

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

This Master Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Straub Construction Company, Inc., 7775 Meadow View Drive, Shawnee, Kansas 66227, a Kansas corporation (hereafter "Contractor"), and \_\_\_\_\_, a \_\_\_\_\_ (hereafter "Subcontractor").

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

**General**

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

**Owner Contract Documents**

The Owner Contract documents may consist of the Owner's original Solicitation for Bids or Request for Proposal (RFP), Owner's Amendments to the Solicitation or RFP and Owner's Award of the Contract to Contractor. The Owner Contract generally contemplates the performance of construction work and services by Contractor for Owner.

**Incorporation by Reference**

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

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

**Confidentiality Agreement**

To the extent disclosed to Subcontractor, Contractor's bid or response to the Owner's RFP, as amended, is proprietary in nature, and shall be kept confidential by Subcontractor, and not disclosed to any third person or firm, except as necessary for the performance of the Work by

Subcontractor under the subcontract. It shall be disclosed for no other purpose without the prior written consent of Contractor. This Confidentiality Agreement includes Contractor's developments, confidential information, know how, discussions, production methods, estimating systems, and historical cost data.

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

### **Subcontract and Work Orders**

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

Contractor, in its sole discretion, may issue to Subcontractor an individual and separate Subcontract Work Order for some or all of the work and services required of Contractor in the Owner issued Contract to Contractor. Subcontractor shall furnish all labor, material, equipment, supplies and services necessary to complete the work, scopes or tasks called for in the Subcontract Work Order under the terms and conditions of the Owner's Contract, this Master Agreement, the AIA A401-2007 Standard Form of Agreement Between Contractor and Subcontractor attached hereto as **Exhibit 1** and incorporated herewith by this reference as if fully set forth herein.

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

All Subcontract Work Orders awarded, and to be awarded, shall be subject to Contractor's evaluation of performance requirement under the various Owner Contracts between Contractor and Owner, **Exhibit 1** attached hereto, and the Subcontract Work Orders.

A Subcontract Work Order may be issued by Contractor to Subcontractor upon Contractor's request for Subcontractor proposal for separate Subcontractor tasks, any amendments thereto, Subcontractor's response to Subcontractor RFP and amendments, and the Contractor award. The Subcontractor shall commence work under the Subcontract Work Order

on or before the date specified in each individual Subcontract Work Order or such earlier date as may be mutually agreed to be Contractor and Subcontractor.

### **Flow Down Provision**

All Subcontractor work and services shall be furnished and performed by Subcontractor in strict accordance and consistent with the Owner Contract documents and requirements therein and also the terms and conditions of the individual Subcontract Work Order issued by Contractor to Subcontractor.

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

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

### **Owner Documents**

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

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

### **Claims and Disputes**

In the event of any dispute, disagreement or claim arising from, out of or under, or in any way related to **Exhibit 1**, and any separate Subcontract Work Order, Contractor and

Subcontractor shall follow the dispute resolution procedures contained in **Exhibit 1**, except as otherwise provided below.

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

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

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

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

### **Binding Effect**

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

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

This Master Agreement consists of the Owner Contractor Documents generally identified above more specifically identified below:

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

**Integration Clause**

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

**Electronic Signatures**

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

STRAUB CONSTRUCTION COMPANY,  
INC.

\_\_\_\_\_  
Insert Subcontractor Name Here

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

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

Its Vice President/COO \_\_\_\_\_  
Title

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

# DRAFT AIA® Document A401™ - 2007

## Standard Form of Agreement Between Contractor and Subcontractor

**AGREEMENT** made as of the [redacted] day of [redacted] in the year **Two Thousand Thirteen**  
(In words, indicate day, month and year)

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

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

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

[redacted]

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: [redacted]

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

[redacted]

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

[redacted]

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

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

[redacted]

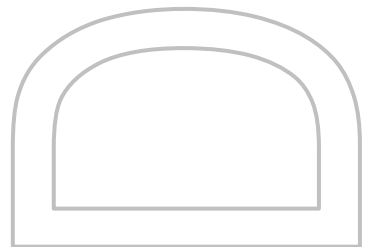
The Contractor and the Subcontractor agree as follows.

### ADDITIONS AND DELETIONS:

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

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

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference.



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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 and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) 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.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 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.

§ 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 AIA Document A201–2007 apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities 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. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

## ARTICLE 3 CONTRACTOR

### § 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. Contractor shall have the right to amend or modify schedules for the Work or to suspend, delay or accelerate the Work, in whole or in part, or delay the commencement or execution of the Work or to vary the sequence thereof. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details. Subcontractor shall not be entitled to extra compensation for reasonable adjustments to the schedule. Subcontractor shall timely perform the Work of this Subcontract, as scheduled by the Contractor, with no delay to the progress of the Work. If Subcontractor fails to timely perform the Work, Contractor, without waiver of any other rights contained in this Agreement, may, with 24 hours written notice to the Subcontractor, employ sufficient workmen and supply sufficient materials to complete the Work, all at Subcontractor's cost.

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

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

§ 3.1.4 Contractor makes no representations to Subcontractor, express or implied, regarding site conditions. Any information regarding the site provided by Contractor to Subcontractor is for information purposes only.

### § 3.2 COMMUNICATIONS

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

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

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

§ 3.2.4 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 Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance,



give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

**§ 3.2.5** The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

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

### **§ 3.3 CLAIMS BY THE CONTRACTOR**

**§ 3.3.1** Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

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

- .1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and
- .2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

### **§ 3.4 CONTRACTOR'S REMEDIES**

**§ 3.4.1** Should the Subcontractor, at any time, 1) refuse or neglect to supply a sufficiency of properly skilled workmen or 2) refuse or neglect to supply materials of the proper quality or 3) fail in any respect to prosecute the Work with promptness and diligence or 4) fail in the performance of any of the agreements herein contained, the Contractor shall be at liberty, after three days written notice to the Subcontractor, to either: a) provide any such labor, materials or data as is required by the contract and to deduct the cost thereof from any money then due or thereafter to become due to the Subcontractor under this Subcontract or b) terminate the employment of the Subcontractor for the said Work and enter upon the premises and take possession for the purpose of completing the Work included under this contract, of all materials, tools, and appliances thereon and to employ any other person or persons to finish the Work, and to provide the materials therefor. In the case that the Subcontractor's employment is terminated the Subcontractor shall not be entitled to receive any further payment under this contract until the said Work shall be wholly finished. In any case, if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the Contractor in finishing the Work, such excess shall be paid by the Contractor to the Subcontractor, but if such expense shall exceed the unpaid balance, the Subcontractor shall pay the difference to the Contractor. The expense incurred by the Contractor as herein provided shall include furnishing materials, finishing the Work and any expense or other damages incurred through such default.

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

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

§ 3.4.4 In the event of disputes between the Contractor and Subcontractor and the utilization of dispute resolution procedures, Contractor shall be entitled to recover from Subcontractor attorneys' fees and costs if Contractor prevails on its claims against Subcontractor and if Contractor prevails on Subcontractor's claims against Contractor.

#### ARTICLE 4 SUBCONTRACTOR

##### § 4.1 EXECUTION AND PROGRESS OF THE WORK

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

§ 4.1.2 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. Shop drawings and submittals shall be submitted immediately, but no later than 14 calendar days after the date of this Subcontract.

§ 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.

§ 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 the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.9 The Subcontractor shall have a continuing duty to provide and update its list of Subcontractors and Suppliers.

§ 4.1.10 The Subcontractor recognizes that revisions in the planned schedule are inherent in the nature of construction. This may result in revisions of Contractor's schedule of the Work during the progress of construction. Subcontractor agrees that Contractor cannot guarantee Subcontractor can start Work on any particular date or continue without interruption once started. Contractor will only be responsible for conditions solely within its control which causes Subcontractor manifestly unreasonable delay in the performance of its Work, provided Subcontractor gives immediate written notice of the delay.

##### § 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, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for

proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

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

**§ 4.2.3** Subcontractor shall not misclassify and pay workmen furnishing labor under this Subcontract as an independent contractor when such workmen shall be classified as an employee under applicable law.

**§ 4.2.4** Subcontractor, and its sub-subcontractors, shall not employ any workmen on the Project who are not lawfully permitted to perform such work under Federal, state or local labor laws relating to aliens and nationality including, but not limited to, the "Immigration Reform Control Act of 1986" (IRCA) as amended, 8 U.S.C. § 1324(e), relating to unlawful employment of aliens.

### **§ 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 report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

**§ 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** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

**§ 4.3.5** 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. Cleanup of the work area shall occur on a daily basis. If cleanup is not completed within 24 hours of written notice, the Contractor will perform the work at the rate of \$50.00 per hour to be deducted by change orders from Subcontractor's contract amount.

**§ 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 may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### **§ 4.6 INDEMNIFICATION**

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

**§ 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.

#### **§ 4.7 REMEDIES FOR NONPAYMENT**

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

### **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. In any event, any request for extension of time on the schedule shall be made by Subcontractor to Contractor within 3 days of the occurrence of the delaying event.

§ 5.4 Subcontractor waives the right to make claim against Contractor for consequential damages.

## ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

### § 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

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

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

### § 6.2 BINDING DISPUTE RESOLUTION

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

*(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 6.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other (*Specify*)

### § 6.3 ARBITRATION

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

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

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

§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

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

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 6.3.7 Subcontractor shall pay Contractor's costs, expenses and attorneys' fees for arbitration should the Contractor prevail on Subcontractor's claims against Contractor and/or on Contractor's claims against Subcontractor.

§ 6.3.8 Mediation and Arbitration shall be conducted in Shawnee Mission, Kansas or at some other location mutually agreed to by the parties.

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

### § 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and 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 and fails within a three-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.1.1 In the event that termination of the subcontractor for default is later determined not to have been the fault of subcontractor, then such termination shall be deemed to have been a termination for the convenience of contractor and Subcontractor agrees that its sole remedy for such termination shall be as set forth in Article 7.2.5

§ 7.2.2 If the Owner terminates the 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.

§ 7.2.5 Contractor, at any time and without the default of subcontractor, may terminate this subcontract, either in whole or in part, for the convenience of the Contractor. Subcontractor agrees that upon any such termination, the Subcontractor's sole remedy shall be the payment of the full value for all the work properly performed less any monies previously advanced to the Subcontractor. Subcontractor agrees to waive any and all claims for damages, including lost or anticipated profits, arising from, out of, or related to any such termination by Contractor.

### § 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 pursuant to Section 5.4 of A201-2007 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.

## ARTICLE 8 THE WORK OF THIS SUBCONTRACT

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

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

## 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.

*(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

§ 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 the date shown in the General Contractor's schedule..

*(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)*

**Portion of Work**

**Substantial Completion Date**

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)*

Liquidated or delay damages for failure of the Subcontractor to substantially or finally complete the work of this Subcontract in accordance with § 9.3 are stated in the subcontract work order.

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

§ 9.5 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. Any extensions of time granted by Contractor for performance of the Work shall be Subcontractor's sole and exclusive remedy for any delay.

§ 9.6 Subcontractor waives the right to claim and recover from Contractor any damages for delay in performance of the Work of this Subcontract.

**ARTICLE 10 SUBCONTRACT SUM**

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

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:

*(Insert the numbers or other identification of accepted alternates.) See subcontract work order.*

§ 10.3 Unit prices, if any:

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

**Item**

**Units and Limitations**

**Price Per Unit**

**See subcontract work order**

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

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

**Item**

**Price**

**See subcontract work order**

**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 calendar month ending on the last day of the month, or as follows:

**See subcontract work order**

§ 11.3 Provided an application for payment is received by the Contractor not later than the **(See subcontract work order)** day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Architect. The Contractor shall pay the Subcontractor each progress payment no later than ten working days after the Contractor receives payment from the Owner. Payment by Owner to Contractor is a condition precedent to payment by Contractor to Subcontractor unless the failure to receive payment from Owner is solely caused by the failures of Contractor. Contractor's surety, if any, shall have the benefit of this provision relative to the obligations of the surety under its surety bond.

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

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

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained [**See subcontract work order**], if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.7.5 Acceptance of a payment by Subcontractor shall constitute a waiver of any and all claims by Subcontractor against Contractor for extra compensation which exists at the time of acceptance of the payment, except those claims otherwise previously made in writing by Subcontractor in accordance with the terms of this Agreement.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, 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.

### § 11.9 SUBSTANTIAL COMPLETION

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

## 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. Payment by Owner to Contractor is a condition precedent to payment by Contractor to Subcontractor unless the failure to receive payment is solely caused by the failures of Contractor. Contractor's surety, if any, shall have the benefit of this provision relative to the obligations of the surety under its surety bond.

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

§ 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 waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

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

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

- .1 Any liquidated damages withheld by Owner from payment to Contractor due to Subcontractor caused delays in the progress of the progress of the Work or default of Subcontractor under the Subcontract.
- .2 Actual cost to Contractor incurred as a result of Subcontractor's failure to adhere to the schedule including, but not limited to, the cost of additional workmen and materials made necessary by Subcontractor's failures.
- .3 Such sum as Contractor determines is necessary to protect Contractor for loss as a result of default by Subcontractor (or a good faith belief of potential default by Subcontractor) under the Subcontract; including the filing or probable filing of mechanic's liens and/or bond claims by any sub-subcontractor and/or material supplier of Subcontractor.

- .4 Any sum due Subcontractor by Contractor on any other project for which Subcontractor has performed work under an agreement with Contractor.
- .5 Failure of Subcontractor to file with Contractor required insurance certificates and surety bonds.

**ARTICLE 13 INSURANCE AND BONDS**

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond	Limit of liability or bond amount (\$ 0.00)
See subcontract work order	

All insurance and bond requirements are per Rider to Subcontract attached hereto and incorporated herewith or as required in the Contract Documents. Any conflict between this Agreement and the Contract Documents between Owner and Contractor shall be resolved by the application of the more stringent requirement.

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

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. Failure to file insurance certificates and bonds with Contractor shall be grounds for the rescission of this Subcontract Agreement or the withholding of payment from Contractor to Subcontractor, at Contractor's election. 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 and are reasonably available, 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 according to the Subcontractor's information and belief.

§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor 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.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

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

§ 13.7 Performance Bond and Payment Bond:  
*(If the Subcontractor is to furnish bonds, insert the specific requirements here.)*

Bond type	Bond amount (\$ 0.00)	Bond delivery date	Bond form
See subcontract work order			

**§ 13.8 PROPERTY INSURANCE**

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

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

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

### § 13.9 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 agreements, written where legally required for validity, 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 TEMPORARY FACILITIES AND WORKING CONDITIONS

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

Temporary Facility, Equipment or Service	Cost, if any (\$ 0.00)
Temporary electrical power, water and trash dumpster for construction debris deposited by Subcontractor's personnel	

§ 14.2 Specific working conditions:

*(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)*

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

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

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

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

## 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 Payments due and unpaid under this Subcontract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.  
(Insert rate of interest agreed upon, if any.)

Zero percent (0%) per annum

§ 15.3 Retainage and any reduction thereto is as follows:

See subcontract work order

§ 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.

**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 This executed AIA Document A401–2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement. See subcontract work order.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification	Date
See subcontract work order	

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

- .1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:
- .2 Other documents:  
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)  
Subcontract Work Order – Any subcontract work order issued under this subcontract  
Exhibit A – Scope of Work – See subcontract work order Exhibit A  
Exhibit B – Drawings and Specifications – See subcontract work order Exhibit B  
Exhibit C – General Requirements of Equal Employment Opportunity  
Exhibit D – Harmony Clause  
Exhibit E – Straub Construction Company, Inc. Policies  
Exhibit F – Supplemental Conditions  
Exhibit G – Subcontractor/Supplier Lien Waiver Requirements Notice

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

CONTRACTOR (Signature)

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

SUBCONTRACTOR (Signature)

(Printed name and title)