

 **AIA** Document A441™ – 2014

*Standard Form of Agreement Between Contractor and Subcontractor for a Design-Build Project*

AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_  
*(In words, indicate day, month and year.)*

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

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

and the Subcontractor:  
*(Name, legal status, address and other information)*

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

with the Design-Builder:  
*(Name, legal status, address and other information)*

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

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

The Contractor and Subcontractor agree as follows.

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### ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the agreement between the Design-Builder and Contractor and the other Contract Documents enumerated therein; (3) Modifications to the Prime Contract, whether before or after the execution of this Agreement; (4) other documents listed in Article 17 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 17.

§ 1.2 The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the terms and conditions governing this Subcontract shall be AIA Document A142™–2014, Standard Form of Agreement Between Design-Builder and Contractor, Exhibit A, Terms and Conditions.

§ 1.4 The Subcontract may be amended or modified only by a Modification. A Modification is (1) a written amendment to an existing agreement signed by the parties to that agreement, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work.

§ 1.5 The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Design-Builder and the Subcontractor, (3) between the Owner and the Subcontractor, or (4) between any persons or entities other than the Contractor and Subcontractor.

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

§ 1.7 If the Contractor and Subcontractor intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™–2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

## ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent they apply to the Work of the Subcontractor, the terms of the Prime Contract. To the extent the provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Design-Builder assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities that the Contractor assumes toward the Owner, Design-Builder, Architect, and other design professionals performing services on the Project. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Design-Builder has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor has against the Design-Builder, insofar as applicable to this Subcontract. Where a provision of the Prime Contract is inconsistent with a provision of this Agreement, this Agreement shall govern.

## ARTICLE 3 CONTRACTOR

### § 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all Project matters requiring the Contractor's approval or authorization. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall render decisions in a timely manner and in accordance with the Contractor's construction schedule.

### § 3.2 Services Provided by the Contractor

§ 3.2.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.2.3 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with any additional scheduling details that will enable the Subcontractor to plan and perform the Subcontractor's Work. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.2.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Except as previously agreed upon, additional costs to the Subcontractor resulting from relocation of such storage areas, at the direction of the Contractor, shall be reimbursed by the Contractor.

§ 3.2.3 Except as provided in Article 15, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

### § 3.3 Communications

§ 3.3.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Design-Builder, that affects the performance of this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

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

§ 3.3.3 The Contractor shall permit the Subcontractor to directly request information from the Design-Builder regarding the percentages of completion and the amount paid on account of Work done by the Subcontractor.

§ 3.3.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.3.5 If the Contractor observes or otherwise becomes aware of a fault or defect in the Work of this Subcontract or nonconformity with the Subcontract Documents, the Contractor shall give prompt written notice thereof to the Subcontractor.

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

§ 3.3.7 If the Contractor asserts or defends a claim against the Design-Builder that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

#### § 3.4 Claims by the Contractor

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

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

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

#### § 3.5 Contractor's Remedies

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement, and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and deduct the reasonable cost thereof from current or future payments due the Subcontractor. If payments due to the Subcontractor are not sufficient to cover such amounts, the Subcontractor shall pay the difference to the Contractor.

### ARTICLE 4 SUBCONTRACTOR

#### § 4.1 General

The Subcontractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number. The Subcontractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Subcontractor shall designate in writing a representative who shall have express authority to act on the Subcontractor's behalf with respect to the Project. The term "Subcontractor" means the Subcontractor or the Subcontractor's authorized representative.

#### § 4.2 Execution and Progress of the Work

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

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

#### § 4.2.3 Submittals

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

§ 4.2.3.2 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Subcontractor represents to the Contractor that the Subcontractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Subcontract Documents

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

§ 4.2.5 The Subcontractor agrees that the Contractor and the Design-Builder each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract.

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

§ 4.2.7 The Subcontractor shall take necessary precautions to protect the work of other subcontractors from damage caused by operations under this Subcontract.

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

#### § 4.3 Permits, Fees, Notices and Compliance with Laws

The Subcontractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Subcontractor's Work, as required of the Contractor by the Prime Contract. The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

#### § 4.4 Safety Precautions and Procedures

§ 4.4.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, and shall comply with safety measures initiated by the Contractor and with applicable laws, ordinances, rules and regulations, and lawful orders of public authorities for the safety of persons and property, in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor, within three days, an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.4.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.4.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance



has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.4.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, their design professionals and consultants and the agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the hazardous material or substance presents the risk of bodily injury or death as described in Section 4.4.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) to the extent that such damage, loss or expense is not due to the active negligence of the Subcontractor, the Subcontractor's Sub-subcontractors, their design professionals and consultants, and their agents and employees.

§ 4.4.5 The Subcontractor shall indemnify the Contractor, Design-Builder, and Owner for the cost and expense the Contractor, Design-Builder or Owner incurs (1) for remediation of a hazardous material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.4.3, except to the extent that the cost and expense is due to the Contractor's, Design-Builder's, or Owner's fault or negligence.

#### § 4.5 Cleaning Up

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

§ 4.5.2 As provided under Section 3.4.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

#### § 4.6 Warranty

The Subcontractor warrants to the Contractor that materials and equipment furnished under the Subcontract Documents will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Subcontract Documents. Work, materials or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. The Subcontractor does not warrant or guarantee that the Project will achieve the Sustainable Objective, if any. If required by the Contractor, the Subcontractor shall provide satisfactory evidence as to the kind and quality of materials and equipment furnished or to be furnished.

#### § 4.7 Indemnification

§ 4.7.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Contractor, Design-Builder, Owner, and the contractors, consultants, agents, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.7.

§ 4.7.2 In claims against any person or entity indemnified under this Section 4.7 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.7.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### § 4.8 Remedies for Nonpayment

If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of shut-down, delay and start-up, plus interest.

#### § 4.9 Professional Services Provided by Subcontractor

The Subcontractor shall provide professional services only to the extent specifically required by the Subcontract Documents for a portion of the Work of the Subcontract or if the Subcontractor otherwise needs to provide such services in order to carry out the Subcontractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Subcontractor shall not be required to provide professional services in violation of applicable law. If professional design services, or certifications by a design professional, related to systems, materials or equipment are specifically required of the Subcontractor by the Subcontract Documents, the Contractor will provide all performance, design, or other criteria that such services or certifications must satisfy. The Subcontractor shall cause such services to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Contractor.

### ARTICLE 5 CHANGES IN THE WORK

§ 5.1 The Design-Builder may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

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

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

### ARTICLE 6 CLAIMS AND DISPUTES

#### § 6.1 Mediation

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

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

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

### § 6.2 Binding Dispute Resolution

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

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

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

### § 6.3 Arbitration

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

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

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

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

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

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



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

### § 7.1 Termination by the Subcontractor

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Design-Builder under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

### § 7.2 Termination by the Contractor

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

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

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

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

§ 7.2.4 In case of such termination for the Design-Builder's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

### § 7.3 Suspension by the Contractor for Convenience

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

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

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

### § 7.4 Assignment of the Subcontract

§ 7.4.1 In the event the Design-Builder terminates the Prime Contract for cause, this Subcontract is assigned to the Design-Builder pursuant to Section A.4.4 of AIA Document A142-2014 Exhibit A, provided the Design-Builder accepts the assignment by written notification to the Subcontractor and Contractor.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

## ARTICLE 8 THE WORK OF THIS SUBCONTRACT

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

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

## ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

§ 9.3 The Work of this Subcontract shall be substantially completed not later than \_\_\_\_\_.

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

Portion of Work

Substantial Completion Date

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

*(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)*

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

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

## ARTICLE 10 SUBCONTRACT SUM

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

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Design-Builder and the Contractor:  
*(Insert the numbers or other identification of accepted alternates.)*

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

Item	Units and Limitations	Price Per Unit (\$0.00)
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§ 10.4 Allowances included in the Subcontract Sum, if any:  
*(Identify allowance and state exclusions, if any, from the allowance price.)*

Item	Price
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**ARTICLE 11 PROGRESS PAYMENTS**

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Design-Builder, and the certificate for payment issued by the Owner, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Design-Builder with a payment bond in the full penal sum of the Contract Sum, the Contractor shall hold payments received from the Design-Builder for Work properly performed by Subcontractors, Sub-subcontractors, and suppliers for those Subcontractors, sub-subcontractors, or suppliers. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the \_\_\_\_\_ day of a month, the Contractor shall include the Subcontractor’s Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Design-Builder. The Contractor shall pay the Subcontractor each progress payment within the time period required by applicable law, but in no event more than seven working days after the Contractor receives payment from the Design-Builder. If the Contractor does not receive payment from the Design-Builder for any cause that is not the fault of the Subcontractor, the Contractor shall pay the Subcontractor, on demand, a progress payment computed as provided in Sections 11.7, 11.8 and 11.9.

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

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

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

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;
- .2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;
- .3 Subtract the aggregate of previous payments made by the Contractor; and
- .4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Design-Builder has withheld or nullified, in whole or in part, payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

### § 11.9 Substantial Completion

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application to the Design-Builder for payment of such Work. Promptly upon receipt by the Contractor of payment from the Design-Builder on account of such application, the Contractor shall make payment to the Subcontractor. If a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project, then such payment to the Subcontractor shall consist of the entire unpaid balance of the Subcontract Sum less any amount necessary to cover costs of items to be completed or corrected by the Subcontractor. If the Prime Contract does not allow for full release of retainage, then such payment shall consist of an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that retained on the Contractor's Work under the Prime Contract, less any amount necessary to cover any costs of items to be completed or corrected by the Subcontractor.

## ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, and the Contractor has received payment from the Design-Builder. If, for any cause which is not the fault of the Subcontractor, the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Design-Builder, final payment to the Subcontractor shall be made upon demand. *(Insert provisions for earlier final payment to the Subcontractor, if applicable.)*

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

#### ARTICLE 13 COPYRIGHTS AND LICENSES

§ 13.1 Upon execution of this Agreement, the Subcontractor (1) grants to the Contractor a license to use the Subcontractor's Instruments of Service in the same manner and to the same extent as the Contractor has granted a license to the Design-Builder in the Prime Contract, and (2) grants to the Contractor the right to license use of the Subcontractor's Instruments of Service to the extent required for the Contractor to fulfill its obligations under the Prime Contract.

§ 13.2 The Contractor and the Subcontractor shall not make changes in each other's Instruments of Service without written permission of the other party.

#### ARTICLE 14 INSURANCE AND BONDS

§ 14.1 The Subcontractor shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions, as follows:

*(Parties should refer to AIA Document A142-2014 Exhibit B, if applicable, and specify each type of insurance, applicable limits and deductible amounts, required endorsements, and other terms and conditions, as applicable.)*

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

§ 14.3 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include the Contractor, Owner, Design-Builder, and the Design-Builder's consultants and contractors as additional insureds. The additional insured coverage shall be primary and non-contributory to any of the additional insured's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ 14.4 The Subcontractor shall provide certificates of insurance acceptable to the Contractor evidencing compliance with the requirements in this Article 14: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Contractor's written request. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final application for payment as required by Article 12 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 14.2. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Subcontractor with reasonable promptness.

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

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



## § 14.7 Surety Bonds

§ 14.7.1 The Subcontractor shall provide surety bonds as follows:

*(Specify type and penal sum of bonds.)*

Type	Penal sum, in dollars (\$0.00)
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§14.7.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under this Agreement, the Subcontractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

## § 14.8 Property Insurance

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

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

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

## § 14.9 Waivers of Subrogation

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

## ARTICLE 15 TEMPORARY FACILITIES AND WORKING CONDITIONS

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

Temporary Facility, Equipment or Service	Cost, if any (\$0.00)
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§ 15.2 Specific working conditions:

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

## ARTICLE 16 MISCELLANEOUS PROVISIONS

§ 16.1 Design professionals and consultants, if any, engaged by the Subcontractor shall be persons or entities duly licensed to practice their professions as required in the jurisdiction where the Project is located and are listed as follows: *(Insert name, address, discipline, license number (if applicable), insurance coverage including professional liability coverage, responsibilities to Subcontractor and other information.)*

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

§ 16.3 Payments due and unpaid under this Subcontract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

%

§ 16.4 Retainage and any reduction thereto is as follows:

§ 16.5 The Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Subcontract, including without limitation, any consequential damages due to either party's termination in accordance with Article 7.

§ 16.6 If the Contractor or Subcontractor receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 16.6.1.

§ 16.6.1 If the Contractor or Subcontractor receives information specifically designated as "confidential" or "business proprietary," the receiving party may disclose such information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The Party receiving such information may also disclose it to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 16.6.

## ARTICLE 17 ENUMERATION OF SUBCONTRACT DOCUMENTS

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

§ 17.1.1 This executed AIA Document A441–2014, Standard Form of Agreement Between Contractor and Subcontractor for a Design-Build Project.

§ 17.1.2 The Prime Contract, consisting of the Agreement between the Design-Builder and Contractor dated as first entered above and the other Contract Documents enumerated in the Design-Builder/Contractor Agreement.

§ 17.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Design-Builder/Contractor Agreement but prior to the execution of this Agreement:

Modification	Date
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§ 17.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

- .1 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed by the parties, or the following:
  
- .2 Other documents:  
*(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)*

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

\_\_\_\_\_  
CONTRACTOR *(Signature)*

\_\_\_\_\_  
SUBCONTRACTOR *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*