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Job No. \_\_\_\_\_

Subcontract No. \_\_\_\_\_

**SUBCONTRACT**

This agreement made at \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_

\_\_\_\_\_ (hereinafter "Contractor"), and

\_\_\_\_\_ (hereinafter "Subcontractor") of

\_\_\_\_\_.

WHEREAS, Contractor has entered into a Contract dated \_\_\_\_\_, 20\_\_\_\_ (hereinafter

"Prime Contract") with \_\_\_\_\_

(hereinafter "Owner") for the construction of \_\_\_\_\_

\_\_\_\_\_ (hereinafter "Project"); and

WHEREAS, \_\_\_\_\_ (hereinafter "Architect") is the architect

and/or engineer for the Project.

**NOW, THEREFORE, it is agreed as follows:  
 WITNESSETH:**

1. **Contract Documents.** The term "Contract Documents" as used in this Agreement refers to the following:
  - (a) this Subcontract;
  - (b) the General and Supplementary Conditions, General Requirements, Drawings, Specifications, and all Addenda of the Prime Contract issued prior to execution of the Prime Contract by Owner and Contractor;
  - (c) all Amendments, Modifications or Change Orders by and between Owner and Contractor subsequent to the execution of the Prime Contract;
  - (d) all Extra Work or Changes ordered by Contractor pursuant to Paragraph 4 of this Agreement; and
  - (e) the Progress Schedule prepared from time to time by Contractor pursuant to Paragraph 12 of this Agreement.

All of the foregoing documents are hereby incorporated by reference in and made a part of this Agreement with the same force and effect as if fully set forth herein. All of the foregoing documents have been examined by Subcontractor and shall be available for Subcontractor's inspection during the term of this Agreement.

2. **Flow-Down.** Subcontractor certifies and agrees that he has:
  - (a) read and examined the Contract Documents;
  - (b) inspected to his satisfaction the location and surface and subsurface conditions of the job site; and
  - (c) is fully familiar with all of the conditions under which the Work is to be performed, including the Progress Schedule referred to in Paragraph 12 herein.

Subcontractor enters into this Agreement based upon his investigation of all of such matters and is in no way relying upon any opinions or representations of Contractor. Subcontractor does hereby agree that it and its subcontractors and suppliers shall be and are bound by any and all of said Contract Documents insofar as they relate in any part, directly or indirectly, to the Work, as hereinafter defined, and performance of the Work, including Extra Work and Change Order Work, covered by this agreement. Subcontractor does hereby agree that it and its subcontractors and suppliers shall be and are bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Contract Documents, to the extent of the Work provided for in this Agreement, including Extra Work and Change Order Work, and that where in the Contract Documents reference is made to Contractor and the work or specification therein pertains to Subcontractor's trade, craft or type of work, then such work or specification shall be interpreted to apply

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 Subcontractor

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 Contractor

to Subcontractor instead of Contractor. In applying the terms and conditions of the Contract Documents to this Agreement, "Contractor" shall be substituted for "Owner" and "Subcontractor" substituted for "Contractor." The provisions of this Flow-Down clause apply with equal force and effect to the Work specified in Paragraph 3 hereof, together with the Extra Work and Change Order Work contemplated by Paragraph 4 hereof. In the event any provision of this Agreement is in conflict with the other Contract Documents, this Agreement shall govern.

3. **Work.** Subcontractor agrees to furnish and pay for all management, supervision, financing, shop drawings, straight-time and overtime labor, services, materials, installation, repair of defective Work or materials, cartage, hoisting, testing, insurance, taxes, licenses, permits, equipment, scaffolding, tools and other construction facilities of every kind and description required to diligently, timely and fully perform and complete the Work specified in Exhibits attached hereto and made a part of this Agreement, together with the Extra Work and Change Order Work contemplated by Paragraph 4 hereof for the Project in strict conformance to the Contract Documents and the Project Schedule as provided in Paragraph 12 hereof.

Subcontractor shall at all times keep the work area clean of rubbish and all kinds of waste materials which result from its work. In addition, Subcontractor shall remove its tools, scaffolds, shanties and surplus materials from the work area. In the event Subcontractor fails to remove such rubbish and equipment, Contractor may remove same, and the expense incurred shall be charged to Subcontractor.

Disposal of any rubbish and/or waste materials, including waste material considered hazardous, shall be in accordance with all federal, state and local regulations and shall be at Subcontractor's own expense.

4. **Extra Work and Change Order Work.** Contractor shall have the right at any time during the progress of the Work, without prior notice to or consent of Subcontractor's surety, to order Subcontractor to increase or decrease the scope of Work of this Agreement by means of extra work or deleted work initiated by Contractor or by means of a Change Order initiated by Contractor as a result of an Owner initiated Change (either additive or deductive in nature) in the Contract Documents. Extra Work and Change Order Work shall be governed and performed by Subcontractor under all of the terms and conditions of this Agreement and in strict conformance with the requirements of the Contract Documents. Nothing herein contained shall excuse Subcontractor from proceeding promptly with the prosecution of the Extra Work or Change Order Work as ordered in writing by Contractor, and any failure to do so shall constitute a material breach by Subcontractor and default under this Agreement. Except in an emergency endangering life or property, no officer, employee or agent of Contractor is authorized to direct any Extra Work or Change Order Work by oral order. In the event Contractor and Subcontractor are unable to agree on the adjustment in the Contract Price, Subcontractor shall, nevertheless, promptly perform said Extra Work or Change Order Work and the Contract Price shall be adjusted as follows:

- (a) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (b) unit prices stated in the Contract Documents or subsequently agreed upon;
- (c) on a time and material basis (which may be on a "not-to-exceed" contingency) in accordance with Owner/Contractor approved labor and equipment rate schedules which include the material markup. Daily force reports, countersigned by Contractor, shall be required to verify all work performed.

Subcontractor shall be required to submit with its invoices appropriate supporting data, i.e., material bills.

Unless requested by Contractor, Subcontractor shall have no dealings with Owner and/or General Contractor nor authorized representatives of either in regard to change, deviation, addition or omission in connection with the Work, but must deal only with Contractor.

If Subcontractor initiates a substitution, deviation or Owner directed Change Order which increases the cost of performance of Contractor or any other subcontractor, Subcontractor shall be liable for said increase and Subcontractor does hereby agree that Contractor shall be entitled to deduct from the Contract Price an amount sufficient to cover said increase, in accordance with Paragraphs 8 and 10 of this Agreement.

Subcontractor shall give notice of claim to Contractor designated as such with respect to Owner initiated Change Orders within the period and under the terms and conditions contemplated by the Contract Documents. Subcontractor shall give notice of claim to Contractor designated as such with respect to Extra Work ordered by Contractor for which extra compensation is asserted against Contractor within ten (10) working days after such work is performed, or Subcontractor shall be deemed to have abandoned any claim therefor.

No Extra Work, Change Order, alteration or modification in or deviations from this Agreement or the Contract Documents, whether made in the manner herein provided or not, shall release or exonerate, in whole or in part, Subcontractor's surety or any bond given in

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Contractor

connection with this Agreement, and neither Owner nor Contractor shall be under any obligation to notify Subcontractor's surety of the occurrence of such event.

5. **Guarantee.** Subcontractor shall guarantee its Work to the same extent that Contractor is obligated to guarantee its Work under the Prime Contract, and to such greater extent as required by law, but in any event shall guarantee its Work against all defects in materials or workmanship for a period of at least one (1) year from the date of final acceptance of the Project by Owner. Subcontractor agrees to provide such further guarantees, warranties, bonds and assurances as required by the Prime Contract or as customary in the type of construction called for on the Project. Nothing herein shall relieve Subcontractor of liability for direct and consequential damages arising from any failure to perform the obligations of the Subcontract. Subcontractor agrees to reimburse Contractor for all costs incurred in enforcing this Subcontract, including, without limitation, Contractor's attorney fees.

6. **Condition to Payment.** Subcontractor states that he relies on payment for Work performed pursuant to Paragraph 3 and Extra Work and Change Order Work performed pursuant to Paragraph 4 on the credit and ability to pay of Owner, and not of Contractor, and thus Subcontractor agrees that payment by Owner to Contractor for Work performed by Subcontractor or its subcontractors and suppliers shall be a condition precedent to any payment obligation of Contractor to Subcontractor. Subcontractor agrees that the liability of the surety on Contractor's payment bond, if any, for payment to Subcontractor, is subject to the same conditions precedent as are applicable to Contractor's liability to Subcontractor.

Should Subcontractor engage in collection proceedings against Owner or General Contractor to collect amounts owed to Contractor, or if Contractor is engaged in litigation with Owner or General Contractor for any reason in order to collect amounts owed, Subcontractor agrees that all costs of these proceedings, including, without limitation, attorney fees, expert witness fees and all other expenses, shall first be deducted against sums owed to Subcontractor so that Contractor can be fully reimbursed for incurring said expenses, and the balance remaining after Contractor is fully reimbursed shall be paid pro-rata to all of Contractor's Subcontractors, based on the amount each Subcontractor is owed. Subcontractor agrees to accept this pro-rata payment as payment in full of its outstanding invoices.

7. **Contract Price.** Subject to Paragraphs 6, 11 and 12, Contractor agrees to pay Subcontractor for the Work required by Paragraph 3, and performed in accordance with the Contract Documents, the sum of: \_\_\_\_\_ (\$ \_\_\_\_\_), and to make such payment in accordance with Paragraph 8.

8. **Payment Schedule.** Subject to Paragraphs 6, 10, 11 and 12, partial payments will be made to Subcontractor on the date specified in the Contract Documents for payment from Owner to Contractor in an amount equal to the net amount payable pursuant to the Contract Documents of the value, computed on the basis of the Contract Price set forth above, and of the quantity, as estimated in accordance with the Contract Documents, of the Work hereunder, as determined in accordance with the Contract Documents, less the aggregate of previous payments, but such partial payments shall not become due to Subcontractor until \_\_\_\_\_ (\_\_\_\_) days after Contractor receives actual payment for such Work from Owner. If Contractor receives payment from Owner for less than the full value of materials delivered to the site but not yet incorporated into the Work, the amount due to Subcontractor on account of such materials delivered to the site shall be proportionately reduced. If the quantities of Work allowed Subcontractor by Contractor are reduced by Owner after making partial payment on the final payment, then Contractor may deduct from any subsequent payment the amount of such decreased payment. No partial payment to Subcontractor shall operate as approval or acceptance of any Work furnished hereunder. Subject to Paragraphs 6, 10, 11 and 12, upon complete performance of this Agreement by Subcontractor and final approval and payment of Subcontractor's Work by Owner in accordance with the Contract Documents, Contractor shall make final payment to Subcontractor of the balance due to him under this Agreement within sixty (60) days after full payment for such Work has been received by Contractor from Owner. If "in-place" or "as-built" drawings are required by the Contract Documents, these shall be prepared and submitted to Contractor before final payment is requested by Subcontractor. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor, materials, equipment and subcontractors performing work or furnishing materials under this Agreement, all in a form satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such payroll affidavits, receipts, vouchers or releases, or any or all of them, have been furnished to and accepted by Contractor. In addition, Subcontractor agrees to furnish to Contractor a sworn affidavit listing all subcontractors and suppliers providing services and/or materials with respect to the Project. Subcontractor shall submit its first monthly Payment Request and each succeeding one thereafter at such time, in such form, and with such supporting documentation as may be requested by Contractor. If Subcontractor is not required or is unable to furnish Payment and Performance Bonds covering its Work, Contractor may, at Contractor's sole option, make direct or joint check payments on behalf of Subcontractor or Subcontractor's employees, material suppliers, subcontractors, other suppliers, or any employee fringe benefit trust.

9. **Taxes.** Subcontractor shall pay, and Subcontractor's lump sum price, unit prices and rates shall include, any and all taxes or other charges of whatever nature imposed by governmental bodies in connection with Subcontractor's Work. This includes, but is not limited to, all sales and use taxes and payroll taxes or contributions, whether federal, state, municipal or local, and Subcontractor accepts exclusive liability for their payment for all employees of Subcontractor engaged in the performance of this Subcontract.

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Subcontractor

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Contractor

10. **Retainage.** Notwithstanding the provisions of Paragraph 8, and in addition to all other rights of Contractor specified herein, Contractor shall be entitled to retain an amount equal to \_\_\_\_\_ percent (\_\_\_\_%) of the net amount of each partial payment due Subcontractor as called for and as subject to the provisions of Paragraph 8. Such retainage shall be held by Contractor as further security for the performance of Subcontractor's obligations hereunder and shall be so held until final payment is made in accordance with Paragraph 8, at which time the retainage will also be disbursed to Subcontractor. No interest shall be paid by Contractor to Subcontractor on amounts so retained.

11. **Deductions.** Without in any manner limiting Contractor's other rights and remedies hereunder, payments otherwise due Subcontractor may be withheld by Contractor on account of Work (including Extra Work or Change Order Work) performed or furnished not in conformance with the Contract Documents and this Agreement; claims filed against Subcontractor by Contractor or other subcontractors or suppliers of Contractor; demands made against Subcontractor's insurer pursuant to Paragraph 17; reasonable evidence indicating probability of filing of claims; failure of Subcontractor to make payments properly to its subcontractors or for material or labor; or a reasonable doubt that this Agreement can be completed for the balance then unpaid. If the aforesaid causes are not removed, on written notice Contractor may rectify the same by tendering payment therefor from amounts otherwise payable to Subcontractor from the Contract Price contemplated herein. Contractor may offset against any sums due Subcontractor hereunder the amount of any liquidated or unliquidated obligations of Subcontractor to Contractor, whether or not arising out of this Agreement.

12. **Commencement or Prosecution of the Work.** Time is of the essence of this Agreement. Subcontractor acknowledges that the Work contemplated herein forms only a part of the entire scope of work contemplated by the Prime Contract entered into by Owner and Contractor. Subcontractor does hereby agree that Contractor shall be entitled to determine the date on which Subcontractor shall be required to commence and complete performance of all Work (including Extra Work and Change Order Work) required by this Agreement. Contractor has reserved exclusively to itself the contractual right to direct Subcontractor to perform all Work aforesaid at such time, for such period and in such sequence of construction as Contractor, in its sole discretion as prime contractor, determines to be in the best interests of the Project as a whole. Contractor may prepare a coordinated Progress Schedule covering all the work of Contractor, Subcontractor and all subcontractors, and if it does so, Subcontractor is required to perform its work in accordance with such Progress Schedule as it may be modified by Contractor from time to time during the progress of the Work. The Progress Schedule, when and if prepared by Contractor, and as may be modified from time to time by Contractor, shall be deemed and construed to be a material part of this Agreement and shall be deemed and construed incorporated into and made a part of this Agreement by this reference. Subcontractor does hereby agree that it shall have no legal or equitable interest in or claim to any float-time contemplated in the Progress Schedule, as modified from time to time by Contractor.

Should Subcontractor be obstructed or delayed in the prosecution of completion of its Work (including Extra Work or Change Order Work) as a result of any cause recognized by Owner as an excusable delay pursuant to the Contract Documents, Subcontractor shall give Contractor notice thereof in accordance with the terms and conditions of the Contract Documents, stating the cause or causes thereof, or be deemed to have waived any right which Subcontractor may have had to a time extension or additional compensation on account of such delay. Contractor will transmit to Owner or Owner's representative a request for extension of time stating the cause of delay asserted by Subcontractor, and Subcontractor shall thereupon become entitled to only such extensions of time or additional compensation for completing the Work as Owner or Owner's representative may grant therefor.

No interruption, cessation, postponement or delay in the commencement of the Work (including Extra Work or Change Order Work) or in the Progress Schedule from any cause whatsoever, including but not limited to disputes, shall relieve Subcontractor of its duty to perform the Work or give rise to any right to direct, consequential or special damages or additional compensation from Contractor, except to the extent that damages or additional compensation are paid to Contractor by Owner for the account of Subcontractor for such delay, and Subcontractor agrees that no additional compensation or damages shall be allowed for any cause except as provided in this Paragraph 12.

13. **Continue Work During Dispute.** Pending the final disposition of any dispute pursuant to Paragraph 20 hereof arising out of or in connection with the Work (including Extra Work or Change Order Work) contemplated by this Agreement, Subcontractor shall proceed diligently with all Work to be performed by it under this Agreement without delay, interruption, cessation or postponement. Time is of the essence of this Agreement.

14. **Termination.**

(a) If the Prime Contract between Contractor and Owner is terminated for any reason prior to completion, Subcontractor, upon being notified by Contractor of such termination, shall immediately cease further Work under this Agreement. Subcontractor shall thereafter be entitled to no further compensation for its Work or costs associated with this Agreement except to the extent that Owner pays to Contractor additional sums for the account of Subcontractor, and then only in the amount of such payment actually received by Contractor.

(b) If Subcontractor (i) fails or refuses to proceed with or to properly perform its Work pursuant to Paragraph 3, or Extra Work and Change Order Work pursuant to Paragraph 4 of this Agreement, or (ii) fails or refuses to properly perform or abide by any terms,

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Subcontractor

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Contractor

covenants, conditions or provisions contained in this Agreement or the Contract Documents, or (iii) fails or refuses to obey laws, ordinances, regulations or other codes of conduct, Contractor shall have the right to terminate all or any part of the Work to be performed by Subcontractor under this Agreement.

(c) If Contractor determines that Subcontractor has not taken substantial action to remedy and cure a default in its performance within three (3) working days following receipt by Subcontractor of written notice of said default (exclusive of the date on which written notice is received by Subcontractor), then Contractor may, at its option, without releasing or waiving its rights and remedies against Subcontractor's sureties and without prejudice to any other right to which it may be entitled hereunder or by law, terminate all or any part of the Work to be performed by Subcontractor under this Agreement and take possession of all or such part of the Work and all materials, tools, equipment and other construction facilities of Subcontractor and complete Subcontractor's Work or part thereof by whatever means, method or agency which Contractor may, in its sole discretion, choose. In the event that Contractor deems any of the foregoing remedies necessary, Subcontractor agrees that it shall not be entitled to receive any further payment until after the Project shall have been completed and Final Payment received by Contractor from Owner. Moreover, all monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including attorney fees, legal expenses and court costs) incurred by Contractor incident to such completion, shall be deducted from the Contract Price, and if such expenditures, together with said costs, losses, damages and extra expenses, exceed the unpaid balance of the Contract Price hereunder, Subcontractor agrees to pay promptly to Contractor, on demand, the full amount of such excess, including all costs of collection, attorney fees, legal expenses, court costs and interest thereon at the maximum legal rate of interest until paid. The liability of Subcontractor hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained and obligations assumed by Contractor in good faith under the belief that such payments or assumptions were necessary or required, (i) on completing the Work or part thereof or re-letting the Subcontract, and (ii) in settlement, discharge or compromise of any claims, demands, suits and judgments pertaining to or arising out of the Work hereunder.

15. **Protection of Work.** Subcontractor shall fully protect its Work and/or materials or equipment from loss or damage and shall bear the cost of any such loss or damage until the date of Owner's Final Payment to Contractor. If Subcontractor or its employees, subcontractors, suppliers or agents are responsible for any loss, injury or damage to the Work and/or materials or equipment of Contractor, Owner, Owner's separate contractors or any other subcontractor of Contractor or Subcontractor, Subcontractor shall be liable to Contractor for such loss, injury or damage and Subcontractor shall be charged with same, and any monies necessary to replace such loss or damage shall be deducted from monies due Subcontractor.

16. **Materials and Equipment Furnished by Others.** In the event Subcontractor is required to install materials or equipment furnished by Contractor or others, it shall be the responsibility of Subcontractor to examine the items so provided and thereupon handle, store and install the items with such skill and care as to ensure satisfactory installation. Loss or damage due to acts of Subcontractor shall be charged to the account of Subcontractor and deducted from monies due under this Agreement. In the event Subcontractor shall use Contractor's equipment or facilities, it shall reimburse Contractor at a predetermined rate, unless otherwise agreed. Further, in so doing, Subcontractor assumes all responsibility for, and shall hold Contractor harmless from, any claims, actions, demands, damages, liabilities or expenses including attorney fees, legal expenses and court costs arising out of or relating to any act or omission of Subcontractor or its agents, employees, guests, subcontractors or suppliers in conjunction with the use of such equipment or facilities.

17. **Insurance.** Shall be in strict compliance with Exhibit A attached to this Subcontract Agreement and made a part hereof.

18. **Indemnity.** To the fullest extent permitted by law, Subcontractor and/or its insurer, pursuant to Paragraph 17 hereof, shall defend, indemnify and save harmless Contractor and Owner from and against all of the following which shall arise or are alleged to have arisen, whether directly or indirectly, on account of or in connection with any Work done under this Agreement, including Paragraphs 4 and 24 hereof, by Subcontractor or its employees, guests, agents, subcontractors or suppliers, or resulting from the use by any of the above persons, of any materials, tools, scaffolding, ways, machinery or other construction facility or property of Owner or Contractor, including any of the same resulting in whole or in part from Contractor's alleged or actual fault, concurrent negligent acts or omissions, regardless of whether such fault, acts or omissions are active or passive in nature:

(a) any claim, liability, loss, damage, penalty, costs, including reasonable attorney fees, awards, fines or judgments;

(b) any and all claims, liability, loss, damage, costs, including reasonable attorney fees, awards, fines or judgments arising by reason of any obligation or indemnity which Contractor has to Owner or Owner's representatives, employees, guests and agents;

(c) any and all claims, suits, liability, expense or damage for any alleged or actual infringement or violation of any patent or patent right arising in connection with this Agreement; and

(d) any costs incurred by Contractor which result from Subcontractor's alleged or actual non-compliance with state and federal governing agencies (i.e., IOSHA, OSHA, etc.), including, without limitation, any fines, sanctions or defense costs. In the event Contractor is deemed to be the controlling or prime contractor on this Project, and if Contractor is issued a fine as a result of an

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inspection in which the inspector determines that Subcontractor is in violation, Subcontractor shall indemnify Contractor from all losses sustained by reason of Subcontractor's non-compliance, which would include, without limitation, fines, costs and attorney fees.

This indemnity obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under any worker's compensation acts, disability benefit acts or any other type of employee benefit act.

**It is expressly acknowledged and agreed that each of the foregoing indemnities is independent and that each shall be given effect. It is expressly acknowledged and agreed that each of the foregoing indemnities shall extend to cases in which there may be concurrent negligent acts or omissions of Contractor regardless of the comparative degree of fault of Contractor, Subcontractor or others. Subcontractor hereby assumes the entire responsibility and liability for all Work, supervision, labor and materials provided for in this Agreement and this indemnification shall be in addition to any indemnity liability imposed in the Contract Documents and shall survive the completion of the Work or the termination of this Agreement. Contractor shall have the right to retain payments to secure this obligation. However, this provision shall not be construed so as to require Subcontractor to indemnify Contractor or Owner with respect to the sole negligence of Contractor.**

19. **Third Party Beneficiary Rights of Subcontractor.** Should Subcontractor have any cause of action at law or in equity against Contractor or any other subcontractor or supplier of Contractor by reason of the acts or omissions of such other subcontractor or supplier, Subcontractor covenants not to sue or demand arbitration against Contractor for any cause of action in law or at equity on account of such acts or omissions; provided, however, it is the express intent of Contractor to make this Subcontractor hereunder an intended third party beneficiary under Contractor's subcontract or purchase order with such other responsible subcontractor or supplier for the limited and express purpose of asserting such cause of action against such other responsible subcontractor or supplier. Subcontractor hereunder shall make claim directly against such other responsible subcontractor or supplier and shall be entitled to assert all rights that Contractor may have against such other responsible subcontractor or supplier as may be contained in Contractor's subcontract or purchase order with such other subcontractor or supplier. Contractor and Subcontractor hereunder further agree that should any other subcontractors or suppliers of Contractor have a cause of action at law or in equity against Contractor and/or Subcontractor hereunder by reason of the acts or omissions of Subcontractor hereunder then such other subcontractors or suppliers of Contractor are intended to be and shall be deemed third party beneficiaries of this Agreement to the same extent and manner as Subcontractor hereunder is deemed by the preceding portions of this provision to be a third party beneficiary of the subcontracts and purchase orders between Contractor and such other subcontractors and suppliers of Contractor.

20. **Disputes.**

(a) Subject to the remaining paragraphs of this Paragraph 20, if arbitration is conducted by Owner and Contractor concerning any dispute between them which likewise involves an issue in dispute between Contractor and Subcontractor, then Subcontractor, if permitted by the arbitrators, shall be allowed, as part of said arbitration, to offer evidence with respect to any such issues. In any event, Subcontractor will be bound by the award in any such arbitration to the extent that the arbitrator's award directly or by necessary implication addresses any issue or dispute between Contractor and Subcontractor, whether or not Subcontractor is a party to such arbitration proceeding.

(b) In case of any disputes between Subcontractor and Contractor, Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to Owner both by the terms of the Contract Documents and by any and all decisions or determinations made thereunder by the party or board so authorized in the Contract Documents. It is agreed that in the event the Contract Documents contain a provision, hereinafter called "Disputes" clause, whereby claims may be resolved under an administrative procedure or by arbitration, then as to any claims of Subcontractor for or on account of acts or omissions of Owner or its Engineer which are not disposed of by agreement, Contractor agrees to present to Owner, in Contractor's name, all of Subcontractor's claims for additional monetary compensation or time extension, and to further invoke, on behalf of Subcontractor, those provisions in the Contract Documents to determine disputes. Contractor shall have the option to present such claims upon Subcontractor's behalf in advance of an event without Subcontractor's written request. Subcontractor shall have full responsibility for preparation and presentation of such claims and shall bear all expenses thereof, including attorney fees. Subcontractor agrees to be bound by the procedure and final determinations as specified in any such Disputes clause, and agrees that it will not take, or will suspend, any other action or actions with respect to any such claims and will pursue no independent litigation with respect thereto, pending final determination under such Disputes clause. Subcontractor shall not be entitled to receive any greater amount from Contractor than Contractor is entitled to and actually does receive from Owner on account of Subcontractor's Work, less any markups or costs incurred by Contractor and to which Contractor is otherwise entitled, and Subcontractor agrees that it will accept such amount, if any, received by Contractor from owner as full satisfaction and discharge of all claims for or on account of acts or omissions of Owner or its Engineer.

(c) Subcontractor shall be bound by Contractor's determination, made in good faith, as to apportionment of any amounts received from Owner for claimants, including Contractor and other subcontractors, whose work is affected by any act or omission of Owner or its Engineer.

(d) Should a dispute as to the proper interpretation of this Subcontractor, or work or material performed or furnished hereunder, arise which concerns the parties hereto only, or Subcontractor and other subcontractors or suppliers, but not Owner or its Engineer, the same shall be decided by Contractor, whose decision thereon shall be final and conclusive.

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Subcontractor

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Contractor

(e) Subcontractor shall proceed diligently with the Work, pending final determination pursuant to any Disputes clause or pursuant to any other action taken with respect to a claim or claims.

(f) If, at any time, any controversy shall arise between Contractor and Subcontractor regarding anything pertaining to this Agreement and which the parties hereto do not promptly adjust and determine, then the written orders of Contractor to Subcontractor shall be followed. The controversy shall be submitted to and determined by arbitration in the city first above written under the Construction Industry Rules of the American Arbitration Association then prevailing and the parties hereto agree to be bound by any provisions thereunder to arbitrate.

21. **Subletting.** Subcontractor shall furnish in writing to Contractor the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each portion of the Work. Contractor shall promptly reply to Subcontractor in writing, stating whether or not Contractor or Owner or Architect, after due investigation, has reasonable objection to any such proposed person or entity. Subcontractor shall not contract with a proposed person or entity to whom Contractor, Owner or Architect has made reasonable and timely objection.

22. **Bonds.** Concurrent with the execution of this Agreement, or at any time during its performance, Subcontractor shall, if required by Contractor, execute a Labor and Material Bond and a separate Faithful Performance Bond, in an amount equal to 100% of the Contract Price. Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form satisfactory to Contractor.

23. **Compliance with Laws.** Subcontractor agrees to comply, at its own expense, with all federal, state and local laws and regulations applicable to the Work covered by this Agreement, including, but not limited to, those dealing with taxation, workers' compensation, equal employment and affirmative action programs, and safety. Subcontractor agrees to defend, indemnify and save harmless Contractor from any and all liability and damages, fines, costs and attorney fees incurred by Contractor on account of Subcontractor's failure to comply with all laws and governmental regulations applicable to all of Subcontractor's Work under this Agreement (including Extra Work or Change Order Work). Subcontractor shall comply fully with all prevailing wage laws and similar statutes and regulations applicable to the Project. The prevailing wage laws will include all statutes, ordinances, laws and regulations of the United States Department of Labor and any other governmental entity at the federal, state or local level with jurisdiction over the Project. It shall be the responsibility of Subcontractor to determine any applicable prevailing wage requirements and to make appropriate payments to all employees.

24. **Safety.** Subcontractor is required to perform the Subcontract Work in a safe and reasonable manner. Subcontractor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect: (1) employees and other persons at the site; (2) materials and equipment stored at the site or at off-site locations for use in performance of the Work; and (3) all property and structures located at the site and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work. Subcontractor is solely responsible for the safety of its employees and representatives, and the employees and representatives of its subcontractors, vendors and materialmen on the construction site. Subcontractor shall implement appropriate safety measures pertaining to the Subcontract Work and the Project, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers and establishing proper notice procedures to protect persons and property at the site and adjacent to the site from injury, loss or damage.

Subcontractor is required to designate an individual at the site in the employ of Subcontractor who shall act as Subcontractor's designated safety representative with a duty to prevent accidents. Subcontractor shall immediately give notice to Contractor, via facsimile or e-mail, of any accident, whether or not an injury was sustained, including near misses, followed by hard copy of written notice within 24 hours of the occurrence.

Prevention of accidents at the site is the responsibility of Contractor, Subcontractor and all other subcontractors, persons and entities at the site. Establishment of a safety program by Contractor shall not relieve Subcontractor or other parties of their safety responsibilities. Subcontractor shall establish its own safety program, implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by Contractor and Owner, including, but not limited to, requirements imposed by the Subcontract Documents. Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project and shall stop any part of the Subcontract Work which Contractor deems unsafe until corrective measures satisfactory to Contractor shall have been taken. Contractor's failure to stop Subcontractor's unsafe practice shall not relieve Subcontractor of the responsibility therefor.

Subcontractor shall give all required notices and comply with all applicable rules, regulations, orders and other lawful requirements established to prevent injury, loss or damage to persons or property. Subcontractor shall have and exercise full legal responsibility for compliance hereunder by itself, its agents, employees, materialmen and subcontractors with respect to its portion of the work on this Project and shall directly receive, respond to, defend and be responsible for any citation, assessment, fine or penalty by reason of Subcontractor's failure or failure of Subcontractor's agents, employees, materialmen and subcontractors to so comply. Subcontractor

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Subcontractor

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Contractor

shall indemnify and hold harmless Contractor and Owner from and against any liability, loss, damage, costs, claims, awards, judgments, fines, expenses, including reasonable attorney fees and expenses, claims or liability for harm to persons or property, expenses incurred pursuant to or attendant to any hearing or meeting or any other applicable costs which may be incurred by Contractor resulting from Subcontractor's failure to fulfill the covenants set forth in this section.

If hazardous substances of a type which an employer is required by law to notify its employees are being used on the site by Subcontractor, Subcontractor's subcontractor or anyone directly or indirectly employed by them, Subcontractor shall, prior to harmful exposure to such substance by any employees on the site, give written notice of the chemical composition thereof to Contractor in sufficient detail and time to permit compliance with such laws by Contractor, other subcontractors and other employers on site. In addition, it is the responsibility of Subcontractor or anyone directly or indirectly employed by Subcontractor to furnish to Contractor all Material Safety Data Sheets for all materials used on the Project. In the event Subcontractor encounters on the site material reasonably believed to be asbestos, lead or polychlorinated biphenyl (PCB) which has not been rendered harmless, Subcontractor shall immediately stop Work in the area affected and report the condition to Contractor in writing. Work in the affected area shall resume in the absence of asbestos, lead or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of Contractor and Subcontractor, or in accordance with final determination by Architect on which arbitration has not been demanded, or by arbitration as provided in this Agreement. Subcontractor shall not be required to perform without consent any Work relating to hazardous substances such as asbestos, lead or polychlorinated biphenyl (PCB).

If any employee or representative of Subcontractor, Subcontractor's subcontractor, vendor or materialmen should ever make a claim of any type against Contractor or Owner, then Subcontractor shall fully and completely defend, indemnify and hold harmless Contractor and Owner from said claim pursuant to paragraph 18 of this Agreement.

25. **Assignment and Subletting.** Subcontractor shall not, without prior written consent of Contractor, assign, transfer nor sublet any portion or part of the Work required by this Agreement nor assign any payments hereunder to others. Once approved, Contractor may assign or transfer the whole or part of this Agreement, and its rights hereunder, to any corporation, individual or partnership.

26. **Owner's Approval.** If this Agreement is subject to approval by Owner or its authorized representative under the terms of the Prime Contract, Contractor shall have no obligation to Subcontractor unless and until such approval is obtained.

27. **Jurisdictional Disputes and Labor Relations.** Subcontractor, in connection with all of the Work performed and material, supplies and equipment furnished and/or employed as a result of the Work performed hereunder, shall comply with and be bound by the labor policies, agreements and practices of Contractor to the extent permitted by law. Subcontractor shall supply only labor and/or materials which will not cause labor disputes or otherwise be in conflict with the labor policies, agreements and practices of Contractor. In the event Subcontractor's workers are involved in a jurisdictional dispute with other crafts on the project site, or such workers refuse to man the project due to any other type of labor dispute or a picket line for any reason, Subcontractor agrees to take immediate steps to resolve such disputes; and, if same are not immediately resolved, Contractor may, at its option, revoke the provisions of Paragraph 13 of this Agreement. Should there be picketing on Contractor's job site and Contractor establishes a reserved gate for Subcontractor's purposes, it shall be the obligation of Subcontractor to continue the proper performance of its Work without interruption or delay. Subcontractor further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing job site work to agree to all of the foregoing promises and undertakings, to the same effect as herein provided.

28. **Equal Employment Opportunity.** Subcontractor specifically affirms its awareness of Executive Order 11246 and all Equal Employment Opportunity regulations and standards and its obligations to comply with all such applicable labor requirements, including, but not limited to, all requirements imposed by law, regulation, Executive Order and the Prime Contract. Subcontractor agrees to provide all required certifications, notices and filings and to develop and maintain all required programs regarding handicapped workers, veterans and minority business enterprises.

29. **Governing law.** This Agreement shall be governed by the laws of the state in which the Project is located.

30. **Successors and Assigns.** Subject to other provisions hereof, this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

31. **Entire Agreement.** The headings used herein are for convenience only and are not to be utilized in interpreting this Agreement. This Agreement contains the complete and final agreement of the parties and supersedes any prior or contemporaneous agreement, understanding or representation by any party or its representative with respect to the subject matter hereof. Except as provided in Paragraph 4 hereof, no provision of the Agreement may be modified, supplemented or waived except in a written agreement executed by authorized representatives of both parties. The failure of Contractor to enforce at any time or for any period of time any one or more of the provisions of this Agreement shall not be construed to be and shall not be a waiver of provisions or of its rights thereafter to enforce each and every such provision. The parties hereto agree that in the event any provisions of this Agreement

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are held or determined to be illegal or void, the remainder of the Agreement shall remain in full force and effect. Subcontractor agrees that it has voluntarily entered into this Contract with full knowledge of its terms after receiving the assistance of legal counsel to understand its contents. Subcontractor waives any claim or defense it might have that the terms of this Contract should be construed unfavorably or against the interests of Contractor.

32. **Exhibits.** Attached hereto and made a part of this Agreement are Exhibit A, *Insurance Requirements*, and Exhibit B, *Scope of Work*. Subcontractor hereby acknowledges receipt and review of said Exhibits.

33. **Attorney Fees and Other Expenses of Enforcement.** Subcontractor agrees that in the event Contractor retains legal counsel or otherwise incurs any expense associated with enforcing any of the terms of this Agreement, Subcontractor shall fully reimburse Contractor for all of its costs and expenses of enforcement, including, without limitation, Contractor's attorney fees.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date hereinbefore set forth.

(Seal)  
Attest: \_\_\_\_\_  
(Signature)

THE PANGERE CORPORATION  
By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or Printed Name/Title)

\_\_\_\_\_  
(Typed or Printed Name/Title)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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**SUBCONTRACTOR SIGNATURES BELOW**  
If INDIVIDUAL – SUBCONTRACTOR, sign here:

Witness: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Typed or Printed Name)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

If CORPORATION, SUBCONTRACTOR, sign here:

(Seal)  
Attest: \_\_\_\_\_  
(Signature – Authorized Corporate Officer)

\_\_\_\_\_  
(Typed or Printed Name of Corporation)  
By: \_\_\_\_\_  
(Signature – Authorized Corporate Officer)

\_\_\_\_\_  
(Typed or Printed Name/Title)

\_\_\_\_\_  
(Typed or Printed Name/Title)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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Subcontractor

\_\_\_\_\_  
Contractor

