



SUBCONTRACT AGREEMENT TERMS & CONDITIONS FOR CONSTRUCTION PROJECTS

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ARTICLE 1 AGREEMENT

This Agreement is made by and between the

CONTRACTOR,

Blue Spader Contractors

332 South Main St., Suite A

Romeo, MI 88065

Telephone: 248.289.0125

Email: jcollins@bluespader.net

And the **SUBCONTRACTOR**

For services in connection with the SUBCONTRACT WORK.

NOTICE: Any notice required by this Agreement by the Parties shall be in writing and shall be deemed to be given on the date such notice was personally delivered or two (2) Business Days after the date such notice is deposited either by certified or registered mail, return receipt requested, postage paid, in the United States mail or sent via commercial carrier with



confirmation of delivery to the above-listed addresses.

ARTICLE 2 SCOPE OF WORK

2.1 PARTIES' RELATIONSHIP Each Party agrees to proceed with the Subcontract Work on the basis of mutual trust, good faith, and fair dealing. The Parties shall each endeavor to promote harmony and cooperation, and perform in an economical and timely manner.

2.2 SUBCONTRACT WORK Contractor contracts with Subcontractor as an independent contractor to provide all labor, materials, equipment and services necessary or incidental to complete the work for the project described in ARTICLE 1 and as may be set forth in further detail in Exhibit A, in accordance with, and reasonably inferable from, the Subcontract Documents, and consistent with the Progress Schedule, as may change from time to time. Subcontractor shall perform the Subcontract Work under the general direction of Contractor and in accordance with the Subcontract Documents.

2.3 CONTRACTOR'S WORK Contractor's Work is the construction and services required of Contractor to fulfill its obligations pursuant to its Prime Contract with Owner (the Work). The Subcontract Work is a portion of Contractor's Work.

2.3.1 ETHICS. Each Party shall perform with integrity. Each shall: (a) avoid conflicts of interest; and (b) promptly disclose to the other Party any conflicts that arise. Each Party warrants that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, employees, subcontractors, or others for whom they may be liable, to secure preferential treatment.

2.4 SUBCONTRACT DOCUMENTS The Subcontract Documents include this Agreement and all Exhibits, pertinent portions of the Prime Contract, special conditions, general conditions, specifications, drawings, amendments issued and acknowledged before execution of this Agreement, other documents listed in this Agreement, and modifications issued in accordance with this Agreement. Contractor shall provide to Subcontractor, prior to the execution of this Agreement, copies of the existing Subcontract Documents to which Subcontractor will be bound. Subcontractor similarly shall provide copies of applicable portions of the Subcontract Documents to its proposed subcontractors and suppliers. Nothing shall prohibit Subcontractor from obtaining copies of the Subcontract Documents from Contractor at any time after the Agreement is executed.

2.4.1 DOCUMENTS IN ELECTRONIC FORM If the Prime Contract requires that Owner, Contractor, and Subcontractors exchange documents and data in electronic or digital form, prior to any such exchange, the Prime Contract may contain a written protocol governing all exchanges of data, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, 2.4.1 software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Subcontractor shall provide whatever input is needed to assist Contractor in complying with the protocol and shall be bound by the requirements of the written protocol. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.



2.5 CONFLICTS In the event of a conflict between this Agreement, as modified, and the other Subcontract Documents this Agreement shall govern.

2.6 DEFINITIONS

2.6.1 "Agreement" means this Agreement Between Contractor and Subcontractor, as modified by the Parties, and Exhibits and attachments made part of this Agreement upon its execution.

2.6.1.1 The Exhibits to this Agreement are as follows:

Exhibit A: The Subcontract Work

Exhibit B: The Subcontract Documents: Drawings, Specifications, General and Other

Conditions, Addenda and other information.

Exhibit C: Progress Schedule,

Exhibit D: Alternates and Unit Prices and Estimated Quantities

Exhibit E: Project Requirements

Exhibit F: Insurance Provisions

Exhibit G: Not Used

Exhibit H: Incorporated FAR Provisions, Agency FAR Supplements and Documents

Exhibit I: Certification of Subcontractor's Size and Status

2.6.2 "Business Day" means all days, except weekends and official federal or state holidays where the Project is located.

2.6.3 The term "Day" shall mean calendar day.

2.6.4 "Laws" mean federal, state and local laws, ordinances, codes, rules, and regulations applicable to the Subcontract Work with which the Contractor or Subcontractor must comply.

2.6.5 The "Parties" are collectively Contractor and Subcontractor.

2.6.6 Wherever the term "Progress Schedule" is used in this Agreement, it shall be read as Project Schedule when that term is used in the Subcontract Documents. "Progress Schedule" is the schedule for performance of the work.

2.6.7 A "Subcontract Change Order" is a written instrument signed by Contractor and Subcontractor after execution of the Agreement, indicating changes in the scope of the Subcontract Work, the Subcontract Amount or Subcontract Time, including substitutions proposed by Subcontractor and accepted by Contractor.

2.6.8 The "Subcontract Work" is the work described in section 2.2, and "Subcontract Work" shall refer to the Subcontract Work in whole or in part.

2.6.9 "Subcontract Time" means the time period on the Progress Schedule between commencing and completing the Subcontract Work.

2.6.10 "Worksite" means the geographical area of the Project location as identified in ARTICLE 1 where the Work is to be performed.

ARTICLE 3 SUBCONTRACTOR'S RESPONSIBILITIES



3.1 OBLIGATIONS The Parties are mutually bound by the terms of this Agreement. To the extent the terms of the Prime Contract apply to the Subcontract Work, then Contractor assumes toward Subcontractor all the obligations, rights, duties, and redress that Owner under the Prime Contract assumes toward Contractor. In an identical way, Subcontractor assumes toward Contractor all the same obligations, rights, duties, and redress that Contractor assumes toward Owner under the Prime Contract. In the event of an inconsistency among the documents, the specific terms of this Agreement shall govern.

3.2 RESPONSIBILITIES Subcontractor shall furnish its diligent efforts to perform the Subcontract Work in an expeditious manner and to cooperate with Contractor so that Contractor may fulfill its obligations to Owner. Subcontractor shall furnish all of the labor, materials, equipment, and services, including, but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of the Subcontract Work, all of which shall be provided in full accord with all requirements reasonably inferable from the Subcontract Documents. Subcontractor shall provide Contractor a list of its proposed subcontractors and suppliers, and be responsible for taking field dimensions, providing tests, obtaining required permits related to the Subcontract Work and affidavits, ordering of materials and all other actions as required under the Subcontract Work to meet the Progress Schedule.

3.3 INCONSISTENCIES AND OMISSIONS Subcontractor shall examine and compare the drawings, specifications, other Subcontract Documents, and information furnished by Owner relative to the Subcontract Work. Such examination and comparison shall be solely for the purpose of facilitating the Subcontract Work and neither for the discovery of errors, inconsistencies, or omissions in the Subcontract Documents nor for ascertaining if the Subcontract Documents are in accordance with applicable Laws. Should Subcontractor discover any errors, inconsistencies, or omissions in the Subcontract Documents, Subcontractor shall promptly report such discoveries to Contractor in writing. Following receipt of such written notice, Contractor shall promptly instruct Subcontractor as to the measures to be taken, and Subcontractor shall comply with Contractor's reasonable instructions.. Subcontractor may be entitled to additional costs or time because of clarifications or instructions arising out of Subcontractor's reports described in this section. Nothing in this section shall relieve Subcontractor of responsibility for its own errors, inconsistencies, and omissions.

3.4 WORKSITE VISITATION Before commencing the Subcontract Work, Subcontractor shall conduct a visual inspection of the Worksite to become generally familiar with local conditions and to compare Worksite observations with the Subcontract Documents. If Subcontractor discovers any discrepancies between its Worksite observations and the Subcontract Documents, such discrepancies shall be promptly reported to Contractor.

3.5 INCREASED COSTS OR TIME Subcontractor may assert a claim as provided in ARTICLE 7 if Contractor's clarifications or instructions in response to requests for information are believed to require additional time or cost. If Subcontractor fails to perform the reviews and comparisons required in sections 3.3 and 3.4, above, to the extent Contractor is held liable to Owner because of Subcontractor's failure, Subcontractor shall pay the costs and damages to Contractor that would have been avoided if Subcontractor had performed those obligations.

3.6 COMMUNICATIONS Unless otherwise provided in the Subcontract Documents and except for emergencies, Subcontractor shall direct all communications related to the Project to Contractor.

3.7 SUBMITTALS



3.7.1 Subcontractor promptly shall submit for approval to Contractor all shop drawings, samples, product data, manufacturers' literature and similar submittals required by Subcontract Documents. Submittals shall be submitted in electronic form if required in accordance with subsection 2.4.1. Subcontractor shall be responsible to Contractor for the accuracy and conformity of its submittals to the Subcontract Documents. Subcontractor shall prepare and deliver its submittals to Contractor in a manner consistent with the Progress Schedule and in such time and sequence so as not to delay Contractor or others in the performance of the Work. Subcontractor's submittals shall identify in a separate signed writing for each submittal all changes, deviations, or substitutions from the requirements of the Subcontract Documents. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions, or changes in the requirements of the Subcontract Documents unless express written approval is obtained from Contractor and Owner authorizing such deviation, substitution, or change. Such approval shall be promptly memorialized in a Subcontract Change Order within seven (7) Days following approval by Contractor and, if applicable, provide for an adjustment in the Subcontract Amount or Subcontract Time. In the event that the Subcontract Documents do not contain submittal requirements pertaining to the Subcontract Work, Subcontractor agrees upon request to submit in a timely fashion to Contractor for approval any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by Contractor or Owner. Unless required by the Prime Contract for authorized deviations, substitutions, or changes that do not have a cost or time impact, a Subcontract change order shall not be required, but such authorized deviations, substitutions, or changes shall be confirmed in writing.

3.7.2 By executing this Agreement, Subcontractor represents and warrants that it has reviewed the provisions of the Subcontract Documents governing the country of origin for materials and equipment furnished by or on behalf of Subcontractor, which are commonly referred to as "Buy American Act" requirements, and that any materials or equipment furnished by Subcontractor, its Subcontractors, or vendors, at any tier, will comply with the applicable Buy American Act requirements.

3.7.3 Contractor and Owner are entitled to rely on the adequacy, accuracy, and completeness of any certifications required by the Subcontract Documents concerning the country of origin, performance criteria of systems, equipment, or materials, including all relevant calculations and any governing performance requirements.

3.8 DESIGN DELEGATION

3.8.1 If the Subcontract Documents (a) specifically require Subcontractor to procure design services and (b) specify all required design and performance criteria to perform such services, Subcontractor shall provide those design services necessary to satisfactorily complete the Subcontract Work. As permitted by the laws, rules, and regulations in the jurisdiction where the Project is located, Subcontractor shall procure such services and any necessary certifications from licensed design professionals. Subcontractor's design professional's signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals prepared by Subcontractor's design professional. Shop drawings and other submittals related to the Subcontract Work designed or certified by Subcontractor's design professional. Contractor shall be entitled to rely upon the adequacy, accuracy, and completeness of



the services, certifications, or approvals performed by Subcontractor's design professional.

3.8.2 If Subcontractor's design professional is an independent professional, the design services shall be procured pursuant to a separate agreement between Subcontractor and Subcontractor's design professional. The Subcontractor-Design Professional agreement shall not provide for any limitation of liability, except to the extent that consequential damages are waived pursuant to subsection 5.4.1, or exclusion from participation in the multiparty proceedings requirement of section 11.6. Subcontractor's design professional(s) is Not Applicable. Subcontractor shall notify Contractor in writing if it intends to change its procured design professional(s). Subcontractor shall be responsible for conformance of its design with the information given and the design concept expressed in the Subcontract Documents. Subcontractor shall not be responsible for the adequacy of the performance or design criteria as set forth in the Subcontract Documents.

3.9 TEMPORARY FACILITIES : Subcontractor's and Contractor's respective responsibilities for temporary services and the project requirements are set forth in Exhibit E.

3.10 COORDINATION Subcontractor shall (a) cooperate with Contractor and all others whose work may interface with the Subcontract Work; (b) specifically note and immediately advise Contractor of any such interface with the Subcontract Work; and (c) participate in the preparation of coordination drawings and work schedules in areas of congestion.

3.11 SUBCONTRACTOR'S REPRESENTATIVE Subcontractor shall designate a person, subject to Contractor's approval, who shall be Subcontractor's authorized representative. This representative shall possess full authority to receive and act upon instructions, orders, or directions, and shall be the only person to whom Contractor shall issue instructions, orders, or directions, except in an emergency. If Subcontractor changes its representative, Subcontractor shall immediately notify Contractor in writing.

3.12 TESTS AND INSPECTIONS Subcontractor shall schedule all required tests, approvals, and inspections of the Subcontract Work at appropriate times so as not to delay the progress of the work related to the Project. Subcontractor shall give proper written notice to all required Parties of such tests, approvals, and inspections. Except as otherwise provided in the Subcontract Documents, Subcontractor shall bear all expenses associated with tests, inspections, and approvals required of Subcontractor by the Subcontract Documents, which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity approved by Contractor and Owner. Required certificates of testing, approval, or inspection shall, unless otherwise required by the Subcontract Documents, be secured by Subcontractor and promptly delivered to Contractor.

3.13 GENERAL WARRANTIES ON MATERIALS AND EQUIPMENT In addition to the warranties set forth in the Subcontract Documents, Subcontractor warrants that all materials and equipment provided for performance of the Subcontract Work shall be new unless otherwise specified, of good quality, in conformance with the Subcontract Documents, and free from defective workmanship and materials. Upon request by Contractor, Subcontractor shall furnish satisfactory evidence of the country of origin, quality, and type of materials and equipment furnished. Subcontractor further warrants that the Subcontract Work shall be free from material defects not intrinsic in the design or materials required in the Subcontract Documents. Subcontractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project



was not intended, improper or insufficient maintenance, modifications performed by others, or abuse.

3.14 CLEANUP

3.14.1 Subcontractor shall at all times during its performance of the Subcontract Work keep the Worksite clean and free from debris resulting from the Subcontract Work. Prior to discontinuing the Subcontract Work in an area, Subcontractor shall clean the area and remove all its rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Subcontractor shall make provisions to minimize and confine dust and debris resulting from its construction activities. Subcontractor shall not be held responsible for unclean conditions caused by others.

3.14.2 If Subcontractor fails to commence compliance with cleanup duties within two (2) Business Days after written notification from Contractor of non-compliance, Contractor may implement appropriate cleanup measures without further notice and shall deduct the reasonable costs from any amounts due or to become due to Subcontractor in the next payment period.

3.15 SAFETY

3.15.1 Subcontractor is required to perform the Subcontract Work in a safe and reasonable manner. Subcontractor shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect: (a) employees and other persons at the Worksite; (b) materials and equipment stored at the Worksite or at off-site locations for use in performance of the Subcontract Work; and (c) all property and structures located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

3.15.2 Subcontractor shall comply with the safety program established by Contractor for the Project, including any safety manual issued by Contractor for the Project.

3.15.3 Subcontractor shall give all required notices and comply with all applicable rules, regulations, orders, and other lawful requirements established to prevent injury, loss or damage to persons or property.

3.15.4 Consistent with the Subcontract Documents, including, but not limited to the Prime Contract, Subcontractor shall implement appropriate safety measures pertaining to the Subcontract Work and the Project, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers, and establishing proper notice procedures to protect persons and property at the Worksite and adjacent to the Worksite, or at off-site locations for use in performance of the Subcontract Work from injury, loss, or damage.

3.15.5 Subcontractor shall exercise extreme care in carrying out any of the Subcontract Work, which involves explosive or other dangerous methods of construction or hazardous procedures, materials, or equipment. Subcontractor shall use properly qualified individuals or entities to carry out the Subcontract Work in a safe and reasonable manner so as to reduce the risk of bodily injury or property damage.

3.15.6 Damage or loss not insured under property insurance and to the extent caused by the negligent or intentionally wrongful acts or omissions of Subcontractor, or anyone for whose acts Subcontractor may be liable, shall be promptly remedied by Subcontractor.



Damage or loss to the extent caused by the negligent or intentionally wrongful acts or omissions of Contractor, or anyone for whose acts Contractor may be liable, shall be promptly remedied by Contractor.

3.15.7 Subcontractor is required to designate one of its employees at the Worksite to act as Subcontractor's designated safety representative with a duty to mitigate the risk of accidents. Unless otherwise identified by Subcontractor in writing to Contractor, the designated safety representative shall be Subcontractor's project superintendent. Such safety representative shall attend Worksite safety meetings as requested by Contractor.

3.15.8 Subcontractor has an affirmative duty not to overload the structures or conditions at the Worksite and shall take reasonable steps not to load any part of the structures or Worksite so as to give rise to an unsafe condition or create an unreasonable risk of bodily injury or property damage. Subcontractor shall have the right to request, in writing, from Contractor loading information concerning the structures at the Worksite.

3.15.9 Subcontractor shall give prompt written notice to Contractor of any accident involving bodily injury requiring a physician's care, any property damage exceeding Five Hundred Dollars (\$500.00) in value or such lesser amount as provided in the Prime Contract, or any incident that could have resulted in serious bodily injury, whether or not such an injury was sustained.

3.15.10 Prevention of accidents at the Worksite is the responsibility of Contractor, Subcontractor, and all other subcontractors, persons, and entities at the Worksite. Establishment of a safety program by Contractor shall not relieve Subcontractor or other parties of their safety responsibilities. Subcontractor shall establish its own safety program implementing safety measures, policies, and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by Contractor and Owner, including, but not limited to, requirements imposed by the Subcontract Documents. Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project, and shall stop any part of the Subcontract Work which Contractor reasonably deems unsafe until corrective measures satisfactory to Contractor shall have been taken. Contractor's failure to stop Subcontractor's unsafe practices shall not relieve Subcontractor of its responsibilities. Subcontractor shall notify Contractor immediately following a reportable incident under applicable rules, regulations, orders, and other lawful requirements, and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by Contractor. To the fullest extent permitted by Law, each Party to this Agreement shall indemnify the other Party from and against fines or penalties imposed as a result of the indemnitor's safety violations, but only to the extent that such fines or penalties are caused by its failure to comply with applicable safety requirements. This indemnification obligation does not extend to additional or increased fines that result from repeated or willful violations not caused by the indemnitor's failure to comply with applicable rules, regulations, orders, and other lawful requirements.

3.16 PROTECTION OF THE WORK Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of others from damage caused by Subcontractor's performance of the Subcontract Work. Should Subcontractor cause damage to the Work or property of Owner, Contractor, or others, Subcontractor shall promptly remedy such damage to the satisfaction of Contractor, or Contractor may, if Subcontractor has not proposed a reasonable plan to remedy such damage within forty-eight (48) hours of Contractor's written notice to Subcontractor, remedy the damage and deduct its cost from any amounts due or to



become due to Subcontractor, unless such costs are recovered under applicable property insurance.

3.17 EMERGENCIES In an emergency affecting the safety of persons or property, Subcontractor shall act to prevent threatened damage, injury, or loss. Any change in the Subcontract Amount or the Progress Schedule from actions of Subcontractor in an emergency situation shall be as determined in ARTICLE 7.

3.18 PERMITS, FEES, LICENSES AND TAXES Subcontractor shall give timely notices to authorities pertaining to the Subcontract Work, and shall be responsible for all permits, fees, licenses, assessments, inspections, testing, and taxes necessary to complete the Subcontract Work in accordance with the Subcontract Documents.

3.19 ASSIGNMENT OF SUBCONTRACT WORK Subcontractor shall neither assign the whole nor any part of the Subcontract Work without prior written approval of Contractor.

3.20 HAZARDOUS MATERIALS To the extent that Contractor has rights or obligations under the Prime Contractor by law regarding hazardous materials as defined by the Subcontract Documents within the scope of the Subcontract Work, Subcontractor shall have the same rights or obligations.

3.21 SAFETY DATA SHEETS (SDS) SHEETS Subcontractor shall submit to Contractor all SDS required by Law for materials or substances necessary for the performance of the Subcontract Work. SDS sheets obtained by Contractor from other subcontractors or sources shall be made available to Subcontractor by Contractor.

3.22 LAYOUT RESPONSIBILITY AND LEVELS Contractor shall establish principal axis lines of the building and Worksite, and benchmarks. Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontract Work and for any loss or damage to Contractor or others by reason of Subcontractor's failure to lay out or perform Subcontract Work correctly. Subcontractor shall exercise prudence so that the actual final conditions and details shall result in alignment of finish surfaces.

3.23 UNCOVERING/CORRECTION OF SUBCONTRACT WORK

3.23.1 UNCOVERING OF SUBCONTRACT WORK

3.23.1.1 If required in writing by Contractor, Subcontractor must uncover any portion of the Subcontract Work which has been covered by Subcontractor in violation of the Subcontract Documents or contrary to a directive issued to Subcontractor by Contractor. Upon receipt of a written directive from Contractor, Subcontractor shall uncover such work for Contractor's or Owner's inspection and restore the uncovered Subcontract Work to its original condition at Subcontractor's time and expense.

3.23.1.2 Contractor may direct Subcontractor to uncover portions of the Subcontract Work for inspection by Owner or Contractor at any time. Subcontractor is required to uncover such work whether or not Contractor or Owner had requested to inspect the Subcontract Work prior to it being covered. Except as provided in the subsection immediately above, the Agreement shall be adjusted by Subcontract Change Order for the cost and time of uncovering and restoring any work which is uncovered for inspection and proves to be installed in accordance with the Subcontract Documents, provided Contractor had not



previously instructed Subcontractor to leave the work uncovered. If Subcontractor uncovers work pursuant to a directive issued by Contractor, and such work upon inspection does not comply with the Subcontract Documents, Subcontractor shall be responsible for all costs and time of uncovering, correcting, and restoring the work so as to make it conform to the Subcontract Documents. If Contractor or some other entity for which Subcontractor is not responsible caused the nonconforming condition, Contractor shall be required to adjust the Agreement by Subcontract Change Order for all such costs and time.

3.23.2 CORRECTION OF WORK

3.23.2.1 If Owner or Contractor rejects any portion of the Subcontract Work for failure to conform with the Subcontract Documents, Subcontractor shall promptly correct the Subcontract Work whether it had been fabricated, installed or completed. Subcontractor shall be responsible for the costs of correcting such Subcontract Work, any required additional testing or inspections, and compensation for services and expenses of Owner and Contractor made necessary by the defective Subcontract Work.

3.23.2.2 In addition to Subcontractor's obligations under this section, Subcontractor agrees to promptly correct, after receipt of a written notice from Contractor, all Subcontract Work performed under this Agreement which proves to be defective in workmanship or materials within a period of one year from the date of Substantial Completion of the Subcontract Work or for a longer period of time as may be required by specific warranties in the Subcontract Documents. Substantial Completion of the Subcontract Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Subcontract Documents so that Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended without unscheduled disruption. If, during the one-year period, Contractor fails to provide Subcontractor with prompt written notice of the discovery of defective or nonconforming Subcontract Work, Contractor shall neither have the right to require Subcontractor to correct such Subcontract Work nor the right to make claim for breach of warranty. If Subcontractor fails to correct defective or nonconforming Subcontract Work within a reasonable time after receipt of notice from Contractor, Contractor may correct such Subcontract Work pursuant to subsection 10.1.1.

3.23.3 Unless otherwise provided in the Prime Contract, Subcontractor's correction of Subcontract Work pursuant to this section shall not extend the one-year period for the correction of Subcontract Work, but if Subcontract Work is first performed after Substantial Completion, the one-year period for corrections shall be extended by the time period after Substantial Completion and the performance of that portion of the Subcontract Work. Subcontractor's obligation to correct Subcontract Work within one year does not limit the enforcement of Subcontractor's other obligations with regard to the Agreement and the Subcontract Documents.

3.23.4 If Subcontractor's correction or removal of Subcontract Work destroys or damages completed or partially completed work or existing building of Owner, Contractor or any separate contractors or subcontractors, Subcontractor shall be responsible for the reasonable cost of correcting such destroyed or damaged property to the extent such cost is attributable to the fault of Subcontractor.

3.23.5 If portions of Subcontract Work which do not conform with the requirements of the Subcontract Documents are neither corrected by Subcontractor nor accepted by



Contractor, Subcontractor shall remove such Subcontract Work from the Worksite if so directed by Contractor.

3.24 MATERIALS OR EQUIPMENT FURNISHED BY OTHERS If the scope of the Subcontract Work includes installation of materials or equipment furnished by others, Subcontractor is responsible for exercising proper care in receiving, handling, storing, and installing such items, unless otherwise provided in the Subcontract Documents. Subcontractor shall examine the items provided and report to Contractor in writing any items it may discover that do not conform to requirements of the Subcontract Documents. Subcontractor shall not proceed to install non-conforming items without further instructions from Contractor. Loss or damage due to acts or omissions of Subcontractor shall, upon two (2) Business Days' written notice to Subcontractor, be deducted from any amounts due or to become due Subcontractor.

3.25 SUBSTITUTIONS No substitutions shall be made in the Subcontract Work unless permitted in the Subcontract Documents, and only upon Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions.

3.26 USE OF CONTRACTOR'S EQUIPMENT Subcontractor, its agents, employees, subcontractors or suppliers shall use Contractor's equipment only with the express written permission of Contractor's designated representative and in accordance with Contractor's terms and conditions for such use. If Subcontractor or any of its agents, employees, subcontractors, or suppliers utilize any of Contractor's equipment, including machinery, tools, scaffolding, hoists, lifts, or similar items owned, leased, or under the control of Contractor, Subcontractor shall indemnify and be liable to Contractor as provided in ARTICLE 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of Contractor's employees operating Contractor's equipment.

3.27 WORK FOR OTHERS Until final completion of the Subcontract Work, Subcontractor agrees not to perform any work directly for Owner or any tenants, or deal directly with Owner's representatives in connection with the Subcontract Work, unless otherwise approved in writing by Contractor.

3.28 SYSTEMS AND EQUIPMENT STARTUP With the assistance of Owner's maintenance personnel and Contractor, Subcontractor shall direct the check-out and operation of systems and equipment for readiness, and assist in their initial startup and the testing of the Subcontract Work.

3.29 COMPLIANCE WITH LAWS

3.29.1 Subcontractor agrees to be bound by, and at its own cost comply with, all Laws applicable to the Subcontract Work, including but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety, and all other Laws. Subcontractor shall be liable to Contractor and Owner for all loss, cost, and expense attributable to any acts of commission or omission by Subcontractor, its employees, and agents resulting from the failure to comply with Laws, including, but not limited to, any fines, penalties, or corrective measures, except as provided in subsection 3.15.10. However, liability under this section shall not apply if notice to Subcontractor was given, and advance approval by appropriate authorities, including Owner and Contractor, is received.

3.29.2 To the extent Contractor receives reimbursement or additional time from Owner under the Prime Contract, the Subcontract Amount or Progress Schedule shall be



equitably adjusted for changes in Laws enacted after the date of the Agreement, including taxes, affecting the performance of the Work.

3.30 CONFIDENTIALITY To the extent the Prime Contract provides for the confidentiality of any of Owner's proprietary or otherwise confidential information disclosed in connection with the performance of this Agreement, Subcontractor is equally bound by Owner's confidentiality requirements.

3.31 ROYALTIES, PATENTS, AND COPYRIGHTS Subcontractor shall pay all royalties and license fees, which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Subcontractor and incorporated in the Subcontract Work. Subcontractor shall defend, indemnify, and hold Contractor and Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. Unless otherwise provided in the Prime Contract, Subcontractor shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Subcontract Documents without notice in the Subcontract Documents that a royalty or license fee must be paid for the use of the design, process, or product. However, if Subcontractor has reason to believe that a particular design, process, or product required by the Subcontract Documents is an infringement of a patent, Subcontractor shall promptly furnish such information to Contractor or be responsible to Contractor and Owner for any loss sustained as a result.

ARTICLE 4 CONTRACTOR'S RESPONSIBILITIES

4.1 CONTRACTOR'S REPRESENTATIVE Contractor shall designate a person who shall be Contractor's authorized representative. Contractor's representative shall be the only person Subcontractor shall look to for instructions, orders, or directions, except in an emergency. Contractor's Representative is TBD. If Contractor changes its Representative, Contractor shall promptly notify Subcontractor in writing.

4.2 OWNER'S ABILITY TO PAY

4.2.1 Subcontractor shall have the right upon request to receive from Contractor such information as Contractor has obtained relative to Owner's financial ability to pay for the Work, including any subsequent material variation in such information. Contractor, however, does not warrant the accuracy or completeness of the information provided by Owner.

4.2.2 If Subcontractor does not receive the information referenced in subsection 4.2.1 with regard to Owner's ability to pay for the Work as required by the Contract Documents, Subcontractor may request the information from Owner.

4.3 INFORMATION OR SERVICES Subcontractor is entitled to request through Contractor any information or services reasonably required for Subcontractor's performance of the Subcontract Work which is under Owner's control. To the extent Contractor receives such information and services, Contractor shall provide them to Subcontractor in a timely manner. Contractor, however, does not warrant the accuracy or completeness of the information provided by Owner. To the extent Owner provides any warranty of Owner provided information, Contractor agrees to permit Subcontractor to prosecute a claim in the name of Contractor for the use and benefit of



Subcontractor, pursuant to subsections 5.3.2 and 11.2 concerning any defects or inaccuracies in Owner-provided information.

4.4 STORAGE AREAS Consistent with the Prime Contract, Contractor shall allocate adequate storage areas, if available, for Subcontractor's materials and equipment during the course of the Subcontract Work. Unless otherwise agreed upon, Contractor shall reimburse Subcontractor for the additional costs of having to relocate such storage areas at the direction of Contractor.

4.5 TIMELY COMMUNICATIONS Contractor shall transmit to Subcontractor, with reasonable promptness, all submittals, transmittals, and written approvals relative to the Subcontract Work. Unless otherwise specified in the Subcontract Documents, if communications are not through Subcontractor, Contractor shall inform Subcontractor of the communications Contractor has with Subcontractor's subcontractors, materialmen and suppliers.

4.6 USE OF SUBCONTRACTOR'S EQUIPMENT Contractor, its agents, employees, or suppliers shall use Subcontractor's equipment only with the express written permission of Subcontractor's designated representative and in accordance with Subcontractor's terms and conditions for such use. If Contractor or any of its agents, employees, or suppliers utilize any of Subcontractor's equipment, including machinery, tools, scaffolding, hoists, lifts, or similar items owned, leased, or under the control of Subcontractor, Contractor shall indemnify and hold harmless Subcontractor as provided in ARTICLE 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of Subcontractor's employees operating Subcontractor's equipment.

ARTICLE 5 PROGRESS SCHEDULE

5.1 TIME IS OF THE ESSENCE Time is of the essence for both Parties. They mutually agree to see to the performance of their respective obligations so that the entire Project may be completed in accordance with the Subcontract Documents and particularly the Progress Schedule as set forth in Exhibit C.

5.2 SCHEDULE OBLIGATIONS Subcontractor shall provide Contractor with any scheduling information proposed by Subcontractor for the Subcontract Work. In consultation with Subcontractor, Contractor shall prepare the Progress Schedule and shall revise and update such schedule, as necessary, as the Work progresses. The Parties are each bound by the Progress Schedule. The Progress Schedule and all subsequent changes and additional details shall be submitted to Subcontractor promptly and reasonably in advance of the required performance. Contractor shall have the right to determine and, if necessary, make reasonable changes to the time, order, and priority in which the various portions of the Work shall be performed and all other matters relative to the Subcontract Work. Subcontractor may seek equitable adjustment in the Subcontract Amount and Subcontract Time in accordance with the Subcontract Documents.

5.3 DELAYS AND EXTENSIONS OF TIME

5.3.1 OWNER-CAUSED DELAY Subject to the subsection immediately below, if the commencement or progress of the Subcontract Work is delayed by the acts or omissions of Owner and without the fault or responsibility of Subcontractor, or any of Subcontractor's subcontractors, materialmen, and suppliers, the Subcontract Time shall be extended by Subcontract Change Order and the Subcontract Amount equitably



adjusted to the extent the Contractor is able to obtain an equitable adjustment from the Owner, which adjustments the Contractor shall diligently pursue.

5.3.2 CLAIMS RELATING TO OWNER To the extent practicable without causing prejudice to either Party's rights or position, each Party hereby agrees to support the other Party in connection with any claims against the Owner. Each Party further agrees that it shall bear its proportional expense in connection with the prosecution of any such claims, depending on the extent to which such claims relate to the actions or inactions of each Party to the Agreement.

5.3.3 CONTRACTOR-CAUSED DELAY Nothing in this article shall preclude Subcontractor's recovery of delay damages caused by Contractor to the extent not otherwise precluded by this Agreement.

5.3.4 CLAIMS RELATING TO CONTRACTOR Subcontractor shall give Contractor written notice of all claims not included in subsection 5.3.2 within fourteen (14) Days of Subcontractor's knowledge of the facts giving rise to the event for which claim is made. Thereafter, Subcontractor shall submit written documentation of its claim, including appropriate supporting documentation, within twenty- one (21) Days after giving notice, unless the Parties agree upon a longer period of time. Contractor shall respond in writing denying or approving, in whole or in part, Subcontractor's claim no later than fourteen (14) Days after receipt of Subcontractor's documentation of claim. Contractor's failure to respond shall be deemed a denial of Subcontractor's claim. All unresolved claims, disputes, and other matters in question between the Parties not relating to claims included in subsection 5.3.2 shall be resolved in the manner provided in ARTICLE 11.

5.4 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

5.4.1 Except for any (a) liquidated, consequential, or other damages that Owner is entitled to recover against Contractor under the Prime Contract, and (b) losses covered by insurance required by the Subcontract Documents, the Parties mutually waive all claims against each other for consequential damages, including damages for loss of business, loss of financing related to the Project, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. Similarly, Subcontractor shall obtain in another agreement from its Subcontractors mutual waivers of consequential damages that correspond to Subcontractor's waiver of consequential damages herein. The provisions of this subsection shall also apply to and survive termination of this Agreement.

5.5 LIQUIDATED DAMAGES

5.5.1 If the Subcontract Documents furnished to Subcontractor in accordance with section 2.4 provide for liquidated damages or other damages for delay beyond the completion date set forth in the Subcontract Documents that are not specifically addressed as a liquidated damage item in this Agreement, and such damages are assessed, Contractor may assess a share of the damages against Subcontractor in proportion to Subcontractor's share of the responsibility for the damages. However, the amount of such assessment shall not exceed the amount assessed against Contractor. This subsection shall not limit Subcontractor's liability to Contractor for Contractor's actual damages caused by Subcontractor.

5.5.2 To the extent the Prime Contract provides for a mutual waiver of consequential damages by Owner and Contractor, damages for which Contractor is liable to Owner,



including those related to section 9.1, are not consequential damages for the purpose of this waiver. Similarly, to the extent that a Subcontractor agreement with its Subcontractor provides for a mutual waiver of consequential damages by Owner and Contractor, damages for which Subcontractor is liable to lower-tier parties due to the fault of Owner or Contractor are not consequential damages for the purpose of this waiver.

ARTICLE 6 SUBCONTRACT AMOUNT

6.1 As full compensation for performance of this Agreement, Contractor agrees to pay Subcontractor in current funds for the satisfactory performance of the Subcontract Work subject to all applicable provisions of this Agreement.

(a) the fixed price of SIX HUNDRED TWENTY THREE THOUSAND SIX HUNDRED THIRTY EIGHT Dollars and zero cents (\$ \$623,638.00) subject to additions and deductions as provided for in the Subcontract Documents; or

(b) alternates and unit prices in accordance with the attached schedule of Alternates and Unit Prices and Estimated Quantities, which is incorporated by reference and identified as Exhibit D.

ARTICLE 7 CHANGES IN THE SUBCONTRACT WORK

7.1 SUBCONTRACT CHANGE ORDERS Subcontractor may request or Contractor may order changes in the Subcontract Work or the timing or sequencing of the Subcontract Work that impacts the Subcontract Amount or Subcontract Time. When Contractor orders in writing, Subcontractor, without nullifying this Agreement shall make any and all changes in the Subcontract Work. Any adjustment in the Subcontract Amount or Subcontract Time shall be authorized by a Subcontract Change Order. No adjustments shall be made for any changes performed by Subcontractor that have not been ordered by Contractor.

7.2 UNILATERAL OR CONSTRUCTIVE CHANGES To the extent that the Subcontract Documents provide for directives to perform what is or may be a Change to the work or time or sequencing of the Subcontract Work, in the absence of agreement on the terms of a Subcontract Change Order, Subcontractor shall promptly comply with such directives and be entitled to apply for interim payment if the Subcontract Documents so provide.

7.3 CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite is (a) a subsurface or other physical condition materially different from those indicated in the Subcontract Documents, or (b) an unusual and unknown physical condition materially different from conditions ordinarily encountered and generally recognized as inherent in the Subcontract Work provided for in the Subcontract Documents, Subcontractor shall stop affected Work after the condition is first observed and give prompt written notice of the condition to Contractor. Any change in the Contract Price or the Contract Time as a result of the condition, including a dispute about its existence or nature, shall be determined as provided within the meaning of FAR 52.236-2 Differing Site Conditions, if applicable, or ARTICLE 7.

7.4 ADJUSTMENTS IN SUBCONTRACT AMOUNT If a Subcontract Change Order requires an adjustment in the Subcontract Amount, the adjustment shall be established by one of the following methods:



- (a) mutual acceptance of an itemized lump sum; or
- (b) unit prices as indicated in the Subcontract Documents or as subsequently agreed to by the Parties; or
- (c) costs as determined in accordance with the Subcontract Documents, or in a manner otherwise acceptable to the Parties and a mutually acceptable fixed or percentage fee; or another method provided in the Subcontract Documents.

7.5 SUBSTANTIATION OF ADJUSTMENT If Subcontractor does not respond promptly or disputes the method of adjustment, the method and the adjustment shall be determined by Contractor on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Subcontract Amount, an allowance for overhead and profit of the percentage provided in subsection 7.5 (f), or if none is provided, as mutually agreed upon by the Parties. Subcontractor shall maintain for Contractor's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Subcontract Change Order:

- (a) labor costs, including Social Security, health, welfare, retirement, and other fringe benefits as normally required, and state workers' compensation insurance;
- (b) costs of materials, supplies, and equipment, whether incorporated in the Subcontract Work or consumed, including transportation costs;
- (c) costs of renting machinery and equipment other than hand tools;
- (d) costs of bond and insurance premiums, permit fees, and taxes attributable to the change; and
- (e) costs of additional supervision and field office personnel services necessitated by the change.
- (f) Unless otherwise provided in the Prime Contract, adjustments to the Subcontract Amount shall be based on net change in Subcontractor's reasonable cost of performing the changed Subcontract Work plus, in case of a net increase in cost, an agreed upon sum for overhead and profit not to exceed 5% and 10%. If the Prime Contract limits the amount that can be charged for overhead and profit on changed Subcontract Work, Subcontractor shall be bound by those overhead and profit limits. Subcontractor shall similarly be bound by any provision in the Prime Contract for reductions in overhead and profit for deductive change orders affecting the Subcontract Work.

7.6 NO OBLIGATION TO PERFORM Subcontractor shall not perform changes in the Subcontract Work until a Subcontract Change Order has been executed or written instructions have been issued in accordance with subsection 7.2 or the section immediately below.

7.7 CHANGES Contractor may direct Subcontractor to perform incidental changes in the Subcontract Work which do not involve adjustments in the Subcontract Amount or Subcontract Time. Incidental changes shall be consistent with the scope and intent of the Subcontract Documents. Contractor shall initiate an incidental change in Subcontract Work by issuing a written order to Subcontractor. Such written notice shall be carried out promptly and is binding on the Parties.



ARTICLE 8 PAYMENT

8.1 SCHEDULE OF VALUES As a condition to payment, Subcontractor shall provide a schedule of values satisfactory to Contractor not more than fifteen (15) Days from the date of execution of this Agreement.

8.2 PROGRESS PAYMENTS

8.2.1 CERTIFICATION A payment request may not be approved unless the payment application includes substantiation of the amounts requested and certification by Subcontractor that:

8.2.1.1 the amounts requested are only for performance in accordance with the specifications,

terms, and conditions of the Subcontract Documents;

8.2.1.2 payments to Subcontractor's subcontractors and suppliers have been made from previous payments received under this Agreement that they have been paid in full all sums to which they are entitled, and timely payments will be made from the proceeds of the payment covered by the certification in accordance with their agreements ; and

8.2.1.3 the application does not include any amounts relating to the work of a lower-tier subcontractor or supplier which Subcontractor intends to withhold or retain from the lower- tier subcontractor or supplier. Contractor is entitled to rely upon Subcontractor's certification in Contractor's payment requests to Owner concerning Subcontractor's performance.

8.2.2 SUBCONTRACTOR WITHHOLDING If Subcontractor withholds sums at any time received in a payment applicable to the work of a lower-tier subcontractor or supplier, Subcontractor will notify Contractor and Contractor shall, if appropriate, deduct such amounts from the next payment to Subcontractor.

8.2.3 APPLICATIONS Subcontractor's applications for payment shall be itemized and supported by substantiating data as required by the Subcontract Documents. If Subcontractor is obligated to provide design services pursuant to section 3.8, Subcontractor's applications for payment shall show its design professional's fee and expenses as a separate cost item. Subcontractor's application for payment for the Subcontract Work shall be notarized if required and if allowed under the Subcontract Documents, Subcontractor's application may include properly authorized Subcontract Construction Change Orders. Subcontractor's progress payment application for the Subcontract Work performed in the preceding payment period shall be submitted for approval of Contractor in accordance with the schedule of values if required and pursuant to subsections 8.2.5 through 8.2.7. Contractor shall incorporate the approved amount of Subcontractor's application for payment into Contractor's application for payment to Owner for the same period and submit it to Owner in a timely fashion. Contractor shall promptly notify Subcontractor of any changes in the amount requested on behalf of Subcontractor.

8.2.3.1 All applications for payment must be identified by Contractor's Project No, and must include:

1. Certified Payrolls



2. Partial & Final Release and Waiver of Lien (at Final Payment)
3. Approved Schedule of Values
4. Required submittals, plans, inspections, reports, and other required submittals.

8.2.4 RETAINAGE The rate of retainage shall be Zero percent (0%). If the Subcontract Work is satisfactory and the Prime Contract provides for reduction of retainage, Subcontractor's retainage shall also be reduced when Contractor's retainage for the Subcontract Work has been so reduced by Owner.

8.2.5 TIME OF APPLICATION Subcontractor shall submit progress payment applications to Contractor no later than the 25th Day of each payment period for the Subcontract Work performed up to and including the last Day of the payment period indicating work completed and, to the extent allowed under the subsection immediately below, materials suitably stored during the preceding payment period.

8.2.6 STORED MATERIALS Unless otherwise provided in the Subcontract Documents, and if approved in advance by Owner, applications for payment may include materials and equipment not incorporated in the Subcontract Work but delivered to and suitably stored at the site or at some other location agreed upon in writing. Approval of payment applications for such stored items on or off the site shall be conditioned upon submission by Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to Owner and Contractor to establish Owner's title to such materials and equipment, or otherwise to protect Owner's and Contractor's interest, including transportation to the site.

8.2.7 TIME OF PAYMENT Progress payments to Subcontractor for satisfactory performance of the Subcontract Work shall be made no later than seven (7) Days after receipt by Contractor of payment from Owner for the Subcontract Work.

8.2.8 SUBSTANTIAL COMPLETION Unless otherwise provided for in the prime agreement, partial Owner occupancy or use of completed portions of the Subcontract Work shall constitute Substantial Completion of that portion of the Subcontract Work and the warranty period applicable to the Subcontract Work shall commence upon achievement of Substantial Completion of the Project and acceptance by Owner under the terms of the prime agreement.

8.2.9 PAYMENTS WITHHELD Contractor may reject a Subcontractor payment application in whole or in part or withhold amounts from a previously approved Subcontractor payment application, as may reasonably be necessary to protect Contractor from loss or damage for which Contractor may be liable and without incurring an obligation for late payment interest based upon:

8.2.9.1 Subcontractor's repeated failure to perform the Subcontract Work as required by this Agreement;

8.2.9.2 except as accepted by the insurer providing building risk or other property insurance covering the Project, loss or damage arising out of or relating to this Agreement and caused by Subcontractor to Owner, Contractor, or others to whom Contractor may be liable;



8.2.9.3 Subcontractor's failure to properly pay for either labor, materials, equipment, or supplies furnished in connection with the Subcontract Work in accordance with section 8.10, including written notices of claim received by Contractor from a supplier or second-tier subcontractor in accordance with 40 U.S.C. Section 3133(b) (the "Miller Act");

8.2.9.4 rejected, nonconforming, or defective Subcontract Work which has not been corrected in a timely fashion;

8.2.9.5 reasonable evidence demonstrating that the unpaid balance of the Subcontract Amount is insufficient to cover the cost to complete the Subcontract Work;

8.2.9.6 uninsured third-party claims involving Subcontractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Subcontractor furnishes Contractor with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established.

8.2.10 No later than seven (7) Days after receipt of an application for payment, Contractor shall give written notice to Subcontractor, at the time of disapproving or nullifying all or part of an application for payment or withholding from a payment otherwise due, stating its specific reasons for such disapproval or withholding, and the remedial actions to be taken by Subcontractor in order to receive payment of the amount disapproved or withheld. When the above reasons for disapproving an application for payment or withholding payment are removed, payment will be promptly made for the amount previously disapproved or withheld.

8.3 FINAL PAYMENT

8.3.1 APPLICATION Upon acceptance of the Subcontract Work by Owner and Contractor and receipt from Subcontractor of evidence of fulfillment of Subcontractor's obligations in accordance with the Subcontract Documents and the subsection immediately below, Contractor shall incorporate Subcontractor's application for final payment into Contractor's next application for payment to Owner without delay, or notify Subcontractor if there is a delay and the reasons for the delay.

8.3.2 REQUIREMENTS Before Contractor shall be required to incorporate Subcontractor's application for final payment into Contractor's next application for payment, Subcontractor shall submit to Contractor:

8.3.2.1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontract Work for which Owner or its property or Contractor or Contractor's surety might in any way be liable, have been paid or otherwise satisfied;

8.3.2.2 consent of surety to final payment, if required;

8.3.2.3 satisfaction of required closeout procedures;

8.3.2.4 certification that insurance required by the Subcontract Documents to remain in effect beyond final payment pursuant to subsection 9.2.6 is in effect and will not be cancelled or allowed to expire without at least thirty (30) Days' written notice to Contractor unless a longer period is stipulated in this Agreement;



8.3.2.5 other data, if required by Contractor or Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be designated by Contractor or Owner;

8.3.2.6 written warranties, equipment manuals, startup, and testing required in section 3.28; and as-built drawings if required by the Subcontract Documents.

8.3.3 TIME OF PAYMENT Final payment of the balance due of the Subcontract Amount shall be made to Subcontractor within seven (7) Days after receipt by Contractor of final payment from Owner for such Subcontract Work.

8.3.4 FINAL PAYMENT DELAY If Owner or its designated agent does not issue a certificate for final payment or Contractor does not receive such payment for any cause which is not the fault of Subcontractor, Contractor shall promptly inform Subcontractor in writing. Contractor shall also diligently pursue, with the assistance of Subcontractor, the prompt release by Owner of the final payment due for the Subcontract Work. At Subcontractor's request and expense, to the extent agreed upon in writing, Contractor shall institute reasonable legal remedies to mitigate the damages and pursue payment of Subcontractor's final payment including interest.

8.3.5 WAIVER OF CLAIMS Final payment shall constitute a waiver of all claims by Subcontractor relating to the Subcontract Work, but shall in no way relieve Subcontractor of liability for the obligations assumed under sections 3.21 and 3.22, or for faulty or defective work or services discovered after final payment, nor relieve Contractor for claims identified by the parties as unsettled at the time of such payment.

8.4 NOT USED.

8.5 CONTINUING OBLIGATIONS Provided Contractor is making payments on or has made payments to Subcontractor in accordance with this Agreement, Subcontractor shall reimburse Contractor for any cost and expense for any claim, obligation, or lien asserted by Subcontractor or Subcontractor's suppliers before or after final payment is made that arises from the performance of the Subcontract Work. Subcontractor shall reimburse Contractor for costs and expenses including attorneys' fees and costs and expenses incurred by Contractor in satisfying, discharging, or defending against any such claims, obligation, or lien, including any action brought or judgment recovered. In the event that any Law or bond requires Subcontractor to take any action prior to the expiration of the reasonable time for payment referenced in subsections 8.2.8 and 8.3.4 in order to preserve or protect Subcontractor's rights, if any, with respect to mechanic's lien or bond claims, then Subcontractor may take that action prior to the expiration of the reasonable time for payment and such action will not (a) create the reimbursement obligation recited above; (b) be in violation of this Agreement; (c) considered premature for purposes of preserving and protecting Subcontractor's rights.

8.6 PAYMENT USE RESTRICTION Payments received by Subcontractor shall be used to satisfy the indebtedness owed by Subcontractor to any person furnishing labor or materials, or both, for use in performing the Subcontract Work through the most current period applicable to progress payments received from Contractor before it is used for any other purpose. In the same manner, payments received by Contractor from Owner for the Subcontract Work shall be dedicated to payment to Subcontractor. This provision shall bear on this Agreement only, and is not for the benefit of third parties. Moreover, it shall not be construed by the parties to this Agreement or third parties to require that dedicated sums of money or payments be deposited in separate accounts, or that there be other restrictions on commingling of funds. Neither shall



these mutual covenants be construed to create any fiduciary duty on the Parties, nor create any tort cause of action or liability for breach of trust, punitive damages, or other equitable remedy or liability for alleged breach.

8.7 PAYMENT USE VERIFICATION If Contractor has reason to believe that Subcontractor is not complying with the payment terms of this Agreement, Contractor shall have the right to contact Subcontractor's subcontractors and suppliers to ascertain whether they are being paid by Subcontractor in accordance with this Agreement.

8.8 LOWER TIER SUBCONTRACTOR RIGHTS To the extent that the Prompt Payment Act Amendments of 1988 require certain actions by Contractor for the benefit of Subcontractor, Subcontractor will take identical actions for the benefit of its lower-tier subcontractors. Accordingly, Subcontractor shall include a payment clause and an interest penalty clause conforming to the standards set forth in sections (c)(1) and (c)(2) of FAR § 52.232-27(c)(3), Prompt Payment for Construction Contracts, in each of its subcontracts; and require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractors or suppliers.

8.9 PARTIAL CLAIM WAIVERS AND AFFIDAVITS As a prerequisite for payments, Subcontractor shall provide, in a form satisfactory to Owner and Contractor, partial claim waivers in the amount of the application for payment and affidavits covering its subcontractors and suppliers for completed Subcontract Work. Such waivers may be conditional upon payment. In no event shall Contractor require Subcontractor to provide an unconditional waiver of claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid or for which it is applying to be paid.

8.10 SUBCONTRACTOR PAYMENT FAILURE Upon payment by Contractor, Subcontractor shall promptly pay its subcontractors and suppliers the amounts to which they are entitled. In the event Contractor has reasonable cause to believe that labor, material, or other obligations incurred in the performance of the Subcontract Work are not being paid without lawful justification, Contractor may give written notice of a potential claim or lien to Subcontractor and may take any reasonable steps deemed necessary to assure that progress payments are utilized to pay such obligations, including but not limited to the issuance of joint checks. If upon receipt of notice, Subcontractor does not (a) supply evidence to the satisfaction of Contractor that any payment owed has been paid; or (b) post a bond indemnifying Owner, Contractor, Contractor's surety, if any, and the premises from a claim or lien, Contractor shall have the right to withhold from any payments due or to become due to Subcontractor a reasonable amount to protect Contractor from any and all loss, damage, or expense, including attorneys' fees that may arise out of or relate to any such claim or lien.

8.11 SUBCONTRACTOR ASSIGNMENT OF PAYMENTS Subcontractor shall not assign any moneys due or to become due under this Agreement, without the written consent of Contractor, unless the assignment is intended to create a new security interest within the scope of Article 9 of the Uniform Commercial Code. Should Subcontractor assign all or any part of any payment due or to become due under this Agreement to create a new security interest or for any other purpose, the instrument of assignment shall contain a clause to the effect that the assignee's right in and to any money due or to become due to Subcontractor shall be subject to the claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the Subcontract Work.

8.12 PAYMENT NOT ACCEPTANCE Payment to Subcontractor does not constitute or imply acceptance of any portion of the Subcontract Work.



8.13 CONTRACTOR BOND REVIEW Upon the request of Subcontractor, Contractor shall provide a copy of its payment bond for the Project.

8.14 OVERPAYMENTS If Subcontractor becomes aware of a duplicate subcontract payment or that Contractor has otherwise overpaid Subcontractor on a subcontract payment, Subcontractor shall immediately notify Contractor and request instructions for disposition of the overpayment.

ARTICLE 9 INDEMNITY AND INSURANCE

9.1 INDEMNITY

9.1.1 INDEMNITY To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Contractor, Owner, and their agents, consultants, and employees (the indemnitees) from all claims for bodily injury and property damage other than to the Work itself that may arise from the performance of the Subcontract Work, including reasonable attorneys' fees, costs, and expenses, that arise from the performance of the Work, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Subcontractor, Subcontractor's subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Subcontractor shall be entitled to reimbursement of any defense cost paid above Subcontractor's percentage of liability for the underlying claim to the extent attributable to the negligent or intentionally wrongful acts or omissions of the indemnitees.

9.1.2 NO LIMITATION ON LIABILITY In any and all claims against the indemnitees by any employee of Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable, the indemnification obligation 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 acts, disability benefit acts, or other employee benefit acts.

9.2 INSURANCE

9.2.1 SUBCONTRACTOR'S INSURANCE Before commencing the Subcontract Work, and as a condition precedent to payment, Subcontractor shall purchase and maintain insurance that will protect it from the claims arising out of or related to performance of the Subcontract Work under this Agreement, whether the performance of the Subcontract Work is by Subcontractor, or any of its consultants or subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

9.2.2 MINIMUM LIMITS OF LIABILITY Subcontractor shall procure and maintain with insurance companies licensed in the jurisdiction in which the Project is located and acceptable to Contractor, which acceptance shall not be unreasonably withheld, at least the limits of liability as set forth in Exhibit F.

9.2.3 PROFESSIONAL LIABILITY INSURANCE

9.2.3.1 Subcontractor shall require its design professional(s) to maintain Professional Liability Insurance with a company reasonably satisfactory to Contractor, including contractual liability insurance against the liability assumed in section 3.8, and including coverage for any professional liability caused by any of the consultants to Subcontractor's design professional(s). Said insurance shall



have specific minimum limits as set forth below: Limit of \$1,000,000 per claim. General Aggregate of \$5,000,000 for the subcontract services rendered. The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all subcontract services rendered by its design professional. Said insurance shall be continued in effect with an extended period of three (3) years following final payment to the Designer. Such insurance shall have a maximum deductible amount of \$10,000 per occurrence. The deductible shall be paid by Subcontractor or its design professional.

9.2.3.2 Subcontractor shall require its design professional to furnish to Subcontractor and Contractor, before design professional commences its services, a copy of its professional liability policy evidencing the coverages required in this section. No policy shall be cancelled or modified without thirty (30) Days' prior written notice to Subcontractor and Contractor.

9.2.4 NUMBER OF POLICIES Commercial General Liability (CGL) Insurance and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy.

9.2.5 CANCELLATION, RENEWAL, AND MODIFICATION Subcontractor shall maintain in effect all insurance coverages required under this Agreement at Subcontractor's sole expense and with insurance companies acceptable to Contractor, which acceptance shall not be unreasonably withheld. To the extent commercially available to Subcontractor from its current insurance company, insurance policies required under this section 9.2 shall contain a provision that the insurance company or its designee must give Contractor written notice transmitted in paper or electronic format: (a) thirty (30) Days before coverage is nonrenewed by the insurance company, and (b) within ten (10) Business Days after cancellation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, Subcontractor shall furnish Contractor with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under this section 9.2 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Subcontractor shall give Contractor prompt written notice upon actual or constructive knowledge of such condition. In the event Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, Contractor may purchase such coverage as desired for Contractor's benefit and charge the expense to Subcontractor, or terminate this Agreement.

9.2.6 CONTINUATION OF COVERAGE Subcontractor shall continue to carry Completed Operations Liability Insurance for at least one years after final payment to Contractor, Before commencing the Work, Subcontractor shall furnish Contractor with certificates evidencing the required coverages.

9.2.7 PROPERTY INSURANCE

9.2.7.1 Upon written request of Subcontractor, Contractor shall provide Subcontractor with a copy of any Builder's Risk Policy of insurance or any other property or equipment insurance in force for the Project and procured by Owner or Contractor.



9.2.7.2 If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Subcontract Documents, Subcontractor shall procure and maintain at Subcontractor's own expense property and equipment insurance for the Subcontract Work, including portions of the Subcontract Work stored off the Worksite or in transit, when such portions of the Subcontract Work are to be included in an application for payment under ARTICLE 8.

WAIVER OF SUBROGATION

9.2.7.3 Unless otherwise provided in the Prime Contract, the Parties waive all rights against each other, Owner, and any of their respective consultants, subcontractors, and subcontractors, agents, and employees, for damages caused by perils to the extent covered by the proceeds of the insurance provided in subsection 9.2.7, except such rights as they may have to the insurance proceeds. Subcontractor shall require similar waivers from its subcontractors.

9.2.8 ENDORSEMENT If the policies of insurance referred to in this article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

9.2.9 CONTRACTOR'S LIABILITY INSURANCE Contractor shall obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including, without limitation, loss of use and claims, losses, and expenses arising out of Contractor's errors or omissions.

9.2.10 ADDITIONAL LIABILITY COVERAGE Contractor ☐ shall ☒ shall not require Subcontractor to purchase and maintain liability coverage, primary to Contractor's coverage under the subsection immediately above.

9.2.10.1 If required by this subsection 9.2.11, the additional liability coverage required of Subcontractor shall be:

☒ .1 ADDITIONAL INSURED. Contractor shall be named as an additional insured on Subcontractor's CGL Insurance specified, for operations and completed operations, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of Subcontractor, or those acting on Subcontractor's behalf, in the performance of Subcontract Work for Contractor at the Worksite.

☐ .2 OCP. Subcontractor shall provide an Owners' and Contractors' Protective liability Insurance ("OCP") policy with limits equal to the limits on the CGL Insurance specified, or limits as otherwise required by Contractor.

9.2.11 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Subcontract Work shall be upon Subcontractor until the Date of Substantial Completion, unless otherwise agreed to by the Parties in a Subcontract Change Order to this Agreement.

9.3 BONDS

9.3.1 Performance and Payment Bonds ☐ are / ☐ are not required of Subcontractor. Such bond shall be issued by a surety admitted in the state in which the Project is located and acceptable to Contractor. Contractor's acceptance shall not be withheld



without reasonable cause. The penal sum of the Payment Bond and of the Performance Bond shall each be in the full Subcontract Amount, unless otherwise agreed in writing.

9.3.2 Upon presentation of a paid invoice for the bond premium(s), Subcontractor shall be reimbursed, without retainage, for the cost of any required performance or payment bonds simultaneously with the first progress payment. The reimbursement amount for Subcontractor bonds shall be a percentage of the Subcontract Amount specified in this Agreement, which sum is included in the Subcontract Amount. If acceptable to Contractor, Subcontractor may, in lieu of retainage, furnish a retention bond or other security interest, acceptable to Contractor, to be held by Contractor.

9.3.3 In the event Subcontractor shall fail to promptly provide any required bonds, Contractor may terminate this Agreement and enter into a subcontract for the balance of the Subcontract Work with another subcontractor. All Contractor costs and expenses incurred by Contractor as a result of said termination shall be paid by Subcontractor.

ARTICLE 10 SUSPENSION, NOTICE TO CURE, AND TERMINATION

10.1 FAILURE OF PERFORMANCE AND TERMINATION

10.1.1 NOTICE TO CURE A DEFAULT If Subcontractor refuses or persistently fails to supply enough properly qualified workers, proper materials, or equipment to maintain the Progress Schedule, or fails to make prompt payment to its workers, Subcontractors, or suppliers, or disregards Laws or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, Subcontractor shall be deemed in default of this Agreement. If Subcontractor fails within three (3) Business Days after written notification to commence and continue satisfactory correction of the default with diligence and promptness, then Contractor shall give a second notice to Subcontractor and surety, if any, to correct the default within a two (2) Business Day period. If Subcontractor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Contractor, without prejudice to any or all of the following remedies:

10.1.1.1 supply workers, materials, equipment, and facilities as Contractor deems necessary for the completion of the Subcontract Work or any part which Subcontractor has failed to complete or perform after written notification, and charge Subcontractor costs and expenses, including reasonable overhead, profit, and attorneys' fees, that are due or to become due. Subcontractor shall be liable for the payment of any amount by which such cost or expense may exceed the unpaid balance of the Subcontract Amount. At Subcontractor's request, Contractor shall provide a detailed accounting of the costs and expenses to finish the Subcontract Work;

10.1.1.2 contract with one or more additional contractors to perform such part of the Subcontract Work as Contractor determines will provide the most expeditious completion of the Work, and charge the cost to Subcontractor as provided under the subsection immediately above;

10.1.1.3 withhold any payments due or to become due Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of Contractor. In the event of an



emergency affecting the safety of persons or property, Contractor may proceed as above without notice, but Contractor shall give Subcontractor notice promptly after the fact as a precondition of cost recovery;

10.1.1.4 terminate the Agreement by written notice.

10.1.2 USE OF SUBCONTRACTOR'S EQUIPMENT If Contractor performs work under this article, either directly or through other subcontractors, Contractor or other subcontractors shall have the right to take and use any materials, implements, equipment, appliances, or tools furnished by or belonging to Subcontractor and located at the Worksite for the purpose of completing any remaining Subcontract Work. Immediately upon completion of the Subcontract Work, any remaining materials, implements, equipment, appliances, or tools not consumed or incorporated in performance of the Subcontract Work, and furnished by, belonging to, or delivered to the Project by or on behalf of Subcontractor, shall be returned to Subcontractor in substantially the same condition as when they were taken, normal wear and tear excepted.

10.2 BANKRUPTCY

10.2.1 TERMINATION ABSENT CURE If Subcontractor files a petition under the Bankruptcy Code, this Agreement shall terminate if: (a) Subcontractor or Subcontractor's trustee rejects the Agreement or, (b) if there has been a default, Subcontractor is unable to give adequate assurance that Subcontractor will perform as required by this Agreement or (c) otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

10.2.2 INTERIM REMEDIES If Subcontractor is not performing in accordance with the Progress Schedule at the time a petition in bankruptcy is filed, or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to assume this Agreement and provide adequate assurance of its ability to perform, may avail itself of such remedies under this article as are reasonably necessary to maintain the Progress Schedule. Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided, including, but not limited to, reasonable overhead, profit and attorneys' fees Subcontractor shall be liable for the payment of any amount by which costs incurred may exceed the unpaid balance of the Subcontract Amount.

10.3 SUSPENSION BY OWNER FOR CONVENIENCE Should Owner suspend the Work or any part which includes the Subcontract Work for the convenience of Owner and such suspension is not due to any act or omission of Contractor, or any other person or entity for whose acts or omissions Contractor may be liable, Contractor shall notify Subcontractor in writing, and, upon receiving notification, Subcontractor shall immediately suspend the Subcontract Work. To the extent provided for under the Prime Contract and to the extent Contractor recovers such on Subcontractor's behalf, the Contract Price and the Contract Time shall be equitably adjusted by Change Order for the cost and delay resulting from any such suspension. Each Party shall cooperate with the other to pursue any claims against the Owner for additional time or cost required as a result of any suspension ordered by the Owner, for which each Party shall bear its proportional expense.

10.4 TERMINATION BY OWNER Should Owner terminate its contract with Contractor or any part which includes the Subcontract Work, Contractor shall notify Subcontractor in writing within



three (3) Business Days of the termination, and, upon written notification, this Agreement shall be terminated and Subcontractor shall immediately stop the Subcontract Work, follow all of Contractor's instructions, and mitigate all costs. In the event of Owner termination, Contractor's liability to Subcontractor shall be limited to the extent of Contractor's recovery on Subcontractor's behalf under the Subcontract Documents. Contractor agrees to cooperate with Subcontractor in the prosecution of any Subcontractor claim arising out of Owner termination and to assist Subcontractor to prosecute the claim, either by espousing the claim on behalf of Subcontractor or by permitting Subcontractor to prosecute the claim in the name of Contractor, for the use and benefit of Subcontractor, or assign the claim to Subcontractor, with Subcontractor bearing its proportional cost of pursuing such claim. In the event Owner terminates Contractor for cause, through no fault of Subcontractor, Subcontractor shall be entitled to recover from Contractor its reasonable costs arising from the termination of this Agreement, including reasonable overhead and profit on Work performed.

10.5 CONTINGENT ASSIGNMENT OF THIS AGREEMENT Contractor's contingent assignment of this Agreement to Owner, as provided in the Prime Contract, is effective when Owner has terminated the Prime Contract for its convenience and has directed Contractor to make an assignment of this Agreement. The assignment shall be effective upon Contractor providing written notice to Subcontractor. This contingent assignment is subject to the prior rights of a surety that may be obligated under Contractor's bond, if any. Subcontractor consents to such assignment and agrees to be bound to Owner by the terms of this Agreement, provided that Owner fulfills the obligations of Contractor.

10.6 SUSPENSION BY CONTRACTOR Contractor may order Subcontractor in writing 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 Contractor. Phased Work or interruptions of the Subcontract Work for short periods of time shall not be considered a suspension. Subcontractor, after receipt of Contractor's order, shall notify Contractor in writing in sufficient time to permit Contractor to provide timely notice to Owner in accordance with the Prime Contract of the effect of such order upon the Subcontract Work. The Subcontract Amount or Subcontract Time shall be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Agreement caused by such suspension. No claim under this section shall be allowed for any costs incurred more than fourteen (14) Days prior to Subcontractor's notice to Contractor. Neither the Subcontract Amount nor the Progress Schedule shall be adjusted for any suspension to the extent that performance would have been suspended due in whole or in part to the fault or negligence of Subcontractor or by a cause for which Subcontractor would have been responsible. The Subcontract Amount shall not be adjusted for any suspension to the extent that performance would have been suspended by a cause for which Subcontractor would have been entitled only to a time extension under this Agreement.

ARTICLE 11 DISPUTE MITIGATION AND RESOLUTION

11.1 WORK CONTINUATION AND PAYMENT Unless otherwise agreed in writing, Subcontractor shall continue the Subcontract Work and maintain the Progress Schedule during any dispute mitigation or resolution proceedings. If Subcontractor continues to perform, Contractor shall continue to make payments in accordance with this Agreement.

11.2 CLAIMS RELATED TO OWNER. Any dispute between the Parties involving the Subcontract Work which relates to a claim involving Owner, or the rights or duties of Owner as to the Subcontract Work, Subcontractor agrees to be bound to Contractor to the same extent



that Contractor is bound to Owner by the terms of the Prime Contract and by any decision or determination made by Owner, Owner's representative, board, court, arbitration panel, or other tribunal to the extent that the work of Subcontractor is involved. The Parties shall cooperate in the diligent resolution of any proceeding related to a claim that is the subject of this section. Subcontractor agrees that, upon Contractor's good faith request, Subcontractor will participate in any proceeding involving Owner or other third party and involving, or allegedly involving, Subcontractor's Work. If Subcontractor files a Miller Act suit or other action against Contractor, its payment bond surety, or both, which may relate to the rights or duties of Owner as to the Subcontract Work, Subcontractor shall, upon Contractor's good faith request, consent to a stay of such suit or action pending the exhaustion of the procedures for the resolution of disputes under the Prime Contract. Subcontractor further agrees that its compliance with this process for the consistent resolution of disputes and claims shall not be deemed to be a waiver of its Miller Act rights. If a court or an arbitration panel finds that Contractor's request to stay a Miller Act proceeding was not made in good faith and Subcontractor is entitled to recover its reasonable attorneys' fees pursuant to section 11.4, then Subcontractor shall also be entitled to recover its reasonable attorneys' fees incurred in the resolution of the claim that was the subject of a stay pursuant to this section. If such a dispute involves the Subcontract Work and it is prosecuted or defended by Contractor against Owner under the terms of the Prime Contract, Subcontractor agrees to furnish all documents, statements, witnesses, and other information required by Contractor for such purpose and to pay or reimburse Contractor for all expenses and costs incurred in connection therewith. Any materials, equipment, or services furnished

or agreed to be furnished by Subcontractor, and as to damages, if any, incurred by Subcontractor in connection with claims subject to this section, Contractor and its surety shall not be liable to Subcontractor to any greater extent than Owner is liable to Contractor, less Contractor's normal overhead and profit. No such dispute shall interfere with the progress of construction, and Subcontractor agrees to proceed with its Subcontract Work as directed by Contractor.

11.3 CLAIMS NOT INVOLVING THE OWNER

11.3.1 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement that does not relate to the rights or duties of Owner as to the Subcontract Work, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the matter remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute resolution procedures selected in this ARTICLE 11.

11.3.2 MEDIATION If direct discussions pursuant to the subsection above do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) working Days of the matter first being discussed and shall conclude within forty-five (45) working Days of the matter being first



discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and to the mediator. The costs of the mediation shall be shared equally by the Parties.

11.3.3 BINDING DISPUTE RESOLUTION If the matter remains unresolved after direct discussions pursuant to subsection 11.3.1, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

☒ Arbitration using the current Construction Industry Arbitration Rules of the American Arbitration Association or the Parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the Parties. If Subcontractor files a Miller Act suit or other action against Contractor, its payment bond surety, or both, Subcontractor shall, upon Contractor's request, consent to a stay of such suit or action pending the completion of the arbitration proceedings. Subcontractor further agrees that its compliance with this process for the resolution of disputes and claims shall not be deemed to be a waiver of its Miller Act rights.

☐ Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

11.4 COST OF DISPUTE RESOLUTION The costs of any binding dispute resolution procedure and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

11.5 VENUE The venue for any binding dispute resolution proceeding shall be the location of the Project unless the Parties agree on a mutually convenient location.

11.6 MULTIPARTY PROCEEDING The Parties agree that all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. To the extent disputes between the Parties involve in whole or in part disputes between Contractor and Owner, disputes between Subcontractor and Contractor shall be decided by the same tribunal and in the same forum as disputes between Contractor and Owner.

11.7 NO EFFECT ON PROJECT No dispute shall interfere with the progress of construction on the Project, and Subcontractor agrees to proceed with its work as directed by Contractor. In the event of any dispute as to the scope of the work to be performed by Subcontractor, or any dispute as to whether Subcontractor is entitled to damages or extra compensation, Subcontractor shall continue to proceed diligently with the performance of the work, this Subcontract, and any disputed work, pending resolution of the dispute. The existence of a dispute shall not be grounds for any work stoppage or failure to perform by Subcontractor nor limit the right of Contractor to proceed to remedy any default by Subcontractor.

11.8 TRIAL BY JURY Each of the parties hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim (whether in contract, statute, including without limitation negligence or otherwise) relating to this Agreement.

ARTICLE 12 MISCELLANEOUS PROVISIONS

12.1 GOVERNING LAW The Parties agree that regardless of the location of the Subcontract Work, this Subcontract shall be interpreted and all substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the federal law of government contracts including decisions enunciated by



federal judicial bodies, boards of contract appeal, and quasi-judicial agencies of the federal government. To the extent that the federal law of government contracts is not dispositive, the laws of the state in which the Work is to be primarily performed shall apply.

12.2 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

12.3 NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of term, covenant, condition, or right with respect to further performance.

12.4 TITLES The titles given to the articles and sections of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

12.5 IMMIGRATION Subcontractor by signing below represents and warrants that it is, and will remain, in compliance with any and all provisions of the Immigration Reform and Control Act of 1986 (IRCA), as amended, the Immigration and Nationality Act, as amended, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all other applicable immigration laws, rules, and regulations (Immigration Laws) including all form 1-9 verification, E-Verify, and record-keeping requirements. Subcontractor shall Indemnify and hold Contractor and its Surety harmless from any claims, liabilities including any damages resulting from work stoppages or delays occasioned by or arising from any subcontractor noncompliance with IRCA or any such Immigration Laws, ordinances, rules, regulations, orders or decisions, as relates to the work of this Subcontract. Subcontractor agrees to submit a certification, acceptable to Contractor, that its employees have presented the correct documents to legally work in the United States. Subcontractor also agrees to insert the substance of this clause, including this section, in all Subcontracts or Purchase Orders hereunder.

12.6 E-VERIFY If the Prime Contract includes the clause at FAR § 52.222-54, Employment Eligibility Verification, Subcontractor/vendor hereby certifies that it has previously enrolled in the U.S. Citizenship and Immigration Services E-Verify program E-Verify") or shall enroll in E-Verify within thirty (30) Days of the award of this Subcontract/purchase order. In accordance with FAR § 52.222-54, which is incorporated in this Agreement by reference, Subcontractor/vendor hereby agrees that (a) it shall begin to use E-Verify within ninety (90) Days of enrollment to verify the employment eligibility of all new hires, who are working in the "United States" as defined in FAR § 52.222-54, within three (3) Business Days after the date of hire; (b) it shall use E-Verify to verify the employment eligibility of all employees assigned to this Subcontract/purchase order within ninety (90) Days of enrollment in E-Verify or within thirty (30) Days of assignment to this Subcontract/purchase order, whichever date is later; and (c) shall include this clause including the requirement for further flow-down in all lower-tier subcontracts/purchase orders. To assure compliance, upon request, Subcontractor/vendor shall furnish satisfactory evidence of its enrollment in and use of the E-Verify program and inclusion of this requirement in lower-tier subcontracts and purchase orders. This clause shall not be applicable if the subcontract/purchase order for construction or services at any tier is for \$3,000.00 or less or is for commercial off-the-shelf items COTS items") as defined at FAR § 52.222-54(a) or modified COTS items that would be COTS items but for minor modifications as described at FAR § 2.101(b)(2), "Commercial item," part (3).

12.7 BUSINESS ETHICS & COMPLIANCE Subcontractor, by signing this Agreement, hereby certifies that it has reviewed the requirements of FAR §§ 52.203-13 and 52.203-14, that it (a) already has or will adopt a written code of business ethics and conduct within thirty (30) Days of



the award of this Subcontract, (b) will otherwise comply with the applicable requirements of the above-referenced FAR provisions, which are incorporated by reference in this Subcontract, and (c) will include the substance of those FAR provisions in lower-tier subcontracts or purchase orders in excess of \$5,000,000 and which anticipate a performance period in excess of one-hundred twenty (120) Days. Upon Contractor's request for verification, Subcontractor shall furnish to it a copy of its written code of business ethics and conduct and satisfactory evidence of an on-going business ethics awareness and compliance program as required by FAR § 52.203-13. This clause is not applicable if the subcontract or purchase order is for \$5,000,000 or less unless a different dollar limit is required by the terms of the Prime Contract.

12.8 CERTIFICATIONS AND CLAIMS OR PROPOSALS

12.8.1 CONTRACT DISPUTES ACT AND TRUTH IN NEGOTIATIONS ACT

CERTIFICATIONS With respect to any Subcontractor claims submitted by Contractor to Owner, Subcontractor agrees to provide at the time of the submission of the claim to Contractor or at the time of agreement to the Change Order a certification signed by a senior company official in charge of the work involved, that the claim is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which Subcontractor, based upon the information available to it, believes Owner is liable. Subcontractor agrees Contractor may rely exclusively on this certification in providing any certification Contractor may be required to submit to Owner insofar as the claim includes a claim for or on behalf of Subcontractor. Subcontractor further agrees to recertify its claim in the above form at any time requested by Contractor.

12.8.2 PROPOSALS AND REPRESENTATIONS If the Prime Contract is subject to the Truth in Negotiations Act (Title 10 of the United States Code, Section 2306a; Title 41 of the United States Code, Section 253), Contract Disputes Act of 1978 (Title 41 of the United States Code, Section 601, *et seq.*) the False Claims Act (Title 31 of the United States Code, Section 231, *et seq.*), the Forfeiture Statute (Title 28 of the United States Code, Section 2514), Title 18 of the United States Code, Section 287, Title 18 of the United States Code, Section 1001, Title 10 of the United States code, Section 2306(1), and Title 41 of the United States Code Section 254, or any other federal laws or any state law which impose requirements of good faith, accuracy, completeness and fair dealing in connection with the presentation of cost proposals or claims against, or the provisions of statements to, any party, Subcontractor shall be bound to these requirements to the same extent as Contractor. Subcontractor and its Surety, if any, shall undertake to defend at its own cost with legal counsel mutually acceptable to Subcontractor and Contractor, indemnify and hold harmless Contractor and their respective officers, directors, employees, sureties, and agents, from any and all loss, cost, penalty, damage, claim, demand, expense, and assessment whatsoever, including reasonable attorney's fees, arising from, relating to, or in any manner connected with any allegation or claim of, or finding of, a violation of one or more applicable federal or state laws. provided that the alleged violation relates to, is directed at, or is attributable to Subcontractor, its representatives, agents, or employees, specifically, or relates to, is directed at, or is attributable to those claims and supporting data submitted by Subcontractor in connection with the presentation of any claim by Subcontractor for additional compensation, or adjustment of the contract terms, payment request, or any other act or statement by Subcontractor, its representatives, agents, or employees.



12.9 SUBCONTRACTING PLAN If included in the Prime Contract, Subcontractor's attention is directed to the Contract Clauses entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (FAR§ 52.219-8) and Small Business and Small Disadvantaged Business Subcontracting Plan Alternate I (FAR§ 52.219-9). Where applicable, Subcontractor shall adopt and comply with a Subcontracting Plan similar to Contractor's approved Subcontracting Plan, a copy of which will be made available upon request. Subcontractor shall provide all periodic reports and other documentation as necessary to show compliance.

12.10 PROMPT PAYMENT TO LOWER TIER FIRMS Subcontractor shall comply with the provisions of FAR § 52.232-27 and include the clauses required by that clause in each subcontract, purchase order, or purchase agreement this Subcontractor issues in reference to this Project including the requirement for a further flow-down of those requirements to lower tier firms.

12.11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENT TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS Subcontractor, by signing this Agreement, hereby certifies that to the best of his or her knowledge it complies with the requirements set forth in FAR§ 52.203-11 - Certification and Disclosure Regarding Payment to Influence Certain Federal Transactions (Sept 2007); that to the best of its knowledge and belief no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract; and that Subcontractor will include the language of this certification in all subcontracts, purchase orders, purchase agreements, etc., awards in excess of \$100,000 and require that all recipients of such a subcontract, purchase order, purchase agreement, etc., to certify and disclose.

12.12 DOD OR SIMILAR PRIORITY RATINGS Priority ratings, if required, shall be in accordance with the Subcontract Documents.

12.13 ENVIRONMENTAL COMPLIANCE

12.13.1 CLEAN AIR AND WATER Subcontractor, by signing this Agreement, hereby certifies that (a) any facility to be used in the performance of this proposed contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities; (b) the Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the EPA, indicating that any facility that the Offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and (c) Subcontractor will include a certification substantially the same as this certification, including this section (c), in every nonexempt Subcontract.

12.13.2 ENVIRONMENTAL LAW COMPLIANCE Subcontractor agrees to comply with all environmental Laws, orders, and decisions issued by any federal, state, or local body or agency relating to Subcontractor providing product(s) or service(s) pursuant to this Subcontract. Subcontractor also agrees to comply with all Owner's rules, regulations, orders, decisions, security requirements, etc. Subcontractor shall indemnify and hold Contractor harmless from any claims or liabilities arising from any noncompliance with any such laws, ordinances, rules, regulations, orders or decisions, as relates to the work of this Subcontract.



12.14 PROVISIONS AND DOCUMENTS INCORPORATED BY REFERENCE Subcontractor, by signing this Agreement, agrees to abide by the provisions of the Federal Acquisition Regulation, and any agency FAR Supplements which are applicable to this Agreement in accordance with the Prime Contract and Exhibit H and incorporated into this Agreement by reference with the same force and effect as if they were set forth in full text. Subcontractor further agrees that it shall incorporate these provisions in its lower tier subcontracts and purchase orders, as required by the applicable clause.

12.15 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

12.16 ASSIGNMENT OF SUBCONTRACT WORK Except as provided in section 8.10 Subcontractor shall neither assign the whole nor any part of the Subcontract Work without prior written approval of Contractor.

12.17 TITLES Titles given to articles and sections of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

ARTICLE 13 SUBCONTRACT DOCUMENTS

13.1 INTERPRETATION OF SUBCONTRACT DOCUMENTS

13.1.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, Subcontractor shall perform the Subcontract Work as though fully described on both, consistent with the Subcontract Documents and reasonably inferable from them.

13.1.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings, or specifications, Subcontractor shall immediately submit the matter to Contractor for clarification by Owner. Owner's clarifications are final and binding on all Parties, subject to an equitable adjustment in Subcontract Time or Price pursuant to ARTICLE 5 and ARTICLE 6 or pursuant to dispute mitigation and resolution in accordance with ARTICLE 11.

13.1.3 Where figures are given, they shall be preferred to scaled dimensions.

13.1.4 Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings, unless otherwise specifically defined in this Agreement, shall be interpreted in accordance with their well-known meanings.

13.1.5 ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Subcontract Documents, the documents shall govern in the following order: (a) Subcontract Change Orders and written amendments to this Agreement; (b) this Agreement; (c) subject to subsection 13.1.2 the drawings (large scale governing over small scale), specifications, and addenda issued prior to the execution of this Agreement; (d) approved submittals; (e) information furnished by Owner that is identified as a Subcontract Document; (f) other documents listed in this Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract



Document and not identified in another shall not be considered a conflict or inconsistency.

13.1.6 Nothing in this Agreement shall be construed to create a contractual relationship between persons or entities other than the Parties. This Agreement is for the exclusive benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

13.1.7 Subcontractor acknowledges and agrees that the certifications provided by it upon execution of this Agreement and during performance of the Subcontract Work are material requirements and Contractor shall be entitled to rely upon them at all times unless Subcontractor informs Contractor in writing of a change or qualification to a certification set forth in this Agreement or previously provided to Contractor. This Agreement is entered into as of the date entered in ARTICLE 1.