability shall be extended to provide for Broad Form coverage and shall also include insurance of completed operations. The completed operations portion of the Property Damage Liability Insurance shall also be extended as provided above.
- c. Contractual Liability: To protect SUBCONTRACTOR from claims for liability arising or assumed under the Contract Documents.
- d. Comprehensive General Liability shall include liability for personal injury or damages to property as a result of blasting, explosion, collapse of buildings or structures and damage to underground installations if applicable.
- e. The Additional Insured endorsement to be used shall be Insurance Services Office (I.S.O.) form CG 2010, edition date 11/85. If a later edition date of CG 2010 is used, or if I.S.O. form CG 2033 is used, then I.S.O. form CG 2037 (edition date 10/01), must also be attached.
- f. The termination date of the policy or any applicable extended reporting period shall be no earlier than the termination date of all such coverage as required to be maintained herein.

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

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

- | | | |
|----|--|--|
| A. | Worker's Compensation
Employer's Liability | Limits - Statutory
Limits - 1 Million |
| B. | Commercial General
Liability: Including
Products/Completed Operations,
Contractor's Protective
& Contractual Liability | Limits - 1 Million/per Occurrence
2 Million/Aggregate |

NOTE: All Commercial General Liability Insurance shall be written on an "occurrence" basis and be endorsed

specifically to cover the contractual liability stated in Paragraphs 8.3, 10.2 and otherwise in this Subcontract Agreement. Coverage must conform to the scope of the Work called for in this Subcontract Agreement. For example, if the Subcontract Agreement requires asbestos abatement, the insurance must specifically cover (and must not exclude) any associated hazards. Commercial General Liability aggregate limits shall apply on a per-project basis.

- | | |
|---|--------------------|
| C. Comprehensive Automobile Liability: (Owned, hired and non-owned) | Limits - 1 Million |
| D. Excess Liability | Limits - 9 Million |

ARTICLE 15
PRICE INCREASES

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

ARTICLE 16
TITLE TO WORK AND MATERIALS

16.1 As between CONTRACTOR and SUBCONTRACTOR and parties claiming through either of them, in addition to title acquired by law, the title to all the Work, whether completed or in the course of construction at the site of the Work and the title to all materials and supplies, shall transfer to CONTRACTOR at the time of payment by CONTRACTOR to SUBCONTRACTOR. Responsibility for protection of such materials and supplies shall remain with SUBCONTRACTOR until final acceptance by Owner.

ARTICLE 17
OWNERSHIP OF DRAWINGS AND SPECIFICATIONS

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

ARTICLE 18
NOTICES

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

ARTICLE 19
LIENS

19.1 SUBCONTRACTOR shall indemnify and save harmless CONTRACTOR and Owner from all claims, demands, causes of action, or suits of whatever nature arising out of the labor and materials furnished by SUBCONTRACTOR, its sub-subcontractors or suppliers. SUBCONTRACTOR shall keep the Work and property free and clear of all liens, claims, and encumbrances arising from the performance of the Work by SUBCONTRACTOR, its sub-subcontractors and suppliers.

19.2 In the event that liens are filed by anyone in relation to the labor, material or equipment being furnished by

SUBCONTRACTOR, its sub-subcontractors and suppliers, SUBCONTRACTOR agrees to discharge by substitution of a surety bond, or otherwise, any lien within thirty (30) days of receiving notice of lien. In the event any lien is not discharged, CONTRACTOR may discharge any lien and recover from SUBCONTRACTOR all costs including attorneys' fees.

ARTICLE 20

TERMINATION BY OWNER

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

ARTICLE 21

TERMINATION FOR CONVENIENCE

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

ARTICLE 22

FAILURE TO PERFORM

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

22.2 If CONTRACTOR is subsequently determined to have improperly or wrongfully exercised any option under Paragraph 22.1, such exercise shall be deemed a Termination for Convenience and SUBCONTRACTOR shall be

compensated as provided for in Article 21. This Article 22 shall be in addition to any other rights CONTRACTOR may have against SUBCONTRACTOR by virtue of SUBCONTRACTORS default or failure to perform in accordance with the provisions of the Subcontract Agreement.

ARTICLE 23

SEVERABILITY AND WAIVER

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

ARTICLE 24

RESOLUTION OF DISPUTES

24.1 In the event that Owner makes any claim against CONTRACTOR which arises out of or on account of the Work, SUBCONTRACTOR agrees to litigate or contest the same in the forum provided in the Contract Documents for resolution of disputes between the Owner and Contractor and to be bound by the results thereof, provided that CONTRACTOR gives notice of such claim and provides SUBCONTRACTOR, to the extent permitted by the Contract Documents and the rules of such forum, with an opportunity to participate in the defense thereof. In the event of a claim by SUBCONTRACTOR against CONTRACTOR which CONTRACTOR has or claims a right to seek relief over against the Owner, SUBCONTRACTOR agrees to assert such claim in a forum where CONTRACTOR has the right to claim relief against Owner.

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

24.3 If the controversy or claim has not been resolved at the time the Project is complete, the SUBCONTRACTOR and CONTRACTOR will attempt in good faith to resolve the controversy or claim through non-binding mediation with mediation proceeding in Elmira, New York.

24.4 If the controversy or claim has not been resolved pursuant to the mediation procedure within 60 days of the commencement of such procedure, or if the CONTRACTOR elects not to participate in mediation, the controversy or claim shall be settled upon the election of the CONTRACTOR either by:

- a. arbitration in Elmira, New York in accordance with the Construction Industry Rules of the American Arbitration Association; or
- b. if CONTRACTOR shall, in its sole discretion, reject arbitration, then by resort to litigation proceedings in New York State Supreme Court, Chemung County, which court shall by consent of the SUBCONTRACTOR and CONTRACTOR have exclusive jurisdiction of any matters arising out of this Agreement, its breach, termination or validity.

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

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

limitations.

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

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

24.8 The laws of the State of New York without reference to its conflicts of law principles shall govern the Agreement.

ARTICLE 25

INTERPRETATION OF THE CONTRACT DOCUMENTS

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

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