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ConsensusDocs™ 750 **STANDARD AGREEMENT BETWEEN CONSTRUCTOR AND SUBCONTRACTOR**

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STANDARD AGREEMENT BETWEEN CONSTRUCTOR AND SUBCONTRACTOR

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ARTICLE 1 AGREEMENT

Job Number: [_____]

Account Code: [_____]

This Agreement is made this [_____] Day of [_____] in the year **2014**, by and between the
CONSTRUCTOR, **JOHN W. ROOKER AND ASSOCIATES, INC. ("Rooker")**

and the

SUBCONTRACTOR, [_____]

Tax identification number (TIN) [_____] State License [_____] General Contractor License No., if
applicable [_____]

for services in connection with the SUBCONTRACT WORK for the following

PROJECT, [_____]

**Notice to the Parties shall be given at the above addresses. The Date of Commencement is the
date of this Agreement above.**

The OWNER is [_____] , and the DESIGN PROFESSIONAL for the Project is [_____]



ARTICLE 2 SCOPE OF WORK

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

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

2.2.1 The Subcontract Time shall commence to run on the date of this Agreement unless a different date is specified in this Agreement or set in a notice to proceed issued by the Contractor. The Work of this Subcontractor shall be performed in accordance with the requirements of the Progress Schedule, subject to the adjustments to this Subcontract Time as provided in the Subcontract Documents.

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

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

2.4 SUBCONTRACT DOCUMENTS The Subcontract Documents include this Agreement, the prime agreement, special conditions, general conditions, specifications, drawings, and other documents appended to or incorporated by reference in the prime contract documents, addenda issued and acknowledged prior to execution of this Agreement, amendments, laboratory testing to determine the nature of encountered hazardous materials, other documents listed in this Agreement, and modifications issued in accordance with this Agreement. The **Constructor** shall make reasonably available to the Subcontractor, prior to the execution of this Agreement, copies of the existing Subcontract Documents to which the Subcontractor will be bound, in hard copy or electronic form. The Subcontractor shall similarly make reasonably available copies of applicable portions of the Subcontract Documents to its proposed subcontractors and suppliers. Nothing shall prohibit the Subcontractor from obtaining copies of the Subcontract Documents from the **Constructor** at any time after the Subcontract Agreement is executed.

2.4.1 DOCUMENTS IN ELECTRONIC FORM If the **Owner** requires that the **Owner, Design Professional, Constructor** and Subcontractors exchange documents and data in electronic or digital form, prior to any such exchange, the **Owner, Design Professional, and Constructor** shall agree in ConsensusDocs 200.2 or a written protocol governing all exchanges, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security



requirements; and (g) storage and retrieval requirements. The Subcontractor shall provide whatever input is needed to assist the **Constructor** in developing the protocol and shall be bound by the requirements of the written protocol. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

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

2.6 DEFINITIONS

2.6.1 “Agreement” means this ConsensusDocs 750 Standard Agreement Between Constructor and Subcontractor, as modified by the Parties, and exhibits and attachments made part of this agreement upon its execution.

2.6.1.1 The exhibits are as follows:

Exhibit A: The Subcontract Work

Exhibit B: Insurance and Bonding Requirements

Exhibit C: Subcontract Information Sheet

Exhibit D: Sales and Use Tax Exemption

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

2.6.3 The term “Day” shall mean calendar day.

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

2.6.5 The “Parties” are collectively the **Constructor** and the Subcontractor.

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

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

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

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



ARTICLE 3 SUBCONTRACTOR'S RESPONSIBILITIES

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

3.2 RESPONSIBILITIES The Subcontractor shall furnish its diligent efforts to perform the Subcontract Work in an expeditious manner and to cooperate with the **Constructor** so that the **Constructor** may fulfill its obligations to the **Owner**. The Subcontractor shall furnish all of the labor, materials, equipment, and services, including but not limited to competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of the Subcontract Work, all of which shall be provided in full accord with and reasonably inferable from the Subcontract Documents. The Subcontractor shall provide the **Constructor** a list of its proposed subcontractors and suppliers, and be responsible for taking field dimensions, providing tests, obtaining required permits related to the Subcontract Work and affidavits, ordering of materials and all other actions as required to meet the Progress Schedule.

3.2.1. The Subcontractor shall be duly licensed and authorized as required by governmental authorities having jurisdiction over the Project.

3.2.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the **Constructor** in scheduling and performing the Subcontract Work to avoid conflict, delaying or interference with the Work of the **Constructor**, other subcontractors, the **Owner**, or separate contractors of the **Owner**.

3.2.3 The Subcontractor shall respond in a timely manner when contacted by the Project Manager or Superintendent or representative of the **Constructor**. Subcontractor shall not assign, delegate or sublet any portion of the Subcontract Work to a subsubcontractor without the written consent of the **Constructor**. For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with the subsubcontractor performing such portions of the Work of this Subcontract by which the Subcontractor and the subsubcontractor are mutually bound, to the extent of the Work to be performed by the subsubcontractor, assuming toward each other all obligations and responsibilities that the **Constructor** and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the **Constructor** and the Subcontractor have by virtue of this Agreement.

3.2.4 Subcontractor shall comply with all applicable ordinances, codes, rules and regulations and lawful orders of governmental authorities bearing upon performance of the Subcontract Work, provided, however, the Subcontractor shall not be responsible or liable for failure of any design components prepared by others relating to its Work not conform to applicable ordinances, codes, rules and regulations, provide that Subcontractor shall give prompt written notice to **Constructor** of any such perceived noncompliance upon its discovery by the Subcontractor and await further direction relative to such affected aspects of the Work.



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

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

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

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

3.7 SUBMITTALS

3.7.1 The Subcontractor promptly shall submit for approval to the **Constructor** all shop drawings, samples, product data, manufacturers' literature, and similar submittals required by the Subcontract Documents. Submittals shall be submitted in electronic form if required. The Subcontractor shall be responsible to the **Constructor** for the accuracy and conformity of its submittals to the Subcontract Documents. The Subcontractor shall prepare and deliver its submittals to the **Constructor** in a manner consistent with the Progress Schedule and in such time and sequence so as not to delay the **Constructor** or others in the performance of the Work. The Subcontractor's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Subcontract Documents. The approval of any Subcontractor submittal shall not be deemed to authorize changes, deviations, or substitutions in the requirements of the Subcontract Documents unless express written approval is obtained from the **Constructor** and **Owner** authorizing such change, deviation, or substitution. Such approval shall be promptly memorialized in a Subcontract



Change Order within seven (7) Days following approval by the **Constructor** and, if applicable, provide for an adjustment in the Subcontract Amount or Subcontract Time. If the Subcontract Documents do not contain submittal requirements pertaining to the Subcontract Work, the Subcontractor agrees upon request to submit in a timely fashion to the **Constructor** for approval any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by the **Constructor, Owner, or Design Professional**.

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

3.8 DESIGN DELEGATION

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

3.8.2 If the Subcontractor's design professional is an independent professional, the design services shall be procured pursuant to a separate agreement between the Subcontractor and the design professional. The agreement between the Subcontractor and the Subcontractor's design professional shall not include any limitation of liability, except to the extent that consequential damage are waived pursuant to subsection 5.4.1, or exclusion from participation in the multiparty proceedings requirement of section 11.6. The Subcontractor shall be responsible for conformance of its design with the information given and the design concept expressed in the Subcontract Documents. The Subcontractor shall not be responsible for the adequacy of the performance or design criteria required by the Subcontract Documents.

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

3.9 TEMPORARY SERVICES The Subcontractor's and **Constructor's** respective responsibilities for temporary services are set forth in Exhibit "A".

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

3.11 SUBCONTRACTOR'S REPRESENTATIVE The Subcontractor shall designate a person, subject to the **Constructor's** approval, who shall be the Subcontractor's authorized representative. This representative shall be the only person to whom the **Constructor** shall issue instructions, orders, or



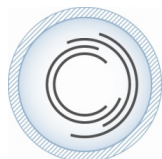
directions, except in an emergency. The Subcontractor's representative is as identified in Exhibit "C", who is agreed to by the **Constructor**. If the Subcontractor changes its representative, the Subcontractor shall immediately notify the **Constructor** in writing.

3.12 TESTS AND INSPECTIONS The Subcontractor shall schedule all required tests, approvals and inspections of the Subcontract Work at appropriate times so as not to delay the progress of the work. The Subcontractor shall give proper written notice to all required Parties of such tests, approvals, and inspections. Except as otherwise provided in the Subcontract Documents the Subcontractor shall bear all expenses associated with tests, inspections, and approvals required of the Subcontractor by the Subcontract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity approved by the **Constructor** and **Owner**. Required certificates of testing, approval, or inspection shall, unless otherwise required by the Subcontract Documents, be secured by the Subcontractor and promptly delivered to the **Constructor**.

3.13 WARRANTIES The Subcontractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Subcontract Documents, and free from defective workmanship and materials. Upon request by the **Constructor**, the Subcontractor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. The Subcontractor further warrants that the Subcontract Work shall be free from material defects not intrinsic in the design or materials required in the Subcontract Documents. The Subcontractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by others, or abuse. The Subcontractor's warranties shall commence on the date of Substantial Completion of the Work or a designated portion.

3.13.1. Such warranties, together with any other specially required warranties or manufacturers, fabricators or suppliers warranties or guarantees required by the Subcontract Documents of the Subcontractor and of any of its subsubcontractors, suppliers, or manufacturers shall expressly be for the use, benefit and enforcement of both the **Constructor** and the **Owner**, as intended beneficiaries, including any assignees or transferees of the **Owner**.

3.13.2. The Subcontractor further warrants and assures that for each aspect its performance and for all materials, equipment or other deliverable the above warranties shall be in effect for a period of one year from the date of Subcontractor's Substantial completion or acceptance, unless otherwise provided in the Subcontract Documents. If any such aspect of performance does not comply with the warranty as applicable it, Subcontractor agrees to correct and remedy the deficiency, together with any other work affected by such correction or remediation whether performed initially by the Subcontractor or not, without charge and in a timely manner upon notice. For all critical services, any such deficiency or nonconformity will be corrected within 24 hours of notice. Subcontractor agrees that the **Constructor** may assign or transfer Subcontractor's warranties and guarantees, and those of Subcontractor's subsubcontractors, suppliers, and fabricators, and manufacturers, to the **Owner** or other third parties having an interest in the completed project and that such third parties may enforce and deal directly with the Subcontractor relative to such issues. If there is a conflict between the above warranties and Subcontractor's standard warranties, the more stringent warranty more favorable to **Constructor** shall apply. Subcontractor agrees to offer an optional post – warranty maintenance service for operational equipment and systems or to cooperate with **Constructor** in procuring and arrangement for such services.



3.14 CLEANUP

3.14.1 The Subcontractor shall at all times during its performance of the Subcontract Work keep the Worksite clean and free from dirt, debris, trash, waste materials, dust accumulation, and rubbish resulting from the Subcontract Work. Prior to discontinuing the Subcontract Work in an area, the Subcontractor shall clean the area and remove all its dirt, debris, trash, waste materials, dust accumulation, and rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The Subcontractor shall make provisions to minimize and confine dirt, trash, waste materials, dust accumulation and debris resulting from its construction activities. The Subcontractor shall not be held responsible for unclean conditions caused by others.

3.14.2 If the Subcontractor fails to commence compliance with cleanup duties within 24 hours extending over consecutive business days after written notification from the **Constructor** of non-compliance, the **Constructor** may implement appropriate cleanup measures without further notice and shall deduct the reasonable costs and a **Constructor's** administrative fee of \$25.00 per hour, expended in performing such cleanup measures from any amounts due or to become due the Subcontractor in the next payment period.

3.14.3. To the extent any area involved cleanup of more than one subcontractor, such charges may be apportioned among the subcontractors involved in the judgment of the **Constructor** among such parties.

3.15 SAFETY

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

3.15.1.1 employees and other persons at the Worksite;

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

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

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

3.15.3 The Subcontractor shall implement appropriate safety measures pertaining to the Subcontract Work and the Project, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers, and establishing proper notice procedures to protect persons and property at the Worksite and adjacent to the Worksite from injury, loss, or damage.



3.15.4 The Subcontractor shall exercise extreme care in carrying out any of the Subcontract Work which involves explosive or other dangerous methods of construction or hazardous procedures, materials, or equipment. The Subcontractor shall use properly qualified individuals or entities to carry out the Subcontract Work in a safe and reasonable manner so as to reduce the risk of bodily injury or property damage.

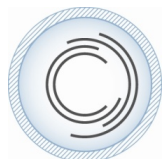
3.15.5 Damage or loss not insured under property insurance and to the extent caused by the negligent acts or omissions of the Subcontractor, or anyone for whose acts the Subcontractor may be liable, shall be promptly remedied by the Subcontractor. Damage or loss to the extent caused by the negligent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

3.15.6 The Subcontractor is required to designate an individual at the Worksite in the employ of the Subcontractor who shall act as the Subcontractor's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Subcontractor in writing to the **Constructor**, the designated safety representative shall be the Subcontractor's project superintendent. Such safety representative shall attend Worksite safety meetings as requested by the **Constructor**.

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

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

3.15.9 Prevention of accidents at the Worksite is the responsibility of the **Constructor**, the Subcontractor, and all other subcontractors, persons, and entities at the Worksite. Establishment of a safety program by the **Constructor** shall not relieve the Subcontractor or other Parties of their safety responsibilities. The Subcontractor shall establish its own safety program implementing safety measures, policies, and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by the **Constructor** and the **Owner**, including, but not limited to, requirements imposed by the Subcontract Documents. The Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project, and shall stop any part of the Subcontract Work which the **Constructor** deems unsafe until corrective measures satisfactory to the **Constructor** shall have been taken. The **Constructor's** failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility therefor. The Subcontractor shall notify the **Constructor** immediately following a reportable incident under applicable rules, regulations, orders, and other lawful requirements, and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by the **Constructor**. To the fullest extent permitted by law, each Party to this Agreement shall indemnify the other Party from and against fines or penalties imposed as a result of safety violations, but only to the extent that such fines or penalties are caused by its failure to comply with applicable safety requirements. This indemnification obligation does not extend to additional or increased fines that result from repeated or willful violations not caused by the Subcontractor's failure to comply with applicable rules, regulations, orders, and other lawful requirements.



3.15.10 The Subcontractor shall take reasonable safety precautions with respect to the performance of this Subcontract, shall comply with safety measures initiated by the **Constructor** and with applicable laws, rules, statutes, ordinances, codes and regulations, and lawful orders of governmental authorities for the safety of persons and property in accordance with the requirements of the Subcontract Documents including the prime contract.

3.15.11 The Subcontractor and its employees are responsible for their safety program and its job site management. OSHA standards shall be strictly adhered to by the Subcontractor and all of its employees employed by the Subcontractor or its subsubcontractors through the project performance. If the Subcontractor or its subsubcontractors, or their employees are found negligent or in willful violation of OSHA standards and safety procedures, **Constructor** shall issue one written warning and then any subsequent similar violation or infraction will result in the Subcontractor and/or its subsubcontractors, or any of their employees involved in the violation or infraction, being removed from the job site until the deficiency or violation is remedied, all at no cost or expenses to **Constructor**. Subsequent violations or infractions will result in the Subcontractor or its subsubcontractor, and/or their employees involved, being permanently removed from the jobsite by direction of **Constructor**, all at no cost to **Constructor**. If the Subcontractor, or its subsubcontractors, or their employees performing work on this project, are found to be in violation of any OSHA regulation or standard, and such violation results in a fine or assessment being levied against **Constructor**, without fault on its part, the cost of such fine and other punitive damages will be deducted from monies due or that would otherwise be due and payable to the Subcontractor. Any balance not paid through monies due the Subcontractor shall be paid by the Subcontractor.

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

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

3.18 PERMITS, FEES, LICENSES, AND TAXES The Subcontractor shall give timely notices to authorities pertaining to the Subcontract Work, and unless otherwise expressly provided in the Subcontract Documents, shall be responsible to secure and pay for all permits, fees, licenses, assessments, inspections, testing, and taxes necessary to complete the Subcontract Work in accordance with the Subcontract Documents.

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

3.19.1 If hazardous substances of a type of which an employer is required by law to notify its



employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the **Constructor** in sufficient detail and time to permit compliance with such laws by the **Constructor**, other subcontractors and other employers on the site.

3.19.2 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the **Constructor** in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the **Constructor** and Subcontractor. To the extent that the **Constructor** is correspondingly entitled to adjustment under the prime contract for such conditions and upon its allowance, the Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization

3.19.3 To the fullest extent permitted by law, to the extent that such damage, loss or expense is due to the fault or negligence of the **Constructor** or others for whom it is responsible, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 3.19.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

3.19.4 The Subcontractor shall indemnify the **Constructor** for the cost and expense the **Constructor** incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or its subsubcontractors or (2) where the Subcontractor fails to perform its obligations under Section 3.19.1, except to the extent that the cost and expense are due to the **Constructor's** fault or negligence.

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

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



3.22 UNCOVERING/CORRECTION OF SUBCONTRACT WORK

3.22.1 UNCOVERING OF SUBCONTRACT WORK

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

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

3.22.2 CORRECTION OF WORK

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

3.22.2.2 In addition to the Subcontractor's obligations under section 3.22.1, the Subcontractor agrees to promptly correct, after receipt of a written notice from the **Constructor**, all Subcontract Work performed under this Agreement which proves to be defective in workmanship or materials within a period of one year from the date of Substantial Completion of the Subcontract Work or for a longer period of time as may be required by specific warranties in the Subcontract Documents. Substantial Completion of the Subcontract Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Subcontract Documents so that the **Owner** can occupy or utilize the Project, or a designated portion, for the use for which it is intended,



without unscheduled disruption or as may otherwise be defined in the Subcontract Documents, including the prime Contract Documents. If, during the one-year period, the **Constructor** fails to provide the Subcontractor with prompt written notice of the discovery of defective or nonconforming Subcontract Work, the **Constructor** shall neither have the right to require the Subcontractor to correct such Subcontract Work nor the right to make claim for breach of warranty. If the Subcontractor fails to correct defective or nonconforming Subcontract Work within a reasonable time after receipt of notice from the **Constructor**, the **Constructor** may correct such Subcontract Work pursuant to subsection 10.1.1.

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

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

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

3.23 MATERIALS OR EQUIPMENT FURNISHED BY OTHERS If the scope of the Subcontract Work includes installation of materials or equipment furnished by others, the Subcontractor is responsible for exercising proper care in receiving, handling, storing, and installing such items, unless otherwise provided in the Subcontract Documents. The Subcontractor shall examine the items provided and report to the **Constructor** in writing any items it may discover that do not conform to requirements of the Subcontract Documents. The Subcontractor shall not proceed to install nonconforming items without further instructions from the **Constructor**. Loss or damage due to acts or omissions of the Subcontractor shall, upon two (2) Business Days' written notice to the Subcontractor, be deducted from any amounts due or to become due the Subcontractor.

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

3.25 USE OF CONSTRUCTOR'S EQUIPMENT The Subcontractor, its agents, employees, subcontractors or suppliers shall use the Constructor's equipment only with the express written permission of the **Constructor's** designated representative and in accordance with the **Constructor's** terms and conditions for such use. If the Subcontractor or any of its agents, employees, subcontractors or suppliers utilize any of the **Constructor's** equipment, including machinery, tools, scaffolding, hoists, lifts, or similar items owned, leased or under the control of the **Constructor**, the Subcontractor shall indemnify and be liable to the **Constructor** as provided in ARTICLE 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Constructor's employees operating the **Constructor's** equipment.



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

3.27 SYSTEMS AND EQUIPMENT STARTUP With the assistance of the **Owner's** maintenance personnel and the **Constructor**, the Subcontractor shall direct the check-out and operation of systems and equipment for readiness, and assist in their initial startup and the testing of the Subcontract Work.

3.28 COMPLIANCE WITH LAWS The Subcontractor agrees to comply with all Laws at its own costs, including, but not limited to federal, state and local tax laws, social security acts, unemployment compensation acts, workers compensation acts, procurement and contracting laws, codes and regulations relating and applicable to the performance of the Subcontract Work. The Subcontractor shall be liable to the **Constructor** and the **Owner** for all loss, cost, and expense attributable to any acts or omissions by the Subcontractor, its employees, and agents resulting from the failure to comply with Laws, including, any fines, penalties, or corrective measures, except as provided in subsection 3.15.9. However, liability under this section shall not apply if notice to **Constructor** was given, and advance approval by appropriate authorities, including the Constructor is received.

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

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

3.30 ROYALTIES, PATENTS, AND COPYRIGHTS The Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by the Subcontractor and incorporated in the Subcontract Work. The Subcontractor shall defend, indemnify, and hold the **Constructor** and **Owner** harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Subcontractor shall be liable for all loss, including all costs, expenses, and attorneys' fees, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Subcontract Documents. However, if the Subcontractor has reason to believe that a particular design, process, or product required by the Subcontract Documents is an infringement of a patent, the Subcontractor shall promptly furnish such information to the **Constructor** or be responsible to the **Constructor** and **Owner** for any loss sustained as a result.

ARTICLE 4 CONSTRUCTOR'S RESPONSIBILITIES

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

4.2 OWNER'S ABILITY TO PAY



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

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

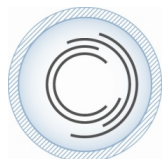
4.3 CONSTRUCTOR APPLICATION FOR PAYMENT Upon request, the **Constructor** shall give the Subcontractor a copy of the most current **Constructor** application for payment reflecting the amounts approved or paid by the **Owner** for the Subcontract Work performed to date, provided, however, that appropriate redactions may be made in the documents so furnished regarding information unrelated to the amounts approved or paid regarding the Subcontractor's Work.

4.4 INFORMATION OR SERVICES The Subcontractor is entitled to request through the **Constructor** any information or services required for the Subcontractor's performance of the Subcontract Work which is under the **Owner's** control. The Subcontractor also is entitled to request through the **Constructor** any information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the **Owner's** interest in the real property on which the Project is located and the recorded legal title. To the extent the **Constructor** receives such information or services, the **Constructor** shall provide them to the Subcontractor in a timely manner. The **Constructor**, however, does not warrant the accuracy or completeness of the information provided by the **Owner**. To the extent the **Owner** provides any warranty of **Owner** provided information, the **Constructor** agrees to permit the Subcontractor to prosecute a claim in the name of the **Constructor** for the use and benefit of the Subcontractor, pursuant to subsection 5.3.2.

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

4.6 TIMELY COMMUNICATIONS The **Constructor** shall transmit to the Subcontractor, with reasonable promptness, all submittals, transmittals, and written approvals relative to the Subcontract Work. Unless otherwise specified in the Subcontract Documents, if communications are not through the Subcontractor, the **Constructor** shall inform the Subcontractor of the communications the **Constructor** has with the Subcontractor's subcontractors, and suppliers.

4.7 USE OF SUBCONTRACTOR'S EQUIPMENT The **Constructor**, its agents, employees or suppliers shall use the Subcontractor's equipment only with the express written permission of the Subcontractor's designated representative and in accordance with the Subcontractor's terms and conditions for such use. If the **Constructor** or any of its agents, employees, or suppliers utilize any of the Subcontractor's equipment, including machinery, tools, scaffolding, hoists, lifts, or similar items owned, leased, or under the control of the Subcontractor, the **Constructor** shall indemnify and be liable to the Subcontractor as provided in ARTICLE 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Subcontractor's employees operating the Subcontractor's equipment.



ARTICLE 5 PROGRESS SCHEDULE

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

5.2 SCHEDULE OBLIGATIONS The Subcontractor shall provide the Constructor with any scheduling information proposed by the Subcontractor for the Subcontract Work or requested by Constructor. In consultation with the Subcontractor, the **Constructor** shall prepare the schedule for performance of the Work ("Progress Schedule") and shall periodically revise and update such schedule, as necessary, as the Work progresses. Both the **Constructor** and the Subcontractor shall be bound by the Progress Schedule. The Progress Schedule and all subsequent changes and additional details shall be submitted to the Subcontractor promptly and reasonably in advance of the required performance. The **Constructor** shall have the right to determine and, if necessary, make reasonable changes to the duration, time, order, and priority in which the various portions of the Work shall be performed and all other matters relative to the Subcontract Work. To the extent such changes are greater than those normally anticipated and experienced in work in the nature involved in this type of project and increase the Subcontractor's time and costs, the Subcontract Amount and Subcontract Time shall be equitably adjusted to the extent such could not have been reasonably anticipated at the time of entry into the Subcontract.

5.2.1. The Project Progress Schedule, in its current form and subject to modifications and adjustments as provided herein is attached as Rooker Project Progress Schedule as Attachment "B" to Exhibit "A". The Subcontractor acknowledges that it has reviewed the referenced Project Progress Schedule and understands its schedule requirements as they relate to the Subcontractor's Work. The Subcontractor further understands and agrees that to maintain this schedule, overtime and shift work may be required and that the cost for any such overtime or shift work is included in the Price, subject to any right to adjustment as herein provided.

5.3 DELAYS AND EXTENSIONS OF TIME

5.3.1 OWNER CAUSED DELAY Subject to the subsection immediately below, if the commencement or progress of the Subcontract Work is delayed without the fault or responsibility of the Subcontractor, the Subcontract Time shall be extended by Subcontract Change Order and the Subcontract Amount equitably adjusted to the extent obtained by the **Constructor** under the Subcontract Documents, and the Progress Schedule shall be revised accordingly.

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



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

5.3.4 CLAIMS RELATING TO CONSTRUCTOR The Subcontractor shall give the **Constructor** written notice of all claims not included in subsection 5.3.2 within fourteen (14) Days of the Subcontractor's knowledge of the facts giving rise to the event for which claim is made. Thereafter, the Subcontractor shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties agree upon a longer period of time. The **Constructor** shall respond in writing denying or approving, in whole or in part, the Subcontractor's claim no later than fourteen (14) Days after receipt of the Subcontractor's documentation of claim. The **Constructor's** failure to respond shall be deemed a denial of the Subcontractor's claim. All unresolved claims, disputes, and other matters in question between the **Constructor** and the Subcontractor not relating to claims included in subsection 5.3.2 shall be resolved as provided for in ARTICLE 11.

5.4 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

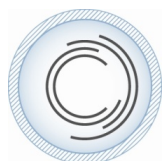
5.4.1 Except for any (a) liquidated, consequential, or other damages that the **Owner** is entitled to recover against the **Constructor** under the prime agreement, and (b) losses covered by insurance required by the Subcontract Documents, the **Constructor** and the Subcontractor mutually waive all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

5.5 LIQUIDATED DAMAGES

5.5.1 If the Subcontract Documents provide for liquidated damages or other damages for delay beyond the completion date set forth in the Subcontract Documents that are not specifically addressed as a liquidated damage item in this Agreement, and such damages are assessed by the **Owner** against the **Constructor**, the **Constructor** may assess a share of the damages against the Subcontractor in proportion to the Subcontractor's share of the responsibility for the damages. However, the amount of such assessment shall not exceed the amount assessed against the **Constructor**. This section shall not limit the Subcontractor's liability to the **Constructor** for the **Constructor's** actual damages caused by the Subcontractor.

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

ARTICLE 6 SUBCONTRACT AMOUNT



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

- a. the fixed-price of [____], (\$) subject to additions and deductions as provided for in the Subcontract Documents; or
- b. alternates and unit prices in accordance with the attached schedule of alternates and unit prices and estimated quantities, which is incorporated by reference and identified as Exhibit "A"; or
- c. time and material rates and prices in accordance with the attached Schedule of Labor and Material Costs which is incorporated by reference and identified as Exhibit "A".

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

ARTICLE 7 CHANGES

7.1 The Subcontractor may request or the **Constructor** may order changes in the Subcontract Work or the timing or sequencing of the Subcontract Work that impacts the Subcontract Amount or Subcontract Time. All such changes in the Subcontract Work that affect the Subcontract Amount or the Subcontract Time shall be formalized in a Subcontract Change Order. Any such requests for a change in the Subcontract Amount or Subcontract Time shall be processed in accordance with this ARTICLE 7.

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

7.1.2 For changes directed or required by **Constructor** that are the result of **Owner** directed or required changes issued under the prime Contract Documents, the mode, process and procedure for seeking and obtaining adjustment of the Subcontract Time or Amount shall be as set forth in the Prime Contract Documents. To the extent any such **Owner** proposed, directed or required change affects, or potentially affects the performance of the Subcontract Work, the **Constructor** shall promptly give notice to the Subcontractor of such **Owner** direction, together with all related documentation, and the Subcontractor, if it believes its costs or time or performance will be affected, shall promptly provide to the **Constructor** the response, substantiation, documentation and information required to be submitted by the **Constructor** on the Subcontractor's behalf seeking any such adjustment. In any event, assuming timely notice from the **Constructor**, the Subcontractor shall provide such response and information to Constructor at least three business days prior to any deadlines for submission to the **Owner** under the Prime Contract. Unless due to the failure of the **Constructor** to timely and properly give such notice or to submit such information on behalf of the Subcontractor, the Subcontractor shall be entitled to adjustment of the Subcontract Time or Amount for such owner responsible change only to the extent corresponding allowance is made under the prime contract and is embodied in a prime contract change order, subject to the right of Subcontractor to protest and appeal such determination through the dispute resolution processes.



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

7.3 CONCEALED OR UNKNOWN SITE CONDITIONS If in the performance of the Subcontract Work the Subcontractor encounters (a) latent, concealed, or physical conditions which differ materially from those indicated in the Subcontract Documents, or (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist, and not generally recognized as inherent in the kind of work provided for in this Agreement, the Subcontractor shall stop affected work and give the **Constructor** prompt written notice of the condition. Any change in the Subcontract Amount or the Progress Schedule shall be determined by article 5, after the condition is first observed. The adjustment which the Subcontractor may receive shall be limited to the adjustment the **Constructor** receives from the **Owner** on behalf of the Subcontractor, or as otherwise provided under subsection 5.3.2.

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

7.4.1 mutual acceptance of an itemized lump sum; or

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

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

7.5 SUBSTANTIATION OF ADJUSTMENT If the Subcontractor does not respond promptly or disputes the method of adjustment, the method and the adjustment shall be determined by the **Constructor** on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Subcontract Amount, an allowance for overhead and profit of the percentage provided in section 7.6, or if none is provided, as mutually agreed upon by the Parties. The Subcontractor may contest the reasonableness of any adjustment determined by the **Constructor**. The Subcontractor shall maintain for the **Constructor's** review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Subcontract Change Order:

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

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



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

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

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

7.6 Adjustments shall be based on net change in the Subcontractor's reasonable cost of performing the changed Subcontract Work plus, in case of a net increase in cost, an agreed upon sum for overhead and profit not to exceed Ten percent (10%).

7.7 NO OBLIGATION TO PERFORM The Subcontractor shall not be obligated to perform changes in the Subcontract Work that impact Subcontract Amount or Subcontract Time until a Subcontract Change Order has been executed or written instructions have been issued in accordance with sections 7.1, 7.2 or 7.8.

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

ARTICLE 8 PAYMENT

8.1 SCHEDULE OF VALUES As a condition precedent to payment, the Subcontractor shall provide a schedule of values satisfactory to the **Constructor** not more than Fifteen (15) Days from the date of execution of this Agreement.

8.2 PROGRESS PAYMENTS

8.2.1 APPLICATIONS The Subcontractor's applications for payment shall be itemized and supported by substantiating data as required by the Subcontract Documents. If the Subcontractor is obligated to provide design services pursuant to section 3.8, the Subcontractor's applications for payment shall show its design professional's fee and expenses as a separate cost item. The Subcontractor's application for payment shall be notarized if required and if allowed under the Subcontract Documents may include properly authorized Subcontract Construction Change Directives or Interim Directed Changes. The Subcontractor's application for payment for the Subcontract Work performed in the preceding payment period shall be submitted for approval by the **Constructor** in accordance with the schedule of values if required and subsections 8.2.2 through 8.2.47. The **Constructor** shall incorporate the approved amount of the Subcontractor's application for payment into the **Constructor's** application for payment to the **Owner** for the same period and submit it to the **Owner** in a timely fashion. The **Constructor** shall promptly notify the Subcontractor of any changes in the amount requested on behalf of the Subcontractor.

8.2.2 RETAINAGE The rate of retainage shall be Ten percent (10%), which is equal to the percentage retained from the **Constructor's** payment by the **Owner** for the Subcontract Work. If the Subcontract Work is satisfactory and the prime agreement provides for reduction of retainage, the Subcontractor's retainage shall also be reduced when the **Constructor's** retainage of the Subcontract Work has been so reduced by the **Owner**.



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

8.2.4 ADDITIONAL REQUIREMENTS in addition to the requirements set forth above. Payment Request documentation required to be submitted with each application for payment is as set forth below. Failure to include all properly and fully prepared Payment Request documentation will preclude processing of such application unless and until all such documentation is provided and may, therefore delay in processing and payment.

8.2.4.1 Required with First Application for payment

8.2.4.1.1 Request for EIN Form W-9

8.2.4.1.2 Schedule for Values form AIA G702

8.2.4.2 Required with All Applications for Payment

8.2.4.2.1 Subcontractor shall complete an AIA G702 detailing the value for that portion of work completed this period. Waiver and Affidavit forms as set forth in Article 8,25,below

8.2.4.2.2 Waiver and Affidavit forms from Subsubcontractors if requested by the Constructor or otherwise required by the Subcontract Documents.

8.2.5 WAIVER AND AFFIDAVIT FORMS executed originals of Exhibit A Attachments G (1) (a) Interim Waiver and Release of Lien and Payment Bond Claims and G (1) (b) Affidavit of Payment and Waiver and Release of Claims upon Interim Payment, for the portion of work completed and/or materials stored on the jobsite for the application period, shall be submitted with the application.

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

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

8.2.7.1 The "reasonable time" within which such payment shall be made to Subcontractor shall in no event be a period shorter than sixty (60) calendar days after the date when



payment of the corresponding amounts by the **Owner** to the **Constructor** for the amount requested in the subcontract payment application would have been due for payment under the Prime Contract Documents.

8.2.8 PAYMENT DELAY If the **Constructor** has received payment from the **Owner** and if for any reason not the fault of the Subcontractor, the Subcontractor does not receive a progress payment from the **Constructor** within seven (7) Days after the date such payment is due, as defined in the subsection immediately above, or, if the **Constructor** has failed to pay the Subcontractor within a reasonable time for the Subcontract Work satisfactorily performed, the Subcontractor, upon giving seven (7) Days' written notice to the **Constructor**, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to the Subcontractor has been received. The Subcontract Amount and Time shall be adjusted by the amount of the Subcontractor's reasonable and verified cost of shutdown, delay, and startup, which shall be effected by an appropriate Subcontractor Change Order.

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

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

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

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

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

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

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

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



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

8.2.10 SUBSTANTIAL COMPLETION

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

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

8.3 FINAL PAYMENT

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

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

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

8.3.2.2 consent of surety to final payment, if required;

8.3.2.3 satisfaction of required closeout procedures;

8.3.2.4 Executed originals of Exhibit "A" Attachments G (2) (a) Waiver and Release of Lien and Payment Bond Claims upon Final Payment and G (2) (b) Affidavit of Payment and Waiver and Release of Claims upon Final Payment.



8.3.2.5 other data, if required by the **Constructor** or **Owner**, such as receipts, releases, and waivers of liens including those of lower tier subcontractors and suppliers under the Subcontractor, to the extent and in such form as may be required by the Subcontract Documents;

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

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

8.3.3 TIME OF PAYMENT Final payment of the balance due of the Subcontract Amount shall be made to the Subcontractor within Seven (7) Days after receipt by the **Constructor** of final payment from the **Owner** for such Subcontract Work.

8.3.4 FINAL PAYMENT DELAY If the **Owner** or its designated agent does not issue a certificate for final payment or the **Constructor** does not receive such payment for any cause which is not the fault of the Subcontractor, the **Constructor** shall promptly inform the Subcontractor in writing. If final payment from the **Owner** for such Subcontract Work is not received by the **Constructor**, through no fault of the Subcontractor, the **Constructor** will make payment to the Subcontractor within a reasonable time.

8.3.4.1 The "reasonable time" within which such payment shall be made to Subcontractor shall in no event be a period shorter than Sixty (60) calendar days after the date when payment of the corresponding amounts by the **Owner** to the **Constructor** for the amount requested in the subcontract payment application would have been due for payment under the Prime Contract Documents.

8.3.5 WAIVER OF CLAIMS Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontract Work, except those specifically identified in writing as pending and unresolved at the time of final payment application and otherwise expressly reserved by appropriate notations of the final payment application and related waiver and affidavit forms, but shall in no way relieve the Subcontractor of liability for the obligations assumed under sections 3.21 and 3.22, or for faulty or defective work or services discovered after final payment, nor relieve the **Constructor** for claims made in writing by the Subcontractor as required by the Subcontract Documents prior to its application for final payment as unsettled at the time of such payment.

8.4 LATE PAYMENT INTEREST Progress payments or final payment due and unpaid under this Agreement, as defined in subsections 8.2.7, 8.3.3 and 8.3.4, shall bear interest from the date payment is due at the prevailing statutory rate at the place of the Project. However, if the **Owner** fails to timely pay the **Constructor** as required under the prime agreement through no fault or neglect of the **Constructor**, and the **Constructor** fails to timely pay the Subcontractor as a result of such nonpayment, the **Constructor's** obligation to pay the Subcontractor interest on corresponding payments due and unpaid under this Agreement shall be extinguished by the **Constructor** promptly paying to the Subcontractor the Subcontractor's proportionate share of the interest, if any, received by the **Constructor** from the **Owner** on such late payments.

8.5 CONTINUING OBLIGATIONS Provided the **Constructor** is making payments, and has made payments to the Subcontractor in accordance with this Agreement, the Subcontractor shall continue its Subcontractor performance and shall reimburse the **Constructor** for any costs and expenses for any claim, obligation, or lien asserted before or after final payment is made that arises from the performance



of the Subcontract Work. The Subcontractor shall reimburse the **Constructor** for costs and expenses including attorneys' fees and costs and expenses incurred by the **Constructor** in satisfying, discharging, or defending against any such claims, obligation, or lien, including any action brought or judgment recovered. If any Law or bond require the Subcontractor to take any action prior to the expiration of the reasonable time for payment referenced in subsection 8.2.7 in order to preserve or protect the Subcontractor's rights with respect to mechanic's lien or bond claims, then the Subcontractor may take that action prior to the expiration of the reasonable time for payment and such action will not: (a) create the reimbursement obligation recited above, (b) be in violation of this Agreement, or (c) considered premature for purposes of preserving and protecting the Subcontractor's rights.

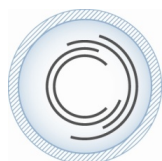
8.6 PAYMENT USE RESTRICTION Payments received by the Subcontractor shall be used to satisfy the indebtedness owed by the Subcontractor to any person furnishing labor or materials, or both, for use in performing the Subcontract Work through the most current period applicable to progress payments received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

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

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

8.9 SUBCONTRACTOR PAYMENT FAILURE Upon payment by the **Constructor**, the Subcontractor shall promptly pay its subcontractors and suppliers the amounts to which they are entitled. If the **Constructor** has reason to believe that labor, material, or other obligations incurred in the performance of the Subcontract Work are not being paid, the **Constructor** may give written notice of a potential claim or lien to the Subcontractor and may take any steps deemed necessary to assure that progress payments are utilized to pay such obligations, including but not limited to the issuance of joint checks. If upon receipt of notice, the Subcontractor does not (a) supply evidence to the satisfaction of the **Constructor** that payment owed has been paid; or (b) post a bond indemnifying the **Owner**, the **Constructor**, the **Constructor's** surety, if any, and the premises from a claim or lien, the **Constructor** shall have the right to withhold from any payments due or to become due to the Subcontractor a reasonable amount to protect the **Constructor** from any and all loss, damage, or expense including attorneys' fees that may arise out of or relate to any such claim or lien.

8.10 SUBCONTRACTOR ASSIGNMENT OF PAYMENTS The Subcontractor shall not assign any payment due or to become due under this Agreement, without the written consent of the **Constructor**, unless the assignment is intended to create a new security interest within the scope of Article 9 of the



Uniform Commercial Code. Should the Subcontractor assign all or any part of any payment due or to become due under this Agreement to create a new security interest or for any other purpose, the instrument of assignment shall contain a clause to the effect that the assignee's right in and to any money due or to become due to the Subcontractor shall be subject to the claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the Subcontract Work.

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

8.12 Conditions of Payment Entitlement. In addition to the conditions and requirements of payment entitlement, as set for the above, the express conditions precedent to such payment entitlement, for both interim progress payment and final payment, and the completion and submission of the referenced and related documents and attachments must be satisfied before Constructor is obligated to include Subcontractors request for payment or Subcontractor is entitled to request and receive the corresponding payments.

ARTICLE 9 INDEMNITY, INSURANCE, AND BONDS

9.1 INDEMNITY

9.1.1 INDEMNITY To the fullest extent permitted by law, and for the separate consideration of Ten dollars (\$10.00) the receipt and sufficiency of which is acknowledged by Subcontractor shall as part of its compensation hereunder, the Subcontractor shall indemnify and hold harmless the **Constructor**, the **Owner**, and any other persons or entities required to be indemnified under the prime Contract Documents, and their agents, consultants, and employees (the Indemnitees) from all claims for bodily injury and property damage other than to the Work itself that may arise from the performance of the Subcontract Work, including reasonable attorneys' fees, costs, and expenses, that arise from the performance of the Work, but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Subcontractor shall be entitled to reimbursement of any defense cost paid above the Subcontractor's percentage of liability for the underlying claim to the extent attributable to the negligent acts or omissions of the Indemnitees.

9.1.2 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

9.2 INSURANCE

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



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

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

9.2.4 CANCELLATION, RENEWAL, AND MODIFICATION To the extent commercially available to the Subcontractor from its current insurance company, insurance policies required under subsection 9.2.1 shall contain a provision that the insurance company or its designee must give the **Constructor** written notice transmitted in paper or electronic format sent to invoices@rookerco.com

(a) (a) 30 Days before coverage is nonrenewed by the insurance company and (b) within 10 Business Days after cancellation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Subcontractor shall furnish the **Constructor** with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under subsection 9.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Subcontractor shall give **Constructor** prompt written notice upon actual or constructive knowledge of such condition. Send Certificates of Insurance to: invoices@rookerco.com

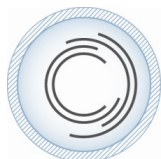
9.2.5 CONTINUATION OF COVERAGE The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least one year after final payment to the **Constructor**. Before commencing the Work, the Subcontractor shall furnish the **Constructor** with certificates evidencing the required coverages. Send Certificates of Insurance to: invoices@rookerco.com

9.2.6 PROPERTY INSURANCE

9.2.6.1 Upon written request of the Subcontractor, the **Constructor** shall provide the Subcontractor with a copy of the Builder's Risk policy of insurance or any other property or equipment insurance in force for the Project and procured by the **Owner** or **Constructor**. The **Constructor** shall advise the Subcontractor if a Builder's Risk policy of insurance is not in force. Send policy to: invoices@rookerco.com

9.2.6.2 If the **Owner** or **Constructor** has not purchased property insurance reasonably satisfactory to the Subcontractor, the Subcontractor may procure such insurance as will protect the interests of the Subcontractor, its subcontractors, and their subcontractors in the Subcontract Work. The cost of this insurance shall be charged to the **Constructor** in a Subcontract Change Order.

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



9.2.7 WAIVER OF SUBROGATION

9.2.7.1 The **Constructor** and Subcontractor waive all rights against each other, the **Owner** and the **Design Professional**, and any of their respective consultants, subcontractors, subsubcontractors, agents, and employees, for damages caused by perils to the extent covered by the proceeds of the insurance provided in section 9.2.6, except such rights as they may have to the insurance proceeds and such rights as they may have for the **Owner's** failure to obtain and maintain any Project Builders Risk Coverage that the **Owner** may be obligated to provide. The Subcontractor shall require similar waivers from its subcontractors.

9.2.8 ENDORSEMENT If the policies of insurance referred to in this article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

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

9.2.10 ADDITIONAL GENERAL LIABILITY COVERAGE The **Constructor** shall require the Subcontractor to purchase and maintain additional liability coverage, primary to the **Constructor's** coverage pursuant to the subsection immediately above by way of additional insured coverages as specified and described in Exhibit "B".

Any documented additional cost in the form of a surcharge associated with procuring the additional general liability coverage in accordance with this subsection shall be paid by the **Constructor** directly or the costs may be reimbursed by the **Constructor** to the Subcontractor by increasing the Subcontract Amount to correspond to the actual cost required to purchase and maintain the coverage. Before commencing the Subcontract Work, the Subcontractor shall provide a certificate and endorsement evidencing that the **Constructor** has been named as an additional insured, as applicable.

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

ARTICLE 10 SUSPENSION, NOTICE TO CURE, AND TERMINATION

10.1 FAILURE OF PERFORMANCE AND TERMINATION

10.1.1 NOTICE TO CURE A DEFAULT If the Subcontractor persistently (a) fails to begin the Work within Seven (7) Days of a Notice to Proceed from **Constructor**, (b) fails or neglects to carry out the work in accordance with this agreement, (c) fails or neglects to perform the Subcontract Work in conformity with the requirements of the Subcontract Documents, (d) fails to perform and complete the Subcontract Work in accordance with the Progress Schedule, or (e) persistently fails to supply enough qualified workers, proper materials, or equipment, to maintain the Progress Schedule, or



fails to make prompt payment to its workers, subsubcontractors, or suppliers, or disregards Laws or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, the Subcontractor shall be deemed in default of this Agreement. If the Subcontractor fails within three (3) Business Days after written notification to commence and continue satisfactory correction of the default with diligence and promptness, then the **Constructor** shall give a second notice to the Subcontractor and surety, if any, to correct the default within a two (2) Business Day period. If the Subcontractor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the **Constructor** without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

10.1.1.1 supply workers, materials, equipment, and facilities as the **Constructor** deems necessary for the completion of the Subcontract Work or any part which the Subcontractor has failed to complete or perform after written notification, and charge the Subcontractor costs and expenses, including reasonable overhead, profit, and attorneys' fees that are due or to become due. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount. At the Subcontractor's request, the **Constructor** shall provide a detailed accounting of the costs to finish the Subcontract Work;

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

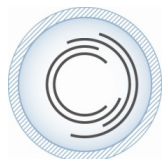
10.1.1.3 withhold any payments due or to become due the Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of the **Constructor**. In the event of an emergency affecting the safety of persons or property,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

10.1.1.4 terminate the Agreement by written notice.

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

10.2 BANKRUPTCY

10.2.1 TERMINATION ABSENT CURE If the Subcontractor files a petition under the Bankruptcy Code, this Agreement shall terminate if the Subcontractor or the Subcontractor's trustee rejects the Agreement or, if there has been a default, and the Subcontractor is unable to give adequate assurance that the Subcontractor will perform as required by this Agreement or otherwise is unable



to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

10.2.2 INTERIM REMEDIES If the Subcontractor is not performing in accordance with the Progress Schedule at the time a petition in bankruptcy is filed, or at any subsequent time, the **Constructor**, while awaiting the decision of the Subcontractor or its trustee to reject or to assume this Agreement and provide adequate assurance of its ability to perform, may avail itself of such remedies under this article as are reasonably necessary to maintain the Progress Schedule. The **Constructor** may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided including, but not limited to, reasonable overhead, profit, and attorneys' fees. The Subcontractor shall be liable for the payment of any amount by which costs incurred may exceed the unpaid balance of the Subcontract Amount.

10.3 SUSPENSION BY OWNER FOR CONVENIENCE Should the **Owner** suspend the Work or any part which includes the Subcontract Work for the convenience of the **Owner** and such suspension is not due to any act or omission of the **Constructor**, or any other person or entity for whose acts or omissions the **Constructor** may be liable, the **Constructor** shall notify the Subcontractor in writing and, upon receiving notification, the Subcontractor shall immediately suspend the Subcontract Work. To the extent provided for under the prime agreement and to the extent the **Constructor** recovers such on the Subcontractor's behalf, the Subcontract Amount and the Subcontract Time shall be equitably adjusted by Subcontract Change Order for the cost and delay resulting from any such suspension. The **Constructor** agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an **Owner** suspension and to permit the Subcontractor to prosecute the claim, in the name of the **Constructor**, for the use and benefit of the Subcontractor.

10.4 TERMINATION BY OWNER Should the **Owner** terminate its contract with the **Constructor** or any part which includes the Subcontract Work, the **Constructor** shall notify the Subcontractor in writing within three (3) Business Days of the termination and, upon written notification, this Agreement shall be terminated and the Subcontractor shall immediately stop the Subcontract Work, follow all of the **Constructor's** instructions, and mitigate all costs. In the event of **Owner** termination, for convenience without cause or fault of the **Constructor**, the **Constructor's** liability to the Subcontractor shall be limited to the extent of the **Constructor's** recovery on the Subcontractor's behalf under the Subcontract Documents, except as otherwise provided in this Agreement. The **Constructor** agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the **Owner** termination and to permit the Subcontractor to prosecute the claim, in the name of the **Constructor**, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor. If the **Owner** terminates the **Constructor** for cause, through no fault of the Subcontractor, the Subcontractor shall be entitled to recover from the **Constructor** its reasonable costs arising from the termination of this Agreement, including reasonable overhead and profit on Work not performed.

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

10.6 SUSPENSION BY CONSTRUCTOR The **Constructor** may order the Subcontractor in writing to suspend all or any part of the Subcontract Work for such period of time as may be determined to be



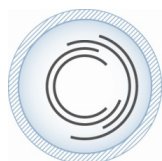
appropriate for the convenience of the **Constructor**. Phased Work or interruptions of the Subcontract Work for short periods of time shall not be considered a suspension. The Subcontractor, after receipt of the **Constructor's** order, shall notify the **Constructor** in writing in sufficient time to permit the **Constructor** to provide timely notice to the **Owner** in accordance with the prime agreement of the effect of such order upon the Subcontract Work. The Subcontract Amount or Subcontract Time shall be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Agreement caused by such suspension. No claim under this section shall be allowed for any costs incurred more than fourteen (14) Days prior to the Subcontractor's notice to the **Constructor**. Neither the Subcontract Amount nor the Progress Schedule shall be adjusted for any suspension, to the extent that performance would have been suspended, due in whole or in part to the fault or negligence of the Subcontractor or by a cause for which the Subcontractor would have been responsible. The Subcontract Amount shall not be adjusted for any suspension to the extent that performance would have been suspended by a cause for which the Subcontractor would have been entitled only to a time extension under this Agreement.

10.6.1. Termination for Convenience. At any time in the sole discretion of the **Constructor**, the **Constructor** may terminate this Agreement for convenient by issuing of a written notice of such "termination for convenience" to the Subcontractor. Upon receipt of written notice of such termination, the Subcontractor shall

- .1 cease operations as directed by the **Constructor** in the notice;
- .2 take actions necessary, or that the **Constructor** may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.
- .4 in case of such termination for the **Constructor's** convenience, the Subcontractor shall be entitled to receive payment for Work executed, the reasonable value of the Subcontractor's Work properly performed and executed prior to the termination, less prior payments made, together with reasonable, costs incurred by reason of such termination, along with reasonable overhead and profit on the Subcontract Work not executed.

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

10.8 TERMINATION BY SUBCONTRACTOR If the Subcontract Work has been stopped for fifteen (15) Days because the Subcontractor has not received progress payments or has been abandoned or suspended for an unreasonable period of time not due to the fault or neglect of the Subcontractor, then the Subcontractor may terminate this Agreement upon giving the **Constructor** Seven (7) Days' written notice. Upon such termination, the Subcontractor shall be entitled to recover from the **Constructor** payment for all Subcontract Work satisfactorily performed but not yet paid for, including reasonable overhead, profit, and attorneys' fees, costs, and expenses. However, if the **Owner** has not paid the **Constructor** for the satisfactory performance of the Subcontract Work through no fault or neglect of the



Constructor, and the Subcontractor terminates this Agreement under this article because it has not received corresponding progress payments, the Subcontractor shall be entitled to recover from the **Constructor**, within a reasonable period of time following termination, payment for all Subcontract Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable overhead and profit on Subcontract Work not performed. The **Constructor's** liability for any other damages claimed by the Subcontractor under such circumstances shall be extinguished by the **Constructor** pursuing said damages and claims against the **Owner** on the Subcontractor's behalf as provided for in sections 10.3 and 10.4.

ARTICLE 11 DISPUTE MITIGATION AND RESOLUTION

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

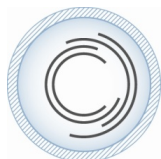
11.2 DISPUTES BETWEEN CONSTRUCTOR AND SUBCONTRACTOR If the dispute resolution provisions between the **Constructor** and the **Owner** in the Subcontract Documents do not permit consolidation or joinder with disputes of third parties, such as the Subcontractor, or if such dispute is only between the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

11.3 CONSTRUCTOR-SUBCONTRACTOR DISPUTE RESOLUTION

11.3.1 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within Five (5) Business Days, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within Five (5) Business Days to endeavor to reach resolution. If the matter remains unresolved after Fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute resolution procedures selected in ARTICLE 11.

11.3.2 MEDIATION If direct discussions pursuant to the subsection immediately above do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within Thirty (30) working Days of the matter first being discussed and shall conclude within Forty-Five (45) working Days of the matter being first discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and to the mediator. The costs of the mediation shall be shared equally by the Parties.

11.3.3 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below, in accordance with the sole and absolute discretion and election of the **Constructor** at the time of the initiation of such a binding dispute resolution procedure by either party of either:



Arbitration using the current Construction Industry Arbitration Rules of the AAA or the Parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the Parties; or

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

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

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

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

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

ARTICLE 12 MISCELLANEOUS

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

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

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

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

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

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



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

ARTICLE 13 SUBCONTRACT DOCUMENTS

13.1 INTERPRETATION OF SUBCONTRACT DOCUMENTS

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

13.1.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings, or specifications, the Subcontractor shall immediately submit the matter to the **Constructor** for clarification by the **Owner**. The **Owner's** clarifications are final and binding on all Parties, subject to an equitable adjustment in Subcontract Time or Subcontract Amount pursuant to dispute mitigation and resolution.

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

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

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

CONSTRUCTOR: **JOHN W. ROOKER AND ASSOCIATES, INC.**

BY: _____

PRINT NAME: _____

PRINT TITLE: _____

SUBCONTRACTOR:

BY: _____

PRINT NAME: _____

PRINT TITLE: _____

END OF DOCUMENT.

