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Sub Contract Number: 4232-34

Cost Code Number: 15-050

THIS AGREEMENT (hereinafter the "Subcontract") made 10/7/04 by and between
"SUBCONTRACTOR" and "CONTRACTOR"

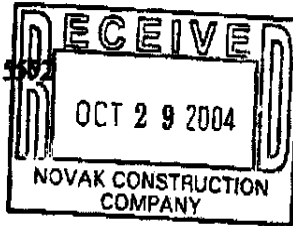
Chicago Cooling Corp
2728 N. Elston Ave.
Chicago, IL 60647

773.276.5000

Fax 773. 276. 5582

"PROJECT"

Little Black Pearl Workshop
1060 East 47th Street
Chicago, IL 60653



Novak Construction Company

3423 North Drake Avenue
Chicago, IL 60618

TEL: 773-278-1100; FAX 773-278-1119

"ARCHITECT"

K2 Architects

"OWNER"

Little Black Pearl Workshop

Subcontractor will furnish all labor, materials, supplies, insurance, taxes, supervision, overhead & profit, plant and equipment necessary to complete all HVAC work, in accordance with all plans, specifications, construction schedule, and work related documents as defined in the exhibits listed below, and made part of this agreement.

Subcontract Sum: \$208,353.00

This subcontract is based upon the Terms and Conditions attached hereto and incorporated herein.

The following exhibits are made part of this agreement and attached hereto:

- Exhibit "A" - Scope of Work
- Exhibit "B" - Drawing Logs, Specification and Addenda
- Exhibit "C" - Billing Instructions
- Exhibit "D" - Insurance Requirements
- Exhibit "E" - Subcontractor Change Order Request Format
- Exhibit "F" - Subcontractor Safety Requirements
- Exhibit "G" - Warranty/Guarantee Form

DB
OCT 11 2004

SUBCONTRACTOR

Chicago Cooling Corp

By: Dean Farber

Its: General Mgr. / Contractor

Date: 10/29/04

CONTRACTOR

Novak Construction Company

By: [Signature]

Its: Project Director

Date: 11/2/04

Please sign and return two (2) copies of this Subcontract Agreement for execution by Novak Construction Company.

Distribution: Subcontractor (1); Novak (1) [Acc. Supt cover sheet and Exh. A only.]

NOVAK 2001

EXHIBIT A

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3423 N. Drake Avenue • Chicago, Illinois 60618
(773) 278-1100 • FAX (773) 278-1119

Subcontract Number: 4232-34

SUBCONTRACT TERMS AND CONDITIONS**WITNESSETH:**

Subcontractor and Contractor, for the considerations hereinafter stated, agree as follows:

ARTICLE 1**SUBCONTRACTOR'S WORK AND CONTRACT DOCUMENTS**

- 1.1 The Subcontractor shall provide and pay for all labor, materials, tools, plants, supplies, scaffolding, transportation, insurance, taxes, equipment, and constant full-time supervision, and all other services and do all things necessary for the proper and complete performance, installation, and construction of all of the work identified in the attached Exhibit A, which is incorporated herein by reference as though herein set out in full (hereinafter the "Work") under and in accordance with the General Contract dated December 14, 2001 between Little Black Pearl (hereinafter called "Owner") and Contractor for the construction and completion of Little Black Pearl Workshop (hereinafter called "Project") located at 1060 E. 47th Street, Chicago, IL 60653 (hereinafter called "Job Site") in strict accordance with General, Special, Supplementary, and other Conditions, if any, and the Drawings, Specifications, and Addenda which are listed in Exhibit B which is attached hereto and made a part hereof and all Amendments and Alternates thereto, if any (hereinafter collectively called "Contract Documents"), all as prepared by K2 Architects. (hereinafter called "Architect"). The Contract Documents are hereby made a part of this Subcontract to the same extent as if attached hereto.
- 1.2 Subcontractor warrants and represents that it has examined and understands all of the Contract Documents and is fully aware of all of the terms and provisions recited therein and that it consents to all such provisions. Subcontractor represents that it is fully qualified to perform this Subcontract, and acknowledges that prior to the execution of this Subcontract, it has: (a) by its own independent investigation ascertained (i) the nature and extent of the Work, (ii) the conditions involved in performing the Work, and (iii) its obligations under the Contract Documents; and (b) verified all information furnished by Contractor and others, satisfying itself as to the correctness and accuracy of that information. Any failure by Subcontractor to investigate independently and become fully informed will not relieve Subcontractor from its obligations hereunder.
- 1.3 This Subcontract contains all the terms and conditions agreed upon between the parties hereto and all prior conversations, understandings, agreements, promises, letters, quotations, qualifications, and writings are null and void unless they are specifically included herein. Subcontractor agrees to be bound by the provisions of the General Contract insofar as they pertain to the Work notwithstanding any contrary provisions in any specifications, amendments, addenda, and drawings, and to perform on behalf of Contractor, each and all of Contractor's obligations under the General Contract in reference to the Work. Any decision of Architect or Owner, which is binding on Contractor relative to the Work, shall also be binding on Subcontractor. It also is agreed that no orders, interpretations, or modifications of the Contract Documents shall be construed as in any way altering or reducing the undertakings herein expressed, unless such orders, interpretations, or modifications are in writing and signed by an officer of the Contractor and consented to and approved by the Architect and Owner.
- 1.4 Subcontractor has inspected the site and has become fully acquainted with all conditions pertaining to the Work prior to executing this Subcontract. Execution of this Subcontract by Subcontractor shall constitute an acceptance by Subcontractor of the conditions of the site and the job conditions pertaining to the Work.

ARTICLE 2**CONTRACT SUM**

- 2.1 Subject to additions and deductions made as provided hereafter in Article 13 and subject to receipt of payment from Owner, which is a condition precedent to Contractor's obligation to pay Subcontractor under this Subcontract, Contractor, in the manner hereinafter specified, agrees to pay Subcontractor for the full and faithful performance of this Subcontract, the contract sum (hereinafter the "Contract Sum") of **TWO HUNDRED EIGHT THOUSAND THREE HUNDRED FIFTY THREE DOLLARS AND 00/100 (\$208,353.00)**. In the event that Owner, to the extent not the fault of Contractor, shall fail to pay Contractor for Subcontractor's Work then the obligation of Contractor and its surety, if any, for payment hereunder to Subcontractor shall be limited solely to pursuing, at Subcontractor's expense, such legal remedies as are available to it to cause Owner to pay for such Work.
- 2.2 The Contract Sum is a firm sum and any increase in the cost of labor, equipment, materials, or general conditions during the performance of the Work shall be borne by Subcontractor. Likewise, any savings in such costs shall inure solely to Subcontractor's benefit. Subcontractor acknowledges that the Project may not be completed within the time presently contemplated in the General Contract and that because of such delays, Subcontractor may incur substantial additional expenses, costs, and liabilities in the performance of its Work. In the event that, for any reason including, but not limited to, delays caused

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by Contractor, Owner, or Architect, the Project cannot be completed by the contemplated completion date and Subcontractor is required to perform its Work beyond said contemplated completion date required by the General Contract or this Subcontract, Subcontractor agrees that, as an inducement to Contractor to enter into this Subcontract, Contractor, Owner, and Architect shall not be liable to Subcontractor for any increase in cost of labor, materials, services, or any other losses, costs, expenses, or damages of any kind and description incurred by Subcontractor by reason of such delay except to the extent that Contractor, on Subcontractor's behalf and at Subcontractor's sole expense, is entitled and is able to recover the same from Owner under the General Contract. Except to the extent that losses, costs, expenses, or damages are recoverable under the General Contract, Subcontractor agrees to and hereby does waive any and all rights, claims and causes of action which it may have against the Contractor, Owner, and/or Architect on account of any such losses, costs, expenses or damages.

ARTICLE 3**SUBCONTRACTOR'S OBLIGATIONS**

- 3.1 Subcontractor shall perform the Work as an independent Contractor, under the general direction of the Contractor, and in accordance with this Subcontract.
- 3.2 Certain sections of the General Conditions, Specifications, and Addenda may have been attached hereto for the convenience of the Subcontractor. It is agreed, however, that the Subcontractor's obligations are not limited to the attached sections and that they may be affected by other sections of the Contract Documents. Instructions to Bidders, Specifications, Addenda, Amendments, or Alternates which, because of the large number of pages involved, have not been attached hereto are available for examination by the Subcontractor at the main office of Contractor. All provisions of the Contract Documents, which impose obligations upon Subcontractor, are incorporated herein by reference as if set forth herein in full, and Subcontractor shall be deemed to have read and understood all of said provisions and agreed to fulfill all of such obligations.

ARTICLE 4**TAXES**

Subcontractor hereby assumes and agrees to pay all sales, use, and other taxes levied or imposed on account of the sale of all personal property required by or used in the performance and execution of this Subcontract, and all taxes, duties, or charges levied or imposed, whether by any municipality, county, township, state, or the United States of America, on the materials and equipment provided and compensation paid by the said Subcontractor to individuals employed by it in the performance and execution of this Subcontract, and any interest or penalties assessed or imposed in connection with such taxes, contributions, and charges. Subcontractor waives any and all claims for additional compensation because of any new duties or taxes or any increases in the aforementioned duties or taxes unless payment therefor is specifically provided for in the Contract Documents, and Contractor receives same from Owner.

ARTICLE 5**PAYMENTS**

- 5.1 As a condition to payment to Subcontractor hereunder, Subcontractor shall, at least thirty (30) days before each payment hereunder becomes due, deliver to Contractor an Application for Payment and a Trade Payment Breakdown on Contractor's form showing each item of labor and materials incorporated into the Work during the preceding pay period and the value thereof. For payment requests which are made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site or at some other location agreed upon in writing, payments therefor shall only be made to the extent that Contractor is entitled to and receives payment from Owner under the terms and conditions of the General Contract. It shall be a further condition of any payment to Subcontractor hereunder that, from time to time as may be required by Contractor or the General Contract in applying for payment from the Owner, Subcontractor shall furnish to Contractor waivers of mechanics' liens and written statements, verified by affidavit acceptable to Contractor, which disclose the names of all parties furnishing materials or labor to Subcontractor, and its Sub-subcontractors, and the amounts due, and to become due, each of them in connection herewith, Subcontractor shall follow the requirements and use the form documents set forth in Exhibit C which is attached hereto and is incorporated herein.
- 5.2 All payments received by Subcontractor pursuant to this Subcontract shall be held in trust by Subcontractor and shall be used solely for payment of all labor, materials, equipment, services, and all other obligations incurred by the Subcontractor in connection with the Work, and shall not be used for any other purpose by Subcontractor until all obligations of Subcontractor in connection with the Work are satisfied in full. All material and work incorporated into the Project shall become the property of Contractor or, if the Contract Documents so provide, the property of the Owner.
- 5.3 If, at any time, including subsequent to the completion of the Work and final payment to Subcontractor, any lien, claim of lien, or bond claim against Owner's or Contractor's surety, if any, should appear which arises out of labor, material, and/or equipment furnished or purportedly furnished by Subcontractor, Subcontractor agrees to promptly and completely indemnify and hold Contractor, Architect and Owner, and each of them, harmless from and against any loss, liability, damage, costs, and expenses of every kind and description, including but not limited to title insurance costs and expenses, costs of special endorsements, and court costs and attorney's fees, sustained or incurred by reason thereof. Subcontractor shall, at its sole expense, defend any suit brought to enforce such lien, claim of lien or bond claim and shall promptly pay, in full, any judgment, interest, costs and attorney's fees entered in said suit. No payment bond or performance bond furnished by Contractor to Owner shall be deemed to relieve the Subcontractor of any of its obligations hereunder or to modify or terminate any rights of the Contractor hereunder. In the event any creditor or claimed creditor of Subcontractor asserts any claim or action against Contractor by way of garnishment,

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creditor's bill, or otherwise to obtain any monies due or to become due Subcontractor under this Agreement, Subcontractor agrees to pay Contractor the amount of any costs, expenses and attorney's fees which it may expend or incur in the defense of such claim or action.

- 5.4 No progress payment under this Agreement shall be conclusive evidence of the performance of the Contract, either wholly or in part, and no payment shall be construed to be an acceptance of defective work or improper materials.
- 5.5 During the satisfactory progress of the Work, and only after Contractor has received payment therefor from Owner, Contractor shall pay to Subcontractor ninety percent (90%) of the value of labor and materials incorporated into the Project through the last day of the preceding pay period as estimated by Contractor and approved by Architect, less the aggregate amount of previous payments; provided however that Subcontractor shall not be entitled to a payment which, in the judgment of Contractor, will leave the unpaid balance insufficient to complete the Work and to pay unpaid amounts owed by Subcontractor to its suppliers for labor and materials, and provided further that, if at any time before final payment, there should be reasonable evidence of any unpaid, or allegedly unpaid, obligation of Subcontractor for which a lien, notice of lien, or bond claim against Contractor's surety, if any, has been or could be claimed, Contractor shall have the right to retain out of any monies due or to become due Subcontractor a sufficient amount to indemnify Contractor and Owner, and each of them, against loss, liability and expenses (including attorney's fees) in connection with such claim or potential claim. Subcontractor agrees that Contractor, after giving written notice to Subcontractor, may pay all persons who have not been paid the monies due them in connection with this Subcontract, whether or not a lien or bond claim has been filed, unless Subcontractor, within ten (10) days after receipt of notice, or within such shorter period as Contractor finds necessary to meet its obligations to the Owner (i) demonstrates to the Contractor's satisfaction that such sums are not due and/or (ii) provides Contractor adequate security.
- 5.6 Final payment shall become due to Subcontractor only after a Certificate of Final Acceptance has been issued by Architect and after final payment for the Work is made by Owner to Contractor, and: (i) all required final waivers, affidavits, guarantees, releases, as-built drawings, and attic stock are submitted to Contractor by Subcontractor; (ii) the Work, including all punch-lists, and all other requirements of Subcontractor under the Contract Documents is fully completed; and (iii) satisfactory evidence is given to Contractor that all bills, claims, or other obligations of Subcontractor have been discharged in full. If there are any unsettled injuries, claims for injuries, or alleged injuries to persons or property when the Work is completed, final payment to Subcontractor shall be deferred until such claims are adjusted or suitable special indemnity and/or insurance acceptable to Contractor is or has been provided by Subcontractor. No certificate issued, or payment made to Subcontractor, nor any partial or entire use or occupancy of the Project by Owner shall be an acceptance of any Work not in accordance with the Contract Documents or deemed to be evidence of proper performance of work.

ARTICLE 6
TIME

Time is of the essence of this Subcontract. Subcontractor shall begin the Work within receipt of written or verbal notice from Contractor, and shall prosecute such Work diligently and in coordination and cooperation with all other subcontractors and other work on the Project, and shall at all times expedite the Work so as to permit the earliest completion of the Project. Subcontractor shall perform the Work in strict accordance with any progress schedule prepared and maintained by Contractor and shall otherwise perform the Work in such sequence and at such rate of progress as, in the sole judgment of Contractor, is necessary to achieve earliest possible completion of the entire Project with emphasis on those portions of the Project which Contractor deems most urgent. Subcontractor further agrees that if it delays the progress of its Work so as to cause any damage or penalty for which Contractor shall become liable, Subcontractor shall promptly, on demand, reimburse Contractor for any such amount.

ARTICLE 7
PROGRESS SCHEDULE

- 7.1 Contractor has prepared, or may prepare, a progress schedule in reference to Work under the General Contract. Contractor does not represent or warrant to Subcontractor that either the Work will be done in the sequence indicated by the progress schedule or at the times indicated therein. If the Work is behind the progress indicated by such progress schedule, Subcontractor shall not be entitled to any additional compensation or damages by reason thereof except as stated in Article 5 herein. Subcontractor shall also not be relieved of its obligation to diligently prosecute its Work. Further, if the Project is behind schedule and Contractor determines, in its sole discretion, that it is necessary to expedite completion, Subcontractor agrees to fully cooperate with the Contractor in expediting completion of the Project by furnishing such additional crews and equipment as Contractor instructs Subcontractor to furnish and/or to require its' personnel to work such additional hours as Contractor deems are required to expedite the completion of said Project within the time required. As a further inducement to Contractor to enter into this Contract with Subcontractor, Subcontractor agrees that, in the event it incurs any additional costs or expenses because it is required to furnish additional crews and/or to work its personnel overtime, it will not seek any additional compensation for said costs or expenses from Contractor except to the extent that Contractor, under the terms of the General Contract with Owner, is able to recover said costs and expenses from the Owner. Contractor shall be the sole judge of its entitlement to recover said costs and expenses from Owner. Subcontractor agrees that the Contractor's decision in that regard shall be final and binding upon it. Subcontractor further agrees to indemnify Contractor from any and all costs and expenses, including attorney's fees, which Contractor may incur in making claim against the Owner for Subcontractor's said additional costs and expenses.
- 7.2 Without limitation, in accepting this Subcontract, Subcontractor agrees that it will perform its Work so as to permit completion as rapidly as possible but in no event later than said date. If Subcontractor falls behind in performance of its Work, or otherwise,

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causes delay to the Project, Subcontractor shall be deemed to be in default hereunder and Contractor shall be entitled to pursue its' remedies as provided in Article 15 herein below.

**ARTICLE 8
SUBCONTRACTOR BONDS**

- 8.1 If requested by Contractor, Subcontractor shall at additional cost provide, as separate and distinct items:
- A performance bond which shall guaranty the full and faithful performance of this Subcontract by Subcontractor; and
 - A labor and material payment bond assuring that all materials incorporated into the Work, and all labor required in and about the performance of the Work, and all other items referred to in this Subcontract, are fully paid.
- Except as otherwise provided in section 8.2 of this Article, each of said bonds shall be: (i) in strict accordance with AIA Bond Form No. 312 in an amount or penalty equal to one hundred percent (100%) of the Contract Sum; (ii) in form acceptable to Contractor; and (iii) written with a corporate surety approved by Contractor, but in no event shall said surety carry a rating of less than "A" as rated by Best's Key Rating Guide."
- Failure of Subcontractor to submit said bonds, or either of them, within fifteen (15) days after delivery of this Subcontract to Subcontractor by Contractor shall be sufficient cause for Contractor, at its option, exercisable by written notice to Subcontractor, (1) to terminate this Subcontract as of a date specified in such notice, reserving all Contractor's rights arising from or incident to this Subcontract accrued to the termination date, or (2) withhold all payments due or which may become due hereunder until such bonds are received and approved by Contractor.
- 8.2 Notwithstanding any language in the performance or payment bonds which might indicate to the contrary, the performance and payment bond shall specifically extend to and cover the entire term of each guarantee, warranty, and maintenance obligation of Subcontractor and such bond shall be amended so as to fully cover such obligations.

**ARTICLE 9
INSURANCE**

- 9.1 Subcontractor shall maintain sufficient insurance (in amounts not less than those specified by the attached Exhibit D or required by the General Contract, Contractor, or applicable law, whichever is greater) to protect it, Contractor, Architect, and Owner, and such other parties as are required by Contractor or the Contract Documents, and each of them, from claims under workers' compensation disability benefit laws and other similar employee benefit acts, and also from any other claims for damages as a result of property damage, personal injury, or death suffered by employees, or persons other than employees, which may arise from operations under the Contract and/or against liability arising or claimed to arise out of the so-called Illinois Structural Work Act, whether such operations be by Subcontractor, or any of Subcontractor's subcontractors, or employees, or anyone directly or indirectly employed by either of them, or acting as agents for either of them. Such insurance shall include a so-called contractual liability provision or endorsement insuring Subcontractor against its indemnifying obligations under the Contract.
- 9.2 Adequate certificates of insurance, issued by companies satisfactory to Contractor and otherwise in accordance with the Contract Documents, shall be filed by Subcontractor with Contractor before the required date for commencement of its Work hereunder. Upon Subcontractor's failure to do so, Contractor shall have the option to have such insurance written and charge the cost of the policies therefor to the Subcontractor or to terminate Subcontractor pursuant to Article 15 of this Contract. Failure of Subcontractor to issue or maintain proper certificates of insurance with Contractor shall constitute an event of default by Subcontractor hereunder and, in addition to the remedies specified in Article 15 of this Contract, shall be cause for Contractor to withhold all payments which are due or become due until such proper certificates are issued and in force. Said certificates of insurance shall further provide that said insurance policies shall not be changed or cancelled during their terms until at least thirty (30) days after Contractor receives written notice from the insurers of their intention to change or cancel their policies, and that said insurance runs in favor of Contractor and/or Subcontractor as their interests may appear. Compliance by Subcontractor with the foregoing requirements, as to carrying insurance and furnishing certificates of insurance, shall not relieve Subcontractor from its' indemnity obligations under this Contract.
- 9.3 In respect to the public liability and property damage insurance which Subcontractor is obligated to purchase by the foregoing provisions, Subcontractor agrees to cause, at its sole expense, Contractor, Architect, and Owner, and such other parties as Contractor is required to indemnify by the Contract Documents, to be named as Additional Insured under said policy or policies of insurance. The certificate of insurance shall indicate that the Subcontractor's policy shall be primary insurance and that, if the Additional Insured have other insurance, which is applicable to the loss, such other insurance, shall be on an excess basis. The policy shall further provide that the amount of the Subcontractor's liability under this policy shall not be reduced by the existence of such other insurance. In any and all claims against Contractor, or any of its' agents or employees, by any employee or agent of Subcontractor, or by anyone directly or indirectly employed by Subcontractor for whose acts he may be liable, the indemnification provisions under the Contract and/or the Contract Documents by Subcontractor in favor of Contractor shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor under workers compensation disability benefit laws and other similar employee benefit acts or laws. The policy shall provide that Subcontractor waives all rights against Contractor, Owner, and such other parties as are required by Contractor and/or the Contract Documents for losses within the scope of and covered by Subcontractor's insurance.
- 9.4 Subcontractor must maintain completed operations coverage for a minimum of one (1) year after final payment or such other longer period as may be required by the Contract Documents.

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UNOFFICIAL COPY**ARTICLE 10
INDEMNIFICATION**

Subcontractor agrees to defend, indemnify, and save harmless Contractor, Architect, and Owner, and such other parties as Contractor is required by the Contract Documents to so indemnify, from and against any and all claims, demands, suits, actions, expenses, judgments, losses and liabilities, including fines and penalties, costs and attorney's fees arising out of or claimed to arise out of injuries to persons including, but not limited to, death, or to tangible and intangible property, including but not limited to the loss of the use thereof occasioned by or growing out of the execution or performance of Subcontractor's Work hereunder by either Subcontractor or Subcontractor's subcontractors or sub-subcontractors or suppliers. Subcontractor's obligations hereunder shall include, but are not limited to, obligations to indemnify Contractor, Architect, and Owner, and such other parties as Contractor is required by the Contract Documents to indemnify, from and against liability arising, or claimed to arise, out of the so-called Illinois Structural Work Act. Subcontractor's indemnifying obligation hereunder does not, however, include any claims, demands, judgments, suits, actions, expenses, losses and liabilities, including costs and attorney's fees, which are solely caused by the negligence of Contractor, Architect, Owner, and such other persons, whichever the case may be.

**ARTICLE 11
CHANGES**

All provisions and requirements of the Contract Documents, including procedural provisions and requirements, shall apply to any changes, omissions or extra work hereunder in like manner, and to the same extent, as they apply to changes, omissions, or extra work under the General Contract and no such changes, omissions or extra work shall annul or invalidate this Subcontract. As to any such changes, omissions or extra work:

- 11.1 Contractor may, at any time, unilaterally or by agreement with Subcontractor, without notice to the sureties, order changes in the Work. Any unilateral order or agreement under this Article 11 shall be in writing. Subcontractor shall perform the Work as changed, without delay.
- 11.2 Subcontractor shall submit to Contractor any requests or claims for adjustment in the Contract Sum, schedule or other provisions of the Subcontract as a result of alleged deficiencies or discrepancies in the Contract Documents, or for circumstances otherwise permitted by the Contract Documents. Said requests or claims shall be submitted in writing by Subcontractor in time to allow Contractor to comply with the applicable provisions of the Contract Documents. Contractor shall process said requests or claims in the manner provided by and according to the provisions of the Contract Documents so as to protect the interest of Subcontractor and others including Contractor. Subcontractor adjustments shall be made only to the extent that Contractor is entitled to relief from or must grant relief to Owner. Further, each Subcontractor adjustment shall be equal only to Subcontractor's allocable share of any adjustment in Contractor's contract with Owner. Subcontractor's allocable share shall be determined by Contractor, after allowance of Contractor's normal overhead and profit or any recovery and Contractor's expense of recovery, by making a reasonable apportionment, if applicable, between Subcontractor, Contractor, and other subcontractors or persons with interests in the adjustment. This paragraph shall also cover other equitable adjustments or other relief allowed by the Contract Documents.
- 11.3 Payment on account of changes made by the Owner shall be made only if Contractor receives such payment from the Owner for Subcontractor's changed work and upon the receipt by Contractor of a fully completed "Subcontractor/Vendor" Change Order, in the form attached hereto as Exhibit E, which is signed by an appropriate representative of Contractor. Each payment to Subcontractor because of change orders shall be equal to Subcontractor's allocable share of Contractor's payment from Owner for the change as determined by Contractor. Amounts paid because of pending changes are provisional and not an admission of liability and shall be repaid to Contractor on demand whenever Contractor determines there has been overpayment.
- 11.4 For changes ordered by Contractor, independent of Owner or the Contract Documents, Subcontractor shall be entitled to an equitable adjustment in the Contract Sum as determined by Contractor. If Subcontractor considers any action or inaction by Contractor to be a change in the Work, it shall so notify Contractor in writing within three (3) days after the commencement of said action or inaction and shall request appropriate relief from Contractor. Failure to comply with this procedure shall constitute a waiver of Subcontractor's right, if any, to compensation for such action or inaction.
- 11.5 Subcontractor shall, within seven (7) days after receipt of a request by Contractor, submit a complete and detailed price quotation for proposed changes. If Subcontractor fails to do so and Contractor is required to submit a proposal to the Owner which includes a proposed change to Subcontractor's work, Contractor shall use its best estimate of the proposed change and the cost thereof, as it affects the Subcontractor's work, in Contractor's quotation to the Owner, which estimate shall be the maximum equitable adjustment due to Subcontractor.
- 11.6 Subcontractor agrees that the maximum allowable percentages for overhead and profit to Subcontractor on proposals which represent an increase in the cost of the Work shall be limited to Ten Percent (10%) with no additional markup allowed for bond premiums (unless said additional markup for bond premiums is specifically allowed by the General Contract and Contractor receives payment for same). For work performed by sub-subcontractors, markup by Subcontractor shall be limited to Ten Percent (10%).

**ARTICLE 12
SETTLEMENT OF DISPUTES**

- 12.1 In the event of any dispute between Contractor and Subcontractor involving the Work, including extra Work, Contractor shall issue a decision, which shall be followed by Subcontractor without interruption or delay. If Subcontractor does not agree with such decision, Subcontractor's sole remedy shall be to make a claim for adjustment in the Contract Sum, schedule, or other

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- provisions of the Subcontract under Section 11.2 hereof and the matter shall be resolved as set forth in Section 12.2. If Subcontractor prevails, Subcontractor's sole remedy shall be the equitable adjustment, specified in Section 12.2, of this Subcontract. In addition to the notifications required of Subcontractor by Article 11, Subcontractor also shall give written notice to Contractor of its disagreement with Contractor's decision not later than ten (10) days after Subcontractor's receipt of Contractor's decision except that, if a lesser period of time is required in order to allow Contractor to give any notice it may be required to give to the Owner under the Contract Documents and/or under Article 13 of this Subcontract, then Subcontractor shall give such written notice to Contractor in such lesser period of time.
- 12.2 In case of any dispute between Contractor and Subcontractor, in any way relating to or arising from any act or omission of the Owner or involving the Contract Documents, Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to the Owner, by the terms of the Contract Documents and by any and all preliminary and final decisions or determinations made thereunder by the party, board, or court so authorized by the Contract Documents, or by law, to make such decisions or determinations, whether or not Subcontractor is a party to such proceedings. In case of such dispute, Subcontractor shall comply with all provisions of the Contract Documents, allowing a reasonable time for Contractor to analyze and forward to the Owner any required communications or documentation. Whenever permitted to do so by the Contract Documents, Contractor, at its option, shall (i) present to Owner, in Contractor's name, or (ii) authorize Subcontractor to present to Owner, in Contractor's name, all of Subcontractor's claims and to answer Owner's claims involving Subcontractor's work. Contractor will further invoke on behalf of Subcontractor, or allow Subcontractor to invoke, those provisions in the Contract Documents for determining disputes. Nothing herein shall require Contractor to certify a claim when it cannot do so in good faith. If such dispute is prosecuted or defended by Contractor, Subcontractor, at its own expense, agrees to furnish all documents, statements, witnesses, and other information required by Contractor and to pay or reimburse Contractor for all costs and expenses of every kind and nature incurred by Contractor in connection with the dispute including attorney's fees. The Subcontract sum shall be adjusted by Subcontractor's allocated share determined in accordance with Article 13 hereof.
- 12.3 Any controversy between Contractor and Subcontractor not relating to or arising from any action or inaction of the Owner shall be decided by a court of law in Cook County, Illinois. Contractor shall be entitled to consolidate or join this litigation with any other lawsuit providing such other lawsuit includes questions of fact in common with this litigation even though it may involve parties other than Subcontractor.

ARTICLE 13
DEFAULT BY SUBCONTRACTOR

If Subcontractor, or any of its lower-tier subcontractors, shall, in the sole judgment of Contractor, refuse or fail to supply sufficient properly skilled workmen, supervisors, equipment, or materials hereunder, or fail to make payments promptly to workmen, material houses or subcontractors, or disregard the instructions of the Contractor, or fall behind in the programs of the Work so as to prejudice Contractor's ability to finish the Project within the time required, or abandon the Work, fail in the performance of any of its obligations under this Subcontract, or shall make an assignment for the benefit of its creditors, then, in any such event, each of which shall constitute a default hereunder by Subcontractor, Contractor shall have the right to exercise any one or more of the following remedies:

- (i) Withhold making payments to Subcontractor, including both progress and final payments which are either due or may become due to Subcontractor under this Subcontract, until such default is cured and if said default is not cured, to apply all such unpaid contract balances, including retainage, to reimburse Contractor for all losses, expenses (including attorney's fees), damages, penalties, and fines, whether liquidated or unliquidated, direct or consequential which are incurred or sustained by Contractor by reason of such default;
- (ii) Require Subcontractor to provide and utilize, at its own expense, overtime labor (including Saturday and Sunday work) and additional supervisors, workmen and shifts as necessary to overcome the consequences of any delay attributable to Subcontractor;
- (iii) Remedy the default by whatever means Contractor may deem expedient including, but not limited to, removing, replacing, correcting, furnishing, performing, or completing the Work or any part thereof, and repairing and replacing the work or property of others that may have been damaged or destroyed by Subcontractor or its sub-subcontractors, by itself or through others (utilizing where appropriate any materials, equipment facilities, tools, scaffolding and other items previously purchased or provided for such purpose by Subcontractor) and to recover the cost (including attorney's fees) of such remedial action from Subcontractor within forty-five (45) days of the commencement of said default (plus an allowance for administrative burden equal to Ten Percent (10%) of such costs);
- (iv) Terminate this Subcontract without thereby waiving or releasing any other rights or remedies against Subcontractor or its sureties, and, by itself or through others, complete the Work and take possession of all materials, equipment, facilities, tools, scaffolds, appliances and other things belonging to Subcontractor and relating to the Work for such purpose (and this Subcontract shall be deemed to be an assignment by Subcontractor to Contractor for purposes of the foregoing) and, for the purpose of securing to itself the payment of all costs (including attorney's fees) incurred in completing the Work (plus an allowance for administrative burden equal to Ten Percent (10%) of such costs) and all other damages sustained as a result of the default and termination, which it shall be Subcontractor's obligation to pay, Contractor is hereby authorized to establish an adequate reserve to protect Contractor and Owner during the period of guarantee required of Subcontractor,

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- which reserve shall be reasonably determined by Contractor based upon the nature of the Work and the exposure of Contractor; and
- (v) Recover from Subcontractor all losses, damages, penalties, and fines, whether liquidated or unliquidated, direct or consequential, and all costs, such as extended overhead, and expenses (including attorney's fees and court costs) suffered or incurred by Contractor as a result of Subcontractor's default, including but not limited to extended overhead.

The foregoing remedies shall be considered separate and cumulative and shall be in addition to every other remedy provided hereunder, under the General Contract and at law and in equity, now or at any time hereafter. If Contractor wrongfully exercises its option under Article 13(iii), such action shall be treated as a deductive change order and Subcontractor's sole remedy and relief shall be limited to its entitlement for a deductive change order under the terms of this Contract. If Contractor wrongfully exercises its option under Article 14(iv), such termination for default shall be considered a termination under Article 14 of this Contract for Contractor's convenience. Subcontractor's sole remedy and relief shall be limited to the extent to which he would be entitled to the compensation specified in Article 14.

ARTICLE 14 TERMINATION FOR CONVENIENCE

Contractor shall have the right to terminate, for convenience, Subcontractor's performance of all, or a part of the Work by providing Subcontractor with a written notice of termination for convenience to be effective upon receipt by Subcontractor. If there has been a termination of the General Contract, Subcontractor shall be paid the amount due from Owner for its work as provided in the Contract Documents, but only after payment therefor has been made by the Owner to Contractor. If the General Contract has not been terminated, Subcontractor shall be paid the reasonable value of work performed by Subcontractor prior to termination plus reasonable direct closeout costs but, in no event, shall Subcontractor be entitled to unabsorbed overhead or anticipatory profit. If Subcontractor has performed no work at the time of termination, Subcontractor shall be paid the sum of \$100.00 in full and complete satisfaction for its undertakings and obligations under this Subcontract.

ARTICLE 15 WORKMANSHIP AND CARE

- 15.1 Subcontractor shall be responsible for damage to the Project caused by the execution of its Work and shall repair or replace such damage at its own expense.
- 15.2 Subcontractor shall, at all reasonable times, permit inspection by Contractor, Owner, and Architect of the Work including, without limitation, all materials to be incorporated into the Work, whether at the Project site or at any place where such materials may be in preparation, manufacture, storage, or installation. Subcontractor shall promptly replace or correct any Work, which Contractor or the Owner shall reject as failing to conform to the requirements of the General Contract or this Subcontract. If Subcontractor does not do so within a reasonable time, Contractor shall have the right to do so and Subcontractor shall be liable to Contractor for the cost thereof. If, in the opinion of Contractor, it is not expedient to correct or replace all or any part of rejected work or materials, then Contractor, at its option, may deduct from the payments due, or to become due to Subcontractor, such amounts as, in Contractor's reasonable judgment, represents the difference between the fair value of the rejected work and materials and the value thereof if they had complied with the requirements of the General Contract or of this Subcontract.
- 15.3 Subcontractor's remedy for wrongful rejection of its Work either by Owner or Architect, or by Contractor acting on Owner's behalf, pursuant to Section 15.2, shall be limited to such relief as Contractor is entitled to receive from Owner under the Contract Documents. Contractor, however, shall be liable to Subcontractor for any increased direct costs caused by its wrongful rejection of Work if the Owner was not involved in said rejection.
- 15.4 The Work shall be accepted in accordance with the terms of the Contract Documents. Unless otherwise agreed in writing, entrance upon and/or the use of Work by Owner or Contractor shall not constitute acceptance of the Work.

ARTICLE 16 DEFECTIVE WORK

Subject to any longer or more extensive warranties which may be required under the Contract Documents, Subcontractor hereby unconditionally warrants that the Work shall be free from any defects and materials in workmanship for a period of one (1) year following the date of completion of the Project. Neither the final certificate, nor payment, nor any provision in the Contract Documents or in any other document shall relieve Subcontractor of responsibility for faulty materials or workmanship, and it shall promptly remedy any defects due thereto, and pay for any damage to other work resulting therefrom. In case Subcontractor fails, upon reasonable notice, to replace defective materials or perform any labor required hereunder, then Contractor or Owner may furnish such materials or labor as are necessary to cause the Work to achieve the required standard, and Subcontractor agrees to promptly pay Contractor or Owner the cost plus Ten Percent (10%) overhead, expended in Subcontractor's behalf.

ARTICLE 17 WORK STOPPAGE

Contractor may stop the Work whenever such stoppage is ordered by Owner, or its representative, or when, in the sole judgment of Contractor, such stoppage is necessary to ensure the proper execution of the Work on timely completion of the Project. In either event, Contractor shall not be liable to Subcontractor for any additional costs which such work stoppage may cause to

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Subcontractor except to the extent that Contractor is able to recover such additional cost, on Subcontractor's behalf and at Subcontractor's sole expense, from Owner.

ARTICLE 18

COORDINATION/COOPERATION

Subcontractor agrees to cooperate with and to otherwise coordinate its Work with the work of Contractor and other subcontractors with whose work that of Subcontractor may come in contact in order to avoid complications, delay to the progress of the Work of Subcontractor or the work of others, and to ensure first-class workmanship in every respect. In the manufacturing, assembling, erection, installation, and application of the Work, Subcontractor shall engage only such employees and lower-tier subcontractors whose work will be in harmony with other workmen on the Project. Subcontractor shall furnish such skilled and competent workmanship and labor, such new material as shall be suitable for the performance and the timely completion of the Work, and shall protect said workmanship and materials from damage by the elements or otherwise until completed. Subcontractor shall, at all times during progress of the Work, employ a full-time field superintendent on site, acceptable to Contractor, who shall supervise and coordinate Subcontractor's Work and act as Subcontractor's agent and representative in order to expedite the Work and insure the highest quality of workmanship.

ARTICLE 19

PROJECT HARMONY

Subcontractor, and its lower-tier subcontractors and suppliers, shall not use any labor, materials, or work methods which may, or shall, cause strikes, secondary boycotts, work stoppages or slowdowns, or labor disturbances of any kind or nature to the Project. Subcontractor, and its lower-tier subcontractors and suppliers, further agree to comply with all labor laws and work regulations applicable to its work and to refrain from engaging in any conduct, or in employing any labor, which may, or shall, result in Contractor being in violation of a provision or provisions of a labor agreement to which it is a party. Upon receipt of notice from Contractor that it, or its lower tier subcontractors and/or suppliers, are in violation of any of the above specified prohibitions and requirements, Subcontractor shall immediately cease such violations and, if they are the violations of its lower-tier subcontractors and/or suppliers, it shall immediately cause its lower-tier subcontractors and suppliers to cease such violations. Subcontractor agrees to defend, indemnify, and to hold Contractor harmless from and against any and all claims, liabilities, losses, and expenses (including but not limited to attorney's fees and court costs), of every kind and description which are asserted against Contractor, or which it may incur or sustain, by reason of any such violations. If any union seeks and receives any payment from Contractor for any sum (including, but not limited to "fringe" benefits) to be paid on behalf of an employee or agent of Subcontractor, or on behalf of Subcontractor's lower tiered subcontractors or suppliers, in connection with the performance of any of the Work under this Subcontract, then Subcontractor shall pay any such sum to Contractor within ten (10) days from the date of a written notice from Contractor to Subcontractor for payment.

ARTICLE 20

SUBMITTALS

Subcontractor's attention is directed to the applicable provisions of the Contract Documents which describe the required submittals and procedures for submitting shop drawings, setting plans, erection drawings, working diagrams, equipment layouts, samples and cuts (collectively, "submittals"). Subcontractor shall immediately expedite preparation of a complete and itemized schedule of all materials, equipment, samples, and shop drawings which are required by the Contract Documents. Subcontractor shall prepare a detailed and comprehensive schedule indicating when each item will be submitted to Contractor. Said schedule shall be prepared to permit adequate time for review and, if necessary, resubmittal in order to avoid any delay to construction progress due to late or untimely submittals. Subcontractor shall obtain the necessary Architect's approval of same without cost to the Contractor. The approval of all submittals shall be general and shall not mean that they have been checked for accuracy of measurements, of providing proper fittings and construction of the Work, of furnishing materials or labor required by the drawings and specifications which may not be indicated on the shop drawings when approved, and of doing whatever may be reasonably required to make the Work a complete and workable installation satisfactory for the purpose intended. Subcontractor shall furnish periodic progress reports on the Work, as mutually agreed, including information on the status of materials and equipment, which may be in the course of preparation or manufacture.

ARTICLE 21

APPROVAL OF SUB-SUBCONTRACTORS

Subcontractor agrees, as a condition of this Subcontract, to issue, or cause to be issued, within thirty (30) days after reasonable notice of award of this Subcontract by Contractor, all purchase orders and sub-subcontracts as may be required for the Work. Prior to commencing performance of its Work, Subcontractor shall obtain Contractor's written approval of all Subcontractor's sub-subcontractors and suppliers it intends to use in the performance of its work; failure to do so shall constitute cause for termination pursuant to Article 15 of this Contract.

ARTICLE 22

GOVERNMENTAL COMPLIANCE AND PERMITS

Subcontractor shall comply with all codes, rules, ordinances, statutes, regulations, and similar requirements of all governmental authorities having or claiming jurisdiction over the performance of the Work and/or of the conditions of employment of

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any person employed by or for Subcontractor including, but not limited to, all federal, state, county, municipal, and environmental authorities wherever they apply to the Work or materials supplied hereunder. Subcontractor shall procure and pay for all necessary licenses, fees and permits, permanent or temporary, affecting all or any part of the Work notwithstanding any contrary provisions in the General Contract or other Contract Documents. Subcontractor shall also give the proper authorities all requisite notices relating to the Work and save Contractor, Architect, and Owner, and each of them, harmless from all delays, fines, or other such costs having reference to the Work.

ARTICLE 23

INFRINGEMENT OF PATENT RIGHTS

Subcontractor shall indemnify, save harmless, and defend Contractor, Owner, Architect, and each of them, from and against all claims, judgments, and decrees involving the infringement of patent rights arising from the performance of the Work or from the use of any patented processes by Subcontractor or his sub-subcontractors, and it shall pay all costs and expenses, including attorney's fees, incurred by Contractor, Owner, Architect, and each of them, in defense of suits for the infringement of patent rights.

ARTICLE 24

CONTRACT REFRAINMENT

Subcontractor agrees to refrain from entering into any contract or agreement with Owner in regard to extras, omissions, or changes in connection with the Work embraced by the Contract but will deal solely with Contractor in reference thereto. Any violation of this Article shall make Subcontractor liable to Contractor for ten percent (10%) of the amount of the agreed price for such extras or of the value of such omissions or changes, which ten percent (10%) may be deducted by Contractor from any balance that is due Subcontractor hereunder. In the event no such balance is due, Subcontractor shall promptly pay Contractor such amount.

ARTICLE 25

MISCELLANEOUS PROVISIONS

- 25.1 Subcontractor shall furnish and install all inserts and anchors required for the proper securing support and erection of its Work, attachments and miscellaneous materials and shall perform all layout Work, take necessary field measurements, and provide all scaffolding required to perform its Work.
- 25.2 Notwithstanding anything to the contrary in the Contract Documents, Subcontractor agrees to be and is fully responsible for all hoisting required for its Work.
- 25.3 Subcontractor shall be and is fully responsible for protection and condition of its materials, work, and equipment installed or stored on Job Site or elsewhere until final acceptance thereof by Owner and Architect, and further agrees that Contractor is not obligated to and will not carry any insurance for benefit of Subcontractor.
- 25.4 Temporary electrical service will be provided for use by the Subcontractor. The service will consist of 110-volt distribution system of convenience outlets and lighting. If Subcontractor requires any additional electrical requirements above the 110-volt service, Subcontractor shall be responsible and pay all costs for the wiring installation and the energy consumption of said additional electrical requirements.
- 25.5 Terms of this Agreement stated in the male gender shall be deemed to refer to the female and in the singular to the plural and vice versa, when necessary to implement the purposes of this Agreement. All stenographic and clerical errors are subject to correction.
- 25.6 This Subcontract shall be governed by the laws in effect in the State of Illinois. Any provision of this Subcontract prohibited by law, or invalid under any law, shall be ineffective only to the extent of such prohibition, and such invalidity shall not, in any manner, invalidate or affect the remaining provisions of this Subcontract, such provisions being deemed severable. The failure of either party hereto to insist, in any one or more instances, upon the performance of one of the terms, covenants or conditions of this Subcontract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects such further performance.

ARTICLE 26

USE OF EQUIPMENT

If, at any time during the Work, Subcontractor, its agents, employees, or suppliers should, either with or without permission of Contractor, use any tools, appliances, hoists, elevators, scaffolding, ladders, false work, shoring, materials, machinery or equipment which belong to or are furnished by Contractor, Subcontractor assumes full responsibility for any injury to person or property which may result from or in connection with use of any such tools, appliances, hoists, elevators, scaffolding, ladders, false work, shoring, materials, machinery or equipment by Subcontractor, its agents, employees or suppliers and agrees to indemnify, defend, and hold harmless Contractor, Owner, and Architect against loss, liability, costs, expense, and attorney's fees and court costs from such claims except to the extent that they are caused solely by the negligence of Contractor, Architect, and/or Owner, whichever the case may be.

ARTICLE 27

CLEAN UP

Subcontractor shall perform regular cleanup and prompt removal from Job Site and adjacent roadways of all dirt, mud, excessive dust, and debris resulting from the Work notwithstanding any reference in the Contract Documents requiring Contractor to perform said cleanup or rubbish removal. In cleaning or utilizing adjacent roadways, Subcontractor shall, at no cost to Contractor, provide flagmen to the extent that Contractor determines they are required. In the event Subcontractor fails to perform regular cleanup

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and prompt removal from the Job Site, Contractor shall perform said cleanup on Subcontractor's behalf and charge Subcontractor for the cost thereof. If a general cleanup of the Project is required on behalf of all subcontractors which either are working, or recently have worked, at the Job Site, Contractor shall perform said cleanup and charge the cost thereof to said subcontractors on a prorata basis using its sole discretion to determine the basis for the prorata charge. Upon completion of the cleanup, Subcontractor will be notified in writing, within a reasonable time period, as to the costs expended in its behalf. If Subcontractor disagrees with such charge, it may pursue its remedies under Article 14 of this Contract.

ARTICLE 28

SAFETY

Subcontractor shall, at its own expense, conform to the safety policy of Contractor as set forth in the current "Novak Health and Safety Manual" (hereinafter, the "Manual"), which is available for Subcontractor's review at the Contractor's main office. Subcontractor represents that it has reviewed this Manual and that it agrees to be bound thereby. Subcontractor shall also, at its own expense, comply with all specific safety requirements promulgated by any governmental authority including without limitation the requirements of the Occupational Safety and Health Act of 1970 and the Construction Safety Act of 1969 and all amendments thereto and all standards and regulations which have been or shall be promulgated by the parties or agencies which administer such Acts. Subcontractor also shall require full compliance with such requirements and the Manual by its agents, employees, materialmen, and subcontractors (both generally and, in particular, with respect to its portion of the Work on this Project) and shall respond to, defend and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of its failure, or failure on the part of its agents, employees, materialmen, or subcontractors, to so comply.

Contractor is committed to providing a safe work place for all its employees, subcontractors, suppliers, and the public. Contractor reserves the right to remove a subcontractor from a job site due to safety negligence and to also charge back all direct and indirect costs associated with unsafe activities. Contractor also reserves the right to provide safety equipment required at a charge back of 110% of costs to the Subcontractor.

ARTICLE 29

SUBCONTRACTOR LABOR

Subcontractor covenants and agrees that any and all labor employed by its sub-subcontractors and it in the performance of the Work will be paid for strictly in accordance with all applicable federal and state laws, and that Subcontractor will, upon demand of Contractor, furnish evidence satisfactory to Contractor of compliance therewith. Toward that end, Subcontractor shall permit Contractor to examine its books and records and shall cause its sub-subcontractors to permit Contractor to examine their books and records. Such examinations shall be permitted, without notice, at the offices of Subcontractor or its subcontractors, during their ordinary business hours.

ARTICLE 30

EQUAL OPPORTUNITY

- 30.1 In connection with the performance of work under this Subcontract, Subcontractor agrees not to discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin or disability protected by the Americans with Disabilities Act. The aforesaid provision shall include, but not be limited to, Chapter 60 Equal Employment Opportunity Title 41, Part 60-1.4 (1-7) and Executive Order 11246, as amended, Vietnam Veterans Readjustment Assistance Act of 1974, as amended 38 U.S.C. 4212 and the Rehabilitation Act of 1973, as amended and the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Subcontractor agrees to hereafter post, in conspicuous places, available for inspection by Subcontractor's employees and applicants for employment, a notice which sets forth its obligations under this Article, along with any other Equal Employment notice which it is required to post by any federal or state statute, law or regulation.
- 30.2 Subcontractor shall permit access to its books, records and accounts by representatives of Contractor or the Owner, for purposes of investigation to ascertain compliance with provisions of this Article 30.
- 30.3 In the event of Subcontractor's non-compliance with the equal opportunity provisions of this Subcontract, this Subcontract may be terminated for default by Contractor.
- 30.4 Subcontractor shall include the provisions of this Article 30 in Subcontractor's sub-subcontracts. The requirements of this Article 30 shall be in addition to and not in lieu of any other Equal Opportunity provisions of the Contract Documents.

ARTICLE 31

ADDITIONAL INFORMATION

In addition to the information to be provided by Subcontractor pursuant to other provisions of this Subcontract, Subcontractor hereby agrees to provide, at no additional cost to Contractor, and in a prompt and timely fashion so as not to disrupt the performance of this Subcontract or the General Contract, any and all additional information relating to this Subcontract which is required either by the Contract Documents or by applicable law.

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ARTICLE 32**WARRANTIES AND GUARANTEES**

Subcontractor shall furnish to Contractor any and all separate written guarantees, warranties, and/or maintenance agreements which Contractor is required under the General Contract to furnish to Owner including, but not limited to, labor, materials, machinery and/or equipment guarantees and warranties, which Subcontractor is required to furnish under this Subcontract and the Contract Documents. Said written guarantees, warranties and/or maintenance agreements shall be furnished to the same extent and at the same time as Contractor is required to furnish them to Owner by the General Contract, and they shall run in favor of Contractor, Owner and every other person, firm and corporation to whom Contractor is required to furnish such protection under the terms of the General Contract and the Contract Documents. Subcontractor's obligation hereunder shall include an obligation to furnish any and all guarantees, warranties, and/or maintenance agreements, which are required by the Contract Documents of its sub-subcontractors and suppliers.

ARTICLE 33**ASSIGNMENT**

- 33.1 Subcontractor shall not assign the Subcontract in whole or in part or any monies due or to become due hereunder without the previous written consent of Contractor, and any such attempted assignment without the consent of the Contractor shall be void and the assignees in such case shall acquire no rights in this Subcontract.
- 33.2 Subcontractor, by execution of this Subcontract, contingently assigns to Contractor all Subcontractor's sub-subcontracts. The assignment of each of Subcontractor's sub-subcontracts shall take effect only upon Subcontractor's termination for default under Article 15 and Contractor's affirmative acceptance of the assignment of the specific sub-subcontract by written notice to Subcontractor and Subcontractor's sub-subcontractor. Contractor shall have no liability to any of Subcontractor's sub-subcontractors unless and until Contractor affirmatively accepts the assignment as provided above.

ARTICLE 34**NOTICES**

All notices, requests, demands, and other communications which are required or may be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally, or sent by Federal Express (or similar overnight courier) or by facsimile.

If to Contractor:

Novak Construction Company
3423 North Drake Avenue
Chicago, Illinois 60618
Telephone: (773) 276-1200
Fax No.: (773) 278-1119

Attention: David Arnoide**If to Subcontractor:**

Chicago Cooling Corporation
2728 N. Elston Ave.
Chicago, IL 60647
Telephone: 773.276.5000
Fax No.: 773.276.5552
Attention: Dean Farley

All such notices, requests, demands, and other communications shall be deemed to have been given on the date of personal delivery or, if given by Federal Express (or other similar overnight courier) or by facsimile, on the date of receipt of such delivery or transmission provided such date is a business day, and if not a business day, on the first business day after the day of the transmission, or if given by mail on the second business day after posting with proper postage prepaid.

ARTICLE 35**ENVIRONMENTAL MATTERS**

Should Subcontractor encounter asbestos, polychlorinated biphenyl ("PCB"), or other hazardous substances at the Job Site which potentially are harmful to persons or property, then Subcontractor shall take all steps required by the Contract Documents and by law to protect persons and property from injury or damage, including stopping the Work in the affected areas and promptly advising Contractor in writing of the conditions as so encountered. Should Subcontractor be required to stop work in any area of the Job Site as a result of hazardous substances located at the Job Site, then Subcontractor shall not resume the Work in the affected area until (i) the hazardous substances have been removed or made harmless, (ii) Contractor and Subcontractor agree in writing to commence Work in all or a portion of the area, (iii) Owner orders the Work to proceed in the affected area and the parties so agree, or (iv) the matter is resolved through litigation as provided for in this Subcontract. Subcontractor shall not be required to perform any work in areas containing asbestos, PCB's or any other hazardous substances defined by the Contract Documents without Subcontractor's consent.

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