

Master Subcontract Agreement - Sample

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor, the Rider thereto, and the other Contract Documents enumerated therein; (3) Subcontractor's Proposal, dated 11/24/2015 ("Proposal") to the extent set forth in § 1.2 below; (4) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (5) other documents listed in Article 16 of this Agreement; and (6) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16. In the event of any ambiguity, contradiction, conflict or inconsistency among the terms of the Subcontract Documents, the term imposing the greater obligation or stricter limitation on Subcontractor shall govern.

§ 1.2 The Proposal is incorporated into the Subcontract Documents with regard only to the scope of the Work to be performed by Subcontractor. All other provisions of the Proposal, including, but not limited to, any terms, conditions, and financial terms, shall be null and void, are not included as part of the Subcontract Documents, and/or are superseded by the terms of the Subcontract Documents, unless expressly stated to the contrary in the Subcontract Documents.

§ 1.3 The Prime Contract made available to Subcontractor is fully binding upon Subcontractor in accordance with Article 2 hereof. The incorporation of the Prime Contract in this Subcontract shall not be limited to the provisions relating to the scope, quality, character and manner of the work to be performed by Subcontractor. It is expressly agreed that all provisions of the Prime Contract (including, by way of illustration and not of limitation, provisions relating to payment, assignment, warranty, dispute resolution, limitations of actions and indemnification obligations) shall be applicable to this Subcontract to the fullest extent relevant to the Subcontractor's Work. Any provisions of the Prime Contract that are repeated herein are for convenience only and shall not be construed as limiting the incorporation or applicability of other provisions of the Prime Contract in this Subcontract.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor. The Subcontractor acknowledges that it is an independent contractor and is not an employee or agent of Contractor. The Subcontractor shall have no authority, and shall not hold itself out as having any authority, to act on behalf of Contractor or to bind Contractor to an agreement with a third party.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract.

ARTICLE 3 CONTRACTOR

§ 3.1 INTENTIONALLY OMITTED.

§ 3.2 INTENTIONALLY OMITTED.

§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 INTENTIONALLY OMITTED.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement, the Contractor may without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor. If payments then or thereafter due the Subcontractor are not sufficient to cover such amounts, the Subcontractor shall pay the difference to the Contractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract with the written consent of Contractor as required pursuant to § 7.4.2 below, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement. Additionally, all written agreements with Sub-subcontractors shall (i) be in the Subcontractor's name, and not as agent for Contractor; (ii) require that each Sub-subcontractor carry the same insurance required of Subcontractor herein; and (iii) be assignable to Contractor at any time in its sole discretion. The Subcontractor shall coordinate and be fully responsible for the work, acts, and omissions of its Sub-subcontractors and of persons either directly or indirectly employed by its Sub-subcontractors.

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

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

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

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

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract. In the event that any of the Work is damaged as the result of the Subcontractor or any of its Sub-subcontractors' actions, the Subcontractor shall promptly repair or replace as required all damaged Work at its own expense.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in meetings and the preparation of coordinated drawings in areas of congestion, if required, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.9 The Subcontractor represents and accepts that it has been given an opportunity to and has visited, inspected, surveyed, and tested all applicable areas of the Project where the Subcontractor's Work shall be performed, including the surrounding areas, to determine, verify, and document all existing conditions or other potential conditions which could impact the Work, and has requested from, and consulted with, any necessary parties, and been provided with, all information concerning the Work, Project, and its conditions so as to properly perform the Subcontractor's Work within the Subcontract Sum and in accordance with the Subcontract Time.

§ 4.1.10 The Subcontractor's Work shall be completed in a first class workmanlike manner in accordance with the Subcontract Documents and to produce the intended results. The Subcontractor shall be solely responsible for meeting, correcting, or adapting to any visible existing condition without increase to the Subcontract Sum. The Subcontractor's Work includes any and all reasonable out of sequence and non-continuous Work which may be required to meet the Subcontract Time.

§ 4.1.11 The Subcontractor shall arrange for all required tests, acceptance testing, and code inspections by the appropriate governmental agencies having jurisdiction over the Project.

§ 4.1.12 The Subcontractor shall be responsible for all cutting, fitting, or patching that may be required to complete the Subcontractor's Work or to make its several parts fit together properly. The Subcontractor shall not damage or endanger any portion of the Work or the work of any separate subcontractor by cutting, patching, or otherwise altering any work, or by excavation, except with the written consent of Contractor.

§ 4.1.13 The Subcontractor shall be solely responsible for the continuous protection of its Work, including materials and equipment, and utility lines.

§ 4.1.14 The Subcontractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures of its Work. Notwithstanding the foregoing, the Contractor, without liability, shall have the right to determine the time and sequence in which the Work shall be installed or the priority of the Work to be consistent with the construction schedule.

§ 4.1.15 The Subcontractor shall promptly correct Work failing to conform to the requirements of the Subcontract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such nonconforming Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for services and expenses made necessary thereby, shall be at the Subcontractor's expense. If the Subcontractor fails to correct nonconforming Work, the Owner may correct it in accordance with Section 3.4.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders, or other requirements of public authorities bearing on performance of the Work of this Subcontract. If the Subcontractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders, or other requirements of public authorities applicable to performance of the Work, the Subcontractor shall promptly notify the Contractor in writing. If the Subcontractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders, or any other requirements of public authorities, the Subcontractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 4.2.2 The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

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

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall immediately report to the Contractor an injury to an employee, agent or invitee of the Subcontractor which occurred at the site. The Subcontractor shall also immediately notify its commercial general liability carrier in writing of all accidents and/or injuries involving its employees, agents, or invitees, and shall also provide notice of such accidents and/or injuries to its commercial general liability carrier on behalf of any and all Additional Insureds as set forth in §13.4 below. The Subcontractor shall obtain prompt written confirmation and acknowledgment from its commercial general liability insurer that said insurer will provide a defense and indemnification for any such accidents and/or injuries to all Additional Insureds specified pursuant to this Agreement.

§ 4.3.2 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 Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

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

§ 4.3.4 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs 1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or 2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

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

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

§ 4.5 WARRANTY

The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions by the Subcontractor that are not properly approved and authorized, may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and/or Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract Documents, including but not limited to those required pursuant to the Prime Contract.

§ 4.6 INDEMNIFICATION

§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall defend, indemnify, and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them ("Indemnitees") from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from or in any way relating to performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) on account of any acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.6.3 The parties expressly agree that this indemnification agreement contemplates (1) full indemnity in the event of liability imposed against the Indemnitees, or any of them, without their negligence or willful misconduct and solely by reason of statute, ordinance or regulation, by operation of law or otherwise; and (2) partial indemnity in the event of any negligence or willful misconduct on the part of the Indemnitees or any of them either causing or contributing to the underlying claim, in which case indemnification for the negligent Indemnitees will be limited to any liability imposed over and above that percentage attributable to their negligence or willful misconduct whether by statute, ordinance or regulation, by operation of law, or otherwise. Where partial indemnity is provided under this Agreement, costs, attorneys' fees, expenses and disbursements shall be indemnified on a pro rata basis. Indemnification under this paragraph shall operate whether or not Subcontractor or any of Subcontractor's Sub-subcontractors has placed and maintained insurance. Attorneys' fees, court costs, expenses and disbursements shall be defined to include those incurred in defending the underlying claim and those incurred in pursuing claims and/or actions, including but not limited to third-party and declaratory judgment actions, against Subcontractor, Subcontractor's Sub-subcontractors, and/or the insurance carrier(s) for either and/or both, as set forth in Article 13. The provisions of this Section shall survive the expiration or termination of this Agreement.

ARTICLE 5 CHANGES IN THE WORK

§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly

notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

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

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

§ 5.4 Any change in the Work shall not be performed without the prior review and written approval of Contractor or Owner. Any Work performed without such review and authorization by Contractor or Owner shall be deemed unauthorized and create no obligation on Contractor to pay therefor. The Subcontractor shall continue to prosecute the Work in the event of any dispute concerning any proposed change in the Work.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Resolution of disputes arising out of or in connection with this Subcontract or Subcontractor's Work hereunder shall be governed by and determined in accordance with the provisions of the Prime Contract.

§ 6.2 The Subcontractor agrees to continue performance of the Subcontract Work and shall proceed in accordance with the directives of the Contractor, under protest, in the event of a dispute or controversy, provided that undisputed amounts not subject to offset continue to be paid. Failure to so proceed shall constitute a material breach of the Subcontract, regardless of the ultimate decision on the dispute, it being understood and agreed that any controversy between the parties shall not be deemed a basis to delay or suspend the work, unless directed otherwise by the Contractor.

§ 6.3 To the fullest extent permitted by law, the Subcontractor hereby agrees to defend, indemnify, and hold harmless the Contractor and its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from or in any way relating to the Subcontract, the Subcontractor's work or the Subcontractor's failure to prosecute its work.

§ 6.4 No action or proceeding shall be commenced or maintained against Contractor or Owner with respect to any claim not waived, unless such action or proceeding is commenced against Contractor or Owner within one (1) year of the date of Final Payment or, if earlier, the date this Agreement is terminated.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for nonpayment of amounts undisputedly due and not subject to offset under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract, the Contractor may, without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

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

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

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

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

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

§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

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

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract. If Subcontractor attempts to make such an assignment or subcontract in the absence of such consent, the assignment or subcontract shall be of no force or effect and Subcontractor shall remain solely and completely responsible for the Subcontract Work and all obligations pursuant to this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

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

Scope of work as seen in Drawings Dated 00/00/2015

§ 8.2 The Subcontractor acknowledges and agrees that all Work not expressly required but reasonably inferred as being necessary to produce the intended result as indicated in the Subcontract Documents shall be performed by the Subcontractor without increase in the Subcontract Sum. If any of the Subcontract Documents imposes a different or greater obligation or limitation upon the Subcontractor than another Subcontract Document, or if any section within a Subcontract Document imposes a different or greater obligation or limitation upon the Subcontractor than another section of the Subcontract Document, the Subcontract Document or section within the Subcontract Document (as the case may be) imposing the greater obligation or limitation upon the Subcontractor shall govern and prevail. The Contractor agrees to conduct a post-completion and a post-warranty inspection in cooperation with the Contractor.

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.

00/00/2016

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than 00/00/2016

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract. By executing this Agreement, the Subcontractor confirms that the Subcontract Time is a reasonable period for performing the Subcontractor's Work. The Subcontractor shall perform its obligations under this Contract with diligence and with sufficient manpower to maintain the progress of the Work as scheduled, without delaying other trades or areas of work, so as to complete the Subcontractor's Work within the Subcontract Time.

§ 9.5 In the event that Subcontractor fails to comply with the construction schedule or the Contractor determines that the Subcontractor's Work is not progressing in a manner such that the Subcontractor's Work will be performed in accordance with the construction schedule or completed within the Subcontract Time, the Subcontractor shall expedite work through the use of overtime or extra manpower or shifts as necessary, at Subcontractor's sole cost and expense and without any increase in the Contract Price, as the Contractor deems necessary or desirable to make up for all time lost or to avoid delay in the completion of the Work and of the Project. Any direction by the Contractor to Subcontractor to expedite work shall be without prejudice to any other rights and remedies available to Contractor under this Agreement or by law for delays caused by Subcontractor.

§ 9.6 The Subcontractor acknowledges that the Contractor will suffer financial loss if the Subcontractor's Work is not fully complete in every respect within the Subcontract Time. The Subcontractor shall be liable for and shall pay to the Contractor the sum of \$0.00 per day for each day, as fixed, agreed and liquidated damages for each calendar day of delay occasioned by the Work to be performed under this Agreement, until that Work is complete. The Subcontractor and the Contractor agree that this sum reasonably approximates the Contractor's per diem general losses which cannot be specifically determined in the event full completion of the Subcontractor's Work is not achieved on time and that said sum shall under no circumstances be deemed to be a penalty. In addition thereto, the Subcontractor herein agrees that the Contractor may prosecute and collect any specific, ascertainable damages it has sustained by reason of any act or omission of the Subcontractor resulting in delays to the completion of the Project for which the Subcontractor is not entitled to a time extension as prescribed by this Agreement. The Subcontractor further agrees that the liquidated damages specified herein do not include any specific costs incurred by reason of claims by third-parties.

§ 9.7 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of \$000,000.00 (Insert Thousand and Zero Cents), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 INTENTIONALLY OMITTED.

§ 10.3 INTENTIONALLY OMITTED.

§ 10.4 INTENTIONALLY OMITTED.

§ 10.5 The Subcontractor expressly acknowledges that all costs, expenses, and applicable taxes for all Work that it is required to supply and perform hereunder are included in the Subcontract Sum.

§ 10.6 The Subcontractor represents and accepts that the Subcontract Sum is based upon the Subcontractor's review, inspection, and acceptance of the site conditions and this Agreement, and acceptance of all foreseeable conditions and events that may occur over the course of the Work. The Subcontractor represents that, based upon the foregoing, it shall make no claims, and waives all rights against Contractor for payment above the Subcontract Sum due to any foreseeable conditions and events that may occur over the course of the Work.

ARTICLE 11 PROGRESS PAYMENTS

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

§ 11.2 The period covered by each application for payment shall be one-half of a calendar month ending on the 15th and last day of the month.

§ 11.3 Subcontractor shall submit to the Contractor two applications for payment per month, the first of which the Subcontractor shall submit no later than the 15th day of the month and the second of which the Subcontractor shall submit no later than the last day of the month. The Contractor shall include the Subcontractor's Work covered by an application in the next application for payment which the Contractor is entitled to submit to the Architect and/or Owner. The Contractor shall pay the Subcontractor the amount paid to Contractor by Owner on account of Subcontractor's Work no later than seven working days after the Contractor receives such payment from the Owner. If the Architect does not issue a certificate for payment or the Contractor does not receive payment for any cause which is not the fault of the Subcontractor, the Contractor shall pay the Subcontractor, within a reasonable time of a demand, a progress payment in an amount determined by Contractor to be proper.

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

§ 11.5 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment. Each application for payment submitted by the Subcontractor shall include a properly completed, executed and acknowledged waiver of lien and release in the form provided or approved by the Contractor with respect to all prior work and services for which the Subcontractor previously applied for and received payment and conditional as to the work for which the application for payment is submitted.

§ 11.6 A Subcontractor's application for payment may be disapproved either in whole or in part for any of the reasons a Certificate for Payment may be withheld by the Architect or Owner pursuant to the Prime Contract. Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment or by the Owner or Architect of the Contractor's application for payment on account of the Subcontractor's Work, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.7 The Subcontractor shall pay each Sub-subcontractor no later than seven days after receipt of payment from the Contractor the amount to which the Sub-subcontractor is entitled, reflecting percentages actually retained from payments to the Subcontractor on account of the Sub-subcontractor's portion of the Work. The Contractor reserves the right to issue payment checks for portions of an Application for Payment or the Final Payment payable jointly to the Subcontractor and any Sub-subcontractor or vendor. If the Subcontractor fails to pay its Sub-subcontractors for Work, the Contractor further reserves its right to make payments directly to the Sub-subcontractor for the Work and deduct the amount of such payment from the Subcontract Sum.

§ 11.8 The Subcontractor agrees that if any of its Sub-subcontractors performing Work or furnishing materials, supplies or equipment in connection with the Work, or any other person or entity claiming under or through such

Sub-subcontractor shall suffer, permit, file or cause to be filed any lien against the Project or any portion thereof, the Subcontractor, at its sole cost and expense, shall within three (3) days after written notice from the Owner and/or Contractor, cause such lien to be canceled and discharged of record by payment, bond or otherwise. If such lien is not canceled and discharged by the Subcontractor as aforesaid, the Owner and/or Contractor shall have the right to cause such lien to be canceled and discharged and, in such event, all reasonable costs and expenses incurred by the Owner and/or Contractor in connection therewith, including, without limitation, premiums and collateral for any bond furnished in connection with such cancellation and discharge and reasonable attorney's fees and disbursements, shall be paid by the Subcontractor to the Owner and/or Contractor on demand, or, at the option of the Contractor, shall be deducted from any payment then due or thereafter becoming due to the Subcontractor under the terms of this Agreement.

§ 11.8 SUBSTANTIAL COMPLETION

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

ARTICLE 12 FINAL PAYMENT

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

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a full and complete waiver and release of any and all claims of any nature whatsoever that the Subcontractor may have against the Contractor or Owner in connection with this Agreement. The making of progress payments or of final payment by Contractor to the Subcontractor shall not constitute an acceptance of the Subcontractor's Work or be deemed a release of the Subcontractor from any claims, demands, or causes of action that the Contractor may now, or at any time hereafter have, against the Subcontractor.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain, at a minimum, the requisite insurance set forth in Exhibit A. The Subcontractor shall also purchase and maintain, at a minimum, the same insurance with the same requirements as required of Contractor under the Prime Contract and the requirements set forth below to the extent such requirements are greater than the requirements in Exhibit A.

§ 13.2 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness.

§ 13.3 The Subcontractor shall cause the required commercial liability coverage to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as Additional Insureds for claims arising out of Subcontractor's Work or caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's

operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations. Subcontractor shall provide to Contractor a copy of the Additional Insured endorsement or applicable insurance policy provision evidencing Additional Insured coverage prior to commencement of the Subcontractor's Work. Upon written demand, Subcontractor shall provide to Contractor a certified copy of the complete commercial liability insurance policy, including all endorsements, applicable to Subcontractor's Work. The coverage afforded to the Additional Insureds shall be on a primary and non-contributory basis.

§ 13.4 In the event Subcontractor (or any of its Sub-subcontractors of any tier) fails to obtain the required insurance and a claim is made or suffered, the Subcontractor shall indemnify, defend and hold harmless Contractor, Owner and their respective employees from any and all claims for which the required insurance would have provided coverage. Contractor has the right to withhold payment to Subcontractor and to deduct from the amount due to Subcontractor for the work it performs under this Subcontract any and all costs that Contractor incurs as a result of the failure to obtain the required insurance by Subcontractor or its respective Sub-subcontractors of any tier. This indemnity obligation is in addition to any other indemnity obligation provided in this Agreement.

§ 13.5 WAIVERS OF SUBROGATION

The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate written agreements, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 INTENTIONALLY OMITTED.

ARTICLE 15 MISCELLANEOUS PROVISIONS

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

§ 15.2 INTENTIONALLY OMITTED.

§ 15.3 Retainage and any reduction thereto shall be withheld as set forth in Prime Contract.

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§ 15.4 The Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Subcontract, including without limitation, any consequential damages due to either party's termination in accordance with Article 7. In the event that Subcontractor is terminated for cause, Subcontractor shall be responsible for all direct and incidental damages resulting therefrom, including all costs of completion and correction of the Subcontractor's Work and all professional fees and costs relating thereto.

§ 15.5 No change, modification, termination, or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith. This Agreement may not be modified orally.

§ 15.6 If any provision of this Agreement or the Subcontract Documents are invalid or unenforceable as against any person, party, or under certain circumstances, the remainder of this Agreement and Subcontract Documents, and the applicability of such provision to other persons, parties, or circumstances shall not be affected thereby.

§ 15.7 No personal liability shall accrue hereunder against any individual, member, partner, officer, director, representative, employee, trustee, fiduciary, or principal of Contractor.

§ 15.8 The Subcontractor shall not assign, encumber, pledge, or transfer any interest in this Agreement without the written consent of Contractor, which consent may be withheld in the sole discretion of Contractor.

§ 15.9 This Agreement may be executed in counterparts, and a signed copy, transmitted by email or fax, shall be deemed an original for purposes of execution.

§ 15.9 NOTICES

Any notice required or permitted to be given under the Subcontract Documents must be in writing and shall be deemed to have been given when delivered personally or by registered or certified mail, return receipt requested to the party to whom the notice is given at the address designated below or, if any party subsequently designates a different address in accordance with this paragraph, at such subsequently designated address. Notices to the Contractor and the Subcontractor shall be addressed and delivered as follows:

If to Contractor: UA Builders Corp.
35-37 36th Street, 6th Floor
Long Island City, NY 11106
Attn: Contact Name

With a copy to: Company Name
Address Line 1
Address Line 2
Attn: Contact Name

To the Subcontractor: XXX Corp.
5555 Name Street
New York, NY 11111

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 The Prime Contract, consisting of the Agreement between the Owner and Contractor, the Rider thereto, and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.2 INTENTIONALLY OMITTED.

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

- .1 EXHIBIT A – Building Rules and Regulation
- EXHIBIT B – Insurance Requirements
- EXHIBIT C – Scope of Work
- EXHIBIT D – Project Schedule

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

CONTRACTOR *(Signature)*

(Printed name and title)

SUBCONTRACTOR *(Signature)*

(Printed name and title)