





EXHIBIT C - STANDARD TERMS AND CONDITIONS

As revised: 05-01-2024

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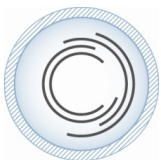
ARTICLE 1 AGREEMENT

See Exhibit A for Agreement.

ARTICLE 2 SCOPE OF WORK

PARTIES RELATIONSHIP The Contractor and Subcontractor each agrees to act on the basis of mutual trust, good faith, and fair dealing. Each Party shall avoid conflicts of interest and disclose to the other Party any conflicts that may exist prior to the signing of this Subcontract Agreement and shall not enter into any agreement or business relationship of any kind that could lead to a conflict of interest after the execution of this Subcontract Agreement.

SUBCONTRACT WORK Contractor contracts with Subcontractor as an independent contractor. Subcontractor shall provide all labor, materials, equipment, and services necessary to complete the Subcontract Work for the Project described in Article 1, and set forth in greater detail in **Exhibit B**, in accordance with the Subcontract Documents, and consistent with the Progress Schedule, as may be



changed from time to time. Subcontractor shall perform the Subcontract Work under Contractors general direction and in accordance with the Subcontract Documents.

2.1 CONTRACTORS WORK Contractors Work is the construction and services required of Contractor to fulfill its obligations pursuant to its agreement with Owner (the Work). The “Subcontract Work” is a portion of Contractors Work.

2.2 SUBCONTRACT DOCUMENTS The Subcontract Documents include without limitation the Prime Agreement, the Agreement with the General Contractor, this Subcontract Agreement, all exhibits and attachments, special conditions, general conditions, specifications, drawings, other documents, addenda issued and acknowledged before execution of this Agreement. Contractor shall make available to Subcontractor, before the execution of this Agreement, copies of the existing Subcontract Documents. Subcontractor 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 Subcontract Agreement is executed.

2.2.1 ELECTRONIC DOCUMENTS If Owner requires that Owner, Design Professional, Contractor, and Subcontractors exchange documents and data in electronic or digital form, before any such exchange, Owner, Design Professional, and Contractor shall agree on and follow a written protocol addendum governing all exchanges, which specifies: (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, 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 developing the protocol and shall be bound by the requirements of the written protocol. Except as otherwise agreed upon 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 Parties.

2.3 CONFLICTS In the event of a conflict between this Subcontract Agreement as modified and the other Subcontract Documents, the document with the most stringent terms or Subcontractor requirements shall govern.

2.4 DEFINITIONS

2.4.1 “Agreement” means this Subcontract Agreement Between Contractor and Subcontractor, as modified by the Parties, along with all exhibits and attachments, made a part of this Agreement upon execution, and any amendments thereto.

“Business Day” means all Days, except weekends and official federal or state holidays where the Project is located.

2.4.2 “Contract Price” is the total amount paid or payable to the Subcontractor for authorized Work, including authorized changes.

2.4.3 “Contract Time” is the scheduled number of days for any given amount or degree of completion of the Work under the Contract, including but not limited to final completion, and the associated date by which the Subcontractor is required to achieve that amount or degree of completion.

2.4.4 The term “Day” shall mean calendar day.



2.4.5 “Interim Directive” is a written order containing Work instructions or directing the Subcontractor to proceed with the Subcontract Work in question. An Interim Directive may or may not cause adjustment to Contract Price or Contract Time. An Interim Directive may also be referenced in the Contract Documents as a “Written Directive” or other equivalent directive and shall be treated as an Interim Directive.

2.4.6 “Law” means a federal, state, or local law, ordinance, code, rule, or regulation applicable to the Subcontract Work with which a Party must comply that is enacted as of the Agreement date.

2.4.7 The “Parties” are collectively Contractor and Subcontractor.

2.4.8 “Prime Agreement” means the agreement between Contractor and Owner for the construction of the Project, including changes, modifications, and amendments thereto and all documents incorporated therein.

2.4.9 “Project” means the project as identified in the Contract Documents.

2.4.10 A “Subcontract Change Order” is a written order signed by The Parties after execution of this 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.

2.4.11 “Subcontract Time” means the time period on the Progress Schedule between commencing and completing the Subcontract Work.

2.4.12 “Worksite” means the geographical area of the Project location as identified in **Exhibit A**, 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 Agreement apply to the Subcontract Work, then Contractor assumes toward Subcontractor all the obligations, rights, duties, and redress that Owner under the Prime Agreement assumes toward Contractor. In an identical way, Subcontractor hereby assumes toward Contractor all the same obligations, rights, duties, and redress that Contractor assumes toward Owner, Design Professional, and others under the Prime Agreement. In the event of an inconsistency among the Contract Documents, the document with the most stringent terms or Subcontractor requirements 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 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 to meet the Progress Schedule.

3.3 INCONSISTENCIES AND OMISSIONS Subcontractor shall examine and compare the 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 not for the discovery of errors, inconsistencies, or omissions in the Subcontract Documents nor for ascertaining if the Subcontract Documents are in accordance with Laws. Subcontractor shall not have liability for errors,



omissions, or inconsistencies discovered under this subsection unless Subcontractor knowingly fails to report a recognized problem to Contractor. 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 written notice, Contractor shall promptly instruct Subcontractor as to the measures to be taken, and Subcontractor shall comply with Contractor's instructions. If Subcontractor performs work knowing it to be contrary to Laws without notice to Contractor and advance approval by appropriate authorities, including Contractor, Subcontractor shall assume responsibility for such work and bear all associated costs, charges, fines, penalties, fees, and expenses necessarily incurred to remedy the violation. 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.

WORKSITE VISITATION Before commencing the Subcontract Work, Subcontractor shall examine and compare the Subcontract Documents, relevant field measurements made by Subcontractor or shared by Contractor, and any visible conditions at the Worksite affecting the Subcontract Work. If Subcontractor discover any errors, omissions, or inconsistencies in the Subcontract Documents or between its Worksite observations and the Subcontract Documents, such discrepancies shall be promptly reported to Contractor. In the event Subcontractor knew or should have known of any errors, omissions, or inconsistencies in the Subcontract Documents and proceeds with the Subcontract Work without having promptly given written notice to Contractor, then Subcontractor shall be liable for any costs incurred resulting from such errors, omissions, or inconsistencies.

3.4 INCREASED COSTS OR TIME Subcontractor may assert a claim 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 §3.3 and §1.1, and Contractor is held liable to Owner because of Subcontractor's failure, Subcontractor shall pay the costs and damages to Contractor that could have been avoided if Subcontractor had performed those obligations.

3.5 COMMUNICATIONS Except as otherwise provided in the Subcontract Documents or for emergencies, Subcontractor shall direct any and all Project-related communications to Contractor.

3.6 SUBMITTALS

3.6.1 Subcontractor promptly shall submit for approval to Contractor all shop drawings, samples, product data, manufacturers' literature, and similar submittals required by the Subcontract Documents. Submittals shall be submitted in electronic form if required. 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 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 changes, deviations, or substitutions in the requirements of the Subcontract Documents unless express written approval is obtained from Contractor and Owner authorizing such change, deviation, or substitution. 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. If 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, Owner, or Design Professional.

3.6.2 Contractor, Owner, and Design Professional are entitled to rely on the adequacy, accuracy, and completeness of any professional certifications required by the Subcontract Documents concerning



the performance criteria of systems, equipment, or materials, including all relevant calculations and any governing performance requirements.

3.7 DESIGN DELEGATION

3.7.1 If the Subcontract Documents specify that Subcontractor is responsible for the design of a particular system or component for Project incorporation, then all design and performance criteria shall be provided. Subcontractor shall not be responsible for the adequacy of such performance and design criteria. Subcontractor shall not be required to provide design services in violation of the Law.

Subcontractor shall procure design services and necessary certifications from licensed design professionals, as required by the Law. Subcontractor's design professional(s) shall be stated in **Exhibit I**. If Subcontractor's design professional is an independent professional, then the design services shall be procured pursuant to a separate agreement between Subcontractor and the design professional.

3.7.2 The signature and seal of Subcontractor's design professional shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Subcontract Work designed or certified by Subcontractor's design professional. Subcontractor through its design professional shall conform its delegated design to the performance and design criteria provided. Subcontractor shall require that its design professional's services, certifications, and approvals meet the applicable standard of care. Subcontractor shall review the performance and design criteria and make any requests for clarification or objection in writing in a timely fashion and in a manner consistent with §3.3 and §1.1. Owner through its Design Professional shall be required to review the design submitted by Contractor for conformance with the established performance and design criteria and make a written determination of conformance.

3.8 COORDINATION Subcontractor shall: (a) cooperate with Contractor and 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 preparing coordination drawings and work schedules in congested areas.

3.8.1 Contractor through Owner and Design Professional shall facilitate coordination of any Owner delegated design services and promptly report any known errors or omissions of any delegated design. However, such review does not assume an affirmative responsibility to detect errors or omissions in delegated design services. Subcontractor shall facilitate coordination for any portion of Subcontractor's Work that utilizes and such design services through seeking input from the design professional performing delegated design services and facilitating the communication of all such responses to Contractor.

3.9 SUBCONTRACTOR'S REPRESENTATIVE Subcontractor's authorized representative as Identified in **Exhibit E**. This person shall possess full authority to receive and act upon instructions, orders, or directions. If Subcontractor changes its representative, or the representative's authority, Subcontractor shall immediately, not more than one (1) business day, notify Contractor in writing.

3.10 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 or other 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 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.

3.11 WARRANTIES Subcontractor warrants that all materials and equipment 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 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. Subcontractor's warranties shall commence on the date of Substantial Completion of the Subcontractor Work or a designated portion. Subcontractor shall obtain from its subcontractors and suppliers any special or extended warranties required by the Subcontract Documents and Subcontractor shall assign all warranties to Contractor and/or Owner and provide reasonable assistance to Contractor in enforcing the obligations of Subcontractor's subcontractors and suppliers.

3.12 CLEANUP

3.12.1 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. Before 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.

3.12.2 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 Subcontractor in the next payment period.

3.13 SAFETY PROGRAMS 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 on or off the Worksite for performing the Subcontract Work; and (c) all property and structures located at the Worksite and adjacent.

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

3.13.2 Subcontractor shall implement appropriate safety programs 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 from injury, loss, or damage.

3.13.3 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.



3.13.4 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.

3.13.5 Subcontractor is required to designate an individual at the Worksite in the employ of Subcontractor who shall act as Subcontractor's designated safety representative with a duty to prevent 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.

3.13.6 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.

3.13.7 Subcontractor shall give prompt written notice to Contractor of any accident involving bodily injury requiring a physician's care, any property damage, or any failure that could have resulted in serious bodily injury, whether or not such an injury was sustained.

3.13.8 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 deems unsafe until corrective measures satisfactory to Contractor shall have been taken. Contractor's failure to stop Subcontractor's unsafe practices does not relieve Subcontractor of its responsibility. Subcontractor shall notify Contractor immediately following a reportable incident under applicable Laws, 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, Subcontractor shall indemnify the Owner and Contractor from and against fines or penalties imposed as a result of safety violations, arising out of or in any way related to its failure to comply with applicable safety requirements. This indemnification obligation extends to additional or increased fines that result from repeated or willful violations caused by Subcontractor's failure to comply with applicable Laws, rules, regulations, orders, and other lawful requirements.

3.14 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 operations. Should Subcontractor cause damage to the Subcontract Work or property of Owner, Contractor, or others, Subcontractor shall promptly remedy such damage to the satisfaction of Contractor, or Contractor may, after forty-eight (48) hours' written notice to Subcontractor, remedy the damage and deduct its cost from any amounts due or to become due Subcontractor, unless such costs are recovered under applicable property insurance.

3.15 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 determined as provided in ARTICLE 7.



3.16 PERMITS AND TAXES Subcontractor shall give timely notices required by Law pertaining to the Subcontract Work, and is responsible for all permits, fees, licenses, assessments, inspections, testing, and taxes necessary to complete the Subcontract Work in accordance with the Subcontract Documents unless otherwise agreed to in writing by both Parties.

3.17 HAZARDOUS MATERIALS Subcontractor shall have the same rights and obligations as Contractor does under the Prime Agreement or Laws regarding hazardous materials, provided that the hazardous materials affect the Subcontract Work's area or originate with Subcontractor.

3.18 SAFETY DATA SHEETS (SDS) 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.

3.19 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.

3.20 CORRECTION OF COVERED SUBCONTRACT WORK

3.20.1 UNCOVERING OF SUBCONTRACT WORK

3.20.1.1 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.

3.20.1.2 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 before such work was covered. Except as provided by the subsection immediately above, this 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 in writing 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 this Agreement by Subcontract Change Order for all such costs and time.

3.20.2 CORRECTION OF WORK

3.20.2.1 If the Design Professional or Contractor rejects the Subcontract Work or the Subcontract Work is not in conformance 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 additional testing, inspections, and compensation for services and expenses made necessary by the defective Subcontract Work.



3.20.2.2 In addition to Subcontractor's obligations under this §3.20, Subcontractor agrees to promptly correct, after receipt of a written notice from Contractor, all Subcontract Work 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 unapproved disruption. If Subcontractor fails to correct defective or nonconforming Subcontract Work within seven (7) days after receipt of written notice from Contractor, Contractor may correct such Subcontract Work pursuant to §10.1.1.

3.20.3 Subcontractor's correction of Subcontract Work pursuant to this section shall not extend the one (1) year period for the correction of Subcontract Work, but if Subcontract Work is first performed after Substantial Completion, the one (1) year period for corrections shall commence when that Subcontract Work portion is substantially complete. 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.

3.20.4 If Subcontractor's correction or removal of Subcontract Work destroys or damages other completed or partially completed work or existing buildings, Subcontractor shall be responsible for destroyed or damaged work correction costs.

3.20.5 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 Project Worksite if so directed by Contractor.

3.21 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 that do not conform to requirements of the Subcontract Documents. Subcontractor shall not proceed to install nonconforming items without further instructions from Contractor. Loss or damage due to acts or omissions of Subcontractor shall be deducted from any amounts due or to become due Subcontractor.

3.22 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.

3.23 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.



3.24 WORK FOR OTHERS Subject to the limitations in § 3.26 herein, 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.

3.25 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.

3.26 COMPLIANCE WITH LAWS Subcontractor agrees to comply with all Laws at its own cost. Subcontractor shall be liable to Contractor and Owner for all loss, cost, and expense attributable to any acts or omissions by Subcontractor, its employees, subcontractors, suppliers, and agents resulting from the failure to comply with all Laws, including any fines, penalties, or corrective measures. However, liability under this section shall not apply if prior approval by appropriate authorities and Owner and Contractor is received.

3.26.1 To the extent Contractor receives reimbursement or additional time from Owner under the Prime Agreement, the Subcontract Amount or Progress Schedule shall be equitably adjusted for changes in the Law enacted after the date of this Agreement, including taxes, affecting the performance of the Work.

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

3.28 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. Subcontractor shall be liable for all loss, including all costs, expenses, and attorneys' fees, but 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.

ARTICLE 4 CONTRACTOR'S RESPONSIBILITIES

4.1 CONTRACTOR'S REPRESENTATIVE Contractor's authorized representative is stated in **Exhibit I**. Notwithstanding anything in this Agreement to the contrary, and subject to the limitations in this Article 4, Contractor's representative shall be the only person Subcontractor shall look to for instructions, orders, or directions, except in an emergency. If Contractor changes its representative, Contractor shall promptly notify Subcontractor in writing.

4.2 OWNER'S ABILITY TO PAY

4.2.1 Unless expressly prohibited by the Prime Agreement, Contractor shall promptly provide to Subcontractor the following information received from Owner: (a) upon Subcontractor's request, information that Contractor has received from Owner regarding Owner's financial ability to pay for the Work, and (b) notice that Contractor has received from Owner of any material variation in Owner's financial ability to pay. Contractor, however, does not warrant the accuracy or completeness of the information provided.



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

4.3 **CONTRACTOR APPLICATION FOR PAYMENT** Upon request, Contractor shall give Subcontractor a copy of the most current Contractor application for payment reflecting the amounts approved or paid by Owner for the Subcontract Work performed to date.

4.4 **INFORMATION OR SERVICES** Subcontractor is entitled to request through Contractor any information or services required for Subcontractor's performance of the Subcontract Work which is under Owner's control. Subcontractor also is entitled to request through Contractor any information necessary to give notice of or enforce mechanic's lien rights and, where applicable, stop notices. This information shall include Owner's interest in the real property on which the Project is located and the recorded legal title. To the extent Contractor receives such information or 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 §5.2.2.

4.5 **STORAGE AREAS** Contractor shall allocate adequate storage areas, if available, for Subcontractor's materials and equipment during the course of the Subcontract Work.

4.6 **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 and suppliers. If requested by Subcontractor, Contractor shall provide to Subcontractor a copy of Contractor's payment bond (if any) on the Project upon the Subcontract Work commencing. Contractor shall provide to Subcontractor a copy of the Builder's Risk Insurance Certificate issued on the Project promptly after Contractor receives it.

4.7 **USE OF SUBCONTRACTOR'S EQUIPMENT** Contractor, its agents, employees, other subcontractors, 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 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 with regard to the obligations of the Subcontract Documents. Subcontractor shall start the Subcontract Work upon receipt of a notice to proceed from Contractor and shall perform the Subcontract Work with promptness and diligence to meet Project milestones and schedule deadlines established by Contractor set forth in Exhibit D.

5.2 DELAYS AND EXTENSIONS OF TIME

5.2.1 **OWNER CAUSED DELAY** Subject to §5.2.2, if the commencement or progress of the Subcontract Work is delayed without the fault or responsibility of Subcontractor, the Subcontract Time shall be extended by Subcontract Change Order and the Subcontract Amount equitably adjusted to



the extent obtained by Contractor under the Subcontract Documents, and the Progress Schedule shall be revised accordingly.

5.2.2 CLAIMS RELATING TO OWNER Subcontractor agrees to initiate all claims for which Owner is or may be liable in the manner and within the time limits provided in the Subcontract Documents for like claims by Contractor upon Owner and in sufficient time for Contractor to initiate such claims against Owner in accordance with the Subcontract Documents. At Subcontractor's request and expense, and to the extent agreed upon in writing, Contractor agrees to permit Subcontractor to prosecute a claim in the name of Contractor for the use and benefit of Subcontractor in the manner provided in the Subcontract Documents for like claims by Contractor upon Owner.

5.2.3 CONTRACTOR CAUSED DELAY Nothing in this article precludes Subcontractor's recovery of delay damages caused by Contractor.

5.2.4 CLAIMS RELATING TO CONTRACTOR Subcontractor shall give Contractor written notice of all claims not included in §5.2.2 within fourteen (14) Days of Subcontractor's first recognition of the conditions giving rise to the claim. 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 §5.2.2 shall be resolved as provided for in ARTICLE 11.

5.3 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

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

5.4 LIQUIDATED DAMAGES

5.4.1 If the Subcontract Documents 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 damages against Subcontractor for Subcontractor's share of the damages arising out of or in any way connected to Subcontractor's failure to perform according to any of the terms of the Contract Documents. However, the amount of such assessment shall not exceed the amount assessed against Contractor. This section shall not limit Subcontractor's liability to Contractor for Contractor's actual damages caused by Subcontractor.

ARTICLE 6 SUBCONTRACT AMOUNT

6.1 As full compensation for performance of this Agreement, Contractor agrees to pay Subcontractor, the amount set forth in, **Exhibit A**, in current funds for the satisfactory performance and timely completion of the Subcontract Work subject to all applicable provisions of this Agreement:



ARTICLE 7 CHANGES

7.1 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. A change in the Subcontract Work that affects the Subcontract Amount or the Subcontract Time shall be formalized in a Subcontract Change Order and processed in accordance with this article.

7.1.1 For changes in the Subcontract Work, the Parties shall negotiate in good faith an appropriate adjustment to the Subcontract Amount or the Subcontract Time and shall conclude these negotiations as expeditiously as possible. Acceptance of the Subcontract Change Order and any adjustment in the Subcontract Amount or Subcontract Time shall not be unreasonably withheld.

7.2 INTERIM DIRECTIVES Contractor may issue a written Interim Directive directing Subcontractor to proceed with the Subcontract Work in question. If such Interim Directive is issued as a result of Owner's issuance of an Interim Directive, then the applicable provisions of the Prime Agreement shall govern. Otherwise, Subcontractor shall separately submit its costs for the resulting change, beginning with its next regularly scheduled application for payment submitted after the issuance of the Interim Directive. If there is a cost dispute, Contractor shall pay Subcontractor fifty percent (50%) of its actual (incurred or committed) cost to perform the Subcontract Work. In such event, the Parties reserve their rights as to the disputed amount. Contractor's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Subcontract Work. Subcontractor's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed Subcontract Work should it be determined that the disputed Subcontract Work is not within scope. Undisputed amounts may be included in applications for payment and shall be paid in accordance with the Subcontract Documents.

When the Parties agree upon an adjustment in Subcontract Amount or Subcontract Time, such agreement shall be reflected in a Subcontract Change Order, and the payments to date shall be adjusted to reflect the Subcontract Change Order. If no agreement is reached, the Parties shall resolve the matter as provided in ARTICLE 11.

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. Subcontractor shall not be required to perform any Work relating to the condition without the written mutual agreement of the Parties. 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 in ARTICLE 7.

7.4 ADJUSTMENTS IN SUBCONTRACT AMOUNT An adjustment in the Subcontract Amount resulting from a Subcontract Change Order shall be determined by one of the following methods:

7.4.1 mutual acceptance of an itemized lump sum;

7.4.2 unit prices as indicated in the Subcontract Documents or as subsequently agreed to by the Parties; or

7.4.3 costs as determined in the Subcontract Documents or in a manner otherwise acceptable to the Parties, and a mutually acceptable fixed or percentage fee.



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 §7.6, or if none is provided, as mutually agreed upon by the Parties. Subcontractor may contest the reasonableness of any adjustment determined by Contractor. 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:

7.5.1 labor costs, including Social Security, health, welfare, retirement, and other fringe benefits as normally required, and state workers' compensation insurance;

7.5.2 costs of materials, supplies, and equipment, whether incorporated in the Subcontract Work or consumed, including transportation costs;

7.5.3 costs of renting machinery and equipment other than hand tools;

7.5.4 costs of bond and insurance premiums, permit fees, and taxes attributable to the change; and

7.5.5 costs of additional supervision and field office personnel services necessitated by the change.

7.6 Adjustments shall be based on the 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 ten percent (10%).

7.7 **NO OBLIGATION TO PERFORM** Subcontractor shall not be obligated to perform changes in the Subcontract Work until a Subcontract Change Order has been executed or written instructions have been issued in accordance with §7.2 or §7.8.

7.8 **INCIDENTAL CHANGES** Contractor may direct Subcontractor to perform incidental changes in the Subcontract Work which do not involve adjustments in the Subcontract Amount or the Subcontract Time. Incidental changes shall be consistent with the scope and intent of the Subcontract Documents. Contractor shall initiate an incidental change in the Subcontract Work by issuing an Interim Directive to Subcontractor, which shall be carried out promptly and is binding on the Parties.

ARTICLE 8 PAYMENT

8.1 **SCHEDULE OF VALUES** As a condition precedent 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 **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 §3.7, Subcontractor's applications for payment shall show its design professional's fee and expenses as a separate cost item. Subcontractor's application for payment shall be notarized and if allowed under the Subcontract Documents may include a properly authorized Interim Directive. Subcontractor's application for payment for the Subcontract Work performed in the preceding payment period shall be submitted for approval by Contractor in accordance with the schedule of values if required in §8.2.2 through §8.2.4. 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.

8.2.2 RETAINAGE The rate of retainage shall equal to the percentage retained from Contractor's payment by Owner for the Subcontract Work. If the Subcontract Work is satisfactory and the Prime Agreement provides for reduction of retainage, Subcontractor's retainage shall also be reduced when Contractor's retainage of the Subcontract Work has been so reduced by Owner.

8.2.3 TIME OF APPLICATION Subcontractor shall submit progress payment applications to Contractor no later than the twentieth 15th Day of each payment period for the Subcontract Work performed up to and including the end of the month for the payment period indicating Subcontractor Work completed and subject to the limitations in § 8.2.4 herein,, materials suitably stored during the preceding payment period, unless otherwise indicated in Exhibit F.

8.2.4 STORED MATERIALS Unless otherwise provided in the Subcontract Documents, applications for payment may include materials and equipment not yet incorporated in the Subcontract Work but delivered to and suitably stored on or off the Worksite including applicable insurance, storage, and costs incurred transporting the materials to an off-site storage facility. Approval of payment applications for such stored items on or off the Worksite shall be conditioned upon submission by Subcontractor of bills of sale and required 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 Worksite.

8.2.5 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. Payment from Owner to Contractor for Subcontractor's Work is a condition precedent to Contractor's obligation to pay Subcontractor. Subcontractor agrees that it is relying upon Owner's credit for payment, and accepts the risk of non-payment by Owner. Subcontractor further agrees that no payment is due and owing to Subcontractor until Owner has made such payment to Contractor and that the sole source of funding for this Subcontract are payments made by Owner to Contractor..

8.2.6 PAYMENT DELAY If Contractor has received payment from Owner and if for any reason not the fault of Subcontractor, Subcontractor does not receive a progress payment from Contractor within seven (7) Days after Contractor received such payment from Owner, Subcontractor, upon giving seven (7) Days' written notice to Contractor, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to Subcontractor has been received.

8.2.7 PAYMENTS WITHHELD Contractor may reject a Subcontractor application for payment in whole or in part or withhold amounts from a previously approved Subcontractor application for payment, 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:

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

8.2.7.2 except as accepted by the insurer providing Builder's Risk (as later defined herein) 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;



8.2.7.3 Subcontractor's failure to properly pay for either labor, materials, equipment, or supplies furnished in connection with the Subcontract Work, provided that Contractor is making payments to Subcontractor for that portion of the Subcontract Work in accordance with this Agreement;

8.2.7.4 rejected or defective Subcontract Work which has not been corrected in a timely fashion;

8.2.7.5 reasonable evidence of delay in performance of the Subcontract Work such that the Subcontract Work will not be completed within the Subcontract Time, and that the unpaid balance of the Subcontract Amount is not sufficient to offset the liquidated damages or actual damages that may be sustained by Contractor as a result of the anticipated delay caused by Subcontractor;

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

8.2.7.7 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 sufficient to discharge such claims if established.

8.2.7.8 any reason for which Owner may withhold payment from Contractor under the Prime Contract.

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

8.2.8 SUBSTANTIAL COMPLETION

8.2.8.1 Upon substantial completion of the Subcontract Work or a designated portion thereof, Contractor shall assume responsibility for security and protection of the Subcontract Work pending the achievement of Substantial Completion of the Project. However, acceptance of the Subcontract Work for the purpose of allowing succeeding Work to proceed shall not result in the commencement of the warranty period for the Subcontract Work unless otherwise provided in the Prime Agreement.

8.2.8.2 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 the achievement of Substantial Completion of the Project and acceptance by Owner under the terms of the Prime Agreement.

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 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:

- (a) An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontract Work have been paid, satisfied, or are to be paid with the proceeds of final payment, so as not to encumber Owner's property, Contractor, or Contractor's surety;
- (b) As-built drawings, manuals, copies of warranties, startup and testing required in §3.25, and all close-out documents and satisfaction of close-out procedures if required by the Subcontract Documents.
- (c) Release of any liens, conditioned on final payment being received, and in such form as may be required by the Subcontract Documents;
- (d) Consent of surety to final payment, if required;
- (e) A report of any outstanding known and unreported accidents or injuries experienced by Subcontractor at the Worksite;
- (f) Other data, if required, such as receipts and releases.

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.

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 §3.19 and §3.20, or for faulty or defective work or services discovered after final payment, nor relieve Contractor for claims made in writing by Subcontractor as required by the Subcontract Documents before its application for final payment as unsettled at the time of such payment.

8.4 LATE PAYMENT INTEREST Progress payments or final payment due and unpaid under this Agreement shall bear interest from the date payment is due at the prevailing statutory rate at the place of the Project. However, if Owner fails to timely pay Contractor as required under the Prime Agreement through no fault or neglect of Contractor, and Contractor fails to timely pay Subcontractor as a result of such nonpayment, Contractor's obligation to pay Subcontractor interest on corresponding payments due and unpaid under this Agreement shall be extinguished by Contractor promptly paying to Subcontractor Subcontractor's proportionate share of the interest, if any, received by Contractor from Owner on such late payments.

8.5 CONTINUING OBLIGATIONS Provided Contractor is making payments in accordance with this Agreement, Subcontractor shall reimburse Contractor for costs and expenses for any claim, obligation, or lien asserted 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. If any Law or bond requires Subcontractor to take any action before the expiration of the reasonable time for payment referenced in §8.2.5 in order to preserve or protect Subcontractor's rights with respect to mechanic's lien or bond claims, then Subcontractor may take that action before 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, or (c) be 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 for the Subcontract Work shall be dedicated to payment to Subcontractor. This applies to this Agreement only and is not for the benefit of third parties. Moreover, this section does not restrict commingling funds nor require separate accounts for deposits. Nothing in this section creates a fiduciary duty on the Parties, nor creates 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 VERIFICATION If Contractor has reason to believe that Subcontractor is not complying with payment terms in this Agreement, Contractor may contact Subcontractor's subcontractors and suppliers to ascertain whether they are being paid by Subcontractor in accordance with this Agreement.

8.8 PARTIAL LIEN WAIVERS AND AFFIDAVITS As a prerequisite for payments, Subcontractor shall provide, in a form satisfactory to Owner and Contractor, partial lien and claim waivers in the amount of the application for payment and affidavits covering its subcontractors and suppliers for completed Subcontract Work. Such waivers shall be conditional upon payment.

8.9 SUBCONTRACTOR PAYMENT FAILURE Upon payment by Contractor, Subcontractor shall promptly pay its subcontractors and suppliers the amounts to which they are entitled. If Contractor has reason to believe that labor, material, or other obligations incurred in the performance of the Subcontract Work are not being paid, Contractor may give written notice of a potential claim or lien to Subcontractor and may take any 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 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.

8.10 SUBCONTRACTOR ASSIGNMENT OF PAYMENTS Subcontractor shall not assign any payment 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 Subcontract Work.

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

ARTICLE 9 INDEMNITY, INSURANCE, AND BONDS



9.1 INDEMNITY

9.1.1 INDEMNITY To the fullest extent permitted by law, Subcontractor shall indemnify, defend, and hold harmless Contractor, Design Professional, Owner, and their agents, consultants, and employees (the "Indemnitees") from all claims for bodily injury and property damage other than to the Subcontract Work itself that may arise from the performance of the Subcontract Work, including reasonable attorneys' fees, costs, and expenses, in any way related to 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.

9.1.2 NO LIMITATION ON LIABILITY In any claim 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, and cause its sub-tier Subcontractors to furnish and maintain, at their sole cost and expense, insurance that will protect it from the claims arising out of its operations under this Agreement, whether the operations are by Subcontractor, or any of its consultants or subcontractors or anyone directly or indirectly employed by any of them for whose acts Subcontractor may be liable. Such insurance shall be issued by a carrier with a rating from A.M. Best & Company of A-VII or better.

9.2.2 MINIMUM LIMITS OF LIABILITY Subcontractor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL), Excess Liability Insurance, Contractor Pollution Liability Insurance, Professional Liability Insurance, and if necessary, Aircraft Liability Insurance 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 E or as otherwise required by the Contract Documents whichever is greater.

9.2.3 PROFESSIONAL LIABILITY INSURANCE

If required by §3.7, 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, and including coverage for any professional liability caused by consultants of its design professional. Said insurance shall have specific minimum limits as set forth in Exhibit E, or as otherwise required by the Contract Documents whichever is greater.

9.2.3.2 The professional liability insurance shall contain prior acts coverage sufficient to cover all subcontract services rendered by the design professional. Said insurance shall be continued in effect with an extended period of five (5) years following final payment to the design professional, or for such time as may be required by the Contract Documents whichever is greater. The Professional Liability Insurance shall contain a retroactive date providing prior acts coverage sufficient to cover all Services performed by the Subcontractor's design professional for this Project. Coverage shall be continued in effect for five (5) year(s) following Substantial Completion, or for such time as may be required by the



Contract Documents whichever is greater. Subcontractor shall pay any self-insured retention and deductible.

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

9.2.4 CONTRACTORS POLLUTION LIABILITY INSURANCE

If the work involves any exposure to pollutants or hazardous waste, Subcontractor shall maintain insurance covering losses caused by pollution conditions (including clean up, mold, transportation and Nonowner disposal site coverage) that arise from the Work. Coverage shall include the Contractor and Owner as additional insureds on a primary and non-contributory basis and waive rights of subrogation.

9.2.5 AIRCRAFT LIABILITY INSURANCE

If the Work involves the operation, maintenance or use of any aircraft, including unmanned aircraft systems, Subcontractor shall procure and maintain or cause to be procured and maintained Aircraft Liability insurance for loss or damage arising out of or related to the use of any aircraft used in the performance of the Work. Such insurance shall have passenger liability limits of \$5,000,000 per seat and provide coverage in a combined single limit of not less than \$10,000,000 per occurrence, including bodily injury, property damage and passenger liability. Such Aircraft Liability coverage shall be endorsed to include Contractor, Owner and all others required by the Agreement to be additional insureds.

9.2.5 NUMBER OF POLICIES Commercial General Liability Insurance (CGL) 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.

9.2.6 CANCELLATION, RENEWAL, AND MODIFICATION To the extent commercially available to Subcontractor from its current insurance company, insurance policies required under §9.2.1 shall contain a provision that the insurance company or its designee must give Contractor written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company and (b) within 10 Business Days after cancellation of coverage by the insurance company. Before commencing the Subcontract 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 §9.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be canceled, Subcontractor shall give Contractor prompt written notice upon actual or constructive knowledge of such condition.

9.2.7 CONTINUATION OF COVERAGE Subcontractor shall continue to carry Completed Operations Liability Insurance through the applicable statute of repose, or 10 years, whichever is less after final payment to Contractor. Before commencing the Subcontract Work, Subcontractor shall furnish Contractor with certificates evidencing the required coverages.

9.2.8 BUILDER'S RISK POLICY INSURANCE Upon Subcontractor's written request, Contractor shall provide Subcontractor with a copy of the Builder's Risk policy of insurance or any other property or equipment insurance in force for the Project and procured by Owner or Contractor. Contractor shall advise Subcontractor if a Builder's Risk policy of insurance is not in force.



9.2.9 WAIVER OF SUBROGATION The Parties waive all rights against each other, Owner, and Design Professional, and any of their respective consultants, subcontractors, sub subcontractors, suppliers, agents, and employees, for damages caused by perils to the extent covered by the proceeds of the insurance provided in §9.2.8, except such rights as they may have to the insurance proceeds and such rights as they may have for the failure to obtain and maintain any Project Builders Risk Coverage that they may have been obligated to provide in the Prime Agreement. Subcontractor shall require similar waivers from its subcontractors.

9.2.10 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.

9.2.11 ADDITIONAL GENERAL LIABILITY COVERAGE Contractor **shall** require Subcontractor to purchase and maintain additional liability coverage, primary and non-contributory to Contractor's coverage pursuant to the subsection immediately above. The additional liability coverage required of Subcontractor shall be:

9.2.11.1 ADDITIONAL INSURED. Contractor and Owner shall be named as an additional insured on Subcontractor's CGL specified, for on-going operations and completed operations, excess/umbrella liability, commercial automobile liability, and any required pollution liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury arising out of 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. Additional Insured coverage shall be equivalent to that found in ISO CG 20 10 04 13 and the CG 20 37 04 13. The insurance of the Subcontractor shall be primary and non-contributory to any insurance available to the Additional Insureds.

9.2.11.2 – OCP. If applicable, Subcontractor shall provide an Owners' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL specified, or limits as otherwise required by Contractor.

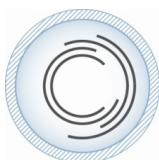
Before commencing the Subcontract Work, Subcontractor shall provide a copy of a certificate and endorsement evidencing that Contractor has been named as an additional insured.

9.2.13 OWNER CONTROLLED OR CONTRACTOR CONTROLLED INSURANCE PROGRAMS If the Contract Documents provide for an Owner Controlled Insurance Program ("OCIP") OR Contractor Controlled Insurance Program ("CCIP") which provides coverage for the Work, the Subcontractor shall comply with all provisions of any such OCIP or CCIP.

9.2.14 Failure of Contractor to demand such certificate of other evidence of full compliance with these insurance requirements or failure of Contractor to identify a deficiency from evidence that is provided shall not be construed as a waiver of Subcontractor's obligation to maintain such insurance. Contractor shall have the right, but not the obligation, to prohibit Subcontractor or any Sub-Subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Contractor.

9.2.15 In the event that rental of equipment is undertaken to complete and/or perform the work, Subcontractor agrees that it shall be solely responsible for such rental equipment. Such responsibility shall include, but not be limited to, theft, fire, vandalism and use by unauthorized persons.

9.2.16 In the event that materials or any other type of personal property ("personal property") is acquired for the Project or delivered to the Project site, sub-contractor agrees that it shall be solely responsible for such property until it becomes a fixture on the Project, or otherwise is installed and



incorporated as a final part of the Project. Such responsibility shall include, but not be limited to, theft, fire, vandalism and use by unauthorized persons.

9.2.17 Subcontractor shall maintain "all risk" insurance, on a replacement cost basis, covering loss or damage to property (for which it has title and/or risk of loss) which becomes a final part of the Project, during its off-Project sites, in transit and while stored or worked upon away from the Project sites. Contractor shall be additional insured under such insurance.

9.2.18 Contractor shall not be responsible for any uninsured loss or damage to the Work that is not incorporated into the Project, nor shall Contractor be responsible for any uninsured loss or damage to materials, tools, equipment, appliances, or any other items used or to be used in the Work, regardless of location, whether or not on site, in transit or in storage, not incorporated into the Project, and regardless of however such loss or damage is caused. Rather, the risk of such uninsured loss shall be borne by Subcontractor, and its Lower Tier Persons. "Uninsured Loss" means any loss that may be incurred that is not covered by, or is less than the deductible of, any policy in force for the Project. Subcontractor's compliance with the insurance requirements of the Subcontract Documents is an affirmative material obligation of Subcontractor and shall be a condition precedent to any payment otherwise payable to Subcontractor.

9.3 BONDS

9.3.1 If Performance and Payment Bonds **are** required of Subcontractor, such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to Contractor. Contractor's acceptance shall not be withheld without reasonable cause. The penal sum of the Payment Bond and Performance Bond shall each be in the original full Subcontract Amount.

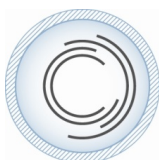
9.3.2 Subcontractor shall be reimbursed, without retainage, for the cost of any required performance or payment bonds simultaneously with the first progress payment. If acceptable to Contractor, Subcontractor may, in lieu of retainage, furnish a retention bond or other security interest, acceptable to Contractor, to be held by Contractor.

9.3.3 If 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 persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the Progress Schedule, or fails to make prompt payment to its workers, sub subcontractors, or suppliers, or disregards a Law 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 other rights or remedies, shall have the right 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 expense may exceed the unpaid balance of the Subcontract Amount. At Subcontractor's request, Contractor shall provide a detailed accounting of the costs 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 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; or

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 or supplies for which Contractor or other subcontractors have paid and located at the Worksite for the purpose of completing any remaining Subcontract Work. Contractor and others performing work under this article shall also have the right to use construction tools and equipment located on the Worksite and belonging to the Subcontractor and its subcontractors for the purpose of completing the remaining Work. If Contractor uses the tools and equipment in accordance with this subsection, Contractor shall indemnify and hold harmless Subcontractor in connection with Contractor's use of such tools and equipment. 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; (b) a default has occurred, and Subcontractor is unable to give adequate assurance of required performance; or (c) Subcontractor is otherwise 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 Agreement and to the extent Contractor recovers such on Subcontractor's behalf, the Subcontract Amount and the Subcontract Time shall be equitably adjusted by Subcontract Change Order for the cost and delay resulting from any such suspension.

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, except as otherwise provided in this Agreement.

10.5 **CONTINGENT ASSIGNMENT OF THIS AGREEMENT** Contractor's contingent assignment of this Agreement to Owner, as provided in the Prime Agreement, is effective when Owner has terminated the Prime Agreement for cause and has accepted the assignment by notifying Subcontractor in writing. 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 the assignee by the terms of this Agreement, provided that the assignee 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 Agreement 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 before 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.

10.7 **WRONGFUL EXERCISE** If Contractor wrongfully exercises any option under this article, Contractor shall be liable to Subcontractor solely for the reasonable value of Subcontract Work performed by Subcontractor before Contractor's wrongful action, including reasonable overhead and profit on the Subcontract Work performed, less prior payments made, and other reasonable costs incurred by such action.

ARTICLE 11 DISPUTE MITIGATION AND RESOLUTION

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



11.2 DISPUTES BETWEEN THE PARTIES If the dispute resolution provisions between Contractor and Owner in the Subcontract Documents do not permit consolidation or joinder with disputes of third parties, such as Subcontractor, or if such dispute is only between the Parties, then the Parties shall submit the dispute to the dispute resolution procedures set forth in the section below.

11.3 CONTRACTOR–SUBCONTRACTOR DISPUTE MITIGATION AND RESOLUTION

DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, 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 (“First Discussion Date”). 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 a resolution could not be reached. 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 First Discussion Date, the Parties shall submit such matter to the dispute resolution procedures selected in this ARTICLE 11.

11.3.1 BINDING DISPUTE RESOLUTION If the matter is unresolved after direct discussions between the Parties, except as provided in §11.4, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

11.3.1.1 ARBITRATION

The Parties choose binding arbitration for any claim or dispute arising out of or relating to this Agreement. **EACH PARTY WAIVES THEIR RIGHT TO BE HEARD IN A COURT OF LAW**, with or without a jury. Arbitration does not involve a judge or jury. Instead, an arbitrator with the power to award damages and other appropriate relief will decide claims and disputes. An arbitrator’s award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction.

11.3.1.2 Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations, statute of repose, or both had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed. If an action is filed in state or federal court, the filing Party agrees that the action shall be immediately submitted to binding arbitration and agrees that it will not dispute or object to submitting the action to binding arbitration. The filing Party further agrees to pay all reasonable attorneys’ fees and costs incurred in removing the action from state or federal court jurisdiction to binding arbitration. If, and when any action is removed from state or federal court jurisdiction and sent to binding arbitration, the commencement date shall still be deemed the date the state or federal court action was filed.

11.3.1.3 The arbitration shall use the following rules:

the current AAA Construction Industry Arbitration Rules and AAA administration. AAA Construction Fast Track Rules shall apply to all two-party cases when neither Party’s disclosed claim or counterclaim



exceeds \$250,000. If arbitration is selected but no rules are selected, then this subsection shall apply by default;

11.3.2 COSTS 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.

11.3.3 VENUE The Project location shall serve as the venue, unless otherwise stated herein.

11.4 MULTIPARTY PROCEEDING All parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding, if possible. 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.

ARTICLE 12 MISCELLANEOUS

12.1 EXTENT OF AGREEMENT Except as specifically provided, this Agreement is for the exclusive benefit of the Parties, and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

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

12.3 GOVERNING LAW The Law in effect at the geographical location of the Project shall govern this Agreement, unless otherwise stated herein.

12.4 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.

12.5 NOTICE Unless changed in writing, a Party's address indicated in , Exhibit A shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

12.6 NO WAIVER OF PERFORMANCE Either Party's failure to insist upon any performance of any term, covenant, or condition of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right.

12.7 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.

12.8 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 before execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

ARTICLE 13 SUBCONTRACT DOCUMENTS

13.1 INTERPRETATION OF SUBCONTRACT DOCUMENTS



13.1.1 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 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. Subject to an equitable adjustment in Subcontract Time or Subcontract Amount pursuant to ARTICLE 7 or ARTICLE 11, Owner's clarifications are final and binding.

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 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 §13.1.2, the drawings (large scale governing over small scale), specifications, and addenda issued before the execution of this Agreement; (d) information furnished by Owner that is identified as a Subcontract Document; (e) 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.

rev. 05-01-24

END OF DOCUMENT.

