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IN THE CIRCUIT COURT IN AND FOR COLLIER COUNTY, FLORIDA
CIVIL DIVISION

WESTERN SURETY COMPANY,

Plaintiff,

Case No.:

v.

PCL CONSTRUCTION SERVICES, INC.,

Defendant.

_____ /

COMPLAINT

Western Surety Company (“Western”) files this Complaint against PCL Construction Services, Inc. (“PCL”), and alleges:

Jurisdiction, Parties, and Venue

1. This is an action for damages in excess of \$30,000.00, exclusive of interest, costs, and attorneys’ fees.
2. Western is a foreign corporation authorized to conduct business in the state of Florida.
3. PCL is a foreign corporation authorized to conduct business in the State of Florida.
4. Venue is proper as the actions giving rise to the Complaint occurred in Collier County, Florida.
5. All conditions precedent to this action have been performed, have occurred or have been waived by PCL.

The Performance Bond

6. PCL entered into an agreement (the “Subcontract”) with PWI Construction, Inc. (“PWI”) to perform major renovations to the Ritz Carlton Hotel in Naples, Florida (the “Project”). (Exhibit A). The original Subcontract was for a total of \$10,817,499.00 and was divided into Phase I (South Tower) and Phase II (North Tower) work.

7. In conjunction with the execution of the Subcontract, Western, as surety, issued a performance bond for the Project (the “Bond”) on behalf of PWI as Principal and PCL as obligee. (Exhibit B)

8. As the Florida Supreme Court has indicated, a Bond is a tripartite contract in which the Surety (Western), the Principal (PWI) and the Obligee (PCL) agree to various obligations and responsibilities to each other in connection with the Bond.

9. For instance, the Bond furnished by Western for the Project provides that should the Obligee declare PWI in default, the Surety shall be afforded several options regarding the completion of the Subcontract work:

1. **Complete the Subcontract** in accordance with its terms and conditions, or
2. **Obtain a bid or bids for completing the Subcontract** in accordance with its terms and Conditions, and upon determination of the Surety of the lowest responsible bidder acceptable to the General Contractor, arrange for a contract between such bidder and General Contractor, and make available as Work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Subcontract price [...]; and
3. Indemnify the General Contractor against loss, damage or liability resulting from Subcontractor’s default.

(emphasis added).

10. Here, PCL breached its obligations under the Bond by failing to allow Western an opportunity to select any one of these options. Instead, PCL took over the Project over Western's objections, thereby stripping Western of the very protections to which the Parties had agreed before issuance of the Bond.

Background

11. In approximately September of 2021, PCL wrote to Western concerning an alleged default by PWI relating to its work on the Project.

12. However, the September notice from PCL was unclear whether a default had actually occurred or what action, if any, PCL expected Western to take.

13. In response, Western requested certain, critical project documents and a contract accounting that were not provided until months later.

14. On January 26, 2022, Western received a copy of a letter from PCL to PWI alleging that although PWI was still working on the Project, it was in default. The only action PCL requested from Western was that it attend a site inspection, which it did.

15. In response to PCL's January notice, Western also retained a consultant and arranged for him to immediately visit the Project. In addition to visiting the Project and meeting with both representatives of PCL and PWI, the consultant obtained copies of the plans and specifications, and other Project related documents. Again, PCL took no action to remove PWI from the Project nor did it request Western to do so.

16. PWI continued to perform under the Subcontract and in February of 2022, completed its work on Phase I of the Project (i.e., the South Tower). PWI then began preparations for the upcoming work on the North Tower.

17. In response to PCL's allegations, PWI strongly denied it was in default and instead argued PCL was the breaching party. Additionally, PWI notified Western that any attempts by Western to take over the work would constitute tortious interference of its Subcontract by Western.

18. PWI continued with its efforts and preparations to commence work on the North Tower in May, 2022, the date required under the Subcontract.

19. On Friday, April 1, 2022 (after the close of business), PCL terminated the Subcontract.

20. Upon learning of the termination, Western immediately asked its previously retained construction and scheduling consultant to review the possibility of obtaining bids for the Project or utilizing PWI to complete the work.

21. Western's consultant, Mr. Carlos Carrillo, contacted PCL and PWI, along with other potential bidders.

22. His efforts were hamstrung, however, by the fact that PCL had already begun contacting various subcontractors to complete the Project. Instead of allowing Western time to investigate the remaining work and to obtain bids, PCL took it upon itself to take over the Project.

23. For example, on April 11, 2022, only 10 days into Western's investigation, PCL informed Western of its intent to ratify several of PWI's key trade subcontractors for the Phase II work.

24. Despite being formally notified by Western that it needed to abide by the terms of the Bond and to stop its attempts to rebid the Project, on April 19, 2022, PCL began ratifying subcontracts with PWI's subcontractors.

25. Thereafter, on May 2, 2022, PCL began work on Phase II without any regard to Western's rights under the Bond.

26. On May 5, 2022, PCL filed a Demand for Arbitration with the American Arbitration Association against both PWI and Western, Case No.: 01-22-0001-8848 (the “Arbitration”), alleging breach of the Subcontract against PWI and breach of the Bond by Western.¹

COUNT I

27. PCL breached the Bond by depriving Western of the opportunity to properly and thoroughly investigate its completion options and by impairing Western’s Performance Bond options.

28. For example, a condition precedent to Western’s liability under the Bond is Western’s right to either (1) complete the Subcontract itself or (2) obtain bids to complete the work.

29. PCL stripped Western of either option.

30. PCL attempts to justify its actions by arguing that Western had notice of PWI’s alleged defaults months prior to the termination and failed to act. This, however, is not only factually incorrect (i.e., PCL never requested Western to take over the Project nor could Western have done so until PCL terminated PWI), but it purposely ignores the plain reading of the Bond.

31. As a result of PCL’s breaches, Western has incurred substantial damages.

WHEREFORE, Western Surety Company (i) demands judgment against PCL for damages, interest, and costs; (ii) requests a jury trial as to whether PCL properly complied with the terms of the Bond; (iii) requests that the Court hold this matter in abeyance until the Arbitration proceedings between PCL and PWI are concluded so that the full extent of Western’s damages may be properly adjudicated or otherwise deemed moot; and (iv) any other relief this Court deems proper.

¹ Pursuant to Section 12.7.3 of the Subcontract, Western acknowledges that it is “bound” by any arbitration award on the underlying merits. Western, however, objects to any decision that attempts to divest this Court of jurisdiction to determine the cause of action stated herein.

Demand for Jury Trial

Western demands a jury trial on all issues so triable.

Dated this 7th day of June, 2022.

/s/ Christopher T. McRae
Christopher T. McRae
Florida Bar No. 865982
cmcrae@mcrametcalf.com
Megan M. Warren
Florida Bar No. 71079
mwarren@mcrametcalf.com
McRae & Metcalf, P.A.
2612 Centennial Place
Tallahassee, Florida 32308
Telephone (850) 386-8000
Facsimile (850) 386-8342

Attorneys for Western Surety Company

EXHIBIT

A



PCL CONSTRUCTION SERVICES, INC.

SUBCONTRACT

Project No.	6150004
Subcontract No.	50004015-OS
Cost Code	03130010-S
Req. By	TRS MW

This agreement is made this 2nd day of March 2021, by and between PCL Construction Services, Inc. ("Contractor") 6700 Forum Drive., Suite 100, Orlando, FL 32821 and PWI CONSTRUCTION, INC. ("Subcontractor"), 3903 WEST MARTIN AVE, Las Vegas, NV 89118 Witnesseth:

THE PROJECT

WHEREAS Contractor has entered into or will enter into a general construction contract ("The Prime Contract") dated November 23, 2020 with HOST HOTELS & RESORTS, INC. ("Owner"), to furnish certain materials, labor, and services necessary for the construction of: Ritz-Carlton Naples Tower Expansion and Guest Room Renovation ("The Project") located at: 280 Vanderbilt Beach Rd, Naples, FL 34108 in accordance with various contract documents hereinafter described, including certain drawings, specifications and addenda prepared by COOPER CARRY, INC ("Architect" / "Engineer"); and

WHEREAS Contractor desires to retain Subcontractor to furnish certain portions of the material, labor, and/or services for the Project.

NOW, THEREFORE, Contractor and Subcontractor agree as follows:

SECTION I
SUBCONTRACT WORK

1.1 Subcontractor shall, as an independent contractor, provide and furnish all labor, materials, tools, supplies, equipment, services, facilities, supervision and administration necessary for the proper and complete performance and acceptance of the following portions of the work (hereinafter the "Subcontract Work" as more specifically defined in the Uniform Special Conditions to Subcontract) for the Project, together with such other portions of the drawings, specifications and addenda as related thereto: Renovation and Conversion of Existing Resort as specifically outlined in Exhibit "A" attached.

1.2 Subcontractor is not required to adopt and implement a mandatory drug and alcohol testing program in accordance with Paragraph 6.7 of the Uniform Special Conditions to Subcontract.

SECTION II
SUBCONTRACT PRICE

In consideration of Subcontractor's performance of this Subcontract and the Subcontract Work, and at the times and subject to the terms and conditions hereinafter set forth, Contractor shall pay to Subcontractor the total sum of **TEN MILLION EIGHT HUNDRED SEVENTEEN THOUSAND FOUR HUNDRED NINETY NINE AND 00/100 DOLLARS (\$10,817,499.00)**, hereinafter the "Subcontract Price". The Subcontract Price includes all applicable taxes, licenses, permits, duties, fees, etc. required for the execution of this Subcontract, except as noted under Specific Exclusions.

SECTION III
SPECIAL CONDITIONS

The Uniform Special Conditions to Subcontract (Revised 08/16), containing Articles I through XXIV, are incorporated in the Subcontract as though fully set forth herein. Subcontractor hereby acknowledges receipt of the Uniform Special Conditions to Subcontract.

IN WITNESS WHEREOF, the parties have executed the Subcontract effective as of the date first written above by proper officer or duly authorized agents.

PWI CONSTRUCTION, INC.

By:  _____

Its: Senior Director _____

PCL Construction Services, Inc.

By: _____

Its: Authorized Representative _____



PCL Construction Services, Inc.
Ritz-Carlton Naples Tower Expansion and Guest
Room Renovation
SUBCONTRACT
EXHIBIT A

Project No.	<u>6150004</u>
Subcontract No.	<u>50004015-OS</u>
Req. By	<u>TRS MW</u>

PWI CONSTRUCTION, INC.
3903 WEST MARTIN AVE
Las Vegas, NV 89118

Hereinafter called "Subcontractor"

SUBCONTRACT WORK

Subcontractor shall provide and furnish all labor, materials, tools, supplies, equipment, services, facilities, supervision, and administration necessary for the proper and complete performance and acceptance of: **Renovation and Conversion of Existing Resort** for the project, as specifically defined in the following specifications, together with such other portions of the drawings, specifications, and addenda of the Prime Contract documents ("Subcontract Work").

This Subcontract amount includes, but is not necessarily limited to the following:

Furnish all labor, material, equipment, and supervision for all work outlined in Specification Sections, as follows:

Bid Package Manual - Bid Package B.13.3 – Existing Tower Conversions & Renovations - Addendums #01 through Revision #04, Post-Bid Addendum 01 through Post-Bid Addendum 02, and Revision #003

Division 00 - Procurement and Contracting Requirements

Division 01 – General Requirements

Specification Sections:

024119 Selective Demolition
051200 Structural Steel Framing
053100 Steel Decking
054000 Cold-Formed Metal Framing
054400 Cold-Formed Metal Trusses
055000 Metal Fabrications
057300 Decorative Metal Railings
061053 Miscellaneous Rough Carpentry
061600 Sheathing
064113 Wood-Veneer-Faced Architectural Cabinets
064214 Stile and Rail Wood Paneling
064216 Flush Wood Paneling
064400 Ornamental Woodwork
064600 Wood Trim
066400 Plastic Paneling

070150.19 Preparation for Reroofing
071300 Sheet Waterproofing
071413 Hot-Fluid-Applied Rubberized Asphalt Waterproofing
071613 Polymer Modified Cement Waterproofing
071616 Crystalline Waterproofing
071800 Traffic Coatings
072100 Thermal Insulation
072413 Polymer-Based Exterior Insulation and Finish System (EIFS)
072726 Fluid-Applied Membrane Air Barriers
073216 Concrete Roof Tiles
076200 Sheet Metal Flashing and Trim
077100 Roof Specialties
077200 Roof Accessories
078413 Penetration Firestopping
078443 Joint Firestopping
079200 Joint Sealants
079513.13 Interior Expansion Joint Cover Assemblies
079513.16 Exterior Expansion Joint Cover Assemblies
081113 Hollow Metal Doors and Frames
081416 Flush Wood Doors
081433 Stile and Rail Wood Doors
081613 Fiberglass Doors and Frames
083113 Access Doors and Frames
083213 Sliding Aluminum-Framed Glass Doors
088000 Glazing
092116.23 Gypsum Board Shaft Wall Assemblies
092216 Non-Structural Metal Framing
092400 Cement Plastering
092900 Gypsum Board
093013 Ceramic Tiling
093033 Stone Tiling
095113 Acoustical Panel Ceilings
095426 Suspended Wood Ceilings
096340 Stone Flooring
096400 Wood Flooring
096513 Resilient Base and Accessories
096519 Resilient Tile Flooring
096723 Resinous Flooring
096816 Sheet Carpeting
097200 Wall Coverings

097516 Stone Base
097519 Stone Trim
099113 Exterior Painting
099123 Interior Painting
099646 Intumescent Painting
102600 Wall and Door Protection
102800 Toilet, Bath, and Laundry Accessories
102819 Tub and Shower Enclosures
104413 Fire Protection Cabinets
104416 Fire Extinguishers
122200 Curtains and Drapes
123640 Stone Countertops
123661.19 Quartz Agglomerate Countertops
210500 Common Work Results for Fire Suppression
211200 Fire-Suppression Standpipes
211313 Wet-Pipe Sprinkler Systems
220500 Common Work Results for Plumbing
220519 Meters and Gages for Plumbing Piping
220523 General-Duty Valves for Plumbing Piping
220553 Identification for Plumbing Piping and Equipment
220700 Plumbing Insulation
221116 Domestic Water Piping
221119 Domestic Water Piping Specialties
221316 Sanitary Waste and Vent Piping
221319 Sanitary Waste Piping Specialties
221323 Sanitary Waste Interceptors
223300 Electric, Domestic-Water Heaters
224000 Plumbing Fixtures
230010 Basic Mechanical Requirements
230500 Common Work Results for HVAC
230513 Common Motor Requirements for HVAC Equipment
230516 Expansion Fittings and Loops for HVAC Piping
230517 Sleeves and Sleeve Seals for HVAC Piping
230518 Escutcheons for HVAC Piping
230519 Meters and Gages for HVAC Piping
230523 General-Duty Valves for HVAC Piping
230529 Hangers and Supports for HVAC Piping and Equipment
230548.13 Vibration Controls for HVAC
230553 Identification for HVAC Piping and Equipment
230593 Testing, Adjusting, and Balancing for HVAC
Ritz-Carlton Naples Tower Expansion and Guest Room Renovation
Subcontract No. 50004015-OS - PWI CONSTRUCTION, INC.
Naples, FL

230700 HVAC Insulation
 230800 Commissioning for HVAC
 230900 Instrumentation and Control for HVAC
 230923 Direct Digital Control (DDC) System for HVAC
 232113 Hydronic Piping
 232116 Hydronic Piping Specialties
 232123 Hydronic Pumps
 232300 Refrigerant Piping
 233113 Metal Ducts
 233300 Air Duct Accessories
 233423 HVAC Power Ventilators
 233600 Air Terminal Units
 233713 Diffusers, Registers, and Grilles
 233723 HVAC Gravity Ventilators
 237313 Indoor Central-Station Air-Handling Units
 237314 Outdoor Central-Station Air-Handling Unit
 238219 Fan Coil Units
 260000 Basic Electrical Requirements
 260519 Low-Voltage Electrical Power Conductors and Cables
 260526 Grounding and Bonding for Electrical Systems
 260533 Raceway and Boxes for Electrical Systems
 260553 Identification for Electrical Systems
 260573 Overcurrent Protective Device Coordination Study
 260923 Lighting Control Devices
 262200 Low-Voltage Transformers
 262413 Switchboards
 262416 Panelboards
 262726 Wiring Devices
 262816 Enclosed Switches and Circuit Breakers
 263600 Transfer Switches
 264113 Lightning Protection for Structures
 264313 Transient-Voltage Suppression for Low-Voltage Electrical Power Circuits
 265100 Interior Lighting
 275319 Emergency Responder's Distributed Antenna System (DAS)
 283111 Digital, Addressable Fire-Alarm System

Breakdown

The total contract value is broken down as follows:

Base Scope, Model Room Extrapolation, Model Room = \$17,750,000.00

PCL Procured Materials (Allowance) = (\$6,500,000.00)

Ritz-Carlton Naples Tower Expansion and Guest Room Renovation

Subcontract No. 50004015-OS - PWI CONSTRUCTION, INC.

Naples, FL

Model Room Electrical Extrapolation = \$97,572.00
Model Room (Previous Contract) = (\$235,466.00)
Sprinkler Modifications (Relocated 1 Head 330 Bays) = \$144,540.00
Rate Shaft Wall Repairs (4 Shafts per Floor) = \$75,000.00
Warehousing of FF&E = (\$600,000.00)
Bond = \$85,853.00
Total of This Subcontract = \$10,817,499.00

SUBCONTRACT EXHIBITS

1. Exhibit A - Scope of Work
2. Exhibit B - Project Specific Requirements
3. Exhibit C - Subcontractor Health, Safety, and Environmental Requirements_V1.1
4. Exhibit D - Schedule_V1.2
5. Exhibit E - List of Contract Documents_V1.1
6. Exhibit F - Prime Contract_V1.1
7. Exhibit G - Geotechnical Report_V1.1
8. Exhibit H - Site Logistics_V1.1
9. Exhibit I - Quality Control
10. Exhibit J - BIM Execution Plan
11. Exhibit K - Design Build Rider_V1.1
12. Exhibit L - CCIP Insurance Manual_V1.1
13. Exhibit M - Delineation of Scope Ritz Naples

1. Inclusions

General Requirements

1. It is understood and agreed upon that this Subcontractor shall furnish and install a complete installation for the Subcontract Work. Miscellaneous details required for a complete installation that may have been omitted in the Contract Documents shall be included as part of this Subcontract Work to complete an intended system or detail, and to complement and complete the intent of the Documents as a whole. This provision establishes the understanding that there will be no change orders on the Project unless they are related to scope changes initiated by the Owner.
2. This Subcontractor shall and will provide all labor, material, supervision, transportation, tools, rigging, insurance, licenses, layout, equipment, protection, storage, engineering, taxes, permit fees, and any other items required to furnish and install a complete scope of work required on The Ritz-Carlton Naples Beach Hotel Addition & Renovation.
3. All Work shall be performed in strict accordance with all Federal, State and Local codes and ordinances, and shall comply with all applicable OSHA and PCL Construction Services, Inc. requirements. Additionally, and without limitation on the complete scope of work, certain selected inclusions are listed in this Exhibit A for clarification. The list of inclusions is not exhaustive and is not intended to limit the Work in anyway.
4. Subcontractor and all of its Sub-tier subcontractors shall enroll in the Contractor Controlled Insurance Policy (CCIP) unless scopes of work are excluded by the CCIP policy and as such all required insurances shall be provided by this Subcontract.

5. Subcontractor shall be responsible for costs associated with drug testing required for own employees.
6. The Subcontract includes several Exhibits all of which are intended to further define the required scope and Contractual obligations, if however, there is a conflict that creates ambiguity it is understood that the more stringent shall apply.
7. It is understood that Exhibit F shall be interpreted that the term "Contractor" shall mean "Subcontractor" as it relates to the scopes of work included in this Subcontract. Furthermore, requirements of notifications and/or requirements when stated as "Contractor" shall notify "Owner" and/or "Architect" that this shall be interpreted as "Subcontractor" shall notify "Contractor".
8. Contractor's Project Schedule is subject to periodic revision and updates, which upon issuance shall be binding upon Subcontractor. Additionally, scheduled start dates if moved to an earlier and/or later date does not constitute cause and/or reason for acceleration and/or delay and such adjustments are included in the cost of this Subcontract.
9. Work performed by this Subcontract must be performed within the duration(s) published for activity and/or activities that describe Subcontractor's work, and it is understood that not every aspect of Subcontractor's scope of work will be individually shown in project schedule and this does not waive Subcontractor's obligations to perform it's work in required time frame to meet a required sequence of work shown in the Project Schedule.
10. In addition to the specifications specifically listed above, all related specification sections noted in the above listed specifications are included as they relate to execution, performance, quality, etc. to complete the scopes of this Subcontract.
11. All labor, material, and equipment cost/price escalation for the duration of the project is included.
12. Subcontractor has included sufficient mobilizations and demobilizations to perform the Work as dictated by the project schedule, look ahead schedules, and / or sequence requirements.
13. All materials and finishes are as specified, any scope items required but not specifically specified must meet or exceed local code.
14. Subcontractor is responsible for coordination of all required inspections by Local, State, and Federal agencies. The costs of all applicable licenses are included as part of this subcontract.
15. Subcontractor to provide protection and/or restoration of existing conditions as required.
16. Subcontractor shall provide access for its own work (i.e. ladders, bakers scaffold, etc.).
17. Subcontractor shall provide survey and layout for own work.
18. Subcontractor shall provide all material handling (i.e. forklift, pallet jacks, etc.) required for this scope of work.
19. Subcontractor shall provide loading, unloading, handling, storing and hoisting of materials with protect as needed.
20. Subcontractor shall provide minimum (48) hour notice prior to scheduled delivery and a "pick ticket" of quantities and item types being delivered on truck ahead of delivery.
21. Subcontractor shall provide all permits, licenses, testing, inspections and coordination with Authorities Having Jurisdiction required for the execution of this scope of work.
23. Subcontractor shall furnish and install all access panels/structures/pull boxes required for this scope of work.
24. Subcontractor shall provide all slab block outs, sleeves, cutting and patching as it pertains to this scope of work.
25. Subcontractor shall provide manufacturer approved installers as required by specifications and manufacturer requirements.
26. Subcontractor shall provide manufacturer field representative as required by specifications and manufacturers requirements.
27. Subcontractor shall furnish and install plywood backboards where required for own scope of work.
28. Subcontractor shall provide daily clean up and trash removal for Subcontractor's own work.
29. Subcontractor shall furnish all submittals, shop drawings, engineering, calculations, warranties, manuals, certified record set and electronic as-built drawings for this scope of work.
30. PCL to receive discounted rates for any extra work payable direct by PCL.
31. Subcontractor shall provide an updated change order log as a part of the monthly billing package.

33. The Contractor and/or Owner reserve the right to provide fixture/equipment and deduct material costs from Subcontractor's total contract value at their discretion.

Renovation and Conversion

1. Subcontractor shall furnish and install a complete scope of work, encompassing all contract documents, and specifications to complete a full renovation, and conversion of the existing tower. See Exhibit M - Delineation of Scope Ritz Naples to define limits of scope of work between existing .
2. Noisy work shall take place between the hours of 9am to 6pm Monday through Friday, and 10am to 5pm Saturdays and Sundays. Modifications to these hours are subject to resort operations.
3. Install temporary doors and barricades at end of corridor to segregate itself from resort guests. Additionally, provide barricading on level 2M public spaces as required for core drilling and plumbing modifications for floor 3.
4. Provide 48 hour notice prior to an utility outages. Subcontractor shall provide description of work to take place, and map outlining rooms being affected.
5. Provide to contractor daily sign-in sheets for its employees, and for that of its subtrades to be provided to resort loss prevention department.
6. Provide all dumpsters, wash outs, hazardous material storage, temporary toiles, handwash stations, etc. , as required per law, and resort requirements for entire duration of scope of work.
7. Protect smoke detectors, during scope of work. Protection shall be removed at the completion of each workday.
8. No substitutions are not acceptable unless already submitted, approved, and included in this subcontract.
9. Subcontractor shall maintain on site at all times a kit to respond to an accidental discharge or water, or fire sprinkler water, this shall include: pool hose and funnel to capture water, trash cans, key to fire riser, water extracting vacuum, air blowers, and fire sprinkler shut off tool.
10. Provide protection to all finishes to remain, and to all new finishes once installed.
11. Daily Cleaning – Daily cleaning to include, all work areas, rooms, corridors, elevators, unloading areas, path of travel, and laydown areas. Areas are to be cleared of debris daily. Utilize mopping, vacuuming, and wiping down to maintain a clean area. Complete cleaning prior to the end of each day.
12. Final Cleaning – Final cleaning to include rooms, corridors, and elevators. Final cleaning will be accepted once rooms are in a condition acceptable for guest occupancy with out further cleaning being required.
13. Vacuum or mop flooring prior to installation of Fixtures Furniture & Equipment (FF&E).
14. Clean path of travel from storage areas, loading docks, stair wells and parking areas each day. Pressure wash as required.
15. Document existing conditions prior to the start of work.
16. Provide all means of access including Scaffolding or lifts to access mezzanine level ceiling.
17. Provide all offices required for own site management personnel, including all permits, and utility hook-ups.
18. When crossing public pathways with furniture of vehicles provide flag man for safe travel of guests and other vehicles.
19. Provide operator for service elevator during duration of scope if required.
20. Provide access to roof for chimney replacement as required, including access for PCL, Owner and Inspectors.
21. Provide protection to existing hardscape and landscape as required to complete all work.
22. Protect smoke detectors, remove protection daily at the end of each work shift.
23. Protect service elevators during use, should damage occur, PWI shall repair at its own cost.
24. Repair, and touch-up paint back of house areas due to construction traffic if damage during renovation.

25. Protect all items to be reused or existing to remain. These items are to be turned over at equal or better condition than at start of project.
26. Furnish and install all backing, blocking, and strapping required for the project. Coordinate with other trades for requirements.
27. Complete all required moisture testing, and moisture mitigation for flooring as required for a complete, and warrantable scope of work.
28. Protect existing sprinkler heads during construction.
29. Prepare sprinkler shop drawings, as required by authority having jurisdiction for a complete scope of work.
30. South Tower portion of work Subcontractor includes all required exterior access via a Buckhoist, including but not limited to loading dock, operators, removal and reinstallation (with new) of existing handrails, electrical, all safety requirements (inspections, drop test, etc.), tie-backs, patching as required, foundations, temporary seals (waterproofing), replacement of balcony traffic coatings, and any craneage/operators/rigging/etc. associated with erection, jumping, and dismantle/removal from site.
31. Provide operator for Buck Hoist during renovation / conversion of south tower
32. Provide means of access to Buck Hoist and remove at the conclusion of construction.
33. Provide all scaffolding, shoring, and other supports to install Buck Hoist.
34. Remove and reinstall all railings at location of Buck Hoist installation.
35. Repair and patch all tie-back locations, balcony traffic coatings, paint, stucco, or similar items damaged due to Buck Hoist or scaffolding installation.
36. Patching/touch-up/replacement of exterior doors as required at buckhoist openings is included as means and methods, doors are to be turned over to match current existing conditions at a minimum.
37. Guestrooms which are being utilized for buck hoist access shall not be allowed to fall behind schedule. Coordinate work such that use and removal of buck hoist does not affect completion of these rooms.
38. Maintain fire watch during periods of down time on fire protection system, or fire alarm system.
39. Provide all carts, baskets, and other means required to move materials, or debris into and out of work areas.
40. Store all owner items to be turned over to owner at owner specified time and location.
41. Subcontractor to provide offsite parking for its forces, and forces of its subcontractors. Subcontractor to shuttle workers to and from parking area and jobsite as needed, all cost associated with shuttling and parking are included in this subcontract.
42. Provide fire extinguishers per NFPA requirements during construction.
43. Provide and maintain negative air pressure machines during construction.
44. Perform daily readings of air pressure differential.
45. Provide temporary construction filters for all Fan Coil Units (FCU) during construction.
46. Replace all FCU filters with new prior to turn over of room upon completion of construction.
47. If required clean FCU coils prior to start-up of unit.
48. FCUs shall be shut down during demolition, drywall installation and tile installation scopes of work.
49. Coordinate FF&E delivery with warehousing company.
50. Install all FF&E and Millwork FF&E provided by the owner.
51. Notify PCL immediately of any concealed damage, to FF&E upon receipt from the warehouse.
52. Provide quantification of all owner supplied wall covering, and carpet within 15 days of receipt of contract and within 15 days of receipt of any drawing revision.
53. Provide inventory of FF&E items damaged during installation. Inventory is to be provided after the completion of each floor.
54. Provide all shop drawings, engineer, and submittals for fire alarm scope of work.

55. Coordinate installation of all outlets with FF&E contractor, and FF&E drawings prior to installation.
56. Provide a payment and performance bond for entire scope of work; additions and deletions to this subcontract shall use 0.8% P&P bond.
57. Remove and rebuild (4) shaft wall assemblies, complete and up to code from floor 3 to 14.
58. Relocate (1) sprinkler head two feet within each single bay unit (330 units total) at entry foyers.
59. Model room extrapolation is the following and is included in the Subcontract amount and scope as follows: Model Room drawings dated 10/16/2020, new model room design has been inferred and applied across all applicable scopes of work and changes/modifications (material products, design details, etc.) are included across all room types and hereby supersede previous K&A design intent. The intent of this effort includes combining all scopes of work as required by the Permit Set dated 7/24/2020 and 12/18/2020 and including new scopes of work as per Model Room drawings, i.e. if Tile 01 was Dal-Tile Marble and is now Ceramic Techniques Porcelain then the new tile type is included (as an example only). A formal drawing revision is due mid-April in which it is anticipated to incorporate the model room design changes into all room types; if scope as shown on model room drawings is what is then shown in the forthcoming drawing revision then this "extrapolation" effort will confirm these incorporations as zero dollars. If changes are made that are different than model room design these items will be treated as a change.
60. Complete quality control and quality assurance inspections of all work put in place. Document these inspections and provide them weekly to contractor.
61. Owner and contractor have elected to furnish some materials for the project. These materials include:
 - Bathroom Fixtures
 - Bathroom Accessories
 - Tiles #1 to #8
 - Wood Flooring WD-02
 - Light Fixtures and Associated Drivers
 - Tape Lights and Associated Drivers
 - Stone #1 to #5

PCL has deducted the anticipated cost for purchasing of these materials for a total of \$6,500,000. This deduct is in the form of an allowance. Upon coming to a mutually agreeable credit for materials procured these costs will be reconciled, against this allowance. Reconciliation could be more or less than this \$6,500,000 credit.

Credits from subcontractor shall include, all material, overhead, insurance, required to procure these materials.

62. Subcontractor shall provide quantification of all materials furnished by others. Quantification should include neat quantity, waste, and attic stock. Quantification is due to contractor no more than 15 days after receipt of subcontract.

63. Subcontractor shall supply no less than the following staff:

Full Time Onsite:

(2) Sr. Superintendents

(1) Superintendent

(1) Project Engineer

Full Time Off Site:

(1) Project Manager

(1) Assistant Project Manager

Offsite personnel shall visit the jobs site no less than (2) times per month.

Deliverables (not inclusive but list includes critical start-up commitments):

1. Provide procurement log by scope broken down by material/equipment component 10 days after receipt of Subcontract.
2. Provide weekly updated procurement log, including all related vendor information, quantities, shipping/freight tracking numbers, etc.
3. All change pricing shall be broken down with back up on take-offs including breakdowns for all associated labor, materials, & equipment. Lump Sum change orders will not be accepted, if change pricing is not provided with appropriate breakdown after 10 days of rejection change will be included at zero dollars via Subcontract Revision.
4. Within 10 days of receipt of this Subcontract, list of all all sub tiers supply any labor, material, equipment including what scope of work they will be performing and indicating which have onsite labor work. Any subtler onsite labor subcontractor shall also be required to provide similar notice of their sub tiers as well as enrollment into the CCIP is required for any onsite work, failure to comply and any delays associated with enrollment is at the risk of this Subcontract and its Sub-Tiers.
5. All project submittals, including but not limited to mock-ups, product data, & shop drawings shall be submitted no later than 20 business days after receipt of this Subcontract. Procurement and lead times are to be coordinated with project schedule including allowing for adequate review times of submittals, and failure to provide timely submittals may require expediting, air freight, acceleration by this Subcontract at no additional cost.
6. Provide contractor with rough-in shop drawings for all mechanical, electrical, and plumbing items to be installed in each wall. Rough-in shop drawings shall be provided for each room type. Shop drawings to be provided not less than one month prior to start of construction.

2. Exclusions

1. Warehousing of Owner Furnished Fixtures Furniture and Equipment.
2. Any scope of work associated with new tower construction, this scope of work is for renovations of existing guestrooms/corridors only.

3. Textura®

The Uniform Special Conditions to Subcontract are modified as follows:

Paragraph 9.4 is deleted and replaced with the following:

As further condition precedent to payment by Contractor as referenced in Article 9., the Subcontractor shall submit the following at least five (5) days prior to the date Contractor is required to submit its progress estimate to Owner:

- (a) Subcontractor's monthly progress estimate and invoice, along with proper back up, all in a form satisfactory to Contractor and
- (b) waivers of lien rights ("Lien Waivers") from Subcontractor and its sub-subcontractors and suppliers in sufficient form for Owner and Owner's lender and title insurer, if any, to determine Contractor's right to payment under the Contract and all applicable laws, using the Textura® Construction Payment Management (CPM™) system

("Textura®"). Subcontractor is responsible for all fees and costs associated with the use of Textura®. Subcontractor agrees to enter into an agreement with Textura® with respect to the payment of fees for the use of Textura® and to pay such fees directly to Textura®. Fees, as of June 13, 2019, are specified in the table below:

Subcontract (SC) Value Fee

*Ritz-Carlton Naples Tower Expansion and Guest Room Renovation
Subcontract No. 50004015-OS - PWI CONSTRUCTION, INC.
Naples, FL*

\$0 - \$1,704,543.17 0.22% of SC

\$1,704,543.18 or greater \$3,750

Fees are subject to change in accordance with the agreement between the Subcontractor and Textura®.

4. Orlando District Mandatory Clarifications

All portions of the Subcontract Documents as defined in the Uniform Special Conditions are incorporated in this Subcontract by virtue of the Subcontract Agreement. However, certain portions of these provisions require special attention and/or action by Subcontract. These include, but are not necessarily limited to the following:

1. All material F.O.B. Jobsite.

2. All applicable taxes are included.

3. Schedule

a See Exhibit "D"

b Schedule compliance is critical. Subcontractor will commit all required resources to adhere to this schedule.

4. The Subcontractor will be required to furnish a written report for each day that he is on the project, which shall address work completed for that day, quality of the work, compliance with specifications, total man count and other information as required by Contractor.

5. The Subcontractor acknowledges that his Scope of Work and Subcontract Value reflects full coordination with interfacing trades. Contractor will not entertain any costs associated with Subcontractor omission of such work.

6. The Subcontractor shall install a job sample of his work in an agreed upon area of the building for the purpose of establishing the level of quality for this project. This sample shall be reviewed by the Contractor, Architect and Owner prior to the continuation of the work.

7. Although the Subcontract documents provided may be incomplete in detail, it is acknowledged that any work not specifically indicated in the Scope of Work or the documents but required to fulfill the intent of a complete job are considered to be included in this Scope of Work.

8. The Subcontractor will commit the necessary resources to price all changes to the Contract documents within one week after receipt of the change notification.

9. Subcontractor acknowledges and agrees that the indemnity provisions applicable to this Subcontract are intended to and do comply with Section 725.06 of the Florida Statutes. The parties hereby acknowledge and agree that to the extent Section 725.06, Florida Statutes, is applicable to the indemnity provisions contained in the Subcontract, that all terms and conditions of Section 725.06 have occurred, been fulfilled or waived and that the indemnity provisions herein contained are fully enforceable as written and the parties will not contend otherwise in any mediation, arbitration, or legal proceeding. The terms and conditions of the indemnity provisions shall survive the termination of the Agreement. Subcontractor acknowledges and agrees there is good and valuable consideration for the foregoing terms and obligations and that without Subcontractor undertaking such terms and obligations, Contractor would not enter into this Subcontract.

Veterans:

"This Contractor and Subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans."

Individuals with Disabilities:

“This Contractor and Subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.”

SUBCONTRACT PRICE

In US dollars unless specified otherwise in this Subcontract

Cost Code	Description	Total
03130010-S	Base Scope + Model Room Extrapolation + Model Room	\$17,750,000.00
03130010-S	PCL Procured Materials (Allowance)	(\$6,500,000.00)
03130010-S	Model Room Electrical Extrapolation	\$97,572.00
03130010-S	Model Room (Previous Contract)	(\$235,466.00)
03130010-S	Sprinkler Modifications	\$144,540.00
03130010-S	Rated Shaft Wall Repairs	\$75,000.00
03130010-S	Warehousing of FF&E	(\$600,000.00)
03130010-S	Bond	\$85,853.00
TOTAL OF THIS SUBCONTRACT:		\$10,817,499.00

UNIFORM SPECIAL CONDITIONS TO SUBCONTRACT

(Revised 8/1/2016)

The following Uniform Special Conditions to Subcontract are incorporated in the Subcontract between Contractor and Subcontractor:

ARTICLE I

SUBCONTRACT DOCUMENTS

1.1 The Prime Contract consists of the construction contract between Contractor and Owner for the Project and all addenda, modifications, and revisions thereto, together with all drawings, project manuals, specifications, conditions (general, technical, supplementary, and special), and all other documents listed in or referenced by the Prime Contract. The Prime Contract is incorporated herein by reference and made an integral part of the Subcontract. The Prime Contract shall be made available to Subcontractor upon request.

1.2 The Subcontract consists of the subcontract between Contractor and Subcontractor and all addenda, modifications and revisions thereto, together with all exhibits thereto, including these Uniform Special Conditions to Subcontract, and the Prime Contract as incorporated in 1.1 above. Subcontractor hereby represents and acknowledges that it has carefully reviewed and examined the Subcontract documents and that any and all ambiguities and discrepancies have previously been clarified and/or corrected. Subcontractor agrees that it will not make any claim or demand upon Contractor based upon or arising out of any misunderstanding or misconception on Subcontractor's part of the provisions and requirements of the Subcontract if Subcontractor knew or reasonably should have known of the ambiguity or discrepancy.

1.3 If Subcontractor discovers any ambiguity or discrepancy in the Subcontract relating to the Subcontract Work (as defined in Article II hereof), Subcontractor shall promptly notify Contractor of the same in writing. Subcontractor shall at its sole expense make any change in the Subcontract Work, and shall be responsible for the expense of changing the subsequent work of others, necessitated by failure to disclose said ambiguity or discrepancy which Subcontractor discovered or reasonably should have discovered.

1.4 All of the provisions which comprise the Subcontract shall be interpreted together and in harmony with one another. However, in case of conflict, the more stringent requirement shall control.

1.5 Subcontractor binds itself to Contractor and is obligated to Contractor in the same manner and to the same extent that Contractor is bound and obligated to Owner under the Prime Contract. All rights which Owner may exercise and enforce against Contractor may be exercised and enforced by Contractor against Subcontractor, including any claim or demand for indemnification or liquidated damages. Subcontractor shall be required to do all things and be bound by all decisions, directives, interpretations, and rulings of Owner, Architect, Engineer, or others authorized to act on behalf of Owner, including all decisions as to the scope of the Subcontract Work, to the same extent that Contractor is bound thereby. In no event shall Subcontractor be entitled to greater rights, higher entitlements or more relief against Contractor than Contractor actually obtains from Owner on Subcontractor's behalf or with respect to the Subcontract Work. To the extent the Prime Contract, or the law, require the inclusion of any provision, clause or other requirement in the Subcontract, or in the Prime Contract that relates to the Subcontract Work, those provisions, clauses and requirements are incorporated by reference in and made a part of the Subcontract as though fully set forth in the Subcontract.

ARTICLE II

SCOPE OF SUBCONTRACT WORK

2.1 The "Subcontract Work" includes the work set forth in Section 1 of the Subcontract, all incidental work usually performed under customary trade practices by the trades to be furnished by Subcontractor, and all changes in the Subcontract Work as described in Article XI hereof. The Subcontract Work shall be performed in accordance with the Subcontract and in a skillful and workmanlike manner, with material and equipment being of the kind and grade necessary to meet the intent of the Contract Documents. Subcontractor shall be responsible for any loss or damage to Contractor or others caused by Subcontractor's failure to perform its work in accordance with the terms of the Subcontract.

2.2 Except as otherwise agreed by Contractor and Subcontractor in writing, Subcontractor shall provide, at its own expense, all temporary and permanent tools, scaffolding, implements, shop and working drawings, samples, models, guarantees, licenses, unloading facilities and services, and all other items necessary for the proper performance and acceptance of the Subcontract Work. Subcontractor shall provide, at its own expense, all tests, inspections, quality control measures and permits necessary for the proper performance and acceptance of the Subcontract Work unless the Subcontract specifies that Contractor or another subcontractor is to provide such tests or permits.

2.3 Subcontractor shall, at its own expense, secure and pay for all permits, fees, licenses, assessments, testing costs, royalties, and taxes required for the Subcontract Work, and the costs of inspections which disclose, or are necessitated by, incorrect or faulty materials or workmanship. Subcontractor shall make all necessary arrangements and agreements, at its own expense, so as not to infringe on any patents, trademarks, or copyrights in the performance of the Subcontract Work. Subcontractor shall indemnify, hold harmless and defend Contractor and Owner from any claims or damages, including court costs, expenses and attorneys' fees, related to or arising out of any allegation that Subcontractor infringed on any patent, violated any copyright or trademark, or engaged in theft of trade secrets.

ARTICLE III VERIFYING PROJECT CONDITIONS

3.1 Prior to execution of the Subcontract, Subcontractor has examined the Project site and evaluated and satisfied itself as to the conditions and limitations under which the Subcontract Work is to be performed, including, but not limited to, examination of the Prime Contract, the Project site, all existing surveys, test reports, schedules, and all other available data and information regarding the Project and Project site. Subcontractor acknowledges that no conditions exist which would adversely affect the progress, schedule, performance or price of the Subcontract or the quality of the Subcontract Work.

3.2 Subcontractor is responsible for the proper layout and location of the Subcontract Work. Before proceeding with any portion of the Subcontract Work, Subcontractor shall thoroughly and accurately: (a) observe and verify all previous and surrounding work performed by others and determine the location, condition, and correctness of same, to the extent necessary, to assure that the Subcontract Work can be performed as intended; and (b) examine and measure all field conditions relating to the Subcontract Work.

3.3 Subcontractor shall give Contractor written notice of any condition it discovers which may or will adversely impact upon Subcontractor's performance of the Subcontract Work, such notice to be provided within forty-eight (48) hours after discovery and prior to any disturbance of the condition. Subcontractor shall, at its own expense, make any change in the Subcontract Work, and shall be responsible for the costs to change the subsequent work of others, or any other damages arising out of Subcontractor's failure to give such notice to Contractor or to satisfy its obligations under Paragraph 3.1 above.

3.4 Subcontractor shall abide by all Prime Contract and other legal requirements relating to archeological, paleontological, prehistoric and historic remains.

ARTICLE IV
COMPLIANCE WITH SCHEDULES; COOPERATION WITH OTHERS

4.1 Subcontractor shall proceed with each portion of the Subcontract Work in a prompt and diligent manner and in strict compliance with all schedules and sequencing, as directed by Contractor. Time is of the essence, and any time specified for the completion of the Subcontract, the Subcontract Work, or any portion thereof is a material provision of the Subcontract.

4.2 Subcontractor shall, within the time specified by Contractor and in no event more than thirty (30) days after the date of the Subcontract, furnish to Contractor all information and data requested by Contractor for the preparation of schedules, including progress schedules for the Subcontract Work, and submit the same to Contractor for review and approval. Subcontractor shall from time to time revise its progress schedules to conform to changes in the schedules as may be directed by Contractor, and submit the same to Contractor for review and approval.

4.3 Subcontractor shall furnish sufficient labor, materials and equipment to assure proper performance of the Subcontract Work in strict compliance with all schedules and as required in this Article IV. Subcontractor shall, if requested by Contractor, furnish adequate evidence to substantiate its ability to meet the schedules and planned progress of the Subcontract Work, including periodic progress reports setting forth the status of material, equipment, manpower and submittals.

4.4 Upon request by Contractor, Subcontractor shall promptly increase its work force, accelerate its performance, work overtime, additional shifts, premium time and work Saturdays, Sundays and holidays, all without additional compensation, if, as reasonably determined by Contractor, such work is necessary as a result of Subcontractor's failure or inability to maintain the current schedule due to Subcontractor's own defective or deficient work or other nonperformance.

4.5 Subcontractor shall conform to Contractor's hours of work. No premium time will be acknowledged or paid without prior written authorization by Contractor.

4.6 Subcontractor shall fully cooperate and coordinate its work with that of Contractor and any other subcontractor or supplier for the Project, and shall not interfere with Contractor's relationship with or the work of other subcontractors and suppliers. Subcontractor shall commence, continue, and complete the Subcontract Work so as not to delay completion of the Project or any portions thereof, including portions to be performed by others.

4.7 The responsibility of Subcontractor for prompt and timely performance shall not be deemed to be waived by any assent or acquiescence by Contractor to Subcontractor's late performance of a portion thereof.

4.8 In the event of Subcontractor's failure to comply with this Article IV, then in addition to the other remedies provided herein or available at law or in equity, Subcontractor shall be liable for all actual damages suffered by Contractor as a result of Subcontractor's failure to comply, including, but not limited to, loss of any "early completion" bonuses and that portion of any liquidated damages payable by Contractor to Owner pursuant to the Prime Contract and reasonably attributable to Subcontractor's failure to comply.

ARTICLE V
INSPECTION, STORAGE AND APPROVAL OF SUBCONTRACT WORK

5.1 Subcontractor shall be solely responsible for thorough inspections of the Subcontract Work for conformance with the Subcontract.

5.2 Subcontractor shall provide, and shall ensure that its sub-subcontractors and suppliers provide, sufficient, safe, and proper facilities for such inspection and/or observation of the Subcontract Work by Contractor, Owner, Architect or Engineer as may be
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Naples, FL

requested. Subcontractor shall, upon request, demonstrate and confirm the quantities and qualities of the materials and equipment being supplied to the Project.

5.3 Subcontractor shall store its equipment, material, and tools only in the areas designated by Contractor.

5.4 Subcontractor shall be responsible for the receipt, delivery, unloading, storage, warehousing, protection, and all risk of loss relating to any materials or equipment it is to furnish, install, provide, or have provided to it for performance of the Subcontract Work. Upon Contractor's payment for any materials or equipment purchased, received, stored, warehoused, or protected by Subcontractor, Subcontractor agrees to issue Contractor a bill of sale for all applicable materials and equipment and agrees to immediately transfer all rights, title and interest in such materials and equipment to Contractor. In consideration of payment by Contractor to Subcontractor for materials and equipment, Subcontractor also grants a security interest in favor of Contractor in and to such materials and equipment solely as a precaution against the holding by a court of applicable jurisdiction that Contractor is not the owner of the Personal Property. Subcontractor agrees to execute and deliver to Contractor from time to time such documents and to take such other steps as are reasonably requested by Contractor to perfect such security interest. Contractor may file such UCC-1 Financing Statements as may be reasonably required by Contractor from time to time to establish its interest in the materials and equipment. Subcontractor agrees to cause the materials and equipment to be stored in segregated areas from Subcontractor's own personal property and designate by a tag or other appropriate written notice affixed thereto that such materials and/or equipment belongs to Contractor. Regardless of any payment, the risk of loss of such materials and equipment shall remain upon Subcontractor until final acceptance of the Project by Owner. Subcontractor shall ensure that the materials it supplies have been suitably maintained to prohibit the growth of mold or the propagation of corrosion or rust.

5.5 If Contractor furnishes material or equipment to Subcontractor, Subcontractor shall, immediately upon receipt, make a thorough inspection as to the physical condition and suitability of the material or equipment, and shall immediately notify Contractor, in writing, of any defect or nonconformity in the material or equipment. If Subcontractor fails to provide such notice, Subcontractor shall be liable for all damages, and shall defend and indemnify Contractor against any claims, arising or alleged to arise out of such defect or nonconformity. Contractor shall not be liable for any deficiency in materials it receives at the site on Subcontractors behalf.

5.6 Subcontractor agrees that any tools, material or equipment of Owner or Contractor which are not to be incorporated into the Subcontract Work will be available to Subcontractor only with Contractor's express written permission and in accordance with Contractor's terms and conditions for such use. If Contractor allows Subcontractor to use any such equipment, Subcontractor agrees that any operator provided by Owner, Contractor or Subcontractor shall be the agent and servant of Subcontractor and Subcontractor shall be solely responsible for the acts of the operator during the time of Subcontractor's equipment use. Subcontractor shall, immediately upon receipt, make a thorough inspection as to the physical condition and suitability of any such tools, material or equipment and the competency of the operator, and shall immediately notify Contractor in writing, of any defect or nonconformity in the tools, material or equipment or any incompetence of the operator. If Subcontractor fails to provide such notice, Subcontractor shall be liable for any damages, and shall defend and indemnify Contractor against any claims, arising or alleged to arise out of such defect or nonconformity in the tools, material or equipment and incompetence of the operator.

5.7 Upon notice from Contractor, Subcontractor shall commence, and thereafter proceed diligently, to take down and remove, at its own expense, any designated portion of its work which is condemned or is disapproved as not being in compliance or conformity with the requirements of the Subcontract. Subcontractor shall promptly, at its own expense, correct the same. If Contractor determines that it will accept nonconforming work, Contractor shall be entitled to an equitable credit for the nonconformity.

5.8 Subcontractor shall promptly perform at its own expense any and all punch list work submitted to it by Contractor. If such work is not performed within a reasonable time prescribed by Contractor, then in addition to its other remedies provided herein or available at law or in equity, Contractor may complete the work and deduct the cost thereof from the Subcontract Price.

5.9 No substitution shall be permitted in the Subcontract Work or materials specified to be provided by Subcontractor unless permitted by the Subcontract, and Subcontractor shall first obtain written approval from Contractor for any such substitution. Subcontractor shall defend and indemnify Contractor against all claims and expenses incurred by Contractor as a result of any unapproved substitution.

5.10 Contractor and Owner shall be permitted to occupy and use any portion of the Subcontract Work that has been either partially or fully completed by the Subcontractor, but such occupation or use shall not be deemed to be a waiver by the Contractor of any of its rights against the Subcontractor unless there is an express agreement in writing to that effect.

ARTICLE VI SAFETY AND CLEAN-UP/JOB SITE MEETINGS

6.1 Subcontractor shall be solely responsible for the safety of its employees, sub-subcontractors, suppliers, and any other person for whom Subcontractor is responsible, and shall maintain its work area so as to at all times provide a safe working environment, including use of personal protective equipment, erection and maintenance of suitable fences, barriers, and barricades when specifically required for the performance of the Subcontract Work, and conformance with all safety policies and requirements of Contractor and with all safety requirements of any applicable governmental authority, including OSHA. Subcontractor shall replace any fences, barricades and/or barriers which Subcontractor removes or damages in the performance of the Subcontract Work and shall be responsible for maintaining a safe working environment while such fences, barriers and barricades are damaged or removed.

6.2 Subcontractor, its sub-subcontractors, suppliers, and any other person or entity for whom Subcontractor is responsible, shall not generate, release, dispose, introduce or transport any hazardous or toxic substance, material, waste, pollutant, chemical or words of similar import as defined in applicable federal, state and local environmental laws, at, near or on the Project without the prior written consent of Contractor. Subcontractor shall notify Contractor in writing if Subcontractor discovers at, near, or on the Project any actual or potential hazardous substance, material, waste, pollutant, chemical or words of similar import, such notice to be provided promptly but no later than twelve (12) hours of obtaining knowledge thereof. Such written notice must also be given to others at the Project Site and to governmental authorities, if appropriate or required by law, prior to exposure to such substance or chemical of any persons at the Project site and, in any event, in sufficient time to permit others at the Project Site to comply with all governmental laws, rules, and regulations. All such written notices shall include a description of the chemical composition of the substance or chemical in sufficient detail to permit compliance with all governmental laws, rules, and regulations, and Subcontractor shall furnish copies of all such notices to Contractor. Upon such discovery, Subcontractor shall cease any work which may impact the hazardous or toxic substance, material, waste, pollutant, chemical or words of similar import until receipt of a written notice to proceed from Contractor.

6.3 Subcontractor shall continuously maintain its work areas of the Project free from all dirt, rubbish, debris, and any other solid or hazardous or other waste materials in any form whatsoever and ensure their proper removal from the Project site or, if supplied by Contractor, to common receptacles or bins. On completion of the various portions of the Subcontract Work, Subcontractor shall broom clean its work areas.

6.4 If Subcontractor fails, upon twenty-four (24) hours written notice, to maintain its work area as herein required, then in addition to its other remedies provided herein or available at law or in equity, Contractor may cure the deficiency and deduct the cost thereof from the Subcontract Price.

6.5 Subcontractor shall attend all job site meetings as requested by Contractor, including regular informational, progress, and safety meetings.

6.6 Subcontractor shall ensure compliance by itself, its employees, and its sub-subcontractors with any applicable laws or regulations with respect to "drugs and the workplace," and shall be solely responsible for the consequence of any drug-related losses or expenses due to their noncompliance.

6.7 Subcontractor and its sub-subcontractors shall adopt and implement a written mandatory drug and alcohol testing program effective at the latest when the Subcontractor's or sub-subcontractor's employees first appear on-site that is compliant with the Prime Contract and with PCL's Subcontractor Safety, Health and Environmental Requirements, a copy of which is included as an exhibit to the Subcontract. In the event of a conflict between the Subcontract and the Prime Contract, the more stringent requirement will govern.

ARTICLE VII ASSIGNMENT/SUB-SUBCONTRACTORS/SUPPLIERS

7.1 Subcontractor shall not engage or employ any person or entity, including sub-subcontractors or suppliers, to which Contractor has reasonable objection, and shall immediately remove from the Project site any such person or entity. Promptly after executing the Subcontract, Subcontractor shall submit a list, for Contractor's review and approval, of sub-subcontractors and suppliers to be used in performing the Subcontract Work, and shall update this list as any changes occur.

7.2 Subcontractor shall not assign or sublet its obligations to perform the Subcontract, or any part thereof, without Contractor's prior written consent. Any such assignment or sub-subcontracting without such consent shall be void. If Contractor consents to an assignment of part or all of the Subcontract, or if Subcontractor assigns any accounts receivable relating to the Subcontract, such assignment shall be subject to and subordinated to: (a) all labor preferences and other liabilities, actual or potential, as may be imposed on Contractor due to any obligation or liability of Subcontractor; and (b) all payment obligations of Subcontractor under the Subcontract. Under no circumstances shall any valid assignment of accounts receivable by Subcontractor to a third party, whether by express approval or by operation of law, have priority over Subcontractor's payment responsibilities to Contractor, sub-subcontractors, suppliers, employees, union trust funds or taxing authorities. Subcontractor shall require any assignee who takes an interest in the Subcontract as collateral to agree that: (a) it shall have no right to payment unless and until all sub-subcontractors, suppliers, employees, union trust funds and taxing authorities have been paid, and any claims of Contractor have been satisfied; and (b) it will repay to Contractor immediately upon receipt any amount received in violation of this Paragraph, with or without demand by Contractor.

7.3 Contractor's consent to any such assignment or subletting shall not in any manner relieve Subcontractor of its obligations to Contractor under the Subcontract, and Subcontractor shall remain fully liable for the Subcontract Work, as performed by its sub-subcontractors, suppliers and assignees.

7.4 Contractor shall have the right to assign all or any portion of its rights and interests in the Subcontract to Owner, Owner's lenders, Contractor's sureties, a joint venture or partnership in which Contractor is a joint venturer or partner, or to any entity which is affiliated with Contractor, and Subcontractor shall thereupon have all of the same duties and obligations to said assignee as if said assignee had been the original contracting party hereto. Upon request, Subcontractor shall promptly provide Contractor with written confirmation of Subcontractor's consent to such assignment.

7.5 Each sub-subcontract and supplier agreement for a portion of the Subcontract Work is assigned by Subcontractor to Contractor, provided that assignment is effective only after termination of the Subcontract by Contractor pursuant to Article XXI and only for those sub-subcontract and supplier agreements that Contractor accepts by notifying the sub-subcontractor or supplier and

Subcontractor in writing; and assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Subcontract.

7.6 Subcontractor shall make prompt payment to all persons and entities to which it becomes obligated in connection with its performance of the Subcontract, including sub-subcontractors, suppliers, employees, union trust funds and taxing authorities, and shall, within ten (10) days of receiving notice of any lien or claim, take such action, at its own expense, as is necessary to remove any mechanic's liens or other claims which relate or are alleged to relate to the Subcontract Work and are filed against: (a) the Project or the property on which the Project is located; (b) Owner or Contractor; or (c) any bonds provided by Owner or Contractor in connection with the Project. Subcontractor shall further take such action, at its own expense, as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of any liens or other claims. Subcontractor shall defend and indemnify Owner, Contractor and their sureties against any claims, liens, actions and damages, including attorneys' fees arising or alleged to arise out of Subcontractor's failure to comply with this Paragraph.

ARTICLE VIII SUBCONTRACTOR'S SUPERINTENDENT

8.1 Subcontractor shall furnish a competent and experienced superintendent, approved by Contractor, at the Project at all times when the Subcontract Work is in progress. Said superintendent shall have authority to act on behalf of Subcontractor. Subcontractor shall not replace said superintendent without prior approval of Contractor, which approval shall not be unreasonably withheld.

ARTICLE IX PAYMENTS

9.1 If Contractor is entitled to apply for progress payments from Owner pursuant to the Prime Contract, Subcontractor shall be entitled to apply for progress payments for the Subcontract Work performed during the payment periods established in the Prime Contract, but not more frequently than monthly.

9.2 Within fourteen (14) days after execution of the Subcontract, Subcontractor shall prepare and submit to Contractor a schedule of values apportioned to the various divisions or phases of the Subcontract Work in a form acceptable to Contractor, which schedule of values must be supported by such documents and proof as Contractor may require. Said schedule of values shall be used for payment purposes only and shall not relieve Subcontractor of any responsibilities under the Subcontract. Contractor may, in its sole discretion, determine to waive the requirements set forth in this Paragraph, which waiver shall only be effective if in writing.

9.3 Progress payments shall be made by Contractor seven (7) days after a corresponding payment has been received by Contractor from Owner or its agent. In no event shall Subcontractor be entitled to receive any payment from Contractor or Contractor's sureties prior to Contractor's actual receipt of that payment from Owner. Contractor's receipt of payment from Owner shall be a condition precedent to any obligation of Contractor or its sureties to pay Subcontractor for any portion of the Subcontract Work, including retainage, progress payments, changes in the Subcontract Work as set forth in Article XI hereof, claims as described in Paragraphs 12.2 through 12.5 hereof, and final payment, and Subcontractor waives all right to commence litigation, arbitration or any other proceeding against Contractor or its sureties for payment until said monies are received by Contractor, unless nonpayment is caused solely by the wrongful acts or omissions of Contractor. Subcontractor acknowledges that it is relying for payment solely on Owner's willingness and ability to pay for the work performed, and not on the ability of Contractor or its sureties to pay for the work.

Subcontractor expressly agrees that it retains the risk of Owner's insolvency or inability or refusal to pay for the Subcontract Work,
Ritz-Carlton Naples Tower Expansion and Guest Room Renovation
Subcontract No. 50004015-OS - PWI CONSTRUCTION, INC.
Naples, FL

and such risk is not transferred to Contractor under the Subcontract. Subcontractor further acknowledges that it has had an adequate opportunity to perform its own inquiry into Owner's financing for the Project and is not relying on any information from Contractor. Subcontractor agrees that Contractor's sureties are intended third-party beneficiaries of this Paragraph. Subject to the foregoing, Subcontractor is not waiving its right to file a mechanic's lien under applicable law in the event that Subcontractor does not receive payment for the Subcontract Work.

9.4 As further condition precedent to payment by Contractor as referenced in Paragraph 9.3, Subcontractor shall submit the following to Contractor at least five (5) days prior to the date Contractor is required to submit its progress estimate to Owner: (a) Subcontractor's monthly progress estimate and invoice, along with proper back-up, all in a form satisfactory to Contractor; and (b) executed waivers of lien rights ("Lien Waivers") from Subcontractor and its sub-subcontractors and suppliers in sufficient form for Owner and Owner's lender and title insurer, if any, to determine Contractor's right to payment under the Subcontract and all applicable laws.

9.4.1 All Waivers shall be in a form satisfactory to Contractor. Unless otherwise required by the Prime Contract, Lien Waivers for work for which Subcontractor has not yet been paid, may be conditioned upon payment; and with respect to work for which Subcontractor has already been paid, the Lien Waiver must be unconditional.

9.4.2 Owner and/or Contractor shall be entitled to adjust Subcontractor's monthly progress estimate to the amount which Owner and/or Contractor reasonably believes to be the actual amount earned by Subcontractor during the applicable time period, and shall only be responsible for payment to Subcontractor of that adjusted amount.

9.4.3 Contractor may, in its sole discretion, determine to waive the requirements set forth in this Article IX, which waiver shall only be effective if in writing.

9.4.4 With respect to (a) work performed by Subcontractor on a cost-reimbursable basis, or (b) work for which Subcontractor seeks additional compensation in addition to the Subcontract Price, Subcontractor shall promptly permit Contractor or its agents or representatives to inspect and copy all of Subcontractor's relevant documents, related to the item (a) or (b) of this Paragraph.

9.5 Subcontractor agrees that all funds received by Subcontractor are to be held in trust, and Subcontractor further agrees to be bound as a fiduciary to Contractor and to Subcontractor's subcontractors and suppliers to apply the funds held in trust properly to payment of labor, equipment, services and materials in connection with the Subcontract Work.

9.6 Progress payments to Subcontractor for any payment period shall not exceed ninety percent (90%) of the value of Subcontractor's labor and materials which have been placed in position or suitably stored on the Project site and approved and paid by Owner for the Subcontract Work completed to date. In addition, Contractor may, in its reasonable discretion, withhold all or any part of payments due or to become due to Subcontractor to the extent necessary to protect and insure Contractor from any and all loss, damage, or expense, and/or Subcontractor may be back charged, on account of:

9.6.1 Subcontractor indebtedness to Contractor pursuant to the Subcontract or any other agreement between Subcontractor and Contractor or its affiliates or subsidiaries, whether or not such other agreement is related to the Project;

9.6.2 Defective Subcontract Work has not been remedied;

9.6.3 Subcontractor's failure to pay, or provide satisfactory evidence of payment to, sub-subcontractors, suppliers, employees, laborers, union trust funds and taxing authorities, or any claim or lien by any third party has been asserted or threatened with respect to the Subcontract Work;

9.6.4 Contractor has a reasonable basis to believe that the Subcontract Work cannot be completed for the unpaid portion of the Subcontract Price or in accordance with the schedule;

9.6.5 Contractor, Owner, or another subcontractor or supplier have been injured or damaged by Subcontractor's performance or failure to perform the Subcontract Work;

9.6.6 Subcontractor fails to submit waivers of lien rights and/or releases of claims as required in the Subcontract or fails to provide certified payroll data when requested by Contractor; or

9.6.7 Subcontractor's breach or threatened breach of this Subcontract.

9.7 All amounts withheld or retained by Contractor from monthly progress payments as provided in this Article IX shall be reduced to an amount then being withheld by Owner from Contractor for the Subcontract Work upon the latest to occur of the following:

9.7.1 Owner's release of any retainage it has withheld as to the Subcontract Work;

9.7.2 Substantial completion of the Subcontract Work;

9.7.3 The curing of all deficiencies set forth in Subparagraphs 9.6.1 through 9.6.7; and

9.7.4 Approval by Subcontractor's sureties of the reduction in retainage. Notwithstanding anything to the contrary herein, Contractor shall be entitled to withhold or retain amounts sufficient to reimburse Contractor for amounts owed by Subcontractor pursuant to Articles XV and XXI hereof.

9.8 In the event of a Revision or Construction Change Directive deleting a portion of the Subcontract Work, Contractor shall have the right to withhold from its periodic progress payments to Subcontractor an amount which Contractor, in its reasonable judgment, determines to be the value of such work. Said amount may be held by Contractor until the value of such work is determined by agreement or by the dispute resolution procedures provided in Article XII hereof.

9.9 Monies withheld or retained by Contractor from Subcontractor as provided in this Article IX shall not accrue interest.

9.10 Except as provided in Subparagraphs 9.6 through 9.8, final payment shall be payable to Subcontractor no later than thirty (30) days after final completion and acceptance of the Project by Owner and receipt of final payment by Contractor, subject to the provisions of Paragraph 9.3, or within thirty (30) days after any earlier final payment by the Owner for the Subcontract Work. Prior to final payment, Subcontractor shall submit, on behalf of itself and its sub-subcontractors and suppliers, all materials required by Article XVIII hereof, together with appropriate Lien Waivers, and verifying full payment of all monies due or to become due relating to the Subcontract. Subcontractor's requisite release must constitute a full release of Contractor and Contractor's sureties. If Subcontractor intends to exclude any claims from said release, the release shall specifically detail each and every claim that Subcontractor asserts against Contractor and its sureties, or said claims shall be deemed waived.

9.11 Subcontractor agrees it will pay all amounts owing to its sub-subcontractors and suppliers within seven (7) days of receipt of a progress or final payment from Contractor for all work performed and all materials furnished through the date of Subcontractor's payment request to Contractor, or within the time required by applicable law, whichever is less. Subcontractor agrees that Contractor may make payment to Subcontractor by check payable jointly to Subcontractor and its sub-subcontractors, suppliers, sureties, and/or governmental agencies when Contractor, in its sole discretion, determines such joint payment is necessary to protect Contractor or Owner from claims. Subcontractor agrees that a default by Subcontractor under this Subcontract shall constitute a default of any other contract between Contractor and Subcontractor or their affiliated entities, and that a default of any such other subcontract shall constitute a default of this Subcontract.

9.12 No payment, including final payment, shall be evidence of the performance of the Subcontract by Subcontractor, either in whole or in part. No payment shall be construed as an acceptance of defective or incomplete work, and Subcontractor shall remain responsible for its performance conforming with the requirements of the Subcontract.

9.13 If Contractor has furnished a performance and payment bond, Subcontractor hereby waives any right that Subcontractor may have to direct, request or order Owner, lenders, or title insurers to withhold amounts owed to Contractor to satisfy any claims of Subcontractor.

9.14 Contractor reserves the right to conduct an audit of Subcontractor's records pertaining to the Project at any time and for any reason, at Contractor's expense as reasonably necessary to assure Subcontractor's compliance with the Subcontract.

ARTICLE X

COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

10.1 Subcontractor shall comply, at Subcontractor's own expense, with all applicable laws, including, but not limited to, all federal, state and local statutes, regulations, rules, codes, ordinances, and permits, including those relating to labor, services and materials to be furnished as part of the Subcontract Work, health and safety, environmental compliance and regulation, removal and remediation of regulated substances, discrimination, immigration, fair employment, equal opportunity and worker's compensation. Subcontractor and its sureties shall defend, indemnify and hold harmless Contractor from and against any damages, penalties, or costs of any nature arising out of Subcontractor's failure to comply with such laws, or failure of Subcontractor's employees, agents, representatives, sub-subcontractors or suppliers to so comply.

10.2 When required under the Prime Contract or applicable law, Subcontractor shall comply with the applicable requirements of Executive Order 11246, including the maintenance and certification of non-segregated facilities, and the applicable provisions of 41 CFR Part 60-741 and 41 CFR Part 60-300. To the extent required by the Prime Contract, Subcontractor shall comply with the Federal Acquisition Regulation (FAR) clauses cited in the Prime Contract, the Federal Acquisition Regulations (FAR) Exhibit to the Subcontract as well as any other FAR or agency FAR supplement clauses including, but not limited to, FAR 52.203-13 - Contractor's Code of Business Ethics and Conduct, and 52.203-14 - Display of Hotline Poster(s).

10.2.1 This Contractor and Subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

10.2.2 This Contractor and Subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

10.3 Subcontractor is responsible for and will comply with local trade practices concerning workmanship and building codes. Subcontractor shall, at its own expense, correct any violations hereof, and shall defend, indemnify and hold harmless Contractor against all claims and expenses relating thereto.

10.4 In case of discovery of any variance between the Subcontract and any applicable statutes, regulations, rules, or ordinances, Subcontractor shall promptly notify Contractor thereof in writing, and make the necessary changes before proceeding with the Subcontract Work. In the event that Subcontractor discovers or reasonably should have discovered any such variance and fails to promptly notify Contractor, Subcontractor shall at its sole expense make any change in the Subcontract Work necessitated by failure to disclose such variance, and shall defend and indemnify Contractor against all claims and expenses relating thereto.

10.5 Subcontractor represents and warrants that, to the extent applicable, it is duly licensed, certified, and/or qualified by all applicable government authorities to perform the Subcontract Work and that it will maintain such licenses, certifications and qualifications at its own expense for a minimum of one year after the date of final acceptance of the Project or such other period required by the Prime Contract, law or regulation, whichever is greater.

ARTICLE XI
CHANGES IN SUBCONTRACT WORK

11.1 Contractor retains the right to make changes in the Subcontract Work, which may be accomplished after execution of the Subcontract by Revision, Construction Change Directive, or Field Order, subject to the limitations stated in the Subcontract. To aid Contractor, Architect, Engineer and Owner in determining whether to issue a proposed Revision, Subcontractor shall, upon request and at no additional charge, submit a budget and time estimate for review.

11.2 Changes in the Subcontract Work shall be performed under applicable provisions of the Subcontract, and Subcontractor shall proceed promptly with such changes, unless otherwise provided in the Revision, Construction Change Directive, or Field Order. If Subcontractor receives written direction from Contractor which Subcontractor considers to be a change in the Subcontract or the Subcontract Work, then Subcontractor shall notify Contractor in writing of the change, including any adjustment in the Subcontract Price or time for performance necessitated thereby, prior to performing work affected by such change, and within any applicable time periods required by the Prime Contract, or within ten (10) days of receipt of such direction from Contractor, whichever shall occur first. Contractor shall have no liability to Subcontractor for work relating to changes where such work was undertaken without written authorization from Contractor. Failure to provide timely notice of a change as required herein shall constitute waiver by the Subcontractor of any right to adjustment of the Subcontract Price or time for performance in connection with such change. If Contractor agrees there has been a change to the Subcontract or the Subcontract Work on account of Contractor's direction, then Subcontractor and Contractor shall proceed in accordance with this Article XI. If Contractor disagrees there has been a change, then Contractor shall notify Subcontractor of its determination. If Subcontractor disagrees with Contractor's determination, Subcontractor shall have the right to make a claim pursuant to Article XII. In any event, Subcontractor shall proceed in accordance with Contractor's direction without delay.

11.3 Where unit prices have been agreed upon by Contractor and Subcontractor, all adjustments, whether increases or decreases, shall be made in accordance with said unit prices. Unit prices shall be deemed to include all general and administrative expenses, overhead, profit, supervision, extended performance cost factors, and all other direct and indirect expenses.

11.4 A Revision is a written instrument prepared by Contractor and signed by Contractor and Subcontractor, stating their agreement upon all of the following:

- 11.4.1 A change in the Subcontract Work;
- 11.4.2 The amount of the adjustment in the Subcontract Price, if any; and
- 11.4.3 The extent of the adjustment in the time for performance, if any.

11.5 Within ten (10) days of receipt of any proposed Revision from Contractor or within such shorter time as may be prescribed in the Subcontract, Subcontractor shall notify Contractor in writing of any adjustment in the Subcontract Price or time for performance necessitated thereby, including a detailed breakdown of the difference in time required and value of the work, labor, services, and materials to be altered, added, omitted or changed, and including quotes from sub-subcontractors and suppliers. If Contractor and Subcontractor agree on all adjustments, and Owner issues a corresponding Change Order to Contractor, then a Revision will be issued to Subcontractor. If they do not agree, Contractor may issue a Construction Change Directive as provided herein.

11.6 A Construction Change Directive is a written order prepared and signed by Contractor, directing a change in the Subcontract Work and stating a proposed basis for adjustment, if any, in the Subcontract Price or time for performance, or both. A Construction Change Directive shall be used in the absence of total agreement on the terms of a proposed Revision.

11.7 If a Construction Change Directive provides for an adjustment to the Subcontract Price, and if unit prices have not been previously agreed upon, the adjustment shall be based upon one of the following methods:

- 11.7.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- 11.7.2 Unit prices subsequently agreed upon;
- 11.7.3 Cost to be determined in a manner agreed upon by the parties; or
- 11.7.4 As provided in Paragraph 11.10.

11.8 Upon receipt of a Construction Change Directive, Subcontractor shall promptly proceed with the change in the Subcontract Work involved and advise Contractor of Subcontractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Subcontract Price or time for performance.

11.9 A Construction Change Directive signed by Subcontractor indicates the agreement of Subcontractor therewith, including adjustment in Subcontract Price and time for performance, if any, and Subcontractor shall make no further claim for costs, time or other impacts relating to such change.

11.10 If Subcontractor does not respond promptly to a Construction Change Directive or disagrees with the proposed method for adjustment in the Subcontract Price, the method and the adjustment shall be determined on the basis of reasonable expenditures and savings attributable to the change, including, in case of an increase in the Subcontract Price, a reasonable allowance for Subcontractor's overhead and profit. In such case, Subcontractor shall keep and present, in such form as Contractor may prescribe, an itemized accounting, together with appropriate supporting data. In no event shall labor charges for overtime work exceed the standard percentage increase paid for similar overtime work in the community in which the Project is located. "Overhead" shall be deemed to include full and complete compensation to Subcontractor for all general and administrative expenses, home office overhead, field office overhead, bonding and insurance costs, and supervision, and shall be an amount consistent with the Prime Contract. In no event shall overhead and profit combined exceed that provided for in the Prime Contract or, in the absence of such provision, fifteen percent (15%) of the cost of the adjusted work performed by Subcontractor's own forces or five percent (5%) of the cost of work performed by sub-subcontractors. "Cost" for the purpose of this Paragraph means Subcontractor's net costs and shall be limited to the following:

- 11.10.1 Costs of labor, including Social Security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- 11.10.2 Costs of material, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- 11.10.3 Rental costs of machinery and equipment, exclusive of hand tools (for which overhead and profit shall be limited to five percent (5%)); and
- 11.10.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes related to the Subcontract Work.

11.11 Pending final determination of Subcontractor's cost, amounts not in dispute may be included in Subcontractor's applications for progress payments. When both additions and credits covering related work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

11.12 A Field Order is a written order signed by Contractor, directing a minor change in the Subcontract Work not involving adjustment in the Subcontract Price or time for performance and not inconsistent with the Subcontract. Such change shall be performed promptly upon issuance of the Field Order describing said change and shall be performed without any adjustment of Subcontract Price or time for performance.

11.13 Any disputes arising out of or relating to a request for or issuance of a Revision, Construction Change Directive, or Field Order, including disputes as to adjustments to the Subcontract Price or time for performance relating thereto, shall be resolved as provided in Article XII hereof.

11.14 With respect to (a) work performed by Subcontractor on a cost reimbursable basis and (b) work for which Subcontractor seeks additional compensation, Subcontractor shall permit Contractor to inspect and copy any of Subcontractor's relevant documents.

ARTICLE XII CLAIMS AND RESOLUTION OF DISPUTES

12.1 A claim is a demand or assertion made in writing by Contractor or Subcontractor seeking an adjustment in the Subcontract Price and / or time for performance, an adjustment or interpretation of the Subcontract terms, or other relief arising under or relating to the Subcontract, including the resolution of any matters in dispute between Contractor and Subcontractor in connection with the Project. Subcontractor shall make no claim or initiate any proceeding against Contractor arising out of or relating to the Subcontract, the performance of the Subcontract Work, or otherwise relating to the Project except as specifically provided herein, and then only after all required notice and claims procedures have been strictly followed. In the event of such claim, which must be submitted in writing, Subcontractor shall, upon request, make available to Contractor for inspection all of Subcontractor's files and records including its bid preparation files relevant to such claim.

12.2 Claims by Owner: Subcontractor shall defend and indemnify Contractor against any claim by Owner against Contractor (including any withholding of payment from Contractor) arising from or related to the Subcontract Work.

12.3 Pass-Through Claims:

12.3.1 If Subcontractor is unsatisfied with any proposed Revision or Construction Change Directive, or otherwise has a claim for which Owner is or may be responsible, Contractor, upon Subcontractor's timely request and at Subcontractor's sole expense, may assist Subcontractor in presenting its claims to Owner, Architect and/or Engineer, but in so doing Contractor acts solely as a conduit for such claim and assumes no responsibility or liability therefore.

12.3.2 Notice of any claim by Subcontractor which will affect or become part of a claim which Contractor is required by the Prime Contract to make within a specified time period or in a specified manner shall be made in writing no later than seventy-two (72) hours after the occurrence of the event giving rise to the claim, unless a shorter time is specified by the Prime Contract, in which event Subcontractor shall provide such notice within a sufficient time to permit Contractor to satisfy the requirements of the Prime Contract. Submittal of the details of any such claim shall be made in writing in sufficient time and sufficient manner to permit Contractor to satisfy the requirements of the Prime Contract. Such submissions shall be received by Contractor not less than ten (10) days preceding the time by which Contractor's submission must be made. Failure of Subcontractor to satisfy the requirements of this Subparagraph shall bind Subcontractor to the same consequences as those to which Contractor is bound.

12.4 Procedures for Claims Described in Paragraphs 12.2 and 12.3:

12.4.1 When Subcontractor prosecutes or defends any claim described in Paragraphs 12.2 or 12.3, Subcontractor shall follow all claim procedures in the Prime Contract.

12.4.2 If the Prime Contract is between Contractor and an instrumentality or agency of the United States Government, Subcontractor agrees that any claim by it will be prepared and submitted in full compliance with the Contract Disputes Act of 1978, as amended (41 U.S.C. Section 7101 et seq.), and shall pursue and exhaust the procedures of the Contract Disputes Act before commencing any other action for any claims it may have arising out of the Subcontract.

12.4.3 Subcontractor shall be bound to Contractor to the same extent that Contractor is bound to Owner by all determinations and decisions made by the Owner and/or in any proceeding authorized by the Prime Contract, including, but not limited to, any judicial or administrative court or tribunal, or any dispute review board or arbitration. Subcontractor has no cause of action against Contractor for any claims for additional compensation or damages for which Owner is or may be liable, unless and until such determination or decision has been made and Contractor has actually been paid such claim. Subcontractor's compensation on claims described in Paragraph 12.3 shall be limited to the compensation actually paid to Contractor in connection with those claims, and receipt of such payment by Contractor is a condition precedent to Contractor's obligations hereunder. Subcontractor acknowledges and agrees that a reasonable period of time for payment of the Claims described in Paragraphs 12.2 and 12.3 is the period of time that it takes to institute and complete a final and binding action against the Owner, including appeals.

12.4.4 In the event any award of additional compensation or damages on any claim, or reasonable settlement by Contractor of such claim, does not identify or allocate an amount to Subcontractor, then Subcontractor shall be entitled only to its proportionate share of any actual net recovery, if any, less overhead and profit to Contractor and less Contractor's expenses and attorneys' fees in handling the matter.

12.5 Remedies: Should Subcontractor's performance, in whole or in part, be delayed, disrupted, accelerated or suspended in the commencement, prosecution or completion of the Subcontract Work ("Delay"), for reasons beyond Subcontractor's control and without its fault or negligence, Subcontractor's sole remedy shall be as follows:

12.5.1 To the fullest extent permitted by law, if any Delay claim is based upon the action or inaction of Contractor, including action or inaction amounting to a breach of the Subcontract, or the action or inaction of any person or entity other than Owner, Subcontractor's sole remedy shall be a reasonable extension of the time for performance in which to complete the Subcontract Work.

12.5.2 If any Delay claim is based upon Owner's action or inaction, Subcontractor's sole remedies against Contractor shall be: (a) a reasonable extension of the time for performance in which to complete the Subcontract Work, provided that a similar extension of time has been granted to Contractor by Owner; and (b) to the extent that Owner pays amounts to Contractor as compensation for the Delay, such payment being a condition precedent to Contractor's obligation hereunder, then Subcontractor shall receive reasonable compensation for such Delay, not to exceed the amount actually received by Contractor as compensation for Subcontractor's Delay.

12.5.3 Subcontractor shall only be entitled to the remedies specified herein if Subcontractor shall have notified Contractor in writing of the cause of Delay no later than seventy-two (72) hours after the occurrence of the event causing the Delay, unless a shorter time is specified by the Prime Contract, in which event Subcontractor shall provide such notice within a sufficient time to permit Contractor to satisfy the requirements of the Prime Contract.

12.6 Joinder of Subcontractor: Contractor may, in its sole discretion, join Subcontractor in any dispute resolution proceeding to which Contractor is or becomes a party and which, in Contractor's sole judgment, relates to the Subcontract Work, including: (a) any dispute resolution procedure provided in the Prime Contract for disputes arising between Contractor, Owner and/or others, including arbitration and submission to Architect or Engineer; (b) litigation; (c) administrative proceedings; and (d) any other dispute resolution proceeding applicable under the prevailing law. If so joined, Subcontractor shall participate at its own expense in said proceeding, shall be bound by its outcome, and shall dismiss or abate any mediation, arbitration or litigation proceedings instituted against Contractor under Paragraph 12.7.

12.7 Claims between Contractor and Subcontractor:

12.7.1 If either party has claims against the other which are not covered under Paragraphs 12.3 through 12.6, the claimant shall provide written notice of any such claim to the other party within ten (10) days after the claimant knew or should have known of the facts giving rise to the claim, except as otherwise provided in Paragraph 12.5. For all claims, the party asserting the claim shall also submit a written summary of the claim as provided herein within sixty (60) days of submitting the claim notice. Such claim summary shall include a clear description of the claim and any proposed change in the Subcontract price (showing all components and calculations) and/or time for performance (showing cause and analysis of the resultant delay). Upon request, the party asserting the claim shall provide supporting documentation and/or data supporting the claim. Prior to the commencement of arbitration or litigation as provided in Subparagraph 12.7.2, each party agrees, upon the written request of the other party, to submit the claims to a mediator and to negotiate in good faith in an attempt to reach a settlement of the claims. Mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association. Neither party shall proceed with arbitration nor litigation as provided in Subparagraph 12.7.2 while mediation is ongoing, except as otherwise provided in Paragraph 12.6.

12.7.2 With respect to the claims identified in Subparagraph 12.7.1, if neither party requests mediation, or if mediation does not resolve the dispute, Contractor may elect at any time to arbitrate or to litigate the dispute, and Subcontractor hereby agrees to arbitrate if so elected by Contractor. Subcontractor agrees to dismiss or abate any proceeding pending in a forum other than that selected by Contractor. Any arbitration proceeding shall be governed by the Construction Industry Arbitration Rules of the American Arbitration Association, as supplemented by Subparagraphs 12.7.3 and by Paragraph 12.8 hereof. No arbitration or litigation shall include by consolidation, joinder or in any other manner, parties other than Owner, Architect, Engineer, Contractor, Subcontractor and any other persons substantially involved in a common question of fact or law, whose presence is required if complete relief is to be accorded. If arbitration is selected by Contractor, the award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

12.7.3 Subcontractor agrees to require its sureties and insurers to be bound by any arbitration award against it. Notwithstanding any provisions of law or rule of arbitration to the contrary, any party to an arbitration agreed to herein may avail itself of the discovery procedures provided for in the Federal Rules of Civil Procedure.

12.8 Waiver of Right to Jury Trial: Subcontractor waives its right to trial by jury in any litigation to which it is or becomes a party under the provisions of the Subcontract. Subcontractor agrees to include this condition in every subcontract and agreement for materials, supplies, labor or equipment entered into by Subcontractor relating to the Subcontract Work.

12.9 General Provisions:

12.9.1 Subcontractor shall proceed with the Subcontract Work, including any written directions of Contractor, and maintain its progress in all respects during the pendency of any claim, dispute, mediation, arbitration or litigation. Contractor shall continue to make all undisputed payments to Subcontractor that are otherwise due and required to be paid in accordance with Article IX.

12.9.2 If the elections afforded Contractor in Subparagraphs 12.7.1 or 12.7.2 hereof are not enforceable, then both parties shall be bound to resolve the dispute in accordance with the requirements of Subparagraph 12.7.2.

12.9.3 If Contractor has provided any bonds, Subcontractor agrees to stay any action or claim against Contractor and/or its sureties arising out of or relating to the Subcontract or the Subcontract Work pending the complete and final resolution, including appropriate appeals, of all claims involving the Subcontract or the Subcontract Work submitted pursuant to any of the dispute resolution procedures set forth in the Prime Contract or in Paragraphs 12.3 through 12.7 hereof. This provision in

no way excuses or stays Subcontractor's obligations to file any and all notices or claims as required by statute, code, rule, regulation or bond.

12.9.4 Should either party file a claim, initiate litigation, or demand arbitration in accordance with this Article XII, to enforce any of the provisions hereof, to protect its interests in any manner arising under the Subcontract, or to recover on a surety bond furnished by a party to the Subcontract, the prevailing party shall be entitled to recover from the other party and its sureties all reasonable attorneys' fees, costs, charges, expert witness fees, and expenses incurred in said proceeding.

12.9.5 The validity, interpretation, and performance of the Subcontract shall be governed by the laws of the State in which the Project is located, and Subcontractor hereby submits to the jurisdiction of that State. Any mediation, arbitration or legal proceeding permitted hereunder shall be commenced and proceed in the county in which the Project is located, unless the parties agree in writing to a different location.

12.9.6 Subcontractor agrees that Contractor's sureties are intended third-party beneficiaries of this Article XII.

ARTICLE XIII

INSURANCE

13.1 Prior to start of the Subcontract Work, Subcontractor shall obtain, and shall maintain until two years following final acceptance of the Project by Owner or such longer period as the Prime Contract may prescribe, all insurance coverage as may be specified in the Prime Contract or elsewhere in the Subcontract, and in amounts not less than those so specified. In no case, however, shall Subcontractor procure and maintain less than the following insurance coverages:

13.1.1 Worker's Compensation and Occupational Disease Coverage - Part I - coverage conforming with the statutory requirements of the jurisdiction in which the work is to be performed, the jurisdictions in which Subcontractor's employees reside, and the states in which Subcontractor is domiciled.

13.1.2 Employer's Liability Insurance - Part II - coverage with a limit of not less than the following amounts (including stopgap in "monopolistic" states):

Bodily injury by accident - \$500,000 each accident

Bodily injury by disease - \$500,000 each employee

Bodily injury by disease - \$500,000 aggregate policy limit

13.1.3 Other States' Insurance - Part III - coverage for all states other than those described in "Part I" above and other than "monopolistic" states. All worker's compensation endorsements furnished by Subcontractor must include the following:

Alternate Employer Endorsement, naming Contractor as the alternate employer (for Subcontractors who are providing leased workers to Contractor)

Voluntary Worker's Compensation Endorsement

United States Longshoremen and Harbor Workers' Endorsement (if applicable)

Maritime Endorsement (if applicable)

13.1.4 Comprehensive General Liability or Commercial General Liability (collectively, "CGL") - coverage with an occurrence limit of not less than \$2,000,000 combined single limit and an aggregate limit of not less than \$2,000,000. Claims-made policy forms are not acceptable unless prior written approval is given by an authorized representative of Contractor. Such coverage shall include Premises/Operations, Products/Completed Operations, Blanket Contractual (to insure defense and indemnity obligations specified herein), Broad Form Property Damage (including completed operations), Personal Injury,

Blanket XCU, Incidental Malpractice, Host Liquor Liability, and Independent Subcontractors and shall provide coverage

through the applicable statute of repose in the jurisdiction where work is performed. The CGL insurance limit shall be provided through a single primary policy. In the event Subcontractor is unable to procure the prescribed limit in a single policy, an excess policy will be acceptable only in the event it includes an endorsement specifying that the coverage provided in the excess policy will provide coverage on a follow-form, primary and non-contributory basis for all additional insureds where required by written contract.

13.1.5 Business Automobile - coverage with an accident limit of not less than \$2,000,000 combined single limit, including Owned, Hired, and Non-Owned Autos.

13.1.6 Contractor's Pollution Liability - coverage with a minimum of \$1,000,000 per claim and aggregate limit for any Subcontractor performing operations that may give rise to a pollution event or exacerbation of a known condition. Claims-made policy forms are not acceptable unless prior written approval is given by an authorized representative of Contractor. Such coverage shall include clean-up costs, natural resource damages, administrative fines and penalties, punitive damages where insurable, coverage for disposal of materials at non-owned disposal site, coverage for transportation of waste or material to and from a job site, site specific coverage for any staging or other leased locations used by Subcontractor for activities directly or indirectly related to the Project. Contractor reserves the right to require higher limits in the event the work performed by Subcontractor poses significant environmental risk.

13.2 Contractor makes no representations that the required minimum amounts of insurance shall be adequate to protect Subcontractor and the procuring and/or carrying of such insurance shall not limit Subcontractor's obligation or liability pursuant to the Subcontract or as a matter of law.

13.3 All insurance shall be procured at Subcontractor's expense. Its CGL policies shall be endorsed to name Contractor, Owner, Architect, Engineer and other parties as required in the Prime Contract as additional insureds.

13.4 Subcontractor shall require insurance with the same coverages and limits from its sub-subcontractors and suppliers, and their CGL policies shall be endorsed to name the same additional insureds as is required of Subcontractor.

13.5 All insurance required to be furnished by Subcontractor shall be maintained with insurance companies with a best rating of A- or better, which companies shall be an admitted carrier and subject to the applicable insolvency fund of the state in which the Project is located. Any exceptions to this requirement must be requested by Subcontractor in writing to Contractor and written consent received in writing from Contractor five (5) days prior to commencement of the Subcontract Work. Certificates of insurance for all coverage to be maintained by Subcontractor shall be delivered to Contractor five (5) days prior to scheduled commencement of the Subcontract Work. The policies required by the Subcontract shall be endorsed to state that the insurance afforded to the additional insureds on Subcontractor's CGL policies shall be primary insurance over any other valid or collectible insurance that the additional insured may have with respect to loss under the policy, other insurance of additional insureds applicable to the loss shall be excess over Subcontractor's policies, and the amount of Subcontractor's insurance company's liability shall not be reduced by the existence of any other insurance. Such additional insured endorsements shall be on forms GC 20 10, GC 20 37 or equivalent. Subcontractor agrees to waive, and shall require all subcontractors to the lowest tier to waive, all subrogation rights against Contractor, Owner, their parents, affiliates and subsidiaries, employees, and agents, and all other persons or entities providing labor or material to the Project as required in the Subcontract. Subcontractor will provide Contractor with 30 day written notice of any cancellation, material change or non-renewal of the insurance required by the Subcontract.

13.6 Failure of Subcontractor to maintain or furnish evidence of all insurance required herein shall permit Contractor, in addition to other remedies provided herein or available at law or in equity, to terminate the Subcontract or to obtain said insurance at Subcontractor's sole expense. Contractor's election to obtain said insurance shall in no case limit Contractor's other remedies nor reduce Subcontractor's responsibility pursuant to the Subcontract.

13.7 Subcontractor and Contractor shall pay all or a portion of all deductibles on any Builder's Risk policy obtained by Owner or Contractor as follows: (a) if Subcontractor and/or Contractor is responsible, in whole or in part, for the insured damages, each shall pay that part of the deductible proportionate to the insured damages for which it is responsible compared to the total insured damages; (b) Contractor will seek contributions from other subcontractors consistent with part (a); and (c) for that part of the deductible not paid under parts (a) or (b), Subcontractor shall pay, in addition to any payment required under part (a), an amount proportionate to the insured damages to the Subcontract Work compared to the total insured damages to the total Contract Work. If an earthquake causes damage to the Subcontract Work, and earthquake insurance is not required to be obtained in accordance with the Prime Contract, is otherwise not being provided, or is inadequate to cover the loss, Subcontractor shall be required to pay the amount necessary to restore the Subcontract Work in accordance with the Subcontract.

ARTICLE XIV

BONDS

14.1 When requested by Contractor, Subcontractor shall furnish to Contractor duly executed Performance and Payment Bonds or such substitute security as is acceptable to Contractor, provided that Contractor will pay the cost of such bonds if Contractor makes its request after the Subcontract has been executed. Said bonds shall be issued by such surety company and in such format as are satisfactory to Contractor, and shall provide that the sureties' obligations are co-extensive with those of Subcontractor under the Subcontract. Unless otherwise specified, said Bonds shall each be in the full amount of the Subcontract Price, and shall be promptly increased if the Subcontract Price is increased more than 15% above the original Subcontract Price. Failure to timely furnish the requested Bonds or to increase promptly the amounts thereof may be deemed a material breach of the Subcontract.

14.2 No change, alteration or modification to or deviation from the Subcontract shall release or exonerate, in whole or in part, any bond, or any surety on a bond given in connection with the Subcontract, and no notice is required to be given to such surety of any such change, alteration, modification or deviation.

ARTICLE XV

DEFENSE AND INDEMNIFICATION

15.1 To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Contractor, Owner, Architect, Engineer, their sureties, consultants, and all persons indemnified by Contractor pursuant to the Prime Contract, and all parents, subsidiaries, affiliates, agents and employees of any of them (the "Indemnitees"), from and against any and all claims, liabilities, liens, costs, damages, citations, penalties, fines, attorneys' fees, losses, and expenses of whatever nature (the "Indemnified Claim") arising out of or resulting from Subcontractor's performance of or failure to perform the Subcontract Work or Subcontractor's obligations under the Subcontract, including loss of use of any property resulting therefrom, but only to the extent caused in whole or in part by breach of the Subcontract or by negligent or otherwise wrongful acts or omissions of Subcontractor, Subcontractor's sub-subcontractors, suppliers, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. Such obligations shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to any Indemnatee, and shall survive the completion of the Project and final payment to Subcontractor. Subcontractor's obligations under this Paragraph shall be enforced regardless of whether or not the indemnified Claim is caused in part by one or more Indemnitees.

15.2 With respect to an Indemnified Claim against an Indemnitee, by an employee of Subcontractor, Subcontractor's sub-subcontractors, suppliers, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the defense and indemnification obligations under this Article XV shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Subcontractor or its sub-subcontractors or suppliers under worker's compensation acts, disability benefit acts, or other employee benefit acts.

15.3 The obligations of Subcontractor under this Article XV shall not extend to the liability of Architect or Engineer, their consultants, and agents and employees of any of them arising out of: (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications; or (b) the giving of or the failure to give directions or instructions by Architect, Engineer, their consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

15.4 Subcontractor's defense and indemnity obligations under this Article XV shall be limited to the extent necessary to comply with governing state and federal law. Subcontractor's defense and indemnity obligations shall survive the termination of the Subcontract for any reason.

15.5 Subcontractor shall maintain such insurance as is necessary to fully underwrite Subcontractor's defense and indemnity obligations hereunder.

15.6 In the event of any Indemnified Claim, or any threat thereof, Contractor may retain any and all monies due or to become due to Subcontractor under the Subcontract in an amount sufficient to assure Subcontractor's obligations under this Article XV. This right of retention is in addition to, and is intended to complement, that set forth in Article IX hereof.

15.7 Notwithstanding any provision to the contrary in any applicable law, including any statute of limitations, an Indemnitee's claim for indemnification by Subcontractor shall not accrue, and any applicable statute of limitations shall not begin to run, until Indemnitee's payment of a final judgment, arbitration award or settlement arising out of any Indemnified Claim.

15.8 With respect to any matter to which Subcontractor's defense obligations apply, the Indemnitee shall have the right, in its sole discretion, to assume its own defense. If the Indemnitee assumes its own defense, or if the Indemnitee incurs expenses or fees in connection with a defense undertaken by Subcontractor, Subcontractor shall reimburse the Indemnitee for all attorneys' fees and other expenses related to the preparation and defense obligations to the Indemnitee, such payment to be made within ten (10) days after Subcontractor's receipt of a statement of such fees and expenses. Subcontractor's obligations to defend the Indemnitee shall be independent of and in addition to Subcontractor's indemnity obligations, and shall apply to the fullest extent permitted by law.

15.9 To the extent that the Prime Contract imposes defense, indemnity or hold harmless obligations on the Contractor that are broader than the obligations contained herein above, then, to the fullest extent permitted by law, Subcontractor shall have the same defense, indemnity, and hold harmless obligations to Contractor that Contractor has to the Owner.

ARTICLE XVI

TAXES

16.1 Subcontractor is an independent contractor, and shall timely pay, or cause its sub-subcontractors or suppliers to pay, all taxes, tariffs, contributions, premiums, assessments, or fees imposed directly or indirectly on account of the Subcontract Work, including those payable on its employees or on its operations under Worker's Compensation Laws, Employment Welfare Benefit Plans, gross business taxes, and sales and use taxes and any other taxes, contributions and / or premiums which may become payable by operation of law or contract, including contributions payable by the employees. Subcontractor shall defend and indemnify Contractor against all liability, loss and expense resulting from Subcontractor's failure to comply with such requirements. At no time

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shall there be any increase in the Subcontract Price on account of any such tax or charge unless allowed by the Prime Contract. Subcontractor shall, if requested by Contractor, substantiate that all taxes and other charges have been and are being paid. If any claim or demand is made against Contractor for any matter enumerated herein, any payment due, or thereafter to become due, to Subcontractor shall be held by Contractor to cover such and expenses, including reasonable attorneys' fees.

ARTICLE XVII LABOR RELATIONS

17.1 Subcontractor shall do whatever is reasonably necessary in the prosecution of the Subcontract Work to assure harmonious labor relations at the Project and to prevent strikes or other labor disputes. Subcontractor shall fully abide by all labor agreements, project agreements, and jurisdictional decisions presently in force or subsequently executed with or by Contractor. Subcontractor's failure to so act may be deemed a material breach of the Subcontract.

17.2 If directed by Contractor to do so, Subcontractor shall honor, and shall direct all sub-subcontractors and employees, including but not limited to any striking employees, to honor, any and all "reserved gate" or "dual gate" arrangements. In the event that Subcontractor, its sub-subcontractors, or its employees fail to comply with this Paragraph, Contractor shall be entitled to avail itself of the remedies provided in Paragraphs 21.1 and 21.2.

ARTICLE XVIII SUBMITTALS, AS-BUILT DRAWINGS, ELECTRONIC DATA

18.1 Subcontractor shall prepare and submit to Contractor in a timely manner all shop drawings, product samples, test results, installer's instructions, certificates, and other required submittals, and obtain all required approvals, permits, and licenses, necessary or required in connection with the Subcontract Work. In no event shall said items be submitted to Contractor later than thirty (30) days following the award of the Subcontract without the written consent of Contractor.

18.2 Contractor's review of shop drawings or other submittals shall be for general concept only. Approval by Contractor of any submittals of Subcontractor shall not relieve Subcontractor of liability for any deviations from the Subcontract, unless said deviation is specifically called to Contractor's attention in writing and is then so approved by Contractor in writing.

18.3 Subcontractor shall submit to Contractor, within fifteen (15) days of the completion of the Subcontract Work, as-built drawings and / or record drawings of the Subcontract Work, and all warranties, guarantees, and maintenance and operation manuals with respect to the Subcontract Work.

18.4 Contractor may use Building Information Modeling ("BIM") to create a three dimensional electronic model of the Project (the "BIM Model," including all components of the model, all electronic data incorporated in the model, and all electronic or printed copies of the model and its components), based on the Prime Contract and information from other sources, for planning and coordinating the Project, including the Subcontract Work. Contractor may, at Contractor's discretion, provide Subcontractor electronic or printed copies of the BIM Model for reference, subject to the terms and conditions of this Article XVIII.

18.5 Subcontractor acknowledges and agrees that the BIM Model is not part of the Subcontract and does not define the scope of the Subcontract Work. The BIM Model is a device for illustrating the Project in three dimensions to enhance Contractor's understanding of the Project and to facilitate coordination of the Work of the overall Project.

18.6 Contractor makes no representations or warranties regarding the adequacy, accuracy or completeness of the BIM Model. Contractor shall not be liable to Subcontractor for any errors or inaccuracies in or related to the BIM Model and Subcontractor shall

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not be entitled to rely upon the BIM Model in connection with its performance of the Subcontract Work. The BIM Model shall in no way modify the Subcontract or relieve Subcontractor of its obligations to perform the Subcontract Work in accordance with the Prime Contract and to verify field conditions pursuant to Article III.

18.7 Subcontractor shall promptly report to Contractor, in writing, any apparent errors, inconsistencies, inaccuracies or omissions discovered by Subcontractor between the BIM Model and any of the Subcontract Documents, or between the BIM Model and actual field conditions. Subcontractor shall not proceed with those portions of Work which reasonably relate to any such apparent error or inconsistency until Subcontractor provides Contractor with a written report describing in reasonable detail such apparent error, inconsistency, inaccuracy or omission.

18.8 In the event the Subcontractor provides information for incorporation by Contractor into the BIM Model, Contractor shall have the right to rely upon the accuracy and completeness of such information.

18.9 Contractor shall be deemed the sole author and owner of the BIM Model and expressly reserves any common law, statutory and other reserved rights, including copyrights, for the BIM Model. The Subcontractor shall use the BIM Model solely for the Project. Subcontractor shall not use or copy the BIM Model in whole or in part for any purpose not related to the Project. Notwithstanding the foregoing, Subcontractor may use the BIM Model to prepare its shop drawings and other submittals for the Project, provided that Subcontractor shall be solely responsible for the accuracy and completeness of the shop drawings, including conformance with the Prime Contract and actual field conditions.

18.10 To the fullest extent permitted by law, Subcontractor shall indemnify, defend and hold harmless Contractor from and against any and all claims, liabilities, liens, costs, damages, attorneys' fees and expenses of whatever nature arising out of, resulting from, or related to the Subcontractor's reliance, use, dissemination or modification of the BIM Model. Subcontractor hereby releases Contractor from any present or future claim for damages of any nature whatsoever, including but not limited to economic losses or consequential or special damages caused by or alleged to be caused by any BIM Model or the use of BIM Model for the Project. This Article shall not limit or amend Subcontractor's other indemnity obligations pursuant to the Prime Contract or the Subcontract. This Article shall survive completion of the Subcontract Work or termination of the Subcontract for any reason.

ARTICLE XIX GUARANTEES AND WARRANTIES

19.1 Subcontractor, in addition to all other guarantees and warranties required by law or by the Prime Contract, and not in limitation thereof, warrants and guarantees that its work is in conformance in all respects with the Subcontract, and that it shall provide all necessary maintenance of the Subcontract Work until final acceptance of the Project. For one year after the date of final acceptance of the Project or such longer period as the Prime Contract or the law may provide, Subcontractor shall: (a) perform any corrective work on the Subcontract Work without cost to Contractor; and (b) pay for the cost of any corrective work to any adjacent work or materials damaged during or as a result of such corrective work within ten (10) days after receipt of written notice from Contractor and without cost to Contractor.

ARTICLE XX NON-INTERFERENCE WITH PRINCIPAL RELATIONSHIP

20.1 Subcontractor shall not interfere with Contractor's relationship with Owner, Architect or Engineer. Subcontractor shall not enter into any other contract relating to the Project without Contractor's prior written consent, which consent shall not be unreasonably withheld.

20.2 All communication between Subcontractor and Owner, Architect or Engineer shall be conducted through Contractor.

ARTICLE XXI

DEFAULT, SUSPENSION, TERMINATION FOR CONVENIENCE

21.1 Should Subcontractor: (a) fail to proceed with the Subcontract Work in the sequence directed by Contractor; (b) fail to prosecute the Subcontract Work diligently, including failure to provide sufficient numbers of skilled workmen or proper materials, or failure to adhere to the applicable performance schedules; (c) cause Delay as defined in Paragraph 12.5 hereof to the work of Contractor or other subcontractors, sub-subcontractors or suppliers on the Project; (d) fail to perform any of its obligations under the Subcontract; (e) fail to perform the Subcontract Work in accordance with the Subcontract; (f) file bankruptcy, assign assets for the benefit of creditors, become insolvent, or be unable or fail to pay its obligations as they mature; or (g) repeatedly perform the Subcontract Work in a manner which is rejected by Owner, Architect, Engineer, Contractor or governmental agencies having jurisdiction over the Project, then Contractor, without limiting other remedies available under this Subcontract, at law or in equity, may deem Subcontractor to be in default and, at Contractor's sole option, take one or more of the following actions:

21.1.1 Take temporary possession of all Subcontractor's material and equipment intended for performance of the Subcontract Work (whether or not located on the Project site) in order to assure its availability for completion of the Subcontract Work;

21.1.2 Upon seventy-two (72) hours prior written notice of default, and provided the default is not fully cured within seventy-two (72) hours, cure the default at Subcontractor's expense plus fifteen percent (15%) for Contractor's overhead and fee, and deduct the cost thereof from the Subcontract Price;

21.1.3 Where the work of other contractors will be materially delayed, Contractor may proceed upon written notice to immediately cure the default at Subcontractor's expense plus fifteen percent (15%) for Contractor's overhead and fee, and deduct the cost thereof from the Subcontract Price; and/or

21.1.4 Upon seventy-two (72) hours prior written notice of default, and provided the default is not fully cured within said seventy-two (72) hours, give Subcontractor written notice of termination of the Subcontract and, at Contractor's option, take possession of all of Subcontractor's material, equipment, manuals, records, drawings, and other items intended for the performance of the Subcontract Work (whether or not located on the Project site), which Subcontractor hereby assigns and transfers to Contractor for such purpose, subject only to Contractor's exercising its option pursuant to this Subparagraph 21.1.4. Contractor shall be entitled to retain the Subcontractor's material, equipment, manuals, records, drawings and other items until the Subcontract Work is completed, at which time, Contractor shall return all equipment, material and other items that are not incorporated into the Project and that are the property of the Subcontractor (e.g., tools and machinery).

21.2 In the event of termination of the Subcontract as provided in Subparagraph 21.1.4, Subcontractor shall receive no further payment of any unpaid portion of the Subcontract Price until such time as the Subcontract Work is completed, at which time Subcontractor will be entitled to the unpaid portion of the Subcontract Price, less all costs and expenses incurred by Contractor in curing said default and completing the Subcontract Work, plus fifteen percent (15%) for Contractor's overhead and fee, plus all costs and attorneys' fees incurred in connection with the default, the completion of the Subcontract Work, and the resolution of any dispute concerning the amount owing to Subcontractor. If said costs, expenses, overhead and fee exceed the unpaid portion of the Subcontract

Price, Subcontractor and its sureties shall be liable for, and shall promptly pay to Contractor, such excess amount, plus all costs and expenses, including reasonable attorney's fees, incurred by Contractor in obtaining such payment, and Contractor shall have a lien upon Subcontractor's material, tools, and equipment in Contractor's possession to secure payment thereof.

21.3 If Owner has the right to suspend or terminate the Prime Contract, in whole or in part, for convenience, whether or not the Prime Contract is in default, then Contractor has the right to suspend or terminate the Subcontract upon the same terms and conditions. Subcontractor's rights, obligations and remedies upon suspension or termination for convenience shall be limited to the corresponding rights, obligations and remedies available to Contractor under the Prime Contract. In the event of suspension or termination for convenience by Owner of the Prime Contract, or such portion of the Prime Contract relating to the Subcontract Work, Contractor shall suspend or terminate the Subcontract for convenience, and Subcontractor shall not be entitled to any compensation, for such suspension or termination except to the extent and in the amount that Contractor actually receives payment from Owner with respect to the suspension or termination of the Subcontract Work.

21.4 In the absence of an Owner suspension or termination for convenience as described in 21.3 above, the Contractor, upon forty-eight (48) hours written notice, shall have the additional right to suspend all or any part of the Subcontract Work for such period of time as may be determined to be appropriate for the convenience of the Contractor. The Subcontractor, after receipt of the Contractor's order, shall notify the Contractor in writing of the effect of such order upon the Subcontract Work. In the event the Subcontract Work is suspended hereunder, the Subcontract amount or Subcontract time shall be adjusted by Subcontract Change Order for any sustained and proven increase in the time or cost of performance of this Agreement caused by such suspension. Neither the Subcontract amount nor the progress schedule shall be adjusted for any suspension, to the extent that Subcontractor's performance would have been suspended due in whole or in part to the fault or negligence of the Subcontractor or by a cause for which Subcontractor would have been responsible.

21.5 The Contractor may at any time, terminate the Subcontract for the convenience of the Contractor and without any default under the Subcontract Documents. In the event of such a termination for convenience and notwithstanding any other provision of the Subcontract to the contrary, provided the Subcontractor is not in default, the Subcontractor shall receive, as its entire and sole compensation, its actual direct costs incurred in performing the Work to date of termination, as well as any loss sustained with respect to early termination of sub-subcontracts and supply contracts, and costs of demobilization as the Subcontractor may reasonably have sustained and proven as determined by audit of the Subcontractor's records, plus a reasonable markup for overhead and profit not to exceed fifteen percent (15%). In no event shall such amounts paid or payable hereunder exceed the then current Subcontract amount, nor shall Subcontractor be entitled to any profit on work not performed or any other consequential damage. The Subcontractor shall make its records available at reasonable times and places for the Contractor's audit.

ARTICLE XXII

CONTRACT INTERPRETATION AND MISCELLANEOUS PROVISIONS

22.1 The partial or complete invalidity of any one or more provisions of the Subcontract shall not affect the validity and continuing force and effect of any other provision.

22.2 The failure of either party to insist, in any one or more instances, upon the performance of any of the terms of the Subcontract shall not be construed as a waiver or relinquishment of such term as respects further performance.

22.3 Except as otherwise specifically set forth herein, the Subcontract is solely for the benefit of the parties hereto, and shall not confer any rights, remedies or benefits upon anyone other than the named parties hereto and their successors and assigns. In no event shall Contractor incur any third party liability or responsibility by virtue of the Subcontract.

22.4 The Subcontract constitutes the entire agreement between the parties, and supersedes all prior negotiations, representations or agreements, oral or written. It is expressly understood and agreed that there are no agreements or promises by and between said parties, except as aforesaid, and that any additions to and changes in the Subcontract shall be in writing and signed by both parties hereto, except as otherwise provided in Article XI hereof. No provision of the Subcontract is to be construed against any party, regardless of which party was responsible for drafting it. Titles, captions or headings to any Article, Paragraph or Subparagraph shall not limit the full contents of same, and said Articles, Paragraphs and Subparagraphs shall have full force and effect as if no titles, captions or headings existed.

22.5 All written notices required or permitted hereunder shall be delivered to the address or transmitted to the facsimile number or email address set forth on the first page of the Subcontract, or such other address or number as either party may designate by like notice. Subcontractor shall be deemed to have received notice of a fact, request, order or demand (i) when its Superintendent is notified, either orally or in writing, (ii) upon receipt of written notice, or (iii) three (3) days after written notice is sent by Contractor, whichever is earlier. Contractor shall be deemed to have received notice of a fact, request, or demand three (3) days after written notice is sent by Subcontractor.

22.6 All rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies that may be available to the parties, whether provided by law, equity, statute, in any other agreement between the parties or otherwise.

22.7 This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Signatures of parties exchanged by facsimile or other electronic means shall have the same force and effect as and shall be deemed as original signatures.

22.8 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER CONTRACTOR NOR SUBCONTRACTOR SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO LOSSES OF FUTURE OPPORTUNITY, BUSINESS, BONDING CAPACITY, REPUTATION OR FINANCING. Notwithstanding the waiver of consequential losses or damages set forth in this Paragraph, Contractor shall be entitled to recover against Subcontractor (i) any liquidated damages that Owner may assess against Contractor which are attributable to Subcontractor, even though both parties recognize that such liquidated damages may include some damages that might otherwise be deemed to be consequential and (ii) any losses, fines, penalties or damages, including consequential damages, that may be imposed upon Contractor by the Owner, Prime Contract, or as a result of a third party claim. The bar against recovery of consequential losses or damages in this Paragraph does not bar the recovery of Contractor's or Subcontractor's direct costs, indirect costs, extended or expanded overhead costs, or acceleration, lost productivity, or disruption costs incurred on the Project to the extent that they are otherwise recoverable under this Subcontract.

ARTICLE XXIII

PRESERVATION OF EVIDENCE AND RECORDS

23.1 Subcontractor shall reasonably cooperate with Contractor in the event of any accident or other event that may give rise to a claim against Contractor or Owner. To the extent possible, Subcontractor shall preserve all evidence, and shall not tamper with any evidence, related to the accident or event until Contractor has had an opportunity to investigate and to inspect the evidence.

23.2 Subcontractor shall preserve and maintain all documents and records, whether in hardcopy or electronic format, arising out of or related to this Subcontract or the Subcontract Work for a period of no less than three (3) years after completion of the Subcontract Work or the time required by the Prime Contract for the preservation of documents and/or records, whichever is greater.

ARTICLE XXIV
CONFIDENTIALITY

24.1 In this Article "Confidential Information" means all information, documentation or records of one party that are disclosed to the other that are marked "Confidential" at the time of disclosure or that would be considered by a prudent and reasonable businessperson to be confidential or proprietary in nature and includes all analyses, compilations, studies or other documents that contain or are derived from the foregoing information, documentation or records.

24.2 Subcontractor (the "Recipient") will hold in confidence any Confidential Information disclosed to it by Contractor (the "Disclosing Party"), to be used only for the purpose for which such Confidential Information was disclosed. Such obligation shall not apply to any information, documentation or records:

- (a) Which the Disclosing Party confirms in writing is not required to be treated as Confidential Information;
- (b) Which is in or becomes a part of the public domain otherwise than through disclosure prohibited by this Article XXIV;
- (c) To the extent either party is required to disclose such Confidential Information by applicable law;
- (d) To the extent such information, documentation or records were lawfully in the possession of the Recipient Prior to its disclosure by the Disclosing Party or
- (e) To the extent such information, documentation or records are received by the Recipient on a non-confidential basis from a third party, provided that to the best of the Recipient's knowledge, such third party was not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient.

24.3 The obligations of the Subcontractor pursuant to this Article are in addition to any confidentiality obligations under the Prime Contract that are incorporated into this Subcontract. All obligations of the Subcontractor and the Contractor pursuant to this Article shall survive termination of this Subcontract for any reason.

This Uniform Special Conditions to Subcontract form is the property of PCL Construction Enterprises, Inc. and may not be used by any unrelated company or person without its written permission.

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EXHIBIT

B

SUBCONTRACT PERFORMANCE BONDBond Number 30114399

KNOW ALL MEN BY THESE PRESENTS, that the undersigned PWI Construction, Inc. as Subcontractor, hereinafter "Subcontractor", and Western Surety Company as Surety, hereinafter "Surety", are held and firmly bound unto PCL CONSTRUCTION SERVICES, INC., hereinafter as "General Contractor", in the full and just sum of SEVENTEEN MILLION THREE HUNDRED SIXTY-NINE THOUSAND FOUR HUNDRED NINETY-NINE AND 00/100 Dollars (\$ 17,369,499.00), for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Subcontractor entered into a written contract dated March 2nd, 2021 with said General Contractor, hereinafter "Subcontract", for Renovation and Conversion of Existing Resort in accordance with drawings and specifications prepared by Cooper Carry, Inc, which said Subcontract is by reference made a part hereof.

NOW, THEREFORE, if the Subcontractor shall well and truly perform all the undertakings, covenants, terms, conditions and agreements of said Subcontract, during the original terms of said Subcontract and any extensions thereof that may be granted with or without notice to the Surety, and during the life of any guaranty or maintenance period required under said Subcontract, and shall also well and truly perform all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said Subcontract that may hereafter be made, notice of which modifications to the Surety being waived, then, this obligation to be void, otherwise to remain in full force and effect.

Whenever Subcontractor shall be, and be declared by General Contractor to be, in default under the Subcontract, the General Contractor having substantially performed General Contractor's obligations thereunder, the Surety shall within the time permitted Subcontractor under the Subcontract, remedy the default, or shall promptly:

1. Complete the Subcontract in accordance with its terms and conditions, or
2. Obtain a bid or bids for completing the Subcontract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder acceptable to the General Contractor, arrange for a contract between such bidder and General Contractor, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Subcontract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Subcontract price", as used in this paragraph, shall mean the total amount payable by General Contractor to Subcontractor under the Subcontract and any amendments thereto, less the amount paid by General Contractor to or for the benefit of Subcontractor; and
3. Indemnify the General Contractor against loss, damage or liability resulting from Subcontractor's default.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the General Contractor named herein or the heirs, executors, administrators or successors of the General Contractor.

Signed and sealed this 19th day of April, 2021

Mary Geph-
Witness

PWI Construction, Inc.
Company
By Jeff Ornel
Principal
Western Surety Company
By Hillary D. Shepard
Hillary D. Shepard, Attorney-in-Fact Surety

CERTIFIED COPY OF POWER OF ATTORNEY OF PERSON EXECUTING BOND FOR SURETY MUST BE ATTACHED.

Western Surety Company

EXHIBIT 7

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

James A Bracy, Terry Crull, Hillary D Shepard, Kristin D Thurber, Individually

of Scottsdale, AZ, its true and lawful Attorney(s)-in-fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 31st day of March, 2020.



WESTERN SURETY COMPANY

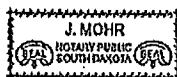
Paul T. Bruffat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 31st day of March, 2020, before me personally came Paul T. Bruffat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

June 23, 2021



J. Mohr, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 19th day of April, 2021.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Form F4280-7-2012

Go to www.cnasurety.com > Owner / Obligor Services > Validate Bond Coverage, if you want to verify bond authenticity.

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.