

**MASTER AGREEMENT**  
**(Subcontractor)**

This Master Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between Straub Construction Company, Inc., 7775 Meadow View Drive, Shawnee, Kansas 66227, a Kansas corporation (hereafter "Contractor"), and \_\_\_\_\_ (hereafter "Subcontractor").

For and in consideration of the mutual covenants and promises contained herein, Contractor and Subcontractor agree as follows:

**General**

This Master Agreement is a written understanding between Contractor and Subcontractor containing contract clauses applying to future Subcontract Work Orders (hereafter "Work Orders") between Contractor and Subcontractor for the furnishing of construction and construction related services, which may include, but not be limited to, design services. This Master Agreement contemplates separate future Work Orders that will incorporate by reference and attach the requirements, applicable clauses and documents agreed to herein and incorporated by reference.

**Owner Contract Documents**

The Owner Contract documents may consist of the Owner's original Solicitation for Bids - Request for Proposal (RFP) similar document, Owner's Amendments to the Solicitation or RFP and Owner's Award of the Contract to Contractor together with the Owner/Contractor Contract ("Owner/Contractor Contract Documents"). The Owner/Contractor Contract Documents generally contemplate the performance of construction work and services by Contractor for Owner.

**Incorporation by Reference**

The Owner/Contractor Contract Documents are incorporated herewith by reference into this Master Agreement and may be attached to this Agreement or any Work Orders issued to Subcontractor. All of the Owner/Contractor Contract documents are available for inspection by Subcontractor at reasonable times at Contractor's office (exclusive of Contractor's pricing information).

The terms and conditions of this Master Agreement, and all documents incorporated by reference herein, regarding work to be performed hereunder, shall be in addition to and not in lieu of, any terms and conditions of the Owner/Contractor Contract Documents.

**Confidentiality Agreement**

To the extent disclosed to Subcontractor, Contractor's bid or response to the Owner's Solicitation RFP, as amended, is proprietary in nature, and shall be kept confidential by

Subcontractor, and not disclosed to any third person or firm, except as necessary for the performance of the Work by Subcontractor under the Subcontract and issued Work Orders. It shall be disclosed for no other purpose without the prior written consent of Contractor. This Confidentiality Agreement includes Contractor's developments, confidential information, know how, discussions, production methods, estimating systems, and historical cost data whether in paper or electronic form.

Contractor shall be entitled to enforce this Confidentiality Agreement by injunctive relief, or other relief available to Contractor, in law or equity, and Subcontractor consents to subject matter jurisdiction and personal jurisdiction of Subcontractor, as well as exclusive venue, in the District Court of Johnson County, Kansas, or in the United States District Court for the District of Kansas, at Kansas City, Kansas, at Contractor's election. Kansas law shall apply to the construction and interpretation of this Master Agreement, the Subcontract and Work Orders. This Confidentiality Agreement is not intended to restrict competition by Subcontractor in any way.

### **Subcontract and Work Orders**

Contractor anticipates that from time to time Owners may award to Contractor individual and separate contracts for specific construction projects or scopes of work, labor, material, equipment, supplies and design services and/or related construction services to be provided to Owner by Contractor under, and pursuant to, Owner/Contractor Contracts. The general scope of work called for by Contractor will be set forth in the Owner/Contractor Contract Documents.

Contractor, in its sole discretion, may issue to Subcontractor an individual Work Order for some or all of the work and services required of Contractor in the Owner issued Contract to Contractor. Subcontractor shall furnish all labor, material, equipment, supplies and services necessary to complete the work, scopes or tasks called for in the Work Order under the terms and conditions of the Owner/Contractor Contract Documents, this Master Agreement, the Subcontract (AIA A401-2017 Standard Form of Agreement Between Contractor and Subcontractor, attached hereto as **Exhibit 1** and incorporated herewith by this reference as if fully set forth herein).

Issuance of one or more Work Orders to Subcontractor shall not create an obligation on the part of Contractor to award any additional Work Orders to Subcontractor. Issuance of a Work Order is neither implied nor guaranteed by this Master Agreement or **Exhibit 1** attached hereto. There are no representations that any minimum amount of work will be subcontracted by Contractor to Subcontractor or that any funds or payments by Contractor to Subcontractor shall be made in the future.

All Work Orders awarded, and to be awarded, shall be subject to Contractor's evaluation of Subcontractor performance under this Master Agreement, **Exhibit 1** attached hereto, and any Work Order.

A Work Order may be issued by Contractor to Subcontractor upon Contractor's request to Subcontractor for a proposal for separate Subcontractor tasks, any amendments thereto, Subcontractor's response to a Subcontractor RFP and amendments, and the Contractor award. The Subcontractor shall commence work under the Work Order on or before the date specified in each

individual Work Order or such earlier date as may be mutually agreed to be Contractor and Subcontractor.

### **Flow Down Provision**

All Subcontractor work and services shall be furnished and performed by Subcontractor in strict accordance and consistent with the Owner/Contractor Contract documents and requirements therein and also the terms and conditions of this Master Agreement, **Exhibit 1** attached hereto, and any individual Work Order issued by Contractor to Subcontractor.

To the extent that the terms of the Owner Contract are applicable to the performance of the Work Order, and except as otherwise modified herein, Contractor assumes toward Subcontractor all the obligations, rights, duties, and remedies that the Owner assumes to Contractor and, in an identical way, Subcontractor assumes toward Contractor all the same obligations, rights, duties and remedies that Contractor assumes to the Owner.

The Work Order shall bind Subcontractor to Contractor in accordance with the terms and conditions therein. The integrated Work Order documents which include the Owner/Contractor Contract Documents, this Master Agreement, **Exhibit 1** attached hereto, and all documents incorporated therein and, also the Work Order, are intended to be complimentary and interpreted in harmony so as to avoid conflict. In the event of any vagueness, conflict, inconsistency or omission in the integrated documents, the documents shall be construed and interpreted consistent with the intent of the parties hereto that the work and services undertaken by Subcontractor in the Work Order be furnished and performed as closely as possible to and under the same requirements placed upon Contractor by the Owner in the Owner/Contractor Contract Documents. The specific terms of this Master Agreement, **Exhibit 1** attached hereto, and the Work Order take precedence over the other Owner/Contractor Contract Documents.

### **Work Order Documents**

A Work Order issued by Contractor to Subcontractor shall consist of Contractor's award to the Subcontractor, the Owner's Contract to Contractor (exclusive of Contractor's pricing), this Master Agreement, **Exhibit 1** attached hereto, Contractor's Work Order to Subcontractor (together with all attachments thereto and documents incorporated by reference therein).

The Work Order shall specify the work, labor, materials, equipment, supplies, tasks, scopes or descriptions of the work and services awarded to Subcontractor; the price or pricing for the work or services; and any other special provisions not otherwise set forth in **Exhibit 1** attached hereto.

### **Claims and Disputes**

In the event of any dispute, disagreement or claim arising from, out of or under, or in any way related to **Exhibit 1**, and any separate Work Order, Contractor and Subcontractor shall follow the dispute resolution procedures contained in **Exhibit 1**, except as otherwise provided below.

To the extent that any claim of Subcontractor constitutes a "pass-through claim" to the Owner, Subcontractor shall provide notice of such claim to Contractor and present such supporting documentation in sufficient time for Contractor to provide such notice and documentation to the Owner in accordance with all of the requirements of the Owner/Contractor Contract Documents and the controlling law under the Owner Contract. Failure of the Subcontractor so to do shall result in the waiver by Subcontractor of its claim.

Contractor shall not be compelled to pursue any pass-through claim of Subcontractor beyond presentation to the Owner as indicated above. However, Subcontractor shall be entitled to present and pursue such claim in the name of Contractor and shall be responsible for the payment of any and all costs and fees in connection therewith. Any such claim shall be subject to approval by Contractor before presentation.

In the event the pass-through claim is timely presented and documented, Subcontractor shall be entitled to recover from Contractor only and to the extent Contractor recovers from the Owner. Such recovery by Contractor is an express condition precedent to payment to Subcontractor. Any recovery by Subcontractor shall solely be limited to the recovery by Contractor against the Owner and any payment made by the Owner to Contractor as a result of Subcontractor's claim. The recovery obtained by Contractor against Owner, if any, shall be final and binding on the Subcontractor and Subcontractor shall be entitled to no further relief against Contractor.

In the event that Owner does not pay Contractor for Subcontractor's work for any reason which is not the fault of Subcontractor, Subcontractor shall allow Contractor time to exhaust all necessary remedies against Owner to collect this sum prior to any institution of any dispute resolution procedures by Subcontractor against Contractor. Subcontractor shall support Contractor in the pursuit of such remedies. In the event that Subcontractor shall institute dispute resolution procedures in order to preserve statutes of limitations, time limits for the filing of mechanic's liens or surety bond claims, Subcontractor agrees that such procedures and proceedings shall be stayed thereafter in order to allow Contractor to exhaust all remedies against the Owner. These stay requirements shall apply equally to Contractor's surety, if any.

### **Binding Effect**

This Master Agreement shall become binding upon Contractor and Subcontractor upon issuance of a signed Work Order. This Agreement may be discontinued for future application upon thirty (30) days written notice by either Contractor or Subcontractor. Notice of discontinuance shall not affect any prior written Work Order.

### **Identification of Master Agreement Documents**

This Master Agreement consists of the Agreement and:

- A. Owner/Contractor Contract and all Documents identified therein and incorporated by reference;

- B. Subcontract Agreement form attached hereto and incorporated herewith as **Exhibit 1** and all documents identified therein and incorporated by reference;
- C. All Work Order(s) issued in the future together with all documents identified therein and incorporated by reference.

**Integration Clause**

This Master Agreement (together with all documents attached and incorporated by reference herein including **Exhibit 1**) and the separate Work Orders to be issued (together with all documents attached and incorporated by reference therein) shall form the entire integrated agreement between Contractor and Subcontractor. All prior or contemporaneous agreements, oral or written, are merged herein and superseded hereby. No prior or contemporaneous oral or written representations, statements, discussions, or promises not contained herein shall bind Contractor and/or the Subcontractor.

**Electronic Signatures**

Contractor and Subcontractor agree that this Master Agreement, Work Orders and any amendments or changes thereto requiring signature of the parties hereto may be signed electronically, in lieu of wet ink, and that such signatures shall not be denied legal effect or enforceability solely because they are electronic in nature. Electronic signature means one communicated by electronic mail or in any electronic form, sound, symbol or process, attached to or logically associated with the Work Order or other record document and executed and adopted by a person with intent to sign the record.

CONTRACTOR:

STRAUB CONSTRUCTION COMPANY,  
INC.

By \_\_\_\_\_  
Name

Its \_\_\_\_\_  
Title

Date: \_\_\_\_\_

\_\_\_\_\_  
Subcontractor

By \_\_\_\_\_  
Name

Its \_\_\_\_\_  
Title

Date: \_\_\_\_\_

# DRAFT AIA® Document A401™ - 2017

## Standard Form of Agreement Between Contractor and Subcontractor

**AGREEMENT** made as of the **TBD** day of **TBD** in the year **Two Thousand Eighteen**  
(In words, indicate day, month and year.)

**BETWEEN** the Contractor:  
(Name, legal status, address and other information)

Straub Construction Company, Inc.  
7775 Meadow View Drive  
Shawnee, Kansas 66227

and the Subcontractor:  
(Name, legal status, address and other information)

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The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: << >>

with the Owner:  
(Name, legal status, address and other information)

### See Subcontract Work Order

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for the following Project:  
(Name, location and detailed description)

### See Subcontract Work Order

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The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:  
(Name, legal status, address and other information)

### See Subcontract Work Order

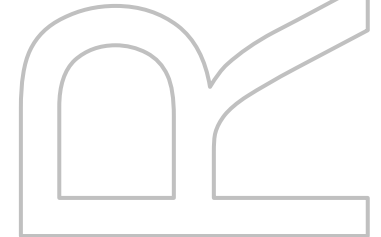
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The Contractor and the Subcontractor agree as follows.

**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference.



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## TABLE OF ARTICLES

1	THE SUBCONTRACT DOCUMENTS
2	MUTUAL RIGHTS AND RESPONSIBILITIES
3	CONTRACTOR
4	SUBCONTRACTOR
5	CHANGES IN THE WORK
6	CLAIMS AND DISPUTES
7	TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT
8	THE WORK OF THIS SUBCONTRACT
9	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
10	SUBCONTRACT SUM
11	PAYMENTS
12	INSURANCE AND BONDS
13	TEMPORARY FACILITIES, SERVICES, EQUIPMENT AND WORKING CONDITIONS
14	MISCELLANEOUS PROVISIONS
15	ENUMERATION OF SUBCONTRACT DOCUMENTS

### ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications to the Prime Contract, whether issued before or after the execution of this Agreement, in accordance with the provisions of Article 5; (4) other documents listed in Article 15 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement, in accordance with the provisions of Article 5. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein.

§ 1.2 The Subcontract Documents form the Subcontract for Construction. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications to the Prime Contract or Modifications to this Subcontract issued subsequent to the execution of this Agreement, appears in Article 15.

§ 1.3 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2017, General Conditions of the Contract for Construction as modified.

§ 1.4 The Subcontract may be amended or modified only by a Modification to this Subcontract. A Modification to this Subcontract is a written amendment to this Agreement signed by both parties, or as otherwise described in, and in accordance with the provisions of, Article 5.

§ 1.5 The Subcontract documents shall not be construed to create a contractual or third-party beneficiary relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.6 The Contractor shall make the Subcontract Documents available to the Subcontractor at reasonable times prior to execution of this Agreement, and thereafter, upon request. The Contractor may charge the Subcontractor for the reasonable cost to reproduce the Subcontract Documents provided to the Subcontractor.

§ 1.7 The Subcontractor represents and agrees that it has carefully examined and understands this Subcontract and the other Subcontract Documents, that it has investigated the nature, locality, and site of the Work and the conditions and difficulties under which the Work is to be performed, and that it enters into this Subcontract on the basis of its own examination, investigation, and evaluation of all such matters and not in reliance upon any opinions, conclusions or representations of the contractor, or the Owner, and any of their respective officers, agents or employees.

§ 1.8 All of the Work shall be performed in accordance with all the Contract drawings and specifications and any addenda and modifications thereto, according to the true intent and meaning of the Contract Documents, including all labor, materials, and engineering incident thereto, or as are usually performed or furnished in connection with such Work, and regardless of whether the labor or materials hereby subcontracted are referred to under one or more headings in the specifications, it being the intention of the parties that all Work usually performed by the trades(s) covered by this Subcontract and required by the Prime Contract shall be performed by the Subcontractor.

§ 1.9 Should it appear that the Work hereby intended to be done or the material to be furnished, or any of the matters relating to such Work or materials, are not sufficiently detailed or explained on the drawings or in the specifications, the Subcontractor shall apply to the Contractor for such other and further drawings or explanations as may be necessary and shall conform to the same without extra compensation as part of this Subcontract.

## ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201–2017 apply to this Agreement pursuant to Section 1.3 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities that the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies, and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies, and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern. This Agreement shall be in addition to and not in substitution of any of the terms and provisions of the prime contract and other subcontract documents.

## ARTICLE 3 CONTRACTOR

### § 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all Project matters requiring the Contractor's approval or authorization. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall render decisions in a timely manner and in accordance with the Contractor's construction schedule.

### § 3.2 Services Provided by the Contractor

§ 3.2.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall review, and expedite written responses to, submittals made by the Subcontractor in accordance with Section 4.2.3 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor with copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. Contractor shall have the right to amend or modify the schedule for the Work or to suspend, delay or accelerate the Work, in whole or in part, or delay the commencement or execution of the Work or to vary the sequence thereof. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details. Subcontractor shall not be entitled to extra compensation for reasonable adjustments to the schedule. Subcontractor shall timely perform the Work of this Subcontract as scheduled by the Contractor with no delay to the progress of the Work. If Subcontractor fails to timely perform the Work, Contractor, without waiver of any other rights contained in this Agreement, may, within 24 hours



written notice to the Subcontractor employ sufficient workmen and supply sufficient materials to complete the work, all at Subcontractor's cost.

§ 3.2.2 The Contractor shall provide suitable *areas* for storage of the Subcontractor's materials and equipment during the course of the Work.

§ 3.2.3 Contractor makes no representations to Subcontractor, express or implied, regarding site conditions. All information regarding site conditions provided by Contractor is for information only and shall not constitute a subcontract document nor a basis for a claim by Subcontractor increase in Subcontract sum or Subcontract time.

### § 3.3 Communications

§ 3.3.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects the performance of this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.3.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.3.3 The Contractor shall permit the Subcontractor to request information directly from the Architect regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.3.4 If hazardous materials or substances are being used on the site by the Contractor, a subcontractor, or anyone directly or indirectly employed by them (other than the Subcontractor), and they are a type of hazardous material or substance of which an employer is required by law to notify its employees, the Contractor shall, prior to delivery to the Project site or exposure of the Subcontractor's employees to such material or substance, give notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.3.5 The Contractor shall timely notify the Subcontractor of any fault or defect in the Work under this Subcontract or nonconformity with the Subcontract Documents. Failure of the Contractor to so notify Subcontractor shall not release Subcontractor of Subcontractor's responsibilities under this Subcontract.

§ 3.3.6 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information possessed by Contractor that is necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights.

§ 3.3.7 If the Contractor asserts a Claim against, or defends a Claim by, the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the Claim that relates to the Work of the Subcontractor.

### § 3.4 Claims by the Contractor

§ 3.4.1 The Subcontractor shall be responsible for liquidated damages to the extent provided for in the Contract Documents for delays caused by or contributed to be caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, including all or a portion of any liquidated damages assessed by the Owner against the Contractor attributable in whole or in part to such Subcontractor-caused delays. In addition, the Subcontractor shall be responsible for actual damages to the Contractor caused or contributed to be caused by Subcontractor delay or any person or entity for whom the Subcontractor is responsible. In the event liquidated damages or actual damages, or both, are caused by the Subcontractor and another entity, the Contractor shall have the right to reasonably apportion the damages between the parties, and such apportionment shall be binding on the Subcontractor.

§ 3.4.2 The Contractor's Claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

- .1 twenty-four (24) hours notice prior to the Contractor's providing services or materials, except in an emergency or as needed to meet requirements of existing schedule for performance of the Work; and

- .2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

§ 3.5.1 Should the Subcontractor at any time (1) refuse or neglect to supply sufficient or properly skilled workmen or (2) refuse or neglect to supply materials of the proper quality or (3) fail in any respect to prosecute the Work with promptness and diligence or (4) fail in the performance of any of the agreements herein stated, the Contractor shall be at liberty after 24 hours written notice to the Subcontractor to either provide any such labor, materials or data as is required by the Contract and to deduct the cost thereof from any money then due or thereafter to become due to the Subcontractor under this Subcontract or to terminate the employment of the Subcontractor for the Work and enter upon the premises and take possession for the purpose of completing the work included under the Contract, or to repair damaged Work, or damaged property and to take possession of all materials, tools, and appliances thereon and to employ any other person or persons to finish the Work and to provide the materials therefor. In the case where the Subcontractor's employment is terminated the Subcontractor shall not be entitled to recover any further payment under this Subcontract until said Work has been wholly finished or damages to the Work or property remediated. If the unpaid balance of the amount to be paid under this Subcontract shall exceed the expense incurred by the Contractor in finishing or remediating the Work, such excess shall be paid by the Contractor to the Subcontractor; but if such expense shall exceed the unpaid balance, the Subcontractor shall pay the difference to the Contractor. The expense incurred by the Contractor as herein provided shall include furnishing materials, finishing the Work, remediating any Work or damage and expense or other damage incurred through such default.

§ 3.5.2 If at any time there shall be evidence of any invoice, bill, lien, or claim in respect to this Subcontract which, if not paid by the Subcontractor, the Contractor or the Owner of the Project premises might become liable, the Contractor shall have the right to retain out of any payment then due to Subcontractor or thereafter to become due an amount sufficient to completely indemnify Contractor against such invoice, bill, lien or claim. If within 30 days the Subcontractor has failed to resolve the claim for payment, or failed to provide a surety bond to protect the Owner and Contractor against such claim, the Contractor shall have the right to make payment on such claim out of funds of the Subcontractor. If no such funds are available, the Subcontractor shall refund to the Contractor all monies that have in good faith been paid in discharging any such claim or lien.

§ 3.5.3 Should Subcontractor, through the breach of this Subcontract, cause Contractor to suffer any loss, cost or expense in excess of the remaining unpaid contract balance under this Subcontract, then the Subcontractor expressly grants to the Contractor the right to set off any such loss, cost or expense not only against the unpaid balance of this Subcontract but also against the unpaid balance of any other Subcontract between Subcontractor and Contractor, whether such Subcontract relates to this Project or any other project.

§ 3.5.4 In the event of disputes between the Contractor and Subcontractor and the utilization of the dispute resolution procedure set forth herein, Contractor shall be entitled to recover from Subcontractor attorneys fees, costs and expenses of Contractor if Contractor prevails on its claims against Subcontractor and if Contractor prevails on the claims of Subcontractor against Contractor. Contractor shall be deemed to prevail on claims of Contractor against Subcontractor if Contractor is awarded 50% or more of the value of its claims; and on Subcontractor's claims against Contractor, if Subcontractor is awarded less than 50% of the value of its claims against Contractor.

## ARTICLE 4 SUBCONTRACTOR

### § 4.1 General

The Subcontractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number. The Subcontractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Subcontractor shall designate in writing a representative who shall have express authority to act on the Subcontractor's behalf with respect to the Project. The term "Subcontractor" means the Subcontractor or the Subcontractor's authorized representative.

### § 4.2 Execution and Progress of the Work

§ 4.2.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.2.1.1 Contractor shall have the right to reasonably modify the construction schedule to suspend, delay or accelerate the Work, in whole or in part, or vary the sequence thereof, without compensation to the Subcontractor. In the event such delay or suspension extends the overall time of performance, the Completion Date for the Subcontractor's Work shall be extended.

§ 4.2.1.2 Should the Subcontractor's Work be delayed, hindered or forced out of sequence, resequence, interfered with, or otherwise disrupted in any way by the act or omission of the Contractor, or by any other Contractor or Subcontractor on the Project, or by any cause beyond the Subcontractor's control and not due to the fault, act or omission on the part of Subcontractor, then the time for completion of the Work shall be extended for a period equivalent to the time lost by reason of any of the aforesaid causes, as determined by the Contractor. Such extension of time shall be the Subcontractor's sole and exclusive remedy for any such occurrence or occurrences, and the Subcontractor shall have no claim for damages against the Contractor for any such occurrence or occurrences or the cumulative impact thereof.

§ 4.2.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in, or interference with the Work of the Contractor, other subcontractors, the Owner, or Separate Contractors.

#### § 4.2.3 Submittals

§ 4.2.3.1 The Subcontractor shall submit Shop Drawings, Product Data, Samples, and other similar submittals required by the Subcontract Documents within fourteen (14) days of the date of this Subcontract and in such sequence as to cause no delay in the Work or in the Activities of the Contractor or other subcontractors.

§ 4.2.3.2 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Subcontractor represents to the Contractor that the Subcontractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Subcontract Documents.

§ 4.2.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.2.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.2.6 The Subcontractor shall pay for all materials, equipment, and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements; including releases, lien waivers and satisfactory evidence to verify compliance with the above requirements. If payment for materials stored off site and not delivered to the site as requested and made, title to such materials shall pass to the Contractor and through to the Owner as may be agreed between Contractor and the Owner, but the Subcontractor shall remain fully liable for all such material not delivered to the job site and shall be responsible for providing insurance for such stored material.

§ 4.2.7 The Subcontractor shall take necessary precautions to properly protect the work of the Contractor, Separate Contractors, and other subcontractors from damage caused by operations under this Subcontract.

§ 4.2.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and Separate Contractors whose work might affect the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or Separate Contractors.

§ 4.2.9 The Subcontractor shall have a continuing duty to provide and update Subcontractor's list of second tier subcontractors and its suppliers.

§ 4.2.10 The Subcontractor recognizes that revisions in the planned schedule are inherent in the nature of construction. This may result in revisions of Contractor's schedule of the Work during the progress of construction. Subcontractor agrees that Contractor cannot guarantee Subcontractor can start work on any particular date or continue without interruption once started. Contractor will only be responsible for delay conditions resulting in schedule delay solely within its control and which causes Subcontractor manifestly unreasonable delay in the performance of its work, provided Subcontractor gives written notice of the delay. Failure of Subcontractor to give Contractor written notice of the delay within 24 hours of occurrence shall constitute waiver by Subcontractor of any claim of increase in Subcontract sum or Subcontract time. The term "manifestly unreasonable" means a delay which is evident, obvious or apparent and exceeds the bound of reason, moderation and rationality and which is not in accordance with the practical realities of the Project requirements.

#### § 4.3 Permits, Fees, Notices, and Compliance with Laws

§ 4.3.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.3.2 The Subcontractor shall comply with Federal, state, and local tax laws; social security acts; unemployment compensation acts; and workers' compensation acts, insofar as applicable to the performance of this Subcontract.

#### § 4.4 Safety Precautions and Procedures

§ 4.4.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract. The Subcontractor shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, for the safety of persons and property, in accordance with the requirements of the Prime Contract. The Subcontractor shall notify the Contractor within three days of an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.4.2 If hazardous materials or substances are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors, or anyone directly or indirectly employed by them, and they are a type of hazardous material or substance of which an employer is required by law to notify its employees, the Subcontractor shall, prior to delivery to the Project site or exposure of the Contractor, other subcontractors, and other employers on the site to such material or substance, give notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with the laws by the Contractor, other subcontractors, and other employers on the site.

§ 4.4.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay, and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.4.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.4.3 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. However, liability of the Contractor for this indemnity shall be limited to the amount, if any, the Contractor recovers from the Owner under the General Conditions of this Agreement or to the amount, if any, that the Contractor recovers from other subcontractors or suppliers as a condition precedent to this indemnity liability.

§ 4.4.5 The Subcontractor shall reimburse the Contractor for the cost and expense the Contractor incurs (1) for remediation of a hazardous material or substance brought to the site and negligently handled by the Subcontractor or

(2) where the Subcontractor fails to perform its obligations under Section 4.4.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

#### **§ 4.5 Cleaning Up**

**§ 4.5.1** The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

**§ 4.5.2** As provided under Section 3.4.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs. Cleanup of Work area shall occur on a daily basis. If cleanup is not completed within 24 hours of written notice to Subcontractor, Contractor may perform clean up at rate of \$50 per hour and deduct cost from Subcontract sum by deductive change order.

#### **§ 4.6 Warranty**

**§ 4.6.1** The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall provide satisfactory evidence as to the kind and quality of materials and equipment furnished or to be furnished.

**§ 4.6.2** All material, equipment, or other special warranties required by the Subcontract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with the Subcontract Documents.

#### **§ 4.7 Indemnification**

**§ 4.7.1** To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.7.

**§ 4.7.2** In claims against any person or entity indemnified under this Section 4.7 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 4.7.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor, or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**§ 4.7.3** The obligations for indemnity herein required are severable. The inapplicability of any portion of the obligations for indemnification hereunder due to the statute, court decision or any other basis shall not nullify, reduce or limit other obligations set forth herein. The obligation for the Subcontractor to indemnify and hold harmless to Contractor against claims, damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, due solely to the negligent acts or omissions of the Subcontractor, will be deemed a severable district obligation.

#### **§ 4.8 Remedies for Nonpayment**

If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' notice to the Contractor, stop the Work of this Subcontract until



payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay, and remobilization provided, however, that receipt of payment by Contractor from Owner shall be a condition precedent of payment to Subcontractor by Contractor unless the Owner's failure to make payment is solely caused by Contractor.

#### **§ 4.9 Professional Services Provided by Subcontractor**

**§ 4.9.1** The Subcontractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Subcontract Documents or unless the Subcontractor is required to provide such services in order to carry out the Subcontractor's responsibilities for its own construction means, methods, techniques, sequences, and procedures. The Subcontractor shall not be required to provide professional services in violation of applicable law.

**§ 4.9.2** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Subcontractor by the Subcontract Documents, the Contractor will provide all performance and design criteria that such services must satisfy to the extent the Contractor has received such performance and design criteria from the Owner and Architect under the terms of the Prime Contract.

**§ 4.9.3** If professional design services or certifications by a design professional are required because of means, methods, techniques, sequences, or procedures required by the Contractor and related to the Work of the Subcontractor, the Contractor will provide all performance and design criteria that such services must satisfy.

**§ 4.9.4** The Subcontractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the performance and design criteria received from the Contractor under this Section 4.9.

**§ 4.9.5** The Subcontractor shall cause the professional services performed under this Section 4.9 to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop drawings and other submittals related to the Work designed by such design professional shall bear the professional's written approval when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals, provided the Contractor has provided to the Subcontractor all performance and design criteria required by this Section 4.9.

#### **ARTICLE 5 CHANGES IN THE WORK**

**§ 5.1** The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of a Modification to the Prime Contract issued subsequent to the execution of this Agreement, the Contractor shall promptly notify the Subcontractor of such Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

**§ 5.1.1** The Subcontractor shall review each modification issued by the Owner and advise the Contractor in writing within seven days of receipt of the modification, unless requested sooner by the Contractor, as to the impact, if any, on the Subcontractor's Work, including any adjustment in Subcontract time or Subcontract sum. The failure to advise the Contractor within the specified time period as to any impact shall constitute a waiver of the Subcontractor's right to assert a subsequent claim.

**§ 5.2** The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions, or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, with the Subcontract Sum and the Subcontract Time adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a Claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

**§ 5.2.1** Subcontractor shall proceed with the changed Work as directed by the Contractor while such claim for adjustment is being determined as provided for in this Agreement.

§ 5.3 The Subcontractor shall make all Claims promptly to the Contractor for additional cost, extensions of time and damages for delays, or other causes in accordance with the Subcontract Documents. A Claim which will affect or become part of a Claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such Claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor's Claim must be made. Failure of the Subcontractor to make such a timely Claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

§ 5.3.1 Failure of the Subcontractor to make such claim to the Contractor shall constitute a waiver by Subcontractor of such claim. Receipt of payment by Contractor from Owner for extra work, damages, or delays, and any other claims, shall be a condition precedent to the right of the Subcontractor to receive payment from Contractor for such costs, damages or claims, unless the extra work was ordered solely for the benefit of the Contractor or the claim results solely from the fault of Contractor.

§ 5.3.2 Any request for extension of Subcontract time shall be made by Subcontractor to Contractor within 24 hours of the occurrence of the event.

## ARTICLE 6 CLAIMS AND DISPUTES

### § 6.1 Mediation

§ 6.1.1 Claims, disputes, or other matters in controversy arising out of or related to this Subcontract, except those waived as provided for in Sections 6.4 and 11.3.2, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 6.1.2, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Shawnee Mission, Kansas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### § 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

Arbitration pursuant to Section 6.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

If the Contractor and Subcontractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

§ 6.2.1 Arbitration is selected by Contractor for any claim less than the sum of \$100,000 to be held in Shawnee, Kansas unless another location is mutually agreed upon by the parties. Litigation shall occur in the District Court of Johnson County, Kansas for any claim exceeding the sum of \$100,000. Subcontractor waives the right to a trial by

jury. Kansas substantive law shall apply to this Agreement and any claims arising from, out of or under it. The terms contained herein in Section 6.2.1 may be modified by the mutual agreement of the parties in writing.

### § 6.3 Arbitration

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. The arbitration should be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 6.3.3 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 6.3.4 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 6.3.4.1 Subcontractor shall pay Contractor's costs and fees, including attorneys' fees, for arbitration or litigation should Contractor prevail on Subcontractor's claims against Contractor, and on Contractor's claims against Subcontractor as stated herein.

### § 6.3.5 Consolidation or Joinder

§ 6.3.5.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 6.3.5.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim, dispute, or other matter in question not described in the written consent.

§ 6.3.5.3 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

### § 6.4 Waiver of Claims for Consequential Damages

The Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Subcontract, including without limitation, any consequential damages due to either party's termination in accordance with Article 7. Nothing contained herein shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of this Agreement.

## ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

### § 7.1 Termination by the Subcontractor

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such



termination by the Subcontractor for any reason which is not the fault of the Subcontractor, the Subcontractor's Sub-subcontractors, or their agents or employees or other persons or entities performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, as well as reasonable overhead and profit on work executed and costs incurred by reason of such termination. Receipt of payment from Owner to Contractor shall be a condition precedent to the right of Subcontractor to payment for termination unless the termination is due solely to the fault of Contractor. But in no event shall Subcontractor be entitled to unexpended overhead, or unearned profit, or any other monetary damages.

## **§ 7.2 Termination by the Contractor**

### **§ 7.2.1 Termination for Cause**

If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a three-day period after receipt of notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed the unpaid balance of the Subcontract Sum, the Subcontractor shall pay the difference to the Contractor. Contractor may terminate the Subcontract for the reasons and in accordance with the same procedures as Owner may terminate the Prime Contract.

**§ 7.2.1.1** In the event that termination of the Subcontract for cause (or default) of Subcontractor is later determined not to have been the fault of Subcontractor, then such termination shall be deemed to have been a termination for the convenience of Contractor and Subcontractor agrees that its sole and exclusive remedy for such termination shall be as set forth herein for a termination for the convenience of Contractor.

### **§ 7.2.2 Termination for Convenience**

**§ 7.2.2.1** If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver notice to the Subcontractor.

**§ 7.2.2.2** In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work properly executed, costs incurred by reason of the termination, and reasonable overhead and profit on the Work executed; but not any other damages unless as a precondition to recovery by Subcontractor Contractor receives such payment from Owner.

**§ 7.2.2.3** Upon receipt of notice of termination, the Subcontractor shall

- .1 cease operations as directed by the Contractor in the notice;
- .2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

## **§ 7.3 Suspension or Termination by the Contractor for Convenience**

**§ 7.3.1** The Contractor may, without cause, order the Subcontractor in writing to suspend, delay, or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

**§ 7.3.2** The Subcontract Time and Subcontract Sum shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 7.3.1. Adjustment of the Subcontract Sum shall include profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent that

- .1 performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Subcontractor is responsible; or
- .2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.3.3 Contractor at any time and without the default of Subcontractor, and for any reason whatsoever, may terminate this Subcontract either in whole or in part for the convenience of the Contractor. Subcontractor agrees that upon any such termination the Subcontractor shall take such action as set forth above in 7.2.2.3 and Subcontractor's sole and exclusive remedy shall be the payment of the full value of all Work properly performed by Subcontractor as of the date of termination notice less any monies previously advanced to the Subcontractor. Subcontractor agrees to waive any and all claims for damages including unearned overhead and unearned anticipated profits arising from, out of or related to any such termination by Contractor.

§ 7.3.4 In the event the suspension of the Subcontract is ordered by Contractor because of suspension of the prime contract by Owner, for the Owner's convenience, then receipt of payment by Contractor from Owner for the cost of Suspension of the Subcontract shall be a condition precedent to the right of Subcontractor to payment for such suspension.

#### § 7.4 Assignment of the Subcontract

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201-2017 provided the Owner accepts the assignment by notifying the Contractor and Subcontractor.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

### ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.

*(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications, and accepted alternates.)*

« »

### ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 The date of commencement of the Subcontractor's Work, shall be:  
*(Check one of the following boxes.)*

[ « » ] The date of this Agreement.

[ « » ] A date set forth in a notice to proceed issued by the Contractor.

[ « » ] Established as follows:

*(Insert a date or a means to determine the date of commencement of the Subcontractor's Work.)*

« »

If a date of commencement of the Subcontractor's Work is not selected, then the date of commencement shall be the date of this Agreement.

#### § 9.2 Subcontract Time

§ 9.2.1 The Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontract Time shall be measured from the date of commencement of the Subcontractor's Work.

§ 9.2.2 Subject to adjustments of the Subcontract Time as provided in the Subcontract Documents, the Subcontractor shall achieve substantial completion of the Subcontractor's Work in accordance with Contractor's Schedule which may be reasonably amended from time to time and  
*(Check one of the following boxes and complete the necessary information.)*

[ « » ] Not later than « » ( « » ) calendar days from the date of commencement of the Subcontractor's Work.

[ « » ] By the following date: « »

§ 9.2.3 Subject to adjustments of the Subcontract Time as provided in the Subcontract Documents, if portions of the Subcontractor's Work are to be completed prior to substantial completion of the Subcontractor's Work, then the Subcontractor shall achieve earlier substantial completion of such portions by the following dates.

(List all portions of the Subcontractor's Work required to achieve substantial completion of the Subcontractor's Portion of the Work.)

Portion of Work	Substantial Completion
[REDACTED]	[REDACTED]

§ 9.2.4 If the Subcontractor fails to achieve substantial completion as provided in this Section 9.2, liquidated damages, if any, shall be assessed as set forth in Section 3.4 or as set forth in any Work Order issued to Subcontractor and made a part of this Agreement.

§ 9.3 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.4 No extension of time will be valid without the Contractor's written consent after a Claim is made by the Subcontractor in accordance with Section 5.3. Subcontractor's sole and exclusive remedy for delay in Subcontract time not the fault of Subcontractor shall be an extension of time to complete work on the schedule; except that where such delay is solely the fault of Contractor. Subcontractor waives the right to claim and receive damages from Contractor for delay in performance of the Subcontract Work unless such delay is solely the fault of Contractor.

**ARTICLE 10 SUBCONTRACT SUM**

§ 10.1 The Contractor shall pay the Subcontractor the Subcontract Sum in current funds for the Subcontractor's performance of the Subcontract. The Subcontract Sum shall be (see subcontract work order), subject to additions and deductions as provided in the Subcontract Documents.

**§ 10.2 Alternates**

§ 10.2.1 Alternates, if any, included in the Subcontract Sum:

Item	Price
[REDACTED]	[REDACTED]

§ 10.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Contractor following execution of this Agreement. Upon acceptance, the Contractor shall issue a Modification to this Subcontract: (Insert below each alternate and the conditions that must be met for the Contractor to accept the alternate.)

Item	Price	Conditions for Acceptance
[REDACTED]	[REDACTED]	[REDACTED]

§ 10.3 Unit prices, if any:

(Identify and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$0.00)
See subcontract work order	[REDACTED]	[REDACTED]

§ 10.4 Allowances, if any, included in the Subcontract Sum:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
See subcontract work order	[REDACTED]

**ARTICLE 11 PAYMENTS**

**§ 11.1 Progress Payments**

§ 11.1.1 Based upon Applications for Payment submitted to the Contractor by the Subcontractor, corresponding to Applications for Payment submitted by the Contractor to the Architect, and Certificates for Payment issued by the

Architect, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the part of the Contractor or Subcontractor for breach of trust, or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.1.1.1 Acceptance of periodic progress payments by Subcontractor shall constitute a waiver of any and all claims by Subcontractor against Contractor or its payment bond surety prior to date of acceptance unless such claims are expressly made in writing and reserved on the face of the Pay Application or on the face of an affidavit and release, or a lien waiver or an attachment thereto.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

**See subcontract work order**

§ 11.1.3 Provided an Application for Payment is received by the Contractor not later than the **(see subcontract work order)** day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next Application for Payment which the Contractor is entitled to submit to the Architect. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Owner. If the Architect does not issue a Certificate for Payment or the Contractor does not receive payment for any cause which is not the fault of the Subcontractor, the Contractor shall pay the Subcontractor, on demand, a progress payment computed as provided in Sections 11.1.7, 11.1.8, 11.1.9 and 11.2. However, payment by Owner to Contractor is an express condition precedent to payment by Contractor to Subcontractor unless the failure of Contractor to receive payment from Owner is solely caused by Contractor. Contractor's surety, if any, shall have the full benefit of the protection of this provision relative to its surety bond.

§ 11.1.4 If the Subcontractor's Application for Payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next Application for Payment submitted to the Architect.

§ 11.1.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent Application for Payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require, and unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's Applications for Payment.

§ 11.1.6 Applications for Payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the Application for Payment.

§ 11.1.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Subcontract Sum properly allocable to completed Work;
- .2 That portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing; and
- .3 The amount, if any, for changes in the Work that are not in dispute and have been properly authorized by the Contractor, to the same extent provided in the Prime Contract, pending a final determination by

the Contractor of the cost of changes in the Subcontractor's Work, even though the Subcontract Sum has not yet been adjusted.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of previous payments made by the Contractor;
- .2 The amount, if any, for Work that remains uncorrected and for which the Contractor has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017 for a cause that is the fault of the Subcontractor;
- .3 For Work performed or defects discovered since the last payment application, any amount for which the Contractor may withhold payment in whole or in part, as provided in Article 9 of AIA Document A201-2017, for a cause that is the fault of the Subcontractor; and
- .4 Retainage withheld pursuant to Section 11.1.8 of this Agreement.

### § 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to substantial completion of the Subcontractor's Work, the Contractor may withhold the following amounts as retainage from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

**See subcontract work order**

§ 11.1.8.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

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§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 11.1.8.1 is to be modified prior to substantial completion of the entire Work, including modifications for substantial completion of portions of the Subcontractor's Work as provided in Section 9.2.3, insert provisions for such modification.)*

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§ 11.1.9 Upon the partial or entire disapproval by the Contractor of the Subcontractor's Application for Payment, the Contractor shall provide notice to the Subcontractor. If the Subcontractor disputes the Contractor's decision regarding a Subcontractor's Application for Payment in whole or in part, the Subcontractor may submit a Claim in accordance with Article 6. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.1.10 Provided the Contractor has fulfilled its payment obligations under the Subcontract Documents, the Subcontractor shall defend and indemnify the Contractor and Owner from all loss, liability, damage, or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any of the Subcontractor's subcontractors, suppliers, or vendors of any tier. Upon receipt of notice of such lien claim or other claim for payment, the Contractor shall notify the Subcontractor. If approved by the applicable court, when required, the Subcontractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### § 11.2 Substantial Completion

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt Application for Payment for such Work. Within 30 days following issuance by the Architect of the Certificate for Payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's



substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

### § 11.3 Final Payment

§ 11.3.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a Certificate for Payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a Certificate for Payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.

*(Insert provisions for earlier final payment to the Subcontractor, if applicable.)*

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§ 11.3.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final Application for Payment. Subcontractor shall furnish to Contractor a general release of all claims and a final lien waiver acceptable to Contractor and the Owner.

§ 11.3.3 Contractor in its sole discretion shall have the right but not the obligation to make payment to Subcontractor and its sub-subcontractors and material suppliers by the issuance of a joint check to Subcontractor and its sub-subcontractor and/or material supplier to satisfy any debts for furnishing of labor, material, equipment and supplies to the Project.

§ 11.3.4 Contractor shall have the right to withhold and set off or recoup from Subcontractor's progress payments or final payment or any portion thereof, sufficient funds to compensate Contractor for:

1. Any liquidated damages withheld by Owner from payment to Contractor due to Subcontractor caused delays in the progress of the Work or default of Subcontractor under the Subcontract.
2. Actual cost to Contractor incurred as a result of Subcontractor's failure to adhere to the schedule including, but not limited to, the cost of additional workmen and materials made necessary by Subcontractor's failure.
3. Such sum as Contractor determines is necessary to protect Contractor for losses as a result of default by Subcontractor (or a good faith belief of potential default by Subcontractor) under the Subcontract including the filing or probably filing of mechanic's liens and/or bond claims by any sub-subcontractor and/or material supplier of Subcontractor.
4. Any sum due Subcontractor by Contractor on any other project for which Subcontractor has performed work under an agreement with Contractor.
5. Failure of Subcontractor to file with Contractor required insurance certificates and surety bonds.

### § 11.4 Interest

Payments due and unpaid under this Subcontract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing. The parties agree on 0% interest on both progress payments and final payment unless otherwise indicated herein.

*(Insert rate of interest agreed upon, if any.)*

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§ 11.5 Contractor may withhold progress payment or final payment from Subcontractor in whole or in part for any failure of Subcontractor to perform the terms and conditions of the Subcontract documents or for the reasons and circumstances by which the Owner may withhold payment from Contractor, regardless of whether the Owner has actually withheld payment from the Contractor.

§ 11.6 Final payment and payment of retainage to Subcontractor is subject to receipt of final payment and release of retainage by Owner to Contractor. Final payment and release of retainage to Subcontractor is expressly conditioned

upon such payment and release and such payment and release is an express condition precedent to payment to Subcontractor; unless such failure of Contractor to receive payment from Owner is solely the fault of Contractor.

§ 11.7 No interest on disputed pay applications or disputed claims.

§ 11.8 No attorneys' fees on disputed pay applications or disputed claims.

## ARTICLE 12 INSURANCE AND BONDS

### § 12.1 Subcontractor's Required Insurance Coverage

§ 12.1.1 The Subcontractor shall purchase and maintain the following types and limits of insurance, from a company or companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

*(Specify each type of insurance, such as commercial general liability, automobile, worker's compensation, employers' liability, professional liability, and pollution, required to be carried by the Subcontractor, the limits of coverage for each type of insurance, and any other pertinent requirements.)*

Type of Insurance	Limits	Other Pertinent Requirements
See subcontract work order		

§ 12.1.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 12.1.3 If professional services are required under Section 4.9, the Subcontractor shall provide the professional liability insurance coverage required under this Section 12.1 for the following period after completion of the Work:

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§ 12.1.4 **Certificates of Insurance.** The Subcontractor shall provide certificates of insurance acceptable to the Contractor evidencing compliance with the requirements in this Article 12 at the following times: (1) prior to commencement of the Subcontractor's Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Contractor's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the time required in this Article 12. The certificates shall show the Contractor and the Owner as additional insureds on the Subcontractor's Commercial General Liability and any excess or umbrella liability policy.

§ 12.1.4.1 Failure to provide certificate of insurance and bond shall be ground for rescinding this Subcontract Agreement by Contractor or withholding payment of Subcontract sum at Contractor's election.

§ 12.1.5 **Deductibles and Self-Insured Retentions.** The Subcontractor shall disclose to the Contractor any deductible or self-insured retentions applicable to any insurance required to be provided by the Subcontractor.

§ 12.1.6 **Additional Insured Obligations.** To the fullest extent permitted by law, the Subcontractor shall cause its commercial general liability coverage to include: (1) the Contractor, the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor and Owner as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions for which loss occurs during the Subcontractor's completed operations. The additional insured coverage shall be primary and non-contributory to any of the Contractor's and Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ 12.1.6.1 Any insurance policy obtained by the Subcontractor to fulfill the insurance requirements of the Subcontract shall provide that such insurance shall be deemed primary insurance to any similar insurance the Contractor may obtain for its own benefit, which shall be in excess or secondary but not contributing insurance. Each such policy obtained by the Subcontractor shall provide that the insurer shall defend any suit against the Contractor, its officers, agents, or employees, even if such suit is contested.

§ 12.1.6.2 The issuance or maintaining of insurance of any type by the Subcontractor or the Contractor will not be deemed or construed to release, limit, waive or discharge the Subcontractor from any and all of the obligations and risks imposed by said Contract upon the Subcontractor. Neither shall any forbearance or omission by the Contractor to require proof of insurance from the subcontractor before permitting the Subcontractor to proceed or continue with the Work be deemed a waiver of the Contractor's rights or the Subcontractor's obligation regarding the provision of insurance under this Subcontract.

§ 12.1.7 **Notice of Cancellation or Change in Coverage.** Within three (3) business days of the date the Subcontractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Subcontract Documents, the Subcontractor shall provide notice to the Contractor of such impending or actual cancellation or expiration. Upon receipt of notice from the Subcontractor, the Contractor shall, unless the lapse in coverage arises from an act or omission of the Contractor, have the right to suspend the Work in accordance with this Agreement until the lapse in coverage has been cured by the procurement of replacement coverage by the Subcontractor. The furnishing of notice by the Subcontractor shall not relieve the Subcontractor of any contractual obligation to provide any required coverage.

§ 12.2 **Subcontractor's Required Performance Bond and Payment Bond**

§ 12.2.1 The Subcontractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:  
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond (See subcontract work order)	
Performance Bond (See subcontract work order)	

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

§ 12.2.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations under this Agreement, the Subcontractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 12.3 **Contractor's Insurance and Bond Obligations**

§ 12.3.1 The Contractor shall furnish to the Subcontractor certificates of insurance evidencing insurance coverage required of the Contractor under the Prime Contract.

§ 12.3.2 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 12.4 **Property Insurance**

§ 12.4.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project, to the extent copies of the policies are available to the Contractor. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 12.4.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 12.4.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the Application for Payment process.



### § 12.5 Waivers of Subrogation

The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work or to property at or adjacent to the Project site, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require similar written waivers in favor of the individuals and entities enumerated herein from the Subcontractor's Sub-subcontractors, agents, and employees. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 12.5 shall not prohibit this waiver of subrogation, which shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the property damaged.

## ARTICLE 13 TEMPORARY FACILITIES, SERVICES, EQUIPMENT AND WORKING CONDITIONS

§ 13.1 The Contractor shall furnish and make the Contractor's temporary facilities and services available to the Subcontractor at no cost, except as noted below:

**Temporary electrical power, water and trash dumpster for construction debris deposited by Subcontractor's personnel**

§ 13.2 The Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms, except as noted below:

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§ 13.3 Specific working conditions as noted below:

*(Insert any specific arrangements or requirements concerning working conditions and labor matters applicable to the Subcontractor's Work.)*

Subcontract work to be scheduled and performed in accordance with Division 1 – General Requirements of Equal Employment Opportunity (Exhibit C), Harmony Clause (Exhibit D), Straub Construction Company, Inc. Policies (Exhibit E), Supplemental Conditions (Exhibit F), Subcontractor/Supplier Lien Waiver Requirements Notice (Exhibit G) and in accordance with Williams-Steiger Occupational Safety & Health Act of 1970, as set forth by the U.S. Department of Labor. Any penalties suffered by the Subcontractor for violation of the act will be the sole responsibility of the Subcontractor, and in no way shall the General Contractor be held responsible for the Subcontractor's violation and/or penalties.

The Subcontractor is responsible for clean up of scraps, boxes, etc., caused from materials used in his work and is responsible for the disposal of this debris to the trash dumpster or location on site designated by the job Superintendent.

**CLEAN UP OF WORK AREAS IS TO BE ON A DAILY BASIS. FAILURE TO CLEAN UP SHALL BE SUBJECT TO BACKCHARGE.**

**USE OF DRUGS, ALCOHOL, PROFANITY, SMOKING AND THE PLAYING OF ANY AUDIO EQUIPMENT SHALL NOT BE PERMITTED ON A JOBSITE.**

§ 13.4 Subcontractor is responsible for verifying the dimensions and elevations at the site by field measurement prior to ordering materials or in any way commencing to perform work. Subcontractor shall be solely responsible for monitoring the progress of the project and for coordinating and performing all field measurements in a timely manner sufficient to support the Project's schedule.

§ 13.5 Subcontractor shall notify the Contractor in writing of any deficiencies in any work at the site prior to the commencement of the Subcontract Work. Any unreported deficiencies discovered or which should have been

discovered by Subcontractor shall be deemed accepted by the Subcontractor as the commencement of the Subcontractor's work in such areas and becomes the responsibility of Subcontractor.

#### ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

§ 14.2 The Contractor's representative:  
*(Name, address, email address and other information)*

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§ 14.3 The Subcontractor's representative:  
*(Name, address, email address and other information)*

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#### § 14.4 Notice

§ 14.4.1 Except as otherwise provided in Section 14.4.2, where the Subcontract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic notice is set forth in Section 14.4.3.

§ 14.4.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 14.4.3 Notice in electronic format, pursuant to Section 14.4.1, may be given in accordance with AIA Document E203™—2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203™—2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

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§ 14.5 Neither the Contractor's nor the Subcontractor's representative shall be changed without ten days' prior notice to the other party.

§ 14.6 The invalidity of any provision of the Subcontract Documents shall not invalidate the Subcontract or its remaining provisions. If it is determined that any provision of the Subcontract violates any law or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case, the Subcontract shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Subcontract.

§ 14.7 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™—2013, Building

Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 14.7.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 14.8 This Subcontract shall be governed by the laws of the State of Kansas. Venue for any dispute resolution procedures in court shall be in the District Court of Johnson County, Kansas and in any arbitration in Shawnee, Kansas or such other location as the parties mutually agree.

#### ARTICLE 15 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 15.1 This Agreement is comprised of the following documents:

- .1 AIA Document A401™–2017, Standard Form Agreement Between Contractor and Subcontractor;
- .2 Prime Agreement between the Owner and Contractor, including all exhibits thereto, attached as Exhibit A;
- .3 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if not included in the Prime Agreement, dated as indicated below:  
*(Insert the date of the E203–2013 incorporated into this Agreement.)*

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- .4 Other Exhibits incorporated into this Agreement:  
*(Clearly identify any other exhibits incorporated into this Agreement.)*

Subcontract Work Order – Any subcontract work order issued under this subcontract  
Exhibit A – Scope of Work - **See subcontract work order Exhibit A**  
Exhibit B – Drawings and Specifications – **See subcontract work order Exhibit B**  
Exhibit C – General Requirements of Equal Employment Opportunity  
Exhibit D – Harmony Clause  
Exhibit E – Straub Construction Company, Inc. Policies  
Exhibit F – Supplemental Conditions  
Exhibit G – Subcontractor/Supplier Lien Waiver Requirements Notice

- .5 Other documents:  
*(List other documents, if any, forming part of the Agreement.)*

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§ 15.2 Prior to performing any Work or supplying any labor, material, equipment or supplies for which Subcontractor intends to make claim for additional Subcontract sum, Subcontractor shall first advise Contractor's superintendent on site of such intent and secure from the supervisor Contractor's form written Work Ticket to be signed by the supervisor at the completion of the furnishing of such work, labor, equipment, materials or supplies by Subcontractor. Any deviation by Contractor's representatives on site from this field Work Ticket policy of Contractor shall be reported by Subcontractor immediately to Contractor's home office in Shawnee, Kansas for resolution. Failure of Subcontractor to secure a signed Work Ticket from the Contractor's site supervisor or to immediately report to Contractor's home office any noncompliance with this policy shall constitute a complete waiver by Subcontractor of any and all rights to a Change Order under this Subcontract and any and all claims for additional Subcontract Sum related to such furnishings. Absent compliance with this paragraph, Subcontractor shall be estopped from claiming later in any dispute resolution proceeding that the failure of Subcontractor to comply with this policy is the fault of or caused by Contractor.

§ 15.3 Any and all subsidiary documents which may require signatures of the parties to be charged as a result of this Subcontract may be executed by the parties either in wet ink and exchanged or by facsimile signature through recognized electronic means.

§ 15.4 This Subcontract and documents designated herein including any subsequently issued Work Orders, if any, constitute the entire agreement of Contractor and Subcontractor and cannot be amended, modified or changed except in writing executed by Contractor and Subcontractor or otherwise agreed to by other electronic means. All proposals, quotes, bids, discussions, negotiations representations and promises, if any, are merged herein and superseded hereby.

This Agreement entered into as of the day and year first written above.

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**CONTRACTOR** *(Signature)*  
Parker J. Young, Jr., Executive Vice President/COO  
*(Printed name and title)*

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**SUBCONTRACTOR** *(Signature)*  
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*(Printed name and title)*

