

EXHIBIT "A"

# HOLLAND

## CONSTRUCTION®

### GENERAL PROVISIONS FOR SUBCONTRACT AGREEMENTS

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HOLLAND and SUBCONTRACTOR agree for themselves, their successors and assigns, as follows:

**GP-1 ENTIRE AGREEMENT**

This Agreement ("Subcontract") embodies the entire final integrated Agreement between Holland Construction Corporation ("HOLLAND" or "CONTRACTOR") and SUBCONTRACTOR and supersedes all other writings. The parties shall not be bound by, or be liable for any statement, representation, promise, inducement, understanding not set forth herein. No other Agreements, instruments or papers, oral or otherwise except those set forth in this Agreement shall be deemed to exist or bind any of the parties hereto. This Agreement may only be changed or modified by a writing executed by both parties hereto. The term "Contract Documents" as used in this agreement shall mean the following: a) Subcontract including cover page, all of its Exhibits, and all documents referenced in any of them, all of which are part of this Agreement as well as all subsequently issued written change orders, written amendments and written modifications; and b) Owner/Contractor Contract ("Prime Contract") between HOLLAND and Owner and all other documents incorporated by reference into the Owner/Contractor Contract, including, but not limited to, all drawings, specifications, general conditions and supplemental conditions, as well as all subsequently issued change orders, amendments or modifications to the Owner/Contractor Contract.

**GP-2 VALIDITY AND SEPERABILITY**

Each provision of this Agreement shall be construed in such manner as to give such provision the fullest legal force and effect possible. To the extent any provision herein (or part of such provision) is held to be unenforceable or invalid when applied to a particular set of facts, or otherwise, the unenforceability or invalidity of such provision (or part thereof) shall not affect the enforceability or validity of the remaining provisions hereof (or of the remaining parts of such provision), which shall remain in full force and effect, nor shall such unenforceability or invalidity render such provision (or part thereof) inapplicable to other facts in the context of which such provision (or part thereof) would be held legally enforceable and/or valid.

**GP-3 NON-WAIVER**

Failure by HOLLAND to insist upon strict performance of any terms or conditions of this Agreement, or failure or delay to exercise any rights or remedies provided herein or by law, or failure to properly notify SUBCONTRACTOR in the event of breach, or the acceptance of or payment for any goods or services hereunder, or the review or failure to review designs shall not release SUBCONTRACTOR from any of the warranties or obligations of this Agreement and shall not be deemed a waiver of any right of HOLLAND, or OWNER to insist upon strict performance hereof or any of its rights or remedies as to any prior or subsequent default hereunder nor shall any termination of Work under this Agreement by HOLLAND operate as a waiver of any of the terms hereof.

**GP-4 SURVIVAL**

The rights and obligations of the parties which by their nature survive termination or completion of this Agreement, including but not limited to those set forth in the General Provisions titled "WARRANTY" and "INDEMNITY", shall remain in full force and effect.

**GP-5 NON-DISCLOSURE**

SUBCONTRACTOR shall not make any announcement, take any photographs, or release any information concerning this Agreement, or the Project, or any part thereof to any member of the public, press, business entity, or any official body unless prior written consent is obtained from HOLLAND.

The SUBCONTRACTOR, its lower-tier subcontractors and suppliers shall not disclose any document or information of any kind related to the project to any party without prior written consent of HOLLAND.

**GP-6 INDEPENDENT CONTRACTOR**

SUBCONTRACTOR represents that it is fully experienced, properly qualified, registered, licensed, equipped, organized and financed to perform the Work under this Agreement. SUBCONTRACTOR shall act as an independent contractor and not as the agent of HOLLAND, or OWNER, in performing this Agreement, maintaining complete control over its employees and all of its lower-tier suppliers and subcontractors. Nothing contained in this Agreement or any lower-tier purchase order or subcontract awarded by SUBCONTRACTOR shall create any contractual relationship between any lower-tier supplier or subcontractor and either HOLLAND or OWNER.

**GP-7 ASSIGNMENTS AND SUBCONTRACTS**

SUBCONTRACTOR shall not assign or transfer this Agreement or any interest herein, or claims hereunder, without the prior written consent of HOLLAND or HOLLAND'S assignee. SUBCONTRACTOR may upon ten (10) calendar days written notice to HOLLAND, assign moneys due or to become due under this Agreement, provided that any assignment of moneys shall be subject to proper set-offs in favor of HOLLAND and any deductions provided for in this Agreement.

HOLLAND may assign this Agreement to OWNER or to such party as the OWNER may designate to perform HOLLAND'S obligations here under. Upon written notice to Subcontractor that the OWNER or a party so designated by the OWNER has accepted an assignment of this Agreement, HOLLAND shall be relieved of all responsibilities hereunder.

SUBCONTRACTOR shall not subcontract with any third party for the performance of all or any portion of the Work without the advance written approval of HOLLAND. Lower-tier subcontracts and purchase orders must include provisions to secure all rights and remedies of HOLLAND, and OWNER provided under this Agreement and must impose upon the lower-tier supplier and subcontractor all of the general duties and obligations required to fulfill this Agreement or OWNER/Contractor Contract.

Copies of all purchase and subcontract Agreements are to be provided to HOLLAND upon request. Pricing may be deleted unless the compensation to be paid there under is reimbursable under this Agreement.

**GP-8 NOTICES**

Any notices provided for hereunder shall be in writing. All notices shall be deemed delivered and valid for all purposes hereunder if delivered to the AUTHORIZED REPRESENTATIVE of the receiving party at the address of that party or at such address as may have been changed by prior written notice; and so long as such notices are: delivered by hand as verified by a receipt; delivered by certified mail as verified by a return receipt; delivered by an overnight delivery service as verified by a received receipt; delivered by facsimile transmittal as verified by transmission confirmation; or, delivered by electronic mail as verified by a received receipt. All such notices shall provide a copy to:

Holland Construction Corporation  
PO Box 516 – 751 Frederick Street  
Hanover, PA 17331  
Attention: Joe Holland  
Reference: (Subcontract No.)

**GP-9 STANDARDS AND CODES**

Wherever references are made in this Agreement to standards or codes in accordance with which the Work under this Agreement is to be performed, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply unless otherwise expressly stated in the specifications and drawings. In case of conflict between any reference standards and codes and any Subcontract Document, the latter shall govern.

**GP-10 LAWS AND REGULATIONS**

SUBCONTRACTOR and its employees, lower-tier subcontractors and suppliers shall at all times comply with all applicable laws, ordinances, statutes, rules, or regulations, in effect at the time the work under this Agreement is performed (including but not limited to A.D.A., wage and hour, and environmental laws), and SUBCONTRACTOR agrees to defend, indemnify and save harmless HOLLAND, and OWNER, its officers, employees, servants, and agents of either of them from and against any and all claims, losses, damages, treble damages, liabilities, or expenses caused or occasioned directly or indirectly by its failure to so comply.

If during the term of this Agreement there are any changed or new laws, ordinances, or regulations not known or foreseeable at the time of signing this Agreement which affect the cost or time of performance of the Agreement, SUBCONTRACTOR shall immediately notify HOLLAND in writing and submit detailed documentation of such effect in terms of both time and cost of performing the work. Upon concurrence by HOLLAND as to the effect of such changes, an equitable adjustment in the compensation and time of performance will be made.

If any discrepancy or inconsistency should be discovered between the Agreement and any law, ordinance, regulation, order, or decree, SUBCONTRACTOR shall immediately report the same in writing to HOLLAND who will issue such further instructions as may be necessary.

**GP-11 PERMITS & LICENSES**

Except as otherwise specified, SUBCONTRACTOR shall procure and pay for all trade permits, licenses and inspections, other than inspections performed by HOLLAND and OWNER and shall furnish any bonds, security, or deposits required by the Government, state, territory, municipality, or other political subdivisions to permit performance of the SUBCONTRACTOR'S Work hereunder. This includes but is not necessarily limited to identifying if such permits and licenses are required, compiling the information and data required for applications to obtain permits and licenses, filing of necessary applications for such permits and licenses, and providing any additional information or data required.

Where permits and licenses are furnished by HOLLAND, and OWNER, the SUBCONTRACTOR shall provide all reasonable assistance requested, including the providing of any necessary information or data.

**GP-12 INSPECTIONS**

Except as otherwise specified, SUBCONTRACTOR shall be responsible for the cost, scheduling and coordination of all inspections of any kind related to the performance of the SUBCONTRACTOR'S work. SUBCONTRACTOR shall cooperate with HOLLAND for any inspections that are required for the performance of HOLLAND'S work or any other inspections that HOLLAND deems necessary.

**GP-13 TAXES**

SUBCONTRACTOR shall pay all taxes, levies, duties and assessments of every nature due in connection with the Work under this Agreement and shall make any and all payroll deductions required by law and hereby indemnifies and holds harmless HOLLAND, and OWNER, from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

**GP-14 FINES AND PENALTIES**

SUBCONTRACTOR is liable to HOLLAND, and OWNER for all fines and penalties assessed against HOLLAND, and OWNER as a result of SUBCONTRACTOR'S failure to perform its work in compliance with the requirements of the Agreement. SUBCONTRACTOR shall reimburse HOLLAND or OWNER for the amount of any resultant fine, cost of additional Work and other additional costs incurred as a result of the enforcement action. HOLLAND may withhold such amounts from any payments due SUBCONTRACTOR under this Agreement or any other transaction between HOLLAND and SUBCONTRACTOR.

**GP 15 PERFORMANCE AND PAYMENT SECURITIES (If Required)**

If specifically stated in the Scope of Work of the Agreement, SUBCONTRACTOR shall deliver to HOLLAND within seven (7) working days after award of subcontract, and prior to commencing the Work or entering the Jobsite, a Performance Bond and a Labor and Materials Payment Bond for the Work under this

subcontract. Such securities shall each be in an amount equal to one hundred percent (100%) of the total subcontract value. The cost of such bonds shall be at actual surety's invoice cost. Such securities shall be issued in a form and by a Surety listed in the current issue of the Department of Labor Circular 570, acceptable to HOLLAND and authorized to issue such bonds in the jurisdiction where the Work is to be performed. The Bonds shall be accompanied by a letter stating the name and contact information of the responsible individual of the surety who will be servicing the bonds. SUBCONTRACTOR shall maintain this information current throughout the execution of this subcontract. In addition, the bonds shall contain the Surety's waiver of notice of all subcontract changes made pursuant to the General Provision titled "CHANGES," including, but not limited to, increase or decrease in scope, value, and schedule acceleration or deceleration. SUBCONTRACTOR shall promptly furnish additional security required to protect HOLLAND, and persons supplying labor or materials under this subcontract in the event that any bonding company supplying bonds under this subcontract becomes unacceptable to HOLLAND.

#### **GP-16 ORDER OF PRECEDENCE**

This Agreement Form, all documents listed herein, and subsequently issued Change Orders and amendments ("Modification Agreements") are essential parts of this Agreement and a requirement occurring in one is binding as though occurring in all. In resolving conflicts, discrepancies, errors, or omissions pursuant to the provision titled "SUBCONTRACT INTERPRETATION" the provision imposing the higher quality, greater quantity, or more stringent obligation on the SUBCONTRACTOR shall govern.

#### **GP-17 SUBCONTRACT INTERPRETATION**

All questions concerning interpretation or clarification of this Agreement, including the discovery of conflicts, errors, or omissions, or the acceptable performance thereof by SUBCONTRACTOR, shall be immediately submitted in writing to HOLLAND for resolution. All determinations, instructions and clarifications of HOLLAND shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. At all times SUBCONTRACTOR shall proceed with the Work in accordance with the determinations, instructions and clarifications of HOLLAND. SUBCONTRACTOR shall be solely responsible for requesting instructions or interpretations and shall be solely liable for any costs and expenses arising from its failure to do so.

#### **GP-18 SITE CONDITIONS**

SUBCONTRACTOR shall have the sole responsibility for fully satisfying itself concerning the limitations under which the Work is to be performed, including but not limited to the following:

- a) The general and local conditions under which the SUBCONTRACTOR'S Work is to be performed,
- b) Availability and quality of water, electric power and road conditions,
- c) Climatic conditions, tides and seasons,
- d) Physical conditions at the jobsite and the project area as a whole,
- e) Topography and ground surface conditions,
- f) Equipment and facilities needed preliminary to and during the performance of the Work,
- g) Anticipated labor supply and cost,
- h) Availability and cost of materials, tools, and equipment,
- i) Transportation, access, disposal, handling, and storage of materials, and
- j) Other, similar issues pertinent to the performance of the SUBCONTRACTOR'S Work.

The SUBCONTRACTOR has satisfied itself as to the accuracy of all existing grades, elevations, dimensions and locations. In all cases of interconnection of SUBCONTRACTOR'S Work with existing work, SUBCONTRACTOR has verified at the site all dimensions relating to such existing work.

The SUBCONTRACTOR will satisfy itself as to the accuracy of all Work and in cases of interconnection of SUBCONTRACTOR'S Work with other's work, SUBCONTRACTOR will verify all dimensions and conditions prior to proceeding.

The failure of SUBCONTRACTOR to acquaint itself with any applicable conditions or any conditions reasonably identifiable will not relieve SUBCONTRACTOR of the responsibility for properly estimating either the difficulties or the cost of successfully performing SUBCONTRACTOR'S obligations under this Agreement and shall be grounds for rejection of any Change Order Request or delays.

Where HOLLAND, or OWNER has made investigations of subsurface conditions in areas where Work is to be performed under this Agreement, such investigations are made by HOLLAND, or OWNER for the purpose of study and design. If the records of such investigations are included in the Subcontract Documents, the interpretation of such records shall be the sole responsibility of SUBCONTRACTOR. Neither HOLLAND, nor OWNER assumes any responsibility whatsoever in respect to the sufficiency or accuracy of such investigations, the records thereof, or of the interpretations set forth and there is no warranty or guarantee, either express or implied, that the conditions indicated by such investigations or records thereof are representative of those existing throughout such areas, or any part thereof, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered.

#### **GP-19 DIFFERING SITE CONDITIONS**

SUBCONTRACTOR shall promptly notify HOLLAND in writing before proceeding with any Work and in no case more than seven (7) calendar days after discovery of which SUBCONTRACTOR believes constitutes a differing site condition with respect to:

- a) Subsurface, substrate, surface, concealed or latent physical conditions at the jobsite differing materially from those indicated in this Agreement, or
- b) Previously unknown physical conditions at the jobsite, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Agreement.
- c) Any condition to which the SUBCONTRACTOR believes is materially different from those identified on the drawings, specifications or other contract documents.

HOLLAND will, as promptly as practicable, investigate such conditions and make a determination. If HOLLAND determines that such conditions do materially so differ and cause an increase or decrease in SUBCONTRACTOR'S cost of or the time required for performance of the Work under the Agreement, an

adjustment will be made, and the Subcontract modified in writing accordingly. By commencing its Work without notice to and determination by HOLLAND, SUBCONTRACTOR accepts the condition, waiving any and all claims against HOLLAND and Owner. No claim of SUBCONTRACTOR under this clause will be allowed unless SUBCONTRACTOR has given the required notice. SUBCONTRACTOR acknowledges and agrees that its claim shall be considered waived by SUBCONTRACTOR'S failure to strictly conform to this requirement.

#### **GP-20 LAYOUT OF WORK**

Unless otherwise stated in the scope of work, SUBCONTRACTOR shall complete the layout, survey or stakeout of all Work and shall be responsible for all requirements necessary for the Work execution in accordance with the locations, lines and grades specified or shown on the drawings, subject to such modifications as HOLLAND may require as Work progresses.

Prior to commencing any portion of Subcontractor's Work, SUBCONTRACTOR shall verify drawing dimensions and actual field conditions which affect its Work and immediately notify HOLLAND of any errors, inconsistencies or omissions it may discover. SUBCONTRACTOR shall be responsible for any loss or damage to HOLLAND or others due to SUBCONTRACTOR'S failure to notify HOLLAND of any error, inconsistency or omission it may discover, or to accurately layout or properly perform SUBCONTRACTOR'S Work.

If SUBCONTRACTOR or any of its lower-tier subcontractors or any of their representatives or employees move or destroy or render inaccurate any survey control point, such control point shall be replaced by HOLLAND at SUBCONTRACTOR'S expense. No separate payment will be made for survey Work performed by SUBCONTRACTOR.

#### **GP-21 LABOR, PERSONNEL AND WORK RULES**

SUBCONTRACTOR shall employ only competent, skilled and properly licensed and lawful personnel to perform the Work and shall remove from the Jobsite any SUBCONTRACTOR personnel determined to be unfit or to be acting in violation of any provision of this Agreement. SUBCONTRACTOR is responsible for maintaining labor relations in such a manner that there is harmony among workers and shall comply with and enforce Project and Jobsite procedures, regulations, work rules and work hours established by HOLLAND and any Governmental Agency.

HOLLAND may at its sole discretion deny access to the Jobsite to any individual by written notice to SUBCONTRACTOR. In the event an employee is excluded from the Jobsite, SUBCONTRACTOR shall promptly replace such individual with another who is fully competent and skilled to perform the Work. HOLLAND may also require that SUBCONTRACTOR remove from the job, at no additional cost to HOLLAND, employees who endanger persons or property, are disruptive to the workforce, or whose continued employment under this subcontract is inconsistent with the requirements of the subcontract and/or interests of safety or security.

Neither SUBCONTRACTOR nor its employees shall establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on the Jobsite or any other lands owned or controlled by HOLLAND, or OWNER.

SUBCONTRACTOR shall endeavor to employ only those persons who are physically qualified to perform work to which they are assigned at the Jobsite, with or without reasonable accommodation. If SUBCONTRACTOR or HOLLAND determines that there may be a question of the person's physical fitness to safely perform work to be assigned, SUBCONTRACTOR shall, with the approval of HOLLAND, require such employee to seek further evaluation. In any case where it is determined that a SUBCONTRACTOR employee is physically unable to perform the essential duties of the job, with or without reasonable accommodation, HOLLAND reserves the right to determine whether or not the employee may be assigned to Work at the Jobsite and to determine any work assignment limitations to be imposed, and SUBCONTRACTOR shall be responsible for adhering to and enforcing HOLLAND'S decision

#### **GP-22 WORK HOURS AND SITE CLOSURE DAYS**

Project work hours are to be established by HOLLAND unless otherwise specified. Deviation from the approved Project work hours shall be requested of HOLLAND in writing. HOLLAND recognizes the following Project Closure days: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. SUBCONTRACTOR is responsible for coordinating support requirements with HOLLAND'S Project Supervisor on Project Closure dates. SUBCONTRACTOR shall note that the above Work schedule may be deviated from based on HOLLAND'S procedure for declaring changes to the Schedule or due to inclement weather conditions. SUBCONTRACTOR shall have the sole responsibility for satisfying itself concerning the general and local conditions, including, but not limited to, climatic and seasonal conditions. HOLLAND'S Project Supervisor will be SUBCONTRACTOR'S point of contact for any Project Closures during scheduled work hours.

SUBCONTRACTOR shall not perform Work at the Jobsite on other than regular Project Work hours, unless it has given prior written notification to HOLLAND and has received approval in advance, as provided in this Special Condition. SUBCONTRACTOR shall give HOLLAND at least eight (8) hours prior notice if its employees are to be working beyond the normal shift period Monday through Friday. SUBCONTRACTOR shall give HOLLAND notice on the prior working day if its employees will be working before normal shift hours, Monday through Friday, or will be working at any time on Saturday, Sunday, or Site Closure days. The notice shall include the type of Work to be performed, location of Work, date and hours of Work, and description of any heavy equipment to be used. HOLLAND'S advance approval is required any time Work is to be performed at other than normal shift periods.

SUBCONTRACTOR shall notify HOLLAND at least two (2) working days before the date it proposes to move any heavy equipment into or from the Jobsite and shall not move any such equipment into or from the Jobsite until receipt of written approval from HOLLAND. Such movement of equipment by SUBCONTRACTOR may be restricted to off-peak travel times and/or use of specific designated routes.

#### **GP-23 SUBCONTRACTOR'S WORK AREA**

All SUBCONTRACTOR Work areas on the Jobsite will be assigned by HOLLAND. SUBCONTRACTOR shall confine its operations to the areas so assigned. Should SUBCONTRACTOR find it necessary or advantageous to use any additional off-site area for any purpose whatsoever, SUBCONTRACTOR shall, at its expense, provide and make its own arrangements for the use of such additional off-site areas.

#### **GP-24 CLEAN UP**

SUBCONTRACTOR shall, at all times, keep its Work areas in a neat, clean and safe condition.

Upon completion of any portion of the Work, SUBCONTRACTOR shall promptly remove from the Work area all its equipment, construction plant, temporary structures and surplus materials not to be used at or near the same location during later stages of the Work.

Upon completion of the Work and prior to final payment, SUBCONTRACTOR shall at its expense satisfactorily dispose of all rubbish, remove all plant, equipment and materials belonging to SUBCONTRACTOR; and return to HOLLAND'S warehouse or Jobsite storage area all salvageable HOLLAND, or OWNER supplied materials. SUBCONTRACTOR shall leave the premises in a neat, clean and safe condition.

If in HOLLAND'S opinion, SUBCONTRACTOR'S fails to comply with this provision, HOLLAND will accomplish same at SUBCONTRACTOR'S expense in accordance with the provision titled "BACK CHARGES."

#### **GP-25 RESPONSIBILITY FOR WORK, SECURITY AND PROPERTY**

SUBCONTRACTOR shall be responsible for and shall bear any and all risk of loss of or damage to Work in progress, all materials, and equipment until final acceptance of the Work under this Agreement.

SUBCONTRACTOR'S responsibility for materials and equipment required for the performance of this Agreement shall include:

- a) Receiving, unloading, handling and hoisting,
- b) Storing in a secure place and in a manner subject to HOLLAND'S review. Outside storage of materials and equipment subject to degradation by the elements shall be in weather tight enclosures provided by SUBCONTRACTOR,
- c) Delivering from storage to construction site all materials and plant equipment as required, and
- d) Maintaining complete and accurate records for HOLLAND'S inspection of all materials and plant equipment received, stored and issued for use in the performance of the Subcontract.

SUBCONTRACTOR shall at all times conduct all operations under this Agreement in a manner to avoid the risk of loss, theft, or damage by vandalism, sabotage, or any other means to any Work, materials, equipment, or other property at the Jobsite. SUBCONTRACTOR shall at its expense continuously inspect all Work, materials and equipment to discover and determine any conditions which might involve such risks and shall be solely responsible for discovery, determination and correction of any such conditions.

SUBCONTRACTOR shall comply with HOLLAND'S security requirements for the Jobsite. SUBCONTRACTOR shall cooperate with HOLLAND on all security matters and shall promptly comply with any project security arrangements established by HOLLAND, or OWNER. Such compliance with these security requirements shall not relieve SUBCONTRACTOR of its responsibility for maintaining proper security for the above noted items, nor shall it be construed as limiting in any manner SUBCONTRACTOR'S obligation with respect to all applicable laws and regulations and to undertake reasonable action to establish and maintain secure conditions at the Jobsite.

SUBCONTRACTOR shall plan and conduct its operations so as not to:

- a) Enter upon lands in their natural state unless authorized by HOLLAND,
- b) Damage, close, or obstruct any utility installation, highway, road, or other property until permits there have been obtained,
- c) Disrupt or otherwise interfere with the operation of any pipeline, telephone, electric transmission line, ditch, or structure unless otherwise specifically authorized by this Agreement, or
- d) Damage or destroy cultivated and planted areas, and vegetation such as trees, plants, shrubs and grass on or adjacent to the premises which, as determined by HOLLAND, do not interfere with the performance of this Agreement. This includes damage arising from performance of Work through operations of equipment or stockpiling of materials.
- e) Damage, close or obstruct any building facilities or access thereto.

SUBCONTRACTOR shall not be entitled to any extension of time or compensation on account of SUBCONTRACTOR'S failure to protect all materials, equipment and environment as described herein. All costs in connection with any repairs or restoration necessary or required by reason of unauthorized obstruction, damage, or use shall be borne by SUBCONTRACTOR.

#### **GP-26 SUBCONTRACTOR'S EQUIPMENT AND FACILITIES**

SUBCONTRACTOR shall provide and use for the Work hereunder only such construction plant and equipment as are capable of producing the quality and quantity of Work and materials required by this Agreement and within the time or times specified in the Subcontract Schedule.

Before proceeding with the Work hereunder, SUBCONTRACTOR shall furnish HOLLAND with information and drawings relative to such equipment, and facilities as HOLLAND may request. Upon written order of HOLLAND, SUBCONTRACTOR shall discontinue operation of unsatisfactory, equipment, or facilities and shall either modify the unsatisfactory items or remove such items from the Jobsite.

SUBCONTRACTOR shall, at the time any equipment is moved onto the Jobsite, present to HOLLAND an itemized list of all equipment, including but not limited to cranes, welding machines, pumps and compressors. Said list must include description and quantity, and serial number where applicable. Prior to removal of any or all equipment, SUBCONTRACTOR shall clear such removal through HOLLAND.

Any SUBCONTRACTOR or rental equipment involved in an on-site accident shall not be removed from the site until all information required for the accident investigation is obtained and approval for release is received from HOLLAND.

When any Work is performed at night or where daylight is obscured, SUBCONTRACTOR shall, at its expense, provide artificial light sufficient to permit Work to be carried on efficiently, satisfactorily and safely, and to permit thorough inspection. During such time periods the access to the place of Work shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in a safe manner and meet all applicable codes and standards.

#### **GP-27 USE OF HOLLAND'S CONSTRUCTION EQUIPMENT OR FACILITIES**

Where SUBCONTRACTOR requests of HOLLAND and HOLLAND agrees to make available to SUBCONTRACTOR certain equipment or facilities belonging to HOLLAND for the performance of SUBCONTRACTOR Work under the Subcontract, the following shall apply:

- a) Equipment or facilities will be charged to SUBCONTRACTOR at agreed rental rates,
- b) HOLLAND will furnish a copy of the equipment maintenance and inspection record, and these records shall be maintained by SUBCONTRACTOR during the rental period,
- c) SUBCONTRACTOR shall assure itself of the condition of such equipment and assume all risks and responsibilities during its use. SUBCONTRACTOR shall release, defend, indemnify and hold HOLLAND harmless against any damages or claims that may arise from use of the equipment as set forth in Special Provision, titled INDEMNIFICATION,
- d) SUBCONTRACTOR shall jointly inspect such equipment before its use and upon its return. The cost of all necessary repairs or replacement for damage other than normal wear shall be subcontractor's expense, and
- e) If such equipment is furnished with an operator, the services of such operator will be performed under the complete direction and control of SUBCONTRACTOR and such operator shall be considered SUBCONTRACTOR'S employee for all purposes other than the payment of wages, Workers' Compensation Insurance or other benefits whether paid directly or indirectly by HOLLAND.

#### **GP-28 AUTHORIZED REPRESENTATIVES & SUPERVISION**

Before starting Work, Subcontractor shall designate in writing an AUTHORIZED REPRESENTATIVE acceptable to HOLLAND to represent and act for SUBCONTRACTOR and shall specify any and all limitations of such representative's authority. In the absence of such designation, the SUBCONTRACTOR'S Project Manager or person acting in such a role shall be considered the AUTHORIZED REPRESENTATIVE. All communications given to the AUTHORIZED REPRESENTATIVE by HOLLAND in accordance with this Agreement and shall be binding upon SUBCONTRACTOR. HOLLAND'S Project Manager shall be its authorized representative to represent and act for HOLLAND and to receive communications from SUBCONTRACTOR. Notification of changes of AUTHORIZED REPRESENTATIVES for either HOLLAND or SUBCONTRACTOR shall be provided in advance, in writing, to the other party. All correspondence shall be issued and received by the designated AUTHORIZED REPRESENTATIVE. HOLLAND'S AUTHORIZED REPRESENTATIVE or executive management are the only individuals authorized to direct SUBCONTRACTOR to deviate from the express, written terms of this Agreement and shall only be done so in writing. It is expressly understood by the SUBCONTRACTOR that HOLLAND'S onsite supervisor, superintendent, foreman or other personnel do not have the authority to direct the SUBCONTRACTOR to deviate from the express, written terms of this Agreement or to make changes as defined in the provision titled "CHANGES".

At all times during performance of this Agreement and until the Work is completed and accepted, SUBCONTRACTOR shall directly supervise the Work or assign and have on the Worksite a competent project supervisor who is satisfactory to HOLLAND and has authority to act for the SUBCONTRACTOR. Prior to commencing any work at the Worksite, SUBCONTRACTOR shall inform HOLLAND, in writing of the identity of the supervising representative by name.

The SUBCONTRACTOR'S key personnel be shall defined as the SUBCONTRACTOR'S Project Manager and onsite project supervisor. The Key Personnel shall be assigned to the project covered by this Agreement for the entire duration in the positions represented. Upon request, SUBCONTRACTOR shall furnish substantiation of the required levels of education, training and experience of these personnel as represented by SUBCONTRACTOR. The Key Personnel will be considered essential to the Work being performed under this subcontract. Prior to (1) diverting Key Personnel to other positions or (2) substituting any of the specified Key Personnel or (3) proposing them as a Key Person under another subcontract, SUBCONTRACTOR shall notify HOLLAND in writing at least fourteen (14) calendar days in advance and shall submit justification (including proposed replacement with candidate resume) in sufficient detail to permit evaluation of the impact on the Work being performed under this subcontract. In the event a replacement candidate proposed by SUBCONTRACTOR does not meet the specific qualifications and experience stated above for the position, HOLLAND may, at its sole discretion, determine that the proposed candidate may be acceptable by way of other qualifications and/or experience, and shall, in such circumstances, inform SUBCONTRACTOR accordingly. HOLLAND is not under any obligation to exercise such discretion.

When HOLLAND finds that a correlation exists or appears to exist between a documented lack of SUBCONTRACTOR performance and a lack of SUBCONTRACTOR employee qualification performance, the SUBCONTRACTOR agrees to immediately replace that individual with another employee with qualifications appropriate to the Work being performed.

Replacement of personnel shall be at SUBCONTRACTOR'S expense and any delay occasioned by the replacement process shall not entitle SUBCONTRACTOR to an adjustment in favor of SUBCONTRACTOR.

HOLLAND may also designate a Project Supervisor ("Superintendent" or "Foreman") who will be responsible for the technical aspects of the performance of the Subcontract. The Project Supervisor may oversee the performance of the Work, sign field tickets, etc. However, HOLLAND'S designated Authorize Representative retains ultimate authority over the technical aspects of the Work. Should SUBCONTRACTOR and Project Supervisor disagree over the technical requirements of this Agreement or the Work; such matters will be immediately referred to HOLLAND'S Authorized Representative for resolution. The Project Supervisor does not possess any authority, express or implied, to direct SUBCONTRACTOR to deviate from the terms and conditions of this Agreement.

The SUBCONTRACTOR'S Key Personnel are required to attend onsite Preconstruction, Preinstallation and Progress Meetings as required by HOLLAND and elsewhere in Contract Documents. The frequency and duration of the Project Meetings will be at the discretion of HOLLAND. The meetings will be held to discuss schedule, procedures, coordination, phasing, interfacing, statuses...etc. SUBCONTRACTOR shall be required to attend all Project Meetings from HOLLAND'S start date to HOLLAND'S date of substantial completion or as otherwise required by HOLLAND. HOLLAND may excuse SUBCONTRACTOR from attendance at its sole discretion but shall have no obligation to do so.

#### **GP-29 COOPERATION WITH OTHERS**

HOLLAND, OWNER, other contractors and other subcontractors may be working at the Jobsite during the performance of this Agreement and SUBCONTRACTOR Work or use of certain facilities may be

interfered with as a result of such concurrent activities. HOLLAND reserves the right to require SUBCONTRACTOR to schedule the order of performance of the Work in such a manner as will minimize interference with Work of any of the parties involved. SUBCONTRACTOR shall fully cooperate with other subcontractors and with HOLLAND, or OWNER. SUBCONTRACTOR shall not commit any act that will interfere with the performance of work by any other subcontractor or by HOLLAND, or OWNER.

Should SUBCONTRACTOR incur any additional costs or sustain any damages through any act or omission of another subcontractor, SUBCONTRACTOR shall have no claim or cause of action against HOLLAND, or OWNER for such additional costs or damages and hereby waives any such claim. The phrase "act or omission" as used herein includes but is not limited to delays, interferences, hindrances, or disruptions on the part of another subcontractor.

#### **GP-30 HOLLAND-FURNISHED DRAWINGS AND SPECIFICATIONS**

HOLLAND will furnish specifications and prints of architectural and engineering design drawings for each part of the Work under this Agreement. Such drawings will give information required for the preparation of shop detail drawings by SUBCONTRACTOR.

If instructed by HOLLAND, HOLLAND and SUBCONTRACTOR shall use HOLLAND'S online project management website for issuance of HOLLAND furnished drawings and specifications.

The exactness of grades, elevations, dimensions, or locations given on any drawings or specifications issued by HOLLAND, OWNER or the work installed by others is not guaranteed by HOLLAND or OWNER. The SUBCONTRACTOR shall, therefore satisfy itself as to the accuracy of all grades, elevations, dimensions and locations.

SUBCONTRACTOR shall, immediately upon receipt thereof, check all specifications and drawings furnished and shall promptly notify HOLLAND of any omissions or discrepancies in such specifications or drawings.

All drawings listed as an exhibit are a part of this Agreement, however, SUBCONTRACTOR shall perform Work only in accordance with the most recent drawings which may be issued by HOLLAND after execution of this Agreement. Such drawings will be issued and become a part of the Agreement, superseding or supplementing the original subcontract drawings. If SUBCONTRACTOR considers such issue to be a change affecting cost or schedule the provisions of the provision titled "CHANGES" shall apply. SUBCONTRACTOR shall perform Work only in accordance with the most recent drawings and any subsequent revisions thereto, and with HOLLAND reviewed drawings submitted by SUBCONTRACTOR in accordance with the provision titled "SUBCONTRACTOR-FURNISHED DRAWINGS, DATA AND SAMPLES."

#### **GP-31 SUBCONTRACTOR-FURNISHED DRAWINGS, DATA AND SAMPLES**

SUBCONTRACTOR shall furnish its drawings, data, samples and other technical submittals required for the performance of the Work in accordance with the requirements stated herein and the requirements of HOLLAND.

If instructed by HOLLAND, HOLLAND and SUBCONTRACTOR shall use HOLLAND'S online project management website for delivery and return of submittal documents. HOLLAND may also instruct SUBCONTRACTOR to submit required documents electronically via email.

Any changes, deviations or substitutions must be specifically identified separately from the submittals and be approved by HOLLAND, OWNER or ARCHITECT/ENGINEER in writing prior to incorporating such items into the SUBCONTRACTOR'S work. Failure of the SUBCONTRACTOR to specifically identify changes or substitutions and receive specific approval shall be grounds for rejection of work.

HOLLAND'S review, permission to proceed and/or approval does not constitute acceptance of submittals including, but not limited to, design details, calculations, analyses, test methods, dimensions, construction methods, rigging plans, certificates or materials developed or selected by SUBCONTRACTOR and does not relieve SUBCONTRACTOR from full compliance with the Agreement requirements.

Such drawings, samples, certificates and data shall be submitted by and at the expense of SUBCONTRACTOR before fabrication, installation or performance is commenced, allowing at least thirty (30) calendar days for review by HOLLAND prior to the date that the materials need to be ordered or fabrications started in order to maintain the SUBCONTRACTOR'S schedule unless otherwise shown on the approved Subcontract Schedule.

Where drawings are required for:

- a) Fabrication of SUBCONTRACTOR-furnished equipment or materials,
- b) Installing SUBCONTRACTOR furnished equipment or materials, or
- c) Planning and performance of the Work under this Agreement;

Such drawings shall include, but not be limited to, match marks, erection diagrams, and other details, such as field connections for proper installation, erection of equipment or materials, and performance of the Work.

Drawings of a specific piece of equipment shall identify components with the manufacturer's part number or reference drawing number clearly indicated. If reference drawing numbers are used, the review data of such drawings shall be included.

Drawings shall indicate design dimensions, maximum and minimum allowable tolerances and other information as necessary in order to allow for review. The sequence of submission of all drawings shall be such that all information is available for reviewing each drawing when it is received.

All drawings submitted by SUBCONTRACTOR shall be certified by SUBCONTRACTOR to be correct, shall show the subcontract number and shall be furnished in accordance with the requirements of HOLLAND. HOLLAND will conduct its review of SUBCONTRACTOR'S drawings and will return drawing(s) to SUBCONTRACTOR with a status code and notations.

Although work may proceed on receipt of a drawing with certain status code and notations, SUBCONTRACTOR must resolve the comments indicated, resubmit and obtain full approval before release for shipment or completion of the affected work.

Samples shall be subject to review and materials represented by such samples shall not be manufactured, delivered to the Jobsite, or incorporated into the Work without such review.

Each sample shall bear a label showing SUBCONTRACTOR'S name, Project name, subcontract number, name of the item, manufacturer's name, brand name, model number, supplier's name, and reference to the appropriate drawing number, technical specification section and paragraph number, all as applicable.

Samples which have been reviewed may, at HOLLAND'S option, be returned to SUBCONTRACTOR for incorporation into the Work.

Certificates shall be subject to review and material represented by such certificates shall not be fabricated, delivered to the Jobsite, or incorporated into the Work without such review.

Certificates shall clearly identify the material being certified and shall include, but not be limited to, providing the following information: SUBCONTRACTOR'S name, Project name, subcontract number, name of the item, manufacturer's name, and reference to the appropriate drawing, technical specification section and paragraph number, all as applicable.

All other data shall be submitted as required by the Contract Documents.

As-Built Drawings and Specifications shall be submitted by and at the expense of SUBCONTRACTOR and in accordance with the requirements of the provision titled "ADMINISTRATIVE CLOSEOUT REQUIREMENTS". SUBCONTRACTOR shall endorse each final as-built drawing and the cover of the as-built specifications and shall note thereon that the recording of deviations and annotations is complete and accurate.

#### **GP-32 OWNERSHIP OF MATERIALS AND DOCUMENTS**

The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of SUBCONTRACTOR or any of its lower-tier subcontractors and the right to use said materials or dispose of same is hereby expressly reserved by the OWNER. Neither SUBCONTRACTOR, its lower-tier subcontractors, nor any of their representatives or employees shall have any right, title, or interest in said materials nor shall they assert or make any claim thereto. SUBCONTRACTOR may, at the sole discretion of the OWNER, be permitted, without charge, to use in the Work any such materials which meet the requirements of this Agreement.

The drawings, specs, sketches and all other documents prepared by HOLLAND, Architect or Owner for the SUBCONTRACTOR'S use shall remain the sole property of HOLLAND, ARCHITECT or OWNER.

The shop drawings, submittals, product data or any other documents prepared by the SUBCONTRACTOR or lower-tier subcontractors shall be considered the property of HOLLAND or OWNER.

#### **GP-33 WORK**

SUBCONTRACTOR shall perform all Work and shall furnish all supervision, labor, materials, tools, equipment, supplies and all other things necessary for the complete, proper and safe performance of the Work described in this Agreement, and all Work incidental thereto or reasonably inferable therefrom, in strict accordance with the terms of this Agreement, in strict accordance with the Owner/Contractor Agreement, and to the satisfaction of HOLLAND and the OWNER.

#### **GP-34 INSPECTION, QUALITY WORKMANSHIP, REJECTION OF MATERIALS AND WORKMANSHIP**

All material and equipment furnished, and Work performed shall be properly inspected by SUBCONTRACTOR at its expense and shall at all times be subject to quality surveillance and quality audit by HOLLAND, OWNER, or their authorized representatives who shall be afforded full and free access to the shops, factories, or other places of business of SUBCONTRACTOR and its lower-tier suppliers and subcontractors for such quality surveillance or audit. SUBCONTRACTOR shall provide safe and adequate facilities, drawings, documents and samples as requested, and shall provide assistance and cooperation including stoppage of Work to perform such examination as may be necessary to determine compliance with the requirements of this Agreement. Any Work covered prior to any scheduled quality surveillance or test by HOLLAND, or OWNER shall be uncovered and replaced at the expense of SUBCONTRACTOR. Failure of HOLLAND or OWNER to make such quality surveillance or discover defective design, materials or workmanship shall not relieve SUBCONTRACTOR of its obligations under this Agreement nor prejudice the rights of HOLLAND, or OWNER thereafter to reject or require the correction of defective Work in accordance with the provisions of this Agreement.

If any Work is determined by HOLLAND, or OWNER to be defective not in conformance with this Agreement, the provisions, of the provision titled "WARRANTY" shall apply.

SUBCONTRACTOR shall be responsible for any and all loss or damage resulting from SUBCONTRACTOR'S failure to notify HOLLAND, prior to installation, of any shortage, damage or defect in materials and equipment furnished by others.

#### **GP-35 TESTING**

SUBCONTRACTOR shall furnish samples as requested and shall provide reasonable assistance and cooperation necessary to permit tests to be performed on materials or Work in place including reasonable stoppage of Work during testing.

If, HOLLAND decides to examine already completed work by removing it or tearing it out, SUBCONTRACTOR, on request, shall promptly furnish all necessary facilities, labor, and materials. If the Work is found to be defective or non-conforming in any respect due to the fault of SUBCONTRACTOR or its lower-tier subcontractors or suppliers, SUBCONTRACTOR shall be responsible for the expense of the examination and of satisfactory reconstruction. However, if the Work is found to meet subcontract requirements, HOLLAND shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of time.

#### **GP-36 COMMENCEMENT, PROGRESS AND COMPLETION OF THE WORK**

The SUBCONTRACTOR acknowledges that time is of the essence for the commencement, progress and completion of the work. SUBCONTRACTOR shall give HOLLAND full information in advance as to its plans for performing each part of the Work. SUBCONTRACTOR shall notify HOLLAND in writing of any actual or anticipated delays immediately upon discovery. If at any time, SUBCONTRACTOR'S actual progress is inadequate to meet the requirements of this Agreement, HOLLAND may require SUBCONTRACTOR to take such steps as may be necessary to improve its progress, including an increase in SUBCONTRACTOR'S labor force, the number of shifts, overtime operations, additional days of Work per week, expedited shipment(s) of equipment and materials, and an increase in the amount of construction plant and equipment, all without additional cost to HOLLAND. Neither such notice nor HOLLAND'S failure to issue such notice shall relieve SUBCONTRACTOR of its obligation to achieve the quality of Work and rate of progress required by this Agreement. SUBCONTRACTOR shall prosecute the Work in a manner that will not delay the completion of the Owner/Contractor Contract.

#### **GP-37 SCHEDULE**

SUBCONTRACTOR shall work in accordance with any schedule established by HOLLAND, including any updated or modified schedules as may be issued by HOLLAND from time to time. SUBCONTRACTOR shall assist HOLLAND in developing schedules and monthly updates by providing all relevant information concerning or affecting its progress, including the duration and sequence of its activities, and by cooperating in the coordination of its Work with that of other subcontractors.

SUBCONTRACTOR shall, within seven (7) calendar days of Subcontract award and before the first request for progress payment is made, submit to HOLLAND for its written approval a detailed Subcontract Schedule meeting the dates as may be required by HOLLAND and shall show all essential construction activities and sequence of operations needed for the orderly performance and completion of any separable parts of and all the Work in accordance with this Agreement. SUBCONTRACTOR agrees to the milestones, start, and completions dates as may be specified by HOLLAND or as published by HOLLAND after of the issuance of this Agreement. The Project Schedule is not intended to be all inclusive as to each individual essential activity in sequence but is meant to provide for overall Work duration of the Project.

SUBCONTRACTOR shall promptly inform HOLLAND of any proposed change in the schedule and narrative and shall furnish HOLLAND with a revised schedule and narrative within seven (7) calendar days after approval by HOLLAND of such change. Revisions shall not modify Milestone Schedule dates except to reflect Subcontract Change Orders or Amendments.

If required by HOLLAND, during the performance of the Work, SUBCONTRACTOR shall submit to HOLLAND periodic reports on the actual progress. Such progress reports shall include the following:

- a) Monthly - A revised Subcontract Schedule showing actual progress to date for the major parts of the Work, as compared to planned progress
- b) Weekly - A three-week look-ahead personnel forecast by craft. Variation from approved schedules and plans shall be noted and rationalized
- c) Daily - A daily force report listing all personnel by craft and work assignment; and report showing the construction facilities, plant, and equipment utilized in the Work

SUBCONTRACTOR understands that multiple mobilizations may be required to complete the Work covered in this Agreement and has included all costs related to multiple mobilizations.

SUBCONTRACTOR shall be responsible for any and all loss or damage resulting from SUBCONTRACTOR'S failure to notify HOLLAND, prior to installation, of any shortage, damage or defect in materials and equipment furnished by others.

#### **GP-38 EXPEDITING**

The SUBCONTRACTOR acknowledges that time is of the essence for the material and equipment furnished and Work performed under this Agreement shall be subject to expediting by HOLLAND. As required by HOLLAND, SUBCONTRACTOR shall provide detailed schedules and progress reports for use in expediting and shall cooperate with HOLLAND in expediting activities.

#### **GP-39 EXCUSABLE DELAYS**

If SUBCONTRACTOR'S performance of this Agreement is prevented or delayed by any unforeseeable cause, existing or future, which is beyond the reasonable control of the parties and without the fault or negligence of SUBCONTRACTOR, SUBCONTRACTOR shall, within twenty-four (24) hours of the commencement of any such delay, give to HOLLAND written notice thereof and within seven (7) calendar days of commencement of the delay, a written description of the anticipated impact of the delay on performance of the Work. Delays attributable to and within the control of SUBCONTRACTOR, its suppliers or subcontractors of any tier shall be deemed delays within the control of SUBCONTRACTOR. Within seven (7) calendar days after the termination of any excusable delay, SUBCONTRACTOR shall file a written notice with HOLLAND specifying the actual duration of the delay. Compliance with all notices in this provision shall be a condition precedent to the SUBCONTRACTOR'S right to any extension of time.

The SUBCONTRACTOR shall be entitled to an extension of time only in the event or to the extent HOLLAND is entitled to an extension of time from the OWNER. Notwithstanding any provision in this Agreement to the contrary, an extension of time shall be the sole remedy of SUBCONTRACTOR for (1) any delay in the commencement, prosecution, or completion of the SUBCONTRACTOR'S Work, (2) hindrance or obstruction in the performance of the SUBCONTRACTOR'S Work, (3) loss of efficiency/productivity, or (4) other similar claims (collectively, "Delays"), whether or not such Delays are foreseeable. In no event shall SUBCONTRACTOR be entitled to any compensation or recovery of any damages in connection with any Delay, including, without limitation, compensatory damages, consequential damages, lost opportunity costs, impact or acceleration damages, or other, similar remuneration.

#### **GP-40 CHANGES**

HOLLAND may, at any time, without notice to SUBCONTRACTOR'S sureties, unilaterally make any change in the Work of this Agreement, including but not limited to changes:

- a) In the drawings, designs, or specifications;
- b) In the method, manner, or sequence of SUBCONTRACTOR Work;
- c) In the OWNER or HOLLAND - furnished facilities, equipment, materials, services or site(s);
- d) Directing acceleration or deceleration in the performance of the work; and
- e) Modifying the Subcontract Schedule or the Subcontract Milestones.

In addition, in the event of an emergency which HOLLAND determines endangers life or property, HOLLAND may use oral orders to SUBCONTRACTOR for any work required by reason of such emergency. SUBCONTRACTOR shall commence and complete such emergency work as directed by HOLLAND. Such orders will be confirmed by Change Order.

If at any time SUBCONTRACTOR believes that acts or omissions of HOLLAND, or OWNER constitute a change to the Work not covered by a Change Order, SUBCONTRACTOR shall within seven (7) calendar days of discovery of such act or omission submit a written Change Order Request explaining in detail the basis for the request. HOLLAND will either issue a Change Order or deny the request in writing.

If SUBCONTRACTOR is notified of the issuance or revisions to drawings, specifications, shop drawings, submittals, RFI's sketches or other documents, SUBCONTRACTOR shall review and identify any changes to cost or time.

If any change under this clause directly or indirectly causes an increase or decrease in cost of, or the time required for, the performance of any part of the Work under this Agreement, whether or not changed by any order, an equitable adjustment shall be made, and the Subcontract modified accordingly. However, SUBCONTRACTOR shall not be entitled to and neither HOLLAND, or OWNER shall be liable to SUBCONTRACTOR or its lower-tier suppliers or subcontractors for increased costs in connection with any changes or delays in the Work for claims arising in tort (including negligence), or in contract except as specifically provided in this Agreement.

If the SUBCONTRACTOR intends to assert a request for an equitable adjustment under this clause, it must, within seven (7) calendar days after receipt of a Change Order Request, notice of issuance of documents or notice of revision of document submit to HOLLAND a written proposal setting forth the nature, schedule impact and monetary extent of such claim in sufficient detail to permit thorough analysis and negotiation. The Change Order Request shall be in accordance with provision titled "PRICING OF ADJUSTMENTS".

Additional costs or damages recoverable by SUBCONTRACTOR for any claim for acceleration allowable under this Agreement shall be limited to additional costs incurred by SUBCONTRACTOR due to: increased shift length; increased number of days worked per week; increased quantity of construction equipment and materials and increased supervision. If HOLLAND requires SUBCONTRACTOR acceleration in accordance with the provision titled "PROGRESS", then SUBCONTRACTOR shall not be entitled to make any claim HOLLAND or OWNER for recovery of costs incurred to accelerate.

Any delay by SUBCONTRACTOR in giving notice or presenting a proposal for adjustment under this clause shall be grounds for rejection of the claim if and to the extent HOLLAND, or OWNER are prejudiced by such delay. In no case shall a claim by SUBCONTRACTOR be considered if asserted after final payment under this Agreement.

If the SUBCONTRACTOR fails to submit a written Change Order Request within the stated time period, and HOLLAND is required to submit a price quotation to the Owner which includes this Subcontract change, HOLLAND shall use its best estimate of the proposed changes as it affects the SUBCONTRACTOR and its quotation to the Owner, and this estimate shall be the maximum equitable adjustment due to the SUBCONTRACTOR. If the Work for which the SUBCONTRACTOR claims for equitable adjustment is determined by the Owner or Architect not to entitle HOLLAND to a change order or extra compensation, then HOLLAND shall not be liable to the SUBCONTRACTOR for any equitable adjustment or extra compensation for such Work.

Failure by HOLLAND and SUBCONTRACTOR to agree on any adjustment shall be a dispute within the meaning of the Provision titled "DISPUTES." However, SUBCONTRACTOR shall proceed diligently with performance of the work as changed pending final resolution of any request for relief, dispute, claim appeal, or action arising under this Agreement and comply with any decision of HOLLAND. Failure of the SUBCONTRACTOR to proceed promptly with the changed Work shall be considered a Default as provided for in the provision titled "DEFAULT BY SUBCONTRACTOR".

#### **GP-41 PRICING OF ADJUSTMENTS**

When costs are a factor in the determination of a Subcontract adjustment pursuant to the provision titled "CHANGES", or any other provision of this Agreement, such costs, increased or decreased, shall be submitted by SUBCONTRACTOR in the form of a lump sum, firm fixed price proposal, or as otherwise directed by HOLLAND.

When SUBCONTRACTOR proposes a price adjustment pursuant to the above, it shall provide cost breakdown information for the purpose of and in sufficient detail to permit analysis including, but not limited to, labor categories, job hours and rates, equipment and material quantities, sources and calculations, overhead costs and allocations, profit computations and any other reference data upon which such estimates are based. SUBCONTRACTOR shall keep separate accounts and records for all change Work and shall make such records available to HOLLAND upon request. The proposal shall be submitted using in a form acceptable to HOLLAND to summarize proposal costs, and shall include as backup an itemized breakdown of all increases or decreases with a minimum of the following detail:

- a) Direct Labor: Charges for labor furnished and utilized by SUBCONTRACTOR in directly accomplishing the Scope of Work shall be allowable for all manual labor. Labor rates used shall be those rates in effect during accomplishment of the change work and shall be as per the Exhibit, if available. Direct labor costs shall include, in addition to direct payroll costs, payroll taxes, insurance, vacation allowance, subsistence, travel time, overtime premium and any other payroll additives required to be paid by SUBCONTRACTOR by law or labor Agreement(s).
- b) Equipment: Charges shall be allowable for rental and operation of all construction equipment furnished and used by SUBCONTRACTOR, except for equipment or tools, with a book value of Five Hundred Dollars (\$500) or less each, which are deemed to be covered in the overhead and profit rates established by this clause. Rental rates shall be as agreed upon in the Subcontract Exhibit; or Rental rates not be greater than seventy percent (70%) of Primedia Information, Inc. Blue Book applicable for the period of performance of the change. The operating cost element

of the rental rate shall be applied at 100% and in any case neither the hourly or weekly rates shall exceed the monthly rate. Hourly rates are determined by dividing the monthly rate by 176; and when the operated use of equipment is infrequent and, as determined by HOLLAND, such equipment need not remain at the Work site continuously, charges shall be limited to actual hours of use. Equipment not operating but retained at the location where the changed Work is to be performed, with HOLLAND'S prior approval, shall be charged at the standby rate. For Rental Equipment not owned by SUBCONTRACTOR, charges will be computed based on reasonable actual invoice cost or as defined above, whichever is less. For the cost of both rented and owned to be allowable, SUBCONTRACTOR must justify, and HOLLAND agree that the individual pieces of equipment are needed, are appropriate for the Work, and that any mobilization/demobilization costs are allocable to the change.

- c) **Materials:** Approved reasonable incurred costs for material incorporated into the changed Work or required for temporary construction facilities made necessary by the change shall be allowable at net cost delivered to the Jobsite. Such costs will be substantiated with supplier invoices and are subject to verification by HOLLAND that such materials were necessary for the changed Work.
- d) **Overhead, Profit and All Other Costs:** Overhead, profit and markup percentages shall be included as set out below, and may include, but not be limited to, insurance, use of small tools, incidental job burdens, and general home and field office expense. All overhead and profit markups shall be calculated against the direct cost.

For Work self-performed by SUBCONTRACTOR, the proposal submitted to HOLLAND shall include only one overhead percentage and profit percentage based on the aggregate total of the cost proposal and shall be a maximum of fifteen percent (15%) or as required by the OWNER in the Owner/Contractor Contract. Overhead and profit shall not be applied to taxes.

For Work subcontracted to lower-tier subcontractors by SUBCONTRACTOR, the cost proposal shall include one markup on the aggregate total of all lower-tier subcontractors and shall be a maximum percentage of 10% or as required by the OWNER in the Owner/Contractor Contract. SUBCONTRACTOR shall not add the cost of the lower-tier plus markups to the self-perform direct cost, and then apply the self-perform overhead and profit percentages to the total. Also, overhead and profit shall not be applied to taxes.

The percentages defined above for markup, overhead and profit are maximum allowable mark-ups and may be negotiated as applicable according to the nature, extent, complexity, and risk of the Work involved and shall not in any case exceed the mark-up shown above.

**Time & Material Work (T&M):** If SUBCONTRACTOR has been authorized in writing to conduct work prior to the approval of the subcontract adjustment procedure above, SUBCONTRACTOR shall provide work tickets on a daily basis identifying direct labor, equipment and materials used that day to be verified by signature by HOLLAND'S representative. When T&M work is completed, the verified daily work tickets shall be used for the basis of the Pricing Adjustment procedure described in this provision. Failure by the SUBCONTRACTOR to get the daily work tickets verified shall release HOLLAND and/or OWNER of any payment obligation associated with the unverified daily work ticket. Non-payment due to SUBCONTRACTOR'S failure to have daily work ticket authorized shall not relieve the SUBCONTRACTOR from any other obligations herein.

#### **GP-42 EXAMINATION OF SUBCONTRACTOR'S RECORDS AND ACCOUNTS**

SUBCONTRACTOR shall maintain records and accounts in connection with the performance of this Agreement which will accurately document incurred costs, both direct and indirect, of whatever nature. HOLLAND, or OWNER, or their representatives shall have the right to examine at all reasonable times, with advance notification, such records and accounts for the limited purpose of verifying requests for payment when costs are the basis of such payment and for evaluating the reasonableness of proposed Subcontract price adjustments and claims.

#### **GP-43 BACK CHARGES**

If, under any provisions of this Agreement, SUBCONTRACTOR fails to correct defective or nonconforming Work, and SUBCONTRACTOR states or by its actions indicates that it is unable or unwilling to proceed with corrective action in the time specified by HOLLAND, HOLLAND may, proceed to accomplish the redesign, repair, rework, or replacement of nonconforming Work by the most expeditious means available and back charge SUBCONTRACTOR for the costs incurred. Furthermore, if HOLLAND agrees to or is required to perform Work for SUBCONTRACTOR, such as cleanup, off-loading, or completion of incomplete Work, HOLLAND may, perform such Work by the most expeditious means available and back charge SUBCONTRACTOR for the costs incurred. The cost of back charge Work shall include:

- a) Incurred labor costs including all payroll additives,
- b) Incurred net delivered material costs,
- c) Incurred lower-tier supplier and subcontractor costs directly related to performing the corrective actions,
- d) Equipment and tool rentals at prevailing rates in the jobsite area, and
- e) Attorney's fees, expert fees and appeals costs.
- f) HOLLAND'S overhead, supervision and administrative costs.

HOLLAND shall separately invoice or deduct from payments otherwise due to SUBCONTRACTOR the costs as provided herein. HOLLAND'S right to back charge is in addition to any and all other rights and remedies provided in this Agreement or by law. The performance of back charge Work by HOLLAND shall not relieve SUBCONTRACTOR of any of its responsibilities under this Agreement including but not limited to express or implied warranties, specified standards for quality, contractual liabilities and indemnification, and the Subcontract Schedule.

#### **GP-44 DISPUTES**

SUBCONTRACTOR shall proceed diligently with performance of the Work, pending final resolution of any request for adjustment, relief, dispute, claim, appeal, arbitration, litigation or action arising under this Agreement, and comply with any decision by HOLLAND.

SUBCONTRACTOR shall not be entitled to and neither HOLLAND, nor OWNER shall be liable to SUBCONTRACTOR or its lower-tier suppliers or subcontractors in tort (including negligence), contract or any other legal theory except as specifically provided in this Agreement.

Any claim for an adjustment to the subcontract price or time of performance which cannot be resolved by negotiation shall be considered a dispute within the meaning of this clause. For all claims, SUBCONTRACTOR shall certify that the claim is made in good faith; that the supporting data is accurate and complete; and that the amount requested accurately reflects the adjustment for which SUBCONTRACTOR believes HOLLAND is liable.

If for any reason SUBCONTRACTOR and HOLLAND are unable to resolve a claim for an adjustment, SUBCONTRACTOR or HOLLAND shall notify the other party in writing that a dispute exists and request or provide a final determination by HOLLAND. Any such request by SUBCONTRACTOR shall be clearly identified by reference to this clause and shall summarize the facts in dispute and SUBCONTRACTOR'S proposal for resolution.

HOLLAND shall, within a reasonable amount of time of any request by SUBCONTRACTOR, provide a final written determination setting forth the basis for its decision and defining what subcontract adjustments it considers equitable. Upon SUBCONTRACTOR'S acceptance of HOLLAND'S determination, the Subcontract will be modified, and the determination implemented accordingly or, failing Agreement, HOLLAND may in its sole discretion pay such amounts and/or revise the time for performance of the Work in accordance with HOLLAND'S final determination.

If HOLLAND'S final determination is not accepted by SUBCONTRACTOR, the parties agree that HOLLAND shall have the sole option to determine resolution of the dispute through binding ARBITRATION. The SUBCONTRACTOR must request the resolution option by a written request made within thirty (30) calendar days following HOLLAND'S final determination or in any event before final payment under this Agreement. Should the SUBCONTRACTOR fail to request the resolution option within the period required then HOLLAND'S final determination shall be considered accepted and agreed to by the SUBCONTRACTOR and the SUBCONTRACTOR shall have no further remedy.

In the event that Holland elects Arbitration as the dispute resolution option, the process shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, and shall take place in the jurisdiction as determined by Holland.

In the event that Holland elects not to arbitrate, to the extent allowable by law, any lawsuit shall be brought in a court of competent jurisdiction in (a) York County, Pennsylvania, where both parties agree to submit to jurisdiction and venue.

Any controversy, claim or dispute between HOLLAND and SUBCONTRACTOR arising out of or related to this Agreement or any breach thereof which involves the correlative rights or duties of the Owner shall be settled according to the dispute resolution procedures in the Owner/Contractor Contract. SUBCONTRACTOR must furnish all notices and information within the time required under the Owner/Contractor Contract to enable HOLLAND to timely assert a claim or a defense of SUBCONTRACTOR or such claim or defense shall be waived. For a dispute which involves SUBCONTRACTOR'S Work, SUBCONTRACTOR shall have the obligation to participate in the assertion or defense of claims related to such Work and shall be bound by the outcome of the dispute resolution procedure regardless of whether it complies with its obligation to participate. Payment by the Owner to HOLLAND is a condition precedent to the obligation of HOLLAND to pay Subcontractor for any Work, claim or damage involving the correlative rights and responsibilities of the Owner. Unless otherwise determined by a court or arbitrator, HOLLAND shall pay SUBCONTRACTOR the amount of the proportionate share of any recovery due SUBCONTRACTOR on the basis of the ratio of the SUBCONTRACTOR'S claims to other claims asserted by HOLLAND less all expenses, litigation expenses and attorneys' fees incurred by HOLLAND in pursuing SUBCONTRACTOR'S claims as calculated by HOLLAND. SUBCONTRACTOR shall pay HOLLAND in advance for any and all expenses, including attorneys' fees and expert consultant fees, for SUBCONTRACTOR'S claims and defense as provided in this Provision. HOLLAND may join or consolidate a lawsuit or arbitration initiated hereunder with a lawsuit or arbitration between HOLLAND and the Owner, Architect, another SUBCONTRACTOR, or any other party where said lawsuit or arbitration involves a common question of fact or law arising from or related to the Project. To the extent that SUBCONTRACTOR is or may be liable for any Claims asserted by other subcontractors, suppliers, or third parties against HOLLAND in an arbitration proceeding or litigation, then, at the election of HOLLAND, Subcontractor hereby consents to joinder in such arbitration proceeding or litigation, and to the direct assertion of claims by such Subcontractor, supplier or third party against SUBCONTRACTOR.

#### **GP-45 CLAIMS BY HOLLAND**

SUBCONTRACTOR and its Sureties, if any, shall be liable to HOLLAND for any damages, liquidated, consequential or otherwise, caused by SUBCONTRACTOR, including HOLLAND'S damages and any liability of HOLLAND to the Owner, other subcontractors, or other persons involved in the Project. In the event of any claim by HOLLAND, both SUBCONTRACTOR, and its surety, if any, agree to pay HOLLAND all associated, expenses, interest, court costs, reasonable attorney's fees, reasonable appellate attorney's fees, and paralegal fees, all of which may be set off against any unpaid contract balance of SUBCONTRACTOR under this Agreement.

#### **GP-46 SUSPENSION**

HOLLAND may by written notice to SUBCONTRACTOR, suspend at any time the performance of all or any portion of the Work to be performed under the Subcontract. Upon receipt of such notice, SUBCONTRACTOR shall, unless the notice requires otherwise:

- a) Immediately discontinue Work on the date and to the extent specified in the notice,
- b) Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice,
- c) Promptly make every reasonable effort to obtain suspension upon terms satisfactory to HOLLAND of all orders, subcontracts and rental Agreements to the extent they relate to performance of suspended Work,
- d) continue to protect and maintain the Work including those portions, on which Work has been suspended, and
- e) Take any other reasonable steps to minimize costs associated with such suspensions.
- f) As full compensation for such suspension, SUBCONTRACTOR will be reimbursed for the following costs, excluding profit, reasonably incurred, without duplication of any item, to the extent that such costs directly result from such Work suspension;
- g) All costs associated with mobilization and demobilization of SUBCONTRACTOR'S plant, forces and equipment, and

- h) An equitable amount to reimburse SUBCONTRACTOR for the cost of maintaining and protecting that portion of the Work upon which performance has been suspended.

Upon receipt of notice to resume suspended Work, SUBCONTRACTOR shall immediately resume performance under this Agreement to the extent required in the notice.

If the SUBCONTRACTOR intends to assert a claim for equitable adjustment under this clause, it must, within ten (10) calendar days after receipt of notice to resume Work, submit to HOLLAND a written statement setting forth the schedule impact and monetary extent of such claim in sufficient detail to permit thorough analysis. Failure of the SUBCONTRACTOR to provide written notice of a claim within the time specified shall be grounds for the rejections of a claim for additional cost and delay. No adjustment shall be made for any suspension to the extent that performance would have been suspended, delayed, or interrupted by any SUBCONTRACTOR non-compliance with the requirements of this Agreement.

#### **GP-47 DEFAULT BY SUBCONTRACTOR**

Notwithstanding any other provisions of the Subcontract, SUBCONTRACTOR shall be considered in default under this Agreement if in HOLLAND'S opinion the SUBCONTRACTOR:

- a) fails to conform to any of the requirements of this Agreement;
- b) fails to perform any of its obligations or undertakings of this Agreement;
- c) fails to make progress so as to endanger performance of this Agreement;
- d) takes or fails to take any action which would cause or threaten to cause delay in the general progress of the work under this Agreement or the Owner/Contractor Contract;
- e) Takes or fails to take any action which adversely affects the quality of the work under this Agreement or the Owner/Contractor Contract;
- f) Fails to fulfill or comply with any of the terms of this Agreement;
- g) Engages in behavior that is dishonest, fraudulent, or constitutes a conflict of interest with SUBCONTRACTOR'S obligations under this Agreement;
- h) Abandons or refuses to proceed with any of the Work, including modifications pursuant to the provision titled "CHANGES";
- i) SUBCONTRACTOR becomes insolvent, makes a general assignment for the benefit of creditors, a voluntary or involuntary petition under any provision of the Federal Bankruptcy Act is filed by or against SUBCONTRACTOR, a receiver is appointed on account of SUBCONTRACTOR'S Insolvency, upon filing of any lien by the Internal Revenue Service against SUBCONTRACTOR or reasonable grounds for insecurity arise with respect to SUBCONTRACTOR'S performance;
- j) takes or fails to take any action which would cause delay in the general progress of the work under the Owner/Contractor Contract;
- k) in any way adversely affects the quality of the work under the Owner/Contractor Contract.

HOLLAND shall have the right but not the obligation, to any or the appropriate combination of any of the following remedies or courses of action:

- a) Investigate any such default and expedite the cure or remedy for the same in any way or manner whatsoever, including but without limitation, the supplement of SUBCONTRACTOR'S forces or providing equipment or materials at SUBCONTRACTOR'S expense;
- b) Take charge of and complete the performance of this Agreement and the Work provided for herein at SUBCONTRACTOR'S expense;
- c) Allow SUBCONTRACTOR to continue performance and accrue and accumulate against SUBCONTRACTOR and its surety or set off against periodic or final payment otherwise due SUBCONTRACTOR all damages suffered by HOLLAND or which HOLLAND or its surety might be liable.
- d) Demand that SUBCONTRACTOR cure or remedy any and all defaults within a time period set forth by the CONTRACTOR and, in the absence of said cure or remedy, declare SUBCONTRACTOR to be in material breach of this Agreement and, without further notice to SUBCONTRACTOR, terminate this Agreement and renegotiate and re-execute a contract or contracts for the completion of the Work required to be done under this Agreement with such persons, firms or corporations as shall be necessary in the opinion of HOLLAND;
- e) All other remedies, either statutory or otherwise, that HOLLAND may have at law or equity.

In the event HOLLAND elects to exercise any alternative, no further payments shall be due to the SUBCONTRACTOR until completion of the Work. All costs, expenses, or damages of any kind whatsoever associated with supplementation, completion, or re-letting of the Work shall be charged against SUBCONTRACTOR and its surety including ten percent (10%) overhead and ten percent (10%) profit thereon and both SUBCONTRACTOR and its surety, if any, agree to pay HOLLAND those amounts as well as any other associated damages, including, but not limited to, interest, court costs, reasonable attorneys' fees, reasonable appellate attorney's fees, and paralegal fees, all of which may be set off against any unpaid contract balance of the SUBCONTRACTOR. SUBCONTRACTOR and its surety hereby knowingly and voluntarily waives any right they may have in any performance bond to remedy any default or complete any of SUBCONTRACTOR'S Work. SUBCONTRACTOR and its surety, if any, acknowledge and agree that HOLLAND shall be entitled to charge and receive the aforementioned overhead and profit percentages as liquidated damages for its efforts in mitigating damages, completing the Work with its own forces or assisting in the re-letting of the Work to another Subcontractor. HOLLAND, SUBCONTRACTOR and any surety of SUBCONTRACTOR, if any, agree that the damages which HOLLAND will suffer upon supplementing or completing SUBCONTRACTOR'S Work with its own forces or assisting in the re-letting of SUBCONTRACTOR'S Work are uncertain, unascertainable, and that the liquidated damage amount of overhead and profit provided herein is a reasonable measure of such damages in light of the respective obligations of the parties under this SUBCONTRACT and the relative detriment to be suffered by HOLLAND upon SUBCONTRACTOR'S default. In the event of any default by SUBCONTRACTOR, both SUBCONTRACTOR, and its surety, if any, agree to pay HOLLAND all associated damages, expenses, interest, court costs, reasonable attorney's fees, reasonable appellate attorney's fees, and paralegal fees, all of which may be set off against any unpaid contract balance of SUBCONTRACTOR under this Agreement.

SUBCONTRACTOR further agrees that a default under any other Agreement between HOLLAND and SUBCONTRACTOR pertaining to this or to any other construction project shall be and constitute a default under this Agreement, thereby entitling HOLLAND to assert all of its rights and remedies hereunder including, but not limited to, a specific right of set-off by HOLLAND against any amounts otherwise payable to SUBCONTRACTOR under this or any other Agreement between HOLLAND and SUBCONTRACTOR.

In the event HOLLAND elects alternative B, HOLLAND may take possession of and utilize any data, designs, licenses, permits, equipment, materials, plant, tools and property of any kind furnished by SUBCONTRACTOR and necessary to complete the Work.

If, after termination pursuant to this clause, it is determined for any reason that SUBCONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the provision titled "TERMINATION FOR CONVENIENCE".

#### **GP-48 TERMINATION FOR CONVENIENCE**

HOLLAND may, at its option, terminate for convenience any of the Work under this Agreement in whole or, from time to time, in part, at any time by written notice to SUBCONTRACTOR. Such notice shall specify the extent to which the performance of the Work is terminated and the effective date of such termination. Upon receipt of such notice SUBCONTRACTOR shall:

- a) Immediately discontinue the Work on the date and to the extent specified in the notice and place no further purchase orders or subcontracts for materials, services, or facilities, other than as may be required for completion of such portion of the Work that is not terminated.
- b) Promptly obtain assignment or cancellation upon terms satisfactory to HOLLAND of all purchase orders, subcontracts, rentals, or any other Agreements existing for the performance of the terminated work or assign those Agreements as directed by HOLLAND;
- c) Assist HOLLAND in the maintenance, protection and disposition of work in progress, plant, tools, equipment, property and materials acquired by SUBCONTRACTOR or furnished by HOLLAND under this Agreement; and
- d) Complete performance of such portion of the Work which is not terminated.

Upon any such termination, SUBCONTRACTOR shall waive any claims for damages including loss of anticipated profits; on account thereof, but as the sole right and remedy of SUBCONTRACTOR, HOLLAND shall pay in accordance with the following:

- a) The subcontract price corresponding to the work performed in accordance with this Agreement prior to such notice of termination;
- b) All costs for work thereafter performed as specified in such notice;
- c) Reasonable costs incurred in demobilization and disposition of residual material, plant and equipment.

SUBCONTRACTOR shall submit within fourteen (14) calendar days after receipt of notice of termination, a written statement setting forth its proposal for an adjustment to the subcontract price to include only the incurred costs described in this clause. HOLLAND shall review, analyze and verify such proposal, and negotiate an equitable adjustment, and the Subcontract shall be modified accordingly. Failure of the SUBCONTRACTOR to provide written statement within the time specified shall be grounds for the rejections of a claim for additional cost.

#### **GP-49 USE OF COMPLETED PORTIONS OF WORK**

Whenever, as determined by HOLLAND, any portion of the Work performed by SUBCONTRACTOR is suitable for use, HOLLAND, or OWNER may occupy and use such portion. Use shall not constitute acceptance, relieve SUBCONTRACTOR of its responsibilities, or act as a waiver by HOLLAND or any of the terms of the Subcontract.

SUBCONTRACTOR shall not be liable for normal wear and tear or for repair of damage caused by any misuse during such occupancy by HOLLAND, or OWNER.

If, as a result of SUBCONTRACTOR'S failure to comply with the provisions of this Agreement, such use proves to be unsatisfactory to HOLLAND, or OWNER, HOLLAND shall have the right to continue such use until such portion of the Work can, without injury to HOLLAND, or OWNER, be taken out of service for correction of defects, errors, omissions, or replacement of unsatisfactory materials or as necessary for such portion of the Work to comply with this Agreement; provided that the period of such operation or use pending completion of appropriate remedial action shall not exceed twelve (12) months unless otherwise mutually agreed in writing between the parties.

SUBCONTRACTOR shall not use any permanently installed equipment unless such use is approved in writing by HOLLAND. When such use is approved, SUBCONTRACTOR shall at SUBCONTRACTOR'S expense properly use and maintain and, upon completion of such use, recondition such equipment as required to meet specifications.

If HOLLAND furnishes an operator for such equipment, all services performed shall be under the complete direction and control of SUBCONTRACTOR, and such operator shall be considered SUBCONTRACTOR'S employee for all purposes other than payment of such operator's wages, Worker's Compensation Insurance or other benefits paid directly or indirectly by HOLLAND.

#### **GP-50 TITLE AND RISK OF LOSS**

Where SUBCONTRACTOR fabricates, purchases or provides equipment, materials or other tangible items (Goods) for the use or incorporation into the Work or any of its separate parts, the title of such Goods shall be vested in OWNER when the first of the following events occurs:

- a) The Goods or part thereof is first identifiable as being appropriated to the subcontract,
- b) When HOLLAND pays for the Goods or part thereof in accordance with this Agreement, or
- c) When the Goods or part thereof are dispatched to or from SUBCONTRACTOR'S fabrication yard or to the Jobsite.

However, such transfer of title in the Goods will be without prejudice of HOLLAND'S right to refuse the Goods in case of non-conformity with the requirements of the subcontract. Irrespective of transfer of title in the Goods, SUBCONTRACTOR shall remain responsible for risk of loss or damage to work in progress and all Goods until Final Acceptance. SUBCONTRACTOR shall ensure that the above provisions are imposed upon its suppliers and subcontractors of any tier and shall execute all documents and take all steps necessary to vest title in OWNER.



## GP-51 INSURANCE

Unless otherwise specified in this Agreement, SUBCONTRACTOR shall, at its sole expense, maintain in effect at all times during the performance of the Work insurance coverage with limits not less than those set forth herein with insurers and under forms of policies satisfactory to HOLLAND. SUBCONTRACTOR shall deliver to HOLLAND no later than ten (10) calendar days after subcontract award, but in any event prior to commencing the Work or entering the Jobsite, certificates of insurance as evidence that policies providing such coverage and limits of insurance are in full force and effect. All coverages shall be based on an occurrence based form.

**CASUALTY INSURANCE.** SUBCONTRACTOR shall, at its expense, procure and maintain insurance on all of its operations, with companies acceptable to HOLLAND or OWNER. Casualty Insurance limits shall be not less than the amounts required of the SUBCONTRACTOR in this Agreement, or greater limits as may be required by the Owner/Contractor Contract.:

(A) **WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE.** Workers' Compensation insurance shall be provided as required by any applicable law or regulation. Worker's Compensation limits shall be not less than the amounts required of Subcontractor under this Agreement and/or the Government or greater limits as may be required by the Owner/Contractor Contract.

(B) **GENERAL LIABILITY INSURANCE.** SUBCONTRACTOR shall carry primary Commercial General Liability Insurance covering all operations by or on behalf of SUBCONTRACTOR providing insurance for bodily Injury and property damage liability for the limits of liability indicated below and including but not limited to coverage for:

- a) premises and operations
- b) products and completed operations will be maintained for four years or the duration of any applicable Statute of Limitations following project completion.
- c) contractual liability insuring tort obligations assumed by Subcontractor in this Contract
- d) broad form property damage (including completed operations)
- e) explosion, collapse and underground hazards
- f) personal injury liability

The limits of liability shall be not less than the amounts required of Subcontractor under this Agreement, or greater limits as may be required by the Owner/Contractor Contract.

The general liability policy shall include a "per project aggregate" limit using CG2503 (or equivalent).

The general aggregate limit shall apply separately to Subcontractor's work under this Contract.

Coverage must be Primary and Noncontributory in favor of additional insured using CGL Form - ISO form CG 20 01 04 13 or equivalent

(C) **EXCESS / UMBRELLA LIABILITY.** Excess/Umbrella Liability insurance shall be provided as required by any applicable law or regulation, this Agreement or greater limits as may be required by the Owner/Contractor Contract.

The excess / umbrella liability policy shall include a "per project aggregate" limit.

(D) **AUTOMOBILE LIABILITY.** SUBCONTRACTOR shall carry commercial automobile liability insurance, including coverage for liability arising out of any owned, hired and non-owned automobiles and shall be written on ISO form CA 00 01 or equivalent. Automobile Liability shall be provided as required by any applicable law or regulation and this Agreement or greater limits as may be required by the Owner/Contractor Contract. Waiver of subrogation in favor of HOLLAND and Owner (ISO form CA 04 44 10 13 or equivalent) shall be provided. HOLLAND to be named Additional Insured (ISO form CA 20 48 10 13 or equivalent). Coverage must be Primary and Noncontributory in favor of additional insured - (ISO forms CA 04 49 11 16 or CA 04 50 11 16 or equivalent)

**ADDITIONAL INSURED.** HOLLAND AND OWNER, its officers, directors and employees, shall be named as additional insured's under the Commercial General Liability policy, Commercial Automobile Liability policy and any Excess Liability policy and such insurance afforded the additional insured's shall apply as primary and non-contributory. Additional insured shall apply to both ongoing operations and products/completed operations on the SUBCONTRACTOR'S and any sub-subcontractor's general liability policy Any other insurance maintained by HOLLAND or OWNER shall not be called upon to contribute with this insurance. Coverage for HOLLAND, its officers, directors and employees and the OWNER as additional insured's shall be provided by an endorsement providing coverage at least as broad as Additional Insured endorsement form CG 2010 1185 as published by the Insurance Services Office (ISO) (or equivalent). The additional insured endorsement will be provided for long as the statute of repose in the jurisdiction having authority of the project and shall include all coverage required hereunder, including completed operations coverage. Failure by HOLLAND to request any such endorsements or to give notice of their not having been filed shall not waive this requirement. All insurance under this Provision (including, but not limited to general liability, automobile liability, and workers' compensation and employer's liability insurance) shall be provided by a carrier with an A.M. Best's Rating of VII, A- or better. General liability insurance shall be written on a form at least as broad as ISO occurrence form CG 0001; Automobile Liability Insurance shall be provided pursuant to a coverage form at least as broad as ISO form CA 0001. HOLLAND reserves the right, in its sole and subjective discretion, to reject an insurer and require Subcontractor to obtain policies from another insurer.

It is expressly understood by the parties to this Agreement that it is the intent of the parties that any insurance obtained by HOLLAND is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the SUBCONTRACTOR, the Sub-Subcontractor or any of their respective consultants, officers, agents, subcontractors, employees or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law. CGL Form - ISO form CG 20 01 04 13 or equivalent. Automobile ISO forms CA 04 49 11 16 or CA 04 50 11 16 or equivalent.

**CLAIMS MADE/SELF INSURANCE PROVISIONS.** SUBCONTRACTOR shall not provide general liability insurance under any Claims Made General Liability form without the express prior written consent of HOLLAND. Any self-insurance program requires the prior written consent of HOLLAND. HOLLAND shall have no obligation to approve any self-insurance program.

**CERTIFICATES OF INSURANCE.** As evidence of the insurance required by this Agreement and including the required "additional insured" endorsement(s) shall be furnished by SUBCONTRACTOR to HOLLAND

prior to commencing any work. Certificates shall set forth deductible amounts applicable to each policy and all exclusions or limitations not set forth in ISO Commercial General Liability Form CG 00 01. Standard ISO Form CG 0001 exclusions will also be allowed. Allowance of any additional exclusions or coverage limiting endorsements is at the discretion of HOLLAND. Regardless of the allowance of exclusions, coverage limitations or deductibles by HOLLAND, the SUBCONTRACTOR shall be responsible for any deductible amount or any loss arising out of coverage denials by his insurance carrier(s). The certificates of insurance shall provide that there will be no cancellation or material change of coverage without thirty (30) day's prior written notice to Contractor by certified mail. Such thirty-day notice should be adequate to ensure replacement coverage is procured by SUBCONTRACTOR. The Certificate of Insurance shall evidence insurance coverage with minimum limits, or in such additional coverage or greater limits as may be required by the Owner/Contractor Contract.

Any acceptance of insurance certificates by HOLLAND shall in no way limit or relieve SUBCONTRACTOR of its duties and responsibilities under this Contract including the duty to indemnify and hold harmless CONTRACTORS set forth in Provision "INDEMNIFICATION". Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the SUBCONTRACTOR for liability in excess of such coverage nor shall it preclude HOLLAND from taking such other actions as is available to it under any other provision of the contract or law. If higher limits or other forms of insurance are required in this Agreement or Owner/Contractor Contract, SUBCONTRACTOR will comply with such requirements.

**NO LIMITATION ON LIABILITY.** With regard to any and all claims against the additional insured by any employee of the SUBCONTRACTOR, anyone directly or indirectly employed by the SUBCONTRACTOR or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the SUBCONTRACTOR under workers' compensation acts, disability benefit acts or other employee benefit acts.

**CANCELLATION, RENEWAL AND MODIFICATION.** The SUBCONTRACTOR shall maintain in effect all insurance coverages required under this Agreement at the SUBCONTRACTOR'S sole expense and with insurance companies acceptable to HOLLAND until final completion and acceptance of the entirety of the Work; or longer if so provided in the Agreement such as with respect to completed operations coverage. Should any insurance policy lapse or be canceled during the contract period, Subcontractor shall, prior to the effective expiration or cancellation date, furnish HOLLAND with evidence of renewal or replacement of the policy. Failure to continuously satisfy insurance requirements as herein provided is a material breach of contract. Certificates of insurance showing required coverage to be in force must be delivered to HOLLAND prior to commencement of the Subcontract Work. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, this shall be considered a material breach of the contract, entitling HOLLAND, at its sole discretion, to purchase such equivalent coverage as desired for HOLLAND's benefit and charge the expense to the SUBCONTRACTOR, or, in the alternative, exercise all remedies otherwise provided in this Agreement, or as permitted by law or equity.

(E) **SPECIAL OPERATIONS COVERAGE.** SUBCONTRACTOR shall carry the following liability insurances as required by any applicable law or regulation and this Agreement or greater limits as may be required by the Owner/Contractor Contract:

- a) **Hazardous Materials.** If SUBCONTRACTOR and/or sub subcontractors or suppliers, regardless of tier, perform investigation and/or remediation of hazardous materials or if their operations create an exposure to hazardous materials as those terms are defined in federal, state or local law, SUBCONTRACTOR and its lower-tier subcontractors and suppliers must obtain a "Contractor's Pollution Liability" policy with limits of those listed in the Provision titled "INSURANCE POLICY LIMITS" but not less than \$2,000,000 per occurrence and not less than \$2,000,000 aggregate for bodily injury, personal injury and property damage, naming HOLLAND as an additional insured. If SUBCONTRACTOR or its lower-tier subcontractors or suppliers haul hazardous material (including, without limitation, waste), the policy provided by SUBCONTRACTOR must extend pollution coverage to include the transportation of hazardous materials or pollutants by waste hauling vehicles. If SUBCONTRACTOR is subject to the Motor Carrier Act of 1980, the Motor Carrier Act endorsement MCS-90 must be obtained and attached to the policy.
- b) **Professional Liability.** Any SUBCONTRACTOR performing work that includes any design/build work or services shall obtain a Professional Liability Insurance Policy. The Professional Liability Policy must have limits not less than those listed herein or greater limits as may be required by the Owner/Contractor Contract. Design/build work includes, without limitation, design/build work with respect to mechanical, electrical, structural, plumbing and fire sprinkler systems. Evidence of coverage in the form of a Certificate of Insurance shall be provided prior to the start of the project. SUBCONTRACTOR shall obtain coverage for a minimum of three years following completion of the project, either through continued purchase of policies for such years or through purchase of an extended reporting period. If Owner or HOLLAND elects to purchase a project design policy, Subcontractor's policy shall be endorsed to indicate that SUBCONTRACTOR'S policy shall provide coverage once the project design policy has been exhausted.
- c) **Riggers Liability.** Should SUBCONTRACTOR'S work involve the moving, lifting, lowering, rigging or hoisting of property or equipment, SUBCONTRACTOR shall carry Rigger's Liability Insurance to insure against physical loss or damage to the property or equipment.

### (F) OTHER REQUIREMENTS

The SUBCONTRACTOR'S insurance policies shall not contain any exclusions that would cause a lack of coverage based on the type of work by the SUBCONTRACTOR or other Subcontractors. Additionally, there shall be no residential exclusions in the SUBCONTRACTOR'S insurance policies.

SUBCONTRACTOR shall not provide any liability coverage under a "wasting" policy or other form of policy that reduces the amount of coverage in whole or in part, by amounts expended on defense of claims. The following requirements shall also be satisfied:

Requirements for lower tier subcontractors, Vendors, and Suppliers. SUBCONTRACTOR shall ensure that all tiers of its subcontractors, vendors and suppliers shall maintain insurance in like form and amounts, shall comply with the additional insured requirements as set forth above, and shall provide HOLLAND with evidence of insurance prior to commencing work.

Property Insurance. Subcontractor shall procure and maintain at its own expense property insurance for portions of SUBCONTRACTOR'S work stored off the site or in transit.

Waiver of Subrogation. HOLLAND and SUBCONTRACTOR waive all rights against each other and against all other subcontractors and OWNER for loss or damage to the extent reimbursed by any property or insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance referred to in this Provision require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent. The Waivers of Subrogation attached to each coverage line must be in favor of HOLLAND, Owner, Architect. CGL - ISO form CG 24 04 or equivalent. Automobile - ISO form CA 04 44 10 13 or equivalent. Workers Compensation - NCCI form WC 00 03 13

Builder's Risk. SUBCONTRACTOR shall satisfy itself as to the existence and extent of such insurance prior to commencement of Subcontractor's work. If Builder's Risk insurance purchased by OWNER or HOLLAND provides coverage for SUBCONTRACTOR for loss or damage to SUBCONTRACTOR'S work, SUBCONTRACTOR shall be responsible for the insurance policy deductible amount. HOLLAND and OWNER do not represent or assume responsibility that any Builder's Risk Insurance protects the interest of the SUBCONTRACTOR. If not covered under HOLLAND'S or OWNER'S Builder's Risk policy of insurance or any other property insurance required by the Contract Documents, the SUBCONTRACTOR shall provide its own Builder's Risk policy covering the SUBCONTRACTOR work.

Neither HOLLAND nor OWNER is maintaining any insurance on behalf of SUBCONTRACTOR covering against loss or damage to the Work or to any other property of SUBCONTRACTOR unless otherwise specifically stated herein and as may be described by appendix hereto.

Failure of HOLLAND to enforce in a timely manner any of the provisions of this Section shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Contract.

MINIMUM INSURANCE POLICY LIMITS. As a condition precedent to payment, Subcontractor shall maintain insurance at the same limits and other terms as required by the Owner/Contractor Contract, Contract Documents or as stated below, whichever imposes the higher amount, or more stringent obligation on the SUBCONTRACTOR shall govern:

Workers' Compensation Limits				
No.	Minimum Amount	Policy Limit	Coverage Type	
1.	\$500,000		Each accident for bodily injury by accident	
2.	\$500,000		Policy limit for bodily injury by disease	
3.	\$500,000		Each employee for bodily by disease	

General Liability Insurance Limits				
No.	Minimum Amount	Policy Limit	Coverage Type	
1.	\$1,000,000		Combined single limit for bodily Injury and property damage (each occurrence)	
2.	\$300,000		Damage to rented premises (each occurrence)	
3.	\$10,000		Medical expenses (any one person)	
4.	\$1,000,000		Personal injury (each occurrence)	
5.	\$2,000,000		General annual aggregate per project	
6.	\$2,000,000		Products-completed operations annual aggregate	

Excess/Umbrella Liability Limits				
No.	Minimum Amount	Policy Limit	Coverage Type	
1.	\$1,000,000		Each occurrence	
2.	\$1,000,000		Aggregate	

Automobile Liability Limits				
No.	Minimum Amount	Policy Limit	Coverage Type	
1.	\$1,000,000		Combines single limit (each occurrence)	

2.	\$1,000,000		Aggregate	
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Hazardous Materials Limits (if applicable)				
No.	Minimum Amount	Policy Limit	Coverage Type	
1.	\$2,000,000		Each occurrence	
2.	\$2,000,000		Aggregate	

Professional Liability Limits (if applicable)				
No.	Minimum Amount	Policy Limit	Coverage Type	
1.	\$1,000,000		Each claim	
2.	\$2,000,000		Aggregate	

#### GP-52 INDEMNIFICATION

SUBCONTRACTOR'S Performance. SUBCONTRACTOR shall indemnify protect, defend and save harmless OWNER and HOLLAND, including their officers, agents, directors, partners, members, employees, affiliates, parents and subsidiaries, and each of them, from and against any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or equity, of every kind and nature whatsoever ("Claims") arising out of or in any way relating to (i) this Agreement, (ii) either actual or alleged actions or omissions by SUBCONTRACTOR or any of its lower-tier subcontractors, suppliers, vendors, employees, or persons for whom it is responsible (regardless of whether the acts or omissions are actually negligent), or (iii) the Project to which this Agreement relates, including, but not limited to Claims for:

- a) Personal injury, including, but not limited to, bodily injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of SUBCONTRACTOR, OWNER, HOLLAND, or any other subcontractor and/or damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part by any actual or allegedly negligent act or omission or intentional misconduct of Subcontractor or anyone directly or indirectly employed by SUBCONTRACTOR or anyone for whose acts SUBCONTRACTOR might be liable regardless of whether such personal injury or damage is caused by a party indemnified hereunder;
- b) Penalties, fees and costs imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the action or inaction of Subcontractor;
- c) Infringement of any patent rights, which may be brought against HOLLAND or OWNER arising out of SUBCONTRACTOR'S work;
- d) Liens or claims for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages resulting to HOLLAND or OWNER from such claims or liens;
- e) SUBCONTRACTOR'S failure to fulfill the covenants set forth by Labor Relations;
- f) Failure of Subcontractor to comply with the Provisions of Casualty Insurance;
- g) Any violation or infraction by Subcontractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of HOLLAND'S or others' equipment, hoist, elevators, or scaffolds;
- h) Failure to perform in accordance with this Agreement, or breach of any term, representation, covenant, or conditions contained therein;
- i) Failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or violation or other approval of a public authority applicable to SUBCONTRACTOR'S Work.

The specific listing in clauses (a) through (i) above shall not in any way limit SUBCONTRACTOR'S Agreement and obligation to fully defend and indemnify any entity as specified in this Agreement for all acts and omissions of SUBCONTRACTOR, and anyone for whom SUBCONTRACTOR is responsible in the performance of the work and other obligations under this Agreement. The obligation to defend and indemnify shall apply notwithstanding that SUBCONTRACTOR is not actively involved in the events that give rise to the claims for which a defense or indemnity is sought. The indemnity, defense, and other obligations under this Provision shall apply even if subcontractor was not actually negligent. The indemnification provisions above shall extend to Claims occurring after this Agreement is terminated as well as while it is in force. Such indemnity provisions apply regardless of any active and/or passive negligent act or omission of OWNER or HOLLAND or of any other person to be indemnified hereunder. Subcontractor, however, shall not be obligated under this Agreement to indemnify OWNER or HOLLAND from Claims arising from the sole negligence or willful misconduct of OWNER or HOLLAND or of any other person to be indemnified hereunder, or for defects in design furnished by such persons.

SUBCONTRACTOR shall:

- a) At SUBCONTRACTOR'S own cost, expense and limit, defend all Claims that may be brought or Instituted by third persons, including, but not limited to, governmental agencies or employees of SUBCONTRACTOR, against HOLLAND or OWNER or any other person to be indemnified hereunder or any of them; and
- b) Pay and satisfy any judgment or decree that may be rendered against HOLLAND or OWNER or any other person to be indemnified hereunder, or any of them, arising out of any such Claim; and/or
- c) Reimburse HOLLAND or OWNER or any other person to be indemnified hereunder for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity. The duty to defend shall apply, and SUBCONTRACTOR shall be required to furnish a defense,

notwithstanding that there has not yet been an adjudication or finding of liability on the part of SUBCONTRACTOR or any person to be Indemnified.

In claims against any person or entity indemnified under this Provision by an employee of SUBCONTRACTOR, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligations shall not be limited by a limitation on the amount or type of damages, compensation, or benefits payable by or for SUBCONTRACTOR under workers' compensation acts, disability benefit acts, or other employee benefit acts, and for this purpose, SUBCONTRACTOR waives its right to immunity as an employer of any such workers' compensation in the event of a claim by one or more of its employees against the Owner, HOLLAND, or against Owner's or HOLLAND'S employees, agents, or representatives, arising out of the negligent or other acts or omissions of Owner, HOLLAND, or employees, agents, or representatives for which the Owner or HOLLAND is seeking indemnification under this Provision.

In the event that SUBCONTRACTOR, or any of its agents, employees, suppliers, materialmen, or sub-contractors utilize any machinery, equipment, tools, materials, scaffolding, hoists, lifts, or similar items belonging to or under the control of HOLLAND on the Project, SUBCONTRACTOR shall be responsible for any claim, damage, loss, liability, or judgment which may arise from such use and shall indemnify, defend, and hold harmless HOLLAND with respect to such claim, damage, loss, liability, or judgment, including attorneys' fees.

Risk of Loss. All work covered by this Agreement done at the site or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of SUBCONTRACTOR exclusively until the completed work is accepted by HOLLAND and OWNER.

SUBCONTRACTOR shall include the provisions for indemnity contained in this Provision and elsewhere throughout this Agreement in any lower tier subcontract or purchase order let by SUBCONTRACTOR for any Work covered by this Agreement.

The obligations of the SUBCONTRACTOR under this paragraph shall also be the obligations of the SUBCONTRACTOR'S surety and insurer under any bond(s) or insurance policies provided pursuant to this Agreement.

**GP-53 FINAL INSPECTION AND ACCEPTANCE**

When SUBCONTRACTOR considers the Work, or any HOLLAND-identified independent portion of the Work, under this Agreement to be complete and ready for acceptance, SUBCONTRACTOR shall notify HOLLAND in writing. HOLLAND, with SUBCONTRACTOR'S cooperation, may conduct such reviews, inspections and tests as may be reasonably required to satisfy HOLLAND that the Work, or identified portion of the Work, conforms to all requirements of this Agreement. If all or any part of the Work covered by SUBCONTRACTOR'S notice does not conform to the requirements of this Agreement, HOLLAND shall notify SUBCONTRACTOR of such nonconformance and SUBCONTRACTOR shall take corrective action and then have the nonconforming work re-installed and corrected. Failure by HOLLAND to provide any notice in this provision shall not relieve the SUBCONTRACTOR of any requirements of this Agreement.

HOLLAND'S written Notice of Final Acceptance of the Work under this Agreement shall be final and conclusive except with regard to latent defects, fraud, or such gross mistakes as amount to fraud, or with regard to HOLLAND'S, and OWNER'S, right under the Provision titled "WARRANTY".

**GP-54 PAYMENT**

To establish a basis for payment, SUBCONTRACTOR shall, within seven (7) calendar days after Subcontract award, provide a Schedule of Values in the form and to the degree of detail acceptable to HOLLAND. If approved, this schedule shall become the basis for determining the amount due on Applications for Payment. If the parties do not agree on the Schedule of Values for this purpose, HOLLAND shall establish the Schedule of Values.

If required by HOLLAND or OWNER as may be the case on specific projects, written monthly estimates shall be prepared by SUBCONTRACTOR for HOLLAND'S approval covering the amount and value of Work satisfactorily performed by SUBCONTRACTOR up to a day of the month as specified by HOLLAND. Such estimate may be made by strict measurement, or by estimate, or partly by one method and partly by the other. HOLLAND will review SUBCONTRACTOR'S monthly estimate and return an approved copy to SUBCONTRACTOR.

Payment for stored materials will not be allowed without prior written approval by HOLLAND. This includes but is not limited to materials stored on site but not under the control of HOLLAND. Upon approval by HOLLAND, the SUBCONTRACTOR must provide the following before payment is issued for stored material: (a) Completed Security Agreement and Bill of Sale on the forms furnished by HOLLAND; (b) Acknowledgment of the filing of the appropriate UCC Form with the responsible State UCC department naming HOLLAND as Secured Party as to said materials. SUBCONTRACTOR will bear any and all filing costs; (c) Acknowledgment of possession, if the material is being stored with by a third party, on the form specified by HOLLAND; (d) Certificate of Insurance indicating the location, an itemized description, with dollar value, of the stored material and naming HOLLAND and the OWNER as Loss Payee; (e) The SUBCONTRACTOR is responsible for ensuring that the material must be securely stored; (f) The material must be segregated from the other material of the Subcontractor and/or any third parties; (g) The material must clearly be identified as the property of HOLLAND ("Holland Construction Corporation").

SUBCONTRACTOR shall submit to HOLLAND applications for payment, on the form required by the Owner/Contractor Agreement or, if no form is specified, then on form substantially similar AIA Document G702/703 (1992) or such other form as HOLLAND directs. The applications for payment shall be submitted on the dates or at the intervals specified by HOLLAND. Each Application for Payment shall describe the Work performed during the preceding payment period for which payment is requested, as specified in the form, and include such documentation as HOLLAND may reasonably require.

**Progress Payment**

On or before the due date listed below, SUBCONTRACTOR shall submit to HOLLAND a progress payment application. The period covered by each application for payment shall be one calendar month ending on the last day of the month. HOLLAND shall by the last day of the following month after receipt of a correct Application for Payment and HOLLAND receiving payment from OWNER, make payment to

SUBCONTRACTOR in an amount equal to the value of the approved Completed Work as of the corresponding Monthly Billing Date, after deducting (a) all previous payments, (b) current retainage, (c) all charges or back charges for services, materials, equipment and other items furnished or otherwise chargeable to SUBCONTRACTOR, and (d) costs associated with liens filed against the Project, (e) disputed amounts.

As a condition precedent to progress payments made by HOLLAND, SUBCONTRACTOR shall be subject to the following requirements:

- a) SUBCONTRACTOR shall provide written statement that represents and warrants that all applicable payroll taxes and other withholding assessments have been paid, and that all employees have been properly classified for workers compensation insurance purposes, and that all employees have been properly classified for wage and hour laws, and that the appropriate premiums have been paid to its insurance carrier.
- b) SUBCONTRACTOR shall provide written statement that represents and warrants that all work performed is in strict accordance with this Agreement.
- c) SUBCONTRACTOR shall submit evidence satisfactory to HOLLAND that all payrolls, bills for materials, equipment and subcontractors and all known indebtedness connected with the SUBCONTRACTOR'S Work have been satisfied, including but not limited to waiver of mechanic's liens from the SUBCONTRACTOR and the SUBCONTRACTOR'S lower-tier subcontractors, suppliers and materialmen.
- d) Among other things, but without limitation, the SUBCONTRACTOR shall provide lien waivers and invoices to verify costs incurred and claimed. With each application for payment, the SUBCONTRACTOR must also submit a waiver of mechanic's liens in a from as required by HOLLAND, constituting a waiver of liens with respect to all Work for which payment was made on the preceding applications for payment. After the SUBCONTRACTOR has received payment for the first Application for Payment, Second Tier Releases shall be required from all sub-subcontractors and suppliers before payment will be made for each succeeding Application for Payment. The Second Tier Release confirms payment of the SUBCONTRACTOR'S sub-subcontractors and suppliers for the period for which the Subcontractor has been paid and must be received before the Subcontractor's payment for the next payment period can be released.
- e) If required by HOLLAND, SUBCONTRACTOR has provided a written monthly Estimate Application is received by HOLLAND, HOLLAND has approved the Estimate Application and HOLLAND has received the Application for Payment all by the dates specified or as required by elsewhere in this Agreement, HOLLAND shall include the SUBCONTRACTOR'S Work covered by that application in the next application for payment which HOLLAND is entitled to submit to the OWNER.
- f) If an application for payment is received after the date specified, The SUBCONTRACTOR'S Work covered by it shall be included by HOLLAND in the next application for payment submitted to the OWNER.

**Substantial Completion**

When the SUBCONTRACTOR'S Work or a designated portion thereof is substantially complete, and the SUBCONTRACTOR has submitted and received approval of all closeout documents as specified in Provision titled "ADMINISTRATIVE CLOSEOUT PROCEDURES" and in accordance with the requirements of the Owner/Contractor Contract, HOLLAND shall upon application by the SUBCONTRACTOR, make application for payment of such Work.

**Final Payment**

Final payment constituting the entire unpaid balance of the Subcontract Sum, including retainage, shall be made by HOLLAND to the SUBCONTRACTOR when the SUBCONTRACTOR'S Work is fully performed in accordance with the requirements of the Agreement, and the OWNER has issued payment covering the SUBCONTRACTOR'S work.

Before issuance of the final payment, the SUBCONTRACTOR shall submit evidence satisfactory to HOLLAND that all payrolls, bills for materials, equipment and subcontractors, and all known indebtedness connected with the SUBCONTRACTOR'S Work have been satisfied, including but not limited to final release of liens from the SUBCONTRACTOR and the SUBCONTRACTOR'S lower-tier subcontractors, suppliers and materialmen.

SUBCONTRACTOR shall submit Applications for Payment by email for receipt by HOLLAND by the date listed below.

Invoicing Items:	Date Due Each Month:
Estimate Application (if required by Project Manager)	20th
Application for Payment	25th
Lien Waivers (Release of Liens)	25th

SUBCONTRACTOR shall submit all invoices, applications for payment, lien waivers, statements, and other documentation as required in this Provision to: [accounts payable@holland-corp.com](mailto:accounts payable@holland-corp.com)

Any amounts otherwise payable under this Agreement may be withheld, in whole or in part, if in HOLLAND'S opinion:

- a) Any claims are filed against SUBCONTRACTOR by HOLLAND, OWNER, or third parties (for which HOLLAND or OWNER is or may become liable);
- b) SUBCONTRACTOR is in default of any provision of this Agreement including, but not limited to, the schedule, performance, quality assurance, and health and safety requirements or as otherwise provided for in the provision titled "DEFAULT BY SUBCONTRACTOR";

- c) SUBCONTRACTOR has not submitted Qualification Forms, Executed Subcontract Agreement, Schedules, Proper insurance certificates, or not provided proper coverage or proof thereof, Submittals, Lien waivers, Warranties, O&M's, As-Built, Sustainability Documents, Performance and Payment Bonds/Securities (if required) or;
- d) Adjustments are due from previous overpayment or audit result;
- e) Offsets in favor of HOLLAND in other transactions between HOLLAND and SUBCONTRACTOR are asserted;
- f) Reasonable doubt that SUBCONTRACTOR'S Work can be completed for the unpaid balance of the Subcontract Sum;
- g) Damage to the Owner or another contractor for which SUBCONTRACTOR or any of its sub-subcontractors are responsible;
- h) Failure of SUBCONTRACTOR to make payments properly to sub-subcontractors and suppliers for labor, material, services, equipment, or other items for which payments have been made by HOLLAND to SUBCONTRACTOR;
- i) Make false or inaccurate certifications that payments to sub-subcontractors and suppliers for labor, material, services, equipment are due;
- j) Reasonable doubt that SUBCONTRACTOR'S Work will be completed within the Subcontract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- k) Work for which SUBCONTRACTOR billed on a prior application for payment and received payment from HOLLAND, but which was subsequently determined by HOLLAND, the Owner, or the Architect not to have been performed in accordance with the Subcontract Documents; or
- l) Mathematical errors made by HOLLAND on SUBCONTRACTOR'S prior applications for payment.

If claims filed against SUBCONTRACTOR connected with performance under this Agreement, for which HOLLAND may be held liable if unpaid (e.g., unpaid wages, withholdings and back taxes), HOLLAND may remove such claims and deduct all costs in connection with such removal from withheld payments or other monies due, or which may become due, to SUBCONTRACTOR. If the amount of such withheld payment or other monies due SUBCONTRACTOR under this subcontract is insufficient to meet such costs, or if any claim against SUBCONTRACTOR is discharged by HOLLAND after final payment is made, SUBCONTRACTOR and its surety or sureties, if any, shall promptly pay HOLLAND all costs incurred thereby regardless of when such claim arose or whether such claim imposed a lien upon the Project or the real property upon which the Project is situated.

In the event a lien is filed, SUBCONTRACTOR shall remove the lien, or see that it is removed or shall furnish a bond for the full amount thereof within seven (7) calendar days of notice by HOLLAND or as otherwise specified by applicable law. Upon SUBCONTRACTOR'S failure to promptly comply with the foregoing requirements, HOLLAND may remove such liens. SUBCONTRACTOR shall reimburse HOLLAND

#### **GP-55 WARRANTY**

SUBCONTRACTOR and its sureties, if any, warrants to HOLLAND and OWNER that equipment and materials furnished under this Agreement shall be new, of clear title and of the most suitable grade of their respective kinds for their intended uses, unless otherwise specified. SUBCONTRACTOR warrants to HOLLAND and OWNER that all work and workmanship shall be first class and performed in accordance with sound construction practices acceptable to HOLLAND. All equipment, materials, work and workmanship shall strictly conform to the requirements of this Agreement.

SUBCONTRACTOR warrants all equipment and material it furnishes and all work it performs against defects in design, equipment, materials, or workmanship either for a period from Work commencement to a date twelve (12) months after Completion of the project as a whole by HOLLAND, or OWNER or the standard commercial warranty period, whichever is more advantageous to HOLLAND and OWNER. Any warranties for manufactured or fabricated equipment that survives the twelve-month warranty period of the project shall remain in effect and be accessible to HOLLAND, or OWNER.

If at any time during the warranty period, HOLLAND, or OWNER discover any defect in the design, equipment, materials, or workmanship immediate notice shall be given to the other parties.

SUBCONTRACTOR shall within a reasonable time propose corrective actions to cure such defects to meet the requirements of this Agreement.

HOLLAND, at its sole discretion, may direct SUBCONTRACTOR in writing and SUBCONTRACTOR agrees to:

- a) Rework, repair, or remove and replace defective equipment and materials or perform again the defective workmanship to acceptable quality at a time and in a manner acceptable to HOLLAND;
- b) Cooperate with others assigned by HOLLAND to correct such defects and pay to HOLLAND all actual costs reasonably incurred by HOLLAND in performing or in having performed corrective actions; or
- c) Propose and negotiate in good faith an equitable reduction in the Subcontract price in lieu of corrective action.

All costs incidental to corrective actions including demolition for access, removal, disassembly, transportation, reinstallation, reconstruction, retesting and re-inspection as may be necessary to correct to the defect and to demonstrate that the previously defective work conforms to the requirements of this Agreement shall be borne by SUBCONTRACTOR.

SUBCONTRACTOR further warrants any and all corrective actions it performs against defects in design, equipment, materials and workmanship for an additional period of twelve (12) months following acceptance by HOLLAND of the corrected Work or standard commercial warranty on product meeting standard warranty.

In addition, SUBCONTRACTOR shall obtain or provide, for the benefit of HOLLAND and OWNER and their successors in interest, warranties or guarantees for the equipment, materials and work furnished by suppliers and subcontractors of any tier. Such warranties or guarantees are to run for the period set forth in this Agreement or, when not specified, that period customarily provided by the supplier. SUBCONTRACTOR shall enforce such lower-tier warranties or guarantees on its own behalf or, if requested by HOLLAND or OWNER, on behalf of HOLLAND or OWNER. SUBCONTRACTOR shall provide warranty documentation prior to Final Acceptance or as otherwise required by this Agreement.

for all costs in connection with the removal of such liens and HOLLAND may deduct such costs from payments or other monies due, or which may become due, to SUBCONTRACTOR.

Notwithstanding, HOLLAND may, at its sole discretion, require a warranty bond in the amount equal to all, or some portion of, retained amounts as a condition of release until expiration of the warranties provided under the Provision "WARRANTY".

Notwithstanding any provision in the Subcontract Documents to the contrary, receipt of payments by HOLLAND from the OWNER shall in each instance be an express condition precedent to the right of the SUBCONTRACTOR to receive payment. SUBCONTRACTOR shall not be entitled to progress payments, or final payments from HOLLAND, unless, until and then only to the extent such payment has been received by HOLLAND from OWNER, regardless of cause.

To the fullest extent permitted by law, the specific terms of this Agreement shall supersede the statutory provisions of any prompt payment act(s) at the federal, state or local level.

SUBCONTRACTOR shall, as often as requested by OWNER or HOLLAND, furnish a sworn statement listing by name, address, telephone, facsimile and e-mail address all parties furnishing any labor, materials or equipment to SUBCONTRACTOR for the Project, along with the amount due or to become due to each. Like statement may be required from any subcontractor of the SUBCONTRACTOR. Upon request, SUBCONTRACTOR shall furnish HOLLAND written evidence of payment of all bills and expense incurred for labor, services, equipment and materials used by SUBCONTRACTOR for the Work as well as written releases from all subcontractors, laborers, materials suppliers and equipment suppliers of any tier.

No payments of Invoices/Applications for Payment or portions thereof shall at any time constitute approval or acceptance of any Work under this Agreement, nor be considered a waiver by HOLLAND or OWNER of any of the terms of this Agreement. However, all equipment and materials for which title has vested in OWNER pursuant to the terms of this subcontract shall not be part of SUBCONTRACTOR'S property or estate, unless otherwise specified by applicable law, in the event SUBCONTRACTOR is adjudged bankrupt or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of SUBCONTRACTOR'S insolvency, or if all or any portion of this subcontract is terminated.

Unless otherwise provided by the Owner/Contractor Contract, the fact that payment has been made with respect to all or any portion of the Work shall not constitute an acceptance of that Work if it is defective or otherwise not in conformity with this Agreement, and shall not constitute a waiver of any of HOLLAND's or the Owner's rights or remedies against the Subcontractor with respect to any defects or other failures to conform to the Subcontract, including applicable requirements of the Owner/Contractor Contract.

SUBCONTRACTOR shall be responsible to perform maintenance and service programs, warranty/guarantee follow-ups, factory startups and seasonal adjustments or inspections as may be required for the full and proper performance of its work and as required by this Agreement.

#### **GP-56 ADMINISTRATIVE CLOSEOUT REQUIREMENTS**

To administratively close out this subcontract and as a condition precedent to receiving final payment, SUBCONTRACTOR shall submit, in addition to other requirements of this subcontract, the following documentation:

- a) Final Lien Waivers for the Subcontractor, its Suppliers and its Lower-tier subcontractors
- b) Warranties
- c) As-Built Drawings & Record Documents
- d) Operations & Maintenance Manuals
- e) Final Unconditional Lien Waivers
- f) Sustainability Documentation (if applicable)

SUBCONTRACTOR and each assignee, if any, under an assignment entered into under this Agreement and in effect at the time of final payment under this Agreement, shall execute and deliver, at the time of and as a condition precedent to final payment under this Agreement, a release in the form as required by HOLLAND or the OWNER, discharging HOLLAND and the OWNER, their officers, agents, and employees of and from all liabilities, obligations and claims arising out of or under this Agreement.