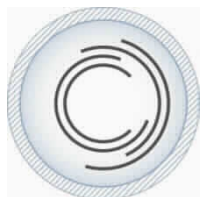


ConsensusDocs 750

~~STANDARD~~ MODIFIED AGREEMENT BETWEEN CONSTRUCTOR AND SUBCONTRACTOR (Where the Contractor and Subcontractor Share the Risk of Owner Payment)

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ARTICLE 1 AGREEMENT

Subcontract Number: 000000000000
Contract Amount: \$0.00

This Agreement is made this 12 Day of April in the year 2016, by and between the

CONSTRUCTOR,

Saunders Construction, Inc.
6950 S Jordan Road
Centennial, CO 80112
Darrel Eastwood
303-699-9000

(Authorized Representative)

and the

SUBCONTRACTOR,

Architect - N/A

,
N/A N/A /

(Authorized Representative)

for services in connection with the SAMPLE Description work for the following

PROJECT

Notice to the Parties shall be given at the above addresses. The Date of Commencement is the date of this Agreement above or the date of the Letter of Intent, if issued previously.

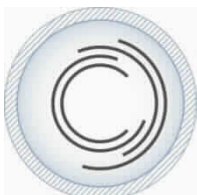
The OWNER is

, ,

The DESIGN PROFESSIONAL for the Project is

, .

The Subcontractor and Constructor agree that the Work to be performed by the Subcontractor is:



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In accordance with the Contract Documents enumerated in Attachment "A". The Work includes all plant, labor, fringe benefits, material, equipment, accessories, and applicable sales tax for the complete and functional SAMPLE Description Work as outlined in Specifications Section(s):

TBD

ARTICLE 2 SCOPE OF WORK

2.1 PARTIES' RELATIONSHIP The Parties each agree to proceed with the Subcontract Work on the basis of mutual trust, good faith, and fair dealing. The Parties shall each endeavor to promote harmony and cooperation.

2.2 SUBCONTRACT WORK The Constructor 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 Attachment "D"- Scope Summary, 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 Constructor and in accordance with the Subcontract Documents.

2.3 CONSTRUCTOR'S WORK The Constructor's Work is the construction and services required of the Constructor to fulfill its obligations pursuant to its agreement with the Owner (the Work). The "Subcontract Work" is a portion of the Constructor's Work.

2.3.1 ETHICS The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest and discloses promptly any to the other Party; and (b) warrants that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, subcontractors or others for whom they may be liable, to secure preferential treatment.

2.4 SUBCONTRACT DOCUMENTS The Subcontract Documents include this Agreement, the prime agreement, special conditions, general conditions, specifications, drawings, addenda issued and acknowledged prior to execution of this Agreement, amendments, ~~laboratory testing to determine the nature of encountered hazardous materials~~, other documents listed in this Agreement, and modifications issued in accordance with this Agreement and further described in Attachment A. The Constructor 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 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 Constructor at any time after the Subcontract Agreement is executed.



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2.4.1 DOCUMENTS IN ELECTRONIC FORM If the Owner requires that the Owner, Design Professional, Constructor and Subcontractors exchange documents and data in electronic or digital form, prior to any such exchange, the Owner, Design Professional, and Constructor shall agree in ConsensusDocs 200.2 or a written protocol governing all exchanges, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. The Subcontractor shall provide whatever input is needed to assist the Constructor in developing the protocol and shall be bound by the requirements of the written protocol. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

2.5 CONFLICTS In the event of a conflict between this ConsensusDocs 750 Standard Agreement as modified and the other Subcontract Documents, the ConsensusDocs 750 shall govern.

2.6 DEFINITIONS

2.6.1 "Agreement" means this ConsensusDocs 750 Standard Agreement Between Constructor and Subcontractor, as modified by the Parties, and attachments made part of this agreement upon its execution. See Article 13.1.6.

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

2.6.3 The term "Day" shall mean calendar day.

2.6.4 "Laws" mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Subcontract Work with which the Constructor and Subcontractor must comply that are enacted as of the Agreement date.

2.6.5 The "Parties" are collectively the Constructor and the Subcontractor.

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

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

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

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



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2.6.10 Whenever the term Prime Contract is used in this Agreement or the Contract Documents it shall mean the Owner-Construction Manager Agreement or Owner-Contractor Agreement.

2.6.11 The term "Constructor" and "Contractor" shall have the same meaning throughout the Contract Documents, including all Agreement Attachments.

2.7 EXTENT OF AGREEMENT Nothing in this Agreement shall be construed to create a contractual relationship between persons or entities other than the Constructor 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.

The enforceability of this Subcontract is expressly contingent upon the Constructor's receipt of a signed, written agreement from the Owner. Subcontractor will be compensated on a time and material basis plus a pro-rated portion of its fee only for any Work performed at the Constructor's direction prior to its receipt of an executed Owner agreement. Any such amount will be included in the Subcontract Sum stated herein upon the Constructor's receipt of an executed Owner agreement.

ARTICLE 3 SUBCONTRACTOR'S RESPONSIBILITIES

3.1 **OBLIGATIONS** The Constructor and the Subcontractor are hereby mutually bound by the terms of this Agreement. To the extent the terms of the prime agreement apply to the Subcontract Work, then the Constructor hereby assumes toward the Subcontractor all the obligations, rights, duties, and redress that the Owner under the prime agreement assumes toward the Constructor. In an identical way, the Subcontractor hereby assumes toward the Constructor all the same obligations, rights, duties, and redress that the Constructor assumes toward the Owner and Design Professional 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 shall furnish its diligent efforts to perform the Subcontract Work in an expeditious manner and to cooperate with the Constructor so that the Constructor 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, all of which shall be provided in full accord with and reasonably inferable from the Subcontract Documents. The Subcontractor shall provide the Constructor 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.

3.2.1 If the Subcontractor uses any labor brokers or temporary help agencies they shall comply with the provisions of the Immigration Reform Act of 1986. In addition, the Subcontractor and any labor broker or temporary help agencies used for this project shall comply with all applicable state, federal and local laws requiring worker's compensation insurance coverage, the payment of wages, including overtime and minimum wage, as well as income tax withholding and Social Security and Medicare withholding and payment requirements. The practice of subcontractors or labor brokers assigning independent contractor status to employees to avoid worker's compensation insurance or benefits required by law will not be allowed.



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3.2.2 The Subcontractor acknowledges and agrees to adhere to all quality control requirements of Attachment "QC" Quality Control On-Site Plan, Subcontractor's Responsibility.

3.3 INCONSISTENCIES AND OMISSIONS The Subcontractor shall examine and compare the drawings, specifications, other Subcontract Documents, and information furnished by the Owner relative to the Subcontract Work. Such examination and comparison shall be solely for the purpose of facilitating the Subcontract Work and not for the discovery of errors, inconsistencies, or omissions in the Subcontract Documents nor for ascertaining if the Subcontract Documents are in accordance with Laws. The Subcontractor shall not have liability for errors, omissions, or inconsistencies discovered under this subsection unless the Subcontractor knowingly fails to report a recognized problem to the Constructor. Should the Subcontractor discover any errors, inconsistencies, or omissions in the Subcontract Documents, the Subcontractor shall promptly report such discoveries to the Constructor in writing. Following receipt of written notice, the Constructor shall promptly instruct the Subcontractor as to the measures to be taken, and the Subcontractor shall comply with the Constructor's instructions. If the Subcontractor performs work knowing it to be contrary to Laws without notice to the Constructor and advance approval by appropriate authorities, including the Constructor, the Subcontractor shall assume responsibility for such work and bear all associated costs, charges, fines, penalties, fees, and expenses necessarily incurred to remedy the violation. The Subcontractor may be entitled to additional costs or time because of clarifications or instructions arising out of the Subcontractor's reports described in this section. Nothing in this section shall relieve the Subcontractor of responsibility for its own errors, inconsistencies, and omissions.

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

3.5 INCREASED COSTS OR TIME The Subcontractor may assert a claim, as provide in Article 7, if the Constructor'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 sections 3.3 and 3.4, to the extent the Constructor is held liable to the Owner because of the Subcontractor's failure, the Subcontractor shall pay the costs and damages to the Constructor 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, the Subcontractor shall direct all communications related to the Project to the Constructor.

3.7 SUBMITTALS



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3.7.1 The Subcontractor promptly shall submit for approval to the Constructor all shop drawings, samples, product data, manufacturers' literature, and similar submittals required by the Subcontract Documents to the Constructor not later than TBD and materials shall be available for installation not later than TBD. The Subcontractor will forward to the Constructor written confirmation of all material delivery dates, including written factory commitments on critical materials as requested. Submittals shall be submitted in electronic form if required. The Subcontractor shall be responsible to the Constructor for the accuracy and conformity of its submittals to the Subcontract Documents including the responsibility to verify the accuracy of all of its quantities and field dimensions. The Subcontractor shall prepare and deliver its submittals to the Constructor in a manner consistent with the Progress Schedule and in such time and sequence so as not to delay the Constructor or others in the performance of the Work. The Subcontractor's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Subcontract Documents. The approval of any Subcontractor submittal shall not be deemed to authorize changes, deviations, or substitutions in the requirements of the Subcontract Documents unless express written approval is obtained from the Constructor and Owner authorizing such change, deviation, or substitution. ~~Such approval shall be promptly memorialized in a Subcontract Change Order within fourteen (14) Days following approval by the Constructor and, if applicable, provide for an adjustment in the Subcontract Amount or Subcontract Time.~~ If the Subcontract Documents do not contain submittal requirements pertaining to the Subcontract Work, the Subcontractor agrees upon request to submit in a timely fashion to the Constructor for approval any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by the Constructor, Owner, or Design Professional.

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

3.8 DESIGN DELEGATION

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



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3.8.2 If the Subcontractor's design professional is an independent professional, the design services shall be procured pursuant to a separate agreement between the Subcontractor and the design professional. The agreement between the Subcontractor and the Subcontractor's design professional shall not include any limitation of liability, except to the extent that consequential damages are waived pursuant to subsection 5.4.1, or exclusion from participation in the multiparty proceedings requirement of section 11.6. The Subcontractor's design professional(s) is TBD . The Subcontractor shall notify the Constructor in writing if it intends to change its procured design professional. 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 Constructor's respective responsibilities for temporary electrical services are set forth in Attachment E, if applicable.

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

3.11 SUBCONTRACTOR'S REPRESENTATIVE The Subcontractor shall designate a person, subject to the Constructor's approval, who shall be the Subcontractor's authorized representative. This representative shall be the only person to whom the Constructor shall issue instructions, orders, or directions, except in an emergency. The Subcontractor's representative is (see Article 1), who is agreed to by the Constructor. If the Subcontractor changes its representative, the Subcontractor shall immediately notify the Constructor in writing.

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 Constructor 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 Constructor.

3.13 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. Upon request by the Constructor, the Subcontractor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. The Subcontractor further warrants that the Subcontract Work shall be free from material defects not intrinsic in the design or materials required in the Subcontract Documents. 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. The Subcontractor's warranties shall commence on the date of Substantial Completion of the Work or a designated portion.



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3.14 CLEANUP

3.14.1 The Subcontractor shall at all times during its performance of the Subcontract Work keep the Worksite clean and free from debris resulting from the Subcontract Work. Prior to discontinuing the Subcontract Work in an area, the Subcontractor shall clean the area and remove all its rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The 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.

3.14.2 If the Subcontractor fails to commence compliance with cleanup duties within ~~two (2)~~ business Days 24 hours after written notification from the Constructor of non-compliance, the Constructor may implement appropriate cleanup measures without further notice and shall deduct the reasonable costs from any amounts due or to become due the Subcontractor in the next payment period.

3.15 SAFETY

3.15.1 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:

3.15.1.1 employees and other persons at the Worksite;

3.15.1.2 materials and equipment stored on or off the Worksite for use in performance of the Subcontract Work; and

3.15.1.3 all property and structures located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

3.15.2 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.

3.15.3 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 Worksite and adjacent to the Worksite from injury, loss, or damage.

3.15.4 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.

3.15.5 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 Constructor, or anyone for whose acts the Constructor may be liable, shall be promptly remedied by the Constructor.



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3.15.6 The Subcontractor is required to designate an individual at the Worksite in the employ of the 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 Constructor, the designated safety representative shall be the Subcontractor's project superintendent. Such safety representative shall attend Worksite safety meetings as requested by the Constructor.

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

3.15.8 The Subcontractor shall give prompt written notice to the Constructor of any accident involving bodily injury requiring a physician's care, any property damage exceeding five hundred dollars (\$500.00) in value, or any failure that could have resulted in serious bodily injury, whether or not such an injury was sustained.

3.15.9 Prevention of accidents at the Worksite is the responsibility of the Constructor, the Subcontractor, and all other subcontractors, persons, and entities at the Worksite. Establishment of a safety program by the Constructor 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 Constructor and the 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 Constructor deems unsafe until corrective measures satisfactory to the Constructor shall have been taken. The Constructor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility therefor. The Subcontractor shall notify the Constructor 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 Constructor. 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.

The Subcontractor acknowledges and agrees to adhere to all loss control requirements of Attachment "B".

3.16 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 Subcontract Work or property of the Owner, the Constructor, or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Constructor, or the Constructor 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.



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

3.18 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.

3.19 HAZARDOUS MATERIALS To the extent that the Constructor has rights or obligations under the prime agreement or by Law regarding hazardous materials as defined by the Subcontract Document within the scope of the Subcontract Work, the Subcontractor shall have the same rights or obligations.

3.20 MATERIAL SAFETY DATA (MSD) SHEETS The Subcontractor shall submit to the Constructor 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 Constructor from other subcontractors or sources shall be made available to the Subcontractor by the Constructor.

3.21 LAYOUT RESPONSIBILITY AND LEVELS The Constructor shall establish principal axis lines of the building and Worksite, 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 Constructor 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.

3.22 UNCOVERING/CORRECTION OF SUBCONTRACT WORK

3.22.1 UNCOVERING OF SUBCONTRACT WORK

3.22.1.1 If required in writing by the Constructor, 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 Constructor. Upon receipt of a written directive from the Constructor, the Subcontractor shall uncover such work for the Constructor'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 Constructor may direct the Subcontractor to uncover portions of the Subcontract Work for inspection by the Owner or Constructor at any time. The Subcontractor is required to uncover such work whether or not the Constructor or Owner had requested to inspect the Subcontract Work prior to it being covered. Except as provided by the subsection immediately above, this Agreement shall be adjusted by Subcontract Change Order for the cost and time of uncovering and restoring any work which is uncovered for inspection and proves to be installed in accordance with the Subcontract Documents, provided the Constructor had not previously instructed the Subcontractor to leave the work uncovered. If the Subcontractor uncovers work pursuant to a directive issued by the Constructor, 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 Constructor or some other entity for which the Subcontractor is not responsible caused the nonconforming condition, the Constructor shall be required to adjust this Agreement by Subcontract Change Order for all such costs and time.

3.22.2 CORRECTION OF WORK

3.22.2.1 If the Design Professional or Constructor 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 additional testing, inspections, and compensation for services and expenses of the Design Professional and Constructor made necessary by the defective Subcontract Work.

3.22.2.2 In addition to the Subcontractor's obligations under section 3.21, the Subcontractor agrees to promptly correct, after receipt of a written notice from the Constructor, 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, without unscheduled disruption. If, during the one-year period, the Constructor fails to provide the Subcontractor with prompt written notice of the discovery of defective or nonconforming Subcontract Work, the Constructor 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 Constructor, the Constructor may correct such Subcontract Work pursuant to subsection 10.1.1.

3.22.3 The Subcontractor's correction of Subcontract Work pursuant to this section shall not extend the one-year period for the correction of Subcontract Work (unless so required by the Prime Agreement), 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 does not limit the enforcement of the Subcontractor's other obligations with regard to the Agreement and the Subcontract Documents.



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

3.23 MATERIALS OR EQUIPMENT FURNISHED BY OTHERS If the scope of the Subcontract Work includes installation of materials or equipment furnished by others, the Subcontractor is responsible for exercising 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 Constructor in writing any items it may discover that do not conform to requirements of the Subcontract Documents. The Subcontractor shall not proceed to install nonconforming items without further instructions from the Constructor. 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 CONSTRUCTOR'S EQUIPMENT The Subcontractor, its agents, employees, subcontractors or suppliers shall use the Constructor's equipment only with the express written permission of the Constructor's designated representative and in accordance with the Constructor's terms and conditions for such use. If the Subcontractor or any of its agents, employees, subcontractors or suppliers utilize any of the Constructor's equipment, including machinery, tools, scaffolding, hoists, lifts, or similar items owned, leased or under the control of the Constructor, the Subcontractor shall indemnify and be liable to the Constructor 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 Constructor's employees operating the Constructor's equipment.

3.25.1 Prior to permitting its employees to use Contractor's equipment, the Subcontractor shall inspect the equipment to assure that it is in good order and repair, is in all respects suitable and proper for the purposes for which it is to be used and in full compliance with all applicable state and federal safety laws, ordinances, rules and regulations. While the equipment is being used by the Subcontractor, the Subcontractor shall take all actions necessary to ensure that the equipment continues to be in a safe and secure condition and fully in accordance with all of the above mentioned safety requirements.

3.25.2 The Subcontractor agrees that the Contractor shall not be liable or responsible for the maintenance of the equipment during Subcontractors use or for any injuries or accidents that might occur while the equipment is being operated, used or maintained by the Subcontractor. Accordingly, the Subcontractor shall be responsible to take all steps necessary to guard against accidents or injuries incidental to the operation, maintenance or use of Contractor's equipment.



3.25.3 The Subcontractor shall be responsible for any and all damage to the equipment and for any extra expense arising therefrom, including loss of use, caused by or arising out of the operation, maintenance or use of the equipment by the Subcontractor.

3.25.4 Upon the termination of the use of the equipment by the Subcontractor, the equipment will, when returned, be in as good condition as when it was delivered to the Subcontractor, ordinary wear caused by reasonable and proper use thereof excepted, or the Subcontractor shall be fully responsible for all costs incurred or expended in bringing the equipment to said condition.

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 Constructor.

3.27 SYSTEMS AND EQUIPMENT STARTUP With the assistance of the Owner's maintenance personnel and the Constructor, 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 comply with all Laws at its own costs. The Subcontractor shall be liable to the Constructor and the Owner for all loss, cost, and expense attributable to any acts or omissions by the Subcontractor, its employees, and agents resulting from the failure to comply with Laws, including, any fines, penalties, or corrective measures, except as provided in subsection 3.15.10. However, liability under this section shall not apply if notice to Constructor was given, and advance approval by appropriate authorities, including the Constructor is received.

3.28.1 To the extent Constructor receives reimbursement or additional time from the Owner under the prime agreement, the Subcontract Amount or Progress Schedule shall be equitably adjusted for changes in Laws enacted after the date of this Agreement, including taxes, affecting the performance of the Work.

3.29 CONFIDENTIALITY To the extent the prime agreement 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 Constructor and Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Subcontractor shall be liable for all loss, including all costs, expenses, and attorneys' fees, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Subcontract Documents. 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 Constructor or be responsible to the Constructor and Owner for any loss sustained as a result.



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3.31 LABOR RELATIONS The Subcontractor agrees that in the event of any strike, picket, sympathy strike, work stoppage, or other form of labor dispute or picket in connection with the Constructor, the Subcontractor, the Owner, or any other person, the Subcontractor will continue the performance of the Work included herein without interruption or delay. In the event the Subcontractor fails to continue the performance of the Work included herein without disruption or delay, because of such picket or other form of labor dispute, the Constructor may terminate the services of said Subcontractor after giving two (2) business days written notice of an intent to do so, or the Constructor may invoke any of the rights set forth elsewhere in this Subcontract Agreement. The Constructor recognizes that a picket-free entrance must in all instances be provided to the Subcontractor before the Constructor can invoke any of the rights contained in this paragraph.

3.32 The Subcontractor shall not assign the whole or any part of the Subcontract Work without prior written approval of the Contractor.

ARTICLE 4 CONSTRUCTOR'S RESPONSIBILITIES

4.1 CONSTRUCTOR'S REPRESENTATIVE The Constructor shall designate a person who shall be the Constructor's authorized representative. The Constructor's representative shall be the only person the Subcontractor shall look to for instructions, orders or directions, except in an emergency. The Constructor's Representative is (see Article 1). If the Constructor changes its representative, the Constructor shall promptly notify the Subcontractor in writing.

4.2 OWNER'S ABILITY TO PAY

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

4.2.2 If the Subcontractor does not receive the information referenced in the subsection immediately above 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 or Owner's lender.

4.3 CONSTRUCTOR APPLICATION FOR PAYMENT Upon request, the Constructor shall give the Subcontractor a copy of the most current Constructor 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 Constructor any information or services required for the Subcontractor's performance of the Subcontract Work which is under the Owner's control. The Subcontractor also is entitled to request through the Constructor any information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the Owner's interest in the real property on which the Project is located and the recorded legal title. To the extent the Constructor receives such information or services, the Constructor shall provide them to the Subcontractor in a timely manner. The Constructor, 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 Constructor agrees to permit the Subcontractor to prosecute a claim in the name of the Constructor for the use and benefit of the Subcontractor, pursuant to subsection 5.3.2.



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4.5 STORAGE AREAS The Constructor 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 Constructor shall reimburse the Subcontractor for the additional costs of having to relocate such storage areas at the direction of the Constructor.~~

4.6 TIMELY COMMUNICATIONS The Constructor 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, if communications are not through the Subcontractor, the Constructor shall inform the Subcontractor of the communications the Constructor has with the Subcontractor's subcontractors, and suppliers.

4.7 USE OF SUBCONTRACTOR'S EQUIPMENT The Constructor, 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 Constructor 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 Constructor shall indemnify and be liable to the Subcontractor as provided in ARTICLE 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of 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 Attachment "F".

5.2 SCHEDULE OBLIGATIONS The Subcontractor shall provide the Constructor with any scheduling information proposed by the Subcontractor for the Subcontract Work. In consultation with the Subcontractor, the Constructor shall prepare the schedule for performance of the Work ("Progress Schedule") and shall revise and update such schedule, as necessary, as the Work progresses. Both the Constructor 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 Constructor shall have the right to determine and, if necessary, make reasonable changes to the time, order, and priority in which the various portions of the Work shall be performed and all other matters relative to the Subcontract Work. To the extent such changes increase or decrease the Subcontractor's time and costs, the Subcontract Amount and Subcontract Time shall be equitably adjusted, but only to the extent Subcontractor's costs are actually recovered from the Owner. Subcontractor agrees that it's right to extend the Subcontract Time under subsections 5.2 and 5.3 will be Subcontractor's sole and exclusive remedy with regard to any delays or interference with Subcontractor's schedule for completion of the Work, and Subcontractor hereby waives any and all claims for monetary damages arising out of or related to any such delay or interference, including without limitation, claims for delay damages, claims for damages based on the lack of productivity due to additional overtime hours worked, claims for damages relating to the stacking of trades, and all other time-related damages.



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5.2.1 The Subcontractor agrees to comply with the work schedule as determined in regularly scheduled progress meetings relating to Subcontractor's work as called by the Project Manager and Superintendent. The Subcontractor will have a qualified representative present at such meetings when his work is forthcoming and throughout the duration of the Subcontractor's work at the Project. Hours of work are from 7:00 A.M. to 3:30 P.M., Monday through Friday, or a specifically agreed to with the Project Superintendent or the Project Manager. The Subcontractor shall obtain the Project Superintendent's consent forty eight (48) hours in advance of working any hours other than 7:00 A.M. to 3:30 P.M., Monday through Friday.

5.3 DELAYS AND EXTENSIONS OF TIME

5.3.1 OWNER CAUSED DELAY Subject to the subsection immediately below, if the commencement or progress of the Subcontract Work is delayed without the fault or responsibility of the Subcontractor, the Subcontract Time shall be extended by Subcontract Change Order and the Subcontract Amount equitably adjusted to the extent obtained by the Constructor 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 and within the time limits provided in the Subcontract Documents for like claims by the Constructor upon the Owner and in sufficient time for the Constructor 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 Constructor agrees to permit the Subcontractor to prosecute a claim in the name of the Constructor for the use and benefit of the Subcontractor in the manner provided in the Subcontract Documents for like claims by the Constructor upon the Owner.

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

5.3.4 CLAIMS RELATING TO CONSTRUCTOR The Subcontractor shall give the Constructor written notice of all claims not included in subsection 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 Constructor shall respond in writing denying or approving, in whole or in part, the Subcontractor's claim no later than fourteen (14) Days after receipt of the Subcontractor's documentation of claim. The Constructor's failure to respond shall be deemed a denial of the Subcontractor's claim. All unresolved claims, disputes, and other matters in question between the Constructor and the Subcontractor not relating to claims included in subsection 5.3.2 shall be resolved as provided for in ARTICLE 11.



5.4 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

5.4.1 Except for any (a) liquidated, consequential, or other damages that the Owner is entitled to recover against the Constructor under the prime agreement, and (b) losses covered by insurance required by the Subcontract Documents, the Constructor and the Subcontractor mutually waive all claims against each other for consequential damages, including damages for loss of business, loss of financing related to the Project, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. Similarly, 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. The provisions of this subsection shall also apply to and survive termination of this Agreement.

5.5 LIQUIDATED DAMAGES

5.5.1 If the Subcontract Documents 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 Constructor 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 Constructor. This section shall not limit the Subcontractor's liability to the Constructor for the Constructor's actual damages caused by the Subcontractor.

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

ARTICLE 6 SUBCONTRACT AMOUNT

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

- a. the fixed-price of Zero Dollars 0/100 dollars (\$0.00) subject to additions and deductions as provided for in the Subcontract Documents; or
- b. alternates and unit prices in accordance with the attached schedule of alternates and unit prices and estimated quantities, which is incorporated by reference and identified as Attachment N/A; or
- 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 Attachment N/A.

The fixed-price, unit prices or time and material rates and prices are referred to as the Subcontract Amount.



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ARTICLE 7 CHANGES

7.1 The Subcontractor may request or the Constructor may order changes in the Subcontract Work or the timing or sequencing of the Subcontract Work that impacts the Subcontract Amount or Subcontract Time. All such changes in the Subcontract Work that affect the Subcontract Amount or the Subcontract Time shall be formalized in a Subcontract Change Order. Any such requests for a change in the Subcontract Amount or Subcontract Time shall be processed in accordance with this article.

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

7.1.2 The Subcontractor agrees that no claim for extras will be charged against the Project without the prior written authorization from the Project Manager or Superintendent for the Constructor. Cost increases CANNOT be authorized by the Owner, Architect, Consultants, Tenant, or any other individual or firm. In accordance with the Prime Agreement, Change Orders may be subject to audit by the Owner at any time, including after Final Completion. Any overcharges not substantiated, as defined in Article 7.5 will be reimbursed to the Owner. Hours charged to an authorized "time and material" extra will need to be verified daily and in writing by the Project Superintendent.

7.2 INTERIM DIRECTED CHANGES In the absence of agreement on the terms of a Subcontract Change Order, the Constructor may issue a written Interim Directed Change directing the Subcontractor to proceed with the Subcontract Work in question. If such Interim Directed Change is issued as a result of the Owner's issuance of an Interim Directed Change, Construction Change Directive, or equivalent directive, then the applicable provisions of the prime agreement shall govern. Otherwise, the Subcontractor shall separately submit its costs for the resulting change, beginning with its next regularly scheduled application for payment submitted after the issuance of the Interim Directed Change. If there is a dispute as to the cost, the Constructor shall pay the Subcontractor fifty percent (50%) of its estimated cost to perform the Subcontract Work. In such event, the Parties reserve their rights as to the disputed amount. If and when the Parties agree upon an adjustment in Subcontract Amount or Subcontract Time, such agreement shall be reflected in a Subcontract Change Order, and the payments to date shall be adjusted to reflect the Subcontract Change Order. If no agreement is reached, the Parties shall resolve the matter as provided in ARTICLE 11.

7.3 CONCEALED OR UNKNOWN SITE CONDITIONS If the conditions encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Subcontractor shall stop affected Work after the condition is first observed and give prompt written notice of the condition to the Constructor. The Subcontractor shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or the Contract Time as a result of the unknown condition shall be determined as provided in ARTICLE 5.



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

7.4.1 mutual acceptance of an itemized lump sum, if allowed by the Prime Agreement; or

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

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

7.5 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 Constructor 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 section 7.6, or if none is provided, as mutually agreed upon by the Parties. The Subcontractor may contest the reasonableness of any adjustment determined by the Constructor. The Subcontractor shall ~~maintain~~ submit with their change order, for the Constructor's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Subcontract Change Order:

7.5.1 ~~labor costs, including Social Security, health, welfare, retirement, and other fringe benefits as normally required, and state workers' compensation insurance; actual costs for: wages, taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as but not limited to sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on their wages and salaries.~~

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

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

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

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

7.6 Adjustments shall be based on net change in the Subcontractor's reasonable cost of performing the changed Subcontract Work plus, in case of a net increase or decrease in cost, an agreed upon sum for overhead and profit not to exceed the amount fixed in the Prime Agreement or Attachment "D"- Scope Narrative.

7.7 NO OBLIGATION TO PERFORM The Subcontractor shall not be obligated to perform changes in the Subcontract Work that impact Subcontract Amount or Subcontract Time until a Subcontract Change Order has been executed or written instructions have been issued in accordance with sections 7.1.2, 7.2 or 7.8.



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7.8 INCIDENTAL CHANGES The Constructor may direct the Subcontractor to perform incidental changes in the Subcontract Work which do not involve adjustments in the Subcontract Amount or the Subcontract Time. Incidental changes shall be consistent with the scope and intent of the Subcontract Documents. The Constructor 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 is binding on the Parties.

7.9 REDUCING OR OMITTING SUBCONTRACTOR'S WORK

7.9.1 Constructor's right to reduce or Omit Subcontractor's Work. The Constructor, without invalidating this Subcontract or any bonds or security furnished hereunder, and without notice to surety, if any, may at any time after execution of this Subcontract, in its sole discretion, for cause or for the Constructor's convenience, reduce or omit the Subcontractor's scope of Work.

7.9.2 Written Notice. The Constructor shall order such reductions or omissions by giving written notice to the Subcontractor not later than five (5) business days prior to when the Work that has been reduced or omitted would otherwise have been performed.

7.9.3 Payment Required Only for Work Performed. When Work is omitted or reduced, in whole or in part, the Constructor shall pay, subject to provisions of this Subcontract, for all Work actually performed plus a prorated portion of the Subcontractors fee. Subcontractor is not entitled to compensation or damages for any losses, including loss or profit or overhead relating to the reduced or omitted Work.

ARTICLE 8 PAYMENT

8.1 SCHEDULE OF VALUES As a condition precedent to payment, the Subcontractor shall provide a schedule of values satisfactory to the Constructor not more than fifteen (15) Days from the date of execution of this Agreement, together with a complete list of sub tier subcontractors and material suppliers to be used on this project. The Subcontractor will notify the Constructor of any additions to the list prior to their next Pay Application,

8.2 PROGRESS PAYMENTS

8.2.1 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 section 3.8, the Subcontractor's applications for payment shall show its design professional's fee and expenses as a separate cost item. The Subcontractor's application for payment shall be notarized if required and if allowed under the Subcontract Documents may include properly authorized Subcontract Construction Change Directives or Interim Directed Changes. The Subcontractor's application for payment for the Subcontract Work performed in the preceding payment period shall be submitted for approval by the Constructor in accordance with the schedule of values if required and subsections 8.2.2 through 8.2.4. The Constructor shall incorporate the approved amount of the Subcontractor's application for payment into the Constructor's application for payment to the Owner for the same period and submit it to the Owner in a timely fashion. The Constructor shall promptly notify the Subcontractor of any changes in the amount requested on behalf of the Subcontractor.



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8.2.1.1 The Subcontractor shall within (7) seven days of the receipt of this Agreement furnish a current audited financial statement, including an income statement and balance sheet, for the Subcontract firm. Upon review of this financial information, even if section 9.3 or other provisions of the Subcontract Documents provide that bonds are not required, the Constructor shall have the right to require Performance and Payment Bonds from the Subcontractor, via additive Change Order, and the Subcontractor shall be obligated to provide such bonds. Should the Subcontractor fail to furnish these bonds within (10) ten days after the Constructor notifies Subcontractor that bonds are required, the Constructor may, in its sole discretion, terminate the Agreement immediately by providing written notice of termination to Subcontractor.

8.2.1.2 PAY APPLICATION DOCUMENTATION All Applications for Payment and all supporting documents (including but not limited to lien waivers, off site stored material bill of sale and insurance) for Subcontractor shall be in electronic format and shall be submitted to Constructor using Textura TM CPM system. Constructor may require Subcontractor's suppliers and Subcontractor to submit applications for payment and lien waivers via Textura TM CPM system. Subcontractor shall be responsible for the fees and costs associated with Subcontractor's use to the Textura TM CPM system.

8.2.2 RETAINAGE The rate of retainage shall be 0 percent (0%), which is equal to the percentage retained from the Constructor's payment by the Owner for the Subcontract Work. If the Subcontract Work is satisfactory and the prime agreement provides for reduction of retainage, the Subcontractor's retainage shall also be reduced when the Constructor's retainage of the Subcontract Work has been so reduced by the Owner.

8.2.3 TIME OF APPLICATION The Subcontractor shall submit progress payment applications to the Constructor no later than the 25th Day of each payment period for the Subcontract Work performed up to and including the 30th Day of the payment period indicating work completed and, to the extent allowed under the subsection below, materials suitably stored during the preceding payment period.

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



8.2.5 TIME OF PAYMENT Receipt of payment by the Constructor from the Owner for the Subcontract Work is a condition precedent to payment by the Constructor to the Subcontractor. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Constructor, for payment of Subcontract Work. Constructor shall have no obligation of any kind to pay the Subcontractor except when, if, and to the extent, the Owner has actually paid the Constructor for the Subcontractor's Work. The Subcontractor agrees that any payment liability on any payment or other bond, and any liability of Constructor's surety, if any, shall be subject to the same condition precedent. 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 Constructor of payment from the Owner for the Subcontract Work. If payment from the Owner for such Subcontract Work is not received by the Constructor, through no fault of the Subcontractor, the Constructor will make payment to the Subcontractor within a reasonable time for the Subcontract Work satisfactorily performed.

8.2.5.1 The Subcontractor shall pay all costs and expenses incurred in the performance of this Subcontract Agreement as they become due and payable and furnish satisfactory evidence and verification of payment when requested by the Constructor. Should the Constructor have reason to believe the Subcontractor is not paying for expenses related to the Subcontract Agreement, the Constructor may withhold funds from current payments sufficient to satisfy outstanding claims. The Subcontractor agrees to accept joint checks to sub-tier subcontractors or material suppliers over disputed indebtedness for Work covered by this Subcontract Agreement.

8.2.6 PAYMENT DELAY If the Constructor 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 Constructor within seven (7) Days after the date such payment is due, as defined in the subsection immediately above, or, if the Constructor 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 Constructor, 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.

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

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

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

8.2.7.3 the Subcontractor's failure to properly pay for labor, materials, equipment, or supplies furnished in connection with the Subcontract Work;



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

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

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

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

8.2.7.8 Subcontractor's failure to furnish financial information required in Paragraph 8.2.1.1.

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

8.2.8 SUBSTANTIAL COMPLETION

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

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



8.3 FINAL PAYMENT

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

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

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 Constructor or the Constructor'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 other data, if required by the Constructor or Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be required by the Subcontract Documents;

8.3.2.5 written warranties, equipment manuals, startup and testing required in section 3.27; and

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

8.3.2.7 certification that insurance required by the Subcontract Documents to remain in effect beyond final payment pursuant to Attachment "C" is in effect and will not be cancelled or allowed to expire without at least (10) ten days written notice to the Constructor, unless a longer period is stipulated in the Contract Documents.

8.3.2.8 correction of all punchlist items the responsibility of the Subcontractor

8.3.2.9 Subcontractor shall be responsible for paying all sales/use taxes on materials provided under this Agreement, including costs assessed to the Owner or Constructor as a result of audit by the governing agencies without regard to the timing of the audit.

8.3.3 TIME OF PAYMENT Receipt of final payment by the Constructor from the Owner for the Subcontract Work is a condition precedent to payment by the Constructor to the Subcontractor. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Constructor, for payment of the Subcontract Work. Final payment of the balance due of the Subcontract Amount shall be made to the Subcontractor within seven (7) Days after receipt by the Constructor of final payment from the Owner for such Subcontract Work.



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

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 sections 3.21 and 3.22, or for faulty or defective work or services discovered after final payment, nor relieve the Constructor for claims made in writing by the Subcontractor as required by the Subcontract Documents prior to its application for final payment as unsettled at the time of such payment.

8.4 LATE PAYMENT INTEREST Progress payments or final payment due and unpaid under this Agreement, as defined in subsections 8.2.5, 8.3.3 and 8.3.4, shall bear interest from the date payment is due at the ~~prevailing statutory rate at the place of the Project~~ rate provided in the Prime Agreement. However, if the Owner fails to timely pay the Constructor as required under the prime agreement through no fault or neglect of the Constructor, and the Constructor fails to timely pay the Subcontractor as a result of such nonpayment, the Constructor's obligation to pay the Subcontractor interest on corresponding payments due and unpaid under this Agreement shall be extinguished by the Constructor promptly paying to the Subcontractor the Subcontractor's proportionate share of the interest, if any, received by the Constructor from the Owner on such late payments.

8.5 CONTINUING OBLIGATIONS Provided the Constructor is making payments on or has made payments to the Subcontractor in accordance with this Agreement, the Subcontractor shall reimburse the Constructor 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 Constructor for costs and expenses including attorneys' fees and costs and expenses incurred by the Constructor in satisfying, discharging, or defending against any such claims, obligation, or lien, including any action brought or judgment recovered. If any Law or bond require the Subcontractor to take any action prior to the expiration of the reasonable time for payment referenced in subsection 8.2.5 in order to preserve or protect the Subcontractor's rights 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: (a) create the reimbursement obligation recited above, (b) be in violation of this Agreement, or (c) 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 Constructor before it is used for any other purpose. In the same manner, payments received by the Constructor 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 Constructor, 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 Constructor has reason to believe that the Subcontractor is not complying with the payment terms of this Agreement,~~ The Constructor 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 PARTIAL LIEN WAIVERS AND AFFIDAVITS As a prerequisite for payments, the Subcontractor shall provide, in a form satisfactory to the Owner and Constructor, partial lien or 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 the Constructor require the Subcontractor to provide an unconditional waiver of lien or claim; either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

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

8.10 SUBCONTRACTOR ASSIGNMENT OF PAYMENTS The Subcontractor shall not assign any payment due or to become due under this Agreement, without the written consent of the Constructor, 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 payment due or to become due under this Agreement to create a new security interest or for any other purpose, the instrument of assignment shall contain a clause to the effect that the assignee's right in and to any money due or to become due to 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.

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



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ARTICLE 9 INDEMNITY, INSURANCE, AND BONDS

The Indemnity and Insurance provisions of this Article have been deleted. Refer to Attachment "C" Insurance Provisions which is incorporated herein and made a part hereof.

9.3 BONDS

9.3.1 Performance and Payment Bonds ~~[] are/ [] are not~~ ARE NOT required of the Subcontractor. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to the Constructor. The Constructor's acceptance shall not be withheld without reasonable cause. The penal sum of the Payment Bond and of the Performance Bond shall each be in the full Subcontract Amount and shall be provided to the Constructor no later than ten (10) days after the Subcontractor's receipt of this agreement.

9.3.2 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 the actual cost of the ~~Subcontract Amount bond~~, which sum is included in the Subcontract Amount. ~~If acceptable to the Constructor, the Subcontractor may, in lieu of retainage, furnish a retention bond or other security interest, acceptable to the Constructor, to be held by the Constructor.~~

9.3.3 If the Subcontractor shall fail to promptly provide any required bonds in the form and when required by this Subcontract, such failure shall constitute a material breach of this Subcontract and shall entitle the Constructor ~~may~~ to terminate this Agreement and enter into a subcontract for the balance of the Subcontract Work with another subcontractor. All Constructor costs and expenses incurred by the Constructor as a result of said termination shall be paid by the Subcontractor.

9.3.4 PAYMENT BOND REVIEW The Constructor ~~[] has/ [] has not~~ HAS NOT provided the Owner a payment bond. A copy of the Constructor's payment bond for the Project, if any, shall be furnished by the Owner or Constructor upon the Subcontractor's written request.

ARTICLE 10 SUSPENSION, NOTICE TO CURE, AND TERMINATION

10.1 FAILURE OF PERFORMANCE AND TERMINATION

10.1.1 NOTICE TO CURE A DEFAULT If the Subcontractor persistently fails to supply enough qualified workers, proper materials, or equipment, to maintain the Progress Schedule, or fails to make prompt payment to its workers, sub-subcontractors, or suppliers, or disregards Laws or orders of any public authority having jurisdiction, or fails to comply with the Constructor's Safety and Health Policy, or fails to comply with the Constructor's Quality Control On-Site Plan, 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 two (2) Business Days after written notification to commence and continue satisfactory correction of the default with diligence and promptness, then, ~~the Constructor shall give a second notice to the Subcontractor and surety, if any, to correct the default within a two (2) Business Day period. If the Subcontractor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice~~, the Constructor without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:



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10.1.1.1 supply workers, materials, equipment, and facilities as the Constructor 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 Subcontractor costs and expenses, including reasonable overhead, profit, and attorneys' fees that are due or to become due. 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 Constructor shall provide a detailed accounting of the costs to finish the Subcontract Work;

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

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

10.1.1.4 supply Constructor's personnel or third party Consultants to meet the Subcontractor's obligations to comply with the Constructor's Safety and Health Policy or Constructor's Quality Control On-Site Plan and charge the costs to the Subcontractor as provided under the subsection above; or

10.1.1.5 terminate the Agreement by written notice. If the Subcontract Agreement was bonded, the Constructor shall provide written notice of termination to the Subcontractor's Surety at the time the Subcontractor is terminated. Upon such termination, in addition to all other rights and remedies, the Constructor shall have the right to make claim on the Subcontractor's performance bond.

10.1.2 USE OF SUBCONTRACTOR'S EQUIPMENT If the Constructor performs work under this article, either directly or through other subcontractors, the Constructor 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 Worksite for the purpose of completing any remaining Subcontract Work. Immediately upon completion of the Subcontract Work, any remaining materials, implements, equipment, appliances, or tools not consumed or incorporated in performance of the Subcontract Work, and furnished by, belonging to, or delivered to the Project by or on behalf of 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

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, and 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.



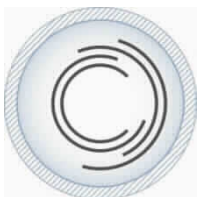
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10.2.2 INTERIM REMEDIES If the Subcontractor is not performing in accordance with the Progress Schedule at the time a petition in bankruptcy is filed, or at any subsequent time, the Constructor, while awaiting the decision of the Subcontractor or its 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 Constructor 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 Constructor, or any other person or entity for whose acts or omissions the Constructor may be liable, the Constructor 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 agreement and to the extent the Constructor recovers such on the Subcontractor's behalf, the Subcontract Amount and the Subcontract Time shall be equitably adjusted by Subcontract Change Order for the cost and delay resulting from any such suspension. The Constructor 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 Constructor, for the use and benefit of the Subcontractor.

10.4 TERMINATION BY OWNER Should the Owner terminate its contract with the Constructor or any part which includes the Subcontract Work, the Constructor 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 the Constructor's instructions, and mitigate all costs. In the event of Owner termination, the Constructor's liability to the Subcontractor shall be limited to the extent of the Constructor's recovery on the Subcontractor's behalf under the Subcontract Documents, ~~except as otherwise provided in this Agreement.~~ The Constructor 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 Constructor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor. ~~If the Owner terminates the Constructor for cause, through no fault of the Subcontractor, the Subcontractor shall be entitled to recover from the Constructor its reasonable costs arising from the termination of this Agreement, including reasonable overhead and profit on Work not performed.~~

10.5 CONTINGENT ASSIGNMENT OF THIS AGREEMENT The Constructor's contingent assignment of this Agreement to the Owner, as provided in the prime agreement, is effective when the Owner has terminated the prime agreement for cause and has accepted the assignment by notifying the Subcontractor in writing. This contingent assignment is subject to the prior rights of a surety that may be obligated under the Constructor's bond, if any. The Subcontractor consents to such assignment and agrees to be bound to the assignee by the terms of this Agreement, provided that the assignee fulfills the obligations of the Constructor.



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10.6 SUSPENSION BY CONSTRUCTOR The Constructor 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 Constructor. 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 Constructor's order, shall notify the Constructor in writing in sufficient time to permit the Constructor to provide timely notice to the Owner in accordance with the prime agreement of the effect of such order upon the Subcontract Work. The Subcontract Amount or Subcontract Time shall be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Agreement caused by such suspension. No claim under this section shall be allowed for any costs incurred more than fourteen (14) Days prior to the Subcontractor's notice to the Constructor. 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 the 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 Constructor wrongfully exercises any option under this article, the Constructor shall be liable to the Subcontractor solely for the reasonable value of Subcontract Work performed by the Subcontractor prior to the Constructor'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 Subcontract Work has been stopped for thirty (30) Days because the Subcontractor has not received progress payments or has been abandoned or suspended for an unreasonable period of time not due to the fault or neglect of the Subcontractor, then the Subcontractor may terminate this Agreement upon giving the Constructor seven (7) Days' written notice. Upon such termination, the Subcontractor shall be entitled to recover from the Constructor payment for all Subcontract Work satisfactorily performed but not yet paid for, including reasonable overhead, profit, and attorneys' fees, costs, and expenses, subject to terms of Paragraphs 8.2 and 8.3. ~~However, if the Owner has not paid the Constructor for the satisfactory performance of the Subcontract Work through no fault or neglect of the Constructor, and the Subcontractor terminates this Agreement under this article because it has not received corresponding progress payments, the Subcontractor shall be entitled to recover from the Constructor, within a reasonable period of time following termination, payment for all Subcontract Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable overhead and profit on Subcontract Work not performed.~~ The Constructor's liability for any other damages claimed by the Subcontractor under such circumstances shall be extinguished by the Constructor pursuing said damages and claims against the Owner on the Subcontractor's behalf as provided for in sections 10.3 and 10.4.

ARTICLE 11 DISPUTE MITIGATION AND 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 Constructor shall continue to make payments in accordance with this Agreement.



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11.2 DISPUTES BETWEEN CONSTRUCTOR AND SUBCONTRACTOR The Constructor and Subcontractor shall be bound by the Consolidation or Joinder provisions of the Prime Agreement. If the dispute resolution provisions between the Constructor and the Owner in the Subcontract Documents do not permit consolidation or joinder with disputes of third parties, such as the Subcontractor, or if such dispute is only between the Constructor and the Subcontractor, then the Parties shall submit the dispute to the dispute resolution procedures set forth in the section below.

11.3 CONSTRUCTOR-SUBCONTRACTOR DISPUTE RESOLUTION

11.3.1 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the matter remains unresolved after fifteen (15) Business Days from the date of first discussion, the Parties shall submit such matter to the dispute resolution procedures selected in ARTICLE 11.3.2.

11.3.2 MEDIATION If direct discussions pursuant to the subsection immediately above do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation through the ~~current Construction Industry Mediation Rules of the American Arbitration Association (AAA) Judicial Arbitrator Group, Inc. ("JAG")~~ in Denver, Colorado. Information on JAG is available at www.jaginc.com, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) working Days of the matter first being discussed and shall conclude within forty-five (45) working Days of the matter being first discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and to the mediator. The costs of the mediation shall be shared equally by the Parties.

11.3.3 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

Arbitration using the ~~current Construction Industry Arbitration Rules of the AAA JAG~~ 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.

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



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

In the event of arbitration between the Constructor and Subcontractor over this Agreement or this Project, the prevailing party in any dispute shall be entitled to recover its legal fees and expenses, including expert fees (hereinafter "Fees"), and any other costs allowable by law. For purposes of this Agreement, the prevailing party shall be determined utilizing the following method: (a) the claiming party is the prevailing party if it is awarded 80% or more of its claimed damages exclusive of costs, interests, and Fees; (b) the defending party is the prevailing party if the claiming party is awarded 20% or less of its claimed damages exclusive of costs, interest and Fees; and (c) neither party is the prevailing party and each party shall bear its own Fees if the claiming party is awarded greater than 20%, but less than 80%, of its claimed damages exclusive of costs, interest and Fees. The trier of fact shall utilize this method to determine the prevailing party regardless of the number of claims alleged by either party. Fees shall not include, however, costs incurred in mediation nor any mediator's fees and expenses.

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 All parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding. To the extent disputes between the Constructor and Subcontractor involve in whole or in part disputes between the Constructor and the Owner, disputes between the Subcontractor and the Constructor shall be decided by the same tribunal and in the same forum as disputes between the Constructor and the Owner.

11.7 NO LIMITATION OF RIGHTS OR REMEDIES Nothing in this article shall limit any rights or remedies not expressly waived by the Subcontractor which the Subcontractor may have under lien laws or payment bonds.

ARTICLE 12 MISCELLANEOUS

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

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

12.3 GOVERNING LAW This Agreement shall be governed by the Law in effect at the location of the Project.

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



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12.5 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.

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

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

12.8 EQUAL EMPLOYMENT OPPORTUNITY The Subcontractor, in performance of the Work, shall not discriminate against or harass any applicant, employee or minority or disadvantaged business because of race, color creed, national origin, protected age category, gender, religion, marital status, sexual orientation, military status, genetic information, physical or mental disability of any individual who is qualified, or any other class protected by law. Unless this subcontract is exempted by the rules, regulations or orders of the Secretary of Labor, Subcontractor agrees to comply with the provisions of the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246, as Amended); the Equal Opportunity clause set forth in title 41 of the Code of Federal Regulations to the US department of Labor, Chapter 60, Part 1.4 (41 CFR §60-1.4); the Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities clauses set forth in 41 CFR §60-741.5; the Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era clause set forth in 41 CFR §60-250; Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Disabled Veterans, Recently Separated Veterans, Other Protected Veterans, and Armed Force Service Medal Veterans set forth in 41 CFR §60-300, which are by reference incorporated herein. Unless this subcontract is exempted by the rules, regulations or orders of the Secretary of Labor, Subcontractor shall include the above provisions of this Article in all lower-tier subcontracts and purchase agreements issued for work to be performed at the site under this Subcontract. Failure of Subcontractor to observe any of the aforesaid requirements, including the prompt submission to the Contractor of required reports and affidavits, shall constitute cause for withholding progress payments until such requirements are met. It shall be the responsibility of the Subcontractor to determine its own status under the various regulatory acts and nothing in this Subcontract shall serve to make the Contractor liable for any errors with respect thereto.



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12.9 HARASSMENT It is Contractor's policy to provide a workplace free of sexual harassment and harassment, intimidation or coercion based on ethnic background, race, religion, and gender of sexual orientation. Sexual harassment includes, but is not limited to, unwelcome sexual advances or unwelcome invitations to participate in offensive conduct, statements regarding permissiveness or sexual reputation of an individual, or other such conduct that does not belong in the workplace. Harassment may be verbal (epithets, derogatory statements, slurs, innuendo), written or visual, or physical (unwelcome touching, assault, gestures, physical interference with one's work). In whatever form and from whatever source, harassment is prohibited. The Contractor will not tolerate any form of unlawful harassment, nor will it tolerate retaliation for refusing unwelcome or harassing overtures, for reporting instances of harassment, or for providing statements or evidence related to alleged harassment. Subcontractor shall comply with this policy in the performance of the Subcontractor's Work. Subcontractor shall fully investigate any reported violations of this policy involving employees of the Subcontractor or lower-tier subcontractors or suppliers to Subcontractor and report the results of such investigation to Contractor. Any personnel guilty of violating this policy shall be promptly removed by Subcontractor for the Project at the direction of Contractor.

ARTICLE 13 SUBCONTRACT DOCUMENTS

13.1 INTERPRETATION OF SUBCONTRACT DOCUMENTS

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

13.1.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings, or specifications, the Subcontractor shall immediately submit the matter to the Constructor 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 Subcontract Amount pursuant to dispute mitigation and resolution.

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

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

13.1.5 In case of any inconsistency, conflict or ambiguity among the Subcontract Documents, the documents shall govern in the following order: (a) Subcontract Change Orders and written amendments to this Agreement; (b) the ConsensusDocs 750 Agreement as modified by the Parties; (c) subject to subsection 13.1.2 the drawings (large scale governing over small scale), specifications and addenda issued prior to the execution of this Agreement; (d) information furnished by the Owner that is identified as a Subcontract Document; (e) other documents listed in this Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.



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13.1.6 As defined in paragraph 2.4, the following Attachments are a part of this Agreement

Attachment "A" The Drawings, Specifications, General and other conditions, addenda, Instructions to Bidders and other information.

Attachment "B" Safety and Health Policies

Attachment "C" Insurance Provisions

Attachment "D" Scope Narrative

Attachment "E" Temporary Electrical, if required

Attachment "F" Progress Schedule

Attachment "QC" Quality Control

Attachment "S" Stormwater Accountability, if required

Each undersigned Party represents, warrants, and states that all legal action necessary for the effectuation and execution of this Agreement has been validly taken and that the individuals whose signatures appear below on behalf of each Party are duly authorized to execute this Agreement on behalf of their respective Parties.

CONSTRUCTOR: Saunders Construction, Inc.

BY:

PRINT NAME: Darrel Eastwood

PRINT TITLE: _____



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SUBCONTRACTOR: Architect - N/A

BY:

PRINT NAME: _____

PRINT TITLE: _____

END OF DOCUMENT.

PM Initials: _____

STACY



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