

UNILATERAL MODIFICATIONS TO THIS SUBCONTRACT FORM SHALL BE DEEMED VOID AND OF NO LEGAL EFFECT. COMMENCEMENT OF WORK AFTER RECEIPT OF THIS SUBCONTRACT FORM SHALL BE DEEMED ACCEPTANCE OF ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN WITH RESPECT TO THE PERFORMANCE OF THE WORK.

This **Subcontract Agreement** (this "Subcontract Agreement") for construction work and services is made on this date _____, by and between:

SUBCONTRACTOR **LEGAL ENTITY NAME** Hereinafter referred to as "**Subcontractor**"
SUB'S REPRESENTATIVE
STREET ADDRESS
CITY, STATE, ZIP8
Phone: Fax:
Email:

and

CONTRACTOR Clayco, Inc. or Other Legal Entity Name Hereinafter called "**Contractor**"
CLAYCO'S REP
STREET ADDRESS
CITY, STATE, ZIP

In connection with the project commonly referred to:

PROJECT NUMBER – PROJECT NAME Hereinafter referred to as "**the Project**"
STREET ADDRESS
CITY, STATE, ZIP

Work Description:

The **OWNER** for the Project is: **OWNER'S LEGAL ENTITY NAME** Hereinafter referred to as "**the Owner**"
OWNER'S CONTACT
STREET ADDRESS
CITY, STATE, ZIP

The **ARCHITECT** for the Project is: **ARCHITECT LEGAL ENTITY NAME** Hereinafter referred to as "**the Architect**"
ARCHITECT'S CONTACT
STREET ADDRESS
CITY, STATE, ZIP

The Contractor, identified above, may be defined as "Design-Builder" in the General Contract. In such instances, references to "Design-Builder" shall mean and apply to "Contractor" and the Contract Documents shall be automatically conformed to the understanding stated herein.

Contract Price: (\$ _____)

INVOICE LINE #	DESCRIPTION	AMOUNT
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Retainage: The rate of retainage shall be (____ %) [*PROJECT-SPECIFIC*]

Design-Build Included? [YES OR NO]

Engineering Services in Scope of Work? [YES OR NO]

Professional Services in Scope of Work? [YES OR NO]

CCIP: Subcontractor is enrolled in Contractor Coordinated Insurance Program ("CCIP") for the Project? [YES OR NO]

Bond: Subcontractor is required to provide a bond (see Article XI, Bonding of Subcontractor)? [YES OR NO]

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Each of the following Exhibits, Attachments, and Subcontractor Submittals (defined below) are included and incorporated as part of the Subcontract Agreement:

Exhibit A:	Minimum Insurance Requirements (if applicable)
Exhibit B:	List of Lower Tiers
Exhibit C:	Subcontractor's Scope of Work
Exhibit D:	Compliance Certificate
Exhibit E:	Substance Abuse Testing Certification
Exhibit F:	Gift Policy, Anti-Corruption & Anti-Money Laundering Policies Certification
Exhibit G:	Special Provisions of General Contract and Other Additional Provisions
Exhibit H:	Equipment Use Agreement

Contract Attachment Description

[ATTACHMENTS ARE PROJECT-SPECIFIC AND INCLUDE THE FOLLOWING]

Attachment A – PROJECT DOCUMENT LIST

Attachment B – PROGRESS/PROJECT SCHEDULE

Attachment C – WORK RULES

Attachment D – SPECIAL INSURANCE [IF APPLICABLE]

Attachment E – CCIP [IF APPLICABLE]

Attachment H - VDC_BIM_REQUIREMENTS [IF APPLICABLE]

Attachment J - APPLICATIONS

Attachment SA Subcontractor SSSP

I. Contract Documents

The "Contract Documents" as such term is used herein shall mean and consist of the following:

1. This Subcontract Agreement, together with all Exhibits and Attachments;
2. The Invitation to Bid Package;
3. The agreement between Contractor and Owner (the "General Contract"), and all of its component parts including but not limited to the plans, specifications, general conditions (including any warranty and indemnity provisions), special conditions, supplementary conditions, reference standards, bulletins, addenda, exhibits, attachments, change orders and amendments from time to time; and
4. Contractor's Work Rules (also known as "Safety Work Rules"), Substance Abuse Policy and Drug Free Program and any and all health and safety policies, programs and requirements provided in the Invitation to Bid Package or otherwise ("Safety Requirements") and available to Subcontractor at any time upon request as may be amended from time to time.

The Contract Documents are incorporated in this Subcontract Agreement by reference, and Subcontractor is bound by the Contract Documents insofar as they relate in any way, directly or indirectly, to the work covered by this Subcontract Agreement. With respect to Subcontractor's Scope of Work, Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the terms of the General Contract. Where, in the Contract Documents, reference is made to Contractor and the work or specifications therein pertain to Subcontractor's trade, craft or type of work, such work or specifications shall be interpreted to apply to Subcontractor instead of to Contractor.

In accordance with Section I of this Subcontract, Subcontractor acknowledges it has reviewed Exhibit G -Special Provisions of General Contract and Other Additional Provisions, and agrees to be bound by all such provisions in the same manner as the Contractor is bound to the Owner under the General Contract with respect to the Subcontract Work performed under the Subcontract. To the extent that Contractor is required by the Owner to modify Exhibit G after execution of this Subcontract, Subcontractor shall execute a no-cost Change Order incorporating Exhibit G; as it may be amended into this Subcontract.

Contractor shall have the benefit of all rights and remedies against Subcontractor which the Owner, by the Contract Documents, has against the Contractor, insofar as is applicable to this Subcontract; provided that where any provision of the Contract Documents between the Owner and the Contractor could be interpreted to provide the Contractor with rights against the Subcontractor less than or more limited than those provided in favor of the Contractor in this Subcontract Agreement, this Subcontract Agreement shall govern. This Subcontract Agreement and the General Contract shall be read together so that, under no circumstances, with respect to the Subcontractor's work, shall Subcontractor's obligations to Contractor be less than the Contractor's obligations to Owner. If a conflict in the Contract Documents is discovered, then the provision imposing the most demanding or the most costly interpretation shall prevail unless waived by Contractor in writing.

Prior to execution of this Subcontract Agreement, copies of the General Contract (including the contract documents incorporated therein) were made available by Contractor for Subcontractor's inspection and Subcontractor has had the opportunity to review all of the Contract Documents. Subcontractor enters into this Subcontract Agreement with full knowledge of the requirements set forth therein.

Subcontractor agrees that all Subcontract Work shall be performed in accordance with the Contract Documents and that it shall ensure that any sub-subcontractors and suppliers are bound to the Contract Documents with respect to any portion of the Work they perform.

This Subcontract Agreement constitutes the final and complete agreement between Contractor and Subcontractor and supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Subcontract Agreement.

II. Scope of Work

Subcontractor agrees to furnish all necessary materials, labor, employee benefits, tools, equipment, supplies, materials, services, fixtures, installation, safety, protection, hoisting, insurance, taxes, fees, licenses, permits (except building permit), transportation, scaffolding, supervision, temporary storage and other facilities of every kind and description required and necessary to perform the prompt and efficient execution of the work set forth as follows:

Exhibit C (referred to herein as "Subcontractor's Scope of Work", "Scope of Work" or the "Subcontract Work").

Subcontractor shall maintain all applicable permits throughout the duration of the Project.

Subcontractor agrees to complete the Subcontract Work described in Exhibit C in accordance with and reasonably inferable from, that which is indicated in the Contract Documents and consistent with the Progress Schedule (defined in Section XIV herein). Subcontractor will perform all of the work that falls within the general area of its scope, regardless of the fact that the work to be performed may be distributed throughout the plans and specifications, and Contract Documents, as well as all incidental work reasonably necessary to complete the scope of work. The Subcontractor shall perform the Subcontract Work under the general direction of the Contractor.

III. Contract Price

Contractor agrees to pay, or caused to be paid, Subcontractor as consideration for the performance of the Subcontract Work, the Contract Price stated on Page 1 of this Subcontract Agreement, subject to additions and deductions for changes in the Subcontract Work as provided for in the Contract Documents.

IV. List of Lower Tier Subcontractors and Suppliers, and Designer, if any:

Within five (5) days of execution of this Subcontract Agreement, and prior to payment by Contractor on any Application for Payment (defined herein) Subcontractor shall complete and return to Contractor Exhibit B - List of Lowers, identifying all of Subcontractor's lower tier subcontractors and suppliers, and Designer, if any, that Subcontractor intends to use on the Project, together with any union trade and local with whom Subcontractor or its lower tier subcontractors are affiliated. Contact information (including address, phone number, contact person, and other available information) shall be provided for each entity identified. Subcontractor shall immediately notify Contractor in writing if Subcontractor adds to or changes any lower tier subcontractors or suppliers, unions, collective bargaining unit fringe benefit fund, and Designer, if any for the Project. Subcontractor shall not engage a lower tier subcontractor with an EMR \geq 1.0 without first obtaining the consent in writing of Contractor to such engagement. The notification requirements for Exhibit B is intended to include unions, and collective bargaining unit fringe benefit funds for any lower-tier subcontractor utilized by Subcontractor to complete the Subcontract Work.

Subcontractor shall not assign this Subcontract Agreement or any amounts due or to become due thereunder to any third party without prior written consent of the Contractor, and shall not subcontract the whole or any portion of this Subcontract Agreement (the "Sublet Work") without prior written consent of the Contractor (except to those subcontractors or vendors identified in Exhibit B). If Subcontractor does, with approval, sublet this Subcontract Agreement or any part thereof, it shall require that its subcontractor be bound to Subcontractor and to assume toward Subcontractor all of the obligations and responsibilities that Subcontractor has assumed toward Contractor. Approval of a sub-subcontractor will not imply that Contractor assumes any responsibility for such sub-subcontractor or that sub-subcontractor is relieved of any responsibility with respect to the Sublet Work. Subcontractor will not sublet any portion of the Subcontract Work to or enter into an agreement with an employee leasing company without Contractor's prior written approval.

A revised Exhibit B is required with any (1) change orders modifying Exhibit B information; (2) changes in subcontractors or suppliers; and/or (3) change in scope of Work.

V. Compliance

Subcontractor is an independent contractor and shall comply with all laws, orders, citations, rules, regulations, standards and statutes affecting or relating to this Subcontract Agreement or its performance, including but not limited to those with respect to occupational health and safety, the handling and storage of hazardous materials, federal, state and local tax laws, social security acts, unemployment compensation acts, and immigration reform and control acts.

Subcontractor and all of its subcontractors, regardless of tier, shall be licensed as a trade contractor for this work, and shall be licensed to operate in respect to its scope of work, at the Project site location, all as required by the licensure requirements of the applicable state, municipal and local authorities. Such licenses shall be maintained throughout the duration of the Project.

Subcontractor agrees to comply with the contractor's prequalification process including, but not limited to, safety and financial reviews.

Subcontractor agrees to fully comply with Contractor's on-site safety training and Safety Requirements.

Subcontractor shall ensure that all of its personnel, employees, affiliates and lower tier subcontractors meet the following minimum requirements at all times:

1. All job site superintendents must be 30 hour OSHA construction course qualified.
2. At least 50% of all on site workers are 10 hour OSHA construction course qualified before starting work.
3. When 25 or more people are working on site for any subcontractor, a qualified (30 hour) safety representative must be on site 100% of the time with their primary responsibility being safety.
4. The Contractor site safety orientation must be completed annually by Subcontractor's employees working at the site and by anyone employed by Subcontractor working on site.
5. Equipment operators must be able to show applicable operator certifications.
6. Documented equipment/vehicle inspections must be made available upon request.
7. 100% fall protection is required on all unguarded surfaces 6' or higher. Elevated work risks are to be thoroughly evaluated before work begins and properly managed by all subcontractors at all times. Fall protection plans are required for roofing, steel, and similar activities where a majority of the work is at heights.
8. Safe work permits must be completed and approved: excavations, hot work, and confined space entries.
9. High visibility clothing must be worn at all times on the job site
10. Personal Protective Equipment must be provided by the subcontractor and worn. This includes at a minimum; ANSI approved safety glasses, gloves appropriate for tasks being performed (e.g. cut resistant), hard hat, work boots/shoes, and any other equipment specific to various tasks e.g. respirator, face shield, hearing protection.
11. All incidents including serious near misses are to be reported to the Contractor job site superintendent or designate immediately. Injuries reported any time after the workday when the injury allegedly took place may require additional investigation and verification to confirm whether the injury in fact took place on the Contractor job site.
12. Conduct a documented daily pre-task-safety analysis with each crew.
13. Proactively utilize spotters, appropriate signage, and barricades to safely manage site vehicle movement and other activities where hazards could be present to those working in and around the job site.
14. Perform weekly documented safety inspections
15. Perform weekly documented tool box talks
16. Participate in Contractor's daily Stretch and Flex Program which will take place before any work begins at a time and location as designated by Contractor's onsite Superintendent. The Stretch and Flex Program routine consists of a brief warm-up (1 minute) and 5 stretches (1 minute each) for a total of 6 minutes.

Subcontractor, on behalf of itself and its lower tiers, acknowledges and agrees that only the following workers are eligible to work: (i) those workers who have passed substance abuse testing and are eligible for employment without having to take another substance test (drug and alcohol analysis), pursuant to a substance abuse program which Subcontractor has implemented that is in compliance with the standards of the Drug Free Workplace Act of 1988 and other applicable laws and regulations ("Program"), (ii) if Subcontractor has not implemented a Program, only those workers that have passed substance abuse testing pursuant to the requirements in the Safety Requirements within ninety (90) days preceding reporting to the Project, or (iii) those workers who have passed substance abuse testing and are eligible for employment without having to take another substance test (drug and alcohol analysis) pursuant to a Program implemented by a union to which Subcontractor and/or its lower tier subcontractors are signatory and such Program is in active status. Subcontractor and its lower tiers shall not assign workers to the Project that do not meet these requirements.

If Subcontractor intends to subcontract with other companies to provide labor at the Project, Subcontractor certifies that it will advise and require any such companies to execute this Substance Abuse Testing Certification as a condition to contracting with such firms and further covenants that it will not permit any such firms to perform labor on the Project site until they provided a fully executed Substance Abuse Testing Certification to Subcontractor.

The undersigned agrees to comply with Contractor's direction on the jobsite respecting all appropriate controls and procedures reasonably implemented to achieve their goal that all individuals performing work on the Project shall be eligible to work on the Project pursuant to Contractor's Safety Requirements.

Subcontractor agrees to fully comply with these requirements, as may be amended from time to time, to verify that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for the employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with all of the aforesaid.

Subcontractor agrees to inspections by Contractor to determine compliance with safety, health, and environmental standards. Subcontractor acknowledges that Contractor's right to inspect shall not in any way relieve Subcontractor of its obligations. If at any time, Subcontractor violates OSHA standards or in the reasonable judgement of Contractor, performs its work in an unsafe manner or otherwise not in compliance with Contractor's requirements, Contractor may either require Subcontractor to immediately

cease work until the unsafe practice is corrected, or provide the required safety measures at Subcontractor's cost.

Violation of any provisions of the above by Subcontractor's employees shall be sufficient grounds for immediate discharge from the Project site at Contractor's request.

Subcontractor is liable to Contractor and the Owner for all fines and penalties assessed by any governmental entity against Contractor or Owner as a result of Subcontractor's failure to perform its work under this Subcontract in compliance with the requirements of the Contract Documents. **Subcontractor agrees to indemnify, defend and hold harmless Contractor from any and all liability and damages, fines, costs, and attorneys' fees incurred by Contractor on account of Subcontractor's failure to comply.**

VI. Notice of Accidents

- A. Immediate Notice Required: Subcontractor shall immediately notify Contractor orally of any accident or occurrence resulting in damage to property of another, or injury to the Subcontractor's employees or third party.
- B. Written Report: Subcontractor shall submit to Contractor a written fact based accident report on a form acceptable to Contractor within two hours of the incident. Upon request of Contractor, the Subcontractor shall furnish Contractor with a copy of any reports prepared by Subcontractor for submission to Subcontractor's insurer(s). All incidents are to be investigated to determine basic/root causes including preventative actions to prevent a similar future event.
- C. **Indemnification: If Subcontractor fails to comply with this Section, Subcontractor agrees to defend, indemnify, and hold harmless Contractor for any and all claims, losses, or damages, including attorney's fees, incurred as a result of Subcontractor's noncompliance.**

VII. Taxes, Federal Labor Standards, Pension Benefits and Fringe Benefits

Subcontractor shall pay all taxes, levies, duties and assessments of every nature due in connection with the Subcontract Work under this Subcontract.

Subcontractor shall comply with all equal employment opportunity and affirmative action requirements promulgated by any governmental authority, including, without limitation, the requirements of the Civil Rights Act of 1964.

Subcontractor shall comply with all provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the "Act"), it being the intent of Contractor to comply with the Act, and such other acts, rules and regulations as may be issued from time to time by federal, state and local authorities which have the intent and purpose of immigration control. Contractor's goal is to achieve such compliance, while at the same time respecting all laws protecting the privacy rights of individuals, all in a fashion that will not in any way wrongfully discriminate against any individuals. It is Contractor's intent that only legal labor shall be employed on the Contractor's jobsites, whether the labor is performed by Contractor employees or by the sub-subcontractors of all tiers.

Within five (5) days of execution of this Subcontract Agreement, and prior to payment by Contractor on any Application for Payment, Subcontractor agrees to execute and return (1) Exhibit D - Compliance Certification; and (2) Exhibit E - Substance Abuse Testing Certification. Subcontractor shall provide no labor on the Project site, nor shall Subcontractor be entitled to any payments respecting the Project until Subcontractor has provided Contractor with the properly executed Exhibits. Subcontractor shall secure like certifications from all firms with whom Subcontractor contracts work to perform labor on the Project. No lower tier subcontractors performing labor for Subcontractor shall be permitted on site until such time as they have first provided Contractor with the properly executed Exhibits.

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

Subcontractor's (together with its lower tier subcontractors and suppliers) compliance with the above stated immigration and control provisions shall be a condition precedent to the Subcontractor's right to receive payment for Subcontractor's Work.

Subcontractor shall comply with and agrees to be bound by all applicable Federal Labor Standards Provisions covering the **Subcontract Work. The Project or Contract Documents may be subject to federal, state or local prevailing wage requirements, such as the Davis-Bacon Act or the Walsh-Healy Act, or other similar laws, statutes or regulations. Subcontractor shall strictly comply with all applicable prevailing wage laws, statutes, regulations or other requirements and shall maintain such records as necessary to establish the amount of wages and other compensation paid to workers in connection with the Project and shall submit to Contractor, as a condition precedent to payment, certified payrolls in the form prescribed by any such laws, regulations or requirements.**

Subcontractor and its lower tier subcontractors shall be solely responsible for and make all contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship, training or other fringe benefit or employee benefit program or trust with whom Subcontractor or its lower tier subcontractors are affiliated (collectively, a "Trust") within thirty (30) days from

receipt of payment from Contractor. As a condition precedent to any Progress Payment (defined herein) Contractor shall have the right to require lien waivers and/ other certification of payment and confirmation (such as a letter of good standing), for the benefit of Contractor, that Subcontractor and its lower tier subcontractors are current (within thirty (30) days) in making all contributions or payments to a Trust. In addition, Contractor shall have the right to: (A) require Subcontractor to, on a weekly basis, submit payroll reports in form and substance required by Contract, signed and attested to by a duly authorized officer or member of the Subcontractor (a "Certified Payroll Report") and/or (B) pay a Trust directly as part of a Progress Payment.

Indemnification: If Subcontractor fails to comply with any provisions of this Section, Subcontractor agrees to defend, indemnify and hold harmless contractor from any and all claims, losses or damages, including attorneys' fees, incurred as a result of Subcontractor's noncompliance.

VIII. Performance

- A. Control of Work: Subcontractor is responsible for, and has control over, all construction means, methods, techniques, sequences, procedures, and coordination of all portions of the Subcontract Work, unless the Contractor shall give specific written instruction concerning these matters. Subcontractor is responsible for, and has control over, all activities necessary to comply with the Safety Requirements. Subcontractor is fully responsible for, and has control over, all construction means, methods, techniques, sequences, procedures and coordination of the Subcontract Work related to the performance of Subcontractor's employees and any other persons working in the area of the Subcontract Work. Subcontractor has no authority to act or make any agreements or representation on behalf of Contractor or Owner, and no contractual relationship exists between Subcontractor and Owner. No employee or agent engaged by Subcontractor shall be, or shall be deemed to be, an employee or agent of Contractor or Owner.
- B. Jobsite Representative and Project Executive: Subcontractor shall keep a representative at the jobsite during all times when the Subcontract Work is in progress, and such representative shall be authorized to represent Subcontractor as to all phases of the work. Subcontractor's jobsite representative must attend all jobsite coordination meetings. Prior to commencement of the Subcontract Work, Subcontractor shall notify Contractor who Subcontractor's representative is to be. Any direction, instructions, information or data given to Subcontractor's representative by Contractor, either written or verbal, shall be as binding as though given to Subcontractor itself. Subcontractor shall also designate a Project Executive, and Site Superintendent each of whom shall be identified on Page 1 of this Subcontract Agreement. Subcontractor shall immediately notify Contractor in writing if there is any change to Subcontractor's jobsite representative or Subcontractor's Project Executive.
- C. Errors in Contract Documents: Subcontractor shall make a careful analysis and comparison of the drawings, specifications, other Contract Documents and information furnished by the Owner relative to the Subcontract Work. Should Subcontractor discover any errors, inconsistencies or omissions in the Contract Documents, Subcontractor shall report such discoveries to Contractor in writing within three days. Upon receipt of notice, Contractor shall instruct Subcontractor as to the measures to be taken and Subcontractor shall comply with such instructions. If Subcontractor performs Subcontract Work knowing it to be, or reasonably should have known it to be, contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations without notice to Contractor and advance approval by appropriate authorities, including Contractor, Subcontractor shall assume appropriate responsibility for such Subcontract Work and shall bear all associated costs, charges, fees and expenses incurred to remedy the violation. Nothing herein shall relieve Subcontractor of responsibility for its own errors, inconsistencies and omissions.
- D. Progress Reports: Subcontractor shall submit the following reports to the Site Superintendent at the stated time:
1. Daily Reports, in form and substance approved by Contractor, shall be submitted within 24 hours of the completed work shift.
 2. Toolbox Meeting Reports and Safety Audits, in form and substance approved by Contractor, together with Certified Payroll Reports, if required, shall be submitted on a weekly basis.

Subcontractor shall also furnish periodic progress reports, in a form mutually agreed upon by Subcontractor and Contractor, respecting information on the availability of materials and equipment under its Subcontract Agreement which may be in the course of preparation or manufacture. If requested by Contractor, Subcontractor shall provide manufacturer's name, phone number, contact person, and the purchase order number and amount.

- E. Layout Responsibility: Contractor or Owner shall establish principal axis lines and levels, and control points, whereupon Subcontractor shall be strictly responsible for the layout and accuracy of its Subcontract Work in accordance with the locations, lines and grades specified or shown in the Contract Documents, subject to such modifications as Contractor may require as the Subcontract Work progresses. Subcontractor is responsible for any loss or damages to other subcontractors engaged in work on the site by reason of failure of Subcontractor to set out or perform its work correctly. Subcontractor is responsible for the layout of all points and grades in excess of building corners, column lines, grid lines and finish floor elevations (which will be established by Contractor). Subcontractor shall exercise prudence so that actual final conditions and details shall result in alignment of finish surfaces that are within industry standard tolerances. If Subcontractor moves or destroys or renders inaccurate any survey control point, such control point shall be replaced by Contractor at Subcontractor's expense.
- F. Labor Relations: Subcontractor shall be fully responsible for the acts and performance of its employees and shall maintain peaceful relations among its employees to avoid labor conflicts. Subcontractor acknowledges that the Project may have both union and non-union personnel. Subcontractor undertakes the responsibility to see to it that all

individuals employed by it on the Project will work on the Project at all times when normally scheduled to work. Should picketing or other labor activity occur on the jobsite by employees or unions with issues against Subcontractor, then Subcontractor shall mitigate any resulting conditions that impede the progress of the work, and Subcontractor shall continue the proper performance of its work without interruption or delay. Any costs incurred by Contractor due to such actions shall be reimbursed by Subcontractor. If jobsite picketing of any kind unrelated to Subcontractor occurs at the jobsite, Subcontractor shall continue the proper performance of its work without interruption or delay. If Contractor establishes a reserved gate system, Subcontractor shall ensure that all of its employees, suppliers, visitors, and managers obey the reserved gate rules.

- G. Protection of Property: In carrying out its work, Subcontractor shall take necessary precautions to protect the work of other trades from damage caused by its operations. Subcontractor shall make every effort to protect its own work from damage of any sort and shall continue to protect its work until Subcontractor has completed its work in its entirety. Subcontractor shall locate all utility lines before digging and take all reasonable precautions to avoid disturbing existing utilities.
- H. Inspection: Subcontractor shall at all times furnish Contractor safe and ample facilities for inspecting materials at the site of construction, shops, factories, or any place of business of Subcontractor and its subcontractors and suppliers where materials under this Subcontract Agreement may be in course of preparation, process, manufacture or treatment.
- I. Uncovering of Work: Subcontractor shall uncover its work upon request by Contractor to provide for inspection to insure that the Subcontract Work is in accordance with the Contract Documents. If the Subcontract Work uncovered is determined to be in accordance with the Contract Documents, then Contractor shall pay Subcontractor its actual costs to uncover and recover the Subcontract Work. If the Subcontract Work uncovered is determined to not be in accordance with the Contract Documents, then Subcontractor shall bear all costs associated with uncovering the Subcontract Work, remedying the Subcontract Work, and recovering the Subcontract Work.
- J. Unforeseen Site Conditions: Subcontractor represents that it has visited the Project site and is familiar with the nature of construction in the general area where the site is located, including site conditions. Subcontractor shall make no claims for differing site conditions except as authorized in the Contract Documents. If Subcontractor presents a claim to Contractor for differing site conditions, Contractor will in good faith present a like claim for compensation and/or a time extension (where applicable) to the Owner so long as Contractor believes in good faith that there is a reasonable basis for Subcontractor's claim. Contractor shall have no obligation to compensate Subcontractor for any claim for a differing site condition unless and until Owner compensates Contractor for such condition, and Subcontractor shall not receive an extension of time for a differing site condition unless Contractor receives a like extension of time from the Owner. Contractor's liability to Subcontractor for differing site conditions shall be limited to Owner's liability to Contractor for any costs or time allegedly incurred by Subcontractor (unless Contractor refuses to present a like claim to the Owner for consideration).
- K. Work for Others: Until final completion and acceptance of the Subcontract Work, Subcontractor agrees not to perform any work directly for the Owner or any tenants, or deal directly with the Owner's representatives in connection with the Subcontract Work, unless otherwise directed or agreed to in writing by the Contractor to do so.

IX. Design-Build and/or Engineering Delegation

If the Contract Documents require Subcontractor to provide design-build and/or engineering services, Subcontractor shall provide those design-build and/or engineering services necessary to satisfactory complete the Subcontract Work. Subcontractor shall procure design services from licensed design professionals (the "Designer") retained by Subcontractor as permitted by law governing the Project site. Subcontractor shall be responsible for conformance of its design with the information given and the design concept expressed in the Contract Documents. The Designer's signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals prepared by the Designer. Shop drawings and other submittals related to the Subcontract Work designed or certified by the Designer, if prepared by others, shall bear the Subcontractor's and the Designer's written approvals when submitted to Contractor. Contractor shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by the Designer.

If the Designer is an independent professional, the design services shall be procured pursuant to a separate agreement between Subcontractor and the Designer. The Subcontractor - Designer agreement shall not provide for any limitation of liability inconsistent with Subcontractor's liability established by the Contract Documents. Subcontractor shall fully identify any Designer in Exhibit B.

Subcontractor's design services shall include providing the design and/or engineering for the structure, systems machinery and/or equipment encompassed by Subcontractor's scope of work. Subcontractor warrants that its design and/or engineering shall include all applicable specifications and criteria specified by the Contract Documents, shall be sufficient to pass all applicable inspections and testing required by any federal, state or local authorities with jurisdiction of the work (such that the Project may be substantially completed and the Subcontract Work fit for its intended purpose), and shall comply with all applicable federal, state and local laws and regulations.

Subcontractor shall ensure that its design and/or engineering is completed and submitted for approval within such time as is necessary to allow the Project to remain on schedule. Subcontractor acknowledges that in performing its design and/or engineering work as provided herein it will not rely upon any specifications or criteria specified in the Contract Documents, but will produce its

design and/or engineering so as to ensure that the completed work will be accepted by the appropriate inspecting authority. Subcontractor acknowledges and agrees that it is solely responsible for providing the proper design and/or engineering for the Subcontract Work.

X. Use of Contractor's Equipment or Facilities

Upon written permission granted by Contractor, Subcontractor may utilize from time to time certain of Contractor's equipment or facilities at a predetermined rental rate charged through deductive Change Order. Subcontractor shall assure itself of the condition of such equipment or facilities and shall assume all risks and responsibilities during its use. Contractor makes no warranty as to the sufficiency of such equipment or facilities for Subcontractor's specific needs, and Subcontractor accepts the same in an "as-is" condition. **Subcontractor shall indemnify and hold Contractor harmless from any claims, actions, demands, damages, liabilities, expenses, and attorney's fees, resulting from the use of such equipment or facilities by Subcontractor.** Contractor and Subcontractor shall jointly inspect such equipment or facilities before its use and upon its return. The cost of all necessary repairs or replacement for damages other than normal wear and tear shall be Subcontractor's expense and charged through a deductive Change Order.

Subcontractor use of Contractor's equipment shall be pursuant to this Subcontract Agreement and Exhibit H (Equipment Use Agreement). If equipment is furnished with an operator, the services of such operator will be performed under the complete direction and control of Subcontractor, and such operator shall be considered Subcontractor's employee for all purposes other than the payment of wages, worker's compensation insurance or other benefits. Subcontractor shall have full responsibility for all acts or omissions of Contractor's operators with regard to Subcontractor's use or employment of them.

XI. Bonding of Subcontractor

Concurrently with the execution of this Agreement, Subcontractor shall, if required by Contractor, execute a labor and material bond and performance bond, in an amount equal to one hundred percent (100%) of the Contract Price. Said bonds shall be executed by a corporate surety acceptable to Contractor in its sole discretion and shall be in a form satisfactory to Contractor. Payment for the premium on said bonds shall be made as otherwise provided in the Contract Documents, and if not so provided, shall be the responsibility of Subcontractor. No change, alteration or modification in or deviation from this Subcontract Agreement or the plans or specifications shall release or exonerate, in whole or in part, any surety on any bond given in connection with this Subcontract Agreement, and neither Owner nor Contractor shall be obligated to notify any surety or sureties of any such change.

In the event of a Default or threatened Default, Contractor shall have the right to demand that Subcontractor post a bond to secure performance of Subcontractor's obligations under this Subcontract at Subcontractor's sole expense. Subcontractor hereby consents to the issuance of such a bond, agrees it shall be liable to the surety under such bond, and agrees that if Contractor posts the bond the cost of such bond shall be charged to Subcontractor in a deductive change order which Subcontractor hereby approves.

XII. Submittals

- A. Submission of Submittals: Subcontractor shall examine the Contract Documents to ascertain the approval material to be submitted such as shop drawings, product data, cut sheets, calculations, schedules, samples, manufacturer's literature, and brochures (collectively "Submittals"). Subcontractor shall submit to Contractor, at Subcontractor's cost, all Submittals required by the Contract Documents. Submittals shall be submitted to Contractor in sufficient time and sequence so that Subcontractor's work may be done effectively, expeditiously and in a manner that will not cause delay in the progress of the Subcontract Work, work of Contractor or other subcontractors.
- B. Submittals Not Identified in Contract Documents: If the Contract Documents do not contain submittal requirements pertaining to the Subcontract Work (or some portion of Subcontract Work), Subcontractor agrees upon request to submit in a timely fashion to Contractor for approval any Submittals as may reasonably be required and requested by the Contractor, Owner or Architect.
- C. Review/Approval of Submittals: Review of Submittals by Contractor, Owner or Architect shall relate solely to general conformity with the Contract Documents. Such review shall not be construed as an approval in detail of conformity of such Submittals with the design drawings, specifications or other Contract Documents, and shall not excuse Subcontractor from fully complying with the terms and conditions of the Contract Documents. No such approval or review shall constitute a waiver of, or agreement to, any change or deviation to the Contract Documents (except in the case of "Alternate" Submittals as provided below). **If Submittals deviate from or are inconsistent with the design drawings, the specifications or other Contract Documents, and such deviations or inconsistencies impose upon Contractor any expense because of delays or extra work or otherwise, Subcontractor agrees to hold Contractor harmless from and to indemnify Contractor from any such expense or damage, including attorney's fees.**
- D. Deviations and Substitutions: If Subcontractor desires to request a deviation or a substitution from the Contract Documents, such request should be made as and conspicuously marked as a separate "**ALTERNATE**" submittal (the "Alternate Submittal") (and shall be provided in addition to the regular submittal), and shall clearly identify the deviations and/or substitutions requested and the reasons for such request. If the Architect or Owner approves the Alternate Submittal in writing, then Subcontractor may proceed with construction containing such deviations or substitutions in accordance with the approval given, but shall remain responsible to pay for any extra costs incurred by others as a result of such substitution or deviation. All extra or additional costs associated in any way with an Alternate Submittal shall be borne by Subcontractor. Under no circumstances shall Subcontractor be entitled to an increase in the Contract Price resulting from the submission and approval of any Alternate Submittal.

- E. Professional Certifications: Contractor, Owner and Architect are entitled to rely upon the adequacy, accuracy and completeness of any professional certifications required of Subcontractor by the Contract Documents concerning the performance criteria of systems, equipment or materials, including all relevant calculations and any governing performance requirements.
- F. Close Out Submittals: Upon completion of its work, Subcontractor shall submit all "in place" or "as-built" drawings, owner's manuals, operating manuals, labor and materials warranties, and any other close out documents required by the Contract Documents (collectively, the "Close Out Submittals"). Final Payment (defined herein) to Subcontractor (including any payments that may be otherwise due for Disputes (defined herein)) shall not be deemed due to Subcontractor until such time as Subcontractor has submitted all required Close Out Submittals.

XIII. Cleanup

- A. General Clean-Up Obligations: Subcontractor shall at all times maintain a clean, safe and orderly working area, free from unreasonable accumulations of rubbish, debris, and waste and/or surplus materials (collectively "Debris") resulting from its operations. Debris shall be removed to and placed at a location designated by Contractor each day (or as otherwise required by Contractor) during the course of the Subcontract Work.
- B. Minimizing Debris: Subcontractor shall make reasonable provisions to minimize and confine dust and debris resulting from its construction activities.
- C. Leaving Discrete Work Area: Prior to discontinuing its work in a discrete area, Subcontractor shall remove from such area all its equipment, temporary structures, and surplus materials not to be used at or near the same location during later stages of the Subcontract Work, and shall turn over its work in such area in a neat, clean and safe condition as to permit the next succeeding work to be commenced without further cleaning.
- D. Completion of Subcontract Work: Upon completion of the Subcontract Work and prior to Final Payment, Subcontractor shall remove from the Project site all equipment, temporary structures, surplus materials and Debris incident to its operation and clean all surfaces, fixtures, and equipment affected by the performance of the Subcontract Work, leaving the premises in a neat, clean and safe condition. Debris shall be removed to and placed at a location designated by Contractor. Final Payment to Subcontractor shall not be due until Subcontractor has complied with its final clean up obligations.
- E. Remedies: If Subcontractor does not comply with its clean up obligations, Contractor may, after giving two working days' prior written notice and upon failure of the Subcontractor to comply with its clean up obligations in such two day period, have Subcontractor's clean-up obligations performed by others, and charge the reasonable cost thereof to Subcontractor. If Contractor is unable to determine which Subcontractor is responsible for the clean-up of any specific area, Contractor may equitably apportion the cost of such clean-up between subcontractors in such manner as it determines to be proper. So long as Contractor expresses a reasonable basis for its equitable apportionment of clean-up costs, Contractor's determination of the apportionment of clean-up costs among subcontractors shall be conclusive on Subcontractor.

XIV. Time of Performance, Scheduling and Coordination

- A. Time: Time is of the essence of this Subcontract.
- B. Compliance with Progress Schedule: Subcontractor shall commence preparatory and planning work immediately upon execution of this Subcontract Agreement and shall timely mobilize its forces to the Project site in order to commence its work in accordance with Contractor's schedule included as part of the Contract Documents, or otherwise provided to Subcontractor by Contractor (the "Progress Schedule"). The Progress Schedule is attached hereto as an Attachment, and is subject to revision by Contractor from time to time. Subcontractor shall diligently prosecute its work in accordance with the Progress Schedule and all revisions thereto, it being expressly understood that Contractor has agreed to meet one or more dates of substantial completion for the Project as further set forth and defined in the Contract Documents, and that Contractor has undertaken that obligation to the Owner in reliance upon Subcontractor's ability and promise to timely perform its work in accordance with the Progress Schedule. If Subcontractor, in the reasonable judgement of Contractor, fails to satisfactorily maintain its progress of the Subcontract Work, then Contractor may direct Subcontractor to cure the issues impeding Subcontractor's progress and to take such steps as Contractor deems necessary to improve the rate of progress of the Subcontract Work, including requiring Subcontractor to increase the number of shifts and/or to pursue overtime operations, and to submit for approval a schedule demonstrating the manner in which the required rate of progress will be regained, all without additional cost to Contractor. If Subcontractor fails to commence or begin taking diligent steps to commence and continue with promptness to cure, in response to Contractor's direction to cure the deficiencies impeding the rate of progress of Subcontractor's Work, within 24 hours after receipt of written notice, Contractor may proceed as provided in Article XXI of this Subcontract Agreement.
- C. Contractor's Delay Damages: Notwithstanding Article XXII of this Subcontract Agreement, Subcontractor shall be liable for any damages for delay sustained by Contractor caused directly or indirectly by Subcontractor, including, but not limited to, damages, liquidated or otherwise, for which Contractor is liable to the Owner.
- D. Contractor's Control of Scheduling: Contractor shall have the right to decide the time and order in which various portions of the Subcontract Work shall be installed, the priority of the work between Subcontractor and the other

subcontractors, and, in general, all matters representing the timely and orderly conduct of the Subcontract Work. Contractor shall decide the sequence of the Subcontract Work, and may require Subcontractor to perform part of the work in one area while delaying work in another area to suit the needs of the Project.

- E. Scheduling of Work: Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of the Subcontract Work consistent with the Progress Schedule and in a form acceptable to Contractor. Subcontractor shall comply with the Progress Schedule including, but not specifically limited to, commencement, duration, and sequencing of activities. Contractor shall reasonably cooperate with the Subcontractor in scheduling the Subcontract Work and shall attempt, as reasonably possible, to avoid conflicts or interference with the Subcontract Work.
- F. Coordination: Subcontractor shall cooperate with Contractor and other subcontractors whose work might interfere with the Subcontract Work, and shall participate in the preparation of coordinated drawings and schedules in areas of congestion, specifically noting and advising the Contractor of any such interference. Subcontractor shall coordinate the Subcontract Work with that of all other subcontractors and Contractor, in a manner that will not delay or hinder their work and that will facilitate the timely and orderly completion of the Subcontract Work and the Project.
- G. Overtime: Subcontractor agrees that overtime operations may be required of Subcontractor. If overtime operations are required in the judgment of Contractor as a result of delays caused by Subcontractor, then Subcontractor will perform overtime operations for no additional compensation. If, however, Contractor requires overtime operations for any reason that is not the fault of Subcontractor, then Contractor will reimburse Subcontractor its actual premium time costs only, which Subcontractor will accept as its exclusive and only compensation related to Contractor's request to perform overtime operations. Overtime operations may include Saturday and Sunday work, two or three shift work, or overtime on a one shift basis.
- H. Force Majeure: Subcontractor has taken into account and has made allowances for delays which should be reasonably anticipated or foreseeable. If the critical path of the Subcontract Work is impacted and delayed in the prosecution of the same by an act, neglect or default of the Owner, Architect or Contractor, or by labor disputes, fire, unavoidable casualties, or acts of God or nature, then the time fixed for Subcontractor's completion of the Subcontract Work as set forth in the Progress Schedule and schedule provided pursuant to Paragraph E above, shall be extended by the number of days that Subcontractor has been delayed, so long as (a) Subcontractor provides Contractor with written notice of the delay within seven days of the commencement of such delay, and (b) Subcontractor provides Contractor with a written claim for the time extension sought within seven days after the delay period has ended. Subcontractor's sole and exclusive remedy for any delay to its work shall be an extension of time, subject only to the specific exception stated in Paragraph J below.
- I. Inclement Weather: Subcontractor has taken into account and has made allowance for delays caused by inclement weather to be reasonably anticipated for the geographic area where the Project is located. Subcontractor shall be entitled to an extension of time for inclement weather so long as such inclement weather in fact impacts and delays the critical path of the Subcontract Work, and such inclement weather is beyond that which should have been reasonably anticipated; provided, however, that if the Contract Documents otherwise provide any specific provisions respecting the Contractor's right to make a claim for extension of time for inclement weather, then the provisions of such Contract Documents shall apply and govern the Subcontractor's right to make a claim for time extension due to inclement weather. Subcontractor shall have no right to a time extension for inclement weather unless the Contractor has the same right for a time extension from the Owner.
- J. Claims For Compensation Due To Delays Or Schedule Interference: No claims for additional compensation or damages for delays or schedule interference, including claims for loss of productivity, disruption, "ripple effect" costs or "impact" costs, whether caused in whole or in part by any conduct on the part of Contractor, other subcontractors or Owner or Architect, or by any other contributing causes, shall be recoverable from Contractor, and an extension of time for completion shall be the sole and exclusive remedy of Subcontractor; provided, however, that in the event the Contract Documents permit the Contractor to obtain additional compensation from Owner on account of a delay, and in the event Contractor does in fact obtain and collect additional compensation from Owner on account of a delay, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances, so long as Subcontractor has (a) requested in writing that Contractor prosecute a claim against Owner for additional compensation for any delay but not later than two (2) business days after commencement of the delay event, (b) cooperated fully with Contractor in the prosecution therefor, and (c) paid Contractor an equitable amount for costs and expenses incurred by Contractor in connection with bringing such delay claim, including attorneys' fees. Contractor's receipt of any funds from the Owner attributable to such a delay claim shall be a condition precedent to any obligation by Contractor to Subcontractor.

XV. Changes in The Subcontract Work

- A. Contractor Change Notice Directives: Contractor may, without notice to sureties, by written directive ("**Change Notice**"), denominated as such, signed by the Contractor's Representative, unilaterally make any change to the Subcontract Work described in the Contract Documents, including but not limited to changes:
1. in the drawings and specifications;
 2. in the method, manner, or sequence of the Subcontract Work;

3. directing acceleration or deceleration in the performance of the Subcontract Work;
4. modifying the schedule of the Subcontract Work or Progress Schedule; and
5. adding to or deleting from the Subcontract Work.

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

- B. Pricing Change Order Work; Agreement on Change Orders: Subcontractor shall within a reasonable time after receipt of a Change Notice, submit to Contractor an itemized estimate reflecting any cost changes and/or time impact required to make the requested changes. The itemized estimate shall detail the anticipated direct labor man-hours and labor costs, direct material, direct equipment, applicable labor markups for employee labor burdens and benefits. Mark-up on Subcontractor's direct costs shall be ten percent (five percent on sub-Subcontractor's work) to cover supervision, field office and home office overhead, and profit. If additional time is sought, the estimate shall provide a detailed explanation how and why the requested change will impact the critical path of the Subcontract Work. All elements of potential cost and time impact are subject to negotiation. If the parties agree with respect to the amount of the change and the time impact, if any, associated with the change, then the parties shall execute a written amendment, or "Change Order" signed by both parties. Agreement on any Change Order shall constitute a full and final settlement and accord and satisfaction of all matters relating to the change in the Subcontract Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Price and the Progress Schedule. Subcontractor shall submit an updated or otherwise shall confirm Exhibit B with any Change Order. A Change Order may also be executed by the Parties to formalize an amendment to this Subcontract Agreement regarding terms other than cost, scheduling, scope of work, or matters addressed in a Change Notice.
- C. Proceedings If Parties Cannot Agree On Change Order: Subcontractor shall timely perform the work contemplated by the Change Notice regardless of whether the parties agree on a Change Order. If the parties cannot agree on a Change Order, then Subcontractor shall treat the matter as a claim and proceed in accordance with Paragraph G below. Subcontractor's claim for a time extension is limited to the documented effect that the change work will have on the critical path of the Subcontract Work. If it is reasonably possible to perform the change in the work concurrently with Subcontract Work that is critical to overall completion, no time extension shall be granted by reason of a change in the Subcontract Work. Subcontractor's claim for extra costs shall be limited to the amount by which Subcontractor's direct costs have been reasonably increased over the direct cost of performing the Subcontract Work without the change in the same, plus ten percent (five percent on sub-Subcontractor's work) of direct cost to cover supervision, field office and home office overhead, and profit.
- D. Unauthorized Changes in the Work: Subcontractor shall not make any changes in its Subcontract Work that would in any way cause or allow the Subcontract Work to deviate from that required in the Contract Documents without first obtaining a Change Notice from the Contractor, or an Alternate Submittal approved in writing by the Architect or Owner. If Subcontractor makes any changes in the Subcontract Work without receiving such documentation, such change constitutes an agreement by Subcontractor that it will not be paid for that changed work, even if it received verbal direction from Contractor or any form of direction, written or otherwise, from Owner or any other person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses, damages, and liability of any nature whatsoever associated with or in any way arising out of any such unauthorized change in the Subcontract Work.
- E. Disputes About Subcontractor's Scope of Work: If a dispute arises between Subcontractor and Contractor with respect to whether particular work is a change in the scope of the Subcontract Work, Subcontractor shall give Contractor prompt written notice of the matter before proceeding with the same. Such written notice shall include an estimate of the extra costs the Subcontractor believes will be involved with the disputed work, and the effect on the Progress Schedule, if any. Subcontractor shall timely perform the disputed work. Within ten days after completing the disputed work, Subcontractor shall provide Contractor with a claim in writing detailing Subcontractor's direct costs and markup, which shall be computed in accordance with the provisions of Subparagraph C above, and any claim for a time extension. Subcontractor's failure to provide the required written notice before proceeding with disputed work and to timely provide the written claim after completing the disputed work shall constitute an agreement by Subcontractor that it will not be paid for the disputed work. Subcontractor shall treat any such claim as a Dispute (defined below) and proceed in accordance with Paragraph G below. Subcontractor shall proceed diligently with performance of the work, including the disputed work, and comply with the directions of the Contractor, pending final resolution of the Dispute.
- F. No Notice to Surety Required: No change, alteration, or modification to or deviation from this Subcontract Agreement or the Contract Documents shall release or exonerate, in whole or in part, any bond or any surety on any bond given in connection with this Subcontract Agreement, and no notice is required to be given to such surety of any such change, alteration, modification or deviation.
- G. Referral to Dispute Resolution And Continued Performance: Any issues related to changes in the Subcontract Work that are not resolved by execution of a Change Order shall, so long as Subcontractor has otherwise complied with the provisions of this Section, be defined as a "Dispute" and shall be subject to resolution by the dispute resolution provisions of this Subcontract Agreement. Subcontractor shall proceed diligently with performance of the work, including work ordered by Change Notices and disputed work, and comply with the directions of the Contractor,

pending final resolution of the Dispute.

XVI. Progress Payments

- A. **Applications for Payment:** Subcontractor shall submit to Contractor applications for payment (each, an "Application for Payment") in a form acceptable to Contractor no later than the 20th day of each month for the portion of the Subcontract Work performed up to and including the last day of the month. Contractor reserves the right to require Subcontractor to submit its Application for Payment electronically through Textura, at Subcontractor's sole cost and expense, or other software in Contractor's discretion. An Application for Payment shall be for payment for materials incorporated in the Subcontract Work and work performed in place during the time period since Subcontractor commenced the Subcontract Work or since its last Application for Payment, whichever is later. Subcontractor agrees to furnish, as and when required by Contractor, the Schedule of Values (defined below), Certified Payroll Reports, receipts, vouchers, lien waivers, releases of claims for labor, material and subcontractors performing work or furnishing materials under this Agreement, and any other documents reasonably requested by Contractor, including but not limited to a waiver or other release from one or more Trusts, all in form satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's option until and unless such documents have been furnished. Contractor shall have the right, at its sole discretion and upon request, to require Subcontractor's lower tiers to provide Certified Payroll Reports. In addition to the foregoing, prior to receiving any payment, Subcontractor must furnish Contractor with a valid certificate of insurance. Notwithstanding anything to the contrary, Contractor shall have right, at its sole discretion, to require Subcontractor to have its lower tier subcontractors and suppliers, submit invoices and lien waivers through Textura and receive payments directly from Contractor through ACH disbursements. Tier subcontractor/supplier will pay a one-time Textura fee at time of contract acceptance in Textura. Contractor will reimburse tier subcontractor/supplier within sixty (60) days of payment of fee.
- B. **Schedule of Values:** Subcontractor shall, within two weeks of execution of this Subcontract Agreement, and in no event before submitting its first Application for Payment, submit to the Contractor a schedule of values of various parts of the work aggregating the total sum of this Subcontract Agreement (the "Schedule of Values"), made out in such detail as the Subcontractor and Contractor may agree upon, or as required by the Owner, and supported by such evidence as to its correctness as the Contractor may direct. The Schedule of Values shall clearly identify the portions of the Subcontract Work that are attributable to each of the lower tier subcontractors and suppliers identified in Exhibit B. The Schedule of Values, as approved by the Contractor shall be used as a basis for all Applications for Payment, unless it is found to be in error.
- C. **Stored Materials:** If payment is requested on account of materials or equipment not incorporated in the Subcontract Work but delivered and suitably stored on site or off site at some other location agreed upon in writing, payment for such materials or equipment shall be made in accordance with the terms and conditions as allowed by the Contract Documents. In such cases: (1) insurance shall be provided with Contractor and Owner's names on the policy, and Subcontractor shall furnish detailed inventory, including invoices, for all such stored materials, and (2) Subcontractor shall comply with such other procedures satisfactory to the Owner and Contractor to establish the Owner's title to such materials and equipment, or otherwise to protect the Owner's and Contractor's interest including transportation to the site. If the Contract Documents do not permit payment for stored materials, then no such payment will be made.
- D. **Retainage:** The rate of retainage shall be that stated on the first page of this Subcontract Agreement, which amount is equal to the percentage retained (the "Retainage") from the Contractor's payment by the Owner for the Subcontract Work. If the Subcontract Work is satisfactory and the Contract Documents provide for reduction of retainage at a specified percentage of completion, then the Retainage shall also be reduced when the Subcontract Work has attained the same percentage of completion and the Contractor's retainage for the Subcontract Work has been so reduced by the Owner. Payment and release of Retainage may be subject to local and/or state law governing the same.
- E. **CCIP Credit:** Contractor may withhold from any amounts otherwise due Subcontractor an amount up to 125% of the expected CCIP credit. An estimated CCIP credit will be calculated based on the Form 1a - Coverage and Rate Verification Worksheet ("Form 1a") submitted prior to or at the beginning of the Work. A Change Order will be issued for the estimated credit. This change order will be billed no later than the final invoice submitted before retention is released. After the final Form 4 - Monthly On-Site Payroll Report has been received the actual credit will be calculated and a Final CCIP Change Order will be issued to adjust the CCIP credit.

A revised Form 1a is required with any change order increasing the Contract Price twenty-five percent (25%) or more or which, when combined with other change orders, results in a cumulative increase of twenty-five percent (25%) or more of the Contract Price.

- F. **Subcontractor's Payments to Lower Tier Providers:** The Subcontractor shall pay for all materials, equipment and labor used in, or in connection with, the performance of this Subcontract Agreement through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor to verify compliance with the above requirements. Subcontractor acknowledges and agrees that its failure, after receipt of payment from Contractor, to make timely payments to its subcontractors, vendors and laborers shall constitute a material breach of this Subcontract Agreement. Contractor shall have the right, on an ongoing basis, to contact Subcontractor's subcontractors, suppliers, Trusts, and other entities affiliated with the Subcontract Work, to ascertain whether they are being paid by Subcontractor in accordance with this Subcontract Agreement.
- G. **Lien Waivers:** Accompanying Subcontractor's Applications for Payment, Subcontractor shall provide lien waivers in

the form and substance required by Contractor or Owner to document that all accounts pertaining to the Subcontract Work and Project have been paid in full. Subcontractor shall also provide similar lien waivers from all sub-subcontractors and vendors of any tier, including Trusts, who are providing goods and services for the Project in an aggregate value in excess of \$2,500. Contractor shall have the right in its sole discretion where it deems it appropriate to issue joint checks, or make payments directly to Subcontractor's subcontractors, suppliers, Trusts, or other entities associated with the Subcontract Work and owed funds by Subcontractor, or to otherwise take reasonable actions in connection with payment in order to protect Contractor's interests. All payments made by Contractor by joint check or directly to Subcontractor's subcontractors or suppliers, etc. shall reduce the amounts due Subcontractor under this Subcontract Agreement. It is agreed that no payment hereunder shall be made to Subcontractor, except at Contractor's option, until and unless lien waivers have been provided in accordance with this Paragraph.

- H. **Payment To Subcontractor:** Provided that Subcontractor is not in breach or default or otherwise in noncompliance with the terms of this Subcontract Agreement, Contractor shall make payment to Subcontractor (each, a "Progress Payment") within ten days of receipt of like payment from Owner. Contractor may deduct from any amounts due or to become due to Subcontractor any sum or sums owed by Subcontractor to Contractor on account of defective work not remedied, claims filed, reasonable evidence indicating the probability of the filing of claims or reasonable doubt that the Subcontract Work can be completed for the balance of the Contract Price then unpaid, or the breach of any provision of the Contract Documents. Contractor may also offset any sums due Subcontractor hereunder the amount of any liquidated or unliquidated obligations of Subcontractor to Contractor, whether or not arising out of this Subcontract Agreement.

XVII. Final Payment

Contractor shall make final payment ("Final Payment") to Subcontractor after the Subcontract Work is complete and accepted by Owner, or such others whose approval is required under the Contract Documents, providing like payment shall have been made by Owner to Contractor, and further providing that Subcontractor has submitted a final Application for Payment, and (a) Subcontractor shall have furnished Contractor with a final lien waiver in the form required by Contractor, (b) that sub-subcontractors and vendors of any tier who are providing goods and services for the Project in an aggregate value in excess of \$5,000 have provided a final lien waiver in the form required by Contractor, (c) final lien waivers and/or letters of good standing (within thirty (30) days) in the form required by Contractor have been provided by any other sub-subcontractors and vendors, and Trusts as requested by Contractor, (d) Subcontractor provides Contractor with satisfactory evidence that all labor and material accounts incurred by Subcontractor in connection with the Subcontract Work have been paid in full, (e) consent of surety, if any, has been received, (f) and Subcontractor has submitted, in a form acceptable to Contractor, all Close Out Submittals (including but not limited to Guaranty/Warranty forms, Operations and Maintenance Manuals, As-Built drawings, a valid certificate of insurance, and any other close-out documents required by the Contract Documents, including any documents required or requested by Contractor including documents in connection with the administration of any CCIP Program).

Contractor may withhold from Final Payment an amount up to 125% of the expected CCIP credit to be finally determined after the Subcontract Work is completed and all documentation necessary to determine Subcontractor's CCIP credit has been received.

Subcontractor's acceptance of Final Payment shall constitute a waiver of all claims, except those expressly reserved in writing in Subcontractor's final Application for Payment.

The making of Final Payment shall not constitute a waiver of claims against Subcontractor for

1. liens, claims, security interests or encumbrances arising out of the Subcontract Agreement and unsettled;
2. failure of the Work to comply with the requirements of the Contract Documents; or
3. terms of special warranties required by the Contract Documents.

XVIII. Owner's Payment to Contractor Mandatory

- A. **Owner's payment to Contractor shall be a condition precedent to Contractor's obligation to pay Subcontractor and Subcontractor's right to receive payment. Subcontractor hereby acknowledges that it is assuming the risk of non-payment by the Owner. This condition precedent also applies to Contractor's obligation to pay Progress Payment, Change Orders, Retainage, Final Payment and any other payment required by the Contract Documents. This paragraph supersedes all other provisions of this Subcontract Agreement, and any conflicting language shall be modified or deemed to be consistent herewith.**
- B. **This Paragraph shall be deemed to apply only in those jurisdictions in which by statute or by judicial interpretation the terms of Section A are not enforceable. In such instance, the following provision shall apply: if Owner delays making payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. "Reasonable time" shall be determined according to the relevant circumstances, but in no event shall be less than the time Contractor, Contractor's sureties, and Subcontractor require to pursue to conclusion their legal remedies against Owner to obtain payment, including, but not limited to, mechanic's lien remedies.**
- C. Interest: If Contractor fails to make any payment to Subcontractor as provided in the Contract Documents, then Subcontractor shall be entitled to interest on amounts not paid when due at the Prime Rate.

XIX. Participation in Contractor's Minority Business Enterprise Program

If and as required by the Contract Documents, Subcontractor shall comply with any minority/women's business development initiative or program. Further, Subcontractor acknowledges Contractor's mission to execute a standard of "best practices" in the construction industry by expanding access to contract and employment opportunities for minorities and women. Contractor seeks to maximize the participation of Minority Business Enterprises ("MBE") and Women's Business Enterprises ("WBE") and to increase the number of minorities and women working on projects. Subcontractor agrees to work with Contractor in good faith to provide reasonable assistance in achieving the diversity objectives, if any, identified in the Contract Documents. Subcontractors will be responsible for meeting and exceeding the stated MBE and WBE participation goals and objectives and for participating in this process throughout the duration of the Project.

XX. Warranty and Defective Work

Subcontractor warrants that all materials and equipment furnished and incorporated by it in the Project shall be new unless otherwise specified, of clear title, and that all work under this Subcontract Agreement will be performed to completion in a good and workmanlike manner, shall be of good quality, free from faults and defects, and in accordance with the Contract Documents. All work not conforming to these requirements, including substitutes not properly approved and authorized, may be considered defective.

The warranty contained in this section shall remain in effect for a period from the commencement of the Subcontract Work to a date one year after substantial completion of the Project; provided that, if the General Contract requires the Contractor's general warranty to be measured from some point after substantial completion of the Project, or if it provides for a longer period of guarantee, then Subcontractor shall be bound to such altered means of measurement or longer period.

The warranty contained in this section shall be in addition to and not a limitation of any other warranty or remedies provided by law or by the Contract Documents.

If at any time during the warranty period, Contractor or Owner shall discover any aspect of Subcontract Work not in compliance with this warranty (the "Defect"), then written notice shall be provided to Subcontractor of the Defect, and Subcontractor shall, within twenty four hours of receipt of such notice, propose corrective actions to cure the Defect so as to meet the requirements of this Subcontract, and shall immediately proceed to cure, and shall cause any of its sub-subcontractors or suppliers to cure, the Defect upon written direction from Contractor to proceed.

Contractor, at its sole discretion, may direct Subcontractor in writing, and Subcontractor agrees to:

- (a) Rework, repair, remove, replace and otherwise correct any Defect at a time and in a manner acceptable to Contractor;
- (b) Cooperate with others assigned by Contractor to correct such defects and pay Contractor all actual costs reasonably incurred by Contractor in performing or in having performed corrective actions; or
- (c) Propose and negotiate in good faith an equitable reduction in the Contract Price in lieu of corrective action.

All costs incidental to corrective actions including demolition for access, removal, disassembly, transportation, reinstallation, reconstruction, retesting and reinspections as may be necessary to correct the Defect and to demonstrate that the previously defective work conforms to the requirements of this Subcontract Agreement shall be borne by Subcontractor.

If Subcontractor fails to commence repairs required hereunder as provided above and/or fails to diligently prosecute appropriate repairs to completion, then any such repairs may be performed by others and it shall be Subcontractor's responsibility to reimburse Contractor or Owner for the costs of such repairs. Any such costs (including home office and field overhead) incurred by Contractor in responding to the circumstances associated with the defective work and in performing the appropriate repairs of Subcontractor's work, including a reasonable amount for overhead and profit on such expenses, plus actual attorneys' fees incurred, shall be the responsibility of Subcontractor. Any such costs incurred by Contractor or Owner may be offset against payments otherwise due under the Contract Documents to Subcontractor.

Subcontractor further warrants any and all corrective actions it performs against defects in design, equipment, materials and workmanship for an additional period of twelve months following acceptance by Contractor of the corrected work, or for such longer or altered period of time as provided for in the General Contract.

Subcontractor's obligation to correct Defects as described above does not limit the enforcement of Subcontractor's other obligations with regard to this Subcontract Agreement and the Contract Documents.

In the event of an emergency affecting the safety of persons or property, Contractor may proceed as above without notice.

XXI. Subcontractor's Failure of Performance, Right to Cure and Termination

- A. Right to Adequate Assurances: When reasonable grounds for insecurity arise with respect to Subcontractor's performance, Contractor may in writing demand adequate assurance of due performance. Subcontractor's failure to provide within three (3) days of the demand such assurance of due performance as is adequate under the circumstances will constitute a default pursuant to the terms of this Section. Contractor's right to demand adequate assurances shall in no way limit Contractor's right to immediately issue a notice to cure as provided below.

- B. Default And Notice To Cure: If Subcontractor fails to supply enough properly skilled workers and proper materials, or fails to properly and diligently prosecute the Subcontract Work, or fails to make prompt payment to its workers, sub-subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or Trust, or fails to provide adequate assurances pursuant to the terms of the preceding paragraph, or is otherwise guilty of a material breach of any provision of the Contract Documents (the "Default"), and fails within twenty-four hours after receipt of written notice to commence and continue satisfactory correction of such Default with diligence and promptness, then Contractor, without prejudice to any rights or remedies, and without the need for previously having requested adequate assurances, shall have, in addition to remedies or rights otherwise set forth herein, the right to any or all of the following remedies:
- (1) Supply such number of workers and quantity of materials, equipment and other facilities as Contractor deems necessary to properly perform and complete the Subcontract Work, and charge the cost thereof to Subcontractor, who shall be liable for the payment of same including reasonable overhead, profit, and attorneys' fees incurred as a result of Subcontractor's failure of performance;
 - (2) Contract with one or more additional contractors to perform such part of Subcontractor's work as Contractor shall determine will provide the most expeditious completion of the total work and charge the cost thereof to Subcontractor;
 - (3) Withhold payment of any monies due Subcontractor on this Project and/or any other Projects that Subcontractor is performing work on under contract with Contractor, pending corrective action to the extent required by and to the satisfaction of Contractor;
 - (4) With respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or Trust, pay such amounts as Contractor deems reasonable into a third party escrow until adequate waivers and assurance are received; and/or
 - (5) Declare Subcontractor in Default as provided for in the following Paragraph.

In the event of an emergency affecting the safety of persons or property, Contractor may proceed with its remedies, including those set forth in items XXI.B (1) through B (5) without notice, and/or may elect to terminate the Subcontract Agreement for Default without notice.

- C. Termination For Default: If Subcontractor is in Default, then Contractor may terminate Subcontractor's right to perform under this Subcontract Agreement and use any materials, implements, equipment, appliances or tools furnished by or belong to Subcontractor to complete the Subcontract Work without any further compensation to Subcontractor for such use. If Subcontractor is declared in Default, Subcontractor shall be entitled to no further payment until the balance of the Subcontract Work is complete. At that time, all of the costs (including home office and field overhead) incurred by Contractor in responding to the circumstances comprising the Default and in performing Subcontract Work, including a reasonable amount for overhead and profit on such expenses, plus actual attorneys' fees as provided above, shall be deducted from any monies due or to become due Subcontractor. Subcontractor and its sureties, if any, shall be liable for the payment of any amount by which such expenses may exceed the unpaid balance of the Contract Price. Termination for default shall not relieve Subcontractor of any obligations and duties that would ordinarily survive completion, including but not limited to warranty obligations and duties to indemnify and insure risks.

- D. Termination for Convenience: Contractor may at any time and for any reason terminate Subcontractor's services and work at Contractor's convenience. Cancellation shall be by service of written notice (including but not limited notification by electronic mail, or facsimile) to Subcontractor. Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Subcontract Agreement, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor or, at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such work as may be necessary to preserve and protect the Subcontract Work already in progress and to protect material and equipment on the Project site or in transit thereto.

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

- E. Grounds For Withholding Payment: Contractor may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any previous Progress Payment to the extent necessary to protect Contractor from loss, including costs and actual attorneys' fees, on account of (1) defective work not remedied; (2) claims filed by lower tier subcontractors or suppliers, or Trusts, or reasonable evidence indicating probable filing of claim; (3) failure of Subcontractor to make payments properly to its subcontractors or suppliers, or for material, labor or collective bargaining unit, union fringe benefits and/ or Trusts; (4) a reasonable doubt that this Subcontract Agreement can be

completed for the balance then unpaid; (5) penalties assessed against Contractor or Owner for failure of Subcontractor to comply with state, federal or local laws and regulations; or (6) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Subcontract Agreement. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Subcontractor.

- F. In the event Contractor terminates Subcontractor pursuant to Paragraph C above and it is subsequently determined in a civil action or arbitration that it was a wrongful termination or termination for default was improper, Contractor's liability to Subcontractor shall be no greater than it would be if Contractor would have terminated Subcontractor for convenience pursuant to Section D above. Moreover, the damages, if any, Subcontractor shall be entitled to shall be limited to the compensation, if any Subcontractor would be entitled to in the event of a termination for convenience in accordance with Section D above.
- G. Subcontractor shall be in default of this Subcontract Agreement if it should, (i) discontinue the conduct of its business; (ii) apply for or consent to the imposition of any insolvency relief; (iii) voluntarily commence or consent to commencement of any insolvency proceeding; (iv) file an answer admitting the material allegations of any involuntary commencement of an insolvency proceeding; (v) make a general assignment for the benefit of creditors; (vi) is unable or admits in writing to its inability to pay its debts as they become due; (vii) enters into a security agreement with another entity and such entity exercises its right to collect against amounts due to Subcontractor by Contractor; or (viii) any insolvency is order is entered against Subcontractor which is not dismissed within thirty (30) days of its entry ("Insolvency Default"). Should Subcontractor be in Insolvency Default, Contractor may proceed as it deems appropriate with the rights and remedies provided for in Sections XXI.B through XXI.E above and Section XXI.F shall apply if Subcontractor is terminated for Insolvency Default and such termination is determined improper.

XXII. Consequential Damages

Subcontractor waives all claims against Contractor for consequential damages arising out of or relating to this Subcontract Agreement.

XXIII. Insurance

- A. Subcontractor's Insurance Generally: Subcontractor agrees to provide all information and documentation as required by the Invitation to Bid, bid specifications and the Contract Documents prior to commencing the Work. Before commencing the Subcontract Work, and as a condition of Progress Payment, Subcontractor shall purchase and maintain insurance for claims arising out of its operations under this Subcontract Agreement, whether the operations are by Subcontractor, or any of its consultants or subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. If Subcontractor is enrolled in a Clayco Coordinated Insurance Program (CCIP) for the Project, then Subcontractor shall comply with all provisions of Attachment E, and relevant Attachments. If Subcontractor, or any of its tiered subcontractors, is not enrolled in the CCIP, then Subcontractor or any of its tiered subcontractors, as applicable, shall comply with all provisions of Exhibit A.
- B. Certificates of insurance showing required coverage to be in force shall be filed with Contractor prior to commencement of the Subcontract Work, and no payments shall be made to Subcontractor until such time as Subcontractor provides Contractor with a valid certificate of insurance for its coverage and for compliant coverage of its tiered subcontractors. Acceptance of any insurance certificate by Contractor shall not constitute acceptance of the adequacy of coverage, compliance of this Subcontract Agreement or serve as an amendment to this Subcontract Agreement.
- C. Subcontractor shall continue to carry Completed Operations Liability Insurance for at least one year after either ninety days following substantial completion of the Project or final payment by Owner to Contractor, whichever is earlier. Subcontractor shall furnish Contractor evidence of such insurance at final payment and one year from final payment.
- D. Subcontractor shall maintain in effect all insurance coverages required under this Subcontract Agreement at the Subcontractor's sole expense. The policies shall contain a provision that coverage will not be cancelled or not renewed until at least thirty days' prior written notice has been given to Contractor.
- E. If Subcontractor fails to obtain or maintain any insurance coverage required under this Subcontract Agreement, such act shall constitute an act of Default, and Contractor may invoke its termination rights as provided for herein. Alternatively, Contractor may purchase such coverage as desired for Contractor's benefit and charge the expenses to Subcontractor, or exercise any other rights that Contractor may have under this Subcontract Agreement as the result of Subcontractor's Default.
- F. Professional Liability Insurance: If the Subcontract Agreement requires Subcontractor to provide design-build engineering and/or any professional services and/or to specify design and performance criteria, then Subcontractor shall maintain Project Specific Professional Liability Insurance, including contractual liability insurance against the liability assumed by Subcontractor in contractually agreeing to perform such services, and including coverage for any professional liability caused by any of the Subcontractor's consultants. Subcontractor shall maintain at least the limits of liability in a company satisfactory to the Contractor as follows:

\$ 2,000,000 Each Claim/Aggregate

The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all subcontract services

rendered by the Subcontractor. Such insurance shall be maintained continuously in effect by Subcontractor for a period of not less than ten years following Final Payment to Subcontractor. This requirement contemplates the maintenance of a Professional Liability policy by Subcontractor, not merely the purchase of an extended reporting period endorsement.

Subcontractor shall furnish to Contractor, before Subcontractor commences its services, a copy of its professional liability policy evidencing the coverages required by this Paragraph. No policy shall be cancelled or modified without thirty days' prior written notice to Contractor.

- G. **Builder's Risk Insurance, Waiver of Subrogation:** Contractor or Owner shall provide Builder's Risk insurance for the Project. Contractor and Subcontractor waive all rights against each other, the Owner and the architect and engineer, and any of their respective consultants, subcontractors, and sub-subcontractors, agents and employees, for damages caused by perils to the extent covered by the proceeds of the Builder's Risk Insurance or any property insurance provided for the Project, except such rights as they may have to the insurance proceeds, provided, however, that the waiver stated in this paragraph shall not be effective if the Owner has not agreed in the Contract Documents to a waiver of claims for damages caused by perils to the extent covered by the proceeds of the Builder's Risk Insurance. Subcontractor shall require similar waivers from its subcontractors. 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 any property damaged.
- H. **Builder's Risk Deductible:** Claims under Contractor's Builder's Risk policy shall be subject to a deductible amount. If the Owner has provided the Builder's Risk policy for the Project, claims thereunder shall be subject to the deductible amount of the policy obtained by the Owner. If claim results from construction activity, the Subcontractor or subcontractor of any tier that is deemed to be responsible shall pay the deductible amount (regardless of whether Contractor or the Owner provided the Builder's Risk policy). If claim results from force majeure, the Subcontractor or Subcontractor of any tier will be responsible for the deductible (regardless of whether Contractor or the Owner provided the Builder's Risk Policy). In the case of theft of Subcontractor's materials, supplies or equipment, Subcontractor shall be responsible for same to the extent the loss is not covered by the Builder's Risk policy. Contractor shall not be responsible for loss or damage to or obtaining and/or maintaining in force insurance on temporary structures, construction equipment, tools or personal effects, owned or rented to or in the care, custody and control of Subcontractor or subcontractors of any tier.
- I. **Waiver of Subrogation:** Subcontractor's policies required under this Subcontract Agreement shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in any property damaged or personal injury.
- J. **CCIP:** Contractor may, for any reason, modify the CCIP coverages, procure alternate coverage, discontinue the CCIP, or request that any Subcontractor withdraw from the CCIP upon thirty (30) days written notice. Upon such notice, Subcontractor, as specified by Contractor in such notice, shall obtain and thereafter maintain during the performance of the Work, replacement coverage for all of the CCIP Coverages (or a portion thereof as specified by Contractor). The form, content, limits of liability, cost, and the insurer issuing such replacement insurance shall be subject to Contractor's approval.
- K. **Deductibles/Self-Insured Retentions:** Subcontractor, and its subcontractors of all tiers, shall be responsible for any deductible or self-insured retentions due under any insurance they provide. The coverage afforded to additional insureds shall not be conditioned on the payment of any deductible or retention.

XXIV. Indemnification

To the fullest extent permitted by law Subcontractor shall indemnify and hold harmless Contractor and Owner (and their respective officers, agents, employees, affiliates, parents and subsidiaries) from and against all claims, demands, causes of action, damages, costs, losses, liability, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Subcontract Work by Subcontractor or any of its sub-subcontractors or suppliers, 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 Subcontract Work itself, but only to the extent caused by the acts or omissions of the Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, including any sub-subcontractors or suppliers of Subcontractor. Subcontractor shall not be required to indemnify any party for their sole negligence or willful misconduct.

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

Subcontractor shall also indemnify and hold harmless Contractor from any and all claims, demands, causes of action, damages, costs, expenses, attorneys' fees, losses or liability of every kind and nature whatsoever arising out of or in connection with

Subcontractor's operations to be performed under this Subcontract Agreement, and to the extent caused by Subcontractor's breach of any of its obligations under the Contract Documents.

In such cases where this indemnity agreement applies (or where any other indemnity agreement provided for in the Contract Documents applies) Subcontractor, upon demand by Contractor, shall provide a competent defense of all claims covered by the indemnity agreement and shall remain responsible for all of the costs of defense of the claim, and for any damages awarded to the claimant by settlement, mediation, arbitration, litigation or otherwise.

XXV. Work Continuation and Payment

Subcontractor shall carry on the Subcontract Work and maintain the Progress Schedule pending resolution of any Dispute or claims by dispute resolution. **Under no circumstances shall Subcontractor stop the Subcontract Work for any reason, except as provided for in this Paragraph.** The sole exception to Subcontractor's promise not to stop the work is the following: If Contractor fails to pay Subcontractor within ten days after Contractor has received payment from Owner for work that was properly performed and billed by Subcontractor, and for which Subcontractor has completed all requirements that entitle it to receive such payment, Subcontractor shall give Contractor seven days written notice citing the condition that gives rise to the stop work right, allowing Contractor the ability to cure such condition. If Contractor fails to cure the condition that gave rise to the stop work right within the seven-day cure period, then Subcontractor shall have the right to stop the work. If Contractor thereafter makes payment, Subcontractor shall promptly recommence work. Any extra costs incurred by Subcontractor to stop the work and to remobilize its forces may be submitted to Contractor as a Change Order.

XXVI. Dispute Resolution

Notwithstanding anything to the contrary in this Subcontract, including in this Article XXVI, the dispute resolution procedures set forth in the General Contract shall take precedence over this Article as to any disputes that involve parties other than Contractor and Subcontractor and that are subject to the provisions of the General Contract, including Owner or any agents, consultants or Separate Contractors of Owner. Accordingly, to the extent the General Contract requires arbitration, Subcontractor agrees it shall submit to such binding arbitration in accordance with the procedures set forth in the General Contract.

- A. Initial Dispute Resolution: If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation precedent to litigation.
- B. Continuance of Work: Subcontractor shall carry on its work and maintain the Progress Schedule pending resolution of any disputes under these dispute resolution procedures.
- C. Mediation: Any Dispute or claim arising out of or related to the Subcontract Agreement shall be subject to mediation as a condition precedent to litigation. A mediation pursuant to this Article may be joined with a mediation involving common issues of law or fact between Contractor and Owner and/or any person or entity with whom the Owner or Contractor has a contractual obligation to mediate disputes which does not prohibit consolidation or joinder, with the claims and disputes of Owner, Contractor, Subcontractor and other subcontractors involving a common question of fact or law to be heard by the same mediator in a single proceeding.

The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association ("AAA") currently in effect at the time of the mediation. The location of the mediation shall be in the state where the Project is located; provided, however, that if the Project at issue is physically located in Missouri or Illinois, then the mediation shall be conducted by the AAA in St. Louis or by electronic mediation if mutually agreed by the parties. Mediation shall be completed within 60 days after written demand for mediation is served upon the other party.

- D. Costs: The cost of any mediation proceeding shall be shared equally by the parties participating subject to Section I hereof. The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by a dispute resolution procedure designated in the Contract Documents shall be entitled to recover from the other party reasonable attorney's fees, costs and expenses incurred by the prevailing party in connection with such dispute resolution process.
- E. In the event the provisions for resolution of disputes between the Contractor and the Owner contained in the Contract Documents do not permit consolidation or joinder with disputes of third parties, such as the Subcontractor, resolution of disputes between the Subcontractor and Contractor involving in whole or in part disputes between the Contractor and the Owner shall be stayed pending conclusion of any dispute resolution proceeding between the Contractor and the Owner. At the conclusion of those proceedings, disputes between the Subcontractor and Contractor shall be submitted again to mediation pursuant to Article XXVI. Any disputes not resolved by mediation shall be decided in accordance with paragraph F hereof.
- F. With respect to disputes not resolved by mediation, subject to paragraph I hereof, Contractor shall notify Subcontractor in writing, either upon written request from Subcontractor or anytime during or after conclusion of mediation, of Contractor's election in its sole discretion, pursuant to this provision F, as to whether final binding dispute resolution shall be either by arbitration under sub-clause F.1 below or by litigation under sub-clause F.2 below.

F1 In the event Contractor selects arbitration, said arbitration shall be conducted before the American Arbitration Association (AAA) in accordance with the AAA Construction Industry Arbitration Rules then in effect. The arbitration

shall be conducted before a single arbitrator in the place where the Project is located, unless another location is mutually agreed upon. 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. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

F1.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

F.1.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

F2. In the event Contractor selects litigation as the final binding dispute resolution procedure, the parties agree that venue for such litigation shall be with the federal court of competent jurisdiction in the jurisdiction where the Project is located; and only in the event of lack of jurisdiction by such federal court, then in the state court of competent jurisdiction in the jurisdiction where the Project is located.

WAIVER OF JURY TRIAL: WITH RESPECT TO ANY SUCH LITIGATION, EACH PARTY TO THIS AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY AND WILLINGLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE BETWEEN OR AMONG ANY OF THE PARTIES HERETO, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, RELATED OR INCIDENTAL TO THIS AGREEMENT, THE TRANSACTION(S) CONTEMPLATED HEREBY AND/OR THE RELATIONSHIP ESTABLISHED AMONG THE PARTIES HEREUNDER.

- G. Nothing about these dispute resolution provisions shall prohibit Subcontractor from taking the necessary actions to perfect its mechanic's lien rights or payment bond rights. Any mechanic's liens or payment bond claims filed with a Court shall be promptly stayed pending resolution of the dispute in accordance with these dispute resolution provisions.

In the event of a dispute which results in Subcontractor filing a mechanic's lien, Subcontractor agrees that if Contractor files a lien bond in the amount of 150% of its lien claim, that any duly filed mechanic's lien shall be deemed and is hereby consented to be transferred from the subject real property to the posted lien bond, subject to Subcontractor and Contractor's respective rights under the Contract Documents and applicable law.

- H. Notwithstanding the foregoing, in the event that a dispute arises between Contractor and Owner involving common issues of law or fact between Contractor and Subcontractor (including situations where Contractor disputes liability to the Owner, but in the alternative seeks to hold Subcontractor liable to Contractor if Contractor is deemed to be liable to Owner), and the dispute resolution provisions of the General Contract are different than the foregoing provisions, then at Contractor's option, in its sole discretion, such differing dispute resolution provisions shall be incorporated herein, and Subcontractor agrees to comply with such provisions and to participate in and be fully bound by such differing dispute resolution provisions.
- I. Notwithstanding the foregoing Paragraphs A through H of this Section XXVI, Contractor at its option may, in its sole discretion, invoke the following dispute resolution provisions, to which Subcontractor agrees to be bound in lieu of the provisions stated in Paragraphs A through H above. Contractor shall notify Subcontractor of this election in writing contemporaneous with the filing of any demand for mediation or within ten (10) business days after commencement of any mediation. Upon such election having been made by Contractor, in its sole discretion, the parties shall be deemed to have agreed to submit their dispute to resolution before the American Arbitration Association ("AAA") in accordance with the Construction Industry Mediation Rules of the AAA currently in effect at the time of the mediation, adjusted as follows: (a) Contractor will file a written demand with the AAA for mediation of the dispute, with the dispute to be heard by a mediator in St. Louis, Missouri; (b) the mediation shall be completed within 60 days after written demand for mediation is served upon the other party; (c) by no later than 14 days prior to the mediation, the parties shall serve upon the mediator and each other a written position statement, with exhibits, outlining their respective claims and defenses; (d) by no later than 5 business days prior to the mediation, the parties shall serve upon the mediator and each other a written position statement in reply to that earlier filed by the other party; (e) after eight hours of actual mediation time to be conducted in a single day, if the matter is not resolved, the mediator shall immediately assume the role of an arbitrator; (f) the arbitrator shall not consider any item of evidence which was not produced by the parties in their respective statements of position nor disclosed to the other in the course of the Mediation, all as determined by the arbitrator; (g) at such time as the mediator shall become an arbitrator, each party shall promptly make one last, best and final offer and demand in writing, which shall be simultaneously submitted to the arbitrator; (h) the arbitrator shall then disclose to the parties the amounts of said last offers and demands; (i) within five days of having received said last offers and demands (but not earlier than seventy-two hours of having received

said last offers and demands), the arbitrator shall issue an Award which shall adopt one and only one of said last offers or demands, without modification or amendment, and the same shall then constitute the award. With respect to any mediation/ arbitration under this clause, the non-prevailing party, as determined by the arbitrator, shall bear the prevailing party's attorney's fees, costs and expenses, including AAA fees and expenses. The award of the arbitrator shall be final and binding, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. If the award is issued prior to final completion of the Project, then the parties agree to sign a Change Order to reflect the award.

XXVII. Miscellaneous Provisions

- A. Patents: Subcontractor agrees to indemnify, defend and hold harmless Owner and Contractor from any claims, demands, or damages of any nature on account of the alleged use of any patented invention, article or process in connection with its work under this Agreement, either in the course of construction or after completion of the Subcontract Work, and Subcontractor further agrees to defend at its own expense, any suit for alleged infringements.**
- B. Liens: So long as Contractor has fulfilled its payment obligations to Subcontractor, Subcontractor shall indemnify and hold harmless Contractor and Owner from and against any and all liens, stop payment notices, and/or payment bond claims (collectively "Lien") arising from Subcontractor's performance of its Subcontract Work. Subcontractor shall, within ten days after receiving notice of any such Lien from Contractor, remove and/or resolve such Lien to Contractor's satisfaction.** If Subcontractor fails to remove and/or resolve the Lien as provided above, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause the Lien to be removed and/or resolved. In such event, any costs incurred by Contractor, including the cost of payment made to remove and/or resolve the Lien, and including attorney's fees incurred by Contractor, shall be immediately due and payable to Contractor by Subcontractor. Contractor may reduce any amounts otherwise due Subcontractor by the amount of such costs and fees incurred. This paragraph shall not be interpreted to prevent Subcontractor itself (as opposed to its laborers, lower tier subcontractors and suppliers) from filing a lien, stop payment notice, or bond claim in the event of Contractor's default of its payment obligations.
- C. Hazardous Materials: To the extent that the Contractor has rights or obligations under the General Contract or by law regarding hazardous materials as defined by the Contract Documents, with respect to any hazardous materials within the scope of the Subcontract Work, Subcontractor shall have the same rights or obligations.**
- D. Notices: Any notice required or permitted under this Subcontract Agreement and any claim permitted under this Subcontract Agreement shall be given in writing (unless otherwise expressly provided herein to the contrary) and shall be given by any one or more of the following methods: (i) hand delivery to the principal office of the party being notified during normal business hours by courier, Federal Express or other reputable courier service which provides confirmation of delivery (and the same shall be deemed given upon delivery to such principal office); or (ii) electronic mail but only if given to each of the following representatives of the respective party with contemporaneous written proof of receipt (by return e-mail or electronic confirmation of delivery).**
- Subcontractor
1. Name: {{{*largeField46_es_:signer1:multiline(1)}}} - Email:{{{*largeField47_es_:signer1:multiline(1)}}}
 2. Name: {{{*largeField48_es_:signer1:multiline(1)}}} - Email:{{{*largeField49_es_:signer1:multiline(1)}}}
- Contractor
1. Name: {{{*largeField1_es_:signer2:multiline(1)}}} - Email:{{{*largeField2_es_:signer2:multiline(1)}}}
 2. Name: Mike Pierle - Email: pierlem@Claycorp.com
- E. Confidentiality: To the extent that the General Contract imposes any confidentiality limitations on Contractor, like confidentiality limitations are agreed to be imposed on Subcontractor.**
- F. Law Governing: This Subcontract Agreement shall be governed by the laws of the State where the Project is located.**
- G. Waiver of Breach: Waiver by Contractor of any breach hereby by Subcontractor, or Contractor's failure to assert any right, shall not constitute a waiver of any subsequent breach of the same or any other provision hereof. Rights may only be waived if expressed in writing and signed by an officer of Contractor. If any provision of this Agreement, or any part thereof, shall at any time be held to be invalid, in whole or in part, under any applicable Federal, State, Municipal or other law, ruling or regulation, then such provision shall remain in effect to the extent permitted, and the remaining provisions hereof shall remain in full force and effect.**
- H. Availability of Records, Accounts And Audit: Subcontractor shall make its books, records and Project documents available to Contractor for review and inspection and/or audit in accordance with the same terms and conditions that are stated in the General Contract requiring the Contractor to make its books, records and Project documents available to the Owner and/or permit the Owner to audit the Contractor's records. It is intended that the Contractor will have the same rights in this regard against the Subcontractor as the Owner has against the Contractor.**
- I. Lien Waiver Forms: Lien waiver forms shall be obtained and approved by Contractor and may be required to be issued electronically through Textura or other software system. Further, lien waiver forms or other affidavits may be required to be provided to a title company or other escrow agent as reasonably requested by Contractor.**

- J. Attachments: Other documents specific to the Project contemplated by these Contract Documents are included in the Attachments.
- K. Contingent Assignment: To the extent that the Contract Documents require that Subcontractor contingently assign this Subcontract Agreement to Owner and/or Owner's Lender (such as upon event of termination of Design-Builder), Subcontractor agrees to such assignment.
- L. Compliance: Subcontractor shall comply with all regulatory and statutory requirements of the Contract Documents as such requirements are incorporated herein. Subcontractor shall indemnify, defend and hold Contractor harmless from any damages, including fines and penalties, to the extent resulting from or related to Subcontractor's non-compliance or violation of a regulatory or statutory obligation. Obligations may include, but are not limited to, adherence to specific FAR provisions and implementation and compliance with Contractor's Code of Business Ethics and Conduct and Gift Policy, Anti-Corruption & Anti-Money Laundering Policies in accordance with Exhibit F attached hereto. **Subcontractor agrees and acknowledges it has read the materials found at <https://claycorp.com/subcontract2/> and agrees to perform the Work in accordance with the policies and codes of conduct listed therein.**
- Among the policies listed at this website, is Contractor's Harassment Free Workplace Policy. It is the goal of Contractor to promote a work environment at the Project that is free from harassment of any kind. Contractor has ZERO TOLERANCE for harassment, including harassment on the basis of race, sex, gender, gender identity, gender expression, transgender status, sexual orientation, pregnancy, childbirth and other pregnancy-related conditions, color, national origin, ancestry, age, religious creed, citizenship, marital status (including registered domestic partners), parental status, physical disability, mental disability, medical condition, genetic information, military or veteran status (including protected veteran status), or any other characteristic or status protected by law. Subcontractor agrees to be bound by the Policy Statement on Harassment and any violation or suspected violation of such policy by Subcontractor or any of its officers, agents, servants, employees, subcontractors or suppliers shall be considered as Subcontractor's failure to perform its obligations under the terms and conditions of this Agreement. Such failure shall be considered adequate and justifiable grounds for Contractor to effectuate its rights and remedies under provisions of this Agreement. Subcontractor shall actively promote a harassment-free work environment among its officers, agents, employees, subcontractors and suppliers.
- M. Subcontractor Prequalification: Unless Contractor advises in writing that Subcontractor's compliance with this Paragraph is not required, before commencing the Subcontract Work, and as a condition of payment, Subcontractor shall fully complete Contractor's prequalification process, and provide all information and/or documentation required to complete the prequalification process. Subcontractor certifies that all of the information and/or documentation provided to Contractor in connection with Contractor's prequalification process is true and correct to the best of the Subcontractor's knowledge, information and belief. At any time during the Project, within seven days of its receipt of written request from Contractor, Subcontractor shall update the information provided and certify that the updated information provided to Contractor is true and correct to the best of the Subcontractor's knowledge, information and belief. In the event that (a) Subcontractor fails to comply with the terms of this Paragraph, or (b) Subcontractor fails to timely provide Contractor with truthful and complete information in responding to the prequalification process and/or requests from Contractor for updates to same, or (c) there shall occur during the course of the Project a material detrimental change (as determined in the discretion of Contractor) in the information respecting Subcontractor provided to Contractor, then such shall be the basis for a Default.

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

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

Subcontractor is obligated to furnish the insurance certificates as set forth in Exhibit A, **Initial:** {{Int_es_:signer1:initials}} if applicable, and any other documents as reasonably required

Subcontractor is obligated to complete and execute Exhibit B, Exhibit D, Exhibit E, {{Int_es_:signer1:initials}} Exhibit F, and Exhibit H

CONTRACTOR:

Clayco, Inc. or Legal Entity Name

By: {{Sig_es_:signer2:Signature}}

Re: PROJECT NUMBER, PROJECT NAME (description)

SUBCONTRACTOR:

Subcontractor's Legal Entity Name

By: {{Sig_es_:signer1:Signature}}

SAMPLE

EXHIBIT A
MINIMUM INSURANCE REQUIREMENTS

Deductibles/self-insured retentions must be stated on the certificate of insurance.

A. Workers' Compensation Insurance

Workers' Compensation Insurance in statutory limits, including benefits provided under United States Longshoremen and Harbor Workers Act (where applicable), with Coverage B - Employer's Liability limits of:

Bodily Injury by Accident
\$500,000 Each Accident/ Each Employee/Policy Limit

B. Commercial General Insurance

Bodily Injury and Property Damage combined:

\$1,000,000 General Annual Aggregate Per Project
\$1,000,000 Products and Completed Operations Annual Aggregate
\$1,000,000 Each Occurrence

Claims under Contractor's Commercial General Insurance policy shall be subject to a deductible amount of ten thousand dollars (\$10,000) per occurrence. If claim results from construction activity, the Subcontractor or subcontractor of any tier that is deemed to be responsible shall pay the deductible amount. In the event of loss or damage not covered by the General Liability policy, the cost of the repair and/or replacement of such loss or damage will be borne by the Subcontractor or subcontractor of any tier.

C. Automobile Liability Insurance

Bodily Injury and Property Damage combined:

\$1,000,000 Single Limit Each Occurrence

D. Aircraft or Marine (if applicable)

Bodily Injury and Property Damage combined:

\$10,000,000 Per Occurrence

E. Umbrella (Excess) Liability Insurance

Bodily Injury and Property Damage combined:

\$1,000,000 General Annual Aggregate

F. Professional Liability - if applicable (All Design-Build, Engineering and/or any Professional Services Rendered)

\$2,000,000 Each Claim/Aggregate

The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all subcontract services rendered by the Subcontractor. Such insurance shall be maintained continuously in effect by Subcontractor for a period of not less than ten years following Final Payment to Subcontractor. This requirement contemplates the maintenance of a Professional Liability policy by Subcontractor, not merely the purchase of an extended reporting period endorsement.

G. Riggers Liability - required if subcontractor's work involves the moving, lifting, lowering, rigging or hoisting of property or equipment.

\$1,000,000

Claims under Contractor's Builders' Risk Insurance policy shall be subject to a deductible amount of ten thousand dollars (\$10,000) per occurrence. If claim results from force majeure, the Subcontractor will be responsible for the deductible (regardless of who provides the builders' risk policy). Contractor shall not be responsible for loss or damage to or obtaining and/or maintaining in force insurance on temporary structures, construction equipment, tools or personal effects, owned or rented to or in the care, custody and control of Subcontractor or subcontractors of any tier. In the event of loss or damage not covered by the Builder's Risk policy, the cost of the repair and/or replacement of such loss or damage will be borne by the Subcontractor or subcontractor of any tier.

The following must appear on the certificate of insurance before work can begin or any payments can be released:

Certificate Holder: Clayco, Inc. [OR OTHER LEGAL ENTITY NAME]
2199 Innerbelt Business Center Drive, St. Louis, MO 63114

Wording: Contractor and the Owner of the project are named as additional insureds, on a primary and non-contributory basis, including completed operations. Waivers of subrogation endorsements apply as required by written contract and where permissible by law (applicable endorsements must be attached to certificate of insurance prior to submission).

If there is Owner specific required wording, it shall be listed on Attachment D.

EXHIBIT B
LIST OF LOWER TIERS

List all of your sub-subcontractors, and Designers, if any, including contact information, with the actual or estimated dollar amount you will pay them for this Project.

SUB-SUBCONTRACTOR (ALL TIERS)	ITEM / SCOPE	COST
{{largeField3_es_:signer1:multiline(6)}}	{{largeField4_es_:signer1:multiline(4)}}	{{Field5_es_:signer1:num}}
{{largeField6_es_:signer1:multiline(6)}}	{{largeField7_es_:signer1:multiline(4)}}	{{Field8_es_:signer1:num}}
{{largeField9_es_:signer1:multiline(6)}}	{{largeField10_es_:signer1:multiline(4)}}	{{Field11_es_:signer1:num}}
{{largeField12_es_:signer1:multiline(6)}}	{{largeField13_es_:signer1:multiline(4)}}	{{Field14_es_:signer1:num}}
{{largeField15_es_:signer1:multiline(6)}}	{{largeField16_es_:signer1:multiline(4)}}	{{Field17_es_:signer1:num}}
{{largeField18_es_:signer1:multiline(6)}}	{{largeField19_es_:signer1:multiline(4)}}	{{Field20_es_:signer1:num}}

Subcontractor Total: {{total_es_:signer1:calc(Field5+Field8+Field11+Field14+Field17+Field20):num}}

Exhibit B Continued

List all of your material suppliers, including contact information, with the actual or estimated dollar amount you will pay them for this Project.

MATERIAL SUPPLIER	ITEM/SCOPE	COST
{{largeField21_es_:signer1:multiline(6)}}	{{largeField22_es_:signer1:multiline(4)}}	{{Field23_es_:signer1:num}}
{{largeField24_es_:signer1:multiline(6)}}	{{largeField25_es_:signer1:multiline(4)}}	{{Field26_es_:signer1:num}}
{{largeField27_es_:signer1:multiline(6)}}	{{largeField28_es_:signer1:multiline(4)}}	{{Field29_es_:signer1:num}}
{{largeField30_es_:signer1:multiline(6)}}	{{largeField31_es_:signer1:multiline(4)}}	{{Field32_es_:signer1:num}}
{{largeField33_es_:signer1:multiline(6)}}	{{largeField34_es_:signer1:multiline(4)}}	{{Field35_es_:signer1:num}}

Material Total {{total_es_:signer1:calc(Field23+Field26+Field29+Field32+Field35):num}}

Exhibit B Continued

List all of your equipment rental companies, including contact information, with the actual or estimated dollar amount you will pay them for this Project.

EQUIPMENT RENTAL & ITEM/SCOPE	COST
{{largeField36_es_:signer1:multiline(6)}}	{{Field37_es_:signer1:num}}
{{largeField38_es_:signer1:multiline(6)}}	{{Field39_es_:signer1:num}}
{{largeField40_es_:signer1:multiline(6)}}	{{Field41_es_:signer1:num}}
<u>Equipment Total</u> {{total_es_:signer1:calc(Field37+Field39+Field41):num}}	

Exhibit B Continued

List all of the union trades and locals which you will use on this Project.

TRADE/LOCAL
{{largeField42_es_:signer1:multiline(6)}}
{{largeField43_es_:signer1:multiline(6)}}
{{largeField44_es_:signer1:multiline(6)}}
{{largeField45_es_:signer1:multiline(6)}}

Your labor, material form stock, suppliers Overhead & Profit

TOTAL: {{total_es_:signer1:calc(Field5+Field8+Field11+Field14+Field17+Field20+Field23+Field26+Field29+Field32+Field35+Field37+Field39+Field41):align(right)}}

TOTAL CONTRACT AMOUNT \$

SUBCONTRACTOR LEGAL ENTITY NAME (Subcontractor) certifies that the above information is correct. Subcontractor will supply Contractor with all of their sub-subcontractor and material suppliers' lien waivers throughout the job as a condition to any Progress Payment and will supply final lien waivers before Final Payment for the Subcontract Work. **Contractor reserves the right to issue joint checks to any of the above listed entities, to pay monies owed into a third party escrow, or to take other action as provided for in the Subcontract Agreement.** Change orders to your contract amount that modify the above amounts must be reported to Contractor in the form of a "revised" Exhibit B.

BY: {{Sig_es_:signer1:Signature}}

EXHIBIT C
Scope Of Work

Subcontractor agrees to furnish all labor, materials, tools, and equipment necessary to SAFELY complete this scope of work.

Work shall comply with State and Local Building Codes and will meet the Plans and Specifications as listed in Attachment A, in conjunction with the Construction Schedule, Attachment B.

Unit Prices provided during the bid process are made a part of this contract and shall be considered all-encompassing of the work, including Overhead and Profit. Contractor reserves the right to invoke these unit prices as necessary during the project.

Subcontractor will be notified through email or fax of changed drawings, schedules, etc. It is your responsibility to access the website, download and distribute to your company and tiers as needed. Subcontractor/Supplier has seven (7) calendar days from the date of occurrence to claim any extras, provided Contractor is notified in writing within forty-eight (48) hours of occurrence/of notification. After the seven (7) calendar-day time period, no extras will be considered or approved, no exceptions. All extras must be authorized in writing by Contractors Supervisory Representative prior to commencement of work.

Inclusions:

[SPECIFIC TO SCOPE OF WORK]

General Project Inclusions:

[SPECIFIC TO CONTRACTOR'S AND PROJECT REQUIREMENTS]

Submittals

Submittals are due in electronically to Contractor's office within one (1) week of receipt of this contract

Closeout Submittals

Closeout submittals are due in Contractor's office to the attention of the Project Manager prior to or contemporaneous with Subcontractor's final application for payment, as further provided for in the Subcontract Agreement.

Schedule

A Progress Schedule may be attached for your information. Please note that start and end dates could change due to circumstances beyond our control, but duration of activity periods shall remain the same. Updated schedules will be distributed to the Subcontractor as required.

EXHIBIT D
COMPLIANCE CERTIFICATION

This Certification is provided to Contractor by Subcontractor pursuant to the Subcontract Agreement between Contractor and Subcontractor for the above-referenced Project.

The undersigned certifies that Subcontractor has verified the employment eligibility of its employees who will perform or are performing work on the Project pursuant to the Immigration Reform and Control Act of 1986 ("IRCA") and, when applicable, the amended Executive Order 12989, and to the extent Subcontractor discovers any violations that are of a nature that, in the undersigned's reasonable judgment, are eligible for cure, such violations have been corrected to ensure full compliance with all applicable Federal, State and local Immigration laws regarding such individuals.

If Subcontractor intends to subcontract with other companies to provide labor at the Project, Subcontractor certifies that it will advise and require any such companies to execute this Compliance Certification as a condition to contracting with such firms and further covenants that it will not permit any such firms to perform labor on the Project site until they provided a fully executed Compliance Certification to Subcontractor.

The undersigned agrees to comply with Contractor's direction on the jobsite respecting all appropriate controls and procedures reasonably implemented to achieve their goal that all individuals performing work on the Project shall be legally authorized to work in the United States in accordance with applicable Federal, State and local Immigration laws.

The undersigned, on behalf of Subcontractor, makes such certifications as set forth above.

SUBCONTRACTOR'S LEGAL ENTITY NAME

By: {{Sig_es_:signer1:Signature}}

EXHIBIT E
SUBSTANCE ABUSE TESTING CERTIFICATION

This Certification is provided to Contractor by Subcontractor pursuant to the Subcontract Agreement between Contractor and Subcontractor for the above-referenced Project.

Subcontractor, on behalf of itself and its lower tiers, acknowledges and agrees that only the following workers are eligible to work on the Project: (i) those workers who have passed substance abuse testing and are eligible for employment without having to take another substance test (drug and alcohol analysis), pursuant to a substance abuse program which Subcontractor has implemented that is in compliance with the standards of the Drug Free Workplace Act of 1988 and other applicable laws and regulations ("Program"), (ii) if Subcontractor has not implemented a Program, only those workers who have passed substance abuse testing pursuant to the requirements in the Safety Requirements within ninety (90) days preceding reporting to the Project, or (iii) those workers who have passed substance abuse testing and are eligible for employment without having to take another substance test (drug and alcohol analysis) pursuant to a Program implemented by a union to which Subcontractor and/or its lower tier subcontractors are signatory and such Program is in active status.

Subcontractor and its lower tiers shall not assign workers to the Project that do not meet these requirements.

If Subcontractor intends to subcontract with other companies to provide labor at the Project, Subcontractor certifies that it will advise and require any such companies to execute this Substance Abuse Testing Certification as a condition to contracting with such firms and further covenants that it will not permit any such firms to perform labor on the Project site until they provided a fully executed Substance Abuse Testing Certification to Subcontractor.

The undersigned agrees to comply with Contractor's direction on the jobsite respecting all appropriate controls and procedures reasonably implemented to achieve their goal that all individuals performing work on the Project shall be eligible to work on the Project pursuant to Contractor's Safety Requirements.

The undersigned, on behalf of Subcontractor, makes such certifications as set forth above.

SUBCONTRACTOR'S LEGAL ENTITY NAME

By: {{Sig_es_:signer1:Signature}}

EXHIBIT F
CERTIFICATION
GIFT POLICY, ANTI-CORRUPTION & ANTI-MONEY LAUNDERING POLICIES

This Certification is provided to Contractor pursuant to the Agreement between Contractor and Subcontractor for the Project.

Business relationships are based upon mutual respect and cooperation. The success of a business relationship relies heavily on a clear understanding of policies applicable to that relationship. *Subcontractor acknowledges receipt and understanding of the policies set forth below as applicable to its scope of work, services and/or provision of goods at or for the Project:*

- A. **NO GIFT POLICY.** Contractor's Gifts, Entertainment and Business Courtesies Policy ("No Gift Policy") prohibits its employees from soliciting or accepting gifts or gratuities from subcontractors and suppliers that are in excess of acceptable common business courtesies. Acceptable common business courtesies of nominal value are exempt, including occasional meals with business associates, occasionally attending sports and other cultural events with business associates, and occasionally accepting reasonable and customary promotional items of nominal value. Gifts and gratuities in excess of the foregoing are strictly forbidden.
- B. **CLAYCO ANTI-CORRUPTION, ANTI-MONEY LAUNDERING COMPLIANCE POLICY** Contractor and its affiliates are committed to doing business in compliance with all applicable laws, including observing the standards of conduct set forth in the United States Foreign Corrupt Practices Act ("FCPA") and the applicable anti-corruption and anti-money laundering laws of the countries in which Clayco may conduct business. *No employee or subcontractor of Clayco or any of its affiliates shall offer to pay a bribe, or provide another thing of value for obtain an improper benefit, to any third party, public or private with whom Clayco or its affiliates are doing business.*
- a. *Compliance with Anti-Corruption Laws.* Subcontractor shall conduct itself with conduct business ethically and comply with all applicable anti-corruption laws, including the FCPA. Subcontractor shall not directly or indirectly, promise, authorize, offer or pay anything of value (including but not limited to gifts, travel, hospitality, charitable donations or employment) to any government official or other party to improperly influence any act or decision of such official of the purpose of promising the business interests of Clayco or its affiliates in any respect, or to otherwise improperly promote the business interests of Clayco in any respect.
- The foregoing applies to any payments to a Government Official to secure or expedite any government action by a Government Official and further prohibits payment of expenses for travel, lodging, gifts, hospitality, or charitable donations to or for Governmental Officials. "Government Official" means all of the following: (i) any employee of a government entity or subdivision, including elected officials; (ii) any private person acting on behalf of a government entity, even if just temporarily; (iii) officers and employees of companies that are owned or controlled by the government; (iv) candidates for political office; (v) political party officials; and (vi) officers, employees and representatives of public international organizations, such as the World Bank and United Nations.
- b. *Compliance with Anti-Money Laundering Laws.* Subcontractor shall comply with all applicable anti-money laundering laws. Subcontractor shall not knowingly directly or indirectly disguise or attempt to disguise the sources of illegally obtained funds.
- C. **ENFORCEMENT.** Contractor reserves all rights and remedies under the Subcontract and applicable law to enforce the above policies, including terminating the Subcontract and seeking damages if appropriate.
- D. **NO RETALIATION.** Contractor will not tolerate retaliation against anyone who has, in good faith, reported a possible violation of this Policy or refused to participate in activities that violate this Policy.
- E. **REPORTING.** Reports or concerns about violation of this Policy or related applicable laws should be made to the Clayco Office of General Counsel, 35 East Wacker Drive, Suite 1300, Chicago IL 60601.

The undersigned, on behalf of Subcontractor and its lower tiers, agrees to comply with the foregoing *and shall require any sub-tier subcontractors and/or suppliers to sign a similar Certification acknowledging receipt and compliance with the foregoing policies* as a condition of Final Payment.

SUBCONTRACTOR'S LEGAL ENTITY
NAME

By: {{Sig_es_:signer1:Signature}}

SAMPLE

EXHIBIT G
SPECIAL PROVISIONS OF GENERAL CONTRACT AND OTHER ADDITIONAL PROVISIONS

In accordance with Article I of the Subcontract Agreement, Subcontractor shall have all liabilities and obligations toward Contractor that Contractor has undertaken in favor of Owner under the General Contract, including in the following provisions of the General Contract, which shall control in the event of any conflict with the Contract Documents.

SPECIAL PROVISIONS OF THE GENERAL CONTRACT AND OTHER ADDITIONAL PROVISIONS:

1. **PLEASE SEE REDACTED VERSION OF GENERAL CONTRACT BETWEEN OWNER AND CONTRACTOR AVAILABLE IN PMWEB AT THIS LOCATION: (DOCUMENT MANAGER > 09 SUBCONTRACTOR FOLDER > REDACTED GENERAL CONTRACT)**

SUBCONTRACTOR IS RESPONSIBLE TO REVIEW THE GENERAL CONTRACT FOR ALL REQUIREMENTS, DUTIES, AND OBLIGATIONS APPLICABLE TO SUBCONTRACT WORK, INCLUDING ASSUMPTION OF ALL LIABILITIES AND OBLIGATIONS OF CONTRACTOR TO OWNER AND OTHERS, AS REQUIRED BY THE GENERAL CONTRACT, TO THE EXTENT ARISING FROM OR RELATED TO SUBCONTRACT WORK.

[EXHIBIT G FOR PROJECTS IN CALIFORNIA CONTAIN ADDITIONAL PROVISIONS UNDER #1)

2. *[PROJECT-SPECIFIC]*

EXHIBIT H
EQUIPMENT USE AGREEMENT

This Equipment Use Agreement (the "Agreement") is entered into by the parties and effective the date executed by Subcontractor.

WHEREAS, Contractor owns or is renting certain equipment (the "Equipment") which Subcontractor wishes to sublet in order to perform its Work at the Project.

NOW, THEREFORE, in consideration of mutual covenants and agreements contained in the Subcontract Agreement (all terms and conditions of which apply to this Agreement) and the additional terms stated herein, the parties agree as follows:

1. If the Equipment to be used by Subcontractor is being leased to Contractor, the Rental Agreement between the lessor of the Equipment and Contractor (the "Lease") shall be incorporated herein and Subcontractor agrees to be bound to Contractor in the same manner and to the same extent Contractor is bound to lessor in the Lease insofar as the Lease terms and conditions relate in any way, directly or indirectly, to subletting the Equipment. Where reference is made to Contractor in the Lease, the obligations specified in the Lease shall apply to Subcontractor and shall be interpreted to apply to Subcontractor rather than Contractor during the sublet period.
2. Subcontractor hereby acknowledges that a qualified representative of Subcontractor has inspected said Equipment, accepts said Equipment "as is" with no representations from the Contractor and/or lessor (if applicable) and relies solely on its own inspection for determining defects (patent or otherwise), safety and ability to utilize said Equipment.
3. Prior to each use of the Equipment, a representative of Subcontractor shall make a complete inspection of the Equipment. If said inspection reveals any defects or dangerous conditions, said information shall be immediately communicated to management of Contractor, and Subcontractor shall refrain from using the Equipment until the defects or dangerous conditions have been repaired or otherwise corrected. In addition, Subcontractor shall immediately cease using the Equipment and immediately notify Contractor of any repairs or maintenance necessary on the Equipment while it is being used by Subcontractor or in Subcontractor's possession. Upon such notice, Contractor shall arrange for repair and maintenance of the Equipment by a qualified party and, if applicable, charge Subcontractor such repair or maintenance costs through a deductive Change Order which Subcontractor agrees to execute.
4. Subcontractor shall not allow any persons other than its own qualified employees to operate the Equipment and accepts all liability for said operation by its employees and immediately notify Contractor in writing if this provision is violated. Subcontractor shall direct the operation of the Equipment.
5. Contractor and lessor (if applicable) shall not be liable for any damages or injuries sustained by Subcontractor, its employees, any third party or anyone else, including the Contractor and/or its employees, subcontractors and/or agents, incurred during Subcontractor's use and/or possession of the Equipment. Subcontractor shall be solely liable for any damages or injuries arising out of this Agreement, the possession and/or use of the Equipment and/or the direction of the operation of the Equipment.
6. In addition to the indemnity obligations contained elsewhere in the Subcontract Agreement, Subcontractor hereby agrees to indemnify, defend and hold Contractor and lessor (if applicable) harmless from any and all claims of any nature made by Subcontractor, its employees, any third party and/or the Contractor's employees, subcontractors and/or agents related to and/or arising out of this Agreement, the possession and/or use of the Equipment and/or the direction of the operation of the Equipment. Subcontractor agrees to pay any sums expended by Contractor and lessor (if applicable) or its agents to investigate, prosecute, defend, settle or satisfy any judgments entered against them pertaining to any such claims.
7. In consideration for use of the Equipment, Subcontractor agrees to the compensation of \$1.00 for the use of the Equipment, or as otherwise identified in a deductive Change Order, which Subcontractor agrees to execute and which may also include the rental period, payment terms and any special conditions.
8. In addition to the insurance coverages specified elsewhere in the Subcontract Agreement, Subcontractor shall obtain **Contractors Equipment Coverage** for the Equipment. Such coverage shall be in a limit of at least the value of the Equipment. Contractor shall also not be responsible for loss or damage to or obtaining and/or maintaining in force property insurance for Equipment (owned or rented) while the Equipment is in the care, custody or control of Subcontractor. Contractor and lessor, if applicable, shall be made loss payee on Subcontractor's Equipment Insurance Policy.

IN WITNESS WHEREOF, Subcontractor and Contractor have executed this Equipment Use Agreement.

Clayco, Inc. [OR OTHER LEGAL ENTITY NAME]

{{Sig_es_:signer2:Signature}}

SUBCONTRACTOR'S LEGAL ENTITY NAME

{{Sig_es_:signer1:Signature}}