



Project Number: _____
Subcontract Number: _____
Vendor Number: _____
Date Issued: _____ <b>See Notice to Subcontractor Below</b>

## SUBCONTRACT AGREEMENT FOR CONSTRUCTION

### PART 1 PROJECT SPECIFIC SUBCONTRACT SUMMARY

(Missouri/Idaho/Illinois/Michigan/Oklahoma/Oregon/South Carolina/Tennessee/Texas/Virginia – Revised May 2022)  
(The Subcontract Agreement is comprised of two parts: Part 1 Project Specific Subcontract Summary and Part 2 General Terms and Conditions.  
Each Part is included in the other by this reference as if fully enumerated in detail therein and together with noted exhibits comprise the entire agreement)

THIS AGREEMENT made on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between

**CONTRACTOR:** PARIC CORPORATION (A MISSOURI CORPORATION) ("Contractor")  
77 Westport Plaza  
Suite 250  
St. Louis, MO 63146

and,

**SUBCONTRACTOR:** (Full Name) ("Subcontractor")  
(Address)  
(City, State, ZIP)

**PROJECT:** (Project Name) ("Project")  
(Project address)  
(City, State, Zip)

**OWNER:** (Full Name) ("Owner")  
(Address)  
(City, State, Zip)

**ARCHITECT/ENGINEER:** (Full Name) ("Architect")  
(Address)  
(City, State, Zip)

**NOTICE TO SUBCONTRACTOR:** At the discretion and determination of Contractor, this subcontract agreement will be null and void if not signed and returned to Contractor without changes or modifications within ten days of the issue date.

Where written notice is required by this agreement, notice shall be given to the parties at the above addresses.

**SCOPE OF WORK:** Subcontractor agrees to provide the (design and) construction services necessary to complete the \_\_\_\_\_ work as described hereinafter in Article 1 – Scope of Work and as required by the Contract Documents.

**PROJECT COMPLETION DATE:** Subcontractor agrees to diligently prosecute its work and cooperate with Contractor and other Subcontractors to complete the \_\_\_\_\_ work in accordance with the Project Schedule enclosed as Exhibit D and in such manner that all Subcontractors can complete their work to ensure completion of the entire Work and Owner occupancy on or before \_\_\_\_\_.

**SUBCONTRACT PRICE:** (Lump Sum, GMP) of (WRITTEN AMOUNT) (\$\_\_\_\_\_ )

**RETAINED PERCENTAGE ON PROGRESS PAYMENTS:** \_\_\_\_\_ percent (\_\_\_\_\_%)

**PROGRESS PAYMENT PERCENTAGE:** \_\_\_\_\_ percent (\_\_\_\_\_%)

**PRIMARY ADDITIONAL INSURED REQUIREMENT:**

For Paric Project Number \_\_\_\_\_ titled \_\_\_\_\_, PARIC Corporation, (Owner's Name) and others as required by the Contract Documents are added as Additional Insured's under the Subcontractor's Commercial General Liability Policy and Umbrella Liability Policy. Coverage under such policies shall be primary and non-contributory with Additional Insureds' insurance policies being excess over Subcontractor's coverage. Such primary and non-contributory coverage shall apply to Completed Operations Coverage as identified in Article 6 of this Subcontract Agreement.

## **1. ARTICLE I - SCOPE OF WORK**

- 1.1. Contractor employs Subcontractor as an independent contractor to perform the part of the Work listed herein which Contractor has contracted with Owner to provide on the Project.
- 1.2. Subcontractor agrees to perform such part of the Work (hereinafter called "Subcontractor's Work" or "Work") under the general direction of Contractor and in accordance with the Contract Documents. Subcontractor will furnish all of the labor, material, tools, equipment, rigging, scaffolding, stages, conveying, drinking water, fuel/oil/grease (FOG) storage, and hoisting, along with competent supervision, shop drawings and samples, scaffolding, and permits which are necessary for such performance.
- 1.3. Subcontractor shall provide construction (and where applicable, design) services necessary to complete the scope of work defined in Exhibit C in a good and workmanlike manner and in accordance with the Contract Documents identified in Exhibit A for the subject project, and, in particular, the Specification Section(s) identified in Exhibit A, and in accordance with the Project Schedule enclosed as Exhibit D.
  - 1.3.1 (For design/build subcontracts only) Provide the engineering and design services necessary to complete the preparation of sealed construction drawings and specifications prepared by a licensed engineer registered in the state where the project is located for the design/build Subcontractor's Work which shall (a) incorporate the programmatic, design and functional requirements of Owner and Architect, (b) be fully coordinated with the drawings and specifications prepared by Architect and other design/build subcontractors, and (c) all in such manner as to produce a fully coordinated and operational system in compliance with all Federal, State and Local laws and all applicable building codes.
- 1.4 SUBCONTRACT PRICE: The Subcontract Price is identified in Exhibit C, along with all applicable allowances, alternates, unit prices, clarifications and exclusions.

## **2. ARTICLE 2 – GENERAL TERMS & CONDITIONS**

- 2.1. CONTRACT DOCUMENTS: The Contract Documents are as listed on Exhibit A to this Subcontract. Except to the extent otherwise provided in this Subcontract Agreement, the Contract between Contractor and Owner, and all documents incorporated therein, including but not limited to the General, Supplementary, other Conditions and referenced standards and codes (hereinafter referred to as the "General Contract"), is expressly incorporated herein and, as applicable to Subcontractor's work, is made part of this Subcontract Agreement as if fully set forth herein at length. Subcontractor binds itself and its sub-subcontractors to Contractor for the performance of Subcontractor's Work and the Sub-subcontractor's Work in the same manner as Contractor is bound to Owner for such performance under the General Contract. Subcontractor acknowledges that it has reviewed the Contract Documents listed in Exhibit A, including the General Contract, as such documents have been made available to Subcontractor for its review and for its contemplation of the Work set out in this Subcontract.
- 2.2. HARMONY OF CONTRACT DOCUMENTS: The Contract Documents are intended to supplement one another, and any work, materials or equipment shown or mentioned in one and not in the other shall be construed as being required by all the Contract Documents and shall be furnished by Subcontractor without extra charge. The enumeration of said items in this Subcontract or in the Contract Documents shall not be construed to exclude other items. If a conflict in the Subcontract Documents is discovered, then the most strict interpretation or the most costly interpretation shall prevail unless waived in writing by Contractor.
- 2.3. IMPLIED SCOPE OF WORK: Subcontractor agrees to furnish, without extra charge, all Work, labor, materials and equipment not mentioned or shown, but generally included under this class of

Subcontract or fairly implied therein as necessary for the satisfactory completion of the Project, and also any Work, labor, materials or equipment of the kind herein contracted for which may be required to conform Subcontractor's work to comply with all laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments and appropriate departments, boards and authorities having jurisdiction, including minority and women requirements for employees and subcontractors, and of the insurance organization having jurisdiction, or any other body or entity exercising similar functions. Any specific reference in this Subcontract to any law, ordinance, regulation, rule, code, or like enactment shall be interpreted to include all amendments, revisions, alterations, or successors implemented at any time before or during the performance of this Subcontract.

- 2.4. **CHANGE IN LAW OR NEW LAW:** If any change or enactment of a law, ordinance, regulation, code or rule (collectively "Law") occurs during the project and this new or changed Law affects the work of Subcontractor, then Subcontractor will be entitled to submit its claim for the effect of any such change on its Work and will be compensated in both additional cost and time if and to the same extent Contractor is paid and granted additional time for the effects of the changes by Owner. Subcontractor shall promptly notify Contractor in writing of any such matters, explaining with specificity the change at issue, so as to permit Contractor to timely advise the Owner of such matters and not prejudice Contractor's right to seek appropriate additional costs and time from the Owner. Such reports shall be in the form of a Request For Information ("RFI") which shall clearly identify the issue(s), specifically reference any provisions of the plans and/or specifications at issue, and clearly identify the direction needed to proceed. Subcontractor shall not proceed with the affected Work after it has actual knowledge of the new or changed Law, pending further direction in writing from Contractor. Subcontractor agrees that it proceeds at its own risk if Subcontractor proceeds with the affected Work without having properly advised Contractor of same, and without having received written direction from Contractor.
- 2.5. **SITE CONDITIONS AND INVESTIGATION:** Subcontractor agrees and represents that it is fully informed regarding all conditions affecting the Work to be done, material, equipment, apparatus and labor to be furnished to complete the Work of this Subcontract and is qualified to perform this Subcontract Work. Subcontractor acknowledges and certifies that prior to the execution of this Subcontract, it has, by its own independent, personal site investigation and research and not from any estimates or representations of any officer, agent or employee of Contractor, ascertained and fully evaluated the Work required by the Subcontract, the conditions and difficulties involved in performing the Work including the availability of requisite skilled workmen, the nature, locality and site of the work, and has reasonably verified all information furnished by Contractor or others satisfying itself as to the correctness of that information. Subcontractor shall determine and verify all field measurements, field construction criteria, etc., as required to accomplish, erect, and complete its Work requirements. If dimensions, criteria or conditions are erroneous, Contractor shall be notified in writing of same and commencement of any such impacted Work shall be delayed until the discrepancy is resolved and Subcontractor is authorized to proceed with that part of the Work affected thereby.

Subcontractor shall, within three (3) days of its discovery, report to Contractor any (a) discrepancy between what is represented in the Contract Documents and actual field conditions, and/or (b) design errors and omissions noted by Subcontractor. Subcontractor shall not proceed with performing any Work knowing of any such discrepancy without first providing Contractor with written notice as provided for herein and obtaining written direction from Contractor with respect to how to proceed. Such reports shall be in the form of a Request For Information ("RFI") which shall clearly identify the issue(s), specifically reference any provisions of the plans and/or specifications at issue, and clearly identify the direction needed to proceed.

- 2.6. **UNFORESEEN SITE CONDITIONS:** Subcontractor shall make no claims for differing site conditions except as authorized in the Contract Documents. If Subcontractor presents a claim to Contractor for differing site conditions, Contractor will in good faith present a like claim for compensation and/or a time extension (where applicable) to the Owner so long as Contractor

believes in good faith that there is a reasonable basis for Subcontractor's claim. Contractor shall have no obligation to compensate Subcontractor for any claim for a differing site condition unless and until Owner compensates Contractor for such condition, and Subcontractor shall not receive an extension of time for a differing site condition unless Contractor receives a like extension of time from the Owner. Contractor's liability to Subcontractor for differing site conditions shall be limited to Owner's liability to Contractor for any costs or time allegedly incurred by Subcontractor (unless Contractor refuses to present a like claim to the Owner for consideration).

- 2.7. **BONDS:** If required by Contractor and prior to the commencement of the work, a Performance Bond and a Labor and Material Payment Bond, from a surety and in a form solely satisfactory to Contractor and by a surety authorized to transact business in the State where the Project is located, shall be furnished in the full amount of this Agreement. This obligation shall continue throughout the Agreement and may be requested at any time during the performance of Subcontractor's work. Subcontractor will be reimbursed for the cost of the bond by a change under Article 5, if not otherwise required to be a part of Subcontractor's scope of work and Subcontract price.
- 2.8. **STRIKE OR WORK STOPPAGE:** During the performance of the Work required by this Subcontract, Subcontractor, its employees, suppliers and visitors will only use such entrance or entrances to the construction site as may be designated from time to time by Contractor. Subcontractor agrees that in the event of any strike, picket, sympathy strike, work stoppage, or other form of labor dispute at the construction site, whether that dispute or picket is in connection with Contractor, Subcontractor, Owner or any other contractor or subcontractor on the construction site, Subcontractor will continue to perform the Work required herein without interruption or delay provided Contractor establishes a valid reserved gate system at the Work site or establishes reserved Work schedules for the employees of the primary employer with whom the dispute exists. In all events, Subcontractor agrees to abide by any reserved gate system established by Contractor. In the event Subcontractor is the primary employer with whom the dispute exists, Subcontractor will comply with the directives of Contractor to: (a) enter the construction site only by the gate that is designated by Contractor; and/or (b) perform its Work only at the times established for it by the Contractor, without cost to Contractor. In the event that Subcontractor fails to continue the performance of the Work required herein, without interruption or delay, because of such picket or other form of labor dispute, Contractor may invoke the default and termination provisions of this Subcontract. This paragraph does not apply in the event the Work stoppage arises due to an expiration of a labor contract to which Subcontractor was signatory.
- 2.9. **COMPETENT SUPERVISOR:** Subcontractor agrees to provide a competent and skilled supervisor, reasonably acceptable to Contractor, who shall be in attendance at the Project site during the performance of Subcontractor's work, and who shall be authorized to represent Subcontractor as to all phases of the work. Subcontractor's jobsite representative must attend all jobsite coordination meetings. The failure to do so shall be grounds for default. Any direction, instructions, information or data given to Subcontractor's representative by Contractor shall be as binding as though given to Subcontractor himself.
- 2.9.1 **EQUIPMENT OPERATORS:** Any Subcontractor employee or person acting on behalf of Subcontractor who is operating any piece of equipment shall be qualified to operate said equipment and shall provide Contractor with proof thereof upon request. If required by OSHA, such employee or person shall possess and provide proof thereof, of any device or manufacturer specific training or certification."
- 2.10. **WORKER DISCIPLINE:** Subcontractor shall enforce strict discipline and good order among Subcontractor's employees and their relationship with the employees of Contractor and other subcontractors on the Project site. Subcontractor shall not permit the employment of unfit persons or persons not skilled in the tasks assigned to them or employees who are uncooperative with Contractor's employees. Subcontractor shall, upon written notice of Contractor, remove from the Project site any of Subcontractor's employees so designated by Contractor, who by reason of their

conduct or performance of the work, are deemed by Contractor to be unfit to continue working on the Project site.

- 2.11. **REPORTS:** At least monthly, Subcontractor will prepare and submit written progress reports of Subcontractor's work as reasonably required by Contractor. These reports will be in a written or electronic format as approved by Contractor and may include the division of the work into its various work activities such as engineering, preparation of fabrication drawings, material delivery schedules, installation activities, testing, start-up, etc., and associated information such as manpower required by craft, man-hours for each activity and/or equipment requirements. If required by Contractor, Subcontractor shall submit a copy of Subcontractor's daily reports and timesheets to Contractor for each calendar week work is performed on the project.
- 2.12. **VERIFY FABRICATION AND DELIVERY:** Subcontractor agrees that Contractor may verify fabrication and material delivery schedules of equipment and materials, directly with Subcontractor's vendors.
- 2.13. **NO DISCRIMINATION:** Subcontractor shall not discriminate against any employee or applicant for employment because of race, sex, religion, color, age, disability, origin, veteran status, marital status, or any other protected basis. Furthermore, Subcontractor shall comply with Owner's requirements regarding non-discrimination in employment.
- 2.14. **LOWER TIER SUBCONTRACTORS AND SUPPLIERS:** Subcontractor shall complete Exhibit E to this Subcontract Agreement, identifying all of Subcontractor's lower tier subcontractors and suppliers that Subcontractor intends to use on the Project. A phone number shall be provided for each lower tier subcontractor or supplier identified. Subcontractor shall immediately notify Contractor in writing if Subcontractor adds to or changes any lower tier subcontractors or suppliers for the Project. Subcontractor shall not engage a lower tier subcontractor with a current EMR  $\geq$  1.0 without first obtaining the consent in writing of Contractor to such engagement. Subcontractor shall not sublet any portion of the work to or enter into an agreement with an Employee Leasing Company without Contractor's prior written approval. Subcontractor waives and releases Contractor from any claim for payment with regard to work performed by workers provided by an Employee Leasing Company in violation of this provision.

Subcontractor shall pay for all materials, equipment and labor used in, or 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. Subcontractor acknowledges and agrees that its failure, after receipt of payment from Contractor, to make timely payments to its subcontractors, vendors and laborers shall constitute a material breach of this Subcontract Agreement. Contractor shall have the right to contact Subcontractor's subcontractors and suppliers to ascertain whether they are being paid by Subcontractor in accordance with this Agreement.

### **3. ARTICLE 3 – PAYMENT**

- 3.1. **PROGRESS PAYMENTS:** Contractor agrees to pay to Subcontractor, subject to other provisions hereof, including additions and deletions as herein provided, the total sum as stipulated herein as the Subcontract Price. Progress payments shall be made only for actual Work performed to the satisfaction of Contractor and Owner and shall be made on the basis of, and only to the extent of, payments actually received by Contractor from Owner. Progress payments will be made to Subcontractor each month or the period corresponding to the time for such payments in the General Contract subject to the conditions herein. Payment will be made in an amount stipulated as the Progress Payment Percentage of the estimated value of the labor, materials, and equipment incorporated in the construction and, if allowed under the General Contract, the amount stipulated as the Progress Payment Percentage of the estimated value of the materials and equipment suitably stored at the Project site, less the retainage and aggregate of previous payments in each case; provided, however, such progress payments shall not become due to Subcontractor until seven (7) days after receipt by Contractor of its payment from Owner for such labor, materials, and equipment.

- 3.2. **FINAL PAYMENT:** Final payment will be made to Subcontractor within thirty (30) days after this Subcontract is fully completed and performed by Subcontractor, Subcontractor's work hereunder is accepted in writing by Owner, full payment for such work has been received by Contractor from Owner, and a complete release of any and all liens or other claims against Contractor and Owner has been executed by Subcontractor and delivered to Contractor, except any claim that Subcontractor has previously reserved in writing to Contractor which specifically identifies the item(s) unsettled at the time of final payment.
- 3.3. **OWNER'S PAYMENT TO CONTRACTOR MANDATORY**
- 3.3.1 Owner's payment to Contractor shall be a condition precedent to Contractor's obligation to pay Subcontractor and Subcontractor's right to receive payment. Subcontractor hereby acknowledges that it is assuming the risk of non-payment by the Owner. This condition precedent also applies to Contractor's obligation to pay progress payments, change orders, retainage, final payment and any other payment required by the Contract Documents. This paragraph supersedes all other provisions of this Agreement, including any provisions in the Prime Agreement, and any conflicting language shall be modified or deemed to be consistent herewith.
- 3.3.2. This Paragraph shall be deemed to apply only in those jurisdictions in which by statute or by judicial interpretation the terms of Paragraph 3.3.1 are not enforceable. In such instance, the following provision shall apply: if Owner delays making payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. "Reasonable time" shall be determined according to the relevant circumstances, but in no event shall be less than the time Contractor, Contractor's sureties, and Subcontractor require to pursue to conclusion their legal remedies against Owner to obtain payment, including, but not limited to, mechanic's lien remedies.
- 3.4. **WITHHOLDING OF PAYMENT:** To the extent reasonably necessary to protect itself, Contractor is not obligated to make any payment to Subcontractor if any one or more of the following conditions exist:
- 3.4.1 Subcontractor has failed to perform its obligations under this Subcontract or otherwise is in default under the Subcontract or the Contract Documents.
- 3.4.2 Subcontractor or any Sub-subcontractor has failed to make payments promptly to any lower-tier subcontractor or material supplier or to make payment for labor or material used in the work for which Subcontractor has received payment.
- 3.4.3 Subcontractor has failed to provide or maintain the required insurance or bonds.
- 3.4.4 Reasonable evidence exists that Subcontractor's work cannot be completed for the unpaid balance of the Subcontract price.
- 3.4.5 Contractor holds a reasonable belief that Subcontractor is unable or unwilling to prosecute the Work in a diligent manner jeopardizing the timely completion of Subcontractor's portion of the Work or the work of other subcontractors.
- 3.4.6 Third party claims filed against Contractor, Owner or the project arising for any reason from the operations of the Subcontractor or reasonable evidence indicating probable filing of such claims or liens.
- 3.4.7 Subcontractor is adjudged bankrupt, it has made a general assignment for the benefit of its creditors, a receiver is appointed on account of its insolvency or is subject to a garnishment.

- 3.5. **LIEN WAIVERS:** Accompanying Subcontractor's Applications for Payment, Subcontractor shall provide lien waivers in the form required by Contractor or Owner to document that all accounts pertaining to the Project have been paid in full. Unless otherwise directed by Contractor, Subcontractor shall provide lien waivers in the form attached hereto as Exhibit I. Subcontractor shall also provide similar lien waivers from all sub-subcontractors and vendors of any tier who are providing goods and services for the Project in an aggregate value in excess of \$5,000. Lien waivers from other sub-subcontractors and vendors of any tier shall be provided only upon request of the Contractor. If Subcontractor does not provide lien waivers in accordance with this Paragraph, or if Contractor otherwise reasonably determines that Subcontractor is not timely paying its subcontractors and suppliers, then Contractor shall have the right to issue joint checks, make payments directly to Subcontractor's subcontractors or suppliers, or to take other reasonable actions in connection with payment, in order to reasonably protect Contractor's interest. All payments made by Contractor by joint check or directly to Subcontractor's subcontractors or suppliers shall reduce the amounts due Subcontractor under this Subcontract Agreement. It is agreed that no payment hereunder shall be made to Subcontractor, except at Contractor's option, until and unless lien waivers have been provided in accordance with this Paragraph.
- 3.6. **SCHEDULE OF VALUES:** Subcontractor shall, before the first application, submit to Contractor a Schedule of Values of the various parts of the work, aggregating the total sum of this Subcontract, made out in such detail as Contractor may reasonably require, or as required by Owner or Architect, and, if required, supported by such evidence as to its correctness as Contractor may direct. The Schedule of Values shall clearly identify the portions of the work that are attributable to each of the lower tier subcontractors and suppliers identified in Exhibit E. This schedule, when approved by Contractor, shall be used as a basis for Applications for Payment, unless it is found to be in error. In applying for payment, Subcontractor shall submit a statement based upon this schedule.
- 3.7. **PAYMENT APPLICATION SUBMISSION:** Subcontractor's Applications for Payment shall be submitted to Contractor no later than the 20th day of the month or as otherwise stipulated by Contractor, for work covered through that date in order to be included in Contractor's corresponding Application for Payment.
- CHANGE ORDER LOG:** Subcontractor shall include a change order log with its payment application. The change order log shall include approved, rejected, pending and potential change orders and estimated costs that the Subcontractor plans on submitting to the Contractor as of the date the Subcontractor's payment application is submitted to the Contractor.
- 3.8. **FAILURE TO PROSECUTE WORK:** Subcontractor agrees that if it should neglect to prosecute its Work diligently or properly, or otherwise fail to perform any provision of this Subcontract, Contractor, with forty-eight (48) hour advance written notice, may, without prejudice to any other right or remedy Contractor may have, furnish labor, services or materials to make good such deficiencies and may deduct as a "backcharge" the cost thereof (on the basis of Contractor's costs, plus 15%) from the payment then or thereafter due Subcontractor; alternatively, Contractor may withhold the estimated cost plus 15% to correct the work from payments then or thereafter due Subcontractor until such deficiencies are made good. Subcontractor may contest Contractor's right to impose such backcharges, or the amount of such charges, under the procedures established in Article 10.
- 3.9. **PAYMENT NOT ACCEPTANCE:** Payment to Subcontractor by Contractor shall not constitute acceptance of the Work by Contractor or Owner.
- 3.10. **ACCEPTANCE OF FINAL PAYMENT AS WAIVER:** Acceptance of final payment by Subcontractor shall constitute a waiver of any and all claims by Subcontractor against Contractor or Owner, except any claim that Subcontractor has previously reserved in writing to Contractor and which Subcontractor specifically identifies as unsettled at the time of such application for final payment.
- 3.11. **LIENS:** Subcontractor agrees it is obligated to Contractor to pay, compromise and settle all claims of lien or liens filed by Subcontractor's vendors of any tier to the extent Subcontractor has been paid,



and Subcontractor shall indemnify, defend and hold harmless Contractor from and against all costs, expenses and attorney fees arising in connection with such claims or liens and shall remove such liens promptly. Otherwise, Contractor shall pay or settle such liens and deduct all appropriate costs and expenses from the Subcontract price by deductive change order.

- 3.12. STORED MATERIALS: Subcontractor shall comply with and be responsible for all of the conditions and requirements of the General Contract respecting payment application, payment, insurance, tagging, transfer of title, delivery, etc. as related to stored materials of the Subcontractor.
- 3.13 Subcontractor's compliance with the provisions of Article 4.26 concerning compliance with immigration and control provisions shall be a condition precedent to the Subcontractor's right to receive payment on the Project.
- 3.14 INTEREST: If Contractor fails to make any payment to Subcontractor as provided in the Contract Documents, then Subcontractor shall be entitled to interest on amounts not paid when due at the Prime Rate.
- 3.15 SURETY LIABILITY: Subcontractor agrees that the liability of the surety on Contractor's payment bond, if any, for payment to Subcontractor, is subject to the same conditions precedent as are applicable to Contractor's liability to Subcontractor.

#### **4. ARTICLE 4 – PROSECUTION OF THE WORK**

- 4.1. TIME IS OF THE ESSENCE: Time is of the essence for all of the obligations undertaken by Subcontractor and required of it by the Subcontract. Subcontractor agrees to see to the performance of its Work and the Work of its sub-subcontractors so that the entire project may be completed in accordance with the Contract Documents as stipulated herein as the Project Completion Date and as set forth in Exhibit D. Normal worksite operation hours shall be 7:00 am to 3:30 pm, Monday through Friday, unless approved in writing by Contractor. Costs for Contractor's supervision required for Subcontractor's work outside of normal worksite operation hours shall be the responsibility of the Subcontractor unless otherwise approved by the Contractor.
- 4.2. MEANS AND METHODS: Subcontractor shall be solely responsible for and have control over construction means, methods, techniques, procedures and safety program implementation for its work, which must also be complementary and aligned to Contractor's Project Schedule.
- 4.3. COORDINATION OF WORK:
  - 4.3.1. Except as otherwise directed by Contractor, Subcontractor shall be responsible for the coordination and proper fitting of its Work with the work of other subcontractors or separate contractors and it shall plan and execute the Work with such other subcontractors or separate contractors to make the several parts of the Work come together properly to achieve the intent of the Contract Documents.
  - 4.3.2. Subcontractor shall cooperate with Contractor and other subcontractors whose work might interfere with Subcontractor's Work and shall participate in the preparation of coordinated drawings, allowing for appropriate tolerances, in areas of congestion as required by the Contract Documents, specifically noting and advising Contractor of any such interference.
  - 4.3.3 SUBSTRATE ACCEPTANCE: Subcontractor shall carefully review all substrate conditions that are predecessor to Subcontractor's work. Subcontractor shall notify Contractor in writing of the existence of any unacceptable substrate conditions before Subcontractor proceeds with its work thereon. Subcontractor's commencement of its work constitutes acceptance of the underlying substrate conditions. Any costs that Subcontractor thereafter incurs arising out of the existence of unacceptable substrates shall be the responsibility of the Subcontractor.

- 4.3.4 SEISMIC BRACING: Where appropriate for the Work to be performed, Subcontractor shall provide all applicable seismic bracing for Subcontractor's work in accordance with seismic zone requirements and any applicable building codes. If no seismic zone is indicated in the Contract Documents, Subcontractor shall utilize seismic Zone D.
- 4.3.5 INSPECTIONS/TESTING: Subcontractor shall assist, coordinate, and provide access for inspections and testing that is performed by testing and inspection agencies with respect to Subcontractor's Work. Subcontractor shall be responsible for securing and paying for all permits, licenses, escrows and inspection fees necessary for the Subcontractor's Work (other than the building permit to be obtained by Contractor or Owner).
- 4.3.6 TRAFFIC CONTROL: Subcontractor shall provide its own traffic control for all public and private roads and lots as required for the execution of its Work. Subcontractor shall also clean all mud and debris from Subcontractor's vehicles including delivery vehicles when leaving the work area/limits of construction.
- 4.4. SUBMITTALS AND SHOP DRAWINGS: Subcontractor agrees to prepare, or otherwise obtain, and submit shop drawings/samples, product data and other submittals as soon as possible. Subcontractor shall provide Contractor with a complete schedule for all submittals no later than 14 days after execution of the Subcontract Agreement. Subcontractor shall be responsible to Contractor for the accuracy and conformity of its submittals to the Contract Documents. The Subcontractor shall prepare and deliver an electronic copy of its submittals to the Contractor in a manner consistent with the Project Schedule and in such advance time and sequence to allow for the proper review of the submittals by the Contractor, Architect and Owner and in such timely fashion as not to delay the Contractor or others in the performance of the Work. Subcontractor shall be responsible and liable for delays to the Project Schedule resulting from Subcontractor's failure to timely submit shop drawings and other submittals as required herein. Additionally, if Subcontractor prepares submittals that are not in conformance with Contract Documents or if the submittals require multiple reviews of Contractor or Architect because of the insufficiency of the submittals, Subcontractor will be liable for any reasonable, additional administrative and review cost incurred by Contractor.

Review of Submittals by Contractor, Owner or Architect shall relate solely to general conformity with the Contract Documents. Such review shall not be construed as an approval in detail of conformity of such Submittals with the design drawings, specifications or other Contract Documents, and shall not excuse Subcontractor from fully complying with the terms and conditions of the Contract Documents. No such approval or review shall constitute a waiver of, or agreement to, any change or deviation to the Contract Documents (except in the case of "Alternate" Submittals as provided below). If Submittals deviate from or are inconsistent with the design drawings, the specifications or other Contract Documents, and such deviations or inconsistencies impose upon Contractor any expense because of delays or extra work or otherwise, Subcontractor agrees to hold Contractor harmless from and to indemnify Contractor from any such expense or damage, including attorney's fees.

- 4.4.1 ALTERNATE SUBMITTALS: If Subcontractor desires to request a deviation or a substitution from the Work provided for in the Subcontract Documents, such request should be made as and conspicuously marked as a separate "ALTERNATE" submittal (and shall be provided in addition to the regular submittal), and shall clearly identify the deviations and/or substitutions requested and the reasons for such request. If the Architect or Owner approves the Alternate submittal in writing, then Subcontractor may proceed with construction containing such deviations or substitutions in accordance with the approval given, but shall remain responsible to pay for any extra costs incurred by itself and by others as a result of such substitution or deviation. All extra or additional costs associated in any way with an Alternate submittal shall be borne by Subcontractor. Under no circumstances shall Subcontractor be entitled to an increase in the Contract price resulting from the submission and approval of any Alternate submittal.

- 4.4.2 **MOCK-UPS:** Subcontractor shall provide mock-ups and/or participate in the preparation of mock-ups as provided for in the Contract Documents, or as may be reasonably directed by Contractor. It is understood and agreed that the purpose of the mock-up is to illustrate how the Subcontractor proposes to perform its Work in compliance with the Contract Documents, and is not intended under any circumstances to suggest or imply directly or indirectly that any approval is being given to permit Subcontractor to deviate in the performance of its Work from the Contract Documents. If Subcontractor includes anything in a mockup that deviates from the Work required by the Contract Documents, Subcontractor agrees that no approval for any such deviation has been granted unless Subcontractor provides the Contractor in writing with a description of the specific change being made in the mock-up from the Work provided for in the Contract Documents, and Contractor approves the specific change in writing.
- 4.5. **COMPLIANCE WITH PROJECT SCHEDULE:** Subcontractor shall proceed with the Work in a prompt and diligent manner in accordance with Contractor's Project Schedule enclosed as Exhibit D and as the same may be reasonably amended from time to time. Subcontractor shall cooperate with Owner, Architect, Contractor, and other subcontractors so that the entire Work may be completed no later than the date required by the Contract Documents, subject to approved delays resulting from weather conditions, Owner revisions, or other extenuating circumstances for which a delay is authorized under the Contract Documents. Contractor, as may be necessary, may revise the Project Schedule as the Work progresses. Subcontractor acknowledges that revisions may be made in such Project Schedule and agrees to make no claim for acceleration or delay by reason of such revision so long as such revisions are reasonable and of the type normally experienced in work of this scope and complexity. In the event Subcontractor fails to maintain its part of the schedule of the Work, it shall, without additional compensation, work such overtime as Contractor may direct until Subcontractor's work has been recovered and is in accordance with such Project schedule.
- 4.6. **DAMAGES FOR DELAY:** Subcontractor shall prosecute Subcontractor's Work in a prompt and diligent manner in accordance with the Progress Schedule without hindering the work of Contractor or any other subcontractor. Should the Work not be complete within the time required by the Contract Documents and Subcontractor has been responsible for the delay of others or the job as a whole, Subcontractor shall be responsible for any costs or damages incurred by Contractor for failure to complete within the time required, including liquidated damages which may be assessed by Owner. Subcontractor shall not be responsible for delays caused by others.
- 4.7. **PROTECTION OF UTILITIES AND IMPROVEMENTS:** The Subcontractor will exercise the standard of care in the performance of its work to properly protect and preserve new and existing utilities, streets, appurtenances, infrastructure and improvements on the property on which the project is located and surrounding areas serving the property affected by Subcontractor operations. To the extent applicable to the Subcontractor's work, Subcontractor shall be responsible to notify and comply with all local, city, state and federal agencies for requesting the location of underground utilities, land disturbance, storm water pollution prevention, etc., prior to the commencement of construction operations. Subcontractor expressly agrees that it may not rely upon locates provided to others, but is responsible for obtaining locates respecting the possible location of underground utilities in any areas where Subcontractor's Work is to be performed. Subcontractor shall be responsible for all extra costs or damages incurred due to Subcontractor's failure to properly obtain the necessary locates.
- 4.8. **PROTECT FINISHED WORK:** Subcontractor shall take necessary precaution to properly protect its finished Work and the finish work of other trades. If the work of others is damaged by Subcontractor, or its sub-subcontractors, Subcontractor will cause such damage to be corrected to the satisfaction of and without cost to the party whose work was damaged, the Contractor and Owner. Any lifts or equipment used on concrete slabs or finished floors shall be diapered to prevent damage from oil/hydraulic leaks and shall have white non-marking tires. Cutting of materials with the use of oils including the use of threading machines shall be performed outdoors in a location approved by the Contractor. Subcontractor shall store all materials susceptible to moisture damage off of the floor

with cribbing and shall cover material to avoid damage from moisture. Subcontractor shall not use any temporary or permanent markings on any floor or surface without written approval of Contractor.

#### 4.9. UNCOVERING/CORRECTION OF WORK:

4.9.1. If the Owner or Contractor rejects the Work of Subcontractor or the Work of Subcontractor is not in conformance with the Contract Documents, Subcontractor shall promptly correct the Work. Subcontractor shall be responsible for all costs of correcting such Work including the costs of additional testing, inspections, and compensation for services and expenses of Owner, architect or Contractor arising out of the defective Work. If Subcontractor's removal of defective Work or correction of Work destroys or damages the Work of the Project, Owner, Contractor, other subcontractors or any separate contractors employed by Owner, the Subcontractor shall be responsible for the cost of such destroyed or damaged construction.

4.9.2. Subcontractor, to the same extent as required of the Contractor under the Contract Documents and as directed in writing by the Contractor, shall be responsible for uncovering Subcontractor's Work for the stated conditions or reasons stipulated therein. Subcontractor shall not be compensated for its services to uncover and repair the Work unless Contractor, as a condition precedent, first receives a change order and payment for such services from the Owner.

4.9.3. If Subcontractor fails to correct faulty or defective Work immediately or uncover work, Contractor may exercise its rights under Paragraph 3.8.

4.10. CONFIDENTIALITY: To the extent the Owner-Contractor agreement provides for the confidentiality of any of Owner's proprietary or otherwise confidential information disclosed in connection with the performance of this Subcontract, the Subcontractor is equally bound by the Owner's confidentiality requirements. In addition, the Subcontractor agrees to execute any Owner confidentiality agreements Owner may require. Other than to the extent necessary to properly perform its Work for the Project, the Subcontractor shall not publish any statements or information about the Owner or the Project in writings of any kind, including on social media.

4.11. COMMUNICATION AND WORK FOR OTHERS: In connection with the Work of this Subcontract, Subcontractor expressly agrees to communicate only with the Contractor and not the Owner or the Architect. Furthermore, Subcontractor agrees not to perform any work directly for the Owner or any tenants, or deal directly with the Owner or its representatives in connection with the Subcontract Work, without the express, prior written consent of Contractor.

#### 4.12. ASSIGNMENT OF AGREEMENTS:

4.12.1 Subcontractor will not assign this Subcontract nor subcontract the whole or any part of the Work to be performed hereunder without the prior written consent of Contractor with the exception of those subcontractors listed by Subcontractor in Exhibit E and furnished to Contractor at the time this Agreement is executed.

4.12.2 Subcontractor agrees that this Subcontract and any agreement Subcontractor has with its sub-subcontractors and vendors are assignable to Owner, without the consent of such Subcontractor or its sub-subcontractors and vendors for the events or circumstances described in and in accordance with the General Contract between Owner and Contractor. Subcontractor, in its agreements with subcontractors and vendors of all tiers, will require these same requirements of assignment.

4.12.3 Subcontractor agrees, in the event of a termination for cause pursuant to Article 9 of this Subcontract, and upon the written request of Contractor, to assign each agreement Subcontractor has with sub-subcontractors, material and equipment vendors, consultants etc., for the work under this Subcontract to Contractor.

- 4.13. FAILURE TO PROSECUTE THE WORK: Subcontractor agrees that if it should neglect to prosecute its Work diligently and properly, or fail to perform any provision of this Subcontract, Contractor, with forty-eight (48) hour written notice to Subcontractor and upon Subcontractor's failure to immediately cure any such deficiency within the notice period, may, in addition to its rights under Paragraph 3.8, at Contractor's sole discretion exercise one of the following options:
- 4.13.1 Cure Subcontractor's default by any means as reasonably determined by Contractor.
- 4.13.2 Retain Subcontractor and supplement its labor, material, and/or equipment with corresponding resources as determined necessary by Contractor and deduct the cost of such supplemental resources from the subcontract amount. Any cost of supplemental resources in excess of the Subcontract amount will be immediately reimbursed to Contractor by Subcontractor.
- 4.13.3 Terminate this Subcontract in accordance with Article 9 Termination.
- 4.14. CLEANUP: Subcontractor shall keep the building and premises reasonably clean of debris resulting from the performance of Subcontractor's Work, and shall place all trash and debris in the Contractor provided dumpster on a daily basis. If Subcontractor fails to comply with this paragraph within forty-eight (48) hours after receipt of written notice of non-compliance from Contractor, Contractor, without further notice to Subcontractor, may perform such necessary clean-up and deduct the cost from any amounts due to Subcontractor. However, Subcontractor shall not be held responsible for unclean conditions caused by other contractors or subcontractors. If Contractor is unable to determine which subcontractor is responsible for the clean-up of any specific area, Contractor may equitably apportion the cost of such clean-up between subcontractors in such manner as it determines to be proper. So long as Contractor expresses a reasonable basis for its equitable apportionment of clean-up costs, Contractor's determination of the apportionment of clean-up costs among subcontractors shall be conclusive on Subcontractor.
- 4.15. LAYOUT FROM LINES AND BENCHMARKS: The Contractor shall establish benchmarks and the principal axis lines of the building and site. From these benchmarks and lines, Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontract Work and for any loss or damage to Contractor or others by reason of Subcontractor's failure to lay out or perform the work correctly. The Subcontractor shall exercise prudence so that the actual final conditions and details of its work product result in proper location, alignment, elevation, installation etc., in compliance with the Contract Documents.
- 4.16. AESTHETIC EFFECT: As it relates to the work of Subcontractor, Architect's or Owner representative's decisions on matters relating to aesthetic effect will be final.
- 4.17. CONTRACTOR'S LABOR AGREEMENTS: Subcontractor acknowledges that Contractor is bound by certain collective bargaining agreements ("Labor Agreements") which require Contractor to obtain commitments from subcontractors regarding the wages, hours, fringe benefits and conditions of employment for certain work covered by this Subcontract. Specifically Contractor is bound by a collective bargaining agreement regarding Laborers in Eastern Missouri (St. Louis City, St. Louis County, St. Charles County, Lincoln County, Warren County and Montgomery County). A copy of such Laborers Agreement is attached as Exhibit H. Contractor is also bound by a collective bargaining agreement regarding Carpenters' District Council of Greater St. Louis and Vicinity (Franklin, Jefferson, Lincoln, St. Louis, St. Charles, Warren, Iron, St. Francois, Washington, Madison, and Reynolds Counties; and St. Louis City in Missouri). Subcontractor agrees it is fully informed regarding such Labor Agreements, and that it will not engage in any activity which will constitute a breach of Contractor's obligations thereunder. Subcontractor agrees to pay and provide for its employees performing covered work (covered by those certain Labor Agreements referenced above) pursuant to this Subcontract, wages, hours, fringe benefits and conditions of employment no less than those specified in the applicable Labor Agreements. Subcontractor agrees to ensure that its

subcontractors, and their subcontractors, if any, are bound in like manner. Subcontractors shall execute Exhibit H with regard to Laborers for projects located in applicable counties.

- 4.18. **LOADING OF STRUCTURES:** Subcontractor accepts the affirmative duty not to overload the structures or conditions at the site and shall take reasonable steps not to load any part of the structures or site so as to give rise to an unsafe condition or create an unreasonable risk of bodily injury or property damage. The Subcontractor shall have the right to request, in writing, from the Contractor loading information concerning the structures at the site.
- 4.19. **NOTICE TO AGENCIES:** Subcontractor shall comply with all Federal, State and Local laws and ordinances applying to the site, building or structure and will comply and give adequate notices relating to the work to proper authorities and secure and pay for all necessary licenses, taxes, fees, royalties, escrows and permits to carry on the work as described in the Contract Documents as applicable to this Subcontract.
- 4.20. **COMPLIANCE WITH LAWS:** Subcontractor shall strictly comply with all Federal, State, and Local laws, together with pertinent rules, regulations, ordinances and directives (including but not limited to Social Security Laws, Unemployment Compensation Laws, Workers Compensation Laws and all safety laws such as OSHA) in effect at the time of and insofar as applicable to the Work, services, tools, equipment, labor and materials to be furnished by Subcontractor herein (collectively the "Laws"), the minimum safety standards established for the Project by Contractor and the reasonable safety directives of the Contractor. Subcontractor shall maintain its own Safety Program for ensuring strict compliance with all Laws relating to worker safety. Subcontractor's Safety Program shall include as a minimum the standards of any safety program established for the Project by Contractor. When so ordered by Contractor, Subcontractor shall stop any action or part of the Work that Contractor deems unsafe until corrective measures satisfactory to Contractor have been taken. Should Subcontractor fail to promptly take or adopt such corrective measures, Contractor may do so and deduct the cost thereof from any payments due to Subcontractor. Subcontractor shall promptly submit copies of all accident or injury reports to Contractor. Subcontractor shall indemnify Contractor to the fullest extent permitted by law for any and all liability, including but not limited to damages, costs, losses, expenses, claims, penalties, assessments, fines, and attorney's fees, (and including but not limited to all liability for personal injury or death of any of its employees or those of its subcontractors or of any other person) resulting from any failure of Subcontractor to strictly and fully comply with the Laws or with Subcontractor's Safety Program and/or any safety directives issued by Contractor.
- 4.21. **DESIGNATED SAFETY REPRESENTATIVE:** Subcontractor shall designate an individual at the site in the employ of Subcontractor who shall act as the Subcontractor's designated safety representative with a duty to prevent accidents. Unless otherwise identified by Subcontractor in writing to the Contractor, the designated safety representative shall be the Subcontractor's Project Superintendent or Foreman as the case may be. This person shall have received safety training to such extent as to be considered competent by OSHA.
- 4.22. **SAFETY:** Subcontractor shall comply with all Federal, State and Local Laws governing safety, as well as Contractor's Safety Manual, which is available at <http://www.paric.com> and incorporated herein by reference.
- 4.23. **ENVIRONMENTAL LAWS:** Subcontractor shall strictly comply and require the same strict compliance by its employees, sub-subcontractors and suppliers with all Federal, State and Local laws, rules, ordinances and regulations governing the acquisition, possession, storage, discovery, movement, transport, abatement, removal, encapsulation and disposal of hazardous, radioactive, toxic, irritant, pollutant or otherwise dangerous substance or condition at the Project (collectively the "Environmental Laws"), produced or that are a by-product of the performance of this Subcontract, and Subcontractor shall defend, indemnify and hold Contractor harmless, to the fullest extent permitted by law, from any and all associated costs, claims, losses, damages, suits, attorney's fees and other liabilities of any kind or nature (including but not limited to those assessed by any

governmental authority under any Federal, State or Local law or regulation, and including but not limited to those resulting from sickness, personal injury, disease or death, and damage to tangible property, including loss of use thereof), resulting from any violation of the Environmental Laws attributable to Subcontractor's actions.

- 4.24. **ACCIDENT NOTIFICATION:** Subcontractor shall promptly (within 24 hours) report in writing to Contractor all accidents arising out of or in connection with the work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damage are caused, the accident shall be reported immediately (no later than 4 hours from time of incident) to Contractor. Subcontractor shall cooperate and comply with all reasonable requests of Contractor and its insurance and legal consultants in the investigation of the accident.
- 4.25. **HAZARDOUS MATERIAL:** In the event Subcontractor encounters on the project site any hazardous, radioactive, toxic, irritant, pollutant or otherwise dangerous substance or condition, Subcontractor shall immediately stop work at the area affected and report the condition to Contractor and Owner in writing. The work in the affected area shall not thereafter be resumed except by written agreement of Owner and Contractor.
- 4.26. **WORKFORCE COMPLIANCE:** It is the intent of the Contractor to comply with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the "Act"), and such other acts, rules and regulations as may be issued from time to time by federal, state and local authorities which have the intent and purpose of immigration and control. The Contractor's goal is to achieve such compliance, while at the same time respecting all laws protecting the privacy rights of individuals, all in a fashion that will not in any way wrongfully discriminate against any individuals. It is the Contractor's intent that only legal labor shall be employed on its jobsites, whether the labor is performed by its employees or by our subcontractors of all tiers.

Subcontractor agrees to execute the Subcontractor Certification Affidavit, in the form of Exhibit F. Subcontractor shall provide no labor on the Project site, nor shall Subcontractor be entitled to any payments respecting the Project until Subcontractor has provided Contractor with a properly executed copy of the Subcontractor Certification Affidavit. Subcontractor shall secure like certifications from all firms who Subcontractor contracts work to who will be performing labor on the Project site. No lower tier subcontractors performing labor for Subcontractor shall be permitted on site until such time as they have first provided Contractor with a properly executed copy of the Subcontractor Certification Affidavit.

Subcontractor further agrees that in the event that Contractor should object in writing to the employment on site of any specific employee, with concerns stated in writing respecting the employee's compliance with I-9 protocol, Subcontractor shall promptly remove the employee from the project site and not return the employee to the project site until such time as the Subcontractor provides Contractor with sufficient information to address Contractor's concerns, within Contractor's reasonable discretion.

- 4.27 **LIGHTING:** Contractor shall provide basic general floor lighting for interior building spaces. Subcontractor shall be responsible for any specific and/or additional floor lighting and task lighting necessary for proper performance of Subcontractor's Work.
- 4.28 **UTILITIES:** Subcontractor shall be responsible for all temporary utilities/distribution from central locations including extension cords, leak-free hoses (when temporary water is available), and hookups for the Subcontractor's Work. If temporary utilities are not available, or are insufficient, or is not of the correct voltage needed by the Subcontractor to perform its Work, then Subcontractor shall provide any necessary generators or temporary power to properly perform its Work.
- 4.29 **TEMPORARY FACILITIES:** Subcontractor shall provide any temporary field offices or break areas required by Subcontractor. The Subcontractor's field office and break areas may be located in the

building or on the site only as approved by Contractor. The Subcontractor shall be responsible for all construction, utilities, and costs for any Subcontractor field offices and break areas. Subcontractor shall remove or relocate any temporary field offices or break areas as directed by Contractor.

- 4.30 MATERIAL AND EQUIPMENT DELIVERIES: Subcontractor shall coordinate all deliveries of materials and equipment with the Contractor at least 48 hours in advance of deliveries.
- 4.31 MATERIAL AND EQUIPMENT STORAGE: The Contractor does not guarantee that space will be available at the project jobsite for storage of the Subcontractor's materials and equipment. Adequate storage areas, if available, will be allocated by Contractor for Subcontractor's materials and equipment during the course of the work. Subcontractor shall be responsible for providing any temporary storage or trailers to store Subcontractor's equipment and materials. The Subcontractor shall store materials and equipment in locations approved by Contractor, if available, and shall be responsible for relocating stored equipment and materials as directed by Contractor. Subcontractor shall maintain full responsibility and liability for protection for all of Subcontractor's stored materials and equipment.
- 4.32 TOBACCO USE: All tobacco use including cigarettes, cigars, pipes, electronic cigarettes and smokeless tobacco shall be strictly prohibited at the project jobsite.
- 4.33 PUNCH LIST: Subcontractor shall promptly address punch list work upon receipt of same and in no event less than five working days after receipt of written direction as to same from Contractor, and shall notify Contractor in writing when punch list work is completed.
- 4.34 OWNER OPERATION AND MAINTENANCE TRAINING: Subcontractor shall provide training for all items for which such is required in the Subcontract Agreement. Subcontractor's training shall include representatives from any vendors and manufacturers as necessary to provide a complete and comprehensive training for the Owner for all aspects of the Subcontractor's scope of work. Subcontractor shall coordinate all training with Contractor.
- 4.35 PROJECT CLOSEOUT REQUIREMENTS: Subcontractor shall provide all closeout documents per the Contract Documents, including at a minimum, as-built/record drawing, operation and maintenance manuals, warranties and any other closeout documents required by the Contract Documents. Subcontractor shall provide electronic versions of all close out documents in PDF format. Closeout documents shall be submitted in one complete package and must be submitted to Contractor no later than 14 days after Project Substantial Completion.

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

- 5.1 CONTRACTOR CHANGE NOTICE DIRECTIVES: Contractor may, without notice to sureties, by written Change Notice, denominated as such, signed by the Contractor's Representative, unilaterally make any change to the Subcontractor's Work described in the Contract Documents, including but not limited to changes:
1. in the drawings and specifications;
  2. in the method, manner, or sequence of Subcontractor's Work;
  3. directing acceleration or deceleration in the performance of the Work;
  4. modifying the schedule of the Work; and
  5. adding to or deleting from the Subcontractor's Scope of Work.

Upon receipt of a Change Notice, Subcontractor shall promptly proceed with the Work reflected by the Change Notice in accordance with the directives of Contractor.

- 5.2. PRICING CHANGE ORDER WORK; AGREEMENT ON CHANGE ORDERS: Subcontractor shall within a reasonable time after receipt of a Change Notice (not to exceed seven working days), submit to Contractor an itemized estimate reflecting any cost changes and/or time impact required to make



the requested changes. The itemized estimate shall detail the anticipated direct labor man-hours and labor costs, direct material, direct equipment, applicable labor markups for employee labor burdens and benefits. Unless otherwise indicated in the Owner Contract, Mark-up on Subcontractor's direct costs shall be 10% (5% on sub-subcontractors' work) to cover supervision, field office and home office overhead, and profit. If additional time is sought, the estimate shall provide a detailed explanation how and why the requested change will impact the critical path of the Subcontractor's Work. All elements of potential cost and time impact are subject to negotiation. If the parties agree with respect to the amount of the change and the time impact, if any, associated with the change, then the parties shall execute a Change Order signed by both parties. Agreement on any Change Order shall constitute a full and final settlement and accord and satisfaction of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Price and the Project schedule.

Unless the parties agree upon a lump sum Change Order prior to when the Subcontractor performs the Changed Work, the Subcontractor shall in all instances provide extra work tickets (specifically identifying the work performed, the personnel who performs the work, and the hours performed by each) to Contractor on a daily basis – either to Contractor's superintendent or to Contractor's project manager, all within 24 hours of when the Work was performed. Contractor's timely receipt of such daily work tickets shall be a condition precedent to Subcontractor's right to maintain a claim for any claimed changed Work.

- 5.3 PROCEEDINGS IF PARTIES CANNOT AGREE ON CHANGE ORDER: Subcontractor shall timely perform the Work contemplated by the Change Notice regardless of whether the parties agree on a Change Order. If the parties cannot agree on a Change Order, then Subcontractor shall treat the matter as a claim and proceed in accordance with Paragraph 5.5 below. Subcontractor's claim for a time extension is limited to the documented effect that the change Work will have on the critical path of the Subcontractor's Work. If it is reasonably possible to perform the change in the Work concurrently with Work that is critical to overall completion, no time extension shall be granted by reason of a change in the Work. Subcontractor's claim for extra costs shall be limited to the amount by which Subcontractor's direct costs have been reasonably increased over the direct cost of performing the Work without the change in the Work, plus 10% (5% on sub-subcontractors' work) of direct cost to cover supervision, field office and home office overhead, and profit.
- 5.4 UNAUTHORIZED CHANGES IN THE WORK: Subcontractor shall not make any changes in the Work that would in any way cause or allow the Work to deviate from that required in the Contract Documents without first obtaining a Change Notice from the Contractor, or an Alternate Submittal approved in writing by the Architect or Owner. If Subcontractor makes any changes in the Work without receiving such documentation, such change constitutes an agreement by Subcontractor that it will not be paid for that changed Work, even if it received verbal direction from Contractor or any form of direction, written or otherwise, from Owner or any other person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses, damages, and liability of any nature whatsoever associated with or in any way arising out of any such unauthorized change in the Work.
- 5.5 DISPUTES ABOUT SUBCONTRACTOR'S SCOPE OF WORK: If a dispute arises between Subcontractor and Contractor with respect to whether particular Work is a change in the scope of the Work, Subcontractor shall give Contractor prompt written notice of the matter before proceeding with the Work. Such written notice shall include an estimate of the extra costs the Subcontractor believes will be involved with the disputed Work, and the effect on the Project Schedule, if any. Subcontractor shall timely perform the disputed Work. Within ten days after completing the disputed Work, Subcontractor shall provide Contractor with a claim in writing detailing Subcontractor's direct costs and markup, which shall be computed in accordance with the provisions of Paragraph 5.3 above, and any claim for a time extension. Subcontractor's failure to provide either the required written notice before proceeding with disputed Work, or to timely provide the written claim after completing the disputed Work shall constitute an agreement by Subcontractor that it will not be paid for the disputed

Work. Subcontractor shall treat any such dispute as a claim and proceed in accordance with Paragraph 5.7 below. Subcontractor shall proceed diligently with performance of the Work, including Work in dispute, and comply with the directions of the Contractor, pending final resolution of the Dispute.

- 5.6 **NO NOTICE TO SURETY REQUIRED:** No change, alteration, or modification to or deviation from this Subcontractor Agreement or the Contract Documents shall release or exonerate, in whole or in part, any bond or any surety on any bond given in connection with this Subcontract Agreement, and no notice is required to be given to such surety of any such change, alteration, modification or deviation.
- 5.7 **REFERRAL TO DISPUTE RESOLUTION AND CONTINUED PERFORMANCE:** Any issues related to changes in the work that are not resolved by execution of a Change Order shall, so long as Subcontractor has otherwise complied with the provisions of this Article 5, be treated as a Dispute subject to resolution by the dispute resolution provisions of this Subcontract Agreement. Subcontractor shall proceed diligently with performance of the work, including work ordered by Change Notices and work in dispute, and comply with the directions of the Contractor, pending final resolution of the Dispute.
- 5.8 **EMERGENCY WORK:** In an emergency affecting the safety of persons and/or property, the Subcontractor shall act, at its own discretion, to prevent threatened injury, damage or loss. Any additional compensation or time on account of the emergency work shall be determined as provided in this Article.
- 5.9. **EXTENSION OF TIME:**
- 5.9.1 Subcontractor shall only be entitled to an extension of time for performing and completing the Changed Work pursuant to this Subcontract only upon the same terms and conditions an extension of time is allowable and only to the extent actually allowed to Contractor by Owner under the terms of the General Contract.
- 5.9.2 **FORCE MAJEURE:** Subcontractor has taken into account and has made allowances for delays which should be reasonably anticipated or foreseeable. If the critical path of Subcontractor's Work is impacted and delayed in the prosecution of the Work by an act, neglect or default of the Owner, Architect or Contractor, or by labor disputes, fire, unavoidable casualties, Acts of God, or other causes beyond the Subcontractor's reasonable control, then the time fixed for Subcontractor's completion of the Work shall be extended by the number of days that Subcontractor has been delayed, so long as (a) Subcontractor provides Contractor with written notice of the delay within seven days of the commencement of such delay, and (b) Subcontractor provides Contractor with a written claim for the time extension sought within seven days after the delay period has ended. Subcontractor's sole and exclusive remedy for any delay to its work shall be an extension of time, subject only to the specific exception stated in the following paragraph.

**CLAIMS FOR COMPANSATION DUE TO DELAYS OR SCHEDULE INTERFERENCE:** No claims for additional compensation or damages for delays or schedule interference, including claims for loss of productivity, disruption, "ripple effect" costs or "impact" costs, whether caused in whole or in part by any conduct on the part of Contractor, other subcontractors or Owner or Architect, or by any other contributing causes, shall be recoverable from Contractor, and the above-mentioned extension of time for completion shall be the sole and exclusive remedy of Subcontractor; provided, however, that in the event the Contract Documents permit the Contractor to obtain additional compensation from Owner on account of a delay, and in the event Contractor does in fact obtain and collect additional compensation from Owner on account of a delay, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances, so long as Subcontractor has (a) requested in writing that

Contractor prosecute a claim against Owner for additional compensation for any delay, (b) cooperated fully with Contractor in the prosecution therefor, and (c) paid Contractor an equitable amount for costs and expenses incurred by Contractor in connection with bringing such delay claim, including attorneys' fees. Contractor's receipt of any funds from the Owner attributable to such a delay claim shall be a condition precedent to any obligation by Contractor to Subcontractor.

- 5.9.3 INCLEMENT WEATHER: Subcontractor has taken into account and has made allowance for delays caused by inclement weather to be reasonably anticipated for the geographic area where the Project is located. Subcontractor shall be entitled to an extension of time for inclement weather so long as such inclement weather in fact impacts and delays the critical path of Subcontractor's Work, and such inclement weather is beyond that which should have been reasonably anticipated; provided, however, that if the Contract Documents otherwise provide any specific provisions respecting the Contractor's right to make a claim for extension of time for inclement weather, then the provisions of such Contract Documents shall apply and govern the Subcontractor's right to make a claim for time extension due to inclement weather. Subcontractor shall have no right to a time extension for inclement weather unless the Contractor has the same right for a time extension from the Owner.
- 5.10. SUBCONTRACTOR WORK ORDERS: Subcontractor expressly agrees that any claim for changed work made by Subcontractor under a Subcontractor's "work order", "extra work order" or similar document, that is also signed by Contractor's Superintendent, is subject to the requirements of this Article for Changed Work and Subcontractor acknowledges that the signature of Contractor's Superintendent or representative constitutes confirmation that the work was performed but does not constitute authority for adjustment in the subcontract amount or time for the changed work.
- 5.11. ESCALATION: Subcontractor shall be solely responsible for any increases in the price of labor, materials, equipment or any Work related to this Agreement. This Agreement is for a stipulated sum and Subcontractor bears the sole risk of any price escalation.

## **6. ARTICLE 6 – INSURANCE AND INDEMNITY**

- 6.1. INSURANCE REQUIREMENTS: Subcontractor shall comply with all provisions of Exhibit G
- 6.2. WAIVER OF CLAIMS, INCLUDING SUBROGATION CLAIMS: Subcontractor, and sub-subcontractors of all tiers waive and relinquish for themselves and their insurers any of their own rights and rights of subrogation they or their insurers may have, against Contractor, and against Contractor's consultants, subcontractors of any tier, agents and employees, for damages caused by events that are covered by the proceeds of insurance provided by Subcontractor and/or subcontractors of any tier. The policies of insurance provided by Subcontractor and/or sub-subcontractors of all tiers shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in any property damaged.

Exception for Professional Liability Insurance: This waiver clause shall not apply with respect to damages caused by events that are covered by the proceeds of professional liability insurance.

- 6.3. BUILDER'S RISK: Contractor and Subcontractor waive all rights against each other and against Owner, Architect/Engineer, separate contractors, and all other subcontractors for damages caused by fire or other perils to the extent covered and paid by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance. Subcontractor, as required, will share in the cost of any deductible applied to the settlement of a claim in the same proportion as

Subcontractor's recovery is to the total settlement payment. However, in the case of theft of Subcontractor's materials, supplies or equipment, Subcontractor shall be responsible for same to the extent the loss is not covered by the Builder's Risk policy.

Notwithstanding the foregoing, in the event that Contractor incurs costs to remedy and correct damages caused by Subcontractor's work having not complied with the Subcontractor's warranty obligations stated in this Subcontract or having otherwise been defective, Contractor shall be entitled to withhold from any payments otherwise due Subcontractor an amount equal to such costs incurred until such time as the proceeds of any Builder's Risk insurance or other property insurance are received by Contractor, at which time Contractor shall release funds withheld to the Subcontractor to the extent of the insurance proceeds received.

#### 6.4. INDEMNIFICATION:

6.4.1 Subcontractor shall, to the maximum extent permitted by law, defend, indemnify and hold harmless Contractor, Owner and Architect (and such other parties as may be required by the terms of the Prime Contract) (and their respective officers, agents, employees, affiliates, parents and subsidiaries) from and against any and all suits, actions, claims, demands, damages, fines, losses, costs, liabilities, and attorney's fees arising out of or resulting from Subcontractor's performance of the Work, 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, but only to the extent caused by the acts or omissions of the Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. Subcontractor shall not be required to indemnify any party to the extent of such other party's negligence or willful misconduct. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 6.4.1.

6.4.2 Subcontractor's indemnity obligation shall not be limited in any way by any limitation of amount or type of damages, compensation or benefits payable by or for the Subcontractor under worker's compensation acts, disability acts or other employee benefit acts. Subcontractor specifically waives any immunity provided against this indemnity by any industrial insurance or worker's compensation statute.

6.4.3 Subcontractor shall also indemnify and hold harmless Contractor from any and all claims, demands, causes of action, damages, costs, expenses, attorneys' fees, losses or liability of every kind and nature whatsoever arising out of or in connection with Subcontractor's operations to be performed under this Agreement, and to the extent caused by Subcontractor's breach of any of its obligations under the Contract Documents.

6.4.4 Subcontractor further agrees that the indemnification obligations herein will survive the completion of all work or the termination of the Subcontract for any reason.

6.4.5 Except as otherwise provided by the Contract Documents, Subcontractor agrees to pay, comply with and hold Contractor harmless from and against the payment of all Federal, State, and Local contribution, taxes, duties or premiums and all employee benefits, dues and fringe costs arising out of the performance of this Subcontract, and all sales, use or other duties or taxes of whatever nature levied or assessed against Owner, Contractor, or Subcontractor arising out of this Subcontract, including any interest or penalties.

### **7. ARTICLE 7 - WARRANTY**

7.1. Subcontractor warrants that all materials and equipment furnished under this Subcontract shall be new, unless specified otherwise, of good quality, fit for its intended purpose, in conformance with the Contract Documents and free from defective workmanship and materials.

- 7.2. Subcontractor agrees to promptly make good without cost to Owner or Contractor any and all defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period so established in the Contract Documents, namely, twelve (12) months from date of project substantial completion, or as otherwise specified in the Prime Contract, the greater time period governing. Subcontractor further agrees to execute any special guarantees as provided by the terms of the Contract Documents prior to final payment.
- 7.3. Subcontractor agrees to assign the benefits of any warranties it provides or receives for work under its portion of the Project, direct to Owner if requested by Contractor.
- 7.4. The warranty obligations of Subcontractor shall survive the termination of the Subcontract.

## **8. ARTICLE 8 - CONTRACTOR'S OBLIGATIONS**

- 8.1. Upon request, the Contractor will give the Subcontractor written authorization to obtain direct from the Architect/Engineer or Owner's authorized agent, evidence of amount and percentages of completion certified on its account.
- 8.2. Contractor shall not issue or give any instruction, order, or directions directly to employees or workmen of Subcontractor other than to the persons designated as the authorized representative(s) of Subcontractor.
- 8.3. Contractor shall make no demand for liquidated damages or other delay damages with respect to delays not caused by Subcontractor. Liquidated damages, when assessed, shall not exceed Subcontractor's proportionate share of the responsibility for such delay. This provision does not preclude any claim Contractor may have for other damages under this Subcontract or applicable law.

## **9. ARTICLE 9 – TERMINATION**

- 9.1. **TERMINATION FOR CAUSE:** If Subcontractor fails or refuses to proceed with or to properly perform its work as directed by Contractor, or fails or refuses to properly perform or abide by any terms, covenants, conditions, or provisions contained in this Subcontract, or fails or refuses to obey laws, ordinances, regulations or other codes of conduct, or fails to provide adequate assurances of performance as provided for in Paragraph 9.5, Contractor shall have the right, at its option, without releasing or waiving its rights and remedies against Subcontractor's sureties and without prejudice to any other right it may be entitled to hereunder or by law, and with forty-eight (48) hour written notice to Subcontractor, to terminate this Subcontract and take possession of the work and all materials, tools, equipment, and appliances of Subcontractor and finish Subcontractor's work by whatever means, method or agency which Contractor may, in its sole discretion, choose, or without terminating this Subcontract, Contractor may, at its option, without releasing or waiving its rights and remedies against Subcontractor's sureties and without prejudice to any other right Contractor may be entitled to hereunder or by law, take any steps Contractor deems advisable to secure any labor, materials, equipment, and services, and shall have a lien on and may take over any or all of Subcontractor's equipment, tools, appliances and materials and may prosecute the work to completion, or any portion thereof. In the event that Contractor deems any of the foregoing remedies necessary, Subcontractor agrees that it shall not be entitled to receive any further payment until after the Project shall have been completed. Moreover, all monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including attorneys' fees) incurred by Contractor incident to such completion, shall be deducted from the Subcontract sum herein stated, and if such expenditures, together with said costs, losses, damages and extra expenses, exceed the unpaid balance of the Subcontract sum, Subcontractor agrees to pay promptly to Contractor, on demand, the full amount of such excess, including costs of collection, attorneys' fees and interest thereon at the maximum legal rate of interest per annum until paid. If it is determined that Subcontractor was terminated wrongfully, Subcontractor agrees that such termination for cause shall automatically convert to a termination for convenience and Subcontractor will be limited to the remedies of Paragraph 9.2 herein.

- 9.2. **TERMINATION FOR CONVENIENCE:** Contractor may at any time and for any reason terminate Subcontractor's services and work at Contractor's convenience. Cancellation shall be by service of written notice to Subcontractor. Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Subcontract Agreement, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor or, at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such work as may be necessary to preserve and protect the work already in progress and to protect material and equipment on the job site or in transit thereto.

Upon any such termination for convenience, Subcontractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Subcontract Agreement; plus, (2) ten percent (10%) of the cost of the work completed for overhead and profit. There shall be deducted from such sums the amount of all payments Subcontractor has previously received on account of such work performed. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages in the event of such a termination for convenience and payment. Termination for convenience shall not relieve Subcontractor of any obligations and duties that would ordinarily survive completion, including but not limited to warranty obligations and duties to indemnify and insure risks.

- 9.3. **SUSPENSION BY OWNER:** In the event Owner, for its own reasons, suspends the work of the Contractor and thus the Work of this Subcontract, and such suspension is not due to any act or omission of the Contractor, the Contractor will provide written notice to the Subcontractor and Subcontractor shall immediately suspend its work accordingly. Subcontractor shall be entitled to an equitable adjustment of Subcontract time and price to the extent of Contractor's recovery of Subcontractor's claim for suspension of the work from Owner.
- 9.4. **BANKRUPTCY:** It is recognized that if Subcontractor becomes insolvent, or institutes or has instituted against it a case under Title II of the United States Code, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such event or events could impair or frustrate Subcontractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Contractor shall be entitled to request of Subcontractor or its successor adequate assurances of future performance acceptable to the Contractor and at no additional cost or expense to the Contractor. Failure to comply with such request within three (3) days of delivery of the request shall entitle Contractor to terminate this Agreement. Pending receipt of adequate assurances of performance and actual performance in accordance therewith, Contractor shall be entitled to proceed with the Work with its own forces or with other subcontractors on a time and material or other appropriate basis, the cost of which will be backcharged against the subcontract sum hereof, as provided in Paragraph 3.8.
- 9.5. **RIGHT TO ADEQUATE ASSURANCES:** When reasonable grounds for insecurity arise with respect to Subcontractor's performance, Contractor may in writing demand adequate assurance of due performance. Subcontractor's failure to provide within three (3) days of the demand such assurance of due performance as is adequate under the circumstances will constitute a default pursuant to the terms of this Article 9. Contractor's right to demand adequate assurances shall in no way limit Contractor's right to immediately issue a notice in compliance with Paragraph 9.1. above.

## **10. ARTICLE 10 – DISPUTE RESOLUTION**

- 10.1. **MEDIATION:** Any Claim arising out of or related to the Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.

- 10.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Mediation shall be completed within 45 days after written demand for mediation is served upon the other party. If mediation has not been completed in this time frame, either party may proceed to file for arbitration in accordance with this Article without further delay, and the parties shall have no further obligation to mediate their Claims.
- 10.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the metropolitan area of at least 500,000 inhabitants nearest the project site in the state where the project is located. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
- 10.4 **ARBITRATION:** Claims which have not been resolved by mediation shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. The jurisdiction of the Arbitrator, and the arbitrability of any issue raised by the parties shall be decided by the Arbitrator.
- 10.5 A demand for arbitration may be made no earlier than after the mediation is concluded, or after 45 days have passed since the written demand for mediation, whichever is earlier, but in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.
- 10.6 An arbitration pursuant to this Article may be joined with an arbitration involving common issues of law or fact between Contractor and Owner and/or any person or entity with whom the Owner or Contractor has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder, with the claims and disputes of Owner, Contractor, Subcontractor and other subcontractors involving a common question of fact or law to be heard by the same arbitrator(s) in a single proceeding. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.
- 10.7 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.
- 10.8 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.
- 10.9 In any dispute between Contractor and Subcontract or related to this Subcontract Agreement, the prevailing party shall be entitled to recover its attorneys' fees, expert fees, and costs from the non-prevailing party. Determination of which party prevailed shall be made by the arbitrator(s). Determination of which party prevailed shall be made by reviewing the Claims resolved at arbitration (and shall not include Claims resolved prior to the taking of evidence at the arbitration hearings), considering the quantum of the Claims being prosecuted and defended, and then determining which party achieved the greater success by quantifying the amounts awarded the party recovering damages and comparing same with the amounts that the party paying damages saved (ie the damages actually awarded versus those that were claimed).
- 10.10 The arbitration hearings for any arbitration conducted pursuant to this Agreement shall commence within 180 days after the Demand for Arbitration is filed, and shall continue to completion on successive week days (not including Saturdays, Sundays and holidays) until the taking of evidence is completed; provided, however, that the arbitrator(s) shall have the right in their discretion to adjust the schedule of the hearings after they have commenced based upon the special needs and considerations related to the circumstances of the dispute. The arbitration shall take place in the metropolitan area of at least 500,000 inhabitants nearest the project site in the state where the project

is located, unless joined with an arbitration between the Owner and Contractor, in which case it shall take place in the location prescribed for in the General Contract.

- 10.11 Nothing about these dispute resolution provisions shall prohibit Subcontractor from taking the necessary actions to perfect its mechanic's lien rights or payment bond rights. Any mechanic's liens, payment bond claims and any other claims of any type filed against the Contractor, the Owner or any other party with a Court shall be promptly stayed pending resolution of the dispute in accordance with these dispute resolution provisions.
- 10.12 Subcontractor shall carry on its work and maintain the schedule of work pending resolution of any disputes under these dispute resolution procedures.
- 10.13 Notwithstanding the foregoing, in the event that a dispute arises between Contractor and Owner involving common issues of law or fact between Contractor and Subcontractor (including situations where Contractor disputes liability to the Owner, but in the alternative seeks to hold Subcontractor liable to Contractor if Contractor is deemed to be liable to Owner), and the dispute resolution provisions of the General Contract are different than the foregoing provisions, then at Contractor's option, such differing dispute resolution provisions shall be incorporated herein, and Subcontractor agrees to comply with such provisions and to participate in and be fully bound by such differing dispute resolution provisions.
- 10.14 Notwithstanding the foregoing Paragraphs 10.1 through 10.13 of this Article 10, Contractor at its option may invoke the following dispute resolution provisions, to which Subcontractor agrees to be bound in lieu of the provisions stated in Paragraphs 10.1 through 10.13 above. Specifically, upon written application of Contractor, the parties agree to submit their dispute to resolution before the American Arbitration Association ("AAA") in accordance with the Construction Industry Mediation Rules of the AAA currently in effect at the time of the mediation, adjusted as follows: (a) Contractor will file a written demand with the AAA for mediation of the dispute, with the dispute to be heard by a mediator in the metropolitan area of at least 500,000 inhabitants nearest the project site in the state where the project is located; (b) the mediation shall be completed within 60 days after written demand for mediation is served upon the other party; (c) by no later than 14 days prior to the mediation, the parties shall serve upon the mediator and each other a written position statement, with exhibits, outlining their respective claims and defenses; (d) by no later than 3 days prior to the mediation, the parties shall serve upon the mediator and each other a written position statement in reply to that earlier filed by the other party; (e) after eight hours of actual mediation time to be conducted in a single day, if the matter is not resolved, the mediator shall immediately assume the role of an arbitrator; (f) the arbitrator shall not consider any item of evidence which was not produced by the parties in their respective statements of position nor disclosed to the other in the course of the Mediation, all as determined by the arbitrator; (g) at such time as the mediator shall become an arbitrator, each party shall promptly make one last, best and final offer and demand in writing, which shall be simultaneously submitted to the arbitrator; (h) the arbitrator shall then disclose to the parties the amounts of said last offers and demands; (i) within five days of having received said last offers and demands (but not earlier than seventy-two hours of having received said last offers and demands), the arbitrator shall issue an Award which shall adopt one and only one of said last offers or demands, without modification or amendment, and the same shall then constitute the Award. Each side shall bear its own attorneys' fees, costs and expenses, including AAA fees and expenses. The Award of the arbitrator shall be final and binding, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. If the Award is issued prior to final completion of the Project, then the parties agree to sign a Change Order to reflect the Award.
- 10.15 The dispute resolution provisions of Article 10 shall not apply to disputes arising out of personal injury claims, which shall instead be resolved in a court of competent jurisdiction.

## **11. ARTICLE 11 – SUBCONTRACTOR'S DESIGN SERVICES**



11.1. Professional liability insurance as stipulated in Exhibit G shall be provided by Subcontractor when it provides or furnishes design or engineering services.

## **12. ARTICLE 12 – PREVAILING LAW**

12.1. This Agreement shall be governed by the law in effect in State where the Project is located.

## **13. ARTICLE 13 – MISCELLANEOUS PROVISIONS**

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

13.2. THIRD PARTY BENEFICIARIES: Subcontractor and Contractor agree that Subcontractor's duties and obligations also run directly to Owner as well as to Contractor and that Owner is a third party beneficiary of such duties and obligations, and may, therefore, directly enforce such duties and obligations against Subcontractor. Except as provided in the preceding paragraph, this Subcontract is for the exclusive benefit of Contractor and Subcontractor and is not intended to benefit any sub-subcontractors or suppliers of Subcontractor or any other persons or entities, and no sub-subcontractors or suppliers of Subcontractor or any other person or entity are intended to be or shall have the right to assert claims as third party beneficiaries of this Subcontract.

13.3. SEVERABILITY: In the event any section or any portion thereof of this Subcontract is or shall be held to be invalid or otherwise unenforceable, such offending section or portion shall be modified or reduced only to the extent necessary to make it valid and enforceable, and such invalidity or unenforceability shall not, in any event, affect the remaining portions of the Subcontract which shall remain in full force and effect.

13.4. NO WAIVER OF PERFORMANCE: The failure of the Contractor to insist upon the performance of any of the terms, covenants or conditions of the Subcontract, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of the term, covenant, condition or right with respect to further performance of Subcontractor.

13.5. CREATION OF SUBCONTRACT: The parties expressly agree that this Subcontract was jointly drafted, and that they both had opportunity to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Subcontract shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

13.6. CONSEQUENTIAL DAMAGES: Subcontractor waives all claims against Contractor for consequential damages arising out of or relating to this Agreement.

13.7. AVAILABILITY OF RECORDS, ACCOUNTS AND AUDIT: Subcontractor shall make its books, records and project documents available to Contractor for review and inspection and/or audit in accordance with the same terms and conditions that are stated in the General Contract requiring the Contractor to make its books, records and project documents available to the Owner and/or permit the Owner to audit the Contractor's records. It is intended that the Contractor will have the same rights in this regard against the Subcontractor as the Owner has against the Contractor.

13.8. WORK CONTINUATION: The Subcontractor shall carry on the Work and maintain the schedule of work pending resolution of any claims by dispute resolution. Under no circumstances shall Subcontractor stop the Work for any reason, except as provided for in this Paragraph. The sole exception to Subcontractor's promise not to stop the Work is the following: If Contractor fails to pay Subcontractor within ten days after Contractor has received payment from Owner for Work that was

properly performed and billed by Subcontractor, and for which Subcontractor has completed all requirements that entitle it to receive such payment, Subcontractor shall give Contractor seven days written notice citing the condition that gives rise to the stop Work right, allowing Contractor the ability to cure such condition. If Contractor fails to cure the condition that gave rise to the stop Work right within the seven day cure period, then Subcontractor shall have the right to stop the Work. If Contractor thereafter makes payment, Subcontractor shall promptly recommence Work. Any extra costs incurred by Subcontractor to stop the Work and to remobilize its forces may be submitted to Contractor as a Change Order.

- 13.9 MODEL/ELECTRONIC FILES: Models and Electronic Files (and information derived therefrom, including but not limited to robotic layout) contained within a model or extracted from are not Contract Documents. To the extent that they are provided to Subcontractor, they are provided for reference purposes only, with the understanding that they may or may not be accurate. Contractor has no control over the content or accuracy of the information contained in or reflected by Models and Electronic Files. Contractor makes no representations or warranties with respect to the accuracy of same. Subcontractor acknowledges that it is possible that Models and Electronic Files may be inaccurate and therefore may not be relied upon entirely to complete their work. Any subcontractor purporting to rely on Models or Electronic Files to define scope does so at that subcontractor's own risk. The hard or digital copies of the Architect's Instruments of Service for the Project (Drawings and Specifications), bearing the Architects seal, are the only true contract documents of record and the only documents which may be relied upon for the purpose of defining scope. All persons consulting or reviewing Models or Electronic Files should direct any questions about same to the Architect in writing for review and resolution.
- 13.10 Notices: Written notice, where required by the terms of this Subcontract Agreement, may be accomplished by personal delivery of said notice or by any other delivery services for which a receipt may be obtained to confirm delivery, or by e-mail. The written notice shall become effective upon the date received by the party to whom the notice is directed. Personal delivery is complete when the notice is delivered to an appropriate representative of the party receiving notice.
- 13.11 SOFTWARE: Contractor will utilize a cloud-based construction management system for document access that includes but is not limited to project drawings, documents, submittals, RFIs and models. Contractor will provide construction management system access to Subcontractor as requested by Subcontractor. Subcontractor shall be responsible for providing any devices (laptop, tablet, smart phone, etc) required for their interface with cloud-based construction management system.

#### **14. ARTICLE 14 – EXHIBITS**

The Exhibits to this Subcontract Agreement are the following:

- A Contract Documents Identification
- B General Requirements
- C Scope of Work and Subcontract Price
- D Project Schedule
- E Lower Tier Subs/Suppliers
- F Subcontractor Certification Affidavit
- G Insurance Requirements
- H Labor Agreement

I Lien Waiver Forms

**NOTICE OF INDEMNIFICATION: SUBCONTRACTOR AND CONTRACTOR HEREBY ACKNOWLEDGE AND AGREE THAT THIS SUBCONTRACT AGREEMENT CONTAINS CERTAIN INDEMNIFICATION OBLIGATIONS AND COVENANTS.**

**THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.**

IN WITNESS WHEREOF the parties hereto have executed this Agreement, the day and year first above written.

Subcontractor

**PARIC Corporation**

Contractor

{{\*Sign\_es\_signer1\_signature}}

{{\*Sign2\_es\_signer2\_signature}}

By: {{\*SubName\_es\_signer1\_fullname}}

By: {{\*Subname\_es\_signer2\_fullname}}

Title: {{\*SubTitle\_es\_signer1\_title}}

Title: {{\*SubTitle\_es\_signer2\_title}}

Date: {{\*SubDate\_es\_signer1\_date}}

Date: {{\*SubDate\_es\_signer2\_date}}