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CONSENSUSDOCS 752 STANDARD SUBCONTRACT AGREEMENT FOR USE ON FEDERAL GOVERNMENT CONSTRUCTION PROJECTS

This document was developed through a collaborative effort of entities representing a wide cross-section of the construction industry. The organizations endorsing this document believe it represents a fair and reasonable consensus among the collaborating parties of allocation of risk and responsibilities in an effort to appropriately balance the critical interests and concerns of all project participants.

These endorsing organizations recognize and understand that users of this document must review and adapt this document to meet their particular needs, the specific requirements of the project, and applicable laws. Users are encouraged to consult legal, insurance, and surety advisors before modifying or completing this document. Further information on this document and the perspectives of endorsing organizations is available in the ConsensusDOCS Guidebook.

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IMPORTANT: A vertical line in the margin indicates a change has been made to the original text. Prior to signing, recipients may wish to request from the party producing the document a "redlined" version indicating changes to the original text. Consultation with legal and insurance counsel and careful review of the entire document are strongly encouraged.

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This Agreement has important legal and insurance consequences. Consultations with an attorney and with insurance and surety consultants are encouraged with respect to its completion or modification. Notes indicate where information is to be inserted to complete this Agreement.

**ARTICLE 1
AGREEMENT**

This Agreement is made this _____ Day of _____ in the year _____, by and between the
CONTRACTOR

and the
SUBCONTRACTOR

for services in connection with the
SUBCONTRACT WORK

for the following
PROJECT

whose OWNER is (Insert name of federal government agency)

NOTICE Any notice required by this Agreement by the Contractor or the Subcontractor shall be in writing and shall be deemed to be given on the date of such notice was personally delivered or two (2) business days after the date such notice is deposited either by certified or registered mail, return receipt requested, postage paid, in the United States mail or sent via commercial carrier with confirmation of delivery and addressed as follows:

To the Contractor:

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To the Subcontractor:

**ARTICLE 2
SCOPE OF WORK**

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

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

2.2.1 The Contractor and the Subcontractor shall perform their obligations with integrity, ensuring at a minimum that:

2.2.1.1 Conflicts of interest shall be avoided or disclosed promptly to the other Party; and

2.2.1.2 The Contractor and the Subcontractor warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers and employees, Subcontractors or others for whom they may be liable, to secure preferential treatment.

2.3 **SUBCONTRACT DOCUMENTS** The Subcontract Documents include this Agreement, the Prime Contract, special conditions, general conditions, specifications, drawings, addenda, Subcontract Change Orders, approved submittals, amendments and any pending and exercised alternates. The Contractor shall provide to the Subcontractor, prior to the execution of this Agreement, copies of the existing Subcontract Documents to which the Subcontractor will be bound. The Subcontractor similarly shall provide copies of applicable portions of the Subcontract Documents to its proposed subcontractors and suppliers. Nothing shall prohibit the Subcontractor from obtaining copies of the Subcontract Documents from the Contractor at any time after the Subcontract Agreement is executed. The Subcontract Documents existing at the time of the execution of this Agreement are listed in Article 13.

2.3.1 **ELECTRONIC DOCUMENTS** If the Prime Contract requires that the Owner, Contractor and Subcontractors exchange documents and data in electronic or digital form, prior to any such exchange, the Prime Contract may contain a written protocol governing all exchanges of data, which, at a minimum, shall specify: (1) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (2) management and coordination responsibilities; (3) necessary equipment, software and services; (4) acceptable formats, transmission methods and verification procedures; (5) methods for maintaining version control; (6) privacy and security requirements; and (7) storage and retrieval requirements. The Subcontractor shall provide whatever input is needed to assist the Contractor in complying with the protocol and shall be bound by the requirements of the written protocol. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

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

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

2.6 DEFINITIONS

2.6.1 Wherever the term Progress Schedule is used in this Agreement, it shall be read as Project Schedule when that term is used in the Subcontract Documents.

2.6.2 Whenever the term Change Order is used in this Agreement, it shall be read as Change Document when that term is used in the Subcontract Documents.

2.6.3 Unless otherwise indicated, the term Day shall mean calendar day.

ARTICLE 3

SUBCONTRACTOR'S RESPONSIBILITIES

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

3.2 RESPONSIBILITIES The Subcontractor agrees to furnish its diligent efforts and judgment in the performance of the Subcontract Work and to cooperate with the Contractor so that the Contractor may fulfill its obligations to the Owner. The 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. The Subcontractor shall provide the 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 The Subcontractor shall make a careful analysis and comparison of the drawings, specifications, other Subcontract Documents and information furnished by the Owner relative to the Subcontract Work. Such analysis and comparison shall be solely for the purpose of facilitating the Subcontract Work and neither for the discovery of errors, inconsistencies or omissions in the Subcontract Documents nor for ascertaining if the Subcontract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules or regulations. Should the Subcontractor discover any errors, inconsistencies or omissions in the Subcontract Documents, the Subcontractor shall report such discoveries to the Contractor in writing within three (3) Days. Upon receipt of notice, the Contractor shall instruct the Subcontractor as to the measures to be taken, and the Subcontractor shall comply with the Contractor's instructions. If the Subcontractor performs work knowing it to be contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations without notice to the Contractor and advance approval by appropriate authorities, including the Contractor, the Subcontractor shall assume appropriate responsibility for such work and shall bear all associated costs, charges, fees and expenses necessarily incurred to remedy the violation. Nothing in this paragraph shall

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relieve the Subcontractor of responsibility for its own errors, inconsistencies and omissions.

3.4 SITE VISITATION Prior to performing any portion of the Subcontract Work, the Subcontractor shall conduct a visual inspection of the Project site to become generally familiar with local conditions and to correlate site observations with the Subcontract Documents. If the Subcontractor discovers any discrepancies between its site observations and the Subcontract Documents, such discrepancies shall be promptly reported to the Contractor.

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

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

3.7 SUBMITTALS

3.7.1 The Subcontractor promptly shall submit for approval to the 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 in accordance with Subparagraph 2.3.1. The Subcontractor shall be responsible to the Contractor for the accuracy and conformity of its submittals to the Subcontract Documents. The Subcontractor shall prepare and deliver its submittals to the Contractor in a manner consistent with the Progress Schedule and in such time and sequence so as not to delay the Contractor or others in the performance of the Work. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Subcontract Documents unless express written approval is obtained from the Contractor and Owner authorizing such deviation, substitution or change. Such approval shall be promptly memorialized in a Subcontract Change Order with in seven (7) Days following approval by the Contractor and, if applicable, provide for an adjustment in the Subcontract Amount or Subcontract Time. In the event that the Subcontract Documents do not contain submittal requirements pertaining to the Subcontract Work, the Subcontractor agrees upon request to submit in a timely fashion to the Contractor for approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Contractor, or the Owner. Unless required by the Prime Contract for authorized deviations, substitutions or changes that do not have a cost or time impact, a Subcontract change order shall not be required, but such authorized deviations, substitutions or changes shall be confirmed in a writing.

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

3.8 DESIGN DELEGATION

3.8.1 If the Subcontract Documents (1) specifically require the Subcontractor to procure design services and (2) specify all required design and performance criteria to perform such services, the Subcontractor shall provide those design services necessary to satisfactorily complete the Subcontract Work. Design services provided by the Subcontractor shall be procured from licensed

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design professionals retained by the Subcontractor as required by the law of the place where the Project is located (the Designer). The Designer's signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by the Designer. Shop Drawings and other submittals related to the Subcontract Work designed or certified by the Designer, if prepared by others, shall bear the Subcontractor's and the Designer's written approvals when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by the Designer.

3.8.2 If the Designer is an independent professional, the design services shall be procured pursuant to a separate agreement between the Subcontractor and the Designer. The Subcontractor-Designer agreement shall not provide for any limitation of liability, except to the extent that consequential damages are waived pursuant to Subparagraph 5.4.1, or exclusion from participation in the multiparty proceedings requirement of Paragraph 11.4. The Designer(s) is (are) _____ . The Subcontractor shall notify the Contractor in writing if it intends to change the Designer. The Subcontractor shall be responsible for conformance of its design with the information given and the design concept expressed in the Subcontract Documents. The Subcontractor shall not be responsible for the adequacy of the performance or design criteria required by the Subcontract Documents.

3.8.3 The Subcontractor shall not be required to provide design services in violation of any applicable law.

3.9 TEMPORARY SERVICES The Subcontractor's and Contractor's respective responsibilities for temporary services are set forth in Exhibit ____.

3.10 COORDINATION The Subcontractor shall:

3.10.1 cooperate with the Contractor and all others whose work may interface with the Subcontract Work;

3.10.2 specifically note and immediately advise the Contractor of any such interface with the Subcontract Work; and

3.10.3 participate in the preparation of coordination drawings and work schedules in areas of congestion.

3.11 SUBCONTRACTOR'S REPRESENTATIVE The Subcontractor shall designate a person, subject to Contractor's approval, who shall be the Subcontractor's authorized representative. This representative shall be the only person to whom the Contractor shall issue instructions, orders or directions, except in an emergency. The Subcontractor's representative is _____, who is agreed to by the Contractor.

3.12 TESTS AND INSPECTIONS The 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. The Subcontractor shall give proper written notice to all required Parties of such tests, approvals and inspections. Except as otherwise provided in the Subcontract Documents the Subcontractor shall bear all expenses associated with tests, inspections and approvals required of the Subcontractor by the Subcontract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity approved by the Contractor and Owner. Required certificates of testing, approval or inspection shall, unless otherwise required by the Subcontract Documents, be secured by the Subcontractor and promptly delivered to the Contractor.

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3.13 CLEANUP

3.13.1 The Subcontractor shall at all times during its performance of the Subcontract Work keep the Work site clean and free from debris resulting from the Subcontract Work. Prior to discontinuing the Subcontract Work in an area, the 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. The Subcontractor shall not be held responsible for unclean conditions caused by others.

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

3.14 SAFETY

3.14.1 The Subcontractor is required to perform the Subcontract Work in a safe and reasonable manner. The Subcontractor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

3.14.1.1 Employees and other persons at the site;

3.14.1.2 Materials and equipment stored at the site or at off-site locations for use in performance of the Subcontract Work; and

3.14.1.3 All property and structures located at the site and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

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

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

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

3.14.5 The 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. The 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.

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

3.14.7 The Subcontractor is required to designate an individual at the site in the employ of the

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Subcontractor who shall act as the Subcontractor's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Subcontractor in writing to the Contractor, the designated safety representative shall be the Subcontractor's project superintendent. Such safety representative shall attend site safety meetings as requested by the Contractor.

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

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

3.14.10 Prevention of accidents at the site is the responsibility of the Contractor, Subcontractor, and all other subcontractors, persons and entities at the site. Establishment of a safety program by the Contractor shall not relieve the Subcontractor or other Parties of their safety responsibilities. The 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 the Contractor and Owner, including, but not limited to, requirements imposed by the Subcontract Documents. The 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 the Contractor deems unsafe until corrective measures satisfactory to the Contractor shall have been taken. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility therefor. The Subcontractor shall notify the Contractor immediately following a reportable incident under applicable rules, regulations, orders and other lawful requirements, and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by the Contractor. To the fullest extent permitted by law, each Party to this Agreement shall indemnify the other party from and against fines or penalties imposed as a result of safety violations, but only to the extent that such fines or penalties are caused by its failure to comply with applicable safety requirements. This indemnification obligation does not extend to additional or increased fines that result from repeated or willful violations not caused by the Subcontractor's failure to comply with applicable rules, regulations, orders and other lawful requirements.

3.15 PROTECTION OF THE WORK The Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of others from damage caused by the Subcontractor's operations. Should the Subcontractor cause damage to the Work or property of the Owner, the Contractor or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor, or the Contractor may, after forty-eight (48) hours written notice to the Subcontractor, remedy the damage and deduct its cost from any amounts due or to become due the Subcontractor, unless such costs are recovered under applicable property insurance.

3.16 PERMITS, FEES, LICENSES AND TAXES The Subcontractor shall give timely notices to authorities pertaining to the Subcontract Work, and shall be responsible for all permits, fees, licenses, assessments, inspections, testing and taxes necessary to complete the Subcontract Work in accordance with the Subcontract Documents. To the extent reimbursement is obtained by the Contractor from the Owner under the Prime Contract, the Subcontractor shall be compensated for additional costs resulting from taxes enacted after the date of this Agreement.

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

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

3.19 MATERIAL SAFETY DATA (MSD) SHEETS The Subcontractor shall submit to the Contractor all Material Safety Data Sheets required by law for materials or substances necessary for the performance of the Subcontract Work. MSD sheets obtained by the Contractor from other subcontractors or sources shall be made available to the Subcontractor by the Contractor.

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

3.21 WARRANTIES The 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. The Subcontractor further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Subcontract Documents. The 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. Unless a different date is specified in the Prime Contract, warranties shall commence on the date of Substantial Completion of the Work or a designated portion thereof.

3.22 UNCOVERING/CORRECTION OF SUBCONTRACT WORK

3.22.1 UNCOVERING OF SUBCONTRACT WORK

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

3.22.1.2 The Contractor may direct the Subcontractor to uncover portions of the Subcontract Work for inspection by the Owner or Contractor at any time. The Subcontractor is required to uncover such work whether or not the Contractor or Owner had requested to inspect the Subcontract Work prior to it being covered. Except as provided in Subparagraph 3.22.1.1, this Agreement shall be adjusted by 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 the Contractor had not previously instructed the Subcontractor to leave the work uncovered. If the Subcontractor uncovers work pursuant to a directive issued by the Contractor, and such work upon inspection does not comply with the Subcontract Documents, the 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 the Contractor or some other entity for which the Subcontractor is not responsible caused the nonconforming condition, the Contractor shall be required to adjust this

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Agreement by change order for all such costs and time.

3.22.2 CORRECTION OF WORK

3.22.2.1 If the Owner or Contractor rejects the Subcontract Work or the Subcontract Work is not in conformance with the Subcontract Documents, the Subcontractor shall promptly correct the Subcontract Work whether it had been fabricated, installed or completed. The Subcontractor shall be responsible for the costs of correcting such Subcontract Work, any required additional testing or inspections, and compensation for services and expenses of the Owner and Contractor made necessary by the defective Subcontract Work.

3.22.2.2 In addition to the Subcontractor's obligations under Paragraph 3.21, the Subcontractor agrees to promptly correct, after receipt of a written notice from the Contractor, all Subcontract Work performed under this Agreement which proves to be defective in workmanship or materials within a period of one year from the date of Substantial Completion of the Subcontract Work or for a longer period of time as may be required by specific warranties in the Subcontract Documents. Substantial Completion of the Subcontract Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Subcontract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended. If, during the one-year period, the Contractor fails to provide the Subcontractor with prompt written notice of the discovery of defective or nonconforming Subcontract Work, the Contractor shall neither have the right to require the Subcontractor to correct such Subcontract Work nor the right to make claim for breach of warranty. If the Subcontractor fails to correct defective or nonconforming Subcontract Work within a reasonable time after receipt of notice from the Contractor, the Contractor may correct such Subcontract Work pursuant to Subparagraph 10.1.1.

3.22.3 Unless otherwise provided in the Prime Contract, the Subcontractor's correction of Subcontract Work pursuant to this Paragraph 3.22 shall not extend the one-year period for the correction of Subcontract Work, but if Subcontract Work is first performed after Substantial Completion, the one-year period for corrections shall be extended by the time period after Substantial Completion and the performance of that portion of Subcontract Work. The Subcontractor's obligation to correct Subcontract Work within one year as described in this Paragraph 3.22 does not limit the enforcement of Subcontractor's other obligations with regard to the Agreement and the Subcontract Documents.

3.22.4 If the Subcontractor's correction or removal of Subcontract Work destroys or damages completed or partially completed work of the Owner, the Contractor or any separate contractors or subcontractors, the Subcontractor shall be responsible for the reasonable cost of correcting such destroyed or damaged property.

3.22.5 If portions of Subcontract Work which do not conform with the requirements of the Subcontract Documents are neither corrected by the Subcontractor nor accepted by the Contractor, the Subcontractor shall remove such Subcontract Work from the Project site if so directed by the Contractor.

3.23 MATERIALS OR EQUIPMENT FURNISHED BY OTHERS In the event the scope of the Subcontract Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to exercise proper care in receiving, handling, storing and installing such items, unless otherwise provided in the Subcontract Documents. The Subcontractor shall examine the items provided and report to the Contractor in writing any items it may discover that do not conform to requirements of the Subcontract Documents. The Subcontractor shall not proceed to install

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non-conforming items without further instructions from the Contractor. Loss or damage due to acts or omissions of the Subcontractor shall, upon two (2) business Days written notice to the Subcontractor be deducted from any amounts due or to become due the Subcontractor.

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

3.25 **USE OF CONTRACTOR'S EQUIPMENT** The Subcontractor, its agents, employees, subcontractors or suppliers shall use the Contractor's equipment only with the express written permission of the Contractor's designated representative and in accordance with the Contractor's terms and conditions for such use. If the Subcontractor or any of its agents, employees, subcontractors or suppliers utilize any of the Contractor's equipment, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Contractor, the Subcontractor shall indemnify and be liable to the 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 the Contractor's employees operating the Contractor's equipment.

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

3.27 **SYSTEMS AND EQUIPMENT STARTUP** With the assistance of the Owner's maintenance personnel and the Contractor, the 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.

3.28 **COMPLIANCE WITH LAWS** The Subcontractor agrees to be bound by, and at its own costs comply with, all federal, state and local laws, ordinances and regulations (the Laws) applicable to the Subcontract Work, including but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety and all other Laws with which the Contractor must comply. The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply with Laws, including, but not limited to, any fines, penalties or corrective measures, except as provided in Subparagraph 3.14.9.

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

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

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3.31 LABOR RELATIONS (Insert here any conditions, obligations or requirements relative to labor relations and their effect on the project. Legal counsel is recommended.)

ARTICLE 4

CONTRACTOR'S RESPONSIBILITIES

4.1 CONTRACTOR'S REPRESENTATIVE The Contractor shall designate a person who shall be the Contractor's authorized representative. The Contractor's representative shall be the only person the Subcontractor shall look to for instructions, orders or directions, except in an emergency. The Contractor's Representative is _____.

4.2 OWNER'S ABILITY TO PAY

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

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

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

4.4 INFORMATION OR SERVICES The Subcontractor is entitled to request through the Contractor any information or services relevant to the performance of the Subcontract Work which is under the Owner's control. To the extent the Contractor receives such information and services, the Contractor shall provide them to the Subcontractor. The Contractor, however, does not warrant the accuracy or completeness of the information provided by the Owner. To the extent the Owner provides any warranty of Owner provided information, the Contractor agrees to permit the Subcontractor to prosecute a claim in the name of the Contractor for the use and benefit of the Subcontractor, pursuant to Subparagraph 5.3.2 concerning any defects or inaccuracies in the Owner-provided information.

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

4.6 TIMELY COMMUNICATIONS The Contractor shall transmit to the Subcontractor, with reasonable promptness, all submittals, transmittals, and written approvals relative to the Subcontract Work. Unless otherwise specified in the Subcontract Documents, communications by and with the Subcontractor's subcontractors, materialmen and suppliers shall be through the Subcontractor.

4.7 USE OF SUBCONTRACTOR'S EQUIPMENT The Contractor, its agents, employees or suppliers shall use the Subcontractor's equipment only with the express written permission of the Subcontractor's designated representative and in accordance with the Subcontractor's terms and conditions for such use. If the Contractor or any of its agents, employees or suppliers utilize any of the Subcontractor's equipment, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Subcontractor, the Contractor shall indemnify and be liable to the Subcontractor as provided in Article

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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 the Subcontractor's employees operating the Subcontractor's equipment.

ARTICLE 5

PROGRESS SCHEDULE

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

5.2 SCHEDULE OBLIGATIONS The Subcontractor shall provide the Contractor with any scheduling information proposed by the Subcontractor for the Subcontract Work. In consultation with the Subcontractor, the Contractor shall prepare the schedule for performance of the Work (the Progress Schedule) and shall revise and update such schedule, as necessary, as the Work progresses. Both the Contractor and the Subcontractor shall be bound by the Progress Schedule. The Progress Schedule and all subsequent changes and additional details shall be submitted to the Subcontractor promptly and reasonably in advance of the required performance. The Contractor shall have the right to determine and, if necessary, change the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the Subcontract Work. To the extent such changes increase Subcontractor's time and costs, the Subcontract Amount and Subcontract Time shall be equitably adjusted.

5.3 DELAYS AND EXTENSIONS OF TIME

5.3.1 OWNER CAUSED DELAY Subject to Subparagraph 5.3.2, if the commencement or progress of the Subcontract Work is delayed by the acts or omissions of the Owner and without the fault or responsibility of the Subcontractor, or any of the Subcontractor's subcontractors, materialmen and suppliers, the time for the Subcontract Work shall be extended by Subcontract Change Order and the Subcontract Price equitably adjusted to the extent obtained by the Contractor under the Subcontract Documents, and the Progress Schedule shall be revised accordingly.

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

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

5.3.4 CLAIMS RELATING TO CONTRACTOR The Subcontractor shall give the Contractor written notice of all claims not included in Subparagraph 5.3.2 within fourteen (14) Days of the Subcontractor's knowledge of the facts giving rise to the event for which claim is made. Thereafter, the 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. The Contractor shall respond in writing denying or approving, in whole or in

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part the Subcontractor's claim no later than fourteen (14) Days after receipt of the Subcontractor's documentation of claim. All unresolved claims, disputes and other matters in question between the Contractor and the Subcontractor not relating to claims included in Subparagraph 5.3.2 shall be resolved in the manner provided in Article 11.

5.4 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

5.4.1 Except for damages provided for by the Subcontract Documents as liquidated damages and excluding losses covered by insurance required by the Subcontract Documents, the Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Agreement, to the same extent the Prime Contract furnished to the Subcontractor in accordance with Paragraph 2.3 provides for a mutual waiver of consequential damages by the Owner and Contractor, including to the extent provided in the Prime Contract, damages for loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. Similarly, the Subcontractor shall obtain in another agreement from its Sub-Subcontractors mutual waivers of consequential damages that correspond to the Subcontractor's waiver of consequential damages herein. To the extent applicable, this mutual waiver applies to consequential damages due to termination by the Contractor or the Owner in accordance with this Agreement or the Prime Contract. The provisions of this Article shall also apply to and survive termination of this Agreement.

5.5 LIQUIDATED DAMAGES

5.5.1 If the Subcontract Documents furnished to the Subcontractor in accordance with Paragraph 2.3 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, the Contractor may assess a share of the damages against the Subcontractor in proportion to the Subcontractor's share of the responsibility for the damages. However, the amount of such assessment shall not exceed the amount assessed against the Contractor. This Paragraph shall not limit the Subcontractor's liability to the Contractor for the Contractor's actual damages caused by the Subcontractor.

5.5.2 To the extent the Prime Contract provides for a mutual waiver of consequential damages by the Owner and the Contractor, damages for which the Contractor is liable to the Owner including those related to Paragraph 9.1. are not consequential damages for the purpose of this waiver. Similarly, to the extent the Subcontractor-Sub-Subcontractor agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, damages for which the Subcontractor is liable to lower-tiered parties due to the fault of the Owner or Contractor are not consequential damages for the purpose of this waiver.

ARTICLE 6

SUBCONTRACT AMOUNT

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

- (a) the fixed-price of _____ Dollars (\$_____), subject to additions and deductions as provided for in the Subcontract Documents; or
- (b) alternates and unit prices in accordance with the attached schedule of Alternates and Unit Prices and estimated quantities, which is incorporated by reference and identified as Exhibit ____; or

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(c) time and material rates and prices in accordance with the attached Schedule of Labor and Material Costs which is incorporated by reference and identified as Exhibit _____. The fixed-price, unit prices or time and material rates and prices are referred to as the Subcontract Amount.

ARTICLE 7

CHANGES IN THE SUBCONTRACT WORK

7.1 SUBCONTRACT CHANGE ORDERS When the Contractor orders in writing, the Subcontractor, without nullifying this Agreement, shall make any and all changes in the Subcontract Work which are within the general scope of this Agreement. Any adjustment in the Subcontract Amount or Subcontract Time shall be authorized by a Subcontract Change Order. No adjustments shall be made for any changes performed by the Subcontractor that have not been ordered by the Contractor. A Subcontract Change Order is a written instrument prepared by the Contractor and signed by the Subcontractor stating their agreement upon the change in the Subcontract Work.

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

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

7.3.1 mutual acceptance of an itemized lump sum;

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

7.3.3 costs determined in a manner acceptable to the Parties and a mutually acceptable fixed or percentage fee; or

7.3.4 another method provided in the Subcontract Documents.

7.4 SUBSTANTIATION OF ADJUSTMENT If the Subcontractor does not respond promptly or disputes the method of adjustment, the method and the adjustment shall be determined by the 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 Paragraph 7.5, or if none is provided as mutually agreed upon by the Parties. The Subcontractor may contest the reasonableness of any adjustment determined by the Contractor. The Subcontractor shall maintain for the Contractor's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Subcontract Change Order:

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

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

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

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

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

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7.4.6 adjustments to the Subcontract Amount shall be based on net change in Subcontractor's reasonable cost of performing the changed Subcontract Work plus, in case of a net increase in cost, an agreed upon sum for overhead and profit not to exceed _____ percent (_____%).

7.5 NO OBLIGATION TO PERFORM The Subcontractor shall not perform changes in the Subcontract Work until a Subcontract Change Order has been executed or written instructions have been issued in accordance with Paragraphs 7.2 and 7.8.

7.6 EMERGENCIES In an emergency affecting the safety of persons or property, the Subcontractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Subcontract Amount or the Progress Schedule on account of emergency work shall be determined as provided in this Article.

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

**ARTICLE 8
PAYMENT**

8.1 GENERAL PROVISIONS The payment provisions of this contract are governed by certain provisions in 31 U.S.C. Section 3901 et seq. (The Federal Prompt Pay Act).

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

8.2 PROGRESS PAYMENTS

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

8.2.1.1 the amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Subcontract Documents;

8.2.1.2 payments to the Subcontractor's subcontractors and suppliers have been made from previous payments received under this Agreement, that they have been paid in full all sums to which they are entitled, and timely payments will be made from the proceeds of the payment covered by the certification in accordance with their agreements and the requirements of 31 U.S.C. Section 3901 et seq.; and

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

8.2.2 OWNER VERIFICATION Subcontractor may obtain information regarding the percentage of completion certified for the Subcontract Work directly from the Owner's representative.

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

8.2.4 APPLICATIONS The Subcontractor's applications for payment shall be itemized and supported by substantiating data as required by the Subcontract Documents. If the Subcontractor is obligated to provide design services pursuant to Paragraph 3.8, Subcontractor's applications for payment shall show the Designer's fee and expenses as a separate cost item. If allowed under the Subcontract Documents, the Subcontractor's application may include properly authorized Subcontract Construction Change Directives. The Subcontractor's progress payment application for the Subcontract Work performed in the preceding payment period shall be submitted for approval of the Contractor in accordance with the schedule of values if required and Subparagraphs 8.2.5, 8.2.6, and 8.2.7. The Contractor shall incorporate the approved amount of the Subcontractor's progress payment application into the Contractor's payment application to the Owner for the same period and submit it to the Owner in a timely fashion. The Contractor shall immediately notify the Subcontractor of any changes in the amount requested on behalf of the Subcontractor.

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

8.2.6 TIME OF APPLICATION The Subcontractor shall submit progress payment applications to the Contractor no later than the _____ day of each payment period for the Subcontract Work performed up to and including the _____ day of the payment period indicating work completed and, to the extent allowed under Subparagraph 8.2.7, materials suitably stored during the preceding payment period.

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

8.2.8 TIME OF PAYMENT Progress payments to the Subcontractor for satisfactory performance of the Subcontract Work shall be made no later than seven (7) days after receipt by the Contractor of payment from the Owner for the Subcontract Work. If payment from the Owner for such Subcontract Work is not received by the Contractor, through no fault of the Subcontractor, the Contractor will make payment to the Subcontractor within a reasonable time for the Subcontract Work satisfactorily performed.

8.2.9 PAYMENT DELAY If the Contractor has received payment from the Owner and if for any reason not the fault of the Subcontractor, the Subcontractor does not receive a progress payment from the Contractor within seven (7) days after the date such payment is due, as defined in Subparagraph 8.2.8, or, if the Contractor has failed to pay the Subcontractor within a reasonable time for the Subcontract Work satisfactorily performed, the Subcontractor, upon giving seven (7)

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days' written notice to the Contractor, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to the Subcontractor has been received. The Subcontract Amount and Time shall be adjusted by the amount of the Subcontractor's reasonable and verified cost of shutdown, delay, and startup, which shall be effected by an appropriate Subcontractor Change Order.

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

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

8.2.10.2 loss or damage arising out of or relating to this Agreement and caused by the Subcontractor to the Owner, Contractor or others to whom the Contractor may be liable;

8.2.10.3 the Subcontractor's failure to properly pay for labor, materials, equipment or supplies furnished in connection with the Subcontract Work in accordance with Paragraph 8.11, including written notices of claim received by Contractor from a supplier or second-tier subcontractor in accordance with 40 U.S.C. Section 3133(b) (the "Miller Act");

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

8.2.10.5 reasonable evidence of delay in performance of the Subcontract Work such that the 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 the Contractor as a result of the anticipated delay caused by the Subcontractor;

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

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

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

8.3 FINAL PAYMENT

8.3.1 APPLICATION Upon acceptance of the Subcontract Work by the Owner and the Contractor and receipt from the Subcontractor of evidence of fulfillment of the Subcontractor's obligations in accordance with the Subcontract Documents and Subparagraph 8.3.2, the Contractor shall incorporate the Subcontractor's application for final payment into the Contractor's next application for payment to the Owner without delay, or notify the Subcontractor if there is a delay and the reasons

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therefore.

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

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

8.3.2.2 consent of surety to final payment, if required;

8.3.2.3 satisfaction of required closeout procedures;

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

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

8.3.2.6 written warranties, equipment manuals, startup and testing required in Paragraph 3.27; and

8.3.2.7 as-built drawings if required by the Subcontract Documents.

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

8.3.4 FINAL PAYMENT DELAY If the Owner or its designated agent does not issue a certificate for final payment or the Contractor does not receive such payment for any cause which is not the fault of the Subcontractor, the Contractor shall promptly inform the Subcontractor in writing. The Contractor shall also diligently pursue, with the assistance of the Subcontractor, the prompt release by the Owner of the final payment due for the Subcontract Work. At the Subcontractor's request and expense, to the extent agreed upon in writing, the Contractor shall institute reasonable legal remedies to mitigate the damages and pursue payment of the Subcontractor's final payment including interest. If final payment from the Contractor for such Subcontract Work is not received by the Contractor, through no fault of the Subcontractor, the Contractor will make payment to the Subcontractor within a reasonable time.

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

8.4 LATE PAYMENT INTEREST Progress payments or final payment due and unpaid under this Agreement, as defined in Subparagraphs 8.2.8, 8.3.3 and 8.3.4, shall bear interest from the date payment is due. Interest shall be computed on the basis of the Federal Cost of Money Rate (Renegotiation Rate) in accordance with 31 U.S.C. Section 3902(a). However, if the Owner fails to timely pay the Contractor as required under the Prime Contract through no fault or neglect of the Contractor, and the Contractor fails to

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timely pay the Subcontractor as a result of such nonpayment, the Contractor's obligation to pay the Subcontractor interest on corresponding payments due and unpaid under this Agreement shall be extinguished by the Contractor promptly paying to the Subcontractor the Subcontractor's proportionate share of the interest, if any, received by the Contractor from the Owner on such late payments.

8.5 CONTINUING OBLIGATIONS Provided the Contractor is making payments on or has made payments to the Subcontractor in accordance with the terms of this Agreement, the Subcontractor shall reimburse the Contractor for any 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. The Subcontractor shall reimburse the Contractor for costs and expenses including attorneys' fees and costs and expenses incurred by the Contractor in satisfying, discharging or defending against any such claims, obligation or lien including any action brought or judgment recovered. In the event that any applicable law, statute, regulation or bond requires the Subcontractor to take any action prior to the expiration of the reasonable time for payment referenced in Subparagraphs 8.2.8 and 8.3.4 in order to preserve or protect the Subcontractor's rights, if any, with respect to mechanic's lien or bond claims, then the Subcontractor may take that action prior to the expiration of the reasonable time for payment and such action will not create the reimbursement obligation recited above nor be in violation of this Agreement or considered premature for purposes of preserving and protecting the Subcontractor's rights.

8.6 PAYMENT USE RESTRICTION Payments received by the Subcontractor shall be used to satisfy the indebtedness owed by the 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 the Contractor before it is used for any other purpose. In the same manner, payments received by the Contractor from the Owner for the Subcontract Work shall be dedicated to payment to the Subcontractor. This provision shall bear on this Agreement only, and is not for the benefit of third parties. Moreover, it shall not be construed by the parties to this Agreement or third parties to require that dedicated sums of money or payments be deposited in separate accounts, or that there be other restrictions on commingling of funds. Neither shall these mutual covenants be construed to create any fiduciary duty on the Subcontractor or Contractor, nor create any tort cause of action or liability for breach of trust, punitive damages, or other equitable remedy or liability for alleged breach.

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

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

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

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8.10 **SUBCONTRACTOR PAYMENT FAILURE** Upon payment by the Contractor, the Subcontractor shall promptly pay its subcontractors and suppliers the amounts to which they are entitled. In the event the Contractor has reason to believe that labor, material or other obligations incurred in the performance of the Subcontract Work are not being paid, the Contractor may give written notice of a potential claim or lien to the 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, the Subcontractor does not (a) supply evidence to the satisfaction of the Contractor that the moneys owing have been paid; or (b) post a bond indemnifying the Owner, the Contractor, the Contractor's surety, if any, and the premises from a claim or lien, the Contractor shall have the right to withhold from any payments due or to become due to the Subcontractor a reasonable amount to protect the Contractor from any and all loss, damage or expense including attorneys' fees that may arise out of or relate to any such claim or lien.

8.11 **SUBCONTRACTOR ASSIGNMENT OF PAYMENTS** The Subcontractor shall not assign any moneys due or to become due under this Agreement, without the written consent of the Contractor, unless the assignment is intended to create a new security interest within the scope of Article 9 of the Uniform Commercial Code. Should the Subcontractor assign all or any part of any moneys 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 the Subcontractor shall be subject to the claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Subcontract Work.

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

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

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

ARTICLE 9

INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION

9.1 **INDEMNITY**

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

9.1.2 **NO LIMITATION ON LIABILITY** In any and all claims against the Indemnitees by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be

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limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

9.2 INSURANCE

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

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

9.2.3 PROFESSIONAL LIABILITY INSURANCE

9.2.3.1 PROFESSIONAL LIABILITY INSURANCE The Subcontractor shall require the Designer(s) to maintain Professional Liability Insurance with a company reasonably satisfactory to the Contractor, including contractual liability insurance against the liability assumed in Paragraph 3.8, and including coverage for any professional liability caused by any of the Designer's(s') consultants. Said insurance shall have specific minimum limits as set forth below:

Limit of \$ _____ per claim.

General Aggregate of \$ _____ for the subcontract services rendered.

The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all subcontract services rendered by the Designer. Said insurance shall be continued in effect with an extended period of _____ years following final payment to the Designer. Such insurance shall have a maximum deductible amount of \$ _____ per occurrence. The deductible shall be paid by the Subcontractor or Designer.

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

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

9.2.5 CANCELLATION, RENEWAL AND MODIFICATION The Subcontractor shall maintain in effect all insurance coverages required under this Agreement at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor, which acceptance shall not be unreasonably withheld. Unless a longer period is set forth in the Prime Contract the policies shall contain a provision that coverage will not be cancelled or not renewed until at least thirty (30) Days' prior written notice has been given to the Contractor. Certificates of insurance showing required coverage to be in force pursuant to Subparagraph 9.2.2 shall be filed with the Contractor prior to commencement of the Subcontract Work. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, the Contractor may purchase such coverage

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as desired for the Contractor's benefit and charge the expense to the Subcontractor, or terminate this Agreement.

9.2.6 CONTINUATION OF COVERAGE The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least one year after either ninety (90) Days following Substantial Completion of the Work or final payment to the Contractor, whichever is earlier. Prior to commencement of the Work, Subcontractor shall furnish the Contractor with certificates evidencing the required coverages.

9.2.7 PROPERTY INSURANCE

9.2.7.1 Upon written request of the Subcontractor, the Contractor shall provide the Subcontractor with a copy of any Builder's Risk Policy of insurance or any other property or equipment insurance in force for the Project and procured by the Owner or Contractor. The Contractor shall advise the Subcontractor if a Builder's Risk Policy of insurance is not in force.

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

9.2.8 WAIVER OF SUBROGATION

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

9.2.9 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.

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

9.2.11 ADDITIONAL LIABILITY COVERAGE Contractor ___ shall/___ shall not (indicate one) require Subcontractor to purchase and maintain liability coverage, primary to Contractor's coverage under Subparagraph 9.2.10.

9.2.11.1 If required by Subparagraph 9.2.11, the additional liability coverage required of the Subcontractor shall be: (Designate Required Coverage(s))

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

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

Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this Subparagraph shall be paid by the Contractor directly or the costs may be reimbursed by Contractor to Subcontractor by increasing the Subcontract Amount to correspond to the actual cost required to purchase and maintain the additional liability coverage. Prior to commencement of the Subcontract Work, Subcontractor shall obtain and furnish to the Contractor a certificate evidencing that the additional liability coverages have been procured.

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

9.3 BONDS

9.3.1 The Subcontractor ___ shall/___ shall not furnish to the Contractor, as the named Obligee, appropriate surety bonds to secure the faithful performance of the Subcontract Work and to satisfy all Subcontractor payment obligations related to Subcontract Work. Such bonds shall be issued by a surety admitted in the State in which the Project is located and shall be acceptable to the Contractor. Contractor's acceptance shall not be withheld without reasonable cause.

9.3.2 If a performance or payment bond, or both, are required of the Subcontractor under this Agreement, the bonds shall be in a form and by a surety acceptable to the Contractor, and in the full amount of the Subcontract Amount, unless otherwise specified. Contractor's acceptance shall not be withheld without reasonable cause.

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

9.3.4 In the event the Subcontractor shall fail to promptly provide any required bonds, the 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 the Contractor as a result of said termination shall be paid by the Subcontractor.

9.3.5 PAYMENT BOND The Contractor ___ has/___ has not provided the Owner a payment bond.

ARTICLE 10

CONTRACTOR'S RIGHT TO PERFORM SUBCONTRACTOR'S RESPONSIBILITIES AND TERMINATION OF AGREEMENT

10.1 FAILURE OF PERFORMANCE

10.1.1 NOTICE TO CURE If the Subcontractor refuses or fails to supply enough properly qualified

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workers, proper materials, or maintain the Progress Schedule, or fails to make prompt payment to its workers, subcontractors or suppliers, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, the Subcontractor shall be deemed in default of this Agreement. If the Subcontractor fails within three (3) business Days after written notification to commence and continue satisfactory correction of the default with diligence and promptness, then the 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 the Contractor deems necessary for the completion of the Subcontract Work or any part which the Subcontractor has failed to complete or perform after written notification, and charge the cost, including reasonable overhead, profit, attorneys' fees, costs and expenses to the Subcontractor;

10.1.1.2 contract with one or more additional contractors to perform such part of the Subcontract Work as the Contractor determines will provide the most expeditious completion of the Work, and charge the cost to the Subcontractor as provided under Clause 10.1.1.1; or

10.1.1.3 withhold any payments due or to become due the Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of the Contractor. In the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice, but the Contractor shall give the Subcontractor notice promptly after the fact as a precondition of cost recovery.

10.1.2 **TERMINATION BY CONTRACTOR** If the Subcontractor fails to commence and satisfactorily continue correction of a default within three (3) business Days after written notification issued under Subparagraph 10.1.1, then the Contractor may, in lieu of or in addition to the remedies provided for in Subparagraph 10.1.1, issue a second written notification, to the Subcontractor and its surety, if any. Such notice shall state that if the Subcontractor fails to commence and continue correction of a default within seven (7) Days of the written notification, the Agreement will be deemed terminated. A written notice of termination shall be issued by the Contractor to the Subcontractor at the time the Subcontractor is terminated. The Contractor may furnish those materials, equipment or employ such workers or subcontractors as the Contractor deems necessary to maintain the orderly progress of the Work. All costs incurred by the Contractor in performing the Subcontract Work, including reasonable overhead, profit and attorneys' fees, costs and expenses, shall be deducted from any moneys due or to become due the Subcontractor. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount. At the Subcontractor's request, the Contractor shall provide a detailed accounting of the costs to finish the Subcontract Work.

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

10.2. BANKRUPTCY

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

10.2.2 **INTERIM REMEDIES** If the Subcontractor is not performing in accordance with the Progress Schedule at the time a petition in bankruptcy is filed, or at any subsequent time, the Contractor, while awaiting the decision of the 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. The Contractor may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided including, but not limited to, reasonable overhead, profit and attorneys' fees. The 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 the Owner suspend the Work or any part which includes the Subcontract Work for the convenience of the Owner and such suspension is not due to any act or omission of the Contractor, or any other person or entity for whose acts or omissions the Contractor may be liable, the Contractor shall notify the Subcontractor in writing and upon receiving notification the Subcontractor shall immediately suspend the Subcontract Work. To the extent provided for under the Prime Contract and to the extent the Contractor recovers such on the Subcontractor's behalf, the Contract Price and the Contract Time shall be equitably adjusted by Change Order for the cost and delay resulting from any such suspension. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor.

10.4 **TERMINATION BY OWNER** Should the Owner terminate its contract with the Contractor or any part which includes the Subcontract Work, the Contractor shall notify the Subcontractor in writing within three (3) business Days of the termination and upon written notification, this Agreement shall be terminated and the Subcontractor shall immediately stop the Subcontract Work, follow all of Contractor's instructions, and mitigate all costs. In the event of Owner termination, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the Owner termination and to permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor. In the event Owner terminates Contractor for cause, through no fault of the Subcontractor, Subcontractor shall be entitled to recover from the Contractor its reasonable costs arising from the termination of this Agreement, including overhead and profit on Work not performed.

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

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Contractor.

10.6 SUSPENSION BY CONTRACTOR The Contractor may order the 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 the Contractor. Phased Work or interruptions of the Subcontract Work for short periods of time shall not be considered a suspension. The Subcontractor, after receipt of the Contractor's order, shall notify the Contractor in writing in sufficient time to permit the Contractor to provide timely notice to the Owner in accordance with the Prime Contract of the effect of such order upon the Subcontract Work. The Subcontract Amount or Subcontract Time shall be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Agreement caused by such suspension. No claim under this Paragraph shall be allowed for any costs incurred more than fourteen (14) Days prior to the Subcontractor's notice to the 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 the 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 the Subcontractor would have been entitled only to a time extension under this Agreement.

10.7 WRONGFUL EXERCISE If the Contractor wrongfully exercises any option under this Article, the Contractor shall be liable to the Subcontractor solely for the reasonable value of Subcontract Work performed by the Subcontractor prior to the Contractor's wrongful action, including reasonable overhead and profit on the Subcontract Work performed, less prior payments made, together with reasonable overhead and profit on the Subcontract Work not executed, and other reasonable costs incurred by reason of such action.

10.8 TERMINATION BY SUBCONTRACTOR If the Contractor has received payment from the Owner and if for any reason not the fault of the Subcontractor the Subcontractor does not receive a progress payment from the Contractor within seven (7) Days after the date such payment is due, as defined in this Agreement, or, if the Contractor has failed to pay the Subcontractor within a reasonable time for the Subcontract Work satisfactorily performed, the Subcontractor, upon giving seven (7) Days' written notice to the Contractor, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to the Subcontractor has been received. The Subcontract Amount and Time shall be adjusted by the amount of the Subcontractor's reasonable and verified cost of shutdown, delay, and startup, which shall be effected by an appropriate Subcontractor Change Order. If the Subcontract Work has been stopped for thirty (30) Days because the Subcontractor has not received progress payments as required by this Agreement, then the Subcontractor may terminate this Agreement upon giving the Contractor seven (7) Days' written notice. Upon such termination, Subcontractor shall be entitled to recover from the Contractor payment for all Subcontract Work satisfactorily performed but not yet paid for, including reasonable overhead, profit and attorneys' fees, costs and expenses.

ARTICLE 11

DISPUTE RESOLUTION

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

11.2 CLAIMS RELATED TO OWNER In case of any dispute between Subcontractor and Contractor involving, or allegedly involving, in whole or in part the Subcontractor's work, or the rights or duties of the

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Owner as to the Subcontractor's work, the Subcontractor agrees to be bound to the Contractor to the same extent that the Contractor is bound to the Owner by the terms of the Prime Contract and by any and all decisions or determinations made thereunder by the Owner, Owner's representative, board, court, arbitration panel, or other tribunal to the extent that the work of the Subcontractor is involved.

Subcontractor agrees that, upon Contractor's request, Subcontractor will participate in any proceeding involving the Owner or other third party and involving, or allegedly involving, in whole or in part the Subcontractor's work. If Subcontractor files a Miller Act suit or other action against the Contractor, its payment bond surety, or both, which may relate in whole or in part to the rights or duties of the Owner as to the Subcontractor's work, Subcontractor shall, upon the Contractor's request, consent to a stay of such suit or action pending the exhaustion of the procedures for the resolution of disputes under the Prime Contract. Subcontractor further agrees that its compliance with this process for the consistent resolution of disputes and claims shall not be deemed to be a waiver of its Miller Act rights.

If such a dispute involving, or allegedly involving, the Subcontractor's work is prosecuted or defended by Contractor against Owner under the terms of the Prime Contract, Subcontractor agrees to furnish all documents, statements, witnesses and other information required by Contractor for such purpose and to pay or reimburse Contractor for all expenses and costs incurred in connection therewith. It is expressly understood that as to any and all materials, equipment or services furnished or agreed to be furnished by Subcontractor, and as to any and all damages, if any, incurred by Subcontractor in connection with the project, Contractor and its surety shall never be liable to Subcontractor to any greater extent than the Owner is liable to Contractor, less Contractor's normal overhead and profit. No dispute shall interfere with the progress of construction and Subcontractor agrees to proceed with its work as directed by the Contractor.

11.3 CLAIMS NOT INVOLVING OWNER

11.3.1 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement that does not relate to the rights or duties of the Owner as to the Subcontractor's work, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within seven (7) Days, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within seven (7) Days to endeavor to reach resolution. If the matter remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute resolution procedures selected in Article 11.

11.3.2 BINDING DISPUTE RESOLUTION If the matter remains unresolved after direct discussions pursuant to Subparagraph 11.3.1, the Parties shall submit the matter to the binding dispute resolution procedure selected herein: (Designate only one)

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

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

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

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

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

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

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 **GOVERNING LAW** The Contractor and Subcontractor agree that irrespective of the place of performance, this Subcontract shall be interpreted and all substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the federal law of government contracts including decisions enunciated by federal judicial bodies, boards of contract appeal, and quasi-judicial agencies of the federal government. To the extent that the federal law of government contracts is not dispositive, the laws of the state in which the Work is to be primarily performed shall apply.

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

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

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

12.5 **IMMIGRATION** Subcontractor by signing below represents and warrants that it is, and will remain, in compliance with any and all provisions of the Immigration Reform and Control Act of 1986 (IRCA), as amended, the Immigration and Nationality Act, as amended, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all other applicable immigration laws, rules, and regulations (Immigration Laws) including all form I-9 verification, E-Verify, and record keeping requirements. Subcontractor shall Indemnify and hold Contractor and its Surety harmless from any claims, liabilities including any damages resulting from work stoppages or delays occasioned by or arising from any

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subcontractor noncompliance with IRCA or any such immigration laws, ordinances, rules, regulations, orders or decisions, as relates to the work of this Subcontract. The Subcontractor agrees to submit a certification, acceptable to contractor that its employees have presented the correct documents to legally work in the United States. Subcontractor also agrees to insert the substance of this clause, including this paragraph, in all Subcontracts or Purchase Orders hereunder.

12.6 E-VERIFY If the Prime Contract includes the clause at FAR 52.222-54, Employment Eligibility Verification, Subcontractor/vendor hereby certifies that it has previously enrolled in the U.S. Citizenship and Immigration Services E-Verify program ("E-Verify") or shall enroll in E-Verify within 30 calendar days of the award of this Subcontract/purchase order. In accordance with FAR 52.222-54, which is incorporated in this Agreement by reference, Subcontractor/vendor hereby agrees that (1) it shall begin to use E-Verify within 90 calendar days of enrollment to verify the employment eligibility of all new hires, who are working in the "United States" as defined in FAR 52.222-54, within 3 business days after the date of hire; (2) it shall use E-Verify to verify the employment eligibility of all employees assigned to this Subcontract/purchase order within 90 calendar days of enrollment in E-Verify or within 30 calendar days of assignment to this Subcontract/purchase order, whichever date is later; and (3) shall include this clause including the requirement for further flow down in all lower tier subcontracts/purchase orders. To assure compliance, upon request, Subcontractor/vendor shall furnish satisfactory evidence of its enrollment in and use of the E-Verify program and inclusion of this requirement in lower tier subcontracts and purchase orders. This clause shall not be applicable if the subcontract/purchase order for construction or services at any tier is for \$3,000.00 or less or is for commercial off-the-shelf items ("COTS items") as defined at FAR 52.222-54(a) or modified COTS items that would be COTS items but for minor modifications as described at FAR 2.101(b)(2), "Commercial item," part (3).

12.7 BUSINESS ETHICS & COMPLIANCE The Subcontractor, by signing this Agreement, hereby certifies that it has reviewed the requirements of FAR 52.203-13 and 52.203-14, that it (1) already has or will adopt a written code of business ethics and conduct within 30 days of the award of this Subcontract, (2) will otherwise comply with the applicable requirements of the above referenced FAR provisions, which are incorporated by reference in this Subcontract, and (3) will include the substance of those FAR provisions in lower tier subcontracts or purchase orders in excess of \$5,000,000 and which anticipate a performance period in excess of 120 days. Upon Contractor's request for verification, the Subcontractor shall furnish to it a copy of its written code business ethics and conduct and satisfactory evidence of an on-going business ethics awareness and compliance program as required by FAR 52.203-13. This clause is not applicable if the subcontract or purchase order is for \$5,000,000 or less unless a different dollar limit is required by the terms of the Prime Contract.

12.8 CERTIFICATIONS AND CLAIMS OR PROPOSALS.

12.8.1 CONTRACT DISPUTES ACT AND TRUTH IN NEGOTIATIONS ACT CERTIFICATIONS

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

12.8.2 PROPOSALS AND REPRESENTATIONS If the Prime Contract is subject to the Truth in Negotiations Act (Title 10 of the United States Code, Section 2306a; Title 41 of the United States

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

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

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

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

12.12 DOD OR SIMILAR PRIORITY RATINGS (Complete If applicable) Contracts or Purchase Orders to be awarded as a result of this Subcontract shall be assigned a DO rating in accordance with the Defense Priorities and Allocations System (DPAS) (15 CFR Part 700). Purchase Orders and Subcontracts issued

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by you or by your subcontractors and suppliers for materials or equipment must be certified and signed as follows to meet the requirements of DPAS: (Use of rubber stamp is suggested).

This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations Systems regulation (15 CFR 700).

PRIORITY RATING: DO-C2

Date(s) Delivery Required: _____

Signed:

The delivery required date must always be entered. Do not use such terms as "immediately" or "as soon as possible" as this does not constitute a delivery date and nullifies the effect of the rating.

12.13 ENVIRONMENTAL COMPLIANCE

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

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

12.14 OTHER PROVISIONS AND DOCUMENTS Other provisions and documents applicable to the Subcontract Work are set forth in Exhibit _____.

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

ARTICLE 13

EXISTING SUBCONTRACT DOCUMENTS

13.1 INTERPRETATION OF SUBCONTRACT DOCUMENTS

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

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

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

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

13.1.5 In case of any inconsistency, conflict or ambiguity among the Subcontract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) this Agreement; (c) subject to Subparagraph 13.1.2 the drawings (large scale governing over small scale), specifications and addenda issued prior to the execution of this Agreement; (d) approved submittals; (e) information furnished by the Owner pursuant to Paragraph 4.5; (f) other documents listed in this Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

As defined in Paragraph 2.3, the following Exhibits are a part of this Agreement.

EXHIBIT ___ The Subcontract Work, ___ pages.

EXHIBIT ___ The Drawings, Specifications, General and other conditions, addenda and other information. (Attach a complete listing by title, date and number of pages.)

EXHIBIT ___ Progress Schedule, ___ pages.

EXHIBIT ___ Alternates and Unit Prices, include dates when alternates and unit prices no longer apply, ___ pages.

EXHIBIT ___ Temporary Services, stating specific responsibilities of the Subcontractor, and Contractor ___ pages.

EXHIBIT ___ Temporary Services, stating specific responsibilities of the Subcontractor, ___ pages.

EXHIBIT ___ Insurance Provisions, ___ pages.

EXHIBIT ___ Other Provisions and Documents, ___ pages.

This Agreement is entered into as of the date entered in Article 1.

CONTRACTOR _____

BY:

PRINT NAME: _____

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PRINT TITLE: _____

ATTEST

SUBCONTRACTOR: _____

BY:

PRINT NAME: _____

PRINT TITLE: _____

ATTEST

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